



TASK FORCE ON CHILDREN MATTERS

Working together to eradicate backlog and enhance efficiency of the criminal justice System for children

PLEA BARGAINING IN CRIMINAL CASES

WHAT IS A PLEA BARGAINING?

- Process by which an accused person and the prosecution mutually agree to bring a case to an end with the approval of the court.
- The mutual agreement is then reduced into writing in the form of a plea agreement and entered before a court.

CAN PLEA AGREEMENTS BE ENTERED INTO IN KENYA

- Plea agreements are provided for under section 137A-O of the Criminal Procedure Code.

- Plea agreements can be entered in all cases **except** in sexual offences, genocide, crimes against humanity and war crimes (Sec 137(N))
- Plea agreements can be entered into any time after a charge has been preferred but before judgment (Sec 137 A (3)).
- Plea Agreements can be withdrawn prior to acceptance of the plea in court or before a court passes its sentence (Sec 137 K).
- No appeal shall lie on any sentence passed by a court pursuant to a plea agreement unless it was obtained fraudulently or by misrepresentation (Sec 137 L).

ELEMENTS OF A PLEA AGREEMENT AS PROVIDED FOR BY LAW (SEC 137E)

- Must be in writing.
- Must be reviewed and accepted by the accused person.
- Must state fully the terms of the agreement, admissions by accused, the substantial & relevant facts.

- Must be signed by the prosecutor and the accused person.
- Must contain a certificate of interpretation where the services of an interpreter have been used.
- Must be signed by the complainant in instances where a compensation order is granted.

STEPS IN NEGOTIATING PLEA AGREEMENTS

- A plea offer is made by the prosecutor or accused person or accused person's advocate {Sec 137 C (1)}.
- The court is notified by the parties of their intention to negotiate a plea agreement {Sec 137 C (2)}.
- The Prosecutor consults with the police investigating officer, affords the victim a hearing, takes note of the personal circumstances of the accused person and the public interest.
- Parties draft and sign a plea agreement.

ROLE OF COURTS

- The court will not participate in plea negotiations (Sec 137C (3))
- The court shall satisfy itself that an accused person was competent, of sound mind and acted voluntarily at the time of entering into a plea agreement (Sec 137 G)
- The court before recording any plea agreement shall:
 - Swear the accused person;
 - Address the accused person directly in court;
 - Inform the accused person of all his rights;
 - Determine that the accused person understands his/her rights;
 - Inform the accused of his/her waiver of the right to a full a trial;
 - Determine that the accused understands

the nature of the charge he/she is pleading to;

- Inform the accused of the mandatory minimum and maximum possible penalty;
- Inform the accused of any applicable forfeiture;
- Inform the accused of his/her waiver of right of to appeal;
- Inform the accused of the court's authority to order compensation.
- Hear the prosecutor lay the factual basis of the plea {Sec 137F (2)}.
- Accept the plea agreement and record the factual basis (Sec 137F).
- Reject the plea agreement and record the reasons why (Sec 137J).
- Hear the parties on the issue of sentencing (Sec 137 I).

SENTENCING GUIDELINES

- Pleading guilty contributes to the objective of the criminal justice system of convicting those who have committed offenses and enables victims to obtain justice without unreasonable delay. (Policy Direction 21.1 in the Sentencing Guidelines)
- Entering an early plea of guilt can be a mitigating factor that may lead to a lesser sentence if the court is convinced that an accused person genuinely regrets the offence committed (Policy Direction 21.4 in the Sentencing Guidelines)
- Once the court is convinced the court may sentence an accused person to less than fifty percent of the maximum sentence provided by law (Policy Direction 23.9(2) in the Sentencing Guidelines)