



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

PLEA BARGAINING FACT SHEET

What is Plea Bargaining?



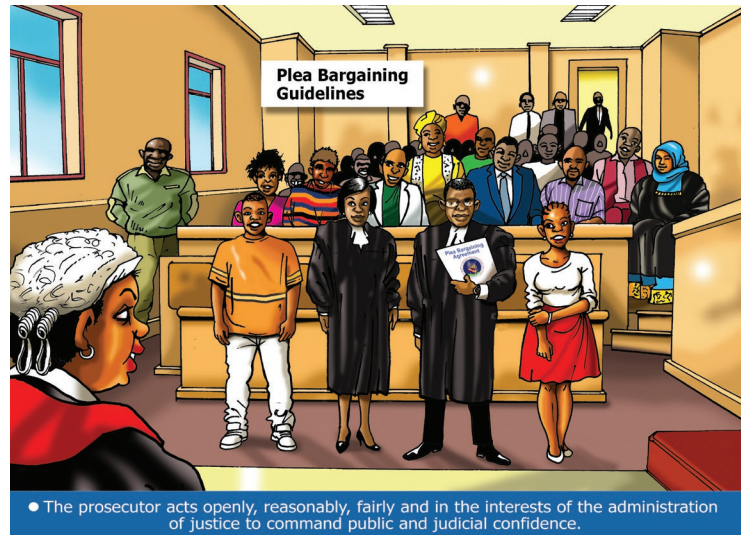
What is Plea Bargaining?



WHAT IS PLEA BARGAINING?

A plea bargain is a negotiated agreement between a criminal accused and a prosecutor, where the accused agrees to voluntarily plead “guilty” or “no contest” for a concession from a prosecutor in exchange for a plea. For example;

- For a lesser charge e.g. murder may be reduced to manslaughter, robbery with violence may be reduced to robbery
- For fewer counts since some charges may be withdrawn for a lenient sentence whereby a maximum sentence may be reduced to a minimum sentence
- In Kenya, Plea Bargaining is guided by Section 137 A - O of the Criminal Procedure Code and the Criminal Procedure (Plea Bargaining) Rules, 2018



THE PROSECUTOR SHALL BEFORE NEGOTIATING A PLEA AGREEMENT ENSURE:

- That the accused is informed of the right to a full trial before a court of law
- There is sufficient evidence to support a conviction and that it is in the public interest
- That the process must be fair, just, transparent and of integrity
- The accused understands the case against him/her and voluntarily agrees to negotiate. In serious cases the accused should get legal representation
- The accused must understand the sentences that are available
- Ensure that sentence reflects public interest, confidence, safety and public wellbeing

THE ROLE OF THE ACCUSED

- Waives the right to full trial
- Voluntarily pleads guilty
- Is ready for conviction and some form of punishment such as (imprisonment, fine, probation, community service, compensation, restitution, apology, supervision)
- Waives the right to appeal
- MUST uphold his or her end of the deal, such as cooperating in the investigation of another offense, or testifying against a co-accused otherwise the plea bargain may be revoked

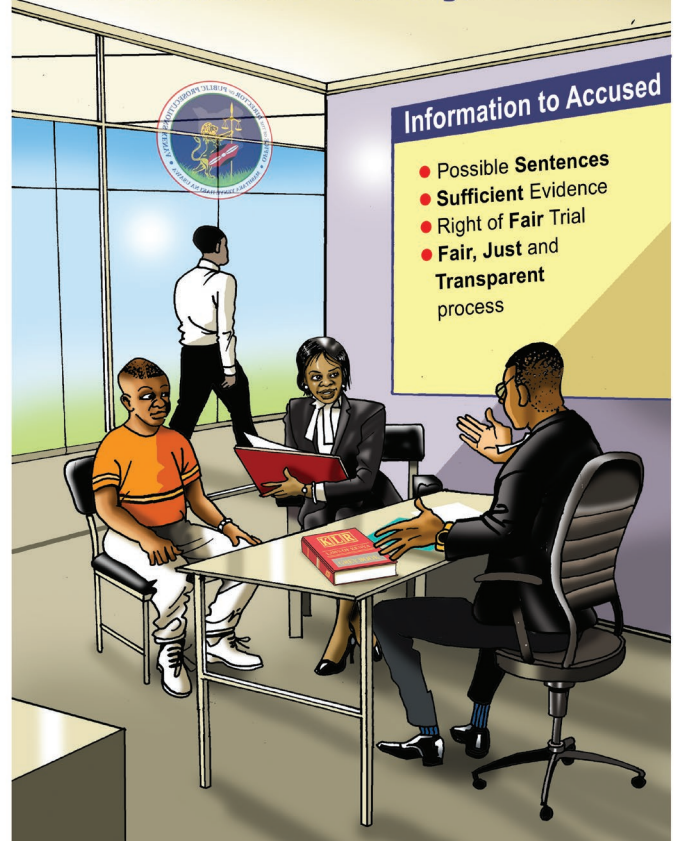
THE PROSECUTOR SHALL IN APPROPRIATE CASES:

- Consult the investigators
- Unless circumstances do not permit, consult with the victim or their legal representative
- Inform those who might be affected

THE ROLE OF THE PROSECUTOR

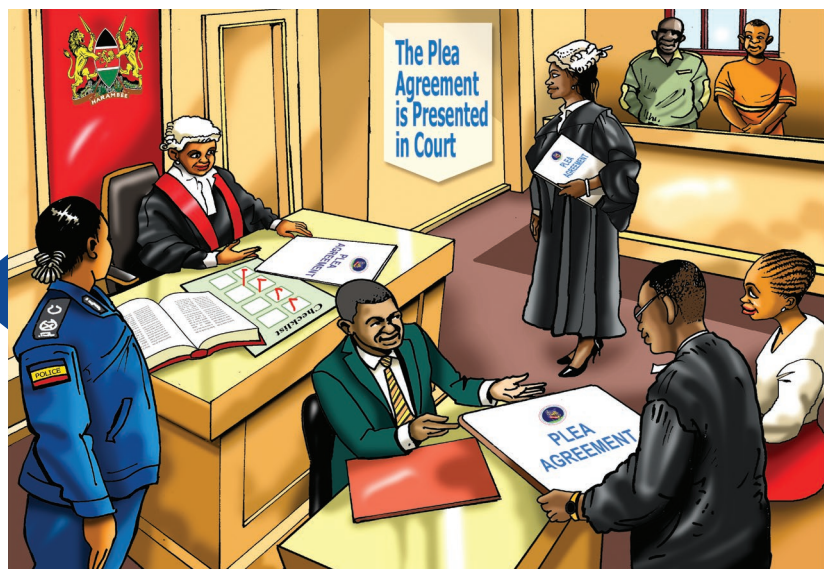
- Withdraws charges
- Reduces charges
- Stays charges
- Recommends alternatives to Prosecution
- Recommends sentence
- Recommends compensation and rehabilitation

The Prosecutor Must Inform the Accused of the Plea Bargain Process



THE ROLE OF THE COURT

- Considers the agreement
- Ensures it meets the ends of justice
- Protect the rights of victims and complainants
- Protect the integrity of the system
- Ensures the accused understands the contents of the agreement and enters into it voluntarily



ADVANTAGES OF PLEA BARGAINING

- Saves expenses that would be incurred if a case goes to full trial
- Saves time
- Allows prosecutors time to focus on higher level cases by significantly reducing the number of cases that go to full trial
- Accused avoids stricter punishment



- Shortened trial time
- Reconciliation
- Lighter sentences
- Compensation for loss
- Non-custodial sentences
- Access to justice enhanced
- Decongested prisons
- Confidence in criminal justice system
- Reduces build-up of cases

ADOPTION OF PLEA BARGAINING GLOBALLY

300%

Increase of plea bargaining worldwide since 1990 (Fair Trials)

97%

Number of cases resolved via plea bargain in the US by 2015

64%

Number of cases resolved via plea bargain in Russia by 2014

NEED MORE INFORMATION ABOUT PLEA BARGAINING?

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