PLEA BARGAIN AS TOOL OF ENFORCING SPEEDY JUSTICE AND THE EFFECTIVENESS OF THE LAW AND PRACTICE IN UGANDA

BY:

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OCTOBER, 2019

DECLARATION

I, NAMIREMBE FAITH, declare that this research dissertation titled "plea bargain as a tool of enforcing speedy justice and the effectiveness of the law and practice in Uganda" is my original work and to the best of my knowledge, it has never been submitted to any university or institution for any academic award whatsoever."

Signature of Candidate..... Date 24.10.2019

NAMIREMBE FAITH

APPROVAL

This research dissertation titled "plea bargain as a tool of enforcing speedy justice and the effectiveness of the law and practice in Uganda has been produced under my supervision and it is now submitted for examination.

Signature: _____ Date: 24th/Oct/2019

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SUPERVISOR

64%

DEDICATION

This study is dedicated to the Almighty God who enabled me to be in a position to carry on with my study by granting me good health throughout the study. I would also dedicate this study to my mother Florence Musana and My Sister Babra for their moral support and continuous belief in me throughout the period of study.

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This humble research study completed is lovingly and wholehearted offered in gratitude, love and utmost respect to my beloved friends.

I would also like to dedicate this research study to my Lecturers and my friends Noah Musasibwaki and above all to the Almighty Allah (God).

Thank you.

TABLE OF CONTENTS

ABSTRACT

The present criminal justice systems face challenges in the modern world characterized by the development of new technologies, fast communication, and the interconnection of different and distant parts of the world; in simple terms the challenges of the Earth becoming "a global village." This causes crime to be more complex and to grow, and consequently criminal justice systems are being burdened with new types of problems. In this research report, systems are forced to try to deal with criminal cases in a more efficient and faster way, to define priorities and look for alternatives to the classical trial which requires significant time, effort and resources. One of these alternative ways is plea agreements, or as is more commonly said plea bargaining. This legal instrument is present in its different forms in a number of national legal systems, as well as in international law. This work deals with its development, application and potential future in Uganda. First, the key features and principles of plea bargaining as a legal institution are presented in this work, demonstrating its strongest and most complex presence in the United States as the country of its origin, but also in other countries and in international law. After that, the research report deals with the development, regulation, as well as the extent of the presence of plea bargaining practices in Uganda. Furthermore, through a number of interviews conducted with Ugandan prosecutors, defense attorneys and judges as the main actors in this process, the study focuses on discovering how the practice functions in reality, and what hides behind the relatively simple legal provisions that regulate this issue. After identifying the key, very interesting, issues that emerge from practical experience, the thesis presents the relevant implications for the future, and a number of related conclusions and recommendations

CHAPTER ONE

1.0 Introduction

The history of Uganda traces its development from the pre-colonial era circa 1500-1890, when the country comprised a diversity of kingdoms, chiefdoms and 'stateless' communities, each with their own system of social control[1]. The Bantu had kings and chiefs and were organized in closely knitted clusters of clans, with the paramount head of the clan or kingdom (a cluster of clans that form the bigger community) as the political leader. The other groups were organized in loose kinship units[2] without a central leader. Despite this divergence in political authority, there was some commonality in customs relating to the trial and sentencing of offenders. The pre-colonial criminal justice system focused on vindicating the victim and their rights, so the sanction was compensatory rather than punitive. The main procedural features in customary trials were the identification of the perpetrator; their admittance of guilt (both individual and collective guilt); the process of individual or collective purification and reparation or compensation for the wrongs done. To promote equilibrium in the society, the offender was forgiven by the victim and peace was made, marked by the sharing of a meal as part of the reconciliation. Procedural differences related to the type of society. For example, in centralised societies, decisions were made by chiefs or kings. Among the loose kinship groups like the Jopad Shola, decision making was collective. During the colonial era (circa 18901957) Britain made Uganda a protectorate. Tensions between the two systems arose out of political manoeuvres to impose the English legal system over the local one, without taking into account existing traditional criminal laws. [3]The English common law and its court systems now operated alongside the local kinship courts that applied traditional clan law. This changed the features of criminal procedure in quite fundamental as explored within the court structures.

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[1] G. W Kanyeihamba, Constitutional and Political History of Uganda: From 1894 to the Present (Kampala: Centenary Publishing House Ltd, 2002) Chapter 1, 1-4

[2] D. Nsereko (1995) op cit, 19

[3] E. Beyaraza, Social Foundations of Law: A Philosophical analysis (Kampala: Law Development Centre Publishers, 2003) at 112 citing J. M. N Kakooza 'Uganda's legal history in a nutshell' (1993); also J. Oloka-Onyango, 'Law, Custom and Access to Justice in Contemporary Uganda: A Conceptual

1.1 Statement of the problem

The main reason why I choose agreements on guilt and their application in Uganda to be topic of my research. The reason is that agreements on guilt represent an entirely new concept in the Ugandan legal system. Due to this fact it is an almost completely unexplored area within the legal professional and academic community in Uganda. There are number of articles and comments; however this is much less than this topic actually deserves, taking into account realistic circumstances and potential of this practice. There is no major, in-depth analysis of the reasons which cause the agreements not to be used or analysis that offers concrete proposals on how to improve the situation in this area. As regards regional authors, the situation is somewhat better. This is probably because this legal institution has been applied in some of the neighboring countries for a little bit longer time, and also the fact that these countries have larger populations and consequently larger legal communities. However, logically, none of these regional studies focuses on Uganda and the specificities of this small society and its legal and judicial system. Through my work presents issues that are specific to Uganda in this area, while taking into account the relevant research efforts of local, regional and international legal professionals and academic community members. I believe that my work has the potential to contribute to a better understanding of one of the legal institutions which is already a part of the Ugandan legal system, and which is an alternative to classical criminal proceedings. This legal institution indubitably works in favor of the efficiency of the criminal justice system in general.

1.2 Objectives of the study

The general objective of the study is examine the applicability of plea bargain as an instrument of reducing case backlog in Uganda

1.3 General objective

1. To analyze the quality of the legal regulation of plea bargaining in the Ugandan Courts of law
2. To investigate the level of use, usefulness and productiveness of plea bargaining instrument in the criminal justice system of Uganda.
3. To analyze the challenges and factors of success in the implementation of the practice.

1.4 Research questions

1) What is the analyzed the quality of the legal regulation of plea bargaining in the Ugandan Courts of law?
2) To what level of is the use, usefulness and productiveness of plea bargaining instrument in the criminal justice system of Uganda?
3) What are the challenges and factors of success in the implementation of the practice?

1.5 The purpose of the study.

The major aim of the study is to of cases plea bargain as tool of enforcing speedy justice and the effectiveness of the law and practice in Uganda.

1.6 Scope of the study

This study shall cover the documents like Acts, text books in the library finding plea bargain as tool of enforcing speedy justice and the effectiveness of the law and practice in Uganda.

1.6.1 Time Scope

The study looked plea bargain as tool of enforcing speedy justice and the effectiveness of the law and practice in Uganda.

1.6.2 Content Scope

This study was limited on evaluating the effectiveness of the plea bargain as tool of enforcing speedy justice and the effectiveness of the law and practice in Uganda.

1.7 Significance of the study

The study shall be useful for use as the finding shall help to improve the efficiency and effectiveness in implementing the plea bargain as tool of enforcing speedy justice and the effectiveness of the law and practice in Uganda. The study will add to the existing literature on computer misuse and will promote the formulation of innovative policies, strategies and

institutional frame work for proper management. The research study will widen not only the researcher's understanding and skill in conducting research but will also serve as a useful tool for future researchers in this area.

Chapter One: Introduction and Background of plea bargaining in Uganda

The focus was on critically analyzing the existing works of national authors, bearing in mind the historical path of plea bargaining, the reasons and motives for its creation and development, as well as current observations and analyses related to this legal institution and its practical implementation. Both critical and positive views will be taken into account in order to provide an objective picture and the larger context when it comes to this practice.

Chapter Two: Analyses of the Results: The Interviews with Judges, Prosecutors and Defense Attorneys in Uganda.

This chapter includes an analytical presentation of the results of interviews conducted with Ugandan judges, prosecutors and defense attorneys in relation to plea bargaining practices. The interviews with five judges, five prosecutors and five defense attorneys will be conduct so as to reveal the general perceptions and positions of the interviewees in relation to plea bargaining, discovering the motives that hide behind positive or negative opinions about it, finding out about their practical experiences in this regard being either successful or challenging, and getting suggestions related to future of plea bargaining in Uganda. Those directly involved in the process are the ones who can provide valuable and unique practical input that can contribute to a better understanding of the reality of plea bargaining in Uganda and defining useful conclusions and recommendations in this regard.

Chapter Three: Discussion of Key Findings

In this chapter, key research findings are presented and discussed. These findings are based on the interviews results analysis. Together with the results of document analysis presented in Chapter three and discussions from other chapters, they will serve as the basis for formulating relevant recommendations for the future.

Chapter Four: Conclusions

In this chapter, concrete recommendations related to plea bargaining in Uganda will be provided. They will be based on research findings, and all the discussions and elaborations presented in the previous chapters. The recommendations will be targeted at improving the legal and practical framework of plea bargaining in Uganda in line with such obvious tendencies of Ugandan legislators and practitioners.

1.8 Methodology

The research methodology shall include a selection of literature on land issues as well as the aspects and trends and these shall include textbooks, journals, newspapers, statutes and Non-Governmental Organizations reports.

Data shall be gathered through semi-structured intensive interviews of which some questions shall have been designed with pre-determined answers, while others open ended questions.

In addition to this, the above shall use questionnaires of short and precise questions that seek to establish the effectiveness of the law governing lawful/bonafide occupants of land in Uganda. Online resources and information shall also be consulted in this research.

1.9 Literature Review

1. 9.1 Plea Bargaining in Ugandan Law

Plea Bargaining was piloted mid-2014 in the High Court Circuit in Kampala, the initiative has since been rolled out to the other 12 High Court Circuits of Nakawa, Jinja, Mbale, Mbarara, Masaka, Fort Portal, Kabale, Lira, Arua, Masindi, Gulu and Soroti, as well as major prisons[4].

Every year, since 2014, a team comprising of judges, advocates, professors, defense lawyers and students travel to Uganda from the Pepperdine University of Califonia, USA, to train the key actors in the criminal justice system on Plea Bargaining. Presiding over the June Conference, the Deputy Chief Justice, Steven B.K. Kavuma, said that Plea Bargaining programme, as an alternative dispute resolution, has taken root and possesses great potential to improve the landscape for criminal

[4] The Judicature (Plea Bargain) Rules, 2016 (Under section 41(1) and 41(2) (e) of the Judicature Act, Cap.13)

justice in the country. "Plea bargaining has already made tremendous advancements in reducing case backlog while at the same time it has promoted reconciliation amongst victims, complainants and accused persons," said Justice Kavuma[5].

"We have learnt that successful implementation of Plea Bargaining requires adequate training of actors, sensitization of inmates and the community, patience in carrying out negotiations and greater respect for a fair trial, as well as respecting the rights of the accused persons. "Justice Kavuma commended the partnership with the Americans for supporting in implementation of programmes which are aimed at turning the Judiciary into more effective machinery for the administration of justice. Justice Bamwine explained that plea bargaining programme was adopted to address a concern about the plight of remanded prisoners in line with the legal directive for speedy trial. "Our appeal to the community and those offended is to forgive them if they come out to confess their sins. To the prisoners, we encourage them never to commit offences again, respect life, hard earned property and to save the infants," he said. Plea bargaining is one of the many interventions in Uganda's criminal justice system targeted at fighting case backlog, fighting congestion and expediting criminal trials. It targets accused persons who say yes and no," explains Mr. Andrew Khaukha, Judiciary's Technical Advisor and coordinator of Plea Bargaining Project. "One can plea bargain at any time, even when they are still at the police station before they are formally produced in court. A person charged for murder is, for instance, eligible for plea bargaining and could have their cases reduced to manslaughter," he says.

1.9.2 The Footsteps of the Plea Bargaining in Uganda

In 2014, an activity codenamed "the Prison Project" was commissioned in 2014 in Luzira Prison complex (Maximum Security Prison, Luzira Women Prison and Murchison Bay Prison). A group of about 40 judicial officers, advocates, state attorneys and other key actors were trained in Plea Bargaining. More than 200 cases were prepared and concluded under the programme. In 2015, similar trainings were conducted in Mbale, Tororo, Soroti and Lira prisons, and a total of more than 250 cases were prepared and later disposed of under the plea bargaining programme. In 2016, a similar training was conducted in Fort Portal, Bushenyi and Mbarara prisons, and by mid-July

[5] The Judicature (Plea Bargain) Rules, 2016 (Under section 41(1) and 41(2) (e) of the Judicature Act, Cap.13)

more than 400 cases had been disposed. In addition, the June 28 National Plea Bargaining Conference facilitated by a team of American judges and legal practitioners, involving at least 150 Uganda judicial officers and legal practitioners, was intended to enhance skills and knowledge on Plea Bargaining[6]

At the Conference, the Principal Judge was named as the best person of the year 2015 under the Global Justice Programme of Pepperdine University, and the Secretary to the Judiciary, Dorcas W. Okalany, was given an award of recognition for the tireless effort in maintaining the relationship. Other participants were given certificates for attending the eight-hour training on the basic principles and procedures on Plea Bargaining. The training content was guided by the Judicature Plea Bargaining Rules No. 43 of 2016 that were recently issued by the Rules Committee chaired by the Hon. Chief Justice that offer guidance on Plea Bargaining. In addition, practical mock sessions were conducted, facilitated by an American judge, attorney, defense lawyer and one American who played the part of an accused during the mock session. The Conference made consideration of how to handle Plea Bargaining involving juveniles as well as involvement of victims/complainants in the Plea Bargain Process.

In light of the current challenges the administration of justice is facing in Uganda including but not limited to case backlog, congestion in prisons, high workload for judicial officers, administration of justice mechanisms that do not promote reconciliation among parties as enshrined under article 126 of the Constitution, Plea Bargaining will go a long way in addressing these challenges. For example, following the two-day hands-on training in Fort Portal during the Americans visit, 98 cases were disposed of in two days by the Resident Judge, Justice David N. Batema, and he is scheduled to conclude more 100 cases[7]. In Mbarara and Bushenyi, Justices Duncan Gaswaga and David Matovu are scheduled to handle close to 300 cases in July. Comparing this trend of case management to the ordinary full trials, it would take more than 10 High Court

[6] Bamwine Calls for Plea Bargain Process Adoption, New Vision (June 2016), http://www.newvision.co.ug/new_vision/news/1426270/ bamwine-calls-plea-bargain-process-adoption

[7] Anthony Wesaka, Plea Bargain: A Case System the Judiciary Says will Curb Backlog, The Monitor (21 April 2016), http://www.monitor.co.ug/artsculture/Reviews/Plea-bargain--A-case-system-the-judiciary-says-will-curb-backlog/691232-2692650-k7pb7l/index. html

sessions, each cost Shs40 million, to have these cases concluded with a case clearance rate in each session not being more than 60% with more than 70% chances of appeal.

In Plea Bargaining, the clearance rate is more than 90%, with less than 10% chances of appeal. The programme, therefore, performs the 360 degree format in the administration of justice in dealing with the current challenge by the criminal justice. Drawing from the current capital offenders committed to the High Court for trial, standing at 10,000, without Plea Bargaining, the numbers would be more than 13,000. If the current 49 High Court judges are each assigned to conclude at least one of the current 10,000 cases, if funding is available, it would take them 10,000 days or approximately seven months, each, if they are excused from any other court business, including new civil and criminal cases.

1.9.3 The Judicature (Plea Bargain) Rules, 2016

In Implementation of the powers conferred upon the Rules Committee by section 41 (1) and 41 (2) (e) of the Judicature Act, these Rules are made the day of April, 2016, were[8];

1.9.3.1 Part I: Preliminary

1. Title These Rules may be cited as the Judicature (Plea Bargain) Rules, 2016.

2. Application These Rules apply to all the courts of judicature.

3. Objectives

The objectives of these Rules are[9];

a. To enhance the efficiency of the criminal justice system for the orderly, predictable, uniform, consistent and timely resolution of criminal matters;
b. To enable the accused and the prosecution in consultation with the victim, to reach an amicable agreement on an appropriate punishment;
c. To facilitate reduction in case backlog and prison congestion;
d. To provide quick relief from the anxiety of criminal prosecution;

[8] Bamwine Calls for Plea Bargain Process Adoption, New Vision (June 2016), http://www.newvision.co.ug/new_vision/news/1426270/ bamwine-calls-plea-bargain-process-adoption

[9] The Judicature (Plea Bargain) Rules, 2016 (Under section 41(1) and 41(2) (e) of the Judicature Act, Cap.13)

e. To encourage accused persons to own up to their criminal responsibility; and

f. To involve the victim in the adjudication process.

4. Interpretation

a. In these Rules, unless the context otherwise requires;

b. "Court'' means a court of judicature established by or under the authority of the Constitution;

c. "Minor and cognate offence" means a lesser offence that is related to the greater

d. Offence and shares several of the elements of the greater offence and is of the same class or category;

e. "Plea bargain" means the process between an accused person and the prosecution, in which the accused person agrees to plead guilty in exchange for an agreement by the prosecutor to drop one or more charges, reduce a charge to a less serious offense, or recommend a particular sentence subject to approval by court; and "plea bargain agreement" means an agreement entered into between the prosecution and an accused person regarding a charge or sentence against an accused person.

1.9.3.2 Part II: Plea Bargain

5. Initiation of plea bargain

A plea bargain may be initiated orally or in writing by the accused or the prosecution at any stage of the proceedings, before sentence is passed[10].

6. Scope of plea bargain.

(1) A plea bargain may be in respect of-

a) a promise to plead guilty to a charge in exchange for a recommendation for a lesser sentence;

b) a promise to cooperate as a witness for the prosecution in exchange for reduced charges or a reduced sentence, or both; or

[10] The Judicature (Plea Bargain) Rules, 2016 (Under section 41(1) and 41(2) (e) of the Judicature Act, Cap.13)

c) a plea of guilty to-a minor and cognate offence; a lesser offence; or some charges or counts in exchange for a withdrawal of one or more charges or counts, in case of multiple charges.

(2) Where there is more than one accused person, a plea bargain may be entered into in respect of any one of the accused persons and the subsequent plea agreement shall apply and be binding only on the accused person who entered into the agreement.

7. Disclosure

(1) The prosecution shall, in the interest of justice, disclose to the accused all relevant information, documents or other matters obtained during investigations to enable the accused to make an informed decision with regard to plea bargain.

(2) Disclosure under sub rule (1) shall not compromise State security, security of witnesses or the integrity of judicial process.

8. Court participation in plea bargain[11]

(1) The court may participate in plea bargain discussions.

(2) The parties shall inform court of the ongoing plea bargain negotiations and shall consult the court on its recommendations with regard to possible sentence before the agreement is brought to court for approval and recording.

(3) Subject to sub rule (1), a judicial officer who has participated in a failed plea bargain negotiation may not preside over a trial in relation to the same case.

1.9.3.3 Part III: Plea Bargain Agreement

9. Form of plea bargain agreement[12]

(1) Where the parties are voluntarily in agreement, a plea bargain agreement shall be executed as prescribed in the Form set out in the Schedule1 and filed in court.

(2) Subject to sub rule (1), where the plea bargain agreement involves a child, the agreement shall be executed by either the parent, guardian, probation and social welfare officer or the legal representative of the child.

[11] The Judicature (Plea Bargain) Rules, 2016 (Under section 41(1) and 41(2) (e) of the Judicature Act, Cap.13)

[12] The Judicature (Plea Bargain) Rules, 2016 (Under section 41(1) and 41(2) (e) of the Judicature Act, Cap.13)

10. Plea bargain agreement to be explained to accused person.

A plea bargain agreement shall, before being signed by the accused, be explained to the accused person by his or her advocate or a justice of the peace in a language that the accused understands and if the accused person has negotiated with the prosecution through an interpreter, the interpreter shall certify to the effect that the interpretation was accurately done during the negotiations and execution in respect of the contents of the agreement.

11. Interests of victim, complainant and community to be taken into consideration.

The prosecution shall, before entering into a plea bargain agreement, take into consideration the interests of the victim, complainant and the community and shall have due regard to;

a. The nature of and the circumstances relating to the commission of the offence;
b. The criminal record of the accused if any;
c. The loss or damage suffered by the victim or complainant as a result of the offence;
d. The interests of the community; and
e. Any other relevant information.

12. Recording of plea bargain agreement by the court

(1) Subject to the procedure prescribed in the Schedule 2, the court shall inform the accused person of his or her rights, and shall satisfy itself that the accused person understands the following; The right;

a. To plead not guilty, or having already so pleaded, the effect of that plea;
b. To be presumed innocent until proved guilty;
c. To remain silent and not to testify during the proceedings;
d. Not to be compelled to give self-incriminating evidence;
e. To a full trial; and
f. To be represented by an advocate of his or her choice at his or her expense or in a case triable by the High Court, to legal representation at the expense of the State;

That by accepting the plea agreement, he or she is waiving his or her right as provided for under paragraph (a);The nature of the charge he or she is pleading to; Any maximum

possible penalty, including imprisonment, fines, community service order, probation or conditional discharge; Any applicable forfeiture; The court's authority to order compensation and restitution or both; and that by entering into a plea agreement, he or she is waiving the right to appeal except as to the legality or severity of sentence or if the judge sentences the accused outside the agreement.

(2) The charge shall be read and explained to the accused in a language that he or she understands and the accused shall be invited to take plea.

(3) The prosecution shall lay before the court the factual basis contained in the plea bargain agreement and the court shall determine whether there exists a basis for the agreement.

(4) The accused person shall freely and voluntarily, without threat or use of force, execute the agreement with full understanding of all matters.

(5) A Plea Bargain Confirmation shall be signed by the parties before the presiding judicial officer in the Form set out in the Schedule 3 and shall become part of the court record and shall be binding on the prosecution and the accused.

13. Rejection of plea bargain agreement by court[13]

(1) The court may reject a plea bargain agreement where it is satisfied that the agreement may occasion a miscarriage of justice.

(2) Where the court rejects a plea bargain agreement-It shall record the reasons for the rejection and inform the parties; the agreement shall become void and shall be inadmissible in subsequent trial proceedings or in any trial relating to the same facts; and the matter shall be referred for trial, subject to sub rule 8 (3).

1.9.3.4. Part IV: Withdrawal and Protection of Plea Bargain[14]

14. Withdrawal from plea bargain agreement.

Either party may, at any stage of the proceedings before the court passes sentence, withdraw a plea bargain agreement. [15]

[13] The Judicature (Plea Bargain) Rules, 2016 (Under section 41(1) and 41(2) (e) of the Judicature Act, Cap.13)

[14] The Judicature (Plea Bargain) Rules, 2016 (Under section 41(1) and 41(2) (e) of the Judicature Act, Cap.13)

[15] The Judicature (Plea Bargain) Rules, 2016 (Under section 41(1) and 41(2) (e) of the Judicature Act, Cap.13)

15. Protection of plea bargain process.

(1) Any statement made by an accused person or his or her advocate during plea bargain discussions is not admissible for any other purpose beyond the resolution of the case through a plea bargain.

(2) The court shall not impose a sentence more severe than the maximum sentence recommended in the plea bargain agreement.

(3) Where the court is of the opinion that a particular case is deserving of a more severe sentence than that recommended in a plea bargain agreement, the court shall reject the plea bargain agreement.

In line with the research goals and the selected research approach, the researcher drafted questions that made a semi-structured interview template. The questions were open-ended and rationalized with the intention of providing original answers to the primary research questions, in a format that is familiar to the specific target groups. All the questions were clear, relatively simple and non-misleading. As **Bryman**[16] stresses, interview questions should be "clear, researchable, have some connection(s) with established theory and research, linked to each other, hold out a prospect of being able to make an original contribution - however small - to the topic, neither too broad, nor too narrow."

The interview questions followed a certain logic which the researcher identified as most productive in terms of the potential richness of answers and keeping in mind research questions. Specifically, they were drafted in a way that they supervene, one after another. The questions start with general ones focusing on plea bargaining institutions and practice as such, and then they are followed by those which concern the roles and experiences of all the actors involved. After that come questions that touch on specific aspects or segments of the researched practice that may potentially have practical significance and influence. Questions which concern the position of plea agreements in the context of the whole criminal procedure were also included. Finally, the participants were given a chance to provide proposals for the future which they consider important and useful. Key

[16] BRYMAN, A. (2012). Social Research Methods (4th ed.) [Electronic version]. U.S.: Oxford University Press Inc., New York

questions were followed by additional questions and possible questions for the sake of further clarification or providing more details. Each group of interviewees had its set of questions: judges, prosecutors and defense attorneys (templates of the interview questions for judges, prosecutors and defense attorneys are attached as Appendices A, B and C). There were slight differences between the questions for different groups which was caused by the specific role of each group in the plea bargaining process.

1.9.4. Participants

When it comes to the target groups i.e. the participants in the study, in line with the research goals and approach, purposive recruitment was the natural way to go. "Purposive recruitment is both deliberate and flexible. It is deliberate, as the name suggests, be selecting 'on purpose' people who are 'information-rich' on the study topic. Purposive recruitment is also flexible, as researchers can refine the types of participants selected during data collection, rather than following a rigid recruitment procedure from the outset." (**Hennink, Hutter & Bailey**[17]. In line with this, I decided to take into account a few different participant selection criteria:

1.8.6.1. Profession and Experience

The main criteria: Those needed to be legal professionals who have practical experience with plea bargaining. Logically those are prosecutors, defense attorneys and judges, each dealing with the practice from different angles and each having different role in the process. I decided to interview 5 of them in total, out of which 1 is judge, 2 prosecutors and 2 defense attorneys.

1.9.6.2. Regional Representation:

The north, south and central regions of Kampala had to be included in the research. The reason is simply for all the regions of the Kampala to be represented. There are significant differences between the northern, on the one hand, and the central and southern parts of the Kampala, on the other. 2 participants were from the north, 3 were from the south, and 10 were from the central part of the Kampala where the busiest courts, prosecution and defense attorney offices are located. so

[17] HENNIK, M., HUTTER, I. & BAILEY, A. (2011). Qualitative Research Methods [Electronic version]. London: SAGE Publications Ltd

it was naturally reflected in the highest number of plea bargaining agreements being concluded in this part of the country.

1.9.6.3. Representation of different courts:

Prosecution offices and defense attorney offices: Keeping in mind that by Ugandan law, at the time of research, plea bargaining agreements could have been concluded before the courts of the initial, first instance – Basic Courts (which have jurisdiction for less serious crimes), but also for a certain number of crimes before the courts of higher instance – High Courts (which have jurisdiction for more serious crimes), the researcher wanted to have all of them represented. Prosecutors act based on courts' jurisdictions, so the researcher included those prosecutors who act before both types of courts. When it comes to defense attorneys, the researcher included attorneys from different attorney offices; in Uganda there is no legal barrier for any adequately registered defense attorney, who is a member of the Bar Chamber of Uganda, to represent before any court in Uganda. In line with this: 1 interviewed judges are from the Basic Courts; 1 judge is from the High Court; 3 prosecutors are those who act before the Basic Courts; 2 prosecutors are those who act before the High Courts; and all the defense attorneys are from different law offices. A very important segment of my research was conducted by the analysis of relevant documentation. In my case this method was supplemental to the semi structured interviews, as it is quite often the case with this type of research. As Bowen[18] writes (2009) citing Denzin (1970): "Document analysis is often used in combination with other qualitative research methods as a means of triangulation 'the combination of methodologies in the study of the same phenomenon". In the study research it predominantly served to enable a comprehensive elaboration of the legal regulations and existing practice concerning plea bargaining at the national and international level. This was seen as necessary for a better understanding of practice itself and getting a "complete picture". As Corbin and Strauss say: "Document analysis requires that data be examined and interpreted in order to elicit meaning, gain understanding, and develop empirical knowledge."

[18] BOWEN, G. A. (2009). Document Analyses as a Qualitative Research Method [Electronic version]. Qualitative Research Journal, 9 (2), 27-40

(Corbin & Strauss, 2008, cited by Bowen[19], 2009, p. 27). The researcher found this method very useful, for the reasons that Bowen[20] further defines (2009): "documents provide background and context, additional questions to be asked, supplementary data, a means of tracking change and development, and verification of findings from other data sources." Contrary to its usefulness, however, it seems to me that less attention is given to this research method in the academic world than is the case with other methods like, for example, interviews.

In the process of analyzing, the first step was to identify documents that were subjected to analysis, and to categorize them based on their content and purpose. Bearing in mind the practice, researching and wishing to provide context and make a link with the interviews results, the laws and bylaws that regulate plea bargaining were the very first choice. They were followed by court case files i.e. primarily judgments based on the agreements on guilt. In order to examine and present the practice from different angles including the legislative, practical, national as attached, it was necessary to have insight into a large number of other documents as well. They include a series of official reports, guidelines, rules, manuals, press releases, newspaper articles, recommendations, and other documents which were also categorized during the analytical process. The analysis of these documents, together with the semi structured interviews was seen as a way to provide a complete picture and reach the research goals.

The documents analysis was mainly done by reading, and describing/presenting the read material. In this process, the identification of issues that are most relevant, informative and illustrative was a primary goal. All the interrelated and interconnected information gained by this method was then categorized and presented in a systematic descriptive way, remembering the key research goals and interview results. When it comes to legal provisions, their analysis included not just informative and descriptive but to a limited extent an interpretative segment as well. It was focused on revealing the ratio legislation i.e. the purpose of existing legal norms, and motives of the legislator.

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[19] BOWEN, G. A. (2009). Document Analyses as a Qualitative Research Method [Electronic version]. Qualitative Research Journal, 9 (2), 27-40

[20] BOWEN, G. A. (2009). Document Analyses as a Qualitative Research Method [Electronic version]. Qualitative Research Journal, 9 (2), 27-40

This analytical process was extremely time-consuming, both in terms of recognizing the most relevant documents, as well as in terms of reading, the proper identification, abstraction, classification and presentation of the main issues. Additionally, it required a very cautious approach, particularly in relation to some typical risks related to the authenticity, reliability and incompleteness of some documents. However, the interesting content of most of the documents made this process much easier.

To conclude, for this type of plea bargaining research, interviews, combined with some other typical qualitative research method(s) seem to represent the best choice and have the potential to provide good quality results.

1.9.5. Research Ethics

One of the general ethical concerns before starting the process of interviews was related to my professional relationship with the potential interviewees, and how that would affect the research. Gibbs and Costley[21] (2006) write that "Practitioner researchers find themselves in various different contexts within particular professions and/or communities where there are likely to be ethical implications that they have a responsibility to recognize and understand."

Starting from the Gibbs and Costly[22] notion of the "ethic of care where the researcher needs to consider 'self' as an ethical being within the community of practice being researched" (2006), and taking into account the University's required ethical review process my initial concerns were minimalized. The lack of any subordinate relationship between me as a researcher and participants; no particular sensitivity of the research topic; guaranteed anonymous status; and formal consent for interviews given by participants' supervisors in the framework of the University ethical review process led to minimal chances for any ethical concerns. On the contrary, the conditions for good, dynamic and relaxed interviews which provided lots of usable information were created.

[21] GIBBS, P., & COSTLEY, C. (2006). An Ethics of Community and Care for Practitioner Researchers [Electronic version]. International Journal of Research and Method in Education, Vol 29(2), 239-249

[22] GIBBS, P., & COSTLEY, C. (2006). An Ethics of Community and Care for Practitioner Researchers [Electronic version]. International Journal of Research and Method in Education, Vol 29(2), 239-249

When it comes to the University ethical review, in accordance with the relevant regulations I prepared the following documents: a consent form (for participants); ethics self-assessment; interview questions; an invitation letter for participants; a participant information sheet; a protocol and letters – a requests for approval to conduct interviews.

CHAPTER TWO

2.1 Types of Plea Bargaining

The project classified plea bargaining in two ways, explicit and implicit. Both kinds can occur in one jurisdiction; but in 27 of 30 jurisdictions explicit plea bargaining was dominant, particularly in felony cases. Explicit plea bargaining involves overt negotiations between two or three actors (prosecutor, defense attorney and judge) followed by an agreement on the terms of the bargain. Implicit bargaining involves an understanding by the defendant that a more severe sentence may be imposed for going to trial rather than pleading guilty. Defense attorneys can, however, be clear in advising the defendant of this probable outcome.

Where explicit plea bargaining occurs concessions may include charge modification, sentence agreement or both. The variety of sentence concessions or actors involved in the bargaining process may be virtually unlimited. Five major types of explicit plea bargaining were identified:

1. Judges participating and indicating the sentence.
2. Modification of charges by the prosecutor.
3. Prosecutorial agreement to make a sentencing recommendation.
4 Combination of 2 and 3.
5 Combination of 1 and 2.

Many jurisdictions had more than one type even though one or two types were dominant in each jurisdiction. The most common pattern involved charge modifications and sentence recommendations by the prosecutor (4). The second most common involved charge modifications alone (2). In one jurisdiction prosecutorial sentence recommendations are the dominant pattern; another combined charge bargaining and judicial indication of the sentence. In some jurisdictions judicial participation is substantial, although a minority of the judges may be so involved because of the way cases are assigned[23].

A plea bargain is an agreement in which the prosecutor and defendant arrange to settle a case against the latter. This is normally in the form of the defendant pleading guilty or no contest to all

[23] CANIVET, G. (2003). The Interrelationship between Common Law and Civil Law [Electronic version]. Louisiana Law Review, Vol. 63(4), 937-944.

or some of their alleged crimes in exchange for concessions by the prosecutor. These concessions may take the form of a reduction of the charges, the dismissal of charges or limiting the punishment imposed upon the defendant. The prosecutor will then disclose the facts of the case that involve the defendant in a more flattering light. At its greatest plea bargaining can take the form of an immunity agreement, where the defendant would be protected from being prosecuted for their crimes, in exchange the defendant would cooperate with the prosecution by for example giving prosecution evidence. Generally plea agreements allow parties to agree on the outcome and settle pending charges.

Broadly speaking, there are two types of legal systems, Common Law and Civil Law regimes. Countries that utilise Common Law, such as the UK, USA, Canada, Australia and New Zealand, apply the adversarial system. Under this, courts do not seek the truth in the sense of actively mounting a general investigation, but only decide if the evidence that the defence and prosecution lawyers produce is sufficient to prove beyond a reasonable doubt that the defendant is guilty. They are ideally neutral umpires holding the ring between rival advocates[24]. In general, these countries employ plea bargaining as a way to get through their large case loads. In contrast, Civil Law countries, such France and Italy, use the inquisitorial system. In this system, it is an official's task to actively collect the evidence that goes towards establishing the guilt or innocence of the accused. In this instance, it is the courts that play an active role in truth telling. Modern International War Crime Tribunals contain elements that can be attributed to both Common and Civil Law. Not surprisingly, the result of this is that the International Tribunal structure is something of a hybrid of the two systems[25].

The process of plea bargaining is often desired by utilitarians who emphasize questions of institutional efficacy including the optimal deployment of resources to secure the maximum outcomes, included case dispositions, as it cuts down the number of trials that the court has to hear. It also, more or less, guarantees a conviction for the defendant and it may also be used to illicit

[24] COMBS, N.A. (2007). Guilty Pleas in International Criminal Law – Constructing a Restorative Justice Approach [Electronic version]. Stanford, California: Stanford University Press

[25] IOVENE, F. (2013). Plea Bargaining and Abbreviated Trial in Italy (University of Warwick School of Law, Legal Studies Research Paper No. 2013-11). Retrieved August 12, 2014, from the Social Science Research Network web-site: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2286705

additional useful information from that defendant relevant to future prosecutions. However, there are a number of dangers to using plea bargaining identified as such by non-utilitarian perspectives, most notably classic forms of liberalism. For example, an innocent person who finds himself or herself accused may feel highly pressured into pleading guilty out of fear of a more severe sentence being passed.

Although the adversarial system originated in England, it is said that the USA is now a more adversarial one than the English. In the USA, approximately 90% to 95% of cases are disposed of by plea bargaining[26]. In the UK a defendant normally decides to plead guilty as they discover that the evidence against them is overwhelming. The guilty plea is then usually rewarded with a discounted sentence of around one third as the guilty plea is taken into mitigation[27]. It is worth noting that, in the USA, a guilty plea is more likely to be a result of a plea bargain or charge bargain[28] consequentially saving the state's resources. There is a strong incentive for an accused to plead guilty. An examination of plea bargaining in the UK shall be used as an example to show the distinctions between the different forms a plea bargain might take and also to show the benefits of each style of negotiation. It should be noted that plea bargains and a plea of guilty are two similar but at the same time very different legal mechanisms, therefore it is important that the two should not be confused. In this thesis a plea bargain shall be referred to when there has been some 'negotiation', 'bargain', 'deal', agreement involving either charges, or the facts of the case, and or the sentence a defendant may receive in exchange for a guilty plea. Although defendants who enter a guilty plea without negotiation are still likely to receive a sentence discount for saving the tribunal the cost of a full trial, this is not a plea bargain. In this thesis it should be assumed that when plea bargaining is referred to it means that there was some form of negotiation in exchange for a guilty plea unless otherwise stated This also lays the foundations for the understanding of plea bargaining in the rest of the thesis.

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[26] COMBS, N.A. (2007). Guilty Pleas in International Criminal Law – Constructing a Restorative Justice Approach [Electronic version]. Stanford, California: Stanford University Press

[27] HALPERIN, J.L., (2011). Law in Books and Law in Action: The Problem of Legal Change [Electronic version]. Main Law Review Vol. 64(1), 46-76

[28] COMBS, N.A. (2007). Guilty Pleas in International Criminal Law – Constructing a Restorative Justice Approach [Electronic version]. Stanford, California: Stanford University Press

2.1.2 Fact Bargaining

Fact bargaining refers to when a defendant changes his or her plea from not guilty to guilty on the reliance that the prosecution will present the facts of the case in a less incriminating light. Again, this is advantageous for the prosecutors as they obtain a guilty plea without having to take the risk of a full trial. Presumably, the defendant would also benefit from a reduced sentence in exchange for this guilty plea. The defendant would supposedly benefit from this kind of bargaining if they are actually guilty of a serious crime.

In cases where the defendant expresses a wish to plead guilty to a charge but the defendant's version of the facts differ from that of the prosecution, or the prosecution cannot accept the facts, then, according to the Code for Crown Prosecutors, 'The court should be invited to hear evidence to determine what happened, and then sentence on that basis' (The Code for Crown Prosecutors). When this occurs, a Newton hearing is held. One of the major concerns about fact bargaining is the lack of checks it has in place. For example, if the prosecutor presents facts concerning a defendant's involvement in a crime in a more severe light, then defence counsel would object. However, if the prosecution was to present facts in a way that was disproportionately flattering to the defendant, then no one would be able to object. The issue being that this would result in an unfair bias towards the defendant as it would place them in a stronger position. In turn, this could give the impression that the victim has lost their 'voice' in the proceedings.

2.1.3 Charge Bargaining

There are two kinds of situations where charge bargaining may be used. The first is where the defendant is charged with two or more crimes. Here, it is possible for the prosecution to drop one or more of the charges in return for a guilty plea for the remaining. The other situation is when the defendant has been charged with a serious offence. Here, the prosecution might drop this charge in exchange for a guilty plea to a less serious offence. A number of domestic criminal justice studies show that, on occasion, there has been a considerable downgrading of charges[29] . One reason for this could be problems proving intent. For example, if a defendant is charged under S.18

[29] HEUMANN, M. (1975). A Note on Plea Bargaining and Case Pressure [Electronic version]. Law & Society review, Vol. 9(3), 515-528.

of the offences against the Person Act, grievous bodily harm with intent, they may have this charge downgraded to a S.20 offence of the same Act, recklessly inflicting grievous bodily harm. It is also quite possible that the charge may also be even further downgraded to assault occasioning actual bodily harm, S 47 if what is thought to be an appropriate agreement is made. In international criminal law an examples may be the ICTY cases of Plavsic and Momir Nikolic where the genocide charges were withdrawn upon entering into negotiations with the prosecution. A possible reason for dropping such a serious an grave charge might be that it is very difficult to prove genocide as a crime, in particular that the defendant had the specific intent require to commit this crime. Examples of this are the case of Jelisic and Kristic (IT-98-33A), where both defendants were acquitted of genocide charges. This form of plea bargaining is beneficial towards the prosecutors as they are guaranteed at least one conviction without the risk of a full trial. Within the UK, Approximately 60% of contested charges are acquitted[30] and the practical reasons for this may include things such as witnesses not turning up on the day or trial. It is understandable then that some prosecutors may choose to enter into charge bargaining, especially if they have a large number of cases to deal with. Interestingly, it is set out in the Code for Crown Prosecutors[31] (2004) that: Crown Prosecutors should only accept the defendant's plea if they think that the court is able to pass a sentence that matches the seriousness of the offending, particularly where there are aggravating features. Crown Prosecutors never accept a guilty plea just because it is convenient.

This version of the guidelines does not expand on what it means by 'convenient', although it is realistic in practice. The way that it is written could possibly give rise to uncertainty as to when it is acceptable to charge bargain. Presumably, the convenience of the court is acceptable, but the personal convenience of the prosecutor is not. An earlier version of this code implies that it is acceptable to accept a plea of guilty to a lesser offence if the maximum sentence for the lesser offence is comparable to the gravity of the defendants' wrong doing:

[30] Scott R. E. and Stuntz W. J., "Plea Bargaining as Contract," 1912. The Yale Law Journal, Vol. 101. June (1992).

[31] Rule 11(c) Plea Agreement Procedure. (1) In General. An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will: (A) not bring, or will move to dismiss, other charges; (B)

Administrative convenience in the form of a rapid guilty plea should not take precedence over the interests of justice, but where the court is able to deal adequately with an offender on the basis of a plea which represents a criminal involvement not inconsistent with the alleged facts, the resource advantages both to the service of the courts generally will be an important consideration. (Code for Crown Prosecutors 1986)

From a defendant's point of view, the primary advantage or disadvantage would come down to whether the defendant is indeed guilty of the crime charged. If so, then obviously this type of bargain would be beneficial to the defendant as they would plead guilty to either a downgraded charge, or they would get one or more charges removed. There is no doubt a guilty defendant would enjoy the benefits of charge bargaining but the biggest disadvantage here is when an accused is in the situation where they are actually innocent of all the charges but feel compelled to plead guilty as a form of 'risk management' as if found guilty after a full trial they would receive a more severe sentence. Possible examples of this in international criminal law may include the ICTR case of Bagaragaza, where the defendant had given 'too much' information to the prosecutors therefore a plea deal was the only 'sensible' solution for the defendant (Interview with Jordash 2010). Also the ICTY case of Kovacevic illustrates this, here the defendant had spoken candidly to journalists, not realizing the impact the statements he made would have on his case, in this case no plea agreement was reached[32].

2.1.4 Sentence Bargaining or Pure Plea Bargaining

In instances of sentence bargaining, or pure plea bargaining, defendants would change their plea from not guilty to guilty for the purpose of receiving a reduced sentence. Within domestic criminal law, S.144 of the Criminal Justice Act 2003 is subject to the Sentence Guidelines Council. Here, the sentence guidelines apply to both Crown Courts and Magistrates Courts and the guidelines cover the whole range of sentences available, such as custodial, fines and community services. Importantly, the Courts are required to state that they have reduced the sentence and, although they are not required to under the guidelines, it is considered to be good practice to state how much of

[32] Dervan, Lucian E.; Edkins, Vanessa A. (2013). "The Innocent Defendant's Dilemma: An Innovative Empirical Study of Plea Bargaining's Innocence Problem" J. Crim. Law Criminol.103 (1): 1 [pp. 6–11]

a reduction in the sentence has been agreed due to a guilty plea (Sentencing Guideline Council 2007).

There are a number of moments in the process that a defendant can plead guilty. The earliest of these is when a defendant pleads guilty at a 'plea before venue', which is normally at the Magistrates Court. Here, a defendant will elect to plead guilty and if they do the Magistrates Court has the ability to sentence them. However, this is only if the case falls within the Magistrates Court's scope. If not, the case may be referred to the Crown Court for sentencing. The second instance a defendant can plead guilty is when there is an indication of sentence at the Magistrates Court. Pretrial hearings in either the Magistrates Court or the Crown Court are examples of other opportunities where a defendant can plead guilty and receive a substantially reduced sentence.

In 1970, the case of **R v Turner (1970) QB321** concerned the role that the judge played in the defendants decision to plead guilty or not guilty. In this case, the Court of Appeal set forth that defence Counsel should be free to give advice to their defendant about the best approach. Having heard their Counsel's advice, it is then up to the defendant whether they take it or not. The judge and defence counsel should be allowed to meet and discuss necessary matters. An example of what might be considered a necessary matter is if a defendant is dying but does not know that they are dying.[33] The only indication a judge may give as to sentence is that it will take the same form whether the defendant pleads guilty or is found guilty through conviction[34]. In the Turner case, the defendant, who had a number of previous convictions, pleaded not guilty to theft. Trial counsel approached the judge during an adjournment. After some discussion, counsel advised the defendant, Turner, if he pleaded guilty he would probably receive a non-custodial sentence, but if found guilty after a full trial he would receive a custodial one. Turner was under the impression that the judge had conveyed this information to counsel, and changed his plea to guilty. The notion that a defendant may receive a non-custodial sentence as a result of a guilty plea, compared to receiving a custodial sentence after a conviction through the full trial process, places enormous pressure on a defendant to plead guilty, even if the defendant is actually innocent of the crime

[33] R v Turner (1970) QB321

[34] Dervan, Lucian E.; Edkins, Vanessa A. (2013). "The Innocent Defendant's Dilemma: An Innovative Empirical Study of Plea Bargaining's Innocence Problem". J. Crim. Law Criminol. 103 (1): 1. Last seen 07 June 2017. [31] 132 S.ct.1399(2012)

charged. The Court of Appeal held Turner's guilty plea to be a nullity. The court believed that improper pressure was put on the defendant to plead guilty.

When plea bargaining the defendant benefits from a sentence discount in particular if he/she is in fact guilty of the original charges brought against them. There is also the benefit of receiving a non-custodial sentence instead of a custodial one in certain cases. No doubt there will be some defendants who plead guilty due to pressure put on them, but are in fact actually innocent of the crimes that they are charged with. The pressure that they feel that they are under may take a number of forms. For example, the defendants themselves may not believe that that they will be able to protest their innocence successfully and so make the pragmatic choice to plead guilty in an attempt to make what they might see as the best of a bad situation. Although defence counsels are not allowed to place undue pressure on a defendant, they are meant to advise them on what their best recourse is: Counsel must be free to do what is his duty, namely, to give the accused the best advice he can, if need be, in strong terms. It will often include advice that a guilty plea, showing an element of remorse, is a mitigating factor which might enable the court to give a lesser sentence. Counsel, of course, will emphasize that the accused must not plead Guilty unless he has committed the acts constituting the offence charged.

It was also stated that, 'the accused, having considered counsel's advice, must have complete freedom of choice whether to plead Guilty or Not Guilty'. Although this case had made it clear that the judge should be prohibited from giving indications of what sentence a defendant may receive, this was not always followed. This is evident in the case of **R V Peverett [2001][35]:** [t]his case has a lamentable history it illustrates what can, and too often does, happen, if despite the repeated judgments of this court to the contrary, counsel, in cases which are not wholly exceptional, have recourse to the judge, in his room, in order to discuss please and sentence. The essential facts of the case are that the offender, a deputy head master at a private preparatory school, pleaded guilty at Crown Court before to nine of the sixteen offences in the indictment, relating to indecent assault on pupils at the school. He has originally entered a plea of not guilty to

[35] RAPHAEL, M. (2008). Plea Bargaining and the Role of the Lawyer (European Criminal Bar Association, Peters & Peters, London). Retrieved Jan 22, 2019, from the European Criminal Bar Association web-site: http://www.petersandpeters.com/sites/default/files/publications/pmrPleaBargainingandtheroleofth elawyer_0.pdf

all charges, but changed his plea as a result of a meeting between defence and prosecuting counsel and the judge. The Judge indicated that the circumstances of the case were such that a suspended sentence would be justified. Subsequently, the offender was sentenced to a total of eighteen months' imprisonment, suspended for two years, ordered to pay £6,500 in prosecution costs and ordered to register under the Sex Offenders Act.

The court reiterated the rules set out in Turner. In response to the courts comments the Attorney General issued guidelines to prosecutors, with regards to discussions about sentencing with the judge and accepting guilty pleas[36]It states that, hearings except those that are in the most exceptional circumstances should be conducted in public, including the acceptance of pleas by the prosecution and sentencing. The Code for Crown
Prosecutors sets out the circumstances in which pleas to a reduced number of charges, or less serious charges, can be accepted. Where this is done, the prosecution should be prepared to explain their reasons in open court. The Court of Appeal has stated on many occasions that justice should be transparent, and that only in the most exceptional circumstances should plea and sentence be discussed in chambers. Where there is such a discussion, the prosecution should at the outset, if necessary, remind the judge of the principle that an independent record must always be kept of such discussions. The prosecution should make a full note of such an event, recording all decisions and comments.

Since the decision in Turner there have been significant changes in criminal procedure. These changes now allow, to some degree, an advance indication of sentence. **R v Goodyear** [2005][37] ECA 888, CA is an important case for sentencing implications. Namely following a request from a defendant a judge may give an indication as to the maximum sentence to be imposed after a guilty plea. The judge may also remind counsel that the defendant is entitled to this in open court. Before Goodyear convictions that violated the rules in Turner would be liable to be quashed. The very basic facts of Goodyear are that the defendant pleaded guilty to an offence of corruption and

[36] Attorney General's Reference (No. 44 of 2000).
[37] RAPHAEL, M. (2008). Plea Bargaining and the Role of the Lawyer (European Criminal Bar Association, Peters & Peters, London). Retrieved Jan 22, 2019, from the European Criminal Bar Association web-site: http://www.petersandpeters.com/sites/default/files/publications/pmrPleaBargainingandtheroleofth elawyer_0.pdf

was sentenced to six months imprisonment, suspended for two years, and a fine of £1000. This was in spite of the judge saying to Goodyear's barrister at a meeting in his chambers before the trial began that 'this is not a custody case'.

The main grounds for the appeal was, that on principle the sentence was wrong as the judge should have followed the indication he gave before the trial, not to impose a custodial sentence. The suspended sentence was also viewed as improper as the offence was not so serious that it could only be justified with a custodial sentence. It was held that Crown Courts need no longer follow the rules set out in Turner that a judge should not indicate the sentence that he might impose if defendant pleaded guilty. The indication must be sought by the defendant within seven days' notice and in writing and then it would not amount to 'improper pressure on him.' Prior to Turner it was not unusual for counsel to be seen (often separately from their solicitors) by the trial judge in his chambers, and for the judge to tell counsel his view of the sentence which would follow an immediate guilty plea. The 37th Archbold (1969) says nothing, and certainly nothing critical, about this practice. It was Turner that bought the 'vexed question of so-called plea bargaining into the open. The main distinction between this case and that of Turner is that the plea bargaining process is now more open and transparent allowing the defendant more agency over the process.

The majority of countries that have employed plea bargaining into their system usually do so to save court costs and in order to maintain the efficiency of the court. This practice in common law countries is encouraged in cases where there are long and lengthy documents that need to be analysed, such as in cases of corporate crime. It is also pursued when pleading guilty would mean that victims and witnesses of particularly traumatizing crimes are saved from giving evidence. This is interesting when one looks at the plea bargaining system India has recently employed. Although its legal system is based on that of England, it is only recently that plea bargaining has been introduced in the Indian Criminal Procedure Code (Chapter XXIA). Its introduction has changed the face of the Indian criminal justice system, where trials are forever stopping and starting, and often taking years to get through just one case.

Unlike the Anglo-American plea bargaining system, there are some constraining features in the one adopted by India. The use of plea bargaining in India is only allowed where it is applicable to offences that are punishable for up to seven years, where the offence has been committed against a woman or a child under the age of 14, or socio-economic crimes (Ghosh 2006). This is of interest here as it differs from most other countries that have adversarial legal systems in the way that it engages with plea bargaining. This could possibly be because that country is trying to redress gender inequalities within the criminal justice system, as well as in society more widely and wants to start to take seriously crimes against vulnerable persons. The thinking behind this may also be to use this punishment to act as a deterrence of other would be perpetrators, as they would see that the criminal justice system takes these charges so seriously that they must have a full trial where there would be no concessions received for guilty pleas or expression of remorse. Whereas in the UK and USA plea bargaining where victims are women or children are often encouraged to avoid any distress to them. There is also the aspect that socio-economic crimes have to have a full trial in India unlike the UK and USA where again plea bargaining is persuaded. An example of such a case is that of Michael Kopper (**United States v. Michael Kopper Cr-560-001**), the former Enron executive. India could also be trying to curb the amount of corruption that it is so used to within its legal system. It is obvious that by using the plea bargaining model, India has adopted that its raison d'être is to safeguard the relative efficiency of the criminal justice system. The restrictive nature of the Indian model presumably is in place so that the public can maintain and gain confidence in a legal system that has, it might be argued, failed so many people.

Systems similar to plea bargaining are now appearing in Continental Europe. Although it is still not being used to the extent that it is in the UK and USA, there has been a clear increase in negotiated justice over the past 30 years. European trials are generally more straightforward than Anglo-American ones as their proceedings usually take the form of an inquiry by the judge, making them an example of an inquisitorial system. This is achieved through the use of a dossier containing a collection of written materials collated by the governmental officials investigating the case. All the contents of the dossier are made available to both the defence and the prosecution. Evidentiary rules are also not as strict as they are in common law countries, with the important exception of

trials by jury[38]. Here, evidence also does not need to be introduced solely through witness testimony. Unlike in the UK and USA, the role of the defence counsel is limited, and criminal proceedings are more centred on the establishment of truth not the rhetoric of counsel. The proceedings on the whole in continental criminal courts are more 'Judge orientated', thus making the proceedings more efficient. This is not to say that the role of plea bargaining does not have an increasingly essential role in the criminal systems of continental countries. But the practice of plea bargaining is far more regulated than in the UK and USA.

2.1.5 The Potential Dangers of Plea Bargaining

So whilst plea bargaining is highly desired in the context of more everyday court proceedings it is also attractive when it comes to war crime trials. Here, as elsewhere, plea bargaining can contribute to cutting down the number of trials that a court has to hear. It also more or less guarantees a conviction for the defendant and can also be used to illicit further information from a defendant. There are also utilitarian justifications for plea bargaining in the context of war crimes such as the fact that an admittance of guilt may promote reconciliation and restoration in the effected society. However, the reduction of a sentence not only challenges the truth telling functions of a court but also its capabilities of providing retribution for the community. There are however a number of dangers to using plea bargaining and I would like to raise these from the outset before returning to them as the thesis progresses. These include the potential situation of an innocent person who finds themselves accused of a crime feeling pressured to plead guilty out of fear of a more severe sentence.

There is also a risk of unequal treatment before the court. For example, if a defendant can offer evidence on another defendant they may be able to receive a lesser sentence than one who does not have such evidence to negotiate with. This principle can extend to the perpetrators of war crimes and crimes against humanity who may able to receive discounted sentences and have charges they are potentially guilty off dropped in exchange for a guilty plea. As one can imagine for these reasons the use of plea bargaining is a very controversial area of study generally.

No analysis of plea bargaining has engendered as much controversy as McConville and Baldwin's. Their study disclosed that there were a number of behind the scenes discussions in relation to

[38] Alschuler. Albert W. (1979). Plea Bargaining and Its History. Colum L. Rev 79 pp. 1- 43 JSTOR 1122051.

defendants entering a guilty plea which on the surface seemed not to have been the subject of negotiations. These conclusions appeared in the 1974 book, Negotiated Justice: Pressures on defendants to Plead Guilty, which involved a large-scale study into the outcome of jury cases in UK Crown Courts. In particular, their research focused on the extent to which plea bargaining was used in Birmingham Crown Court and staff of the Institute of Judicial Administration in Birmingham assisted in carrying out the research.

Negotiated Justice: Pressures on Defendants to Plead Guilty caused such controversy that Mr Webster and Mr Napley, who were the Chairman of the Bar and President of the Law Society at the time, wrote letters to national newspapers claiming that the authors of the book had not carried out suitable research for their arguments and had no academic integrity. Indeed, they both campaigned publicly and privately to stop the publication of the book.

The only way McConville and Baldwin could defend their work was to publish their findings so that the public and academics could evaluate it themselves. Broadly, their research concluded that plea bargaining was used frequently in Birmingham Crown Court and that the plea bargains negotiated may not have been in the defendants best interest as the process used to obtain these bargains may have gone beyond what was at that time acknowledged by English law. The book goes so far as to suggest that some of the defendants felt that they had been pressurized into pleading guilty to charges which they believed they were innocent of. The implication being that that they were unjustly treated and the authors argued that this was due to institutional structure of the criminal law and the operations of the criminal courts.

A number of other countries, such as India and Nigeria, have recently included the use of plea bargaining in their judicial system in order to allow for the smooth and efficient running of their criminal justice systems. In Europe, plea bargaining can take a number of forms. For example, Italy uses a procedure called Patteggiamento Sulla Pen in order to curb long and time consuming trials. The Italian system closely resembles the Anglo-American plea bargaining system[39]. Other European countries use mechanisms similar to plea bargaining to help the efficient running of the criminal justice system reflecting how all-consuming the process has slowly become. With this in

[39] COMBS, N.A. (2007). Guilty Pleas in International Criminal Law – Constructing a Restorative Justice Approach [Electronic version]. Stanford, California: Stanford University Press

mind, I will now consider how the use of plea bargaining moved from domestic courts to war crime tribunals.

2.1.6 Plea Bargaining in International Law

One more interesting proof of the truly offensive nature of plea bargaining is its application in international criminal law and before the international criminal courts. Specifically, this legal institution has been used before the International Criminal Tribunal for Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). As of 25 May 2016, 81 accused have been sentenced by the ICTY out of which 20 pleaded guilty. According to the official statistics and documents that Ferioli analyzed[40] (2013, p.3): "The ICTR had convicted forty-six defendants, of whom eight had pleaded guilty." Currently available statistics show that there are 62 convicted in total.

Another international court, the International Criminal Court (ICC) also envisages plea bargaining in its statute known as the Rome Statute[41]. Article 65 of the Statute of Rome defines "Proceedings on an admission of guilt". However, it has not yet applied plea bargaining in its practice. It should also be taken into account that the ICC practice has been very limited so far. Additionally, many legal authors have already posed the question of the application of plea bargaining in ICC cases.

When discussing international law and courts we must inevitably consider the European Court of Human Rights (ECoHR) and its position in relation to plea bargaining and notably the right to a fair trial - Article 6 of the European Convention of Human Rights (ECHR). TO be precise, on 29 April 2014, the ECoHR announced a first decision, which became final on 8 September of the same year, where it directly treated plea bargaining practice in the context of Article 6 of the

[40] FERIOLI, M.L. (2013). Plea Bargaining Before the International Criminal Court: Suggestions Taken from the Experience of the ad hoc Tribunals (University of Warwick School of Law, Legal Studies Research Paper No. 2013-9). Retrieved July 25, 2014, from the Social Science Research Network web-site: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2286678

[41] IOVENE, F. (2013). Plea Bargaining and Abbreviated Trial in Italy (University of Warwick School of Law, Legal Studies Research Paper No. 2013-11). Retrieved February 12, 2019, from the Social Science Research Network web-site: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2286705

ECHR. It is in the Natsvlishvili and Togonidze v. Georgia case[42]. In this judgment, the ECoHR gave its view of the plea bargaining practice: "The Court noted that plea bargaining between the prosecution and the defense was a common feature of European criminal justice systems and not in itself open to criticism". The Court stressed the benefits of plea bargaining in terms of the "speedy adjudication of criminal cases and alleviating the workload of courts, prosecutors and lawyers". It added that, if applied correctly, plea agreements could also be a very good tool for fighting corruption and organized crime, and could also "contribute to the reduction of the number of sentences handed down and as a result to the number of prisoners". Furthermore, the Court considered the effects of plea bargaining in relation to waiving of a number of procedural rights. "This cannot be a problem in itself, since neither the letter nor the spirit of Article 6 prevents a person from waiving these safeguards of his or her own free will", the Court explained.

Finally, the Recommendation R (87)1838 of the CoE Committee of Ministers Concerning the Simplification of Criminal Justice demonstrates that the CoE considered the issue of negotiated justice even back in 1987. In Part III entitled Simplification of ordinary judicial procedures it provides recommendations to member states and calls on them to introduce "the procedure of 'guilty pleas'. Wherever constitutional and legal traditions so allow. Even though plea bargaining has become part of international criminal law and the practice of the international criminal courts, it has many critics among professionals and academics who do not see it as an appropriate part of international criminal law. Many authors stress the specific role and tasks of the international criminal tribunals as completely contrary to plea bargaining.

Burens writes about truth seeking in criminal proceedings and stresses that it has a much larger significance in the international courts than the domestic ones because of the wider set of objectives the international criminal court trials have. When writing about these courts she says (2013, p.324): "Next to rendering justice for alleged wrongs it is also about national reconciliation, restoration, reparation, peace-building, prevention and deterrence of future violence, reestablishing the rule of law and also the creation of a historical record." She believes (2013,

[42] GAZAL, O. (2005). Partial Ban on Plea Bargains (Law & Economics Working Papers Archive: 2003-2009. University of Michigan Law School Scholarship Repository, Art.59). Retrieved July 29, 2014, from the University of Michigan Law School web-site: http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1052&context=law_econ_archive

p.322) that: "...practices of plea bargaining by the ICTY and the ICTR have shown that to a certain extent truth-seeking is sacrificed for efficiency when courts use this procedural mechanism."

[43]Rauxloh (2010, n.p.), for example, believes that international criminal trials, among other things, serve to reach "accurate historical record of the atrocities". However, she has concerns (2010, n.p.) that: "...although plea bargaining can encourage admissions of guilt, which serve the historical record and reconciliation, it can also undermine both aims if the incentive of the bargain is so strong that it triggers non insincere admissions." In this context she refers to the previously mentioned Plavsic who, right after serving the sentence and being released from prison, said that she pleaded guilty only for tactical reasons.

Historically, the ICTY did not immediately accept plea bargaining. It was even openly criticized by the court. [44]Rauxloh (2010, n.p) and Clark (2009, p.417) refer to Morris and Scharf (1995) and write that the First President of this tribunal Antonio Cassese in his statement given to the members of the diplomatic missions in 1994 was directly reluctant to use plea bargaining in the ICTY proceedings due to the extremely grievous nature of the crimes this court is responsible for.
After this practice was introduced in the ICTY in 2001 and potentially bearing in mind critiques like the ones presented above, the Court itself gave general guidelines about how to properly use this legal institution. This was probably also the result of quite an intensive plea bargaining period for the Court from 2001 to 2003. In the case Prosecutor v. Momir Nikolic the Court gave a special view on charge bargaining: "In cases where charges are withdrawn, extreme caution must be urged. The Prosecutor has a duty to prosecute serious violations of international humanitarian law. The crimes falling within the jurisdiction of this Tribunal are fundamentally different from crimes prosecuted nationally. Although it may seem appropriate to 'negotiate' a charge of attempted murder to a charge of aggravated assault, any 'negotiations' on a charge of genocide or crimes against humanity must be carefully considered and be entered into for good cause."

[43] RAUXLOH, R.E. (2010). Negotiated History The Historical Record in International Criminal Law and Plea Bargaining (International Criminal Law Review, Vol. 10(5), 739-770). Retrieved August 12, 2014 from the University of Surrey-Surrey Research Insight web-site: http://epubs.surrey.ac.uk/2970/2/formalisation.pdf
[44] RAUXLOH, R.E. (2010). Negotiated History The Historical Record in International Criminal Law and Plea Bargaining (International Criminal Law Review, Vol. 10(5), 739-770). Retrieved August 12, 2014 from the University of Surrey-Surrey Research Insight web-site: http://epubs.surrey.ac.uk/2970/2/formalisation.pdf

CHAPTER THREE

ANALYSES OF THE RESULTS THE INTERVIEWS WITH JUDGES, PROSECUTORS AND DEFENSE ATTORNEYS IN COURTS OF KAMPALA.

3.0 Introduction

With the purpose of providing context, background and support for my research, this chapter discusses, how and why plea bargaining was introduced into the Ugandan legal system, how it is regulated, to what extent it is applied in practice and in what way.

3.1 Plea Bargaining in Uganda (Legislation and Practice)

In May 2014, the Judiciary of the Government of Uganda initiated a new plea bargaining initiative in Uganda's High Courts, with the aim of addressing crippling criminal case backlogs and the extensive pre-trial detention of accused persons. In addition to its institutional and human rights advantages, its framers sought to increase the role of victims in the process, by ensuring that victims' interests were considered in the plea agreement and that victims had an opportunity to provide impact statements during sentencing.

Uganda's plea bargaining initiative[45] is set against the backdrop of significant levels of gender inequality and violence against the Ugandan citizens. Although Uganda has passed numerous laws to protect the rights and interests of citizens, implementation remains limited and abuse rampant. Reporting of the Ugandan citizens remains low and cases experience dismissal more often than conviction, resulting in impunity for many related crimes.

Although plea bargaining is often examined by governments and academics from the perspective of the accused or its impact on the rule of law, few researchers or practitioners have evaluated the specific impact that plea bargaining has on the Ugandan citizens, and in particular on prosecuting cases of crimes. This research study is intended to be a preliminary analysis of Uganda's new plea bargaining initiative, through the lens of its impact on the Ugandan citizens who have experienced

[45] The Judiciary. A Report of The Case Backlog Reduction Committee. at 43 (29 March 2017).

violence and abuse. It provides an overview of a number of potential advantages and areas of concern that arose from a literature review, key informant interviews (KIIs), and a limited case review. Nonetheless, the researcher believes that the preliminary findings from this report can and should be used to strengthen the plea bargaining initiative during its initial stages, to allow Uganda avoid the pitfalls experienced in other jurisdictions and to ensure that protections for victims and gender-sensitivity become integrated throughout all aspects of the programs, rather than a 'fix' added on after years of avoidable harm.

3.2 Plea Bargaining Guidelines

Uganda adopted both charge and sentence bargaining[46], defining a "plea bargain" as: The process between an accused person and the prosecution, in which the accused person agrees to plead guilty in exchange for an agreement by the prosecutor to drop one or more charges, reduce a charge to a less serious offense, or recommend a particular sentence subject to approval by court. (Rule 4) It did not statutorily limit the types of offences eligible for plea bargaining, meaning that it can apply to both serious and minor offences.

3.3 Role of the Court

Under Uganda's Guidelines, the court plays an active role in the plea negotiations, provides an independent check to ensure that rights of accused persons are being protected, and determines the final sentence to the bargained-for charges. For example, the Plea Bargaining Guidelines provide that the court "may" participate in plea bargaining discussions. Parties are required to inform the court of negotiations and consult the court on proposed sentences before the final plea agreement is presented in open court[47] (Rule 8). This practice is unique to Uganda – all other African countries evaluated for this report expressly preclude judicial officers from participating in plea negotiations, presumably to ensure prosecutorial and judicial independence. In addition to participating in negotiations, the court is required, as a precondition for approval, to determine whether there is a

[46] Judiciary Case Backlog Report, supra note 20, at 23 (also finding that total case backlog stands at 28,864 cases and an additional 22,005 cases are potentially backlogged).

[47] The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013. The Sentencing Committee, chaired by the Principal Judge and with the Technical Advisor to the Judiciary serving as secretary, are also developing guidelines for additional lesser offences, but as of the date of this report, the new guidelines have not yet been issued.

factual basis for the agreement and must reject an agreement that "may occasion a miscarriage of justice[48]" (Rules 12 and 13).

3.4 Victim Involvement

The Guidelines also provide some rights and considerations for victims and complainants during the plea bargaining, including consideration of the victim's interest and the opportunity to present a victim impact statement during sentencing.

For example, the prosecution is required to "take into consideration the interests of the victim, complainant and the community" before entering into a plea agreement[49] (Rule 11). However, obtaining the victim's consent, considering the victim's views, or even notifying victims is not expressly required by the Guidelines (although the ODPP has instructed prosecutors to make reasonable efforts to notify victims). Information about the victim, the relationship between the victim and accused, the victim's interest, and the victim's views are not included in the prescribed Plea Bargaining Form, and the prosecutor is not required to attest that s/he contacted the victim.

However, if a victim or complainant is present during the presentation of the plea agreement, s/he is entitled to be heard on the issue of sentencing. The intent of the framers to include the victim's voice is also evidenced by two of the six stated objectives of the Rules: "(b) to enable the accused and the prosecution in consultation with the victim, to reach an amicable agreement on an appropriate punishment;" and "(f) to involve the victim in the adjudication process" (Rule 3).

In addition to increasing victim involvement, additional objectives include to enhance the efficiency of the criminal justice system, reduce case backlog and prison congestion, provide quick relief from the anxiety of criminal prosecution, and to encourage the accused person to take responsibility for their actions[50] (Rule 3).

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[48] The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013. The Sentencing Committee, chaired by the Principal Judge and with the Technical Advisor to the Judiciary serving as secretary, are also developing guidelines for additional lesser offences, but as of the date of this report, the new guidelines have not yet been issued.

[49] The ODPP is in the process of revising a Client Charter, including certain protections for victims.

[50] The Judiciary, A Report Of The Case Backlog Reduction Committee (29 March 2017).

Current Status of Plea Bargaining in Uganda Since its launch in 2014, the Judiciary - with leadership from the Principal Judge, Chief Registrar, and Technical Advisor to the Judiciary - has introduced plea bargaining in 11 Circuits of the High Courts of Law across the country.

Although plea bargaining may take place anytime during the criminal proceeding, the vast majority of plea agreements are presented during special Judiciary-sponsored plea bargaining sessions. The Judiciary has held numerous plea bargaining sessions, disposing of more than 6,000 cases[51] and saving the Judiciary an estimated 1.7 billion UGX[52]. The majority of these sessions have taken place in or around Kampala; however, sessions have also been held in, inter alia, Mubende, Fort Portal, Bushenyi, Tororo, Gulu, Arua, Soroti, and Jinja. Except for a pilot plea bargaining project in the Chief Magistrate's Courts in Mukono and in Gulu, plea bargaining is currently limited to High Court cases. Charges include murder, attempted murder, manslaughter, rape, aggravated defilement, and aggravated robbery. The Judiciary intends to continue expanding plea bargaining by both extending it to additional Magistrates Courts and increasing its utilization across all High Courts.

The precise procedures vary between sessions, but generally a representative of the Judiciary visits a prison to raise awareness about the new plea bargaining procedure and identify potential participants. This participant list is provided to the Director of Public Prosecutions who assigns the potential plea[53] bargaining cases and sessions to specific State Attorneys. Based on KIIs, State Attorneys generally then have one to two weeks to locate the police file, contact the accused and his/her advocate to negotiate a plea deal, and contact the victim or complainant for input. Where plea agreements are successfully reached, they will be presented to a High Court Judge over a one to two day plea bargaining session.

Plea agreements can also take place during the ordinary course of court business; however, this is not the norm. In such cases, the defence counsel will generally speak with the prosecutor when

[51] The Judiciary, A Report of The Case Backlog Reduction Committee, at 43 (29 March 2017).
[52] See Judiciary Urged to Increase Victim Participation in Plea Bargain, Uganda Radio Network, 29 March 2017 (citing Technical Advisor to the Judiciary), https://ugandaradionetwork.com/story/irregularities-mar-plea-bargaining-initiative
[53] Interview with Female State Attorney (13 April 2019).

the case comes up for plea and/or trial. They will advise the court that the accused wants to plea bargain and the court affords the parties additional time to negotiate an agreement. State Attorneys indicated that the physical presence of victims and witnesses in the courtroom greatly enhances the likelihood that the accused will decide to plead guilty or negotiate a plea agreement.

3.5 The Roles of Judges, Prosecutors and Defense Attorneys in the Plea Bargaining Process

Before examining the results presentation and analysis, is it necessary to generally refer to the role of each category of interviewees, i.e. judges, prosecutors and defense attorneys, in the plea bargaining process in Uganda, and to their feedback.

3.5.1. Judges

The role of a judge in the whole process of plea bargaining in Uganda is the least active, but still a very important one. This is primarily from the perspective of the main task of the judge, to "verify" the whole process and makes sure that it was done in accordance with the law, that the accused is aware of the essence and consequences of her/his act, and that everything is done in accordance with the available evidence. As was mentioned earlier, such a role of the judge does not always exists in other countries; this role can be more or less influential. This position of the judge in the Ugandan system enables primarily a good perception of the type and quality of the agreements submitted, as well as the relevant behavior and attitude of prosecutors, defense attorneys and the accused, as well as the injured party. The stage of the process before the judge is the final one where the totality of the "picture", composed of small separate hidden parts or phases, finally becomes visible. Given this quite important role in the process, several issues were predominant in the answers of the interviewed judges. From the totality of judicial opinions it is clear that they[54]

a) Do have affection for this institution as such and in their own "surroundings", and that they appreciate its potential advantages
b) Do recognize that there are different problems in the practical application of this legal institution and they elaborate well their own thinking related to the causes of this practice

[54] Interview with a Judge (23 Mach 2019).

c) Have some specific suggestions for future action, but in principle, they do not provide complete answers about what the right ways to resolve this situation are.

3.5.2 Prosecutors

The prosecutor's role in the process of plea bargaining in Uganda, as is the case with all the other countries which have this practice, is extremely important. The prosecutor is the key actor or one side of the process together with the accused and her/his defense attorney. The prosecutor is able to significantly contribute to the usage of agreements or, on the contrary, to discourage the implementation of this practice. The interviews conducted with prosecutors lead to three major conclusions[55]:

a) Prosecutors do like this legal institution in general, as well as when it comes to its availability in the Ugandan legal system, and they appreciate all of its potential advantages
b) They all stress the lack of practical implementation of plea bargaining and believe that it is not good, that this institution should be used more, and in their answers they do identify the causes of such a low level of implementation
c) They do have specific proposals about which steps should be taken in order for this institution to be used to its full capacity. In principle, the prosecutors were a little bit more specific in their observations in comparison to judges. This is understandable, bearing in mind their fully active role in this process, and them being one side of the agreement.

3.5.3 Defense Attorneys

A side which is equally important in the whole process and which can largely influence the practice in this area is that of defense attorneys. Similarly to prosecutors, interviews with them showed three major issues[56]:

a) That defense attorneys do like the institution of plea bargaining, appreciate the fact that it is part of the Ugandan legal system and think that it is very useful;
b) They do recognize problems related to the non-implementation of agreements on the acceptance of guilt in practice, think that this is not good, and do elaborate on the reasons for such a situation in practice

[55] Interview with a Prosecutor (27 March 2019).
[56] Interview with a Defence Attorney (29 Mach 2019).

c) Do have certain recommendations on how to improve the situation. Just like prosecutors, remembering their active role in the process, defense attorneys are also more precise when it comes to their opinions, conclusions and proposals than the judges are.

None of the interviewees that were interviewed is explicitly against plea bargaining and this practice being part of the Ugandan legal system. It is completely clear from their answers, their thinking and reasoning as a whole. However, some concerns were expressed in relation to the fairness of the practice. The question of truth and "natural justice". The judge who was interviewed generally favors the institution and its practicality, the judge clearly said[57]:

> *"What is the thing that is questionable to me? That is the existence of plea agreement and the principle of truth and justice. I would be for truth and justice." Such concerns can be "felt" in the answers of some other interviewees as well".*

With the interview the same judge expressed his view that *"Plea bargaining was introduced amid a report that Uganda had more than 38,000 inmates instead of the recommended 15,000, making its prisons the most congested in East Africa. More so, the 2015 report into the case census found that there were 114,512 cases pending in all courts".*

Supported by development partners and the University of Pepperdine, the judiciary launched a pilot plea bargain project in 11 circuits of the High court in 2015 in Uganda. During the pilot period, the High court disposed of 1,500 cases in a very short time". This was beneficial as the legal fraternity hailed it for being cheap with a high case clearance rate of 95 percent per session.

However plea bargain has some critics that were lamented by the same interviewee, who contended that[58] *"the programme cripples the criminal justice system because it leans more on one's power of negotiation and deal-making; both the defence and prosecution depend on their power to negotiate a deal, instead of winning a trial. But the judiciary argues that pleading guilty to get a reduced charge or lessen the seriousness of the offence is better on an offender's record than a conviction that might result from a full trial".*

The interviewee also revealed, that[59] *"they have learnt many lessons along the journey of rolling out plea bargaining," the interviewee said. "We have learnt that successful*

[57] Interview with a Judge (23 Mach 2019).
[58] Interview with a Judge (23 Mach 2019).

[59] Interview with a Judge (23 Mach 2019).

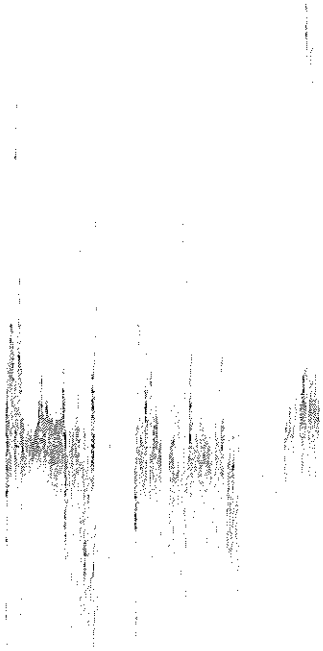
implementation of plea bargaining requires adequate training of the actors, sensitization of the inmates and the community, patience in carrying out negotiations and greater respect for fair trial, as well as respecting the rights of the accused persons."

The interviewee acknowledged that plea bargaining can easily be misunderstood and abused if the agreements are not well made, or where the sentences imposed defeat the cardinal rules of sentencing[60]. *"It is, therefore, important that the national task force on plea bargaining carries out an in-depth study of the application of plea bargaining in Uganda to identify areas that need improvement and opportunities to make the programme a success".*

Then also one of the prosecutors interviewed, stressed that[61]:

"What is important is that in our criminal procedure we do take care of fairness." Those attitudes indirectly support the retributive justice theory requirements of being punished for a committed crime by a sentence adequate to the seriousness of the crime.

Such positions obviously still retain their non-dominant place in the Ugandan legal system and within its actors. This is the case with many other legal systems of the present time as well. The concept in Uganda is expected to be, taking into account the current set-up of the criminal procedure and also the existence of the previously mentioned formal requirement for respecting the principle of truth and fairness defined in the Ugandan Criminal Procedure Code.



[60] Interview with a Judge (23 Mach 2019).

[61] Interview with a Prosecutor (27 Mach 2019).

CHAPTER FOUR
DISCUSSION OF KEY FINDINGS

4.1 Introduction

The interviews "put some light" on the reality when it comes to this practice in Uganda. The interview results presented in the chapter three, the discussion of the research results that follows in this chapter, and the relevant conclusions which will be part of Chapter five, will provide answers in relation to the research objectives: the investigation of the level of use, usefulness and productiveness of plea bargaining practice in the Criminal Justice system of Uganda; identification of the problems and successes and their causes in the application of plea bargaining in this country; and based on that, the provision of adequate conclusions and recommendations which can be useful in the further development of the practice and study of this issue in Uganda. In general, the research represents a solid contribution to the overall literature in the plea bargaining field, particularly as no other authors have so far dealt with this issue while being specifically focused on Uganda.

4.2 The Investigation of the Level of Use, Usefulness and Productiveness of Plea Bargaining Practice

- Judges receive benefits from plea bargaining as well, even though they remain impartial and neutral by not taking personal stances on sentencing. Obviously plea bargains reduce caseload, or at least streamline the work. Plea bargains serves to raise a judge's standing or reputation because bargains usually include a waiver of appeal, meaning the ruling the judge enters will not be challenged and possibly overturned in a higher court.

- Overcrowded Dockets/Case Management Efficiency; Overcrowded dockets create serious human rights problems without developed bail systems or other procedures to release people from custody pending trial. If the average criminal case takes months or years to go to trial, the average defendant spends that amount of time in custody, even if the charges are not serious. Pretrial detention facilities in many Uganda have notoriously poor conditions such as overcrowding, poor hygiene, poor nutrition, disease, and lack of physical safety. Therefore, reducing case backlogs can mean reducing the amount of time defendants spend in pretrial detention and ultimately the amount of time they spend in

detention overall. This will always have a substantial impact on the human rights situation in Uganda which has poor detention and prison conditions.

- Creative, Noncustodial, and Individualized Sentences; A third reason for adopting plea bargaining in Uganda is that it may provide greater flexibility in sentencing, allowing the prosecution and the defense to construct more individualized sentences through the informal negotiation process. For example, the prosecutor and defense could agree on a sentence that includes community service directed to the offense committed, such as a drunk driver working at a rehabilitation center with car accident victims. Rule of law assistance providers tend not to discuss this possible advantage of plea bargaining.

- After evaluating all these circumstances, I believe pleas are necessary for the functioning of the Ugandan system and cannot be realistically eliminated. Bargaining is effective in keeping the judicial system moving along at an appropriate pace. Financially, it provides the benefit of money saved for taxpayers, lawyers, and defendants, in addition to reducing the effect of costs on the outcome of the case because bargaining lessens the defendant's need of a lawyer if the defendant can plead quickly. Furthermore, pleas in exchange for testimony are essential for victimless crimes (i.e., white-collar and drug crimes) because the police must have a means of gathering information about such delinquencies.

- Adding to the benefits, adequate limits on pleas exist to protect defendants who agree to plea bargains. Defendants gain additional negotiating power with plea bargains, and many retain the right to appeal, although this can be waived in some situations. Because plea bargains aid in the expedient and fair resolution of criminal cases, pleas must be continued in order to maintain functioning state and judicial systems.

4.3 Objections Raised Against the Plea Bargain System

Some theorists have argued that the concept of Plea Bargaining is more a mechanism of convenience and mutual benefit than an issue of morality, legality or constitutionality. That be as it may, there is unarguably an inevitable need for a radical change in criminal justice mechanism. It may be a welcome change but only when there is possibility of swift and inexpensive resolution of cases. If the sole purpose of criminal justice system is to rehabilitate

criminals into society, by making them undergo specified sentences in prison; then plea bargaining loses most of its charm.

Plea bargaining offers no benefits to the innocent, and many people feel that it is entirely too easy to coerce innocent accused to accept a plea bargain. Innocent accused who are fearful who may be convicted of a serious crime at trial may agree to plead 'i.e. to make no contest' to a lesser charge, even though they are not guilty. This is rather the most unfortunate bit of the process. The interviewees additionally revealed that, the system may focus on the ability to 'make a deal', the facts and details of what actually happened, and the legal consequences for those actions become less important. Many feel this leads to sloppy or incompetent investigations by the police and prosecutor, and poorly prepared cases by defense counsel.

Here below are some of the core demerits attributed to the system of plea bargain by the respondents during the filed activity.

- **Unfair:** The system is looked at being too soft for the accused and allows them unfair means of escape in a dishonestly ridden society. This is an alternative way of legalization of crime to some extent and hence not a fair deal. Plea bargaining creates a feeling that Justice is no longer blind, but has one eye open to the right offer. One of the prosecutors who was interviewed said, foreseeing a bargaining process, will overcharge the defendant, much as a trade union might ask for an impossibly high salary. It is inherently unfair, assuming you have two accuseds who have engaged in the same conduct essentially similar circumstances, to treat one more harshly because he stands on his constitutional right is deplorable.

- **Contempt for system**: Plea bargaining creates contempt for the system within a class of the Ugandan society who frequently come before the courts. A shortcut aimed at quickly reducing the number of under-trial prisoners and increasing the number of convictions, with or without justice. While countless numbers of the poor Ugandans are languishing in the country's prisons while awaiting trial, only a few might get a chance of bargaining.

- **Conviction of innocents:** The plea bargaining process results in phenomenal increase in number of innocent convicts in prison. The innocents who are accused may be paid by the actual perpetrators of crime in return to their guilty plea with assured reduction in penalty. Thus illegal plea bargaining between real culprits and apparent accused will get legalized with rich criminals corrupting police officials ending up in mockery of justice system. When plea bargaining is certainly not resulting in acquittal or limited to penalties or payment of damages, the accused may not find it as useful and plea bargaining may not operate as incentive at all.

- **Tedious:** Whether one realizes it or not, the plea bargaining process is extremely tedious and prolix both to the prosecution and the defence attorneys. There is a lot of back and forth activity involved between the two attorneys especially in as far as agreeing on the appropriate sentence is concerned not to mention the fact that such sentences may be either approved or alternative recommendations made by court. This all involves a lot of time and effort. The prosecution also bares the colossal task of looking for the victims and records their statements. This process is not only momentous but also costly.

- **Derailment of Trial:** Once the guilty plea comes forward and recorded on the file and in the mind of the judge, the trial will be surely derailed. The court may not strictly adhere to or depart from the requirement of proof of beyond reasonable doubt and might lead to conviction of innocent.

- **Legislative challenges:** Anti-corruption measures call for strong legislations. However, Uganda still lacks some of the vital pieces of legislation, an Asset Recovery Law, Anti-Corruption Regulations, Anti Money Laundering Regulations, and the witness protection Act. With regard to Asset recovery, there is no comprehensive law but sections scattered in various pieces of legislation. Additionally there is no law that allows recovery of proceeds before conviction (non-conviction based asset recovery) and as such even when the assets are traced and identified and at times restrained, they cannot be recovered until a conviction has been secured. This poses a challenge given the burden of proof on the prosecution to secure a conviction. Property gets lost or disposed of even when it is tainted but for failure to prove a charge against the person beyond reasonable doubt.

- **Lack of Mutual Legal Assistance Legislation**: Corruption cases are in most times committed across borders and even some of the assets that would be recovered can be traced across the borders. However, there is no legislation providing for mutual legal assistance in that respect. This therefore means that the properties across the border cannot be recovered.

- **Inadequate staffing:** The Office of the Director of Public Prosecutions is gravely under staffed which affects the organisational performance. The success of any organisation largely depends on the human resource which should be adequate both in terms of quality (skill, knowledge and competencies) and quantity. For example, it is not uncommon to find one prosecutor appearing in court in a corruption matter involving more than five accused persons against more than five defence attorneys. The ratio of workload to staff is really high thereby creating a case backlog and affecting the quality of investigations and prosecutions.

- **Lack of legal and institutional framework for Asset management**: Most of the assets that would be recovered are going- concerns and courts are reluctant to issue restraining orders in such cases due to the fact that there is no infrastructure for the management of such assets. Even in a case where a management order has been issued to the Official receiver, there are challenges because of lack of a clear management structure.

4.4 Examples of the Plea Cases that have successfully concluded in Uganda that the research came across

1) The Republic Of Uganda; In The High Court Of Uganda Sitting At Arua Criminal Case No. 0167 Of 2016

   Uganda .... Prosecutor
   Versus
   Aberninga Francis .... Accused
   Before: Hon Justice Stephen Mubiru.

2) The Republic Of Uganda in The High Court Of Uganda Sitting At Arua Criminal Case No. 0177 Of 2016
   Uganda .... Prosecutor
   Versus
   Kapondo Charles .... Accused
   Before: Hon Justice Stephen Mubiru.

3) The Republic Of Uganda In The High Court Of Uganda Sitting At Arua, Criminal Case No. 0176 Of 2016
   Uganda .... Prosecutor
   Versus
   Mwesigwa Charles .... Accused
   Before: Hon Justice Stephen Mubiru

4) The Republic Of Uganda In The High Court Of Uganda Holden At Mukono Criminal Appeal No. 004 Of 2017
   (Arising From Criminal Case No.0263 Of 2017)
   Inensiko Adams::: Appellant
   Versus
   Uganda:: Respondent
   Before Hon.Lady Justice Margaret Mutonyi, Judge High Court

5) The Republic Of Uganda In The High Court Of Uganda Sitting At Arua Criminal Case No. 0122 Of 2017
   Uganda .... Prosecutor
   Versus
   Gadaf Jamal .... Accused
   Before: Hon Justice Stephen Mubiru.

6) The Republic Of Uganda In The High Court Of Uganda At Kampala [Land Division] Civil Suit No. 0129 Of 2010

   Sheik Hussein Mayanja::Plaintiff

   Mubiru Christopher Kisingiri::::::::::::::::::::::::::::::Defendant

   Before: Hon. Mr. Justice Henry I. Kawesa

7) The Republic Of Uganda In The High Court Of Uganda At Kampala Land Division Civil Suit No. 417 Of 2006
Hanne Kamulegeya Suing Through Her Agent,
Irene Nabiataka Kisingiri .... Plaintiff
Versus
Haji Siragi Zaribwende .... Defendant
Hon. Lady Justice Monica K. Mugenyi

8) The Republic Of Uganda In The Supreme Court Of Uganda At Mengo (Coram: Wambuzi, C.J.; Oder, J.S.C.; And Kanyeihamba, J.S.C.). Civil Appeal No. 40 Of 1995.

Between

Noordin Charania Walji:::.:::.:Appellant

And

Drake Semakula::Respondent

(Appeal From The Judgment Of The High Court At Kampala (Kityo, J.) In Civil Suit No. 685 of 1989, Dated 31/8/1993).

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusion

Based on the determined research objectives and the research findings reached, a set of actions in the plea bargaining field that might be taken by practitioners and legislators, as well as the academic community of Uganda will be presented in this chapter.

To make use of the available process and to secure the gains from these reforms, the plea bargaining process needs to first be successfully understood and mooted by the prosecuting state attorneys, judiciary and the bar and there is need for them to heartily adopt it and the spirit beneath it. Defence Advocates should also encourage the adversarial parties to opt for the plea bargaining rather than to treat the plea bargaining as a threat to their profession. It is obvious that the capacity building of prosecutors and judges should be the high priority and a pre-requisite for experimenting the plea bargaining. It can be given a chance of survival. Plea bargaining unquestionably remains a disputed concept and a doubtful practice. But since the overloading of courts with piling up of criminal cases is threatening the foundations of our judicial system, plea bargaining may be accepted as one of the required measures for speeding up case load disposition. After giving a rigorous trial to this mechanism, there should be a thorough study of its working, its impact on crime rate, conviction rate, and ultimately how the rule of law is affected.

5.2 Recommendations

1) Educational recommendations; To continuously organize plea bargaining related training for prosecutors and defense attorneys, as well as judges when deemed appropriate. Almost all the interviewees stress training as an important element that can affect the future application of plea bargaining. In their comments, most of the participants call for educational activities in this area. Many of them stress that in the initial period when plea bargaining was introduced into the Ugandan legal system, there were many relevant training events for prosecutors, defense attorneys and judges.
2) To organize promotional activities related to plea bargaining; Even though this proposal is nominated by many interviewed participants, at first glance it may provoke the question of

whether it is appropriate to promote something that exists in the law, especially in the criminal law. However, if plea bargaining is understood as an alternative to the classical criminal trail (which is usually exhausting for all of its actors), then the promotion of this legal institution is acceptable. One of the interviewed attorneys says: "Anybody who hasn't been in a courtroom cannot know how exhausting it is to actually reach the judgment." (A3) Similarly, mediation is strongly promoted as an alternative way of resolving civil, but also criminal cases in many countries including Uganda.

3) Encouraging future research on this topic; the final recommendation is related to the need for future research of plea bargaining in Uganda. This is primarily bearing in mind the already mentioned key limiting factors of this research: the complete absence of previous research of this type and on this topic in Uganda; the very limited literature related to the same or similar issues in the countries of the region which are the most useful when it comes to comparative analysis; and the very small number of plea agreements concluded in Uganda so far. This research obviously represents just a starting point. It does provide key information about one phase of plea bargaining application in Uganda.

APPENDIX A: CONSENT FORM

Part A. Introduction

My name is FAITH; Registration Number: 2018-08-00410. I am pursuing a Diploma in Law from Kampala International University. The award of this diploma partially requires presenting a research report. It is for this reason that I have designed a questionnaire to help me gather data about "Plea bargain as a tool of enforcing speedy justice and the effectiveness of the law and practice in Uganda". There is no pledged compensation for participating in this study. However, your thoughts will certainly contribute to the growing body of work on the Applicability of Plea Bargain. All stages of this study, there will be no mentioning of your personal identity details.

Thank you for your consideration

APPENDIX B: INTERVIEW QUESTIONS FOR JUDGES

Semi-structured interview

	Main Questions	Additional Questions	Eventual Clarifying Questions
Q1.	As you have been informed, the overall purpose of this interview is to find out your opinion about plea bargaining agreements, potential for their application in the Ugandan legal system, challenges and successes with implementing this practice. In line with this, firstly what is your general opinion about such agreements	Why do you think they are good/not good? What are advantages and disadvantaged of this legal instrument? Does your opinion come from your practical experience with plea bargaining agreements? Can you please describe your personal practical experience with these agreements?	Can you please tell me how many agreements have you approved and how many agreements have you rejected during last year?
Q2.	From your perspective how Ugandan judges generally perceive such agreements	In your opinion what are the reasons for these perceptions? What might explain a judge's reluctance to plea bargaining? To what extent might this reluctance be linked to all the novelties of the criminal justice system? Do you think it could be typical for the plea bargaining institution only?	
Q3.	In relation to my next question, it's obvious from the courts' statistics that there are not that many cases in which plea bargaining was applied. In your opinion, are these agreements realistically applicable in the Ugandan legal system to a larger extent?	To what extent do you think that the barriers for the application of plea bargaining are within the provisions of the Criminal Procedure Code itself? Do you think that they could relate more to the approach and motives of prosecutors and advocates? Are there any other reasons that could be put forward for this? Can you please explain what do you think: whether this type of reluctance of the criminal justice system can be linked to all the novelties of the criminal justice system which are in a way alien to traditional continental legal system of Uganda, or it is typical for plea bargaining institution only?	What do you think, does sentencing policy of the courts plays role in application of plea bargaining, and if it does how?

Q4.	Do you have any comments regarding application of plea bargaining agreements in the context of the protection of human rights?	What specific European Convention of Human Rights standards you have in mind	
Q5.	Can you please comment on the position of the damaged party when it comes to plea bargaining agreements and Ugandan legislation in this context? How do you see this?	In your opinion, how well are the interests of the injured party protected? Is this satisfactory?	From your experience does this issue of the injured party interests ever comes as problematic in practice? Can you please share with me some experiences of this kind
Q6.	The law, practice and literature suggest that both plea bargaining and deferred prosecution have a purpose of enlarging work efficiency and reducing case backlog. In the light of this how do you see the relationship between these two legal institutions?	In your opinion, which of these two legal institutions is more useful in practice, and why?	
Q7.	Finally, is there anything you would like to add on this topic, anything we missed and you see it as important? Any comments, suggestions and similar		

APPENDEX C: INTERVIEW QUESTIONS FOR PROSECUTORS

Semi-structured interview

	Main Questions	Additional Questions	Eventual Clarifying Questions
Q1.	As you have been informed, the overall purpose of this interview is to find out your opinion about plea bargaining agreements, potential for their application in the Ugandan legal system, challenges and successes with implementing this practice. In line with this, firstly what is your general opinion about such agreements?	Why do you think they are good/not good? What are advantages and disadvantaged of this legal instrument? Does your opinion come from your practical experience with plea bargaining agreements? Can you please describe your personal practical experience with these agreements?	Can you please tell me how many agreements have you concluded during last year i.e. how many cases have you finished that way?
Q2.	From your perspective how Ugandan prosecutors generally perceive such agreements?	In your opinion what are the reasons for these perceptions? What do you think motivates prosecutors when considering whether or not to engage with plea bargaining? What might explain a prosecutor's reluctance to engage with plea bargaining? To what extent might this reluctance be linked to all the novelties of the criminal justice system? Do you think it could be typical for the plea bargaining institution only?	
Q3.	In relation to my next question, it's obvious from the courts' statistics that there are not that many cases in which plea bargaining was applied. In your opinion, are these agreements realistically applicable in the Ugandan legal system to a larger extent?	To what extent do you think that the barriers for the application of plea bargaining are within the provisions of the Criminal Procedure Code itself? Do you think that they could relate more to the approach and motives of prosecutors and advocates? Are there any other reasons that could be put forward for this? Can you please explain what do you think: whether this type of reluctance of the criminal justice system can be linked to all the novelties of the criminal justice system which are in a way alien to traditional continental legal system of Uganda, or it is typical for plea bargaining institution only?	
Q4	In your experience, how advocates generally act when it comes to plea bargaining agreements?	Are there any particular problems in practice that you can identify? What in your opinion could be done to improve the situation?	Can you please share with me some examples from your practice of the advocates who did not want to enter into plea bargaining, and you believed that there were good grounds for plea bargaining, and/or opposite?

Q5.	How do judges react when plea bargaining agreement is offered to them?	Are there any particular problems in practice that you can identify, and can you please describe them? What in your opinion could be done to improve the situation?	Can you please share with me some examples from your practice, when a judge rejected the agreement, and you thought that it was completely justified and well grounded?
Q6.	Do you have any comments regarding application of plea bargaining agreements in the context of the protection of human rights?	What specific European Convention of Human Rights standards you have in mind?	
	In your experience, how much the defendants know about plea bargaining?	How would you describe the defendants' opinion about such agreements? Are they generally open for plea bargaining or not? How important this factor is in the whole process of plea bargaining application? Do you or would you worry about public perception when entering into plea bargaining?	
Q7.	What you think could be done by legislators and all the actors of plea bargaining (prosecutors, lawyers, judges) in order to make it an efficient alternative tool in resolving criminal cases?	Who has the most important role in promoting this institution (having in mind that it has been part of the Ugandan criminal legislation for quite some time, and that by its nature it is expected to contribute to the efficiency of the criminal justice system)? Do you have any concrete legislative changes in mind that could be useful when it comes to plea bargaining?	
Q8.	Finally, is there anything you would like to add on this topic, anything we missed and you see it as important? Any comments, suggestions and similar		

APPENDEX D: INTERVIEW QUESTIONS FOR ADVOCATES

Semi-structured interview

	Main Questions	Additional Questions	Possible Clarifying Questions
Q1.	As you have been informed, the overall purpose of this interview is to find out your opinion about plea bargaining agreements, potential for their application in the Ugandan legal system, challenges and successes with implementing this practice. In line with this, firstly what is your general opinion about such agreements?	Why do you think they are good/not good? What are advantages and disadvantaged of this legal instrument? Does your opinion come from your practical experience with plea bargaining agreements? Can you please describe your personal practical experience with these agreements?	Can you please tell me how many agreements have you concluded during last year i.e. how many cases you finished that way?
Q2.	From your perspective how Ugandan advocates generally perceive such agreements?	In your opinion what are the reasons for these perceptions? What do you think motivates advocates when considering whether or not to engage with plea bargaining? What might explain an advocate's reluctance to engage with plea bargaining? To what extent might this reluctance be linked to all the novelties of the criminal justice system. Do you think it could be typical for the plea bargaining institution only?	
Q3.	In relation to my next question, it's obvious from the courts' statistics that there are not that many cases in which plea bargaining was applied. In your opinion, are these agreements realistically applicable in the Ugandan legal system to a larger extent?	To what extent do you think that the barriers for the application of plea bargaining are within the provisions of the Criminal Procedure Code itself? Do you think that they could relate more to the approach and motives of advocates and prosecutors? Are there any other reasons that could be put forward for this? Can you please explain what do you think: whether this type of reluctance of the criminal justice system can be linked to all the novelties of the criminal justice system which are in a way alien to traditional continental legal system of Uganda, or it is typical for plea bargaining institution only?	
Q4.	In your experience, how prosecutors generally act when it comes to plea bargaining agreements?	Are there any particular problems in practice that you can identify? What in your opinion could be done to improve the situation?	Can you please share with me some examples from your practice of the prosecutors who did not want to enter into plea bargaining, and you believed that there were good grounds for plea bargaining, and/or opposite?

Q5.	How do judges react when plea bargaining agreement is offered to them?	Are there any particular problems in practice that you can identify, and can you please describe them? What in your opinion could be done to improve the situation?	Can you please share with me some examples from your practice, when a judge rejected the agreement, and you thought that it was completely justified and well grounded?
Q6.	Do you have any comments regarding application of plea bargaining agreements in the context of the protection of human rights?	What specific European Convention of Human Rights standards you have in mind?	
Q7.	Can you please comment on the position of the damaged party when it comes to plea bargaining agreements and Ugandan legislation in this context? How do you see this?	In your opinion, how well are the interests of the injured party protected? Is this satisfactory?	From your experience does this issue of the injured party interests ever comes as problematic in practice? Can you please share with me some experiences of this kind?
Q8.	In your experience, how much your defendants know about plea bargaining?	How would you describe your defendants' opinion about such agreements? Are they generally open for plea bargaining or not? How important this factor is in the whole process of plea bargaining application? Do you or would you worry about public perception when entering into plea bargaining?	
Q9.	What you think could be done by legislators and all the actors of plea bargaining (prosecutors, lawyers, judges) in order to make it an efficient alternative tool in resolving criminal cases?	Who has the most important role in promoting this institution (having in mind that it has been part of the Ugandan criminal legislation for quite some time, and that by its nature it is expected to contribute to the efficiency of the criminal justice system)? Do you have any concrete legislative changes in mind that could be useful when it comes to plea bargaining?	
Q10.	Finally, is there anything you would like to add on this topic, anything we missed and you see it as important? Any comments,		