Plea Bargaining In Tanzania: Is It A Grab of Judicial Powers Or Coercion To Compromise?

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Abstract

Plea bargaining as a concept was introduced in Tanzania criminal justice system by the amendment made on the Criminal Procedure Act, [Cap. 20 of 1985], passed by the parliament through the Written Laws (Miscellaneous Amendment) Act No. 4 of 2019. Ever since its introduction, the concept has been a subject of debate from journalists and academicians. While some criticize it on the ground that it violates fundamental principles of the Constitution, others hail it as instrumental in lessening the burden of trials and ensuring speedy disposal of cases. The purpose of this article, therefore, is to throw some light on the existing law relating to plea bargaining in Tanzania by examining the concept of mutual satisfactory disposition, the extent of victim's participation as well as judicial involvement at the negotiation stage.

Keywords: Plea-negotiation, constitutional principles, discretion, scrutiny, guilty pleas, accountability

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1.0 Introduction

Under the Tanzania criminal justice system, for all crimes committed, the offender is required to be punished as per the laws of the land.[2] Traditionally, it is the cardinal principle of law in criminal cases that the prosecution is under the duty to prove the offender's guilty of the criminal charges he is accused of, beyond reasonable doubt.[3] By entering a guilty plea, an accused waives certain procedural rights, including the right to plead not guilty, the right to require the prosecution to prove the charges made against him at a fair and public trial, and the right to put forward a defence to those charges at such a public trial.[4]

Plea bargaining is a concept in which an agreement takes place between the prosecution and the accused person by which he pleads guilty to the criminal charges in exchange for some concession in charges or punishment. A plea bargain allows both parties in a trial to avoid a lengthy trial procedure. Plea bargaining as most criminal justice reformers believe, is more suitable, flexible and better fitted to the needs to the society, as it might be helpful in recurring admissions in cases where it might be difficult to prove the charge laid against the accuse.[5]

2 Article 13(6)(c) of the Constitution of the United Republic of Tanzania, 1977

3 See the Court of Appeal decision in *Horombo Elikaria v. Republic,* Criminal Appeal No. 50/2005 (*Unreported*)

4 See *Kabula Luhende v. R,* Criminal Appeal No. 281 of 2014 (CAT-*Unreported*); Also see Article 13(6)(a) of the Constitution of the United Republic of Tanzania, 1977

5 Justice Pasayat A. Plea Bargaining, 5 Nyaya Deep, National Legal Services Authority, 2007, VIII

2.0 The Origin of the Concept of Plea Bargaining

The concept of plea bargaining evolved in United States and has become a prominent feature of American criminal justice system throughout the years. Plea bargaining was adopted with the result of the classic case of *Martin Luther King Jr.*[6] In 1969 James Earl Ray was accused of murder of Martin Luther King Jr. He pleaded guilty in order to avoid death penalty. After his plea, he got 99 years of punishment.[7] In 1970s the plea bargain was recognized as a formal procedure for the resolution of criminal cases. The concept was given the constitutional validity in the case of *Brady v. United States,*[8] where the Supreme Court held by saying that a plea of guilty is not invalid merely because it was entered to avoid the possibility of a death penalty. The Supreme Court also held that award of lesser punishment pursuant to plea bargain is not invalid. In *Santobello v. New York,*[9] the US Supreme Court held that plea-bargaining was necessary for the operation of justice and was to be encouraged when properly managed. Today, plea bargaining dominates most criminal cases in the USA. Almost every criminal case is now conducted by plea bargaining and today it is often understood that the American criminal justice system would collapse if plea bargaining is removed from it.

6 William Bradford Huie, "*He Slew the Dreamer: My Search for the Truth About James Earl Ray and the Murder of Martin Luther King, Jr.* (Revised ed.)", 1997 available at Montgomery: Black Belt Press, ISBN 13: 978-1- 57966 005-5

7 Ray pleads guilty to King assassination, Feb.19 available at https://www.history.com/this-day-in-history/ray pleads-guilty-to-king-assassination, last seen on Feb. 19, 2020.

8 *Brady v. United States*, 397 U.S. 742 (1970)

9 *Santobello v. New York*, 404 U.S. 257 (1971)

3.0 Plea Bargaining in Tanzania Criminal Justice System

Mounting backlog of cases in the courts, effective utilization of scarce judicial as well as prosecutorial resources and the resultants pain and agony suffered by the accused led the law makers to introduce the concept of plea bargaining in Tanzania criminal justice system. Plea bargain was introduced through amendments made on the Criminal Procedure Act Cap. 20 of 1985, passed by the parliament through the Written Laws (Miscellaneous Amendment) Act No 4 of 2019. The Act[10] amended several legislation including the contents of section 3 of the Criminal Procedure Act (CPA) by adding the meaning of plea agreement and plea bargaining and addition of section 194A to 194H, immediately after section 194.

3.1 Plea Bargaining Defined

Alshuler describes plea bargaining as one that consists of the exchange of official concessions for a defendant's act of self-conviction.[11] Those concessions may relate to the sentence imposed by the Court or recommended by the prosecutor the offence charged, or a variety of other circumstances.[12] Black's Law Dictionary[13] defines the term "plea bargaining" as:

"The process whereby the accused and the prosecutor in criminal case work out a mutually satisfactory disposition of the case subject to the Court approval. It usually involves the accused pleading guilty to a lesser offence or to only one or some of the courts of a multi-count indictment in return for a lighter than that possible for the graver charge."

In Tanzania, s. 15[14] which amends s. 3[15] defines "plea bargaining" to mean negotiation in a criminal case between a prosecutor and the accused whereby the accused agrees to plead guilty to a particular offence or a lesser offence or to a particular count or counts in a charge with multiple counts; or cooperate with the prosecutor in the provision of information that may lead to a discovery of other information relating to the offence or count charged, in return for concession from the prosecutor which may lead to a lenient sentence or withdrawal of other counts.[16] The section provides for a negotiation between the accused and the prosecutor during which the accused person agrees to plead guilty in exchange for some concession in the form of reducing the *quantum* of sentences by the prosecutor; it is a kind of compromise.

3.2 Nature of Plea Bargaining

As provided forth in s. 3 of Act No. 4/2019 plea bargaining is not a collective and cumulative scheme. It is based on needs and demand of both sides, that is to say, the prosecution and accused. Since it is a negotiation, the accused may agree to plead guilty to a less serious charge, or to one of several charges or count or counts, in return for the dismissal of other charges, or it may mean that the accused may plead guilty to the original criminal charge in return for a more lenient sentence which is commonly known as charge bargaining.

Furthermore, the accused may cooperate

10 Act No. 4 of 2019

11 *Alschuler, Albert W.* (1968) "The Prosecutor's Role in *Plea Bargaining,"* University of Chicago Law Review: Vol. 36: Iss.1.

12 Rai S. 2007 Law relating to Plea bargaining, 47 Orient Publishing Company, New Delhi, Allahabad, 1st ed.,

13 Plea Bargaining, Black's Law Dictionary, 8th edition, 1190 (2004)

14 See Act No. 4 of 2019

15 The Criminal Procedure Act, 1985

16 See s. 15(a-b) of Act No. 4 of 2019

with the prosecutor in the provision of information that may lead to a discovery of other information relating to the offence or count charged in return for a more lenient sentence which is also known as Sentence Bargaining. Thus, it involves an active negotiation process between the prosecution and the accused.

3.3 Application of Plea Bargaining in Tanzania

The provisions of s. 194F[17] provides that plea bargaining shall not be entered into in the following offences including; sexual offences with a punishment which exceeds five years, sexual offences involving a victim whose age is under eighteen, treason and treasonable offences, offences relating to possession or trafficking in narcotic drugs whose market value is above twenty million shillings, terrorism, possession of government trophy whose value is above twenty million shillings without the consent of Director of Public Prosecutions in writing, and any other offence as the Minister may, upon consultation with other relevant authorities and by order published in the *gazette* proclaim.[18]

3.4 Procedures of Plea Bargaining under the Criminal Procedure Act, 1985

According to s. 194A, application for plea bargaining may be initiated by a public prosecutor after the consultation with the victim or investigator or the accused person or his advocate and notify the court of their intention to negotiate a plea agreement with a prior written consent of the Director of Public Prosecution (DPP). The court shall not participate in plea negotiations between a public prosecutor and the accused person.[19] The plea agreement shall be in writing and shall state in full the terms of the agreement, the substantial facts of the matter and all other relevant facts of the case and any admissions made by the accused person.[20]

Under s. 194D, the plea agreement reached by the parties must be registered to the court to gain a status of a formal court judgment. At this stage, the court is vested with wider discretion to examine and satisfy itself on whether the negotiation and finally reached agreement was mutual and concluded with free consent. However, before it registers the agreement, the court shall satisfy itself that the agreement was voluntarily obtained and the accused was competent to enter into such agreement. Furthermore, before court records the plea, the accused must be placed under oath and the court must address the accused person in court in a language that he understands, and must inform him that by entering into a plea agreement, the accused waives his right to a full trial (i.e. his right to confront and cross-examine witnesses) and his right to appeal except as to the extent or legality of sentence.[21] However, prosecution has the right, in the case of prosecution for perjury or false statement, to use any statement that he gives in the agreement against him.[22]

Upon registration, the plea agreement becomes binding upon the prosecution side and the accused and the agreement shall become part of the record of the court. Moreover, s. 194D[23]gives the court the power to reject a plea agreement for sufficient reasons. Therefore, even in situations whereby the plea agreement has the approval of the DPP, it is still open to the court to either accept or reject the same. It presupposes that, upon rejection by the court the plea agreement reached shall become null and void and the proceedings giving rise to such agreement shall be inadmissible in a subsequent or future trial relating to the same facts. Therefore, the rejection necessitates a plea of not guilty being consequently entered in the court record. This is contrary with the power of the DPP to enter a *nolle prosequi*, upon which the proceedings are discontinued and the accused discharged in respect of the charge for which the *nolle prosequi* was entered.[24] However, the rejection shall not operate as a bar to subsequent negotiations preferred by the parties.

4.0 Plea Bargain: A Grab of Judicial Power or a Coercion to Compromise?

Plea bargaining is necessary for the continued function and efficiency of any criminal justice system. Tanzania is no exceptional. With increase in crime rates, the criminal justice system is getting over-burdened every day. Plea bargaining provides an effective solution as all the actors within the criminal justice system, that is, the prosecution, judicial officers and the accused work in *tandem* avoiding unduly long trials and cumbersome process of producing evidences and witnesses.[25] Undoubtedly, speedy trial is an essence of criminal justice system and delay in trial by itself constitutes denial of justice. Plea bargaining has become a disputed concept because there are many views regarding its introduction in our legal system. Some authorities' stress that its introduction in our legal system is exceptionally good as it will reduce heavy backlog prevalent in Tanzania Judiciary[26] as well as congestion in jail. On the other hand, the introduction of the same has provoked scholarly debate on a number of legal issues as discussed hereinafter:-

4.1 Judicial intervention after Plea Bargaining

Contrary to popular belief, plea bargaining has become ingrained in our legal system because offenders and agencies such as police departments, prosecutor's offices, and the courts benefit from its use. It can be efficient, time saving and less risky to the parties involved. It has been reported that more than 500 accused persons had applied to the DPP for the application of plea bargain. The plea bargain system is a move that ensures timely delivery of justice, reduces backlog of cases, as well as reducing inmate congestions in prison facilities.

Under s. 194A (3),[27] the court is prohibited from becoming involved in plea negotiations and limit the courts' role to reviewing a plea bargain once it is presented by the parties.[28] Of course, under the Act, the court invariably participates in the plea bargaining

17 The amended Criminal Procedure Act, 1985
18 See s. 194F of the amended Criminal Procedure Act, 1985
19 Section 194A(1-3) of the amended Criminal Procedure Act, 1985
20 *Ibid* at s. 194C
21 S. 194E of the amended Criminal Procedure Act, 1985
22 *Ibid* t s. 194E(b)(iii)
23 Ibid at s. 194D(1)(3)
24 See s. 91(1) of the Criminal Procedure Act, 1985
25 K. V. K. Santhy, *Plea Bargaining in US and India Criminal Law Confessions for Concessions*, Nalsar Law Review Vol. 7, 2013 Hyderabad
26 See the Chief Justice Speech at the celebration to mark the Country's Law Day of 2014 at Dar es Salam
27 Of the Criminal Procedure Act, 1985
28 *Ibid* at s. 194D(2)

process through accepting or rejecting the plea bargaining itself.[29] The Act has refrained from involving the court in plea negotiations. The common practice is for the court to review a guilty plea to ensure that it is voluntary and knowing, but only after the plea is concluded between the parties.[30] The court does not have to entertain an agreement if it is ascertained at the very outset that the accused did not voluntarily consent, the Act provides the court with the power to reject the settlement arrived at.[31]

The role of the court as can be seen in such cases is just that of a figure head in such cases. The parties bargain informally outside of court and strike a deal with little judicial involvement between prosecutors and accused person, behind closed doors and with practically no or minimal judicial input or oversight.[32] The entire secretive procedure leaves the adjudication of criminal cases to prosecutors not the court, as the prosecutors maintains charging decisions by selecting the charges, prosecutors strongly influence the sentence. This presents significant issues concerning transparency, fairness, and effective sentencing.[33] Therefore, in a scenario where there may be serious failure in the capabilities of the accused, a risk of prosecutorial coercion and the probability of corruption at various levels, a reasonable level of discretion on the part of the deciding authority is required.[34] Keeping the court at the sidelines will result in the inequality of the bargaining power of the prosecution and the accused.

However, one may argue that the court's participation in negotiations may seem to interfere with her role as an impartial arbiter, particularly if the same judicial officer who participates in the negotiations would preside over a subsequent trial and sentencing of the accused person. Possibly, it can give the accused impression that he will not receive a fair trial if he is tried by the same judge or makes it difficult for the judge objectively to determine the voluntariness of the plea.[35] As it is provided under s. 194D(2),[36] a plea of guilty by the accused must be made 'voluntarily', therefore judicial participation may be seeing as inherently coercive that judicial involvement renders the plea involuntary.[37]

4.2 Judicial Scrutiny

Unlike in a normal criminal proceeding where judges/magistrates must confirm that prosecutor has sufficient evidence to support and make out a *prima facie* case,[38]in plea bargaining process prosecutorial discretion in plea-negotiations operates essentially free from external scrutiny or transparency. Basing on s. 194D (2)[39] in the interest of justice in criminal prosecutions, judges/ magistrates must approve plea bargains before registering such agreement. The Act[40] emphasizes two prerequisites for judicial acceptance of guilty pleas; the voluntariness of the accused's plea, and the accused competence to enter into such agreement. Furthermore, s. 194G provides a court with the power to set

29 *Ibid* at s. 194D(3-4)
30 *Ibid* at s. 194D(2)
31 *Ibid*
32 Albert W. Alschuler, *The Trial Judge's Role in Plea Bargaining*, 76 COLUM. L. REV. 1059, 1064-66 (1976)
33 Sulabh Rewari and Tanya Aggarwal, "*Wanna Make a Deal? The Introduction of Plea Bargaining in India*" (2006)
34 S. 194D(3) of the Criminal Procedure Act, 1985
35 John Paul Ryans and James J. Alfini, "*Trial Judge's Participation in Plea Bargaining: An Empirical Perspective*", 13(2) Law and Society Review 482, 479-507 (1979)
36 Of the Criminal Procedure Act, 1985
37 *Boyd v. United States*, 703 A.2d 818, 821 (D.C. Cir. 1997)
38 See s. 230 of the Criminal Procedure Act, 1985. Also the case of *DPP v. Peter Kibatala*, Criminal Appeal No. 4/2015, CAT at Dar es Salaam.
39 Of the Criminal Procedure Act, 1985
40 *Ibid*

aside conviction and sentence relating to plea bargaining on ground of fraud, misrepresentation and involuntariness of the plea. Considering the above provisions one may argue that judges/ magistrates have broader implicit authority to approve or reject party-negotiated guilty pleas based on their independent determination that the proposed disposition is inconsistent with the public interest. However, a judge/ magistrate generally cannot wipe out a plea agreement after they have accepted it and entered the conviction unless for sufficient reasons.[41]

The unchecked prosecutors' discretionary power to decide whether or not, and how to, proceed includes which offence(s) to pursue, and whether to dismiss charges, engage in plea-negotiations[42] and make/ accept a plea-agreement[43] takes upon the role of the judge/magistrate. Again, the prosecutors' ability to threaten inflated sentences, combined with their power to trade those sentences away for pleas of guilt, allows them to control 'who goes to prison and for how long.' Such powers give them a quasi-judicial role. In our unregulated interstices of criminal justice system such unchecked discretion power may transform them into administrators of an 'unwritten criminal law' that consists only of their own discretionary decisions' to charge certain offenses or to offer certain deals.[44] Meanwhile, the Act imposes virtually no constraints on prosecutors' plea bargaining practices at all, neither does it give the courts powers to examine prosecutorial conduct to ensure that they met the most meticulous standards of both promise and performance in plea bargaining[45].

4.3 Accused Constitutional Right

The Bill of Rights in our Constitution[46] protects some of our most fundamental liberties including rights to impartial and fair trial, to confront adverse witnesses as well as right to appeal. However, despite such supposed protection, most of those charged with crimes do not get to exercise these rights. Most accused persons charged, plead guilty and waive away their rights through the process of plea bargaining. [47] A discount for pleading guilty made under plea bargaining process imposes a price on the right to be tried and appeal. That is to say, during the plea bargaining process, prosecutors generally offer charging or sentencing concessions to induce accused persons to plead guilty and waive their right to trial[48] or threaten accused persons with increased charges or more severe sentences if they do choose to go to trial.

Generally, one can say that, the state is in fact penalizing those accused who choose to exercise their constitutional rights and rewarding those who refrain from doing so, hence undermining the presumption of innocence[49] and encouraging self-incrimination.

Again, article 18[50] provides for right to be informed. Plea negotiations are between the accused person and the prosecutor,[51] the negotiations are informal and totally outside the purview

41 S. 194D(3) of the Criminal Procedure Act, 1985
42 *Ibid* s. 194B(a-c)
43 *Ibid* s. 194D(3)
44 Gilien Silsby, *Why Innocent People Plead Guilty*, USC NEWS (Apr. 18, 2014)
45 Albert W. Alschuler, *The Prosecutor's Role in Plea Bargaining*, 36 U. CHI. L. REV. 50, 53 (1968)
46 See Articles 12 to 29 of the Constitution of the United Republic of Tanzania, 1977
47 S. 194E of the Criminal Procedure Act, 1985
48 *Republic v. Erick Kabendera*, Economic Crime Case No. 75/2019 in the Resident Magistrate's Court of Dar es Salaam at Kisutu.
49 Article 13(6)a of the Constitution of the United Republic of Tanzania, 1977
50 Of the Constitution of the United Republic of Tanzania, 1977
51 See s. 194A(1-2) of the Criminal Procedure Act, 1985

of judges/magistrates,[52] yet a court will enforce the agreement that the parties have made.[53] The accused guilty plea based on the extent of his knowledge of the prosecutor's case against him and any tactical, mitigating, or exculpatory information that might exist are known only to the prosecution.[54] Therefore, it is a give and take process. In this sense, lack of relevant information prevents the accused person from a reasoned decision whether to plead guilty or to stand trial. In the effort to guarantee 'due process',[55] the accused must be provided with all type of information that would aid the accused in making decision including all items relevant to an assessment of the prosecution's case against the accused.[56] A key concern in this context, worsened by the absence of plea negotiation information and/or data, is the potential for negotiations to create pressures that compel accused persons to plead guilty.[57]

The practical reality is that plea bargain is an unsupervised practice[58] with an imbalance of bargaining powers, yet the court is required to assume that plea negotiations were conducted fairly. In this situation, accused may not be able to understand the nature of the plea bargained offer or what may happen if the case goes to trial.[59]

52 *Ibid* s. 194D(3)
53 *Ibid* s. 194D
54 D. Newman, Conviction: *The Determination of Guilt or Innocence without Trial* 3 (1966).
55 Article 13 of the Constitution of the United Republic of Tanzania, 1977
56 *Brady v. Maryland* 373 U.S. 83 (1963)
57 Baldwin, J., & McConville, M. (1977). *Negotiated justice: Pressures to plead guilty*. London, England: Martin Robertson.
58 *Ibid* s. 194D(3) of the Criminal Procedure Act, 1985
59 Alschuler, *The Prosecutor's Role in Plea Bargaining*, 36 U. GHI.L. REV. 50, 58-60 (1968)

4.4 Prosecution Unregulated Monopoly

The process of plea bargaining hurts the innocent and gives rise to unfair bargains in content and in time. In plea bargaining, the prosecutor is the central and controlling figure in the bargaining process.[60] Practically, in Tanzania the decision whether to permit plea bargaining in any particular case is solely a matter of prosecutorial discretion.[61] Prosecutors enjoy wide latitude and power in the plea bargaining process and can agree to dismiss a case outright, or dismiss charges, or allow an alternative sentence, such as a fine or community service. One side is very strong and the other side is very weak. In the eyes of the accused, it may well be a rational calculation given the penalty of going to trial, for there is clearly such penalty. The sentencing differential in plea bargaining from that of an ordinary trial makes plea bargaining coercive leading to risk of prosecutorial coercion.

The accused person obviously has more to lose than the prosecution, particularly if it may involve a jail term. There is of course a natural pressure upon the accused, because if the accused goes on with the trial and lose, there are bigger consequences.[62] And if the accused does not settle, he/she may get an acquittal, but it is unknown. It is a gamble either way, and unpredictable. There is therefore pressure on them to plead guilty on an account that additional charges or even consecutive punishment may not be brought forward nor new charges be introduced during trial. The prosecutor's unlimited discretion to

60 John H. Langbein, *"Torture and Plea Bargaining"*, 46(1) The University of Chicago Law Review 8, 3-22(1978)
61 Section 194C(3) of the Criminal Procedure Act, 1985
62 Davis, K. (1969). Discretionary justice: *A preliminary inquiry*. Baton Rouge, LA: Louisiana State University Press.

pick and choose which charges to bring against defendants and ability to create significant sentencing differentials between similar defendants can lead to the practice of overcharging and the use of threats to seek the harshest sentence to keep defendants from going to trial.[63] Such threats might induce an innocent accused to plead guilty to suffer a light and inconsequential punishment rather than go through a long and difficult criminal trial which, having regard to our cumbrous and unsatisfactory system of administration of justice is not only long drawn out and catastrophic in terms of time and money, but also uncertain and unpredictable in its result. Hence making the plea bargaining an unfair contract since accused persons will accept a plea agreement that is not in their own best interests.[64] That is, the expected return for tactical concession from acceptance is less than that from rejection or going to trial.

4.5 Victim's Participation

The Act[65] obliges a public prosecutor to conduct plea bargaining with the accused person after consultation with the victim/investigator and before pronunciation of judgment. In any criminal justice system victims of criminal conduct have two rights; the right to be informed, and the right to be present.[66] In the context of plea bargaining, the Act introduces a contour that allows prosecutors to negotiate with the accused person after consulting the victim. A significant third party affected by the plea bargain is the victim of the crime. Nonetheless the

63 Jeff Palmer, Note, *Abolishing Plea Bargaining: An End to the Same Old Song and Dance*, 26 AM. J. CRIM. L. 505, 512–13 (1999)
64 Sulabh Rewari and Tanya Aggarwal, "*Wanna Make a Deal? The Introduction of Plea Bargaining in India*" (2006)
65 See s. 194A(1) of the Criminal Procedure Act, 1985
66 Article 13(6) a of the Constitution of the United Republic of Tanzania, 1977

Act[67] accords victims the most minimal right to information regarding the plea bargain. The Act is silent about the most substantial right of victims which is the right to participate in the plea bargaining decision. The Act does not expressly state what constituting consulting the victim. Does it imply giving the victim the right to veto a decision to plea bargain? Or provide victims with an opportunity to be heard? Although the victims have a direct interest on the outcome of the criminal trial, their position is not formally recognized by the Act.

The Act unfairly excludes the victims to participating in plea bargains process even where he/she has a legitimate interest. The State being the prosecutor and aggrieved party, the actual victim had no say in the proceedings apart from informing the crime to the police and giving evidence when called for. It is taken for granted that punishing the accused is satisfaction enough for the victim.[68] This is borne out of the entrenched universal principle that sees the prosecution of crime as an exclusive prerogative of the State. Hence, the victim, for the most part, serves the role of a source of information about the crime and the criminal and features mostly as the individual whose injury triggers State action.[69] For most part, his or her interest is subsumed by public interest and overwhelmed by the prerogative of the State. Victims feel excluded and ignored in their own case[70] hence victims suffer silently as a result of crime and abuse of power. Therefore,

67 *Ibid*
68 Dr. Subhash Chandra Singh, *"Justice for Victims of Crime"* Criminal Law Journal, Oct 2009, p.13
69 Gittler Josephine, *'Expanding the role of the victim in a criminal action: an overview of issues and problems'* (1983) Pepp. L. Rev. 11, 117.
70 Maguire, Mike, and Trevor Bennett, 1982 *'Burglary in a dwelling: The offence, the offender, and the victim'* (London Heinemann).

implementing the provision of Article 13(6) (a)[71] it is imperative to develop/adopt guidelines or regulations stressing the need for compassion to the victims putting in place suitable machinery and legal framework for protection of the victims.[72]

4.6 Public attitudes to Plea Bargains

The Judiciary of Tanzania (JoT) is well known for its impartiality, independence and justice oriented approach. The Preamble of our Constitution promises "a society founded on the principles of freedom, justice, fraternity and concord."[73] And that, the Judiciary which is independent and dispenses justice without fear or favour, thereby ensuring that all human rights are preserved and protected.[74] However, of recent, many persons involved in corruption and financial crimes have gotten away with ridiculously low sentences that the ordinary man on the street began to wonder if the country's judiciary is not already compromised.

Traditionally, judges/magistrates when trying an accused for an offence must apply his mind to the evidence recorded before him and, on the facts as they emerge from the evidence, decide whether the accused is guilty or not. Therefore, conviction on plea of guilty entered by the accused as a result of plea bargaining is contrary to public policy because a judge/magistrate is likely to be deflected from his path of duty to do justice and he might convict an innocent accused of accepting plea of guilty or let off a guilty accused with lighter sentence, thus subverting the process of law, and frustrating the social objective.[75] It is argued that plea bargaining allows accused to escape full punishment by providing them with more lenient sentences.[76] This act as motivation to other offenders that justice can be bought and sold[77] and that offenders can easily beat the criminal justice system, hence weaken the deterrent effect of punishment.[78]

Since plea bargaining cases invariably results in disposition of a case, it is argued that judges/magistrates may be persuaded to accept plea bargaining agreements so that they could be assessed and evaluated in accordance with cases they disposed of. Also, the heavy case-load of judges/magistrates are easily reduced by the number of cases in which plea bargaining has been successful pleaded and invariably help the court to dispose of some of its cases. Therefore, it must always be remembered by every judicial officer that administration of justice is a sacred task and according to our hoary tradition, it partakes of the divine function and it is with the greatest sense of responsibility and anxiety that the judicial officer must discharge his judicial function, particularly when it concerns the liberty of a person.[79]

Equally, plea bargaining allows the prosecutors to evade the rigorous standards of due process and proof imposed during trials. Consequently, instead of establishing accused's guilt and sentence through an impartial process with a complete investigation and an opportunity for the defense to present its case, prosecutors take on the role of a judge, making all determinations based on the probability of whether they will win or lose at trial. And the accused person is induced to confess to a plea of guilty of an allurement being held out to him that if he enters a plea of guilty he will be let off lightly. The end result is a decision that has little to do with the primary objectives of the criminal justice system.[80]

71 Of the Constitution of the United Republic of Tanzania, 1977
72 Ibid at Article 13(6)(d)
73 See the Preamble of the Constitution of the United Republic of Tanzania, 1977
74 *Ibid*

75 Jeff Palmer, Note, *Abolishing Plea Bargaining: An End to the Same Old Song and Dance,* 26 AM. J. CRIM. L. 505, 512–13 (1999)
76 Alissa Pollitz Worden, *Policymaking by Prosecutors: The Uses of Discretion in Regulating Plea Bargaining*, 73 JUDICATURE 335, 336 (1990))
77 *Ibid*
78 Douglas D. Guidorizzi, *Comment, Should We Really "Ban" Plea Bargaining?: The Core Concerns of Plea Bargaining Critics*, 47 EMORY L.J. 753, 765 (1998)
79 See *Kasambhai v. State of Gujarat,* AIR 1980 SC 854

5.0 Conclusion

The economic realities of our criminal justice system and the ever growing criminal population as well as over congested prisons in Tanzania dictate that plea bargaining cannot be altogether abolished. Undoubtedly, speedy trial is an essence of criminal justice system and delay in trial by itself constitutes denial of justice. It cannot be denied that plea bargaining may result in faster disposal of cases, relieving the prosecutors of the long process of proof, technicalities and long arguments, as well as the court of its ordeal surrounded by a crowd of paper and persons is avoided by one case less and the accused is happy that he is free early in the day to pursue his old profession.

The concept has been introduced in our Criminal Procedure Act, 1985 by the Written Laws (Miscellaneous Amendment) Act No 4 of 2019 as a prescription to the problem of overcrowded jails, burdened courts and abnormal delays. The provisions relating to plea bargaining in the Act[81] show that throughout the process, the court is not a moot spectator, but it plays an active role in ensuring that there are no pressure tactics adopted by the prosecution to extract guilty plea from the accused and that the agreement reached between the parties is voluntary. However, it has been observed that accused persons are not provided with material information regarding their charges and the prosecution case against them. Furthermore, plea bargains are conducted before the investigation is complete,[82] it is also done when the accused is under difficult environment. The way it is conducted does not reflect a balanced process but one side process. Definitely, from its outset it is not based on a win-win situation, but money oriented thus subjecting the accused to confess guilty in order to save life and get out of remand prison.

The practice of plea bargaining can be a fair and legitimate alternative to trial if the principles of dues process are observed. Thus, plea bargains negotiations should be handled expeditiously, without subjecting the accused person to long, tough and complex court proceedings unnecessarily. Also, regulations or rules or guidelines ought to be made providing guiding procedures on how plea bargain negotiations and plea bargaining agreement should be done thoroughly.[83] Furthermore, regulations or rules or guidelines should define the parameters of authority and capacity of the court in plea negotiations in fulfilling its constitutional duty of doing justice in criminal prosecution.

80 Douglas D. Guidorizzi, *Comment, Should We Really "Ban" Plea Bargaining?: The Core Concerns of Plea Bargaining Critics*, 47 EMORY L.J. 753, 765 (1998)
81 Criminal Procedure Act, 1985

82 See *Republic v. Erick Kabendera*, Economic Crime Case No. 75/2019 in the Resident Magistrate's Court of Dar es Salaam at Kisutu.
83 See s. 194H of the Criminal Procedure Act, 1985