

# LADA BRIEF

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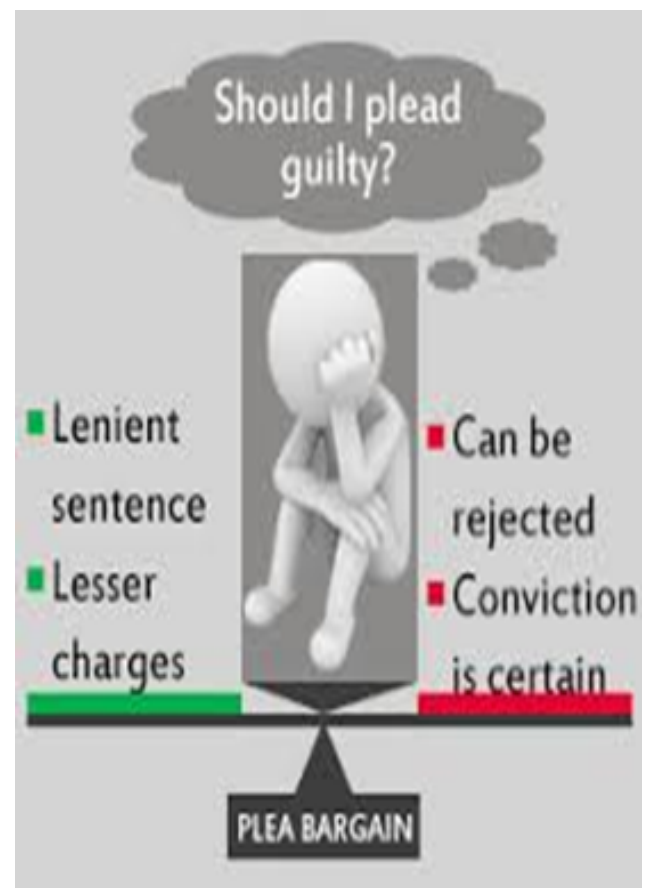


## IN EXCHANGE OF LITIGATION

### Taking on the Full Mantle of Plea Bargaining in Ghana.

The criminal justice system in Ghana, like in most countries, is fraught with challenges and subject to criticisms. The perceived bias of judges, jurors and lawyers, coupled with the delay in justice delivery and other such difficulties, defeat the intended aim of the enactments promulgated to tackle criminal justice in the country.

There are however concerted efforts by stakeholders at bridging the gap that threatens to thwart the efforts at building a formidable justice delivery system. **One of such efforts is the introduction of Plea-Bargaining in our justice delivery system.**



Previously, the Criminal and Other Offences Act, 1960 (Act 29), the main Act regulating the criminal jurisprudence in Ghana, did not expressly provide for plea bargaining. Some sections (***see Section 239 (2) and (3) in respect of indictable offences***) of the Criminal Procedure Act, 1960 (Act 30), the Courts Act, 1993 (Act 459) [***see section 35 in respect of economic loss, harm or damage to the State***], and recently, the Office of the Special Prosecutor Act, 2017 (Act 95) [***see section 71***] and the Narcotics Control Commission Act, 2020 (Act 1019 ) [***Provisions on corruption and corruption-related offences, narcotic offences***] offer provisions on plea bargaining. However, these provisions have inherent limitations that make their application challenging.

There is therefore the need for a comprehensive law dealing with plea bargain. The Bar, the Bench and Academia have all made calls for this. The legislature has evinced a clear intention to support this course. In this regard, LADA, along with the Attorney General's Department, is facilitating the development of a Bill for plea bargaining in Ghana.

The Memorandum to the Bill describes the process of Plea Bargaining as where an accused person relinquishes his or her right to go to full trial in exchange of some other benefit. Such benefits may include, a reduction in the charge, a withdrawal of some charges or reduced sentences.

Accused persons who were hitherto saddled with going through the full trial now have the choice of making an informed decision in respect of criminal offences and trials. Save for treason and high treason [***Constitution of Ghana, Article 19 2(a)***], the Plea-Bargaining law will specifically recognise plea bargaining as applicable to all offences.



The benefits of plea bargaining are enormous:

- Accused persons who were hitherto saddled with going through the full trial now have the choice of making an informed decision in respect of criminal offences and trials.
- The monotonous plea of guilty and the incessant caseload of work heaped on the Police and the courts will see a revamp.
- State prosecutors can concentrate on more serious offences while accused persons will have the liberty to cooperate with prosecution for a lesser charge or a withdrawal of charges entirely.
- Plea bargaining will offer some respite with regards to the decongestion of prisons due to reduced sentencing.
- The state will benefit from compensation and restitution by the accused persons as proposed in the Act.

The Bill provides guidance on issues relating to negotiations, the right persons to engage in plea negotiations and their limitations, disclosures, the form the plea agreement should take and how it should be presented in court.

The Bill when passed will bring finality to a conviction and sentence of an accused person in accordance with a plea agreement and no appeal shall lie against such a judgment.

With the Plea-Bargaining Bill, costly and laborious trials which may not necessarily guarantee a conviction will give way to flexibility; and consented and voluntary negotiation may replace severe and harsh sentences for non-serious offences.

Public education is therefore very important to the success of a plea-bargaining law in Ghana. While it is important to ensure that actors in the criminal justice system understand and embrace the law, it is equally important to ensure that the general public is well educated on the law, for “justice emanates from the people.”



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