



REPUBLIC OF GHANA

**CRIMINAL AND OTHER
OFFENCES (PROCEDURE)
(AMENDMENT) ACT, 2022
(ACT 1079)**

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(AMENDMENT) ACT, 2022

ARRANGEMENT OF SECTIONS

Section

Sections 162A to 162R inserted



THE ONE THOUSAND AND SEVENTY-NINETH

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED

**CRIMINAL AND OTHER OFFENCES (PROCEDURE)
(AMENDMENT) ACT, 2022**

AN ACT to amend the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) to provide for plea bargaining in the administration of criminal justice and for related matters.

DATE OF ASSENT: *22nd July, 2022.*

PASSED by Parliament and assented to by the President

Sections 162A to 162R inserted

1. The Criminal and Other Offences (Procedure) Act, 1960 (Act 30) is amended by the insertion after section 162 of

"Plea Bargaining

Plea negotiations

162A. (1) Subject to section 162B, a person charged with a criminal offence may at any time before judgment, negotiate with the Attorney-General for a plea agreement

- (a) to reduce an offence charged to a lesser offence;
 - (b) to withdraw a charge against an accused person; or
 - (c) to reduce the punishment for an offence charged within the law that prescribed the punishment.
- (2) A plea agreement under subsection (1) may provide for
 - (a) a sentence or a range of sentences to be recommended to the Court;
 - (b) the payment by the accused person of compensation to a victim of the offence; or
 - (c) the making of restitution by the accused person with the prior consent of the accused person.

(3) Where the accused person is represented by counsel, the plea negotiations shall be between the prosecutor and counsel for the accused person.

Authorisation for plea bargaining

162B. (1) The Attorney-General may, by notice in writing, authorise a prosecutor or a class of prosecutors to conduct plea bargaining, generally or in respect of a specified case.

(2) A prosecutor who is not an officer of the Office of the Attorney-General, shall not conclude a plea agreement without the consent of the Attorney-General.

(3) For the purposes of subsection (2), “an officer of the Office of the Attorney-General” means a person holding a post or a rank specified in subsection (3) of section 3 of the Law Officers Act, 1974 (N.R.C.D. 279).

Initiation of plea negotiations

162C. (1) The plea negotiations referred to in section 162A may be initiated by

- (a) an accused person or counsel for the accused person; or

(b) a prosecutor in charge of the prosecution of an accused person.

(2) The prosecutor shall, before the commencement of the plea negotiations, inform the accused person of the right of the accused person

- (a) to be presumed innocent until
 - (i) proven guilty; or
 - (ii) the accused person has pleaded guilty;
- (b) to plead not guilty;
- (c) to full trial;
- (d) to remain silent and not to testify during the proceedings;
- (e) not to be compelled to give self-incriminating evidence;
- (f) to be represented by counsel of the choice of the accused person;
- (g) to be afforded facilities to examine, in person or by counsel, a witness called by the prosecution before the Court; and
- (h) to obtain the attendance and carry out the examination of a witness to testify on the same conditions as those applicable to a witness called by the prosecution.

(3) The prosecutor, the accused person or the counsel for the accused person shall give notice to the Court in writing of the commencement of the plea negotiations.

(4) The Court may, upon notification of the commencement of plea negotiations, adjourn the case and give the prosecutor, and the accused person or the counsel for the accused person time to negotiate a plea agreement.

(5) Where a plea agreement is not reached within thirty days of the commencement of the plea negotiations, the Court may proceed with the trial.

(6) The commencement or continuation of the trial under subsection (5) shall not preclude the parties from further negotiations for the purposes of concluding a plea agreement.

(7) The Court shall not participate in a plea negotiation between a prosecutor and an accused person or counsel for the accused person.

Disclosures in plea bargaining

162D. (1) The prosecutor shall, before the commencement of plea negotiations, serve on the accused person or counsel for the accused person any document or material necessary for the accused person to prepare a defence or to negotiate fairly.

(2) Unless prohibited by any other enactment, the materials and documents referred to in subsection (1) include

- (a) the charge sheet or indictment;
- (b) the facts of the case of the prosecution;
- (c) a written or recorded statement made by the accused person to an investigator of the case;
- (d) a written or recorded statement made by any other person in respect of the case;
- (e) a document in the possession of the prosecutor or the investigator relevant to the case;
- (f) a photograph, audio, video or other electronic recording in the possession of the prosecutor or the investigator; and
- (g) exculpatory evidence in the possession of the prosecutor or the investigator of the case.

(3) The prosecutor shall make available to the accused person or counsel for the accused person, the documents and materials referred to in subsection (2) whether or not the prosecutor intends to tender the documents or materials in evidence at the trial.

(4) Where the nature of a document or material is such that it cannot be conveniently delivered, the prosecutor shall afford the accused person or counsel for the accused person an opportunity to inspect and, where possible, make a copy of the document or material.

Consultation with interested parties

162E. (1) A prosecutor shall not conclude a plea agreement with an accused person or counsel for an accused person unless the prosecutor has

- (a) informed a victim or complainant of the offence or the representative of the victim or complainant of the plea agreement;
- (b) afforded the victim or complainant or the representative of the victim or complainant an opportunity to make representations to the prosecutor regarding the contents of the plea agreement; and
- (c) taken into consideration
 - (i) the nature and circumstances under which the offence was committed;
 - (ii) the views of the investigator;
 - (iii) the personal circumstances of the accused person;
 - (iv) the previous conviction of the accused person, if any;
 - (v) the interest of the community; and
 - (vi) the interest of justice.

(2) A victim or a complainant in a case who objects to the terms of the plea agreement may

- (a) cause a statement to be filed as part of the plea agreement detailing the grounds for the objection for the consideration of the Court; and

- (b) serve the accused person with a copy of the statement.

(3) Despite subsection (1), the failure of the prosecutor to inform the victim or complainant or the representative of the victim or complainant about a plea agreement shall not invalidate the plea agreement if the prosecutor shows that, after reasonable attempts, the prosecutor was unable to reach the victim, complainant or the representative of the victim or complainant.

Form of plea agreement

162F. (1) Where a prosecutor and an accused person or counsel for the accused person reach a plea agreement, the prosecutor shall reduce the plea agreement into writing.

- (2) A plea agreement under subsection (1) shall state
 - (a) that before the accused person entered into the plea agreement, the accused person was informed of the rights of the accused person mentioned under subsection (2) of section 162C;
 - (b) the terms of the plea agreement;
 - (c) the relevant facts of the case;
 - (d) any admission made by the accused person;
 - (e) all the charges to which the accused person has agreed to plead;
 - (f) the sentence to be recommended to the Court, if any; and
 - (g) any restitution to be made or compensation to be paid by the accused person.

(3) The prosecutor shall give the accused person or counsel for the accused person the opportunity to review the plea agreement.

- (4) A plea agreement shall be signed by the
 - (a) prosecutor;
 - (b) accused person; and
 - (c) counsel for the accused person, if any.

(5) Where the accused person is blind or illiterate or a person with a disability, a person other than the prosecutor, investigator, or an interested party, shall read over and explain to the accused person the contents of the plea agreement in a language the accused person understands, and the person shall certify on the plea agreement that the contents have been read over and explained to the accused person and that the accused person appeared to understand the plea agreement before executing the plea agreement.

Consideration of plea agreement by the Court

162G. (1) Where a plea agreement is concluded, the prosecutor shall, within seven days, cause a copy of the plea agreement to be

- (a) filed in Court;
- (b) served on the accused person or counsel for the accused person; and
- (c) served on the victim where applicable.

(2) Despite subsection (1), the Court may where the circumstances merit admit a plea agreement out of time.

(3) The Court shall, before considering the plea agreement, address the accused person personally under oath to determine whether the accused person

- (a) entered into the plea agreement voluntarily; and
- (b) was informed of the rights of the accused person as specified under subsection (2) of section 162C and whether the accused person understands
 - (i) the rights specified under subsection (2) of section 162C;
 - (ii) that by accepting the plea agreement, the accused person is waiving the right to a full trial;
 - (iii) the nature of the charge the accused person is pleading to; and

- (iv) that by accepting the plea agreement, the accused person is waiving the right to appeal.

(4) The prosecutor shall read the plea agreement to the Court.

(5) The Court may inquire from a victim or a complainant of the case whether the victim or complainant has any objection to the plea agreement and the Court shall take into consideration the views of the victim or complainant in considering the plea agreement.

Acceptance of a plea agreement

162H. (1) The Court shall not accept a plea agreement unless the Court is satisfied that

- (a) the accused person is of sound mind;
- (b) the accused person entered into and signed the plea agreement voluntarily; and
- (c) there is factual basis for the plea agreement.

(2) Where the Court accepts a plea agreement, the Court shall call on the accused person to plead to a charge in the plea agreement.

(3) Where the accused person pleads guilty to a charge, the Court shall record the plea and convict the accused person.

(4) Where the accused person pleads not guilty, the Court shall

- (a) treat the plea as a withdrawal from the plea agreement, and
- (b) make an order for the trial of the accused person on the original charge.

Consideration of sentence

162I. (1) Where the Court accepts a plea agreement and convicts an accused person, the Court shall consider the recommended sentence in the plea agreement.

(2) Where the plea agreement does not include a recommended sentence, the Court may, subject to any enactment, impose a sentence as the Court considers just.

(3) In considering the sentence, the Court may invite the prosecutor and the accused person or counsel for the accused person to address the Court.

(4) The Court shall also take into account

- (a) the period the accused person has spent in detention in respect of the offence;
- (b) the personal circumstances of the accused person;
- (c) a written or oral statement made by the victim or the complainant or the representative of the victim or the complainant in respect of the plea agreement;
- (d) the stage of the proceedings at which the plea agreement was concluded; and
- (e) any restitution or compensation contained in the plea agreement.

(5) Where the Court is satisfied that the sentence recommended is appropriate, the Court shall sentence the accused person in accordance with the plea agreement.

(6) Where the Court is dissatisfied with the sentence recommended in the plea agreement the Court may advise the parties to renegotiate the plea agreement.

Rejection of plea agreement

162J. (1) A Court may reject a plea agreement in accordance with law.

(2) Where the Court rejects a plea agreement, the Court shall

- (a) record the reasons for the rejection of the plea agreement;
- (b) inform the parties of the reasons for the rejection;

- (c) enter a plea of not guilty on behalf of the accused person; and
- (d) make an order for the trial of the accused person on the original charge.

(3) Where a plea agreement is rejected, the plea agreement and proceedings of the plea bargaining which gave rise to the plea agreement shall not be admissible in a subsequent trial arising from the same facts.

(4) The decision of the Court to reject a plea agreement shall not be subject to appeal.

(5) The rejection of a plea agreement shall not be a bar to subsequent negotiations for the purposes of entering into a new plea agreement.

Withdrawal from a plea agreement

162K. A prosecutor or an accused person may at any stage of the proceedings withdraw from a plea agreement before the plea agreement is accepted by the Court.

Finality of judgment

162L. Where a Court convicts and sentences an accused person in accordance with a plea agreement, the conviction and the sentence shall be final and an appeal shall not lie against the judgment of the Court.

Setting aside judgment

162M. (1) Despite section 162L, a prosecutor or an accused person may apply to the Court to set aside the judgment on the ground that the plea agreement entered into

- (a) was as a result of
 - (i) fraud;
 - (ii) misrepresentation;
 - (iii) undue influence;
 - (iv) mistake;
 - (v) duress;
 - (vi) illegality; or
 - (vii) incapacity

on the part of a person other than the person making the application; or

- (b) is in breach of the rules of natural justice.
- (2) An application under subsection (1) shall be filed within ninety days from the date of the judgment.
- (3) The application shall be
 - (a) by a motion supported by an affidavit, and
 - (b) served on the Attorney-General and a person affected by the application.
- (4) A person served with an application under subsection (3) may file an affidavit in opposition to the motion.
- (5) The Court may
 - (a) allow a person who has filed an affidavit to be cross-examined on the affidavit of that person, and
 - (b) call a witness whose evidence is, in the opinion of the Court, relevant to the proceedings to testify before the Court.
- (6) Where the Court is satisfied that a plea agreement had been entered into as a result of fraud, misrepresentation, mistake, undue influence, illegality, incapacity, duress or in breach of the rules of natural justice, the Court
 - (a) shall set aside the judgment, and
 - (b) may make an order as to the re-trial or discharge of the accused person as the justice of the case demands.
- (7) A person aggrieved by a decision of the Court under subsection (6) may appeal against the decision."

Proceedings after rejection or withdrawal from a plea agreement

162N. Where a party withdraws from a plea agreement, or where a plea agreement is rejected by the Court, the Court shall,

- (a) where the trial of the accused person had not commenced before the plea agreement, commence with the trial; or

- (b) where the trial of the accused person had commenced before the plea agreement, continue with the trial from where the Court ended before the plea agreement.

Protection of plea agreement process

162O. (1) Despite a provision in this Act or any other enactment, a statement made by an accused person during plea negotiations or in a plea agreement shall not be used for any purpose other than for the plea agreement.

(2) Despite subsection (1), a plea agreement may be used in proceedings under section 162M.

Rules

162P. The Rules of Court Committee may, in accordance with clause (2) of article 157 of the Constitution, make Rules to regulate the procedure for plea bargaining.

Guidelines

162Q. The Attorney-General may issue Guidelines for the administration of plea bargaining.

Application of sections 162A to 162Q

162R. (1) Unless otherwise provided by any other enactment, the provisions of sections 162A to 162Q apply to the trial of a person charged with a criminal offence under any enactment except a person charged with

- (a) treason or high treason;
- (b) high crime;
- (c) rape;
- (d) defilement;
- (e) genocide;
- (f) robbery;
- (g) kidnapping;
- (h) murder;
- (i) attempted murder;

- (j) abduction;
- (k) piracy;
- (l) hijacking; and
- (m) an offence related to public elections.

(2) Unless otherwise provided by any other enactment, the provisions of sections 162A to 162Q apply to a person tried under the Juvenile Justice Act, 2003 (Act 653), with the necessary modifications.

(3) Subject to subsections (1) and (2), a person charged with an offence punishable by death shall not enter into a plea agreement to plead guilty to the offence punishable by death.

(4) Despite subsection (3), a person charged with an offence punishable by death may enter into a plea agreement to plead guilty to a lesser offence.

(5) In a proceeding before the Juvenile Court, a reference to an accused person shall be construed as a reference to the juvenile and the parent or guardian of the juvenile.

(6) Where plea negotiations are initiated in a proceeding which involves a juvenile who is not represented by counsel, the Court shall refer the juvenile to the Legal Aid Commission and the Legal Aid Commission shall appoint a counsel to represent the juvenile in the proceeding.

(7) A Juvenile Court shall not accept a plea agreement unless

- (a) the Court has taken into consideration the social enquiry report under section 24 of the Juvenile Justice Act, 2003 (Act 653);
- (b) the parent or guardian of the juvenile consents to and signs the plea agreement; and
- (c) the plea agreement is in the best interest of the juvenile.”.

*Criminal and Other Offences (Procedure)
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Act 1079

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