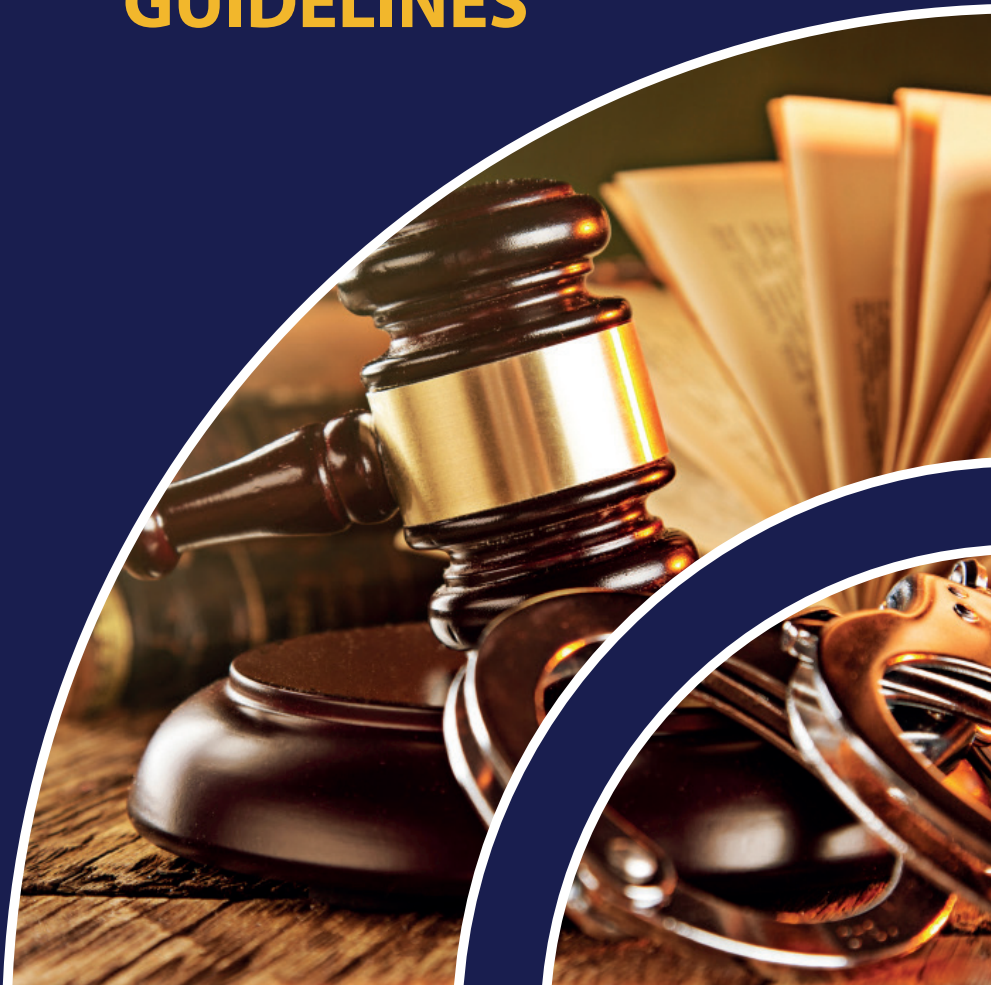




OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

PLEA BARGAINING GUIDELINES



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OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

PLEA BARGAINING GUIDELINES

ACKNOWLEDGEMENTS

The Plea Bargaining Guidelines and Explanatory notes have been developed pursuant to Section 137A-O of the Criminal Procedure Code (CAP 75) and the Plea Bargaining Rules gazetted on 14th February 2018. These guidelines are an important addition to the general prosecutorial policy framework and serve to elaborate the Plea Bargaining Rules. The Guidelines are meant to guide public prosecutors, as well as other prosecutors who may be granted prosecutorial powers, in the best practices and application of the plea bargain provisions within the Kenyan context.

The Office of the Director of Public Prosecutions wishes to convey its sincere appreciation to the United States Department of Justice (USDOJ)/Overseas Prosecutorial Development Assistance and Training (OPDAT) Office for the partnership and support through provision of expert assistance and guidance throughout the development process.

On behalf of the ODPP, may I express our sincere gratitude to the United Nations Office on Drugs and Crime (UNODC), whose support was instrumental in the finalization and production of the printed version of these guidelines.

I acknowledge the invaluable contribution of our internal and external stakeholders for their valuable input throughout the process; their views, critique and contributions enriched the development of these guidelines,

I recognize and convey my sincere gratitude to the ODPP Management under the able stewardship of the Secretary Public Prosecutions, Dorcas Oduor, for their direction and personal commitment in guiding the development of these guidelines.

Last but not least, may I make special mention of the critical role and unwavering dedication of the members of the ODPP Standing Committee on Law Reform, led by the Chairperson Mr. Jacob Ondari (DDPP), Ms. Tabitha Ouya (Ag. DDPP), Grace Murungi (SADPP), Alloys Kemo (SADPP), Edwin Okello (SADPP), Vincent Monda (SADPP), Lillian Obuo (SADPP), Rhoda Ogoma (SADPP), Alexander Muteti (SADPP), Gikui Wangui Gichuhi (SPPC), Violet Kerubo (SPPC), Laura Spira (SPC), Gitonga Murang'a (PPC), Alexander Jami (PPC), Juma Victor Owiti (PC), Rose Kipyego and Agnes Nyawira, for bringing these guidelines to fruition.

To all those who contributed either directly or indirectly to the successful preparations of the Plea Bargaining Guidelines and have not been mentioned in this acknowledgement note, I say thank you. I hope to have you all on board in the implementation process.

It is my hope that these guidelines will contribute immensely to effective, efficient and expeditious dispensation of justice to the people of this great nation.

NOORDIN HAJI, CBS, OGW
DIRECTOR OF PUBLIC PROSECUTIONS

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PREFACE

Plea bargain has in theory been part of our criminal justice system for a long time, yet its applicability has been poorly utilized.

It is not every criminal case that should be prosecuted to finality through a trial if it can be resolved by alternative means. What is important is that justice is done in each case and as far as is possible, all parties are dealt with fairly and equitably.

Considering that in some cases remandees remain in prison custody during court proceedings, it is important that stakeholders embrace creative provisions in our law to decongest the prisons. It is against this backdrop that the Plea Bargaining Rules, Guidelines and Explanatory Notes were developed.

If properly employed, plea bargaining will serve as an important, useful and effective tool to keep the wheels of justice moving in a timely and cost effective manner.

The aim of plea bargain or plea negotiations is for the accused to enter into an agreement or plead guilty in exchange for some concessions by the prosecution. This may take the form of an offer of a plea by the accused to some but not all the charges, a different offence or less serious charge or to one of multiple charges or agreement to testify against some or other of the accused person(s).

These guidelines, therefore, set out the procedure by which a prosecutor, with a view to agreeing to an alternative means of disposing of a criminal case, may conduct discussions with an accused or their legal representative. These guidelines are premised on transparency, accountability, integrity, consistency, predictability and credibility. It is important that the procedures followed should command public and judicial confidence.

The purpose of the Plea Bargaining Guidelines is to ensure decisions on alternative means of disposing a case confidence of by the public to whom the prosecutor is accountable.

Section 137 A-N of the Criminal Procedure Code empowers my Office to make and or consider and accept plea bargain proposals from or on behalf of the accused.

These guidelines provide practical information about what plea bargain entails, the procedure for applying and general information that would ease for all stakeholders. It is presented in simple language to ensure that a layman can understand it.

I am mindful of the fact that the law places the burden on the prosecution to prove its case beyond reasonable doubt. However, advocates should embrace the culture of advising their clients to consider plea bargain especially in the face of overwhelming evidence rather than the usual practice of encouraging them to plead “not guilty”.

I wish to underscore the fact that my Office understands and indeed is constantly mindful of the unbargainable need to exercise its discretionary powers to prosecute, not to prosecute, take over or discontinue criminal cases within its powers as entrenched in the Constitution of Kenya 2010 with a sense of responsibility devoid of any bias, prejudice, fear or favour.

I wish to assure you that all proposals for plea bargaining will be considered dispassionately by my Office, bearing in mind the need to promote the rule of law, interest public, integrity administration of justice.

It is my hope that the availability of a forum for quick and efficient dispensation of justice will inspire confidence among citizens in the criminal justice in Kenya.



NOORDIN HAJI, CBS, OGW
DIRECTOR OF PUBLIC PROSECUTIONS

1. INTRODUCTION

- 1A. These Guidelines are made pursuant to section 137A to 137O of the Criminal Procedure Code (CPC), Cap 75 Laws of Kenya, and the Rules made thereunder. The Guidelines are intended for both public and private prosecutors.
- 1B. The purpose of plea bargaining is to narrow down the issues in a case with a view to reaching a just outcome within the shortest possible time, including the possibility of reaching an agreement about acceptable plea[s] of guilty and recommendations on sentencing.
- 1C. The Guidelines set out the process by which a prosecutor may negotiate with an accused person, his/her legal representative or any other party of his/her choice on the charges at any time before judgment.
- 1D. The prosecutor must ensure that a charge or charges have been registered before entering into plea negotiations.
- 1E. The decision whether or not to charge and the appropriate charges to prefer rests with the prosecutor. In selecting the appropriate charge or charges, the prosecutor shall comply with the principles set out in the National Prosecution Policy and all other guidelines issued from time to time by the Director of Public Prosecutions (DPP).

2. GENERAL PRINCIPLES

- 2A. Plea negotiations shall be initiated and entered into by the Director of Public Prosecutions or any other officer acting under his or her direction.
- 2B. In cases of great public interest (including those touching on National Security and public figures), the DPP shall be consulted and appraised on the Plea Agreement before commencement and during the negotiations.
- 2C. Plea negotiations shall take place between a prosecutor and an accused person, his/her legal representative- including his/her advocate, intermediary, paralegals, guardians and parent or any other party of his/her choice.
- 2D. In conducting plea negotiations and presenting a Plea Agreement to the court, the prosecutor shall act openly, reasonably, fairly and in the interests of the administration of justice and shall ensure that:
 - i. The procedures followed command public and judicial confidence.
 - ii. The accused person has sufficient information to enable him/her to make an informed decision in the plea negotiations including the right to have a legal representative or any other person of his/her choice.
 - iii. That the accused person has the assistance of an interpreter where he/she cannot understand the language of the court.
 - iv. The accused person has entered into plea negotiations voluntarily and without undue influence, coercion or misrepresentation of facts by any party to the negotiation.
 - v. The accused person is informed of his/her rights under section 137F 1(a) of the CPC and that by entering into the plea negotiations he/ she waives his/her right to a full trial and appeal except as to the extent or legality of sentence.
 - vi. A full and accurate record of the plea negotiations is prepared and maintained.
 - vii. Reasonable effort is made to communicate with the victim, the victim's family, victim's representative or any other person whether natural or artificial likely to be affected by the terms and the status of the Plea Agreement.
 - viii. The Plea Agreement placed before the court fully reflects the matters agreed upon in a clear and simple way.
 - ix. The court has sufficient material and information to pass an appropriate sentence.
 - x. The investigating officer is notified in writing of the intention to enter into plea negotiations.
- 2E. Once plea negotiations are initiated, the accused person may express the intention to plead guilty to one or more of the charges preferred. If the accused person pleads guilty to one or some, but not all the counts or to less serious count (s), the prosecutor may accept such plea(s).

- 2F. The prosecutor shall consider carefully the impact of the Plea Agreement on the victim and community as well as the prospects of successfully prosecuting any other person implicated in the offence.
- 2G. There is no bar on continuing the investigation while negotiations are ongoing.

Explanatory Note:

A prosecutor should be able to demonstrate that reasonable effort was made to contact the family of the victim or representative; reasonable effort can be demonstrated through written correspondence. (e.g., minutes from the meeting, summary of victim's response);

3. INITIATING PLEA NEGOTIATIONS

- 3A. The prosecutor, the accused person, the legal representative of the accused person or any other party of the accused person's choice may initiate plea negotiations.
- 3B. In cases involving children in conflict with the law, the child's parent(s)/guardian(s) and children's officer may initiate and/or be involved in the plea negotiations.
- 3C. The prosecutor shall ensure that the plea negotiations are initiated at the earliest opportunity.
- 3D. The plea negotiations shall be initiated in writing and shall state:
- The date and time of the meeting or consultation.
 - The venue of the meeting or consultation, which may include court premises, ODPP offices, prison facilities for inmates, police stations, and investigative agency premises.
 - The parties to be present during the meeting or consultation.
 - A request that the parties bring any documents relevant to the plea negotiations (e.g birth certificates, medical reports, criminal records) and.
 - Confidentiality clause.
- 3E. Where plea negotiations are initiated by the prosecutor, the prosecutor shall:
- Enquire from the accused person, his/her legal representative or any other party of his/her choice if they are willing to enter into plea negotiations in accordance with these Guidelines.
 - Set a deadline for a response from the accused person or his/her legal representative which may not exceed thirty (30) days.
- 3F. Where accused persons are jointly charged, the prosecutor has the discretion to initiate plea negotiations with any or all of the accused persons as circumstances may allow.
- 3G. Where the accused person offers to engage in plea negotiations, the prosecutor shall write a response to the accused accepting or rejecting to engage in the plea negotiations within thirty (30) days.
- 3H. Where the accused person agrees to engage in plea negotiations, the prosecutor shall send them a letter setting out the way in which the negotiations will be conducted. This letter should set out the following:
- The manner in which the prosecutor may use the information provided by the accused person.
 - The practical means by which the negotiations will be conducted.
- 3I. Where the plea negotiations fail, the prosecutor shall provide a written undertaking that any information provided by the accused person in the course of the plea negotiations will be treated with confidence.

Explanatory Note:

A prosecutor includes the following:-

- Director of Public Prosecutions*
- Officers authorized by the Director of Public Prosecutions*
- Private prosecutors gazetted by the Director of Public Prosecutions*

4. CONDUCTING PLEA NEGOTIATIONS

- 4A. The parties may negotiate by correspondence, in person or a legal representative or by a combination of the two as the parties may agree.
- 4B. A full and accurate written record of the plea negotiations shall contain every key step and event including:

- i. A letter initiating the plea negotiations.
- ii. Consultations with the investigator or investigating agency confirmation that the victim or victim's legal representative has been afforded an opportunity to make representations to the prosecutor regarding the terms of the Plea Agreement.
- iii. Joint meetings of all the parties to the plea negotiation where the circumstances permit.
- iv. Personal circumstances of the accused person, such as reports on medical condition, mental status, age, and vulnerability, including Probation Report, Children Officers' Report, and other relevant reports where appropriate.
- v. The time and place where such consultations or meetings took place.
- vi. Any mitigating and aggravating circumstances including previous records, victim impact statements, compensation, restitution, period served in custody, and initiation of plea negotiation by the accused person.
- vii. Records of every offer and or concession made by any of the parties.

Explanatory Note:

A prosecutor should give careful consideration to the likely impact on the whole case if any one or more accused persons take part in unsuccessful plea negotiations.

- 4D. The prosecutor shall ensure that plea negotiations are concluded within a reasonable time.
- 4E. Before entering into plea negotiations the prosecutor shall ensure that the "Two-Stage test" as set out in the National Prosecution Policy is met in respect of each charge.
- 4F. Before signing a Plea Agreement, the parties shall resolve any factual differences necessary to allow the court to sentence the accused person on a clear, fair and accurate basis.
- 4G. During the plea negotiations the prosecutor shall make it clear to the accused person, his/her legal representative or any other party of his/her choice that the submission as to sentence is not binding on the court although the court may be persuaded by it.
- 4H. Where the parties submit on sentence, the submissions shall outline the mitigating and aggravating circumstances from the agreed facts, set out any personal circumstances of the accused person, and refer to any relevant sentencing guidelines or authorities, and may propose a specific sentence.

Explanatory Note:

Reasonable time will depend on the circumstances of each case but the time shall not exceed 90 days from the date of initiation of plea negotiations. If additional time is required, the prosecutor shall seek authorization to extend the time period before the initial 90 days lapse. Provided the additional time authorized shall not exceed 30 days. In exceptional circumstances when more time is required, the prosecutor shall present sufficient basis for further extension.

Liaison with other Agencies and/or Regulators

- 4I. Where the prosecutor becomes aware that another Government agency or regulatory body has an interest in the accused person, the prosecutor shall inform that agency or body on the status of the plea negotiation and enquire whether they wish to take part in the plea negotiations.
- 4J. If the agency or body intends to participate in the plea negotiation, the agency or body shall inform the prosecutor in writing of its intention with a view to resolving all matters in one Plea Agreement.
- 4K. The prosecutor shall inform the accused person that a Plea Agreement will not bind any other agency which is not a party to it.

Explanatory Note:

Prosecutors should set out a firm negotiating position that fully reflects the strength of the case from the beginning and should be alert to the possibility that the defense may have in mind an exploratory discussion and that positions do change.

5. THE PLEA AGREEMENT

- 5A. All matters agreed between the prosecutor and the accused person or his/her legal representative shall be put in writing as the Plea Agreement and signed by both parties. The Plea Agreement shall include, among others:
- i. The charge/s agreed between the prosecutor and the accused person.
 - ii. A statement of the facts.
 - iii. A declaration, signed by the accused person, to the effect that she accepts the stated facts and admits she is guilty of the agreed charges.
 - iv. A declaration that the plea negotiations were entered into freely and voluntarily.
 - v. A recommendation on sentencing.

6. EXECUTION OF PLEA AGREEMENT

- 6A. The prosecutor should ensure that the Plea Agreement is signed and initialled on each page by the accused person and in the case of a child by the child and his/her legal representative or children's officer.
- 6B. A prosecutor shall sign the Plea Agreement upon written approval by the DPP or the prosecutor's supervisor.
- 6C. A Plea Agreement shall be binding upon acceptance by the court.
- 6D. If the Plea Agreement includes a compensation clause, the victim/complainant or his/her legal representative shall sign the agreement.
- 6E. A prosecutor shall maintain an original copy of the duly signed agreement.

7. TERMINATION OF PLEA NEGOTIATION PROCESS

- 7A. Plea negotiations may be terminated by either party, and the reasons for termination shall be set out in writing.
- 7B. Plea negotiations must be completed within a reasonable time frame and must terminate once that period lapses subject to guideline 4D.
- 7C. A prosecutor may re-initiate the plea negotiation process provided the negotiation process is completed within reasonable time.
- 7D. A breach of any terms of the agreement after execution but before acceptance by the court may lead to withdrawal by the prosecutor.
- 7E. The prosecutor shall not agree to a factual basis of plea which is misleading, untrue or illogical and shall immediately terminate the plea negotiations where this is apparent.
- 7F. Wherein the course of the plea negotiation it becomes clear to the prosecutor that some material facts have been concealed or misrepresented by the accused person with the intention of misleading the plea negotiations, the prosecutor shall terminate the plea negotiation.

8. TERMINATION OF PLEA AGREEMENTS

- 8A. A Plea Agreement shall be terminated as a result of any of the following:
- i. Fraud
 - ii. Misrepresentation
 - iii. Mistake of fact
 - iv. Concealment of material fact(s)
 - v. Death of the accused person
 - vi. Coercion
 - vii. Withdrawal of a plea of guilty pursuant to Section 137K of the CPC
 - viii. Rejection by the court.

- 8B. Where there is failure in the Plea Agreement, all the parties will continue to be bound by the undertakings made in relation to the confidentiality and use of information provided in the course of the plea negotiations.
- 8C. Where a Plea Agreement has been set aside on grounds of fraud or misrepresentation by the accused person, the prosecutor shall proceed with the matter as if there was no plea of guilty and there will be no further negotiations relating to the same facts.

9. MONITORING AND EVALUATION

- 9A. Heads of County Stations must maintain records and Regional Heads shall submit to the Director of Public Prosecutions quarterly reports summarizing the following:
- a) Number of cases resolved by way of Plea Agreements.
 - b) Number of cases where plea negotiations and Plea Agreements failed and reasons.
 - c) The nature of offences resolved by way of Plea Agreements.
 - d) The length of time to resolve cases by way of Plea Agreements.
 - e) Challenges observed during the plea negotiation process.
 - f) The type and length of sentences imposed in cases resolved by way of Plea Agreements.
 - g) Demographic information of accused persons whose cases were resolved by way of Plea Agreements.
 - h) Any other relevant issue that may arise in the plea negotiation context.



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

REPUBLIC OF KENYA

IN THE _____ COURT AT _____

CRIMINAL CASE NO. _____ OF 20 _____

REPUBLIC
-VERSUS-

**THE ACCUSED
PLEA AGREEMENT**

Pursuant to Section 137A-O of the Criminal Procedure Code, Cap 75 Laws of Kenya, the accused, _____ agrees as follows:

1. The accused enters into this Plea Agreement and pleads guilty freely, voluntarily, without threat, force, intimidation, or coercion of any kind and without promise or benefit of any kind, other than as contained herein.
Court : _____ **Accused:** _____ **Interpreter:** _____

2. The accused knowingly, voluntarily and truthfully admits the facts contained herein.
Court : _____ **Accused:** _____ **Interpreter:** _____

3. The accused pleads guilty to the offence of _____ contrary to SECTION _____ of the _____ **OF THE LAWS OF KENYA.**
Court : _____ **Accused:** _____ **Interpreter:** _____

4. The accused understands every element of the offence to which the accused is pleading guilty, and that the maximum potential penalty for that offense is _____
Court : _____ **Accused:** _____ **Interpreter:** _____

5. Upon acceptance by the court, and fulfillment by the accused of all terms and conditions of the Plea Agreement, the Republic agrees the accused will face no other charges known to the Republic as a result of the instant investigation.
Court : _____ **Accused:** _____ **Interpreter:** _____

6. The accused understands and agrees this Plea Agreement is limited to the criminal charges listed herein and is not a waiver, settlement or compromise of any civil or administrative remedies that may be available to the victim, the government, or any other agency or authority and that if the court rejects the plea of guilty, this Plea Agreement shall be rendered null and void and no party shall be bound by it.
Court : _____ **Accused:** _____ **Interpreter:** _____

7. The accused has been advised by his/her legal representative (**name:** _____) and the court, of his/her Constitutional rights, including the right to trial, the right to examine and cross-examine witnesses, and the accused being well informed, has knowingly and voluntarily waived these rights, including the right to appeal, and agreed to enter a plea of guilty as set forth in this Plea Agreement.
Court : _____ **Accused:** _____ **Interpreter:** _____

8. Had the case gone to trial, the Prosecution would have presented evidence sufficient to prove the following facts beyond any reasonable doubt (**factual basis**):

[Continued on Form 2]



9. The accused shall at all times give complete, truthful, and accurate information and testimony, and agrees not to undertake any act in furtherance of the instant offence, and understands this Plea Agreement does not protect him/her from prosecution related to any new offence. Failure by the accused to comply with the terms and conditions of this Plea Agreement will permit the Republic to fully prosecute the accused on all criminal charges that may be brought against him/her. <u>Court :</u> _____ <u>Accused:</u> _____ <u>Interpreter:</u> _____	10. The Prosecution may, before sentence is passed, submit a Victim Impact Statement or any such evidence pursuant to Section 329 of the Criminal Procedure Code as it deems fit in order to inform the Court as to the proper sentence to be passed, and the Prosecution shall also present to the court any circumstances of the case including mitigating circumstances in favor of the accused before sentence is passed. <u>Court :</u> _____ <u>Accused:</u> _____ <u>Interpreter:</u> _____
11. The accused understands that the sentence to be imposed upon conviction on his/her plea of guilty is within the sole discretion of the court. <u>Court :</u> _____ <u>Accused:</u> _____ <u>Interpreter:</u> _____	12. The accused understands and agrees no promises, agreements and/or conditions have been entered into regarding the charges herein other than those expressly set out in this Plea Agreement and none shall be entered into, or shall be binding upon the accused and/or the Prosecution, unless expressly set forth herein, in writing, and signed by the accused (in the presence of his/her legal representative [initial here if applicable]) and the Prosecution. <u>Court :</u> _____ <u>Accused:</u> _____ <u>Interpreter:</u> _____
I admit the facts contained in the Plea Agreement, which has been explained to me in a language I understand and fully understand the contents of the Plea Agreement. I plead guilty to the charge, and every element set out in the Plea Agreement, because I am guilty. I do this knowingly, freely and voluntarily and without any threat, force, intimidation, or coercion of any kind. <u>Accused:</u> _____ <u>Representative:</u> _____ <u>Interpreter:</u> _____ <u>Date:</u> _____	This Plea Agreement has been approved by the Office of the Director of Public Prosecutions after consultation with the investigating officer(s), any victim(s), and is being done in the interests of justice after considering all the relevant facts and circumstances. <u>Prosecution Counsel:</u> _____ <u>Date:</u> _____
11. At sentencing, the prosecutor will ask the court to consider a recommendation of _____. At sentencing, the accused person will ask the court to consider a recommendation of _____. The accused understands that the actual sentence to be imposed upon conviction on his/her plea of guilty is within the sole discretion of the court.	
Entirety of Plea Agreement: Yes ☐ No ☐ Additional provisions of this Plea Agreement are included on the attached Form 2: Yes ☐ No ☐	



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

REPUBLIC OF KENYA
IN THE _____ COURT AT _____
CRIMINAL CASE NO. _____ OF 20 ____
REPUBLIC
-VERSUS-

THE ACCUSED
PLEA AGREEMENT

FORM
ODPP/PA/1

Page 2

Continuation from Page 1: [Check if applicable: ☐]

Agreement to Cooperate: [Check if applicable: ☐]

The Accused agrees to provide entirely truthful, complete and accurate information and agrees to fully cooperate with the court. The cooperation required shall include:

- ☐ 1. The accused submitting to an interview by a **Children's Officer**, Probation Officer, or any other officer as may be ordered by the court pursuant to this agreement.
- ☐ 2. The accused shall disclose any information and materials that may be in his possession that may lead to the fair determination of the matter herein.
- ☐ 3. The accused shall demonstrate good behavior and shall remain arrest free at all times.
- ☐ 4. **The accused shall not possess or consume any alcoholic beverages or any substance or thing determined to be illegal under the law.**
- ☐ 5. The accused shall attend and meaningfully participate in any treatment and/or counseling as may be ordered by the court.
- ☐ 6. The accused shall not possess, transport and/or control any weapon, explosive device or firearm.
- ☐ 7. The accused shall immediately inform his/her legal counsel or Probation Officer, of any subsequent arrest, summons and/or questioning by any law enforcement agency.
- ☐ 8. The accused shall inform his/her legal Counsel or Probation Officer of any change of address or telephone number within 24 hours of said change.
- ☐ 9. The accused shall not associate himself/herself with any person or be in any place in violation of this Plea Agreement or in violation of the orders of the Court.
- ☐ 10. The accused shall maintain good behavior at all times.
- ☐ 11. The accused shall comply with all court orders.
- ☐ 12. The court may impose part or all of the conditions herein as well as other terms and conditions as the Court may deem appropriate.
- ☐ 13. Additional conditions: _____

I, _____, the accused, understand the above noted conditions and freely and voluntarily agree to abide by the same.

Accused: _____ Interpreter: _____ Date: _____

Compensation/Restitution: [Check if applicable: ☐]

The parties, both the Prosecution and the accused, agree:

- 1. The victim of this offense is _____ who is the complainant herein.
- 2. The loss suffered by the victim as a result of the offense complained of amounts to _____ Kenya Shillings (Ksh).
- 3. The accused has agreed to compensate the victim _____ Ksh being the financial loss sustained by the complainant.
- 4. Payment of the _____ Ksh shall be made in _____ (weekly/monthly/quarterly) installments until paid in full.

I, _____, the accused, understand the above noted compensation/restitution agreement and freely and voluntarily agree to abide by the same.

Accused: _____ Interpreter: _____ Prosecution Counsel: _____

Complainant: _____ Date: _____



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

A. PLEA AGREEMENT

REPUBLIC OF KENYA

IN THE [state the court] AT [state the town /location of court]

CRIMINAL CASE NO.....

REPUBLIC

VERSUS

[ABC].....

ACCUSED

PLEA AGREEMENT

This Agreement is made pursuant to Section 137 A-O of the Criminal Procedure Code, Cap 75 Laws of Kenya.

The accused, **[NAME]** (hereinafter referred to as the accused person), agrees as follows:

PART 1. THE PLEA

1. The accused person is entering into this Plea Agreement and is pleading guilty freely and voluntarily without promise or benefit of any kind, other than as contained herein, and without threats, force, intimidation, or coercion of any kind.
2. The accused person knowingly, voluntarily and truthfully admits the facts contained herein.
3. The accused person agrees to plead guilty to **[list/state the charges]**
4. The accused person admits that he is guilty of **[list/state the charges and penalties provided]** and that he understands every element of the charge including the penalties provided by law.
5. If the court accepts the Plea Agreement and the accused person fulfills each of the terms and conditions of this Plea Agreement, the state agrees as follows:
 - a) It will reduce the charge(s) to include a lesser offence(s) of **[specify the lesser charge(s)]**
and/or
 - b) To withdraw the charge(s)
[specify the charge(s) to be withdrawn]
and/or
 - c) To stay other charge(s) already registered
[specify the charge(s)]
and/or
 - d) Promises not to proceed with the following possible charge(s) **[specify the charge(s) initially intended]**.
6. The accused person also understands that this Plea Agreement affects only the criminal charge(s) **(as listed herein above)** and shall not be construed, in whole or in any part, as a waiver, settlement, or compromise of any civil or administrative remedies available to the central government, or any agency, or authority or county government.
7. The accused person agrees that if the Court rejects his or her plea of guilty subject to this plea agreement, this Plea Agreement shall be rendered null and void and no party shall be bound by it.

PART 2. ADVICE ON RIGHTS

8. The accused person has been advised of his Constitutional rights, including his right to a trial, his right to examine and cross-examine witnesses against him, and he has knowingly and voluntarily waived these rights and privileges and agrees to enter the plea of guilty as set forth in this Plea Agreement.

PART 3. FACTUAL BASIS OF OFFENCE(S) CHARGED

9. Had this case gone to full trial, The State would have presented evidence sufficient to prove the guilt of the accused beyond a reasonable doubt.

Part 4. AGREEMENT TO COOPERATE

10. The accused person agrees to provide entirely truthful, complete and accurate information and agrees to cooperate fully with the State. This cooperation shall include, but is not limited to the following:

EXAMPLE:

- *The accused person agrees to submit himself to be interviewed by law enforcement agent*
- *To attend all meetings, at his own expense at which his presence is requested, concerning his participation in and knowledge of, all criminal activities*
- *Disclose any information and materials that may be in his possession that may lead to fair determination of the matter [include any other]*

PART 5. COMPENSATION[where applicable]

11. The parties agree that the victim(s) of this offence(s) is/are.....
12. The loss(es) to the victim(s) is/are estimated to be approximately Kenya Shillings
13. The accused person agrees to pay as part of this agreement the sum of Kenya Shillings in compensation thereof.
14. The accused person agrees that his compensation obligation shall be joint and several with any other accused person(s) who may be convicted of the offence.

Provided that the court may apportion liability among accused person(s) to reflect the level of contribution to the victim(s) loss and economic circumstances of each accused person.
15. The parties understand that the accused person is entitled to argue for set off based on the amount(s) paid or agreed to be paid to the victims by potentially responsible parties.

PART 6. RESTITUTION (where appropriate)

16. The parties agree that the victim(s) of this offence is **[state the name of victim whether natural or corporate personality]**
17. The loss to the victim(s) **[state the name of victim whether natural or corporate personality]** is estimated to be Kenya Shillings representing the amount misappropriated, stolen, received as bribes **[if property, state the nature and type of the property]**
18. The accused person agrees not to transfer or encumber his assets except with notice to and consent of the undersigned representatives of the State. Until such time as this Plea Agreement is filed with court after which the accused person must seek leave of the court to transfer or otherwise encumber the assets.
19. The accused person agrees as part of this Plea Agreement that he will provide to the State detailed financial information about his income and expenses on a monthly basis as may be requested.

PART 7. BREACH OF THE PLEA AGREEMENT

20. The Accused person shall at all times give complete, truthful and accurate information and testimony, and he agrees not to commit, or attempt, any act in furtherance of offence(s) the subject matter of this plea agreement.
21. The Accused person understands that this Plea Agreement does not protect him from prosecution for perjury, should he testify untruthfully at any proceeding, or for making false statement.
22. Should the accused person fail to comply with the terms and conditions set forth in this Plea Agreement, the State may fully prosecute the accused person on all criminal charges that can be brought against him or her.

PART 8. NO OTHER AGREEMENTS

23. No promises, agreements or conditions have been entered into in respect of the charges herein other than those expressly set out in this Plea Agreement and none shall be entered into or are binding upon the accused person and the State unless expressly set forth herein in writing and signed by the parties to this Plea Agreement.

DATED AT [*specify the place*] on thisday of20.....

ACKNOWLEDGEMENTS

A. BY THE ACCUSED

I [**specify name of accused**], hereby expressly acknowledge the following:

- 1) that I have read this Plea Agreement;
- 2) that I have had an opportunity to discuss this Plea Agreement fully and freely with my Advocate (if represented by legal counsel);
- 3) that I fully and completely understand each and every terms of this agreement;
- 4) that I am fully satisfied with the advice and representation provided to me by my advocate (if represented by legal counsel) (**the team seeks the view of other counsels on this**);
- 5) that I have signed this Plea Agreement knowingly, freely and voluntarily.

SIGNATURE

DATE

B. BY THE ADVOCATE FOR THE ACCUSED

I [**specify the name of the advocate**] Advocate for [**specify name of accused person**], expressly acknowledge the following:

- 1) that I have discussed this Plea Agreement with the accused person;
- 2) that I have fully explained each one of its terms to the accused person;
- 3) that I have fully answered each and every question put to me by the accused person regarding the Plea Agreement; and
- 4) in my opinion, the accused person fully understands the terms of this Plea Agreement.

SIGNATURE

DATE

(Advocate for accused person)

C. BY THE COMPLAINANT *(where applicable under section 137E)*

I [**specify the name of complainant**] hereby expressly acknowledge the following:

- 1) that I have read part 5 of this Plea Agreement
- 2) that I have fully understood each and every term of the said part
- 3) that I am in full agreement with the provisions and the amount agreed to be paid as set out in this part.

SIGNATURE

DATE

ON BEHALF OF THE STATE

.....

Prosecuting Counsel

.....

Head of [**Section/County/ Dept**]

D. The ODPP Declaration for The Victim

Pursuant to Rule 20

REPUBLIC OF KENYA

IN THE [state the court] AT [state the town /location of court]

CRIMINAL CASE NO.....

REPUBLIC

VERSUS

[ABC].....

ACCUSED

DECLARATION

I [***specify the name of the victim or complainant***] of P.O. Box do solemnly declare as follows:

1. I have read the contents of the Plea Agreement dated [***specify the date of the plea agreement***] whose contents I fully understand.
2. I hereby declare that I shall not disclose the contents of the said Plea Agreement to any person not party to this Plea Agreement
3. That I have been advised by the Counsel for the State of the attendant penal consequences should I disclose the contents of the agreement to any unauthorized person.
4. That I fully understand that I shall be liable to legal sanctions should I breach this declaration which I promise to abide by.

Dated at [***specify location***] thisday of 20.....

.....

[***Signed***]

In the presence of Prosecuting Counsel

.....

[***Name of victim***]

.....

[***Signed***]

.....

[***Name of prosecuting counsel***]

E. Certificate of Interpretation

Pursuant to Rule 9

REPUBLIC OF KENYA

IN THE [state the court] AT [state the town /location of court]

CRIMINAL CASE NO.....

REPUBLIC

VERSUS

[ABC]..... ACCUSED

CERTIFICATE OF INTERPRETATION

I [***specify name of interpreter***] of P.O. Box do certify that I am proficient in the English {language} and [***specify language***]. That I accurately interpreted to the accused person in [***specify language***] which language he understood during the plea negotiations and further interpreted the entire contents of the plea agreement in the said [***specify language***]. That I confirm that the accused person understood fully the contents and terms of the Plea Agreement.

Dated [***specify date***] on this.....day of20...

Signed by the

Interpreter

Name.....

Signature.....

Accused Person

Name

Signature.....

NOTES

NOTES

[illegible]



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

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