

Plea Agreements as Unconscionable Contracts. The Ugandan Experience

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Abstract

This article explores the challenge that most plea agreements in states such as Uganda might not conform to the legal contractual tenets, a gap that seemingly impugns their legitimacy rendering them unconscionable voidable contracts in law. To test this hypothesis, the author adopts the empirical data from her earlier Nakibuule (2023) case study of Uganda's High Court bargained trials from 2014 to 2021 conducted in 11 High Court Circuits of Uganda: *Arua, Fort Portal, Gulu, Kabale, Lira, Masaka, Masindi, Mbale, Mbarara, Mubende, Soroti*; and two High Court Divisions: *Kampala* High Court Criminal Division, and The International Criminal Division, *Kololo*. In that study, she employed qualitative doctrinal legal research and empirical narratives of a population sample of 66 convicts and 60 justice actors, with some of the field survey trends quantitatively explained. She selected its respondents using Quota; Purposive; Random; and Snowballing Sampling techniques. Analytical data evidences: how some accused enter plea agreements while minors; some others for the crimes they committed while minors but when grown into adults before trials; diverse fears and anxieties that most battle with during the negotiations, mostly amidst non-conducive ambience, negatively impact their sobriety to contract legit bargains; and the coercive and undue influence traits induce several of them into involuntary plea-agreements showcasing limited freedom to contract. These findings suggest that plea agreements can be irrevocable due to the accused's limited contractual capacity and freedom to contract them. The article offers both legal and institutional reforms to rethink plea bargains as legit contracts for Uganda that can also extrapolate to other jurisdictions.

Keywords

Plea Agreements, Unconscionable Contracts, Accused Contractual Capacity, Freedom to Contract, Uganda

1. Introduction

The debate that plea bargains present as contracts has been long settled. For example, the Supreme Court of the US (a common law jurisdiction from which Uganda—a common law jurisdiction, benchmarked plea bargaining) did not only resolve that a guilty plea agreement negotiated between the *defendant* [in Uganda referred to as *an accused*] and prosecutor has a juristic effect (*Santobello v. New York*, 1971: p. 262) but, as Jones (1978) argues:

[i]n holding that the prosecutor has a legal obligation to fulfil any promise on which [the accused] has relied to his detriment by pleading guilty, the [US] Supreme Court may have applied the doctrine of promissory estoppel to guilty plea agreements predicated upon negotiated conditions. Since the Supreme Court reasoned that a material breach of the conditions underlying a negotiated guilty plea entitles the [accused] to have either specific performance or rescission, the Court seems to view negotiated guilty plea agreements as more than simple bargains—they become formal contracts (Jones, 1978: p. 593).

Past researchers such as Scott and Stuntz (1992) also advocated for viewing plea bargaining through the lens of a legal contract beyond the “rights rhetoric”, since it presents more sensibly as “value-enhancing bargains” to all parties, prosecutors and accused alike (p. 1969). Scott and Stuntz’s recommendation that through “appropriate contract models, one can devise different rules that reduce the harm to innocent [accused] and the transaction costs and inefficiency for everyone else during plea bargaining” is quite novel (p. 1967).

Others such as Easterbrook (1992) supplement that “plea bargains are preferable to mandatory litigation—not because [their] analogy to contract is overpowering, but because compromise is better than conflict” (p. 1975). The accused, by pleading guilty, surrender their substantive and procedural rights to the prosecutor in exchange for concessions they value more highly than those surrendered rights (p. 1975). Easterbrook concludes, persuasively, that “plea bargains are compromises... “Imperfections” in bargaining reflect the imperfections of an anticipated trial” (p. 1975). It is true, in the English language, the noun “compromise” is synonymous with “an agreement”, “terms”, “a deal” or a “bargain”, “a trade-off”, or “a middle ground” (*Compromise meaning, n.d.*). Most of these synonyms are shared for the noun *contract*.

This Article’s strong inference from the above diverse plea bargain contexts is whether a plea bargain is construed doctrinally as a contract (Jones, 1978; Scott & Stuntz, 1992), or as a compromise (Easterbrook, 1992), bargaining should be legitimate. A bargain should conform to the basic contractual principles: the contractual capacity and freedom to contract. The ODPP Plea Bargain Guidelines (2021) seem to tread this contractual lane in Uganda. While the guidelines are soft law, diminishing their legal capacity to influence courts’ decisions, they at least emphasise to the prosecutors that during plea bargaining, “all the elements of a

contract, namely: offer, acceptance, consideration, intention to contract and the capacity of the parties to contract [are] crucial to the plea bargain process” (ODPP Guidelines, para.1.3.1, pp. 14-15). To put the dilemma of Uganda’s plea bargaining compliance with the legal contractual tenets, hence the procedure’s legitimacy, into context further focusing the debate, I define *plea bargaining* and *legitimacy*.

As I argued elsewhere, *plea bargaining* is a trial arrangement between the accused and the state, where the former pleads guilty in return for the latter’s concessions, mostly the lenient sentencing (Nakibuule, 2023: p. 19), notwithstanding other probable concessions. For example, under Ugandan law (*The Judicature (Plea Bargain) Rules, 2016*) as an exchange for an agreement by the prosecutor to drop one or more charges, reduce a charge to a less serious offence, or recommend a particular sentence subject to approval by the court (r.4); The compromise can also be “a promise to cooperate as a witness for the prosecution in exchange for reduced charges or a reduced sentence, or both” (r.6(1)(b)). Research confirms such concessions as globally encompassing, in the majority of instances as a recommendation to the court for a lighter sentence (a sentence bargain); dismissal of additional or potential charges, or preference of lesser charge(s) (charge bargain); a prosecutor’s promise of no affirmative action beyond the prosecution of the offence in question; a recommendation of the accused’s choice of punishment, and the accused to testify as a state witness (Alschuler, 1979: p. 214; Green et al., 1975: p. 496; Lubaale, 2016: p. 137; Russell & Hollander, 2017). Whatever the concession or a variety of them they should be mutually agreed upon by the party to legitimate the bargain in law.

Simply put too, *legitimacy* is a presentation of acceptability of the existing law. This analogy does not debase the debate in contemporary jurisprudence about the separability of law from morality (Crocker, 2022). The legal positivism theory’s “separability thesis” contends that because laws are rules made by humans, there is no inherent or necessary link between law and morality (Hart & Green, 2012). This “separability thesis” is composed of two formulations: what a society considers to be law is a matter of social fact (social thesis); laws do not always have moral value (value thesis) (Morauta, 2004: p. 112, 128). These formulations can imply that while legal concepts are normative they do not necessarily constitute morals (Shapiro, 2011: p. 101). Tyler (2007)’s argument is, however also persuasive that legitimacy is exhibited by the public responsiveness to procedural justice, in the legal processes (p. 661). It is in the above Tyler’s context that I define legitimacy as society’s acceptance of its existing legal processes when applied following its expected dispute resolution standards, even during consensual negotiations such as plea bargaining. These ideals ought to be well spelt out in the law for plea negotiations to attain legitimacy in line with social justice norms and values (Nakibuule, 2023: p. 19). I broaden this construction to argue in this Article that to that end plea deals should be construed as contracts in law.

To validate further these plea bargaining’s constructions, I, for this discourse,

adopt the mostly qualitative and limited quantitative methods that I used in an earlier study that examined the High Court plea-bargained trials in Uganda of 66 convicts from 2014 to 2021 and 60 judicial actors. Employing a triple variable-tier analysis of that study's data: Uganda's legislative framework; the accused's contractual capacity; and the freedom to contract to inform this Article, the analysis confirms the presupposition, a challenge that some plea agreements can be irrevocable due to accused's limited contractual capacity and freedom to contract them. The Article is arranged in eight sections including literature review on plea agreements; Uganda's contractual legal framework; accused contractual capacity; their freedom to contract plea agreements; summary of the findings, conclusions and recommendations.

2. Characteristics of Plea Agreements (A Brief Literature Review)

Whether the accused possesses the contractual capacity to enter a plea bargain is an ongoing debate in the past literature. Earlier analysts opine that plea deals allow a broader discretion to the parties to maximise their interests in a free, fair, and efficient market for just and better results—accused trade their fair trial rights (as a good) in exchange for a concession from the state (Grossman, 1983). Others underline the accused's vulnerability in this exchange since the state's monopolistic control of the legal process and sanctions destroys the balance of the free market model (Taylor, 2011: p. 142). Some argue that the accused has “a proven tendency to become risk-seeking when faced with a choice between a sure loss and a gamble that may result in either a large loss or no loss at all” (Birke, 2007: p. 66). There is also the debate on the “*best alternative to a negotiated agreement*” (BATNA) principle, whose dynamics past studies evaluated differently: Some argued that “*the reason you negotiate is to produce something better than [what is produced] without negotiating*”—BATNA allows parties “*to determine what a minimally acceptable agreement is, [and] probably raise that minimum*” (Fisher et al., 2011: p. 104, 111); the accused have no BATNA of “lumping it” or walking away from the case, but standing trial if negotiations fail. Yet; the “*trial may not represent a BATNA for the accused due to the high post-trial sentences*” (Alkon, 2010: p. 386); or as I argued somewhere else, plea bargaining can be the accused's worst alternative (Nakibuule, 2017: p. 73, 76). Generally, past contractual capacity studies indicate a high likelihood of a lack of parity in plea negotiations, rendering plea bargaining's legality questionable.

It is therefore, pertinent to discern the plea agreements characteristics highlighted by the contemporary literature. I underline the major five to support this discourse: A plea agreement is an admission of guilt; ought to be consensual; but is in most cases laced with uncertainties; not always voluntary; It can be state-driven when influenced by a state's unique socio-legal and sometimes economic and cultural dynamics under which bargaining operate. These factors, among related others, impact plea agreements' legitimacy as contracts.

2.1. Admission of Guilt

The primary characteristic of a plea agreement is that it comprises an accused's admission of guilt for the charged offence by the prosecution. Contemporary studies' plea bargain definitions, elucidated in the previous section, emphasise a bargained plea's concessional characteristic that revolves around admissions, distinguishing a bargained from an ordinary plea (Lubaale, 2016; Green et al., 1975; Alkon, 2010; Ashworth et al., 2019). Plea agreements, synonymous to plea bargains, consist "of the exchange of official concessions for [an accused's] act of self-conviction" relating to sentencing, charges or other conditionalities; The concessions "may be explicit or implicit; and they may proceed from any of a number of officials" (Alschuler, 1979: p. 213).

Ordinarily, the explicit ones are recorded thus binding the parties and, occasionally, the court. The implicit ones are in most cases undocumented prosecution's promises to the accused that are hard to fulfil to the accused's satisfaction; as such lack redress, thus not binding on the parties (Green et al., 1975: p. 497). This distinction calls the plea bargains' implicit, usually inherent, characteristics into question, as contracts for lack of parity.

2.2. Consensual

Several scholars agree too that a plea bargain is a consensual arrangement interparty; For example, unlike an ordinary plea of guilt and abbreviated trials that have standard statutory sentence discounts, a bargained guilty plea attracts an informal consensual or agreed sentence that is not strictly statutory but deemed legal (Green et al., 1975: p. 497; Alkon, 2010: pp. 384-385). This characteristic buttresses this Article's claim that ideally a plea bargain is a contract. Therefore, impugning its agreement terms or tainting them with implicit impartial ones, reveals a "criminal justice's systematic inefficiencies" (Green et al., 1975: p. 503).

As noted earlier, plea bargains consist "of the exchange of official concessions for [an accused's] act of self-conviction" (Alschuler, 1979: p. 213). The official position can cause imbalanced negotiation grounds for the accused. This plea agreement's unique nature expressed in the existing literature, some of which is reproduced above, has several inferences. These implications seemingly compromise the consensual plea agreements or contractual legality of plea bargains.

For example, as I earlier argued in Nakibuule (2023), in most cases, the accused remain uncertain of their negotiated sentences in their plea agreements that they present to the court. Courts are cautious of the maximum statutory sentences had the matters not been bargained, which can bias a sentencing judge into misusing his or her judicial discretion to the detriment of the otherwise binding plea agreement. Duty bearers might abuse the eternal nature of the bargain to the convict's prejudice (p. 49). Such likelihoods render the bargain's contractual tenet questionable.

2.3. Uncertainty

While both, an ordinary plea of guilt and a plea bargain, constitute "a waiver by

the [accused] of the right to a trial and to put the prosecution to proof” (Ashworth et al., 2019, cap 10, 315), the consequences of an ordinary plea of guilt are more predictable than those of a plea bargain. An ordinary plea of guilt does not require the prosecution and the accused to agree on the concessions to the accused’s expectations, but attracts, for example, a non-negotiable statutory sentence on the conviction influenced by either an early or late registration of a plea of guilt. Ashworth et al. underline that the timeliness of this plea, which might also apply to plea bargains, might be considered a mitigating or aggravating factor during sentencing subject to the court’s discretion and, in most cases, jurisdictional sentencing guidelines (p. 315). Such certainty makes an ordinary guilty plea a much more reliable choice for the accused when admitting guilt than a plea bargain option.

On the other hand, some researchers regard trial uncertainties as a fundamental plea bargaining pull factor (Di Luca, 2005; Alati, 2015; Meyer, 2024; Jung, 1997). Di Luca argues:

Perhaps one of the largest draws of plea-bargaining for an accused is the certainty of outcome that follows a bargained guilty plea. By pleading guilty, accused persons can avoid the all or nothing nature of the trial process as well as its inherent uncertainties (Di Luca, 2005: p. 29).

The “prospect of conviction, time and cost of proceedings, [and the severity of] the sentence upon conviction” are some of the trial uncertainties (Alati, 2015: p. 208). However, the dilemma is that both the “guilty and innocent may accept bargains that seem beneficial to them, especially if they have been detained before trial and if accepting the bargain would mean getting out of jail” faster when their pre-trial detention time is a consideration in the offer (Meyer, 2024: p. 5).

My consistent view, therefore, is that plea bargains “speculation comes with its challenges” (Nakibuule, 2023: p. 50)—while the accused has the benefit of getting a short sentence to avoid indeterminate full trial spans, the fear of the pending trial could have independently influenced the accused to enter a plea bargain hurriedly. Probably, because of its expedited progress to steer clear of the indeterminate course of a full trial (p.50). Second, the leniency motivation the accused expects in return for a bargained guilty plea is also unpredictable in most cases (Jung, 1997: p. 118). In all plea agreement negotiations are more likely tainted with uncertainties than not. Contractual terms must be certain.

2.4. Voluntariness

Ideally, the negotiations should be voluntary for the agreement as a contract. However, the plea’s uncertainty, discussed in the previous section, supports my earlier claim that plea bargaining’s anticipated “procedure leniency motivation, trial delay, and haste to avoid trial uncertainties, among other insurmountable factors that the accused faces, likely compel the accused to plea bargain involuntarily” (Nakibuule, 2023: p. 50). Such involuntariness speaks strongly to the supposition that plea bargains are unconscionable contracts.

Research confirms a multitude of other pull factors influencing the accused's involuntary plea negotiations; such as the defence and the prosecuting attorneys' actions; jurisdictional levels; arbitral judicial discretion; the prosecutor's mood and the case's publicity (Alschuler, 1976: p. 1125); "wealth, sex, age, education, intelligence, and confidence" (Bibas, 2004: p. 2468). The aforementioned criteria demonstrate the coerciveness of plea agreements in such cases, which undermines their legitimacy as contracts. While the nature of the crime the accused committed; their negotiation competencies; and the flexibility by all the parties during the negotiations also inform plea agreements (Bibas, 2004: pp. 2463-2547; Persaud, 2009), it is still investigable whether a combination of insurmountable factors, some mentioned above, do not unduly influence the accused's capacity to contract legally tenable plea agreements.

2.5. Dependability

Related to the above pull factors, research shows that plea bargaining is indeed dependent on institutional and social dictates that can negatively impact the negotiations. Turner (2017), for example, identifies "several other plea bargaining features that heighten the risk of inaccurate and unjust outcomes" (p. 83), yet the chances for judicial review of the convict's sealed plea agreement are minimal in many cases. She cites features such as limited time and resources, especially for investigations by the defence counsel; the principal-agent problems on the defence and prosecution side; and the limited scope of judicial review. Turner's argument still holds that such factors independently minimise the fairness of plea bargaining; for example, "the principal-agent relationship entails that the state and the defence attorneys' primary goals are to fulfil their senior principals' interests: a conviction for the state and a lenient sentence for the accused" (p. 51). These institutional purposes or interests appear to conflict with the accused's procedural fairness rights (p. 51), particularly for this discourse, their freedom to contract significant terms beneficial to their plea deals.

Past proponents such as the "Plea bargaining within the shadows" theorists, assumed that plea bargains result in roughly fair trial outcomes; parties negotiate intending to maximise utility (Landes, 1971: p. 61; Church Jr., 1979: pp. 509, 512-514, 523; Easterbrook, 1983: pp. 309-317; Easterbrook, 1992: p. 1975; Scott & Stuntz, 1992; Ruttenburg, 1979). Some of them confirm that plea agreements result from a function of factors including the available resources, estimation of costs and probable trial outcome, costs of plea bargaining, and severity of the crime (Landes, 1971: pp. 66-69); trial uncertainty and resource expenditures (Ruttenburg, 1979). Ruttenburg, for example, claims that if the trial outcome is unknown, the parties will bargain regardless of available resources, with the prosecutor benefiting more than pursuing a full trial. Parties forecast the expected sentence after trial, discount it by the probability of acquittal, and offer some proportional discount. When they strike bargains, both sides are better off having split the saved costs of the trial (Ruttenburg, 1979). The debate above does not resolve

the plea agreements' parity question.

Other scholars raise plausible assessments that buttress the plea agreements' unconscionable question, for example, [Bibas \(2004\)](#) argues that structural forces including agency costs, attorney competence, compensation, workloads, resources, sentencing and bail rules, and information deficits prevent mutually beneficial bargains or induce harmful ones. So do psychological biases or distortions including confidence levels, denial, discounting, risk preferences, loss aversion, framing, and anchoring. Such "psychological biases and heuristics warp [the accused's] judgments" (p. 2467). True, some accused strike skewed bargains, others plea bargain when they would otherwise have gone to trial, or go to trial and usually receive harsher sentences than the ones they would have received had they plea bargained ([Bibas, 2004: pp. 2467-2468](#); [Nakibuule, 2023: p. 52](#)). These influences might sometimes cancel out for some accused while pushing others in one direction or another, resulting in excessive or insufficient punishment ([Bibas, 2004: p. 2497](#); [Nakibuule, 2023: p. 52](#)).

The cut point, therefore, is that plea bargaining can be influenced by a state's unique socio-legal and sometimes economic and cultural dynamics, for instance in developing economies as Uganda, under which plea bargaining operates ([Nakibuule, 2023: pp. 52-53](#)). Such operational challenges compromise the legitimacy of plea agreements as contracts.

2.6. Conclusion

Contemporary research's highlights of plea bargaining characteristics illuminate the debate on whether plea agreements should comply with legal contractual obligations. In the following sections, this question is analysed in depth from the context of Uganda's contractual legal framework; accused contractual capacity; and their freedom to contract plea agreements, in an attempt to unravel plea agreements' contractual legitimacy in some situations.

3. Summary of Uganda's Legal Framework on Binding Contracts

Under Ugandan Law, a person can only enter a contract if he or she passes a three-tier test. First, that person must be aged eighteen years or above, except, in quasi-contracts involving minors aged sixteen years and above. They are, however, constitutionally protected from social or economic exploitation, hazardous work and employment that interferes with their education or is harmful to their health, or physical, mental, spiritual, moral or social development ([The Contracts Act, 2010, s.11\(1\)\(a\)](#); [Constitution of the Republic of Uganda, 1995, Arts. 34\(4\) and \(5\)](#)). Second, the person contracting must be of sound mind at the time of entering into the contract, when capable of understanding and forming a rational judgment as to its effect upon his or her interests ([The Contracts Act, 2010, ss.11\(1\)\(b\) and 12\(1\)](#)); Third, he or she must not be disqualified from contracting by any law to which he or she is subject (s.11(1)(c)). Ideally, therefore, Ugandan courts should

only record plea agreements that pass this contractual capacity three-tier test.

Uganda's *Contracts Act (2010, s.13)*, a contract is taken to be free where it is not caused by coercion, undue influence, fraud, and, or misrepresentation. A contract is induced by undue influence where the relationship subsisting between the parties to a contract is such that one of them is in a position to dominate the will of the other. He or she uses that dominancy to obtain an unfair advantage over the other party (s.14(1)). A party is taken to be in a position to dominate the will of another party where; the former holds a real or apparent authority over the latter party, or, the former stands in a fiduciary relationship to the latter party, or, when the mental capacity of the latter party is temporarily or permanently affected because of age, illness, mental or bodily distress (s.14(2)). In situations where consent to an agreement is obtained by coercion, undue influence, fraud or misrepresentation, the agreement amounts to a voidable contract at the option of the party whose consent was obtained by coercion, undue influence, fraud or misrepresentation (s.16(1)). *The Judicature (Plea Bargain) Rules (2016)* supplement that the accused should only "...freely and voluntarily, without threat or use of force, execute the agreement with full understanding of all matters" (r.12(4)). Thus, under pure contract law, an impugned plea agreement should be set aside absolutely. Further, where the party who was entitled to avoid it received any benefit under it, the court has the discretion to set just terms and conditions under the circumstances (*Contracts Act, 2010, s.16(5)*). Whether this is an applicable approach by the courts in criminal trials is paradoxical, but *the Judicature (Plea Bargain) Rules (2016, r.12)* seem to suggest so.

Conclusion

The basic assumptions from the above legal framework are that: In Uganda, the accused must have the capacity to negotiate a plea bargain, in essence: be of contractual age; have a sound mind; and not be barred by any other law. Their negotiation situations should also entail the freedom to contract, that is, while not coerced, unduly influenced, or fraudulently, and, or under misrepresentation. However, while Uganda's Plea Bargaining Rules legitimate plea agreements, most of the accused persons' contractual capacity and freedom to enter them are questionable as illustrated further below.

4. Accused's Contractual Capacity

I recap Section Three's highlights here that contractual capacity under Ugandan law entails three-tiers: contractual age; sound mind; and legality. Notably, plea bargaining in Uganda is a legitimate process since it applies to all the courts of judicature (*The Judicature (Plea Bargain) Rules, 2016, r.2*). Thus, this section limits the discourse to the remaining two tiers of a legit contract: contractual age and sobriety.

4.1. Accused's Contractual Age

Empirical data analysis in the *Nakibuule (2023)* study that informed this Article,

(reproduced in **Table 1**, categorised 66 accused respondents' ages into 10 groups or strata. The accused respondents aged 18 - 23 years were 17 (26%); 24 - 29 years were 21 (32%); 30 - 35 years were 5 (8%); 36 - 41 years were 13 (20%); 42 - 47 years were 4 (6%); 48 - 53 years were 2 (3%); there was one (2%) aged 60 - 65 years and another (2%) aged 66 - 71 years and those aged 12 - 17 years were 2 (3%). This data demonstrates that while the majority (97%) were adults at the time they conflicted with the law, and *ipso facto* of contractual age by the time they plea bargained, the fact of the two minor accused respondents aged; 12 - 17 years constituting a 3% contracted plea agreements is not only a human rights abuse signal but is an illegality that needs to be corrected.

Table 1. Accused respondents' demographics*.

| No. | Accused Respondents | | Demographics by Age | |
|-------|---------------------|---------------|---------------------|------------|
| | Strata | Sub-Strata | Frequency | Percentage |
| 1 | Gender | Female | 21 | 31.8% |
| | | Male | 45 | 68.2% |
| | Total | | 66 | 100% |
| 2 | Age Ranges | 12 - 17 years | 2 | 3% |
| | | 18 - 23 years | 17 | 26% |
| | | 24 - 29 years | 21 | 32% |
| | | 30 - 35 years | 5 | 8% |
| | | 36 - 41 years | 13 | 20% |
| | | 42 - 47 years | 4 | 6% |
| | | 48 - 53 years | 2 | 3% |
| | | 54 - 59 years | 0 | 0% |
| | | 60 - 65 years | 1 | 2% |
| | | 66 - 71 years | 1 | 2% |
| Total | | 66 | 100% | |

*Source: Nakibuule (2023, edited, Table 4. accused respondents' demographic characteristics, p. 200).

Justice Actors are obligated to negotiate and make any consequential orders, regarding the juvenile's fate, using three approaches. First, the ages at which the juveniles conflict with the law. Second that the juveniles were of criminal liability age; and third to note that these juveniles are negotiating their responsibilities for the crimes they admitted to have committed. Doctrinal evidence shows that Ugandan law recognises plea agreements that are contracted by juveniles with the assistance of adults, who include their lawyers (**The Judicature (Plea Bargain) Rules**,

2016, r.9(2)). This is irrespective of the fact that at the time these juveniles are brought into the realms of formal justice after having acquired the Minimum Age of Criminal Responsibility (MACR) of 12 years (*The Children Act, 1997, s. 88(1) 7*). This situation raises pertinent concerns. Is it not possible for juveniles to make up a story of guilt and enter a plea agreement involuntarily to attract court empathy? Is not the three-month detention timeline that is provided under *the Children Act (1997, s.91(5)(a))*, a sufficient in-built mechanism in the law that can address juvenile trial delays?

The earlier Nakibuule, 2023 study affirming these dilemmas, showed that some juveniles get trapped into plea bargaining while they have grown into adults after long detentions before their trials. For example, the tracked two juveniles in that study (identified as MC39 who was charged with aggravated defilement after child to child sex incident and WC12 who was charged with aggravated robbery that arose out of an intimate partner relationship with a boyfriend) were minors on arrest. These were both aged 17 years. They both plea-bargained with the assistance of state brief counsel, exploited the justice system's flaws and most probably, were both absorbed into the plea bargaining program/sessions due to trial delays. The excerpts' highlights of their experience are verbatim as hereunder.

MC39: ... [I]mmediately when I arrived [at Katojjo Prison], then [my fellow inmates] started telling me that this case, you don't take care, you will be committed for your trial, but now to see that you serve a low sentence, there is something that they do, you enter into plea bargaining after which they give you a short sentence, that you serve and leave prison (sic). (...) Now while I was with [the state attorney] ... He offered seven years since I committed the offence while I was still school-going. (...) I implored him to reduce the offer to at least five years. He replied that he had given me the seven-year offer because I was still very young and a student too. He argued that this would not have been the case for the mature inmates for whom the prosecution ordinarily offers sentences that range from seven to eight years. I contemplated his offer for a while. (...) So when I talked to my lawyer, she told me the truth that if I opted for a High Court full trial, they would sentence me to about 15 years. She then advised me that it will be wise on my part if I simply accepted the six years that she was going to negotiate on my behalf with the state attorney. The court would then discount this agreed period with my pre-trial detention period that I had suffered prior sentencing, and the remaining period will be subject to the prison remission grant that will further reduce the sentence period that I would serve. So I accepted. (...) What mostly led me to plea bargain, was that I was trying to see where my future ahead lay. I considered the facts that I was still school going, the long period of five to six years that I found my fellow inmates had spent before undergoing their trials; and I decided that instead of waiting for my full trial, when I was uncertain of its due date, I would rather plea bargain, serve a short sentence, go back home, and I continue with my studies (MC39(n₁),

2021: pp. 40, 42-43, 45-46).

WC12(n₁) (2021) who had been on pre-trial detention for three years since arrest stated:

I was so scared because my fellow inmates, who had just appeared before the court for their plea hearings and sentencing had been sentenced to so many years. (...) When [the judge] asked me as to whether the charges read against me were true, I wanted to say no [laughs], but, I immediately remembered my lawyer's caution that I should not contest anything that the judge would ask me [laughs] and I replied that yes; I did it. Then the judge asked me as to why I did it. I failed to answer because I knew I never did it [laughs again]. (...) I pleaded that I was sorry and that I was young and would not commit such an offence again. I was trying to impress the judge so that he could give me a lenient sentence. I have no baby yet, so I also wanted to leave prison early so that I bear children. Hence, I so pleaded so that I attract the judge's clemency to reduce for me years [that I would] serve. Then, I also pleaded the two years and 11 months that I had spent on pre-trial detention and that this period was coming to three years. The judge wondered why I had not been taken for a full trial hearing after all that long. The state attorney stood up and answered that they would have taken me for full trial, but there were so many earlier people to stand for trial, and I was in the last expected batch. The judge deducted the three years' prior detention period from my bargained sentence, announced that I was to serve five years and that he would complete the rest of the processes with his clerk (...)

PI: Did the judge know that you're 17 years old at the time of arrest? (...)

WC12: He asked me how old I was at the time I came to prison, and I replied that I was 17 years. He cautioned me that I was still young, and that should I commit such an offence again and be brought back before him on plea bargain, he would sentence me to 20 years. I assured him that I would never do it again (pp. 26-28).

At the time of their arrest, these accused were 17 years old and did not qualify as minors constitutionally protected to contract, as their bargains did not meet the criteria for quasi-contracts. Uganda protects children aged 16 years and below "from social or economic exploitation" while engaged in child quasi-contracts (*Constitution of the Republic of Uganda, 1995, Arts. 34(4) and (5)*). However, it lowered the contractual age from 18 to 16 years for contracts of employment (*Contracts Act, 2010, s.11(1)(a) and 11(2)*). This lowered threshold allows minors to engage in relations similar to those a contract can create concerning supplies of "necessaries suited to the condition in life" (*Contracts Act, 2010, s.57*).

These supplies should be suitable for the minor's condition or when the provider is legally bound to support the child, but the description of suitable supplies is open-ended. The common law doctrine of necessaries that informed this Ugandan law "holds a husband or father liable to anyone who sells goods to his wife or

child if the goods are required for sustenance or support” (Garner, 2009: p. 554). Even then, these supplies’ suitability as sustenance is hard to exact. Elsewhere, studies attempted to clarify it, but without precision. Ireland’s Law Reform Commission (1985)’s report on Minor Contracts, for example, stated:

[T]he court must determine, as a matter of law, whether the particular goods or services are capable of being necessities by establishing [if] there are any grounds on which they might be said to be needed to maintain the minor in his status or condition. Secondly, assuming that [they] are capable of being necessities, the plaintiff must prove that (...) they are necessities in his/her particular circumstances (p. 535).

English case law has defined “necessaries” as “those things without which an individual cannot reasonably exist [including] food, raiment, lodging and the like... essential to the existence and reasonable advantage and comfort” (*Nash v Inman*, 1908). It extends this meaning to contracts that can benefit minors when taken as a whole (*De Francesco v Barnum*, 1890)¹, such as contracts of an educational nature (*Roberts v Gray*, 1913)², contracts of service that are manifestly beneficial to the minor (*Flower v London & North Western Railway Company*, 1894; *Clements v London & North Western Railway Company*, 1894: pp. 492-493)³ and others in analogous areas such as a contract to publish a minor’s autobiography (*Chaplin v Leslie Frewen (Publishers) Ltd*, 1965, [11])⁴ and a contract of management of a pop group (*Denmark Productions Ltd v Boscobel Productions Ltd*, 1969). Should a child’s plea agreement be considered manifestly beneficial to the minor or one of those analogous areas that benefit him or her? The lack of clear legislation and case law to answer this question has cast doubt on the legitimacy of juvenile bargains in Uganda.

MC39 and WC12’s tales, indicated earlier, are empirical evidence that probable illegalities, including abuse of child rights, can occur when an accused plea bargains for an offence that he or she committed while a juvenile. The court and the

¹A minor had an arrangement for dancing lessons, Contract was to be sealed after seven years, but left and joined the defendant. Court found there was no breach of contract; it was unreasonable and invalid. Fry, L.J., stated: “The Court must look at the whole contract, having regard to the circumstances of the case, and determine, subject to any principles of law which may be ascertained by the cases, whether the contract is or is not beneficial.”

²Hamilton, L.J. held that a contract by a minor of a broadly educational nature could be enforced against him although it was still to a large extent executory.

³A young railway porter agreed to join an insurance scheme and to forgo any claims he might have under the Employers’ Liability Act. The Court found that he had forfeited his rights under the Act and the contract bound him for his benefit as a whole being. This case illustrated that such contracts of service should be those where a minor can obtain employment which would be difficult if he or she could not make a binding contract. However, the contract, taken as a whole, need to be **manifestly** for his benefit. <https://www.scribd.com/document/659752026/Clements-v-London-and-North-Western-Railway-Co-1894> Accessed October 17, 2023].

⁴Justices Danckwerts and Winn found the contract to publish the Appellant (*Chaplin* — a 19-year-old minor)’s autobiography valid; binding, thus enabled him to start as an author and earn money for his living expenses, despite his disapproval that the respondent indicated him “as a depraved creature content” impliedly with “a debased, cynical, and irresponsible approach to life”.

attorneys engaged them in plea bargaining without taking into account that they committed the offences while below the contractual age, even if they had attained the requisite MACR at the time they committed them, and the contractual age at the time they entered the agreements. The agreements appear illegal because in making any order [including negotiations or plea hearings in my view] for a child offender, the prosecutor or a person presiding over the matter must consider the child's age at the time the act was allegedly committed (*The Children Act, 1997, s.88(2)*). MC39 was sentenced to six years' imprisonment. He had been on pre-trial detention for a year and 20 days. WC12 was sentenced to five years' imprisonment. She had been detained in an adult prison for three years since her arrest. These situations were all implementation' illegalities which would have been avoided had they undergone the juvenile trial legal processes.

Under Ugandan law, a juvenile offender can only be detained only as a matter of last resort after careful consideration when all other reasonable alternatives have been tried and failed, or where the gravity of the offence warrants the order. In the case of an offence with a maximum penalty of death, like it was in both their cases, they would only be sentenced to a maximum of three years. The court, however, must consider the period the child spent on remand when making the detention order (*Children Act, 1997, ss. 94(4), 94(1)(g), and 94(3)*). Even if courts were constrained to entertain the plea agreements, for whatever reason not limited to trial delay, they should have imprisoned MC39 for only two years, given the one year he had been in detention and set WC12 free since she had already clocked three years on pre-trial detention since her arrest. In essence, MC39 and WC12's stories challenge the widely held notion that children can enter into plea agreements and support the minority, but the legitimate one that they should not for lack of contractual capacity.

To illustrate this conclusion, during my referenced *Nakibuule (2023)* study, I asked 60 justice actors (including judges, registrars, state attorneys, private advocates and advocates who handled public state briefs, prison officers, community leaders, selected members of the public, news reporters, CSOs' representatives, members of the legal academic and victims): "*should a juvenile offender undergo this plea bargaining procedure (give reasons for your response)?*" Some proponents opined that juveniles should plea bargain, provided they are guided by a parent, guardian, or lawyer to protect their interests. When they do it implies that they are remorseful and are not likely to reoffend. They are criminally liable as long as they are charged with offences after they conflict with the law (*Rugadiya, 2020: p. 5; JAJ6(n₂), 2020: p. 5; Elubu, 2020: p. 4; JAJ3(n₂), 2019: p. 7; JAJ2(n₂)/JASA2(n₄), 2019: p. 5; JAR2(n₃), 2019: p. 3; Oyugi, 2019: p. 6; Nakigudde, 2019: p. 8; Ninsiima, 2019: p. 8; JAP5(n₆), 2021: p. 14; JAP6(n₆), 2021: p. 3; JAP11(n₆), 2021: p. 4; Anguzu, 2021: p. 17).*

Related proponent views were premised on the context of the principle of the best interest of the child, arguing that at many times children act impetuously; some out of peer pressure or adolescence effects; Plea bargaining, therefore, moves

them from the formal justice system faster than full trials, when they are offered lenient sentences that they can serve when cautioned against reoffending (Oyugi, 2019: p. 6); JAP8(n₆), 2021: p. 4); JAP12(n₆), 2021: p. 4). Some of the proponents were also cautious against restraining juveniles from plea bargaining yet adults can; It would amount to infringement of their constitutional right to non-discrimination, or equality before the law. This latter school of thought suggested that the ultimate benefit of plea bargaining for a Ugandan is lenient sentencing, to which juvenile offenders are entitled like the adults (JAJ2(n₂)/JASA2(n₄), 2019: p. 5; JAJ3(n₂), 2019). I argue in this article that as the earlier data exemplified, juveniles should not enter plea agreements for lack of capacity to contract them.

4.2. Sobriety

Two variables featured most during the analysis of the plea agreements' contractual paucity in the referenced study (Nakibuule, 2023). Evidence indicated that fear and the ambience during negotiations and plea hearings informed the accused's sobriety to enter a meaningful bargain, as discussed below.

1) *The Fear Effect*

The noun "fear" reoccurred several times during the respondents' interviews. Out of the 66 accused respondents, around 14% plea bargained out of fear: 4% feared undergoing a full trial; 8% feared a delayed trial; and another 2% feared the death penalty (Nakibuule, 2023, 204 and *Annex I*, Table 6, I-IV), for example, a female convict stated:

The lawyer came and asked me about my sentence proposal. My first offer was four years. [Finally] I agreed to the counteroffer of eight years. (...) The lawyer had scared me so much that it was a capital offence and I would be hanged. I cried so much. I was so scared. I accepted the offer. He never told me anything else (WC1(n₁), 2019: p. 4).

A prison officer attested how "the fears of delayed trials make the accused risk to plea bargain whatever the results would be. It is a come-what-may approach" (JAP1(n₆), 2019: p. 4), "... to defeat the uncertain pre-trial detention period so that they can get out of prison early after serving short lenient sentences" (JAJ4(n₂), 2019: p. 5). The resolve is informed by the dilemmas of whether it is worth waiting for trial without knowing when it is likely to be; whether they would be found innocent if they awaited them; the opportunities of acquittal arising from the common lapses in the prosecution's investigations and how long would be sentenced if they plea bargained (JAP9(n₆), 2021: p. 3; JAJ6(n₂), 2020: p. 3)? One convict respondent recalled.

I then spent six years in pre-trial detention awaiting trial because most times they could only cause list people for plea bargain sessions. Full trial sessions were not common. Consequently, I was constrained to enter a plea agreement, plea bargained and got sentenced to 16 years imprisonment, rather forcefully (MC8(n₁), 2019: p. 2).

Hopelessness compels several accused to sentence-bargain in whatever the

circumstances, confirming past research that fear of pending trials can influence them to plea bargain as an expedited progress to steer clear of the indeterminate course of a full trial (Jung, 1997: pp. 114-115, 118).

Several inmates fear the probability of the ODPP counter offer harsh sentences and the courts to differ from the plea agreement sentences to harsher ones outside the agreements (Nakigudde, 2019). Others fear the uncontrollable victim's tongue, especially when some victims exaggerate the pain or the effects of the offence on them. For example, one practising advocate cited a scenario where the father of the victim pleaded the probability of her defiled daughter having been impregnated by the accused yet there was no medical evidence to that effect (Kuunya, 2019: p. 5).

Some other accused who plea bargain while on joint charges, fear the reaction of their co-accused who wish to undergo trial whom they might be called upon to testify against as prosecution witnesses. They are bent on achieving lenient sentencing and not to lynch a colleague. It is in rare circumstances that they would divulge facts that centre a co-accused to the crime scene or link him or her to the *actus reus* (Ninsiima, 2019: p. 6). Conversely, their co-accused fear whether they will be accorded a fair hearing at their full trials when the accused who plea-bargained testify against them (JAJ2(n₂)/JASA2(n₄), 2019: p. 4). There is therefore tension between the co-accused all wishing not to implicate each other; each carrying his or her cross, an attitude of "I die with it alone" (Ninsiima, 2019: p. 6).

Some others fear the community's reactions after serving their plea-bargained sentences, in effect, the likely public scrutiny of their confessions for wrongdoing (Ninsiima, 2019: p. 7) as accountability "for having wronged the community member and the community at large" (JAJ2(n₂)/JASA2(n₄), 2019: p. 4). Not only do they battle with the uncertainty of being accepted back into the suspicious community (JAJ2(n₂)/JASA2(n₄), 2019: p. 4; Rugadiya, 2020), but worry about how their family members and community would react to their plea-bargained admission of their charges without trial (Ninsiima, 2019: p. 7). Some fear the possible consequences, such as community mob justice retaliation against their families, for wrongs they confess in exchange for bargained lenient sentences. They all struggle to balance the fast-release reality with the community's acceptance of their fast sentence completions (Ninsiima, 2019: p. 5). Given the hasty plea bargaining processes that the community members never learn of, plea bargaining most likely affects the convicts' resettlement back in their communities (JAP2(n₆), 2019: p. 4).

Such demonstrated categorical fears can crowd the accused's minds when offered plea bargain options. The anxiety probably withers their sobriety so much so that most of them at the time of contracting their plea agreements, might not understand fully and form rational judgments as to the effect of these agreements upon their interests, as required in law (The Contracts Act, 2010, ss.11(1)(b) and 12(1)). They more likely than not inadvertently admit guilt to attain freedom from the indeterminate prison shackles, and as such, diminished sombreness dissolves

their contractual capacity to enter plea bargain-agreements under Ugandan law (ss. 11(1)(a) - 11(1)(c)). In practice, there is no clear effort by the key plea bargain handlers (attorneys and the courts) to address the accused's fear effects during plea bargaining. Mainly, the accused's sensitisation is limited, while centred on numbers by way of accumulating registration of inmates for the program.

2) *The Ambience Effect*

Nakibuule (2023) study further revealed that related to "fear" is the "ambience" under which the accused contract their plea agreements, seemingly informing the accused's sobriety to voluntarily contract plea bargains. The ambience during the negotiations and pleading hearings can be "so tight. The inmates feel frozen in the docks. They are rushed through the whole process, [yet contracting], a plea agreement is a personal thing and the process ought to take its time" (JASB1(n₅), 2019: p. 9). Sometimes, the situation is so tense that the prosecution insists on high-penalty offers that the accused persons unwillingly sign for so as not to miss out on the ongoing session (JAP11(n₆), 2021: p. 4). The negotiations conducted normally in prisons are not given the privacy they deserve, which hinders the accused from confiding in their defence attorneys to disclose truthfully to them their roles in the act of offending. As such, defence attorneys cannot commit to the state attorneys their clients' levels of remorsefulness, to attract enough empathy from both attorneys to strike good deals (JAP12(n₆), 2021). Furthermore, defence lawyers operate in a rigid environment, where they are not prioritised to interview their accused/clients freely. They are, many times, forced to join long queues at prison facilities, the visiting time restrictions limiting the accused's negotiation deadlines, leading to hasty interviews, which haste compromises this accused's negotiation ambience. The peer pressure from the hard-core criminals who forecast sentence and trial time trends also impact their fellow inmates' negotiations (JAJ3(n₂), 2019: p. 7).

Arguably, therefore, a bargain ought to be secured behind the scenes in a closed environment. For example, behind closed doors. Otherwise, the stronger party's presence tilts the negotiations towards its wishes. To avoid such imbalance, the accused who wishes to plea bargain should be escorted from the prison walls to a freer atmosphere, such as a secured room at the courthouse house from where he or she can conduct the negotiations voluntarily (JAJ2(n₂)/JASA2(n₄), 2019: pp. 5-6).

In sum, ambience affects soberness, and in turn, negates the accused's capacity to contract meaningful plea agreements. The diverse fears and anxieties that the accused battle with during plea bargaining and the ambience under which they negotiate their plea agreements negatively impact their sobriety to contract plea bargains in Uganda. This dilemma points then to the third variable, freedom to contract, another key variable this Article employed to measure the accused's plea agreements' conformity with the legit contractual tenets.

5. Freedom to Contract Lawful Plea Agreements

Again to recap section 3, in Uganda, a contract is taken to be free where it is not

caused by coercion, undue influence, fraud, and, or misrepresentation ([The Contracts Act, 2010, s.13](#)). Thus, freedom to contract lawful plea agreements is derived from the contractual tenets under Ugandan law, which any party entering a binding agreement has to conform to. In the [Nakibuule \(2023\)](#) study, two schools of thought in this regard were established: the proponents' and the dissidents' perspectives on the accused's freedom to contract lawful plea agreements.

The proponents, mostly from the prison department, argued that the accused have the freedom to plea bargain. Their presumption was drawn from mixed factual situations and assumptions (the accused's voluntary enrolment and negotiations). The assumption of voluntary programme enrolment derives from the prison authority's points of view. Their arguments include that after inmates voluntarily register for plea bargaining programmes; compiled lists of their names are submitted to the court registry; the court prepares the cause list, allocates state briefs to the listed accused and shares the list with the ODPP through the resident state attorney's district office for preparation to negotiate with the interested inmates and the lists are returned to the prison's facility with the assigned state brief counsel. The counsel secure prison-scheduled interview days for their clients and usually requests copies of the indictment warrants and summaries of evidence of the accused from the prison's department records; negotiations commence, though, not within the hearing of the prison warders but the assumption is that these accused persons are free, at par with their lawyers, and therefore are not coerced ([Ninsiima, 2019: p. 7](#); [JAP8\(n₆\), 2021: p. 3](#); [JAP9\(n₆\), 2021: p. 4](#); [JAP11\(n₆\), 2021: p. 11](#); [JAP10\(n₆\), 2021: p. 3](#); [JAP12\(n₆\), 2021: p. 4](#)). They can even withdraw from it before they are sentenced ([Nakigudde, 2019: p. 8](#)).

Regarding the voluntary sentence negotiations' supposition, the primary claim is that the accused negotiate the imprisonment sentence terms that they are ready to serve, and all, thereafter, sign consents ([JAP10\(n₆\), 2021: p. 3](#); [JAP12\(n₆\), 2021: p. 4](#)). Probably, the agreement is reached after both parties have understood the facts on the police file ([JAP11\(n₆\), 2021: p. 11](#)), albeit, most accused admit guilt when convinced by the probability of lenient sentences compared to the full trial with harsh capital penalties on convictions ([Oyugi, 2019: p. 6](#)). The ODPP argues that there is a defence counsel, and the accused is not coerced into the process. There is a lot of work the ODPP attorneys get involved in during the negotiation process to bridge the gap between the offer and counter offers, the accused's initial offers are in most cases extremely low while the state offers are harsh. The accused agrees to the final sentence after a lot of convincing and explanation by the prosecution to make the accused appreciate the circumstances of the case ([Nakigudde, 2019: p. 8](#)).

The dissidents, majorly judicial officers and advocates, raised strong views insinuating that many of the accused were not free during negotiations due to several factors, some of them underlined below: Plea bargaining is negotiated justice without explicit parity; the best negotiator, whether the defence or the prosecution party, wins the deal, taking it all to the detriment of the weaker negotiating party

(JAJ2(n₂)/JASA2(n₄), 2019: p. 3; JAJ4(n₂), 2019: p. 7). The accused are rushed through the whole process. Plea bargaining is a hectic process that includes swift prior sensitisation, generating a list of those to plea bargain, and ends up in hastily concluded plea agreements. Consequently, the meeting of the minds of the state attorney and the accused (or through his defence counsel) remains only paper law; The process is so mechanical, geared at attaining maximum numbers that could sustain a session sitting, but not based on truth-telling (JAR1(n₃), 2019: p. 4). The accused sign for the prosecution's high penalty offers unwillingly because they cannot risk missing out on the ongoing session (JAP11(n₆), 2021: p. 4).

JASB1(n₅) (2019) added that most inmates are greatly disadvantaged, except the very few who realise that the state is bent on punishment and vengeance for the alleged crimes. In such a few cases, they do appeal the plea bargaining sentences mainly where the sentences have been varied from those signed for in the sealed plea agreements. Most accused concede to the plea bargaining process in court because of the prosecution pressure to end trials, the tight uncomfortable court ambience amidst a crowded court, and as a result of fear returning to pre-trial detention, with a failed deal. So, it is like “*katukimare* [Luganda, meaning] let's do away with it” (p. 8).

There is a need to correlate the above strong contrasting views with two other intervening legal variables: coercive and undue influence traits, to understand the plea bargaining relationship with freedom to contract in law in depth. Configuration of some other empirical data seems to suggest these two traits, supporting the dissenting view that the accused have limited freedom to contract plea agreements in Uganda, questioning their legality as analysed more below.

5.1. Coercive Traits

Recapping the legal position stated in section 3 earlier, a contract is taken to be free where it is not caused, *inter alia*, by coercion (The Contracts Act, 2010, s.13). Situations that present as coercive during plea bargaining processes therefore regress the accused's freedom to contract plea bargains questioning these agreements legality. Coded 186 response frequencies from the accused interviewees as to why they plea bargained indicated that the accused, after conflicting, whichever way, with the law, embrace plea bargaining for diverse reasons. The 22 most common pull factors included leniency which stood at 18.3%; simply to do away with the charge at 10.2%; a sense of guilt or surrender in self-blame at 8.6%; social responsibilities towards their families at 8.06%; delayed, or fear of delayed trial at 7.5% (around 8%); certainty of ending trial at 7%; long pre-trial detention periods suffered by fellow inmates at 5.9%; indefinite pre-trial detention time at 4.84%; and continuity with life's expectations, such as education, helping out parents, childbearing, and further progress at 4.84%. Fear of undergoing a full trial stood at 3.76% (around 4%); relief from anxiety and stress at 3.23%; quick disposal mechanism at 2.69%; family/society reconciliation at 2.69%; loneliness, hopelessness, or despair at 2.69%; to save court's time at 2.15%; fiduciary abuses at 2.15%;

fear of the death penalty at 1.61% (around 2%); disabilities, including severe ailments at 1.61%; schemed skilling reformatory programmes at 0.54%; peer pressure at 0.54%; prison congestion at 0.54%; and stringent pre-trial processes at 0.54% (Nakibuule, 2023: p. 204). These reasons differ from the objectives of plea bargaining rules (*The Judicature (Plea Bargain) Rules, 2016, r.3*). Sometimes they plea bargain for a single reason and at other times for a combination of them as one did below.

I was sensitised that when you undergo plea bargaining, the procedure helps us to avoid overstaying on pre-trial detention, and to take advantage of probable lenient sentencing when one enters a bargain. So I agreed to enter a plea bargain after considering that the prison was overcrowded and that there were fellow inmates who had spent six to seven years on pre-trial detention before the court could cause list them for their full trials. I made up my mind to undergo this process, with the view that probably I would serve a short sentence and return home (MC19(n₁), 2020: p. 13).

Limited financial allocations and slow court processes also constrained them into admitting guilt as this convict further explains below:

Considering that the prison was overcrowded and some fellow inmates had spent six to seven years on pre-trial detention before the court could cause list them for their full trials for lack of unfunded sessions, I decided to undergo this process, believing I would probably serve a short sentence and return home (MC19(n₁), 2020: p. 13).

While the general inference from all these causes is that mostly the accused plea bargain to avoid indefinite prison shackles, the categorical reasons convey a sense of hopelessness, which is particularly relevant when considering the issue of coerciveness. They confirm earlier studies that the accused can be influenced into bargaining by hordes of pull factors (Alschuler, 1976: pp. 1125-1126). They evidence insurmountable factors as characteristics of implied or direct coerciveness that the accused succumb to and plea bargain for self-reorganisation towards a fresh start in life, not necessarily out of free choice. For example, one accused respondent stated:

(...) I enlisted for plea bargaining in April 2017 (...) on realizing that my co-accused was granted bail, which I found unfair since I did not have any surety. I resolved that “*kaneyabizeko obusibe*” (Luganda), [meaning let me detonate imprisonment on myself], I serve an agreed sentence and return home (MC1(n₁), 2019: p. 3).

In essence, the accused resign to fate, resolve to pick up their pieces, self-detona-
te with penalties, serve sentences that the court deems fit to their admission of
guilt, and move on. Such pull factors that induce the accused into contracting plea
bargains, can be explained as diverse plea bargaining’s coercive traits, or charac-
teristics that push the accused’s human instinct into rethinking how to recoup. In
addition to coercive factors are the diverse concessions that some justice actors

employ to the unfair advantage of the accused during the negotiations. These compromises unduly influence the accused into bargaining tainting their freedom to contract plea agreements. The following section illustrates.

5.2. Undue Influence Traits

Section 3, well laid Uganda's legal position that a contract is tainted with undue influence where the relationship subsisting between the parties to a contract is such that one of them is in a position to dominate the will of the other. The stronger party exploiting its dominant position, either through real or apparent authority, fiduciary relationship, or the weaker party's mental incapacity, distress or related situations such as age and illness, to obtain an unfair advantage over the weaker party (*The Contracts Act, 2010, ss.14(1)-14(2)*). Situations that present, therefore, as undue influence during plea bargaining processes regress the accused's freedom to contract plea bargains. They present in interpersonal relationships, subsisting fiduciary relationships, and mental or bodily distress, as illustrated below.

1) Dominant Actors

There is a nexus between dominancy, innocence, and plea bargaining. Nakibuule (2023) demonstrated how in Uganda some convicts feared being sentenced more harshly during full trials, had they declined the court's revised plea offers. In such situations, judicial officers dominate the bargaining space. One convict amusingly shared:

[T]here is a visiting judge who came here and he convicted inmates to 50, 60 years and convicts would admit to that. (...) Inmates nicknamed that judge UMEME. They scare you that if you hesitate to plea bargain, you wait for UMEME. ... He slapped inmates with 60 years, and the only inmate who walked away with the least sentence got 13 years, and he was the happiest. They scare you by telling you that you wait for UMEME; so you accept. We all want to continue with our responsibilities. Like for me, I had only been in a marriage with my wife for four years, and I want to go back and be with her. So you run for these years that they have added you instead of waiting for UMEME (*MC34(n₁), 2021: p. 50*)⁵.

The accused are boxed into the state counter offer' deals by the ODPP attorneys, out of which they cannot easily jump due to fear that if they do non-compliance would fetch them harsher penalties after full trials (*JAJ3(n₂), 2019: p. 6*). This anxiety is worsened by the failed plea agreements that are inadvertently kept on court records as one convict confirmed:

PI: Aah! When did you sign your plea agreement? Was it not in April 2019?

⁵UMEME is a private registered company in Uganda that serves chargeable metered electricity (which is quite expensive). According to; <https://www.lawinsider.com/dictionary/umeme>, the noun "umeme" means "electricity" in Swahili. It also stands for Understand, Measure, Evolve, Modify, Evaluate, a five step-process that African policy makers are invited to follow to increase renewable energy in their energy mix.

MC37: Yes, then it took another one and a half years before any feedback. So I reapplied for plea bargaining and managed to get cause listed for a session in October 2020. I renegotiated with another state attorney and a new defence attorney. The other agreement had lapsed. This time they offered eight years. I counter-offered five years, but they insisted. They were biased by my earlier plea agreement that was still on my file where I had signed for six years. They argued that since I had earlier agreed to serve six years, the sentence bargain should remain as it were. I adopted the six years too. (...). The judge confirmed the sentence (...) (MC37(n₁), 2021: pp. 10-11).

A judge admitted that the probability is high that such a plea agreement where left on record can naturally influence a trial judge when he or she reads it (JAJ3(n₂), 2019: p. 6).

Some convicts reported that many of their fellow inmates who were innocent admitted guilt because of limited sensitisation (MC3(n₁), 2019: p. 5). This easily infers that the attorneys exploit their ignorance to override their will during contracting plea agreements. Some others shared incidents that suggest how the innocent accused can plead guilty out of fear of the well-connected and rich complainants who they believe can influence court decisions or tamper with the prosecution investigations:

[W]hen you look at the person who is now accusing you for the act that you did, you also weigh his capacity to influence your trial results. In my case, even some parliamentary ministers had interest in my case, and if you are not serious and you opt to undergo full trial, you will end up being sentenced with death. So you have to wisely gauge your defence potential against the prosecution aides against you; you know the world of today. People are so corrupt. The people who have interest in your case can influence your prosecution into a condemnation. You must know the people who are pursuing you, especially for some of us who come from poor background, and when the victim's family has big people from the executive such as ministers, Resident District Commissioners, or people who have links with big officials in the government. Can you wrestle with such a person? So for your rescue you also try to rush into plea bargaining (MC34(n₁), 2021: p. 51).

I even know some of them [meaning innocent accused]. They succumb to the process when they know that behind the complainant is some very rich person following the case out of whose influence they cannot escape. I have also learned from here too that in court some judicial officials, including lawyers and prosecutors, can be paid money, or they need money, and can do whatever the complainants' wish. So the poor litigants face it rough (MC36(n₁), 2021: p. 29).

Some judges were wary that some prison warders encourage the inmates to plea bargain due to prison congestion, in order to free the prison's limited holding capacity after convictions to manageable numbers. Failure by the inmates to comply with the warders' recommendations above can cause repercussions to the defiant

inmates when they return to their holding capacities (JAJ3(n₂), 2019: pp. 7-8). This situation illustrates the domineering force of the warders. A judge lamented that the accused at the time of the negotiations “is already in a weak position since he or she is under detention and therefore with limited bargaining power other than the desire to get early freedom through lenient sentencing”; there is a lack of parity in the deal (JAJ4(n₂), 2019: p. 6). The judge argued that the state is a coercive instrument, through its attorneys who threaten the accused into admission of guilt in order to secure lenient sentencing and avoid the evidence of a full trial. The accused bargains under the parameters of this impartial agreement limited to his or her sentence fate: “If all sides of the bargain were to be equal, would not the accused use the long pretrial detention as a bait for a shorter sentence in response to the state higher sentence counter offers?” (p. 7).

Some accused claimed innocence that they enter plea agreements when they feel weak and defenseless against the aggressive complainants in offences with the backdrop of personal vendetta, especially in cases of defilement (MC2(n₁), 2019: p. 4) and property-related cases such as theft and robbery (MC3(n₁), 2019: p. 5). These respondents claimed that much of the complainants’ evidence was malicious or concocted, and they had the opinion that the police investigations would fail to proof-check such evidence flaws. Other accused plea-bargained cases arose out of family land or related village wrangles or scores (MC19(n₁), 2020: p. 47).

An advocate experienced in accused state brief legal aid (Namaweje, 2021) noted that some accused see the whole judicial process as unjust. She cited a Luganda myth common to the inmates that “*tosinga mwana muto musango. Ogwo omu-sango mala gagukiriza*” [You cannot win a child victim. In that case, you just have to admit guilt] (p. 9). This belief lies in the fact that child-prosecution witness/victims stand the advantage of being believed much more than the accused. Another accused respondent confirmed the myth thus; “...my fellow inmates advised me to admit guilt since a young boy cannot or has no capacity produce children” (WC1(n₁), 2019: p. 3). Namaweje (2021) confirmed that sometimes the charge of aggravated defilement confirms the above accused’s myth as true. The charge has been greatly abused by the communities to settle personal property related wrangles. “Then, without crosschecking the factual basis through some accused’s storytelling, the police and judiciary act in anger and domineeringly charge, convict, and sentence the accused, even where innocent, and unfairly sentences them” (p. 4).

The above narratives suggest a nexus between dominance, innocent accused, and plea bargaining. This correlation supports the finding that undue influence traits regress the accused’s freedom to plea bargain, to the extent that a dominant plea bargain actor can influence the weaker accused, even where innocent, to contract plea agreements that work to the accused’s detriment. In most of these cases, the seemingly dominant party has a fiduciary relationship with the accused.

2) Fiduciary Relationships

A fiduciary is a person who holds a position of trust in relation to another and

who must therefore act for that person's benefit (Woodley et al., 2009). Thus, "[a] fiduciary relationship exists where someone is in a position of trust such as solicitors and their clients" (p. 184). Their relationships encompass the idea of faith and confidence and are generally established only when the confidence given by one person is accepted by the other person (Merriam-Webster, 2024.). Borrowing from the above two definitions, it is reasonable to contend that justice actors (in particular, the defence and ODPP attorneys and judicial officers) are fiduciaries to the accused during plea negotiations.

One judge JAJ2(n₂)/JASA2(n₄) (2019) rightly observed that the accused's freedom to contract bargains is dictated by the quality of the defence legal representation capabilities during the negotiations. These accused need a lot of guidance to understand the implications of waiving their fair trial rights to avoid poor bargaining and sentence disparities in diverse plea agreements. Inadequate legal representation negatively affects the bargain result (p. 5).

Judicial officers are also constitutionally mandated to exercise justice in the names of people [court users] in conformity with their norms and aspirations (Constitution of the Republic of Uganda, 1995, Art. 126(1)). In that vein, they must accord the accused a fair hearing. When it comes to the ODPP, it has the sole constitutional mandate to institute criminal proceedings against any person or authority, can take over and continue any criminal proceedings instituted by any other person or authority, or discontinue them at any stage before judgment is delivered (Art. 120(3)(b), (3)(c) (3)(d)). Thus, the ODPP must have regard for the public interest, the interest of the administration of justice, and the need to prevent abuse of legal process (Art. 120(5)). That way, the ODPP holds the office in trust for the people to protect them from lawlessness, including protecting the accused persons. It is in that context that the citizenry files complaints with the police from whom the ODPP takes over the prosecution. This role, however, does not absolve the ODPP from handling the suspect-accused within the tenets of a fair hearing.

Empirical evidence showed that in many situations, the justice actors exploited their categorised fiduciary relationship with the accused above, to the latter's disadvantage as a weaker party during plea negotiations (Nakibuule, 2023). Such abuse weakens the accused's freedom to contract meaningful plea agreements. For example, many times some judges while practising their judicial oversight role during the precession meetings as mandated by law (The Judicature (Plea Bargain) Rules, 2016, r.8(2)), preside over the meetings like plea markets; negotiating expedited justice over the accused as an absent commodity that is being traded by the attorneys, as bidders, for a price by way of a sentence (Nakibuule, 2023). "The judge's minimum[starting] bargaining point could [even be as high as] 10 years" (Oyugi, 2019: p. 7). The accused is only informed later of the agreed cost by the bidders in the form of a proposed sentence that is confirmed by the court later as the vendor. The Court of Appeal's guidance in *Agaba and 2 Others v Uganda* (2020) that repositioned the trial court's role as only regulatory; as an overseer

over the agreements for the ends of justice is a progressive approach that speaks to the like judges' excesses. The Court guided that the trial court is not privy to the agreement and cannot redefine it. What the court may do is to reject the agreement when not satisfied that it may occasion a miscarriage of justice, record the reasons for the rejection and inform the parties. The agreement becomes void and inadmissible in other subsequent trial proceedings, and the court should refer the matter for trial (p. 7). The challenge is that this *Agaba* decision seems limited to situations where trial courts interfere with the agreed sentences in the plea agreements during the sentence confirmation/ hearing, like the one the accused respondent narrated below.

We had a negotiation with the state attorney and my advocate. I proposed 5 years' imprisonment and the state proposed 20 years' imprisonment and I rejected. I then signed for 5 years' imprisonment but when I reached court, the judge rejected the agreement and sentenced me to 16 years' imprisonment (MC8(n₁), 2019: p. 3).

Strict reading into the *Agaba* decision suggests that the Court's guidance is most likely inapplicable to pre-session meetings where judges reject plea agreements, out rightly, in the absence of the accused who are key parties to them. Some of the accused's experiences, confirm such unfair treatment. One, for example, shared:

I was given a lawyer on state brief called O.D. We sat down with him and agreed to give a defence offer of a six-year imprisonment term in return for my admission of guilt for the charge. He accepted my proposal, and he presented it to the Judge. He came back and informed me that the Judge rejected it as low in consideration of the seriousness of the offence of murder that I had been charged with. The judge had proposed instead of our offer, an eight-year sentence. In consultation with my lawyer, I went by the judge's directions and accepted the eight-year sentence term (MC12(n₁), 2019: p. 3).

In the above and related scenarios, judges engage in renegotiating other terms of the agreements that they are not privy to and do not recuse themselves from the later plea hearing session despite their prior indulgence in these negotiations. They instead of referring the accused to another trial court, receive back the renegotiated agreements for plea-hearing after the parties have adjusted them to suit the court's discretionary dictates. Such judges proceed to confirm the amended agreements and sentence the accused. As such, the judge or any other judicial officer in this bargain arrangement sits in a judgment of a cause that they previously negotiated, abusing their fiduciary oversight role (Nakibuule, 2023).

Regarding attorneys as fiduciaries, Oyugi (2019), a practising advocate, observed that the accused is always the weaker party in the deal, at the mercy of the key actors. Kyobika (2021), a judiciary researcher, made an analogy of a game where there is an unequal match to plea bargaining, explaining well the effects of a fiduciary relationship between the attorneys and the accused. She argued:

If the court is to be taken as a criminal justice field where plea bargaining is being played, the field is not levelled between the state and the accused. The state's main actors (ODPP attorneys) are knowledgeable in the law and obligated to prosecute. The state fully funds them to execute their role. While the opposite player, mostly an illiterate and poor accused person, is statutorily provided with state representation (by a defence lawyer on state brief), such lawyers are normally engaged on short notice, are meagrely facilitated by the state, are allocated an average of ten cases by the state in a given session, and are very busy with their well paid up other matters in their chambers to attend to fully. The legally incompetent accused, in most cases, who has barely seen his busy lawyer, ends up on a negotiating table to bargain briskly his plea. How can this accused person strike a fair bargain within the tenets of a fair trial (p. 3)?

JAR1(n₃) (2019) claimed that some state attorneys mislead the innocent accused into false pleading (p. 3). They scare them that they would suffer harsh penalties if they ever undergo their full trials if they do not join plea bargaining programs, for the sake of securing a good number of plea convictions (p. 5). In some cases, the state brief advocates coerce their clients "to admit guilt through constant re-negotiations to and from, because the state brief legal fees are pegged on attaining a conviction" (p. 3). Namubiru (2022), a private legal service provider, underlined that the innocent accused pleading guilty to crimes they did not commit undermines the integrity of Uganda's criminal justice system (p. 3). JAJ3(n₂) (2019), a senior judge, noted:

There is a complete lack of parity between the negotiating state attorney and the accused, even where the accused is defended. The timelines during the scheduling of the process are pre-fixed or limited. Plea bargaining to the defence lawyer implies a quick buck, while to the state attorney, it is a trial process done away with. The court assumes that the accused has understood the process, and simply goes through a question-and-answer process which the accused always answers in the affirmative. Then the whole expediency chain [of the justice actors skipping the accused] is completed (p. 7).

These narratives evidence exploitation of the accused's weaker position by their fiduciaries during plea bargaining. They demonstrate traits of undue influence, weakening the accused's freedom to contract plea agreements.

3) Mental Distress

During the Nakibuule (2023) field visits the researcher would put an optional question to the accused respondents thus; "Did you commit this offence?" Forty-three (66.1%) of them pleaded innocence. Some narrated tales that mostly exculpated them, while others' tales indicated lesser cognate offences because of probable defences. The defences mostly varied from self-defence, mental incapacity, diminished responsibility to provocation into crimes of passion. Among the forty-three narratives, some accused raised alibis that could only be tested had the

accused undergone full trials. One of the convicts, for example, pleaded innocence more than once thus:

I do not even know the deceased victim who I allegedly killed. (...) I maintain that in the name of God, I did not kill any person and I never knew that deceased person. I pleaded guilty to the charge to save myself from inordinate detention... I expect to at least complete my sentence in 2026. (...) In truth, I did not and I only admitted guilt because I was helpless. I am not a thief or lawless person. I was just following my prostitute waiting for her as I sat in the bar (MC1(n₁), 2019: p. 2, 4).

Another stated:

I enrolled for plea bargaining because I was hopeless. I did not have anybody to follow up on my defence case. Instead, the lawyers kept on threatening me that my case was very bad. I believe that if I underwent trial I would have got an acquittal since I had a defence of self-defence. I did not have any bad intent to commit the crime. My relatives are very far from Kampala and none of them has ever visited me up to date. So I pleaded guilty so that I just move on with life. If I were to get a competent lawyer, I would be off the hook since I acted on utter provocation by the deceased who followed me and continuously taunted me by threatening to shoot me until I acted in self-defence. So that's it. Let me suffer with it. None of the victims, deceased relatives nor my relatives attended court. I do not even know the deceased's relatives (victims). I was all alone (MC6(n₁), 2019: pp. 3-4).

The above voices were among the many others that demonstrate a relationship between the accused's mental stress or distress, innocence, and plea bargaining. Mental stress or distress can compel some innocent ones into plea bargaining. They self-convict; some possibly innocent end up with voidable plea agreements due to the diverse facets of undue influence in law (*The Contracts Act, 2010*, s.14(2)).

JASB1(n₅) (2019) a renowned advocate in handling state briefs, reported how some accused who are innocent infiltrate the process; "making up stories, faking their guilt, in match with the summarised state facts on the copies of the summaries of the prosecution evidence that they retain after committal for trial" (p. 4). Some of them cramming their evidence summaries and lying to their defence counsel for convenient early releases (p. 4). One of them confirmed this concerted falsehood, thus:

MC26: I sat down with my lawyer. He asked me how I committed the offence. I explained to him how I committed it while avoiding indicating to him that I actually did not commit it. So, convincingly I tailored my explanation. On listening to me, he asked me if I was aware that on conviction the offence attracts a life imprisonment sentence. I informed him that I was aware of this consequence since I had already been sensitised about it. He further informed

me that the Judge had sent the state attorney to negotiate the sentence with us (I and this defence attorney), and on successful negotiations, the judge could sentence me to an imprisonment term of 18 to 20 years. However, if I were to undergo a full trial, the lowest sentence term that the judge could grant in case I was convicted would be 35 years. I offered three years because I had overstayed on pre-trial detention, experienced a lot of suffering, and was remorseful. I asked him to beseech, on my behalf, a lenient sentence from the state attorney. (...)

PI: You were saying all this to convince the lawyer that you committed the offence?

MC26: True; then the state attorney counteroffered ten years. I begged the lawyer to intercede for me because I was young and had young children to look after. They further negotiated. The state attorney asked me to give another offer beyond the range of six and seven years. When I refused, he threatened to close my file and strike me off the plea bargain session cause list. I counteroffered eight years, to which he agreed (MC26(n₁), 2021: p. 44).

Some others, such as MC28(n₁) (2021), would at the time they plea bargained, still be hurting and with an underlying intent of pursuing vengeance. If given a chance to return to their homes early, to probably pursue their accusers whom they claim falsely caused their arrests and eventual detention (p. 4).

Generally, most likely innocent accused plea bargain to have a fresh start in life due to various challenges, including those Oyugi (2019), an advocate cited: prison congestion, poor feeding in prison, loss of freedom, unattended to families and in pastoral communities deplorable abandoned properties like herds of animals and some of the accused's families meet forceful payment of burial expenses sanctioned by cultural practices for lost victims. The accused could even be jointly charged with the rest of the family members after police mob swoops. Others plead guilty to escape from the area environment and serve their sentences in other regions away from home, such as in the capital city's Luzira Maximum Prison in Kampala (p. 7). Some other accused are constrained to plea bargain when feeling abandoned by their families. To illustrate, Ninsiima (2019), a Senior Superintendent of Prisons shared her experience while in charge of Lira (Main) prison thus:

[I]n 2018 before his lordship Batema there was an accused person who tried to plea bargain during the court session that was held in Lira prison itself here. His rationale was to get out of prison after serving a quick sentence. It was only after the court quizzed him that he broke down crying that he had been abandoned by his family who had ceased visiting him since he was charged in court for a long time. So he wanted to be sentenced, serve, and return home (p. 8).

Yet, others, such as MC44(n₁) (2021), who feel that they cannot stand the deplorable ward congestion anymore, find early admission as the beneficial exit of being transferred to the less congested prison centres (p. 22).

Trial delay, however, is one of the cardinal causes of mental stress behind the innocent accused false pleas. The timing of the plea bargain option for the accused plays a big role in influencing them into bargaining. Supporting this supposition, for example, JAP1(n₆) (2019) in charge of Kampala (Luzira Upper) Prison, observed that if the program is introduced in the accused's fifth year of pre-trial detention, it can propel them to plead guilty to escape their pre-trial long detentions; likewise, it can to an early bird who is apprehensive of delaying on trial like his delayed fellow inmate (pp. 6-7). The Nakibuule (2023) study showed further that out of the 66 accused respondents who plea bargained, 57 (87%) of them had spent six months to three years and a half under pre-trial detention (PDT) since arrest until their convictions, though some three early birds plea bargained and secured convictions within a year of their arrest and pre-trial detention. The extremely delayed ones, plea bargained after their four years' stay and beyond on pre-trial detention. Situations of the most earliest and delayed bargainers are interrogated below.

MC42(n₁) (2021) who delayed most on pre-trial detention, had been charged with rape, and spent four years, eight months, and five days in detention in Kabale Ndorwa prison since his arrest on May 03, 2016, until when he negotiated his plea on December 12, 2020. According to the prison records, his earliest expected date of completion of his sentence was April 04, 2023. His story was that while a young man aged around 23 years, he had a relationship with a 26-year-old lady with whom he later spent a night. However, after the event in the morning when she returned to her home and her parents asked her where she spent the night, she disclosed that she spent it with him. Over time he was arrested by Kabale Police over rape charges and detained at Ndorwa government prison by the Chief Magistrate's court at Makanga. Having waited on pre-trial detention for the High Court session for the full trials for over four years, he registered for plea-bargaining in 2020. According to him, he decided to admit guilt on realising that he was wasting time; not that he appreciated how and why his sex act with his victim-girlfriend was offensive. Her agreement to come over to his home willingly was a tacit consent to sleeping with him. He also considered the harsh penalties, such as the 25 years' imprisonment his fellow inmates similarly charged with the offence of rape were being sentenced to after their full trials. He claimed that he conceded to the state attorney's offer of eight years' sentence.

MC19(n₁) (2020), the earliest of the three early birds that entered plea agreements, spent one month and twelve days since arrest before his conviction. His fate had a backdrop of an outstanding family land wrangle where his father was stabbed to death in 2003 during a related fiasco. He narrated to the researcher that in the course of avenging his father's death, he continuously got into squabbles with his paternal aunts over the same disputed land. He would be charged in court over criminal trespass and had a pending charge over which he was out on bail before the commission of the issue offences. On the fateful day, he got into yet another brawl, but this time in due course both his aged paternal aunt and

grandmother inadvertently lost their lives. He was later arrested and detained in Maluku prison in Mbale over their murder; by luck, his detention coincided with the preparation for a plea bargaining session for the Mbale High Court Circuit. He informed the researcher that fellow inmates interested him in plea bargaining, given the circumstances of his offence. Some of them had spent over six years on pre-trial detention and others were planning to use the planned session to bargain for short sentences. He claimed that he never intended to offend, or confront the victims but it was them who instead confronted him; They had pursued him for long, and, framed diverse offences against him for which he would invariably spend money to get released on bail. He argued further that he never intended to kill them; they all just engaged in a brawl that ended up in fatal events in self-defence. While in prison he was anxious about his needy family and his chronic diabetic health condition. With all the above reasons in mind, he plea bargained as an early shortcut out of prison, for a concurrent nine-year imprisonment term for both counts of the charges of murder. The court sentenced him to a consecutive nine-year imprisonment term for each of the two counts. Relating his narrated situation to the concept of freedom to contract, arguably with the above raging issues in mind, he was most likely not mentally stable at the time he admitted guilt.

MC42 and MC19's tales confirm an accused with hovering delusions and anxieties in mind, mostly trial delays or likely delay, can admit guilty to an offence, even when innocent and plea bargain. Had the trial courts inquired into how the accused offended; putting the facts to them and asking them if they had anything to clarify in their regard, the courts would have realised that they entered the agreements under anxiety. They were baffled by issues that they felt explained their acts, which if the courts listened to insinuated defences contradicting their admissions of criminal responsibility. The trial courts, most probably, would have replaced their entered guilty pleas with those of not guilty to validate their not guilty pleas under full trials.

Several prison officers reported how innocent accused are enticed by the lenient sentences their fellow inmates get away with when they plea bargain similar offences the innocent ones are charged with. These early birds leave the innocent ones behind awaiting trials where they could probably be convicted and get harsh statutory sentences (Ninsiima, 2019: p. 10; Anguzu, 2021: p. 21; JAP12(n₆), 2021: p. 5). This anxiety pulls the latter into plea bargaining too. Affirming the relationship between innocence, mental stress or distress and trial delay (mostly on pre-trial detention), JAP1(n₆) (2019) gave an example of both an accused committed for trial in 2016, who projects the trial in 2019 and another committed for trial in 2019 who projects it in 2023. He argued that these accused can plea bargain simply due to the timing of their full trial uncertainties. Or, else if they were truly guilty as they might claim they would have indicated from the onset of their detention their desire to ordinarily plead guilty rather than wait for the plea bargain campaigns or sessions and suddenly enlist to admit guilt. He concluded that the

accused persons committed for trial have a high impetus to lie as a test option for the sake of court appearance. This test also explains the high number of failed bargains (pp. 6-7). Anguzu (2021) supplemented that these accused “only realise the mischief, after they have been sentenced to unfair sentences against which they, come up to them for help to, lodge appeals, contesting their innocence” (p. 18). Trial delays traumatise the accused so much so that whenever they think of further pre-trial detention, they risk surviving it, as this particular one tells:

I had no lawyer at the time. The lady attorney suggested to her lead state attorney to consider reducing the prosecution’s offer to a 13-year imprisonment, and that if I refused it they would then de-cause list me from the program. They were not ready to suggest any further sentence offers that day and they left. The following day, all inmates who refused the prosecution offers had been delisted; I had offered eight years. Sensing danger, I implored these prosecution attorneys that I would take their offer since I couldn’t continue to stay on indeterminate pre-trial detention, any longer. I agreed to their offer of a 13-year imprisonment sentence. (...) I also signed a document during the negotiations before we went to court before the judge (MC24(n₁), 2021: p. 5).

All the accused-respondents in the referenced study confirmed that they had interfaced with their fellow innocent inmates who entered plea agreements, mainly, because of the trauma of overstay on pre-trial detention, without even the state’s involvement of the victims or relatives. MC34(n₁) (2021), for example, argued:

You see Madame, people are traumatised in prison, when they flash back into their family background, looking at how they left their families behind, some had orphans to take care of. The trauma is compounded by the prison backlog where inmates are waiting for High court sessions to be called to undergo trial. For example, I had a friend of mine from *Kumi*, called *Osulubaba*. He had finished seven years since he was committed to trial, but he has never been summoned for his trial. So when you look at such scenarios, you find that an innocent accused just decides to join plea bargaining. On the other hand, as you would be waiting for a full trial, another accused who had just been detained and found you in prison, can enter a plea bargain arrangement, serve his sentence and leave you behind. Those are some of the experiences that inform the innocent accused’s decisions to plea bargain ... yeah, like me, there was a friend of mine. His name was *Okule*, I have forgotten his Christian name. This *Okule* got me in prison, but joined plea bargaining, was convicted, sentenced, served his sentence and he left me here (p. 48)!

All the interviewed key justice actors (the judges, advocates, prison officers, registrars, and state attorneys) confirmed that innocent accused self-incriminate in both white-collar crimes and other penal offences, to take the benefit of lenient sentencing. Nakigudde (2019), the ODPP representative, for example, admitted

that “the criminal justice system is so slow, and as a result, it has pushed the innocent accused into plea bargaining” because they anticipate long pre-trial detention (p. 9). Mbazira (2021: p. 2) a legal academic and human rights activist and Namubiru (2022: p. 3) a private legal aid service provider in Uganda attested that some accused who are innocent plead guilty at the cost of lenient sentencing. Prisons officials agreed that the chip of leniency waived to the inmates by the court and state attorneys heightens the probability of the innocent accused to plea bargain instead of suffering inordinate pre-trial delays (JAP2(n₆), 2019: p. 5); they succumb to the bait out of hopelessness of ever undergoing their trials, forecasting a reward of certainty or precision of the detention period in the prescribed sentence (JAP10(n₆), 2021: p. 3).

One of the advocate respondents and a law lecturer, Kuunya (2019), recalled how a male inmate, stood up during a prison sensitisation and informed them, openly, how he did not commit the offence, but pleaded guilty because he was tired of the pre-trial detention. Sharing as a convict, the inmate argued, he had one comfort that in July 2020 he would go home. Kuunya argued that such innocent accused leave their consciences’ conviction to God, but at least get certain of the length of their stay under prison conditions. Some of them confide in their advocates that they never committed the charged offences but are rather ready to serve the bargained sentences than stay on pre-trial detention (p. 7).

Keitirima (2019), with expanse experience in handling plea bargaining while at Masaka and Mbarara High Court Circuits, observed that the accused ploy, through plea bargaining to exploit “the inefficiency of the judiciary system that handles capital trials on the first in first out principle, and risk to serve lenient sentences than overstay on pre-trial uncertain detention period” (p. 6). Due to the limited slots in the plea bargaining’ slated sessions, the prison department resorts to looking at their dates of admission into prison to inform the courts’ cause listings, the judiciary’s session attendance’ criterion is whoever wishes to bargain and strikes a deal can be heard (Anguzu, 2021: p. 10). Many accused therefore risk to bargain, simply to attend court (JAP1(n₆), 2019: pp. 6-7).

Several prison officers added that others plead guilty so that they quickly enrol for opportunistic reform programs such as study programs. Not knowing their fate depresses them. Inmates always wish to keep themselves busy, and they can only qualify for reform programs after conviction (Ninsiima, 2019: p. 10; Anguzu, 2021: p. 5). The available prison reform programs, including formal education programs, in Uganda are strictly for convicted inmates because of the certainty of their period of imprisonment unlike those who have not been sentenced. Many of the inmates, especially those charged with capital charges, have been inspired by one post-convict *Susan Kigula* who enrolled for an LLB program after being condemned for murder⁶. They admit guilt or the prison authority encourages some of them to admit guilt so that they can be transferred when sentenced to the

⁶For further reading, see Susan Kigula. The Death Penalty Project, <https://deathpenaltyproject.org/story/susan-kigula/>, accessed April 8, 2024.

maximum security prison at Luzira located in the capital city of Kampala, where such programs are mostly offered (Ninsiima, 2019: p. 10).

Whatever method the accused use to penetrate plea bargaining sessions; the anxiety over the possibility of long pre-trial detentions explains their exodus to plea bargaining. It confirms the nexus between the accused's mental stress, innocence, trial delay (pre-trial detention) and plea bargaining. This correlation bolsters the finding that undue influence traits regress the accused's freedom to contract plea bargains, to the extent that even the innocent ones can admit guilt, whereas not, in Uganda. As Rugadiya (2020), a retired judge, cautioned, a judge registering a plea agreement must, therefore, be very careful and advise the accused in this respect, rejecting plea agreements whose facts raise doubt of innocence and directing that such accused be listed in the immediate following sessions for trial (p. 5).

6. Summary of the Research Findings

While the majority of the accused who plea bargained were adults, *ipso facto* of contractual age, some were minors and others had committed the offences while minors.

Second, the accused battled with diverse fears and anxieties during plea bargaining, fears including undergoing a full trial; delayed trial; the death penalty; reactions of their co-accused who wish to undergo trial whom they might be called upon to testify against as prosecution witnesses; going back to their communities to confront the likely public scrutiny of their confessions for wrongdoing; and community reprisals on their wider families for the confessions in the plea agreements in return for lenient sentences.

Third, most accused contracted plea agreements in non-conducive environments mostly in tight ambience during the negotiations and plea hearings with some inmates feeling frozen in the docks; hasty negotiations; prosecutors frequently insisting on high-penalty offers that the accused unwillingly accept; and lack of confidentiality during negotiations.

Fourth, several factors presented as coercive to the accused during plea bargaining. They included a lack of parity during plea negotiations; the prosecution pressure to end trials and as such the accused were rushed through the bargaining process, mechanically, without seeking their true tales; the prosecution's high penalty offers that they concede to, unwillingly, as not to miss out on court audience; the crowded court halls with tight, and uncomfortable ambience; the fear to return to pre-trial detention with failed deals; among hordes of other insurmountable factors that were not limited to indeterminate pre-trial detentions, which were spelt out by trial delays.

Fifth, there was a nexus between mental stress, innocence, and plea bargaining. Mental distress compelled the innocent accused into plea bargaining. Indeterminate pre-trial detention was the most stressor that unduly influenced several accused into plea bargaining, even when innocent. Most of them plea-bargained to

avoid indefinite prison shackles.

Sixth, there was a nexus between dominancy, innocence, and plea bargaining. Dominant plea bargain Justice actors could influence unduly the weaker accused, even where innocent, to contract plea agreements that worked to the accused's detriment.

Seventh, there was a correlation between the concepts "fiduciaries" and "plea bargaining." Key justice actors hold fiduciary relationships with the accused during plea bargaining, but to the accused's prejudice, some of them abuse these relationships.

7. Conclusion

Based on the empirical data in an earlier Nakibuule (2023) study, I devised three variables: Uganda's legal framework, contractual capacity and freedom to contract, to address the question of whether plea agreements in Uganda conform with contractual tenets in law. The analysis drew salient conclusions summed below.

The finding that some minors contracted plea agreements and some accused entered plea agreements after delayed trials for the offences they committed while minors, not only suggests that children have a high propensity to be tempted into lying their way out to self-convict like adults do for freedom, but demonstrates abuse of children's rights. While a juvenile of criminal liability age can be held criminally liable, and plea bargaining involves negotiating an admission of a criminal act under the confines of a formal justice system, a plea agreement is neither a quasi-contract nor a necessary excepted contract that juveniles can engage in under Ugandan law. Even though Ugandan law allows an accused person to plea bargain at any time before sentence, some accused illegally plea bargain offences they committed while children. Juveniles' plea agreements are therefore more illegitimate than not, irrespective of whether their plea deals are sealed by adults on their behalf, bargained through adults, or, that they have grown into adults at the time they contract the impugned plea agreements.

The empirical data's revelation of the diverse fears and anxieties the accused suffer when presented with plea bargain possibilities, coupled with the sometimes non-conducive environment under which they bargain, points to the tension under which the accused negotiate plea agreements. The anxiety most likely drains their sobriety to the point where most of them might not completely understand and develop rational judgements about the effect of their plea agreements on their interests. More than likely, their desire to be free of the indeterminate jail shackles exceeds their contractual competence to sign informed plea deals. As such, diminished sombreness dissolves their contractual capacity to enter legit plea agreements knowingly and after understanding the consequences of pleading guilty, contravening Uganda's *Contracts Act (2010, s.11(1)(a)-11(1)(c))*.

Situations that present as coercive to the accused during plea bargaining processes in Uganda regress the accused's freedom to contract plea bargains. They transmit a sense of hopelessness, which frequently leads the accused, out of human

nature, to reconsider how to recuperate, resolving to pick up their pieces in resignation to fate and yield to plea bargaining and self-conviction. Consequently, they self-detonate with penalties that the courts deem fit to their admission of guilt. As such, they confirm earlier studies that the accused can be influenced into bargaining by hordes of pull factors (Alschuler, 1976: pp. 1125-1126). The pull factors evidence insurmountable factors as characteristics of implied or direct coerciveness that the accused succumb to and plea bargain for self-reorganisation towards a fresh start in life, not necessarily out of free choice. This state of affairs when not checked, points to plea bargaining's illegitimacy as unconscionable contracts.

Mental or bodily distress and apprehension are other formations of coercive traits that can compel most of the accused, innocent or guilty, irrespective of gender, age, and literacy levels, into plea bargaining, especially when unduly influenced by indeterminate pre-trial detention and the urge for freedom. Many times, the cost of the accused's freedom is the unconscionable imprisonment terms they succumb to.

The correlation between mental stress, innocence, and plea bargaining infers undue influence traits. Similar to coercive traits, undue influence traits compromise the accused's freedom to contract plea bargains, so much so that some innocent accused admit guilt, whereas not, self-convicting, entering voidable plea agreements due to the diverse facets of undue influence in law (The Contracts Act, 2010, s.14(2)).

A dominant actor can threaten the accused into biased negotiations and sealing of unexplained plea agreements. The abuse by some justice actors of their fiduciary roles to the accused through the exploitation of dominance over them is one of the cardinal mental stressors that translate into undue influence. Therefore, interpersonal relationships, a subsisting fiduciary relationship, and mental or bodily distress can negatively impact the accused's freedom to plea bargain.

This Article has illustrated that in Uganda most of the accused who plea bargain have limited capacity to contract plea agreements because of their compromised sobriety by the diverse fears and anxieties that they battle with during the negotiations, and the non-conducive ambience under which most contract their plea agreements. Relatedly, the coercive traits that induce most of them into plea bargaining, and all the correlates that demonstrate traits of their undue influence during plea negotiations confirm that most accused have or limited freedom to contract meaningful plea agreements in Uganda. Thus, most of their plea agreements not only contravene the international normative human rights standards of a guilty plea of voluntariness, unequivocal, well informed and factual based, but are illegitimate unconscionable contracts that do not conform with contractual tenets under Ugandan law. Uganda needs to rethink plea bargaining underscoring the need to statutorily repackage its implementation as contracts that align with the human rights standards; alongside institutional reforms. Some are suggested below.

8. Recommendations

1) Legal Reforms

National plea bargaining laws should eloquently legislate that the capacity and

freedom to contract under the national laws of contract apply to plea agreements. Statutorily, juveniles should be refrained from plea bargaining. Children should, rather than waiting to plea-bargain in organised plea-bargaining sessions, as the Ugandan case is after delaying on trial, be handled timely, for instance, like under [the Children Act \(1997\)](#) that is self-contained with speedy trial deadlines.

2) Hold Plea Bargain and Full Trial Hearings Simultaneously

Plea agreements should be processed on a case-by-case basis on arraignment or after the parties have filed their initial plea agreements alongside scheduled full trials. The accused will have equal access to all plea options, allowing them to make voluntary, unequivocal and informed admissions, with legal competence and freedom to contract.

3) Increase the Accused's Sensitisation

The key plea bargain handlers (attorneys and the courts) need to address the accused's fear effects during plea negotiations to guard parity during the negotiations and uphold their fiduciary roles with the accused. To that end, institutional sensitisation programmes should be heightened. The judiciary and prison departments should not concentrate on numbers by way of accumulating registration of inmates for the program, but rather on enlisting voluntary admissions of guilt.

4) Heighten Courts Oversight and Judicial Activism

The trial judges need, without descending into the negotiation arena, be regulators of the process rather than mere recipients. They need to refrain from the common tendency during pre-session meetings, of placing emphasis on the penalty proposals in the agreements, as the case is in Uganda. That practice is an abuse of their fiduciary role as custodians of the law for all. They should instead inquire into the merits of the bargain, cautious of their legal duty to only convict the accused on an unequivocal guilty plea when proven by the prosecution beyond reasonable doubt. They should study the agreements before the accused's arraignment, to identify the evidential gaps and exercise maximum judicial activism during the pre-session hearing: ensuring the agreement has facts that establish a factual basis for the charged offence, is informed and supports an unequivocal plea. Courts should weigh the advantages and disadvantages of the accused's case to be considered for a full trial versus plea bargaining based on the accused's plea statement during the plea hearing.

5) Avail Conducive Negotiation Ambience

Trial Judges should be wary of the courts' intimidating decorum, which occasionally includes judges in red robes and strange headgear, and at other times combined with judges' domineering attitudes, which conditions impugn the negotiation's voluntariness. The accused, due to apprehension, succumb to the court process, whichever way the primary duty bearers drive it. Judges should also take an interest in the victim's participation because involving them can provide certainty as to whether the accused pleads guilty to the offence expeditiously yet innocent or pleads guilty out of remorse.

6) Provide Psychological Support to the Accused

To address the mental distress that plea negotiations cause, States' ministries of

internal affairs and health should provide comprehensive social psyche support for the accused in prisons both pre and post convictions, expand the existing family and children support at police stations, and set up welfare services in communities and prison facilities.

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References

- (1890). *De Francesco v Barnum* (1890) 45 ChD 430.
- (1894). *Clements v London & North Western Railway Company* [1894] 2 QB 482 (CA, June 15, 1894).
- (1894). *Flower v London & North Western Railway Company* (1894), 2 QB 65 (CA).
- (1908). *Nash v Inman* [1908] 2 KB 1 (CA, 5 March 1908).
- (1913). *Roberts v Gray* [1913] 1 KB 520 (SC April 23, 1913).
- (1965). *Chaplin v Leslie Frewen (Publishers) Ltd* [1965] EWCA Civ J1025-2, [1966] 1 Ch 71(CA, October 25, 1965).
- (1969). *Denmark Productions Ltd v Boscobel Productions Ltd* (1968) [1968] EWCA Civ J0628-3, [1969] 1 QB 699 (CA, June 28, 1968).
- (1971). *Santobello v. New York*.
- (1997). *The Children Act. 1997. (Revised 2016), (Commencement 01/08/1997), Pub. L. No. Cap 62, Cap 62, Red Volume III, Title No. IX, Laws of Uganda, 7th Edition, 2024.*
<https://publications.ulrc.go.ug/laws-of-uganda/26?title=VOLUME%20III>
- (2010). *The Contracts Act, Pub. L. No. Act 7 of 2010, Cap 284, Title No. XXXVI, Red Volume XII, Laws of Uganda, 7th Edition, 2024.*
<https://publications.ulrc.go.ug/laws-of-uganda/35?title=VOLUME%20XII>
- (2016). *The Judicature (Plea Bargain) Rules, 2016. Uganda Gazette CIX (45).*
<https://judiciary.go.ug/files/downloads/The%20Judicature%20Plea%20Bargain%20Rules%202016.pdf>
- (2019). JAJ2(n2)/JASA2(n4)., (Judge) HCT, Criminal Division, Kampala (Host). (2019, February 07), [Interview Transcript, Personal Communication].
- (2019). JAJ3(n2)., (Judge) HCT Circuit, Masaka (Host). (2019, March 06), [Interview Transcript, Personal Communication].
- (2019). JAJ4(n2)., (Judge) HCT Circuit Mbale (Host). (2019, March 07), [Interview Transcript, Personal Communication].
- (2019). JAP1(n6)., (Officer in Charge) Kampala (Luzira Upper) Prison (Host). (2019, February 14), [Interview Transcript, Personal Communication].
- (2019). JAP2(n6)., (Officer in Charge) Kampala, (Luzira Women) Prison (Host). (2019,

- February 15), [Interview Transcript, Personal Communication].
- (2019). JAR1(n3)., (Registrar) HCT, Kampala Criminal Division (Host). (2019, February 07), [Interview Transcript, Personal Communication].
- (2019). JAR2(n3)., (Registrar) HCT, International Criminal Division (ICD) Kampala (Host). (2019, February 15), [Interview Transcript, Personal Communication].
- (2019). JASB1(n5)., (Advocate) ULS, Kampala (Host). (2019, February 18), [Interview Transcript, Personal Communication].
- (2019). MC1(n1). (Accused Respondent). Kampala (Luzira Upper Security) Prison (Host). (2019, February 14) [Interview Transcript, Personal Communication].
- (2019). MC12(n1). (Accused Respondent). Kampala (Luzira Upper) Prison (Host). (2019, February 14) [Interview Transcript, Personal Communication].
- (2019). MC2(n1). (Accused Respondent). Kampala (Luzira Upper) Prison (Host). (2019, February 14) [Interview Transcript, Personal Communication].
- (2019). MC3(n1). (Accused Respondent). Kampala (Luzira Upper) Prison (Host). (2019, February 14) [Interview Transcript, Personal Communication].
- (2019). MC6(n1). (Accused Respondent). Kampala (Luzira Upper) Prison (Host). (2019, February 14) [Interview Transcript, Personal Communication].
- (2019). MC8(n1). (Accused Respondent). Lira (Main) Prison (Host). (2019, September 06) [Interview Transcript, Personal Video Conferenced Communication].
- (2019). WC1(n1). (Accused Respondent). Kampala (Luzira Women) Prison (Host). (2019, February 15) [Interview Transcript, Personal Communication].
- (2020). *Agaba and 2 Others v Uganda* (Criminal Appeal 139 of 2017) [2020] UGCA 2143 (13 October 2020) (Musoke. E., Musota. S., Kasule. R, JJA).
- (2020). JAJ6(n2)., (Resident Judge) HCT Circuits, Arua and Gulu (Host). (2020, May 20), [Interview Transcript, Personal Communication].
- (2020). MC19(n1). (Accused Respondent). Mbale (Maluku) Prison (Host). (2020, September 04) [Interview Transcript, Personal Video Conferenced Communication].
- (2021). JAP10(n6)., (Officer in Charge) Masindi, (Main) Prison (Host). (2021, February 12), [Interview Transcript, Personal Communication].
- (2021). JAP11(n6)., (Officer in Charge) Masindi (Main) Prison (Host). (2021, March 05), [Interview Transcript, Personal Communication].
- (2021). JAP12(n6)., (Officer in Charge) Kabale (Ndorwa) Prison (Host). (2021, March 20), [Interview Transcript, Personal Communication].
- (2021). JAP5(n6)., (Officer in Charge) Gulu (Main) Prison (Host). (2021, January 11), [Interview Transcript, Personal Communication].
- (2021). JAP6(n6)., (Prisons Welfare Officer) Masindi (Main) Prison (Host). (2021, March 11), [Interview Transcript, Personal Communication].
- (2021). JAP8(n6)., (Welfare Officer) Arua, (Main) Prison (Host). (2021, April 22), [Interview Transcript, Personal Communication].
- (2021). JAP9(n6)., (Officer in Charge). Arua, (Main) Prison (Host). (2021, April 22), [Interview Transcript, Personal Communication].
- (2021). MC24(n1). (Accused Respondent). Masaka (Main) Prison (Host). (2021, March 04) [Interview Transcript, Personal Communication].
- (2021). MC26(n1). (Accused Respondent). Masaka (Main) Prison (Host). (2021, March 04) [Interview Transcript, Personal Video Conferenced Communication].
- (2021). MC28(n1). (Accused Respondent). Masindi (Main) Prison (Host). (2021, March

- 12) [Interview Transcript, Personal Video Conferenced Communication].
- (2021). MC34(n1). (Accused Respondent). Soroti (Main) Prison (Host). (2021, April 10) [Interview Transcript, Personal Video Conferenced Communication].
- (2021). MC36(n1). (Accused Respondent). Soroti (Main) Prison (Host). (2021, April 12) [Interview transcript, Personal Video Conferenced Communication].
- (2021). MC37(n1). (Accused Respondent). Fort Portal (Katogyo Male) Prison (Host). (2021, April 18 and 21) [Interview Transcript, Personal Video Conferenced Communication].
- (2021). MC39(n1). (Accused Respondent). Fort Portal (Katogyo) Prison (Host). (2021, April 21) [Interview Transcript, Personal Video Conferenced Communication].
- (2021). MC42(n1). (Accused Respondent). Kabale (Ndorwa) Prison (Host). (2021, April 22) [Interview Transcript, Personal Communication].
- (2021). MC44(n1). (Accused Respondent). Mbarara (Kakyeka) Prison (Host). (2021, April 27) [Interview Transcript, Personal Video Conferenced Communication].
- (2021). WC12(n1). (Accused Respondent). Arua Main Prison (Host). (2021, March 17) [Interview Transcript, Personal Video Conferenced Communication].
- (n.d.). *Compromise*. Oxford Languages Dictionary.
<https://www.google.com/search?q=compromise+meaning>
- Alati, D. (2015). Plea Bargaining and the Trial Penalty in Canada. *International Journal of Human Rights and Constitutional Studies*, 3, 206-219.
<https://doi.org/10.1504/ijhracs.2015.072474>
- Alkon, C. (2010). Plea Bargaining as a Legal Transplant: A Good Idea for Troubled Criminal Justice Systems. *Transnational Law & Contemporary Problems*, 19, 355-418.
- Alschuler, A. W. (1976). The Trial Judge's Role in Plea Bargaining, Part I. *Columbia Law Review*, 76, 1059-1154. <https://doi.org/10.2307/1121673>
- Alschuler, A. W. (1979). Plea Bargaining and Its History. *Law & Society Review*, 13, 211-245. <https://doi.org/10.2307/3053250>
- Anguzu, J. (2021). JAP7(n6)., (Superintendent of Prisons (SP)) Soroti Main Prison, Uganda Management Institute Campus (Host). (2021, April 24), [Interview Transcript, Personal Communication].
- Ashworth, A., Redmayne, M., & Campbell, L. (2019). *The Criminal Process* (5th ed.). Oxford University Press.
- Bibas, S. (2004). Plea Bargaining Outside the Shadow of Trial. *Harvard Law Review*, 117, 2463-2547. <https://doi.org/10.2307/4093404>
- Birke, R. (2007). Role of Trial in Promoting Cooperative Negotiation in Criminal Practice. *Marquette Law Review*, 91, 39-83.
<https://scholarship.law.marquette.edu/mulr/vol91/iss1/4>
- Church Jr., T. W. (1979). In Defense of "Bargain Justice". *Law & Society Review*, 13, 509-525. <https://doi.org/10.2307/3053266>
- Constitution of the Republic of Uganda (1995). (*Commencement 08/10/1995*), *Pub. L. No. Title No 1, Red Volume I, Title No 1, Laws of Uganda, 7th Edition, 2024*.
<https://publications.ulrc.go.ug/laws-of-uganda/24?title=VOLUME%20I>
- Crocker, O. J. (2022). *The Separability Thesis: A Comparison Between Natural Law and Legal Positivism*. <https://philpapers.org/archive/CROTST-4.pdf>
- Di Luca, J. (2005). Expedient McJustice or Principled Alternative Dispute Resolution? A Review of Plea Bargaining in Canada. *Criminal Law Quarterly*, 50, 14-66.
- Easterbrook, F. H. (1983). Criminal Procedure as a Market System. *The Journal of Legal*

- Studies*, 12, 289-332. <https://doi.org/10.1086/467725>
- Easterbrook, F. H. (1992). Plea Bargaining as Compromise. *The Yale Law Journal*, 101, 1969-1978. <https://doi.org/10.2307/796953>
- Elubu, M. (2020). JA5 (n2), (Judge) HCT Circuits, Kabale and Jinja (Host). (2020, April 29), [Interview Transcript, Personal Communication].
- Fisher, R., Ury, W. L., & Patton, B. (2011). *Getting to Yes: Negotiating Agreement without Giving*. Penguin Publishing Group.
- Garner, B. A. (2009). *Black's Law Dictionary Standard* (9th ed.). West Group.
- Green, T. S., Ward, J. D., & Arcuri, A. (1975). Plea Bargaining: Fairness and Inadequacy of Representation. *Columbia Human Rights Law Review*, 7, 495-527.
- Grossman, G. M., & Katz, M. L. (1983). Plea Bargaining and Social Welfare. *The American Economic Review*, 73, 749-757. <http://www.jstor.org/stable/1816572>
- Hart, H. L. A., & Green, L. (2012). *The Concept of Law. Clarendon Law Series* (3rd ed.). Oxford University Press.
- Jones, D. A. (1978). Negotiation, Ratification, and Rescission of the Guilty Plea Agreement: A Contractual Analysis and Typology. *Duquesne Law Review*, 17, 591-632. <https://dsc.duq.edu/dlr/vol17/iss3/3>
- Jung, H. (1997). Plea Bargaining and Its Repercussions on the Theory of Criminal Procedure. *European Journal of Crime, Criminal Law and Criminal Justice*, 5, 112-122. <https://doi.org/10.1163/157181797x00464>
- Keitirima, J. E. (2019). (Judge). Kampala, HCT Land Division (Host). (2019, March 03), [Interview Transcript, Personal Communication].
- Kuunya, H. (2019). JASB2(n5), (Advocate) Lecturer, Law Development Centre (LDC), Kampala, Makerere (Host). (2019, March 13), [Interview Transcript, Personal Communication].
- Kyobika, W. (2021). JAAC1(n8), (Magistrate) Judicial Training Institute Research Unit (Host). (2021, February 01) [Interview Transcript, Personal Communication].
- Landes, W. M. (1971). An Economic Analysis of the Courts. *The Journal of Law and Economics*, 14, 61-107. <https://doi.org/10.1086/466704>
- Lubaale, E. C. (2016). The Advent of Plea Bargaining in Uganda: Is Uganda's Criminal Justice System Cognizant of What It Is Up Against? *East African Journal of Peace and Human Rights*, 22, 136-173.
- Mbazira, C. (2021). JAAC3(n8). (Legal Academic, Human Rights). Makerere School of Law (Host). (2021, June 15), [Interview Transcript, Personal Communication].
- Merriam-Webster (2024). *Fiduciary Relationship*. <https://www.merriam-webster.com/legal/fiduciary%20relationship>
- Meyer, J. F. (2024). *Plea Bargaining*. Encyclopedia Britannica. <https://www.britannica.com/topic/plea-bargaining>
- Morauta, J. (2004). Three Separation Theses. *Law and Philosophy*, 23, 111-135.
- Nakibuule, G. K. (2017). *The Impact of Plea Bargaining on the Criminal Justice Delivery: A Case Study of the Uganda High Court Criminal Trials*. AuthorHouse.
- Nakibuule, G. K. (2023). *An Accused's Self-Incrimination to End Trial? Plea Bargaining and the Right to a Fair Hearing in Uganda*. Master's Thesis, Makerere University. <http://hdl.handle.net/10570/13013>
- Nakigudde, M. (2019). JASA1(n4). (Senior State Attorney, ODPP National Coordinator in charge Plea Bargaining) ODPP Headquarters (Host). (2019, August 6), [Interview Transcript, Personal Communication].

- Namaweje, S. E. (2021). JASB4(n5)., (Advocate) ULS, Kampala (Host). (2021, August 24), [Interview Transcript, Personal Communication].
- Namubiru, S. M. (2022). JACSO2 (n11)., (Chief Executive Officer) LASPNET Mengo, Kampala (Host). (2022, March 08), [Interview Transcript, Personal Communication].
- Ninsiima, M. (2019). JAP4 (n6). (Senior Superintendent of Prisons (SSP)). Lira Main Prison (Host). (2019, November 17), [Interview Transcript, Personal Communication].
- ODPP Plea Bargain Guidelines (2021). *Office of the Director of Public Prosecution (ODPP) (unpublished)*.
- Oyugi, Q. (2019). JASB3 (n5)., (Advocate) ULS Lira (Host). (2019, September 01), [Interview Transcript, Personal Communication].
- Persaud, S. N. (2009). Conceptualizations of Legalese in the Course of Due Process, from Arrest to Plea Bargain: The Perspectives of Disadvantaged Offenders. *North Carolina Central Law Review*, 31, 107-149. <https://archives.law.nccu.edu/ncclr/vol31/iss2/2>
- Rugadiya, A. (2020). (Retired), JAJ7(n2). (Resident Judge) HCT Circuit, Masindi (Host). (2020, May 09), [Interview Transcript, Personal Communication].
- Russell, J., & Hollander, N. (2017). The Disappearing Trial: The Global Spread of Incentives to Encourage Suspects to Waive Their Right to a Trial and Plead Guilty. *New Journal of European Criminal Law*, 8, 309-322. <https://doi.org/10.1177/2032284417722281>
- Ruttenburg, E. A. (1979). Plea Bargaining Analytically-The Nash Solution to the Landes Model. *The American Journal of Criminal Law*, 7, 323-353.
- Scott, R. E., & Stuntz, W. J. (1992). Plea Bargaining as Contract. *The Yale Law Journal*, 101, 1909-1968. <https://doi.org/10.2307/796952>
- Shapiro, S. J. (2011). *Legality*. Harvard University Press. <https://doi.org/10.2307/j.ctvjnrds5>
- Taylor, J. R. (2011). Restoring the Bargain: Examining Post-Plea Sentence Enhancement as an Unconscionable Violation of Contract Law. *California Western Law Review*, 48, 129-173. <https://scholarlycommons.law.cwsl.edu/cwlr/vol48/iss1/4>
- The Law Reform Commission (1985). *Report on Minors' Contracts. LRC 15-1985. The Law Reform Commission 1985*. <https://www.lawreform.ie/fileupload/Reports/rMinorsContracts.htm>
- Turner, J. I. (2017). Plea Bargaining. In E. Luna (Ed.), *4. Reforming Criminal Justice. A Report by the Academy for Justice* (pp. 73-100). Arizona State University. https://law.asu.edu/sites/default/files/pdf/academy_for_justice/4_Reforming-Criminal-Justice_Vol_3_Plea-Bargaining.pdf
- Tyler, T. R. (2007). Does the American Public Accept the Rule of Law? The Findings of Psychological Research on Deference to Authority. *De Paul Law Review*, 56, 661-694. <http://hdl.handle.net/20.500.13051/2409>
- Woodley, M., Adams, J., Atkin, L., Bainbridge, J., Clough, J., Gowland, J., Hewitson, R., Jackson, A., Judd, P., & Wolf, S. (2009). *Osborn's Concise Law Dictionary* (11th ed.). Sweet & Maxwell.