

# Plea Bargain as an Effective Alternative Dispute Resolution Tool in Decongesting Uganda Prisons

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## Abstract

With the increase of population in Uganda, the rate of crime has also increased. This has led to law enforcement agencies arresting suspected criminals and arraigning them before courts of law. The suspected criminals take plea and are either remanded pending bail or sentenced to prisons upon conviction. This has inevitably led to congestion in prisons and thus a strain on the available physical infrastructure for accommodation and resources. The paper seeks to fill a knowledge gap and demonstrate how plea bargain can be exploited as an Alternative Dispute Resolution (ADR) tool to decongest Ugandan prisons. Hence this paper adopts the doctrinal research methodology and notes that the solution to the congestion in prisons is using plea bargain as an ADR tool to decongest prisons. It further explores into the application of plea bargain as an ADR form of decongesting prisons, limitations of applying plea bargain. Finally, the paper concludes by identifying the challenges of plea bargain and recommendations to those challenges.

**Keywords:** Plea Bargain, Alternative Dispute Resolution, decongesting Uganda Prisons

## Introduction

Article 126(2) of the 1995 Constitution of the Republic of Uganda gives court powers to use ADR to promote reconciliation and arbitration as opposed to relying exclusively on formal oppositional litigation. ADR in Uganda may take several forms like compensation, plea bargain, reconciliation, administrative fines among others.

As opposed to the other forms of ADR, this paper uses plea bargain as a tool of ADR to champion the decongestion of prisons in Uganda. Plea bargain has of recent gained notoriety in Uganda's judicial system. The origins of plea bargain in Uganda are attributed to the then Chief Justice Benjamin Odoki who piloted the plea bargain program in 2014. This led to the formulation of the Judicature (Plea Bargain) Rules 2016.

Rule 4 of the rules defines plea bargain as;

“the process between an accused person and the prosecution, in which the accused person agrees to plead guilty in 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 acceptable to the accused subject to approval by Court”.

Plea bargaining involves compromise whereby the accused agrees not to take his or her case to trial and the prosecution agrees to a less severe punishment than the legally prescribed. It is one of the alternative ways of administering justice since not all offences should be prosecuted in courts of law if there is an

opportunity to have them resolved by alternative means. One of the intended roles of plea bargain is to, among others is to decongest prisons.

The same is well echoed under Rule 3 of The Judicature (Plea Bargain) Rules, 2016, the overall objectives of plea bargaining is;

- To enhance the efficiency of the criminal justice system for the orderly, predictable, uniform, consistent and timely resolution of criminal matters;
- To enable the accused and the prosecution in consultation with the victim, to reach an amicable agreement on an appropriate punishment;

**To facilitate reduction in case backlog and prison congestion;**

- To provide quick relief from the anxiety of criminal prosecution;
- To encourage accused persons to own up to their criminal responsibility; and
- To involve the victim in the adjudication process.

There are more than 11.5 million people in prison worldwide on any given day (Justice P. R., 2023). These prisoners include those who have been convicted of the committed offences and those who are awaiting trial. This prison congestion is one of the key contributing factors to poor prison conditions around the world. It is also arguably the biggest single problem facing prison systems and its consequences can at worst be life-threatening at best prevent prisons from fulfilling their proper function (**Reform, 2025**).

In Uganda as of December 2025 the Uganda Prisons reported that the levels of congestion in prison units during the month of August, 2025. 8.9% (24 prison units) were extremely congested with occupancy levels of above 600%. 148 prisons units were very congested, constituting 55.0% of the total prisons units. Only 25 prison units composing 9.3% had congestion levels below 200% (**Service, 2025**). This findings were duly summarized in the table as below (**Service, 2025**).

<i>Summary of congestion levels Category</i>	<b>Occupancy Rate</b>	<b>No. of Stations</b>	<b>Percentage (%)</b>
Extremely Congested	Above 600%	24	8.9
Very Congested	From 301% upto 600%	148	55.0
Fairly Congested	From 200% upto 300%	72	26.8
Not Congested	Below 200%	25	9.3
<b>Total</b>	<b>269</b>		<b>100.0</b>
Prison population August 2025		78,819	
Holding Capacity		22,569	
Overall Occupancy rate		349.2%	

The congestion in prisons was further confirmed in the situational analysis of criminal justice in Uganda as at 31<sup>st</sup> December 2025. It was noted that the judiciary of Uganda has been confronted with challenges that threaten the effectiveness, credibility and sustainability of the criminal justice system. Some of the challenges include; overcrowded prisons, hinged on chronic case backlog and prolonged pre-trial detention (**ADR in the administration of criminal justice , n.d.**).

In supplement, it is argued that congestion is caused in large part by the excessive use of pre-trial detention; approximately half of those detained at any one time are awaiting justice. Congestion is also caused by the imposition of short terms of imprisonment whereby significant number of people, most of whom are

living in poverty, are sentenced to prison for a few weeks or even days for offences such as using abusive language, operating a small business without a valid licence, the possession of illicit ‘liquor’ or simple theft. **(Penal Reform International, n.d.)**.

Congestion if not resolved can lead to spread of diseases, claustrophobic, high emissions and unbearable access to places. Therefore, this research deems plea bargain as an effective ADR tool and solution to this conundrum.

The research in articulating the above notion will use the doctrinal methodology of research to explore into;

- The application of plea bargain as a form in ADR in decongesting prisons in Uganda.
- The limitations in applying plea bargain as a form in ADR in decongesting prisons in Uganda.
- The challenges of plea bargain and recommendations to those challenges.

### **Theoretical Framing**

As opposed to the various philosophical theories like distributive justice, deterrence justice this study adopts the restorative justice theory to support plea bargain as effective ADR tool to decongest Ugandan prisons. This theory is to the effect that the justice system will do better when it facilitates moral reasoning by families over what to do about a crime as an alternative to punishment (such as imprisonment) by the state **(Braithwaite)**.

Restorative justice works similarly to plea bargain by inviting victims and supporters (usually family supporters) of the victim to meet with the offender and the people who care most about the offender and most enjoy the offender’s respect (usually including both the nuclear and extended family, but not limited to them **(Braithwaite)**).

The minimum elements of a restorative justice require a process in which the victims and their offender(s) meet face-to-face and that they come to some understanding, which constitutes the outcome that they have determined, currently it is primarily through plea bargaining **(Kanyamunyu Mathew Muyogoma Versus Uganda, 2020)**.

Equally, the above is enunciated under regulation 11 of Judicature (Plea Bargain) Rules 2016 that provides for the interest of victims, complainant and community to be taken into consideration when entering into plea bargain agreements.

Plea bargain offenders experience more remorse and more forgiveness than court offenders who await a full trial. They are repentant and tend to have learnt from the process that there are people who care about them and wish to see them reform from their wrong ways.

Plea bargain also as a form of restorative justice washes away the shame from the offender. If not mitigated shame can be a destructive emotion because it can lead one to attack others, attack self, avoid or withdraw **(Braithwaite)**.

Plea bargain therefore plays a restorative function by ensuring that the offender desists from committing any crime and therefore avoiding prison and limiting prison congestion.

### **Methods of the Study**

This a qualitative research conducted under the doctrinal methodology. The primary sources of data include statutes such as the 1995 Constitution of Uganda and the Judicature (Plea Bargain) Rules 2016. Books, journals, articles such as ADR in the Administration of Criminal Justice and caselaw such as the notorious case of Kanyamunyu Mathew Muyogoma Versus Uganda, 2020 inter-alia.

This research relies heavily on doctrinal research to provide a front a practical and viable solution to the problem of congestion in Ugandan prisons. This research further uses the primary sources of data to advocate for the use of plea bargain as an ADR tool in decongesting prisons in Uganda. This is done through the systematic analysis and examination of the research questions. That later transcends into the analysis of the data collected to reach a convincing conclusion and recommendations.

### Findings of the Study:

#### 1.1. The Application Of Plea Bargain As An ADR Tool In Decongesting Prisons In Uganda.

The application of plea bargain is either by charge/count bargain or by sentence bargain.

Whereby, charge/count bargaining is a method where prosecutors agree to drop some charges or reduce a charge to a less serious offence in exchange for a plea by the accused (**Kanyamunyu Mathew Muyogoma Versus Uganda, 2020**). The charge bargain is deduced when the accused pleads for a lesser offence.

Whereas, sentence bargaining is a method of plea bargain in which the prosecutor agrees to recommend a lighter sentence for specific charges if the accused pleads guilty or no contest to them (**Kanyamunyu Mathew Muyogoma Versus Uganda, 2020**).

Plea bargain takes the format of a plea bargain agreement. This is simply an agreement entered into between the prosecution and an accused person regarding a charge or sentence against the accused. Rule 4 of the Judicature (Plea Bargain) Rules, 2016.

The form of the plea agreement is prescribed under Rule 9, schedule 1 of The Judicature (Plea Bargain) Rules, 2016. This form among others comprises of the rights of the accused to an advocate or the right to waiver those rights, case summary, aggravating factors and mitigating factors.

However, it was emphasized that for an agreement to plead guilty to be valid, the accused must

- accept the plea bargain in full awareness of the facts of the case;
- accept the plea bargain with full awareness of the legal consequences; and
- accept the plea bargain in a genuinely voluntary manner (**Kanyamunyu Mathew Muyogoma Versus Uganda, 2020**).

By applying sentence bargaining we see the convict's sentence lengths reducing as opposed to the convict getting the maximum penalty thus alleviating prison overcrowding and decongesting prisons. This can be illustrated by A(convict) entering into plea bargain with B(state) after judgement has been delivered but A has not yet been sentenced. Therefore plea bargain allows A and B to enter into a plea bargain agreement for a lesser sentence.

Plea bargain is flexible in its application and be adopted at any time of the criminal proceedings. The court is obliged under the rules to embrace plea bargain any time before sentence when either party before it expresses interest in the process unless it is intended to pervert the cause of justice (**Kanyamunyu Mathew Muyogoma Versus Uganda, 2020**).

This flexibility allows the accused who is in fear of prison or has overstayed on remand to apply for plea at any stage of trial for a lesser sentence or fine. Once the plea agreement is adopted by court, there will be one less convict going to prison if a fine or non-custodial sentence has been adopted thus decongesting prisons.

To buttress the above assumption court noted that: "...ideally plea bargain should be at the time of plea taking to enable the state, the accused and defence counsel agree on amending the charge sheet or indictment where necessary with a view of dropping some counts if they are multiple, reducing the charge

to a minor cognate offence, using accused as state witness or taking responsibility of the criminal conduct early enough etc...” (Lwanga Suleman Alias Katongole v. Uganda, 2019)

Additionally, plea bargain allows increased convictions that might result into either fines or lesser sentencing which in plays a pivotal role in alleviating prison overcrowding. This is because plea bargains present a process where such factual and legal issues are resolved through a process of negotiation and inquisitorial proof, resulting in a counseled guilty plea, that is both voluntary and intelligent, which is an admission of factual guilt. (Kanyamunyu Mathew Muyogoma Versus Uganda, 2020)

Plea bargain fosters restorative justice because it plea bargain involves the court, interests of the victims, complainant and community. We thus see the accused being given an opportunity to unit with their families and communities, ensuring continuation of work, and freed from the would have been traumatizing experience of detention and one way or there other reducing overcrowding in prisons.

Plea bargain allows the accused and the state to enter into an agreement for a non-custodial sentence like community service therefore playing a role in decongesting prisons.

### **1.2.The Limitations In Applying Plea Bargain As A Tool Of ADR In Decongesting Prisons In Uganda.**

Plea bargain is said to derogate the right to fair hearing as enunciated under Article 28 of the Constitution of Uganda 1995. Although the objectives of plea bargaining envisage the right of the accused to a speedy trial but on the alternative, there is a growing concern as to whether the accused enters into a plea bargain and pleads guilty to the charged offence voluntarily and more so without a fact-finding or an opportunity to be heard on record.

In addition, under plea bargaining, an innocent accused person may rationally prefer a specified lenient sentence to the risk of a much harsher sentence resulting from a wrongful conviction ( (Kinsley, December 16, 2002).

It has also been argued that, plea bargaining is akin to torture and that both methods evolved for the sole purpose of eliciting confessions (Kinsley, December 16, 2002).

Plea bargain has also been criticized for undermining the ability to fairly and consistently punish the deserving. By effectively allowing guilty parties to bid for sentences, plea bargaining creates inconsistency in the punishment accorded to parties guilty of the same crime (Easterbrook, 1969(1992)).

Plea bargain has also been criticized for creating grave implications for the justness of the criminal justice system since in many cases the success of the negotiation may depend upon personal attributes or financial resources which further creates tremendous potential for systemic socio-demographic discrimination (Alschuler, 1981).

Plea bargains are derided as making a mockery of the criminal justice system stemming from lenient deals being offered to some defendants (Reilly, 12-2018). This is based on the fear that plea bargains are used by the State Prosecutors as a way of making money off the accused in exchange for a lesser sentence or drop of a charge.

However, the said limitations need not limit the application of plea bargain in playing a pivotal role in decongesting prisons. This is because the limitations can be cured by Rule 13 of the Judicature (Plea Bargain) Rules 2016 that gives court the discretion to reject the plea bargain agreement.

In supplement to the above, also Rule 14 of the Judicature (Plea Bargain) Rules 2016 allows the parties to withdraw from the plea bargain agreement. Therefore giving parties leeway as to whether to accept the plea bargain or not.

### 1.3. The Challenges In Applying Plea Bargain As A Form Of ADR In Decongesting Prisons In Uganda.

Limited awareness is one of the challenges that is exhibited in plea bargain. This is because many accused persons are unaware of plea bargaining or its benefits.

Inadequate legal representation especially where the person is a pauper. Though Article 28(e) of the 1995 Constitution of Uganda allows cases of any offence, which carries a sentence of death or imprisonment for life, be entitled to legal representation at the expense of the State, in other offences most accused are left with no legal representation. We note that limited access to quality legal representation can hinder the effectiveness of plea bargaining and deter its use.

## CONCLUSION AND RECOMMENDATIONS

### Conclusion

This paper has evidently shown that plea bargain is an essential tool that will greatly contribute to decongestion of prisons in Uganda. The judiciary Uganda's has adopted ADR mechanisms including plea bargaining to reduce case backlog, congestion in prisons and generally ensure effective and efficient administration of justice.

### Recommendations

1. Encouraging courts to adopt plea bargain as an effective alternative dispute resolution to create awareness as well as its objectives like decongesting prisons.
2. Training and sensitization by providing training and sensitization programs for judges, prosecutors, and defense lawyers on plea bargaining best practices. This will help to cure the limitations assumed by plea bargain.
3. It is encouraged that newly-appointed magistrates and judges and other relevant courts and tribunals need to receive training on alternative sentences. There is also a need for continuous training which involves magistrates visiting community service sites and sharing experiences and best practices. Training and sensitization on community service needs to be integrated in the training curriculum for key stakeholder departments and all the other stakeholders are encouraged to integrate it in their programmes (**Penal Reform International, n.d.**).
4. Public awareness campaigns: Launch public awareness campaigns to educate accused persons and the general public about plea bargaining and also involving key stake holders like prisons to enlighten them on plea bargain as an important aspect in the criminal justice system.
5. In relation to the above, the public and media should be encouraged to propose work that offenders should do and be made aware of the work completed by offenders through open days, forums and the use of local radio. The value of such work should be calculated and disseminated (**Penal Reform International, n.d.**).
6. Strengthen legal aid Strengthen legal aid services to ensure quality representation for indigent accused persons.

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