

THE PLEA NEGOTIATIONS AND AGREEMENTS BILL, 2010

MEMORANDUM

The objects of this Bill are to provide for—

- (a) the introduction and implementation of plea negotiations and plea agreements in the criminal justice system; and
- (b) matters connected with, or incidental to, the foregoing.

A. J. SHONGA, JNR,
Solicitor-General

N.A.B. 11, 2010
17th February, 2010

THE PLEA NEGOTIATIONS AND AGREEMENTS BILL, 2010

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A BILL

ENTITLED

An Act to provide for the introduction and implementation of plea negotiations and plea agreements in the criminal justice system and for matters connected with, or incidental to, the foregoing.

ENACTED by the Parliament of Zambia

Enacted

PART I

PRELIMINARY

1. This Act may be cited as the Plea Negotiations and Agreements Act, 2010, and shall come into operation on such date as the Minister may, by statutory instrument, appoint.

Short title and commencement

2. In this Act, unless the context otherwise requires —

Interpretation

“court” means a High Court or a subordinate court;

“legal practitioner” has the meaning assigned to it in the Legal Practitioners act;

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Cap. 30

“plea agreement” means an agreement made pursuant to section *four*;

“plea negotiation” means any negotiation carried out between an accused person or the accused person’s legal representative, and a public prosecutor in relation to the accused person pleading guilty to a lesser offence than the offence charged in return for any concession or benefit in relation to which charges are to be proceeded with;

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“public prosecutor” has the meaning assigned to it in the Criminal Procedure Code; and

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“victim” in relation to an offence, means a person who has suffered actual physical bodily harm, loss of any kind, mental illness or mental shock as a direct result of an act or omission involved in the offence.

Cap. 88

- Declaration of certain existing rights
Cap. 1
3. (1) Nothing in this Act affects the right of an accused person to plead guilty to a charge without entering into any plea negotiation or a plea agreement.
- (2) Except as expressly agreed by a public prosecutor in a plea agreement, nothing in this Act affects the powers conferred upon the public prosecutor under the Constitution or any other written law.

PART II

PLEA NEGOTIATIONS

- Plea negotiation
4. (1) Subject to section six, where a public prosecutor considers it desirable in any case, or where the circumstances of the case so warrant, the public prosecutor may, at any time before judgment and in accordance with the provisions of this Act, enter into a plea negotiation with the accused person for the purpose of reaching an agreement in accordance with the provisions of subsection (3), for the disposition of any charge against the accused person.
- (2) An accused person may, at any time before judgment and in accordance with the provisions of this Act, enter into a plea negotiation with a public prosecutor for the purpose of reaching an agreement in accordance with the provisions of subsection (3), for the disposition of any charge against the accused person.
- (3) An agreement under subsection (1) shall require that—
- (a) the accused person undertakes to—
- (i) enter a guilty plea to an offence which is disclosed on the facts on which the charge against the accused person is based; and
 - (ii) fulfil the accused person's other obligations specified in the agreement; and
- (b) a public prosecutor, having regard to the accused person's undertaking under paragraph (a) agrees to—
- (i) take a course of action consistent with the exercise of the powers specified in section *five*; and
 - (ii) fulfil the other obligations of the State specified in the agreement.

- Exercise by public prosecutor of certain powers
5. The powers of a public prosecutor referred to in subparagraph (i) of paragraph (b) of subsection (3) of section *four* are to—

(a) withdraw or discontinue the original charge against the accused person; or

(b) accept the plea of the accused person to a lesser offence, whether originally included or not, than that charged.

5 **6.** (1) Notwithstanding any other provision to the contrary in any other law, a public prosecutor shall, before commencing any plea negotiation, inform the accused person of the accused person's right to representation by a legal practitioner of the accused person's choice and of the right to apply for legal aid in respect of the negotiations.

Legal
representation

10 (2) Plea negotiations shall be held by a public prosecutor with the accused person only through the accused person's legal representative.

PART III

15 PLEA AGREEMENTS

7. A plea agreement that is brought before a court shall —

Plea
agreement

(a) be in writing;

(b) contain the information set out in the Schedule; and

20 (c) be signed by a public prosecutor, the accused person and the accused person's legal representative in each other's presence.

8. (1) Subject to section *seventeen*, where a plea agreement is concluded, a public prosecutor shall, where applicable, and unless otherwise required by compelling reasons in the interest of justice, as soon as is reasonably practicable, inform the victim -

Victim to be
informed of
plea
agreement

25 (a) of the substance of, and reasons for, the plea agreement; and

(b) that the victim is entitled to be present when the court considers the plea agreement.

30 (2) Where the victim has died or is incapacitated, a public prosecutor shall communicate with a member of the victim's immediate family or authorised representative in respect of the matters set out in subsection (1).

35 **9.** (1) A prosecutor shall in open court or on showing of good cause in chambers -

Public
prosecutor
to notify
court of
existence of
plea
agreement

(a) before the accused person is required to plead; or

(b) at any time after arraignment;

inform the court, as the case may be, of the existence of a plea agreement.

(2) The court may, where the circumstances appear to so require, question the accused person in order to confirm the accused person's knowledge of the existence of a plea agreement.

Court not bound by plea agreement

10. A court shall not be bound to accept any plea agreement except where the non-acceptance would be contrary to the interests of justice and public interest. 5

Matters for consideration of court before accepting plea agreement

11. A court shall, before accepting a plea agreement, make a determination in open court that -

(a) no inducement was offered to the accused person to encourage the accused person to enter into the plea agreement; 10

(b) the accused person understands the nature, substance and consequence of the plea agreement;

(c) there is a factual basis upon which the plea agreement has been made; and 15

(d) acceptance of the plea agreement would not be contrary to the interests of justice and public interest.

Refusal by court to accept plea agreement

12. (1) Subsection (2) shall apply where, upon a determination of the matters referred to in section *eleven*, the court decides that —

(a) acceptance of the plea agreement would be contrary to the interests of justice and public interest; 20

(b) the offence for which the accused person is charged is not disclosed on the facts; or

(c) there is no confirmation by the accused person of the agreement or the admission contained in the agreement. 25

(2) The court shall, in the circumstances described in subsection (1) —

(a) refuse to accept the plea agreement;

(b) inform the public prosecutor of the decision and the reasons therefor. 30

(3) The rejection of a plea agreement by a court shall not operate as a bar to the conduct of any subsequent plea negotiation and the conclusion of a subsequent plea agreement in respect of the same case.

(4) The court shall, where it rejects a plea agreement under subsection (2), proceed to try the accused person on the original charge. 35

Effect of accepting plea agreement

13. Where a plea agreement is accepted by a court, the accused person shall be requested to plead to the new charge.

14. Subject to section *seventeen*, where a plea agreement has been accepted by the court, the contents thereof shall be entered on the record.
- Accepted plea agreement to form part of record
15. (1) The court may on its own motion, or upon application by an accused person who entered into a plea agreement, allow the accused person to withdraw from that agreement before sentence, or to appeal against a conviction based on the agreement, if—
- Withdrawal from plea agreement
- (a) the accused person entered into the agreement as a result of an improper inducement;
- (b) the court determines that the public prosecutor has breached the terms of the plea agreement; or
- (c) the accused person entered into the agreement as a result of a misrepresentation or misapprehension as to the substance or consequences of the plea agreement.
- (2)A public prosecutor may withdraw from a plea agreement before sentence where the public prosecutor subsequently discovers—
- (a) that the public prosecutor was in the course of plea negotiations misled by the accused person or by the accused person's legal representative in some material respect; or
- (b) that the accused person was induced to conclude the plea agreement.
16. Evidence of the following matters is not, in any civil or criminal proceedings, admissible against an accused person who entered into an agreement or is a party to any plea negotiations:
- Admissibility of plea agreement, etc.
- (a) a plea of guilty which was later withdrawn or any statement made in the course of any proceedings under this Act regarding the plea of guilty; or
- (b) any statement made in the course of plea negotiations with the public prosecutor which does not result in a plea of guilty or which results in a plea of guilty that is later withdrawn.
17. The court may, upon application, order that the records of any plea negotiation or a plea agreement be sealed, where the court is satisfied that the sealing of the records is in the interests of the effective administration of justice.
- Sealing of records of plea negotiations

Obligation for
secrecy

18. (1) A person exercising any function under this Act shall treat as secret and confidential, all information relating to a plea agreement before it is presented to the court or consequent upon the records thereof being sealed by the court.

(2) Any person referred to in subsection (1) having possession of, or control over, any document, information or record, who communicates or attempts to communicate anything contained in the document or record or any such information to any person otherwise than in accordance with this Act or pursuant to a court order, commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding twelve months, or to both. 5 10

(3) Any person to whom information is communicated in accordance with this Act shall regard and deal with the information as secret and confidential. 15

(4) A person referred to in subsection (3) who at any time communicates or attempts to communicate any information referred to in that subsection to any person otherwise than for the purposes of this Act, commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding twelve months, or to both. 20

Grant of legal
aid

19. Legal aid may be granted to—

(a) any person who is detained at a police station or in a lock up, correctional institution or other similar place; or

(b) an accused person in respect of the conduct of any plea negotiation under section *four*. 25

PART IV

GENERAL PROVISIONS

Regulations

20. (1) The Minister may, by statutory instrument, make regulations generally for the purpose of giving effect to the provisions of this Act. 30

(2) The Minister may, by statutory instrument, amend the Schedule.

SCHEDULE

(Section 7)

CONTENTS OF PLEA AGREEMENT

1. The name and jurisdiction of the court in which the matter is held or to be held.
2. The case number and file number.
3. The name, position, business address, business telephone and facsimile numbers of the public prosecutor.
4. The name, position, business address, business telephone and facsimile numbers of the defence counsel.
5. The proper name and alias, if any, and the last known address of the accused person.
6. The original information or indictment shall be attached to the Agreement.
7. The draft information or indictment shall be attached to the Agreement.
8. The elements of the various offences to which the accused person is pleading shall be set out.
9. A statement of facts may be attached and incorporated by reference. Any document containing any promise, agreement, understanding or inducement which forms part of the Agreement shall be attached to the Agreement.
10. A statement that the accused person was informed of, and has waived, the following rights:
 - (a) the right not to be compelled to give self-incriminating evidence;
 - (b) the right to confront and cross-examine any witnesses against the accused person; and
 - (c) the right to pursue pre-trial motions and appeal preliminary points.
11. A statement that the provisions of the Agreement are not binding on the court.
12. A statement of the rights of the accused person under the Agreement, including the right to persist in a plea of not guilty.
13. The obligations of the accused person under the Agreement.
14. The obligations of the State under the Agreement.
15. A statement that the State is free to prosecute the accused person for any other unlawful past conduct which is not the subject of the Agreement or for which the accused person has not been acquitted or convicted, or any unlawful conduct that occurs after the date of the Agreement.
16. A statement that the Director of Public Prosecutions may, in any case where the Director of Public Prosecutions considers it desirable so to do, discontinue at any stage before judgment is delivered any criminal proceedings instituted or undertaken by the Director of Public Prosecutions or any other person or authority.
17. The grounds upon which an accused person may withdraw from the Agreement.

- 18. Consequences of any breach of the Agreement.
- 19. Provisions relating to a right of appeal.
- 20. A statement that the Agreement applies only to an offence committed by the accused person with which the accused person is charged and has no effect on any proceedings against the accused person not expressly mentioned therein.
- 21. The date on which the Agreement was concluded.
- 22. That the Agreement becomes effective upon signature by the accused person, the accused person's legal counsel and the public prosecutor, before a court.
- 23. The following statement by the accused person:
"I have read this Agreement and carefully discussed each paragraph with my legal counsel. I understand the terms of this Agreement and agree to it without reservation. I voluntarily and of my free will agree to these terms. I am pleading guilty to the following charge (s):
*(a).....
(b)....."

My legal representative has advised me of my rights, of possible defence, of the penalties and the consequences of entering into this Agreement. No promises, agreements, understanding or inducements have been made to me other than those contained in this Agreement. No one has threatened or forced me in any way to enter into this Agreement. I have had sufficient time to confer with my legal counsel concerning this Plea Agreement. I am satisfied with the representation of my legal representative in this matter.

*state as applicable

Signature of accused person

Name of accused person

Date

- 24. The following statement by the legal practitioner representing the accused person:

"I am the legal representative for

Name of accused person

I have read this Agreement and carefully discussed each paragraph of this Agreement with my client. Further, I have fully advised my client of my client's rights, of possible defences, of the penalties, and of the consequences of entering into this Agreement. To the best of my knowledge and belief, my client's decision to enter into this Agreement is an informed and voluntary one.

*Signature of legal practitioner
representing the accused person*

*Name of legal practitioner
representing the accused person*

Date

25. A statement whether the accused person communicated with a prosecutor through an interpreter. If the accused communicated through an interpreter, a certificate by the interpreter as to the accuracy of the interpretation during the negotiations and in respect of the contents of the agreement shall be appended to the Agreement.
26. Such other provision as the Director of Public Prosecutions considers necessary or desirable.
