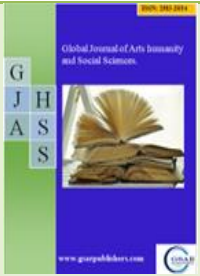


OPEN ACCESS	Global Journal of Arts Humanity and Social Sciences			
	ISSN: 2583-2034			
	Abbreviated key title: Glob.J.Arts.Humanit.Soc.Sci			
	Frequency: Monthly			
Published By GSAR Publishers		Journal Homepage Link: https://gsarpublishers.com/journal-gjahss-home/		
Volume - 4	Issue - 12	Dec 2024	Total pages 1231-1236	

LEGAL CHALLENGE OF PLEA BARGAINING AGREEMENT IN CRIMINAL JUSTICE SYSTEM IN TANZANIA

By

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Abstract

This article examined the challenges of plea bargaining agreement in Tanzania focusing in law that, the law provides the procedures and power of the Director of Public Prosecutions to negotiate with accused persons on charge and count bargaining while prohibiting court to participate. The article guided by legal challenges of plea bargaining agreements. The study reveals that Involuntary as the accused person is coerced and induced on charge and count bargaining by public prosecutor.

Thus this article concludes that plea bargaining agreement do not guarantee fair trial in criminal justice system since unlimited power of the DPP undermined the fairness and lead to potential injustices and abuses of power as the accused individual coerced or pressured to accept plea bargains. Also, the insufficient judicial participation in plea bargaining agreement lead to unfair outcomes as the study recommends on government, parliament, judiciary, Director of Public Prosecution, defense counsel and all stakeholders

Keywords: Plea Bargaining Agreement, Criminal justice System, Legal Framework, Legal Challenge

Article History

Received: 11- 12- 2024
Accepted: 19- 12- 2024
Published: 21- 12- 2024

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INTRODUCTION

Tanzania Parliament recently amended numerous criminal laws, with one notable change being the introduction of plea bargaining whereby this new legal framework, outlined in the Written Laws (Miscellaneous Amendments) Act (No. 4) 2019, allows for an alternative to traditional litigation in criminal cases through the amended Criminal Procedure Act Cap. 20, this Legal update details the introduction of plea bargaining in Tanzania, the procedures involved and its administration, highlighting the potential impact of this reform on the country's criminal justice system. By fostering an environment of compromise and cooperation, plea bargaining agreement seeks to strike a balance between the interests of the accused and the demands of the criminal justice system, promoting fairness and efficiency while safeguarding the rights of all parties involved. This new development represents an important milestone in Tanzania efforts to improve its legal system and promote justice for all, this article is bound to examine legal challenge of plea

bargaining process in Tanzania by focusing with amendment made on the Criminal Procedure Act.ⁱⁱ

Understanding Key Terms of article:

Plea Bargaining Agreement

Plea bargaining agreement is a legal tool that allows the accused and the public prosecutor to reach an agreement outside of the courtroom through this process the accused voluntarily accepts some or all of the charges against them and in return, the prosecution agrees to either drop some charges or request a reduced sentence from the court upon conviction.ⁱⁱⁱ

Plea bargaining offers a unique opportunity for the accused and the prosecution to engage in a flexible and individualized negotiation, considering their respective needs and interests this process take various forms, such as charges bargaining, where the accused pleads guilty to certain charges in exchange for dropped charges, sentence bargaining, where a plea of guilty is exchanged for a lighter sentence and facts bargaining, where the accused provides



useful information or evidence in exchange for a plea deal.^{iv} Through these various negotiations, plea bargaining provides a unique avenue for a more efficient and mutually beneficial resolution to criminal cases.^v Also is an agreement between the prosecutor and the defendant in a criminal case for the accused to plead guilty to a lesser charge or receive a lighter sentence, instead of going to trial.^{vi} In exchange, the prosecutor may drop some of the charges or recommend a more lenient sentence to the judge to allow the accused to avoid the risk of a harsher punishment if they were found guilty at trial.^{vii}

Criminal Justice System

This is the system of law enforcement that is directly involved in apprehending, prosecuting, defending, sentencing and punishing those who are suspected or convicted of criminal offences, it consist of institutions that deal with crime and punishment of criminal offenders, including law enforcement agencies such as Police officers who are responsible for investigating crimes, providing the emergency service and apprehending suspects,¹ The prosecutors who review evidence, decide whether to pursue charges and represent the government in criminal cases,² The adjudication process which include courts reside over criminal trials, hear evidence and make rulings on guilt or innocence and appropriate sentences,³ the correction department which include prison as essential pillars in maintaining public safety, community-based programs, following the criminal trial resulting in conviction and sentencing the offender⁴ and Defense councils who upholding the rule of law within a society.⁵

The system operates on the basis of the rule of law, with a set of procedures and guidelines that are intended to ensure that justice is served in a fair and equitable manner starting from detection of crime, prevention, prosecution and when the offender is convicted, this is attained when the whole segment are followed to ensure fairness has to do with the process, where the guilt of accused charged with an offence is determined by body bounded with that responsibility and when the accused is found guilty appropriate punishment is pronounced by court.⁶ This means the innocent accused is equally determined where necessary at the end of trial and where the accused charged with crime fixed by the court to take his or her plea, tried, sentenced appropriately, discharged and acquitted.⁷

¹ [TERRILL Richard, \(2012\), *World Criminal Justice Systems. A Comparative Survey books*, pp.29-84.](#)

² [McCoy Candace, \(2019\), *Plea Bargaining and Coercion, Indiana Law Journal*, Vol. 94, No.4, pp. 1433-1484.](#)

³ [SIEGEL Larry \(2013\), *The criminal justice system \(4th Ed.\) Upper Saddle River, NJ: Pearson Education Inc*, pp. 8-10.](#)

⁴ [SENNA Joseph et al \(1995\) *Essentials of Criminal Justice*, West Publishing Company, pp. 17.](#)

⁵ <https://www.ojp.gov/ncjrs/virtual-library/abstracts/overview-criminal-justice-system> accessed on June, 2024.

⁶ [JAMES Inciadi, \(2005\), *Criminal justice \(7th Ed\) with Powe Web*, pp. 9.](#)

⁷ [TOMONO Tomohide, \(1993\), *Policy Nigeria, Present and Future*, Lagos Nigeria Malthouse Press Ltd.](#)

1.2 LEGAL FRAMEWORK

Plea bargaining agreements in Tanzania is governed by a legal framework that aims to balance the rights of accused with the need to ensure fair trial in criminal justice for victims and the community as authorized under the Criminal Procedure Act and with rules, which provides guidelines for the negotiation and acceptance of agreements. The article examine the Constitution of United Republic of Tanzania of 1977, the Criminal Procedure Act of 2022, Penal Code of 2022 and the Evidence Act of 2022 as discussed here under.

1.2.1 The Constitution of United Republic of Tanzania of 1977

The Constitution came into force in 1977 and was named as the permanent constitution of united Republic of Tanzania as the mother law of country.^{viii} The Constitution has been amended several times, the most notable amendment was 1984 whereby the Bill of Rights was incorporated, substantive and procedural rights of citizens was incorporated as per those rights enshrined in the constitution are always required to be respected.

The law affirms the fundamental principle of equal before the law,^{ix} by ensuring court and other agencies determine the rights and duties of individuals be entitled to a fair hearing and they should have the right to appeal or seek other legal remedies in case of an unfavorable decision by the court or the other agency concerned.^x Similarly to ensure justices is prevail, the Act emphasis the principle of presumption of innocence as the fundamental right under the law by ensuring that no person charged with a criminal offence considered guilty until proven so in a court of law.^{xi}

Moreover the Constitution endows the Director of Public Prosecutions (DPP) with the authority to institute, prosecute and supervise all criminal cases within the country whereby DPP may exercise these powers personally or through subordinate officers under his or her supervision as is required to act independently, free from external interference and in accordance with principles of dispensing justice,^{xii} preventing the abuse of legal procedures and safeguarding the public interest, in exercise of these powers is subjected to the relevant laws enacted by the Parliament of Tanzania ensuring that the DPP's authority is exercised within the bounds of the law.^{xiii}

Furthermore the Act provides the authority for dispensing justice to the Judiciary which is tasked with applying certain principles when making decisions in cases include ensuring impartiality, fairness for all individuals regardless of their social or economic status and accelerate the process of justice without unreasonable delays, awarding reasonable compensation to victims of wrongdoing and encouraging the resolution of disputes between involved parties.^{xiv} In the same way judiciary is granted the autonomy and freedom to exercise its power in the dispensation of justice as long as they strictly adhere to the provisions of the Constitution and the laws of the land.^{xv} Hence this article look for the challenge of plea bargaining agreement through regarding to these provisions of Constitution of United Republic of Tanzania.



1.2.2 The Criminal Procedure Act of 1985

This is an Act which provide for the procedure to be followed in the investigation of crimes and the conduct of criminal trials and for other related matters.^{xvi} In 2019 The Parliament of Tanzania amended The Criminal Procedure Act⁸ through Written Laws (Miscellaneous Amendments) Act^{xvii} by introducing Plea bargaining agreement between the prosecutor and accused person in some offences.^{xviii}

The Act provides the denotation of plea bargaining agreement as an agreement entered between prosecutors and the accused in a criminal trial in exchange of plead guilty and accused is being reduced or withdrawn of other count of the offence.^{xix} Also, the Act under section 194H,^{xx} empower Chief Justice to make the rules which give the direction for the better carrying out the plea bargaining agreement.^{xxi}

The law provides that a public prosecutor may enter into a plea bargaining agreement with an accused person or their representative such as an advocate, relative, friend, or any other person legally competent to represent the accused and the prosecutor may consult the victim or investigator where circumstances allow for plea bargaining agreements before judgment is passed.^{xxii} The process for initiating a plea bargaining agreement involves either the accused person or public prosecutor to notifying the court of their intention to negotiate a plea agreement,^{xxiii} at the same time court is not permitted to participate in the negotiations between the public prosecutor and the accused.^{xxiv} The requirement of the law is the accused individual to plead guilty to the original charge, a lesser charge, or a particular count or counts in a multi-count charge, in exchange for the withdrawal of other counts and the accused may be ordered to pay compensation, make restitution, or be subjected to forfeiture of the proceeds and instrumentalities that were used to commit the crime in question.^{xxv}

The Act outlines specific requirements for plea agreements that they must be in writing, witnessed by an advocate or other representative of the accused as accepted and signed by the prosecutor and the accused or their representative also such agreement must be fully explained and understood by the accused in language that they understand.^{xxvi} Once a plea agreement has been entered into between the accused and the prosecutor, it must be registered by the court at the same time court will verify the agreement was obtained voluntarily,^{xxvii} before the court records a plea agreement, the accused must take an oath and be informed of their rights in a language they understand, then the court will explain to the accused that by accepting the plea agreement, they are waiving their right to a full trial and the right to appeal, except in certain limited circumstances.^{xxviii} Moreover the court may then accept or reject the agreement based on its assessment of the evidence and the circumstances of the case,^{xxix} likewise if the agreement is accepted, it will become binding on both parties and will become part of the court record,^{xxx} then court will proceed to

convict the accused and sentence them in accordance with the terms of the agreement.^{xxxi}

Furthermore the law provides power to the Director of Public Prosecutions or an accused person to apply to the court that passed the sentence to have a conviction or sentence set aside on the grounds of fraud or misrepresentation if it was obtained as part of a plea agreement,^{xxxii} this is to ensure that the rights of the accused are protected and the integrity of the criminal justice system is maintained.

1.2.3 The Evidence Act R.E 2022

The Act was enacted in 1967 by the parliament and came into force immediately after the minister issued the notice in the National Gazette,^{xxxiii} the Act applies to all judicial proceedings before the High Court and all magistrates' courts,^{xxxiv} by dealing with alleged matter of fact, the truth of which is submitted for investigation. The objective is to ensure that evidence is presented in a fair and impartial manner that the rights of both parties are respected in legal proceedings.^{xxxv}

The Act provides that confessions made by an accused person to a police officer may be used as evidence against them in court if it was made voluntarily and will be considered involuntary if it was obtained through threats, promises or any other form of coercion by the police or any other person in authority.^{xxxvi} Also the confessions made voluntarily to a magistrate or a justice of the peace immediate presence of that person may be used as evidence against the accused in court as the presence of a magistrate or justice of the peace serves to ensure the confession is made in a fair and unbiased environment while meets the legal requirements for admissibility in court.^{xxxvii} Also at the same time a confession made by an accused person may not be rejected as evidence simply because a promise or a threat was made to them, unless the court determines that the promise or threat was likely to cause an untrue admission of guilt, and the provision requires the court to consider the circumstances under which the promise or threat was made for the purpose to assess its potential impact on the truthfulness of the confession for ensuring the truth is revealed in criminal proceedings.^{xxxviii}

Furthermore the law provides on the issue of burden of proof in criminal law it means the person who asserts the existence of a fact, or who desires a court to give judgement based on that fact, must prove that the fact exists as the burden of proof lies on the person who is bound to prove the existence of the fact, in other words, the prosecution has the burden of proving that the accused committed the crime, while the accused has the burden of proving any defense that they may raise.^{xxxix} Also if the claimant fails to meet the burden of proof, their claim will not be successful this is to ensure that the court's decision is based on facts and evidence, rather than speculation or unsupported claims.

1.3 LEGAL CHALLENGE IN PLEA BARGAINING AGREEMENT

The introduction of plea bargaining agreement in the Tanzanian criminal justice system represents a significant departure from the

traditional litigation process, offering an alternative approach to resolving criminal cases yet, with this shift comes with a number of legal challenges; First, significant challenges associated with trial waver systems in Tanzania is the risk of abuse of power by prosecutors, which undermine the fairness of the legal system. In plea bargaining negotiations, prosecutors enjoy significant leverage, giving them the ability to exert undue influence on suspects.^{xi} This imbalance of power can result in innocent individuals being coerced into accepting plea deals or suspects being pressured into accepting a deal without fully understanding the implications.^{xii} The potential for misuse of power in these negotiations highlights the importance of establishing clear guidelines and oversight mechanisms to safeguard against injustice and abuse.

Secondly, plea bargaining potentially lead to coercion of accused persons, particularly if prosecutors agreed to reduce charge and with draws other count,^{xiii} or law enforcement officials use undue influence or pressure to obtain guilty pleas, this take various forms, including exaggerating the strength of the evidence against suspects, threatening harsher penalties if the case goes to trial, or using intimidation or threats to coerce suspects into accepting plea deals. Such coercion can undermine the due process rights of accused persons and lead to wrongful convictions and violations of human rights.^{xiii}

Third, in plea bargaining practice prohibiting court from participation,^{xiv} this reduce the role influence of magistrates and judges be significantly reduced, as much of the negotiation and decision-making occurs between the accused and the prosecution outside of the courtroom, as this result reduced role for judges in determining the outcome of cases and in ensuring that justice is served. Some argue that plea bargaining, while efficient, may lead to a decrease in judicial oversight and accountability, as well as a reduced opportunity for defendants to challenge evidence or raise legal defenses.^{xlv}

Fourth, plea bargaining carries the significant risk of false confessions and wrongful convictions.^{xlvi} Accused persons may plead guilty to crimes they did not commit due to a variety of factors, including coercion by law enforcement officials or prosecutors, or a lack of knowledge about their legal rights and options. This can result in innocent individuals being convicted and punished for crimes they did not commit, undermining the principles of justice and fairness in the legal system.^{xlvii} This risk is particularly concerning given the potentially lifelong consequences of a criminal conviction, including the loss of liberty, civil rights, and economic opportunities.

Fifth, court discretions as the court as mandated functions of dispensing justice and ensure fair trial is adhered, required by law to pronounce a decision based on plea bargaining agreement and make orders as it deems necessary including an order to reject the plea agreement for sufficient reasons.^{xlviii} Though the court are prohibited from participation, sometime courts are non-compliance with Plea bargaining agreement entered between public prosecutor and accused person the study revealed that where the court is seen

to charge the parties of plea bargaining agreement, particularly charging sentence of an accused parson and compensation awarded by prosecutor during plea guilt, the court as independence body some time may ignore the agreement of the part and in ensuring justices to all part of the case. Hence, changing terms and conditions agreed by the parties violate the provisions of the law and it is against the doctrine of sanctity of the agreement as discussed in the Case of Director of Public Prosecutions v. Hamis Mustapha Mwinyimvua and Another (Supra) and in the Case of Vietel Tanzania PLC v. Republic,^{xlix} also in the Case of Denise Cindy-Lee Jansen & Another v The State,^l therefore, with deep consideration of these cases, it is crystal clear that there has been the tendency of the court to interfere plea agreements entered between the parties thereto in which this should not be entertained in order to let the parties to enforce what has been agreed during negotiations. Therefore, in consideration of the cases above, it is clear that there has been the tendency of the court to interfere plea bargaining agreement agreements entered between the parties thereto in which this should not be entertained because is seem as contradicting the plea agreement among the part. The finding show that judge has unfettered discretion in both the negotiation process and sentencing, in that it is the judge who first sets their own expected minimum sentence that the court would grant in terms of years of imprisonment and both attorneys cannot negotiate for the final sentence below this set minimum period. While the judge, being the head of the court, is expected to make a decision, this unfettered discretion not only raises a concern as to whether the sentencing judge should be involved in the plea bargain negotiations at all but also obstructs the voluntariness of the accused's plea of guilt. This concern about plea negotiations being conducted behind closed doors without judicial oversight challenges the traditional responsibilities of judges in the fair trial as a result of involuntariness of plea bargaining procedures in the country.

Six, unrepresented accused persons face significant challenges during plea bargaining negotiations. Due to their lack of legal knowledge and experience, they may be more vulnerable to coercion or manipulation by the prosecution, and may be less able to effectively defend themselves or negotiate a favorable deal. This lack of representation can lead to unfair outcomes and contribute to disparities in the criminal justice system, particularly for marginalized or disadvantaged groups who are more likely to be unrepresented.

RCOMEDATION

To the Parliament of Tanzania, As a body entrusted with the responsibility of representing the interests of the Tanzanian people and enacting laws that promote justice and fairness, the study recommend to take the actions to address the challenges associated with trial waver systems, particularly in plea bargaining agreement together with to develop and pass legislation that clearly defines the rules and procedures for plea bargaining negotiations, including requirements for disclosure of evidence, fair treatment of defendants and judicial oversight also to provide for regular reviews and assessments of the plea bargaining process to ensure

that it is achieving its intended purpose and to identify areas for improvement.

To the Government, in the pursuit of fairness in the legal system it is vital that the Government of Tanzania take a proactive approach to address the potential abuses associated with trial waver systems, particularly plea bargaining agreement. By amending existing provisions of plea bargaining agreement section 194A-194G of Criminal Procedure Act Cap 20 R.E 2022 and regulations to reflect these principles and establishing effective oversight mechanisms, the government can promote justice and protect the rights of defendants such actions will ensure the legal system serves as a fair and transparent mechanism for resolving criminal cases, promoting the rule of law and safeguarding the interests of the citizens of Tanzania.

The Public Prosecution of Tanzania plays a serious role in safeguarding the rights of defendants and promoting justice in the criminal justice system. In light of the potential for abuse of power and the challenges associated with limited resources and staffing, it is essential that the Public Prosecution prioritize the development of policies and procedures that promote transparency, accountability and collaboration with other stakeholders. By taking these steps, the Public Prosecution will ensure plea bargaining negotiations serve as a fair and effective means of resolving criminal cases, while protecting the rights and interests of defendants and society as a whole. In additional public prosecution service to address the imbalance of power of Public Prosecution Service should implement measures such as, encouraging the use of neutral third-party mediators in plea bargaining negotiations to help facilitate fair and balanced

discussions, to provide defendants with access to competent legal representation to help ensure that their rights and interests are adequately represented and protected, Prohibiting the use of coercion or intimidation tactics in plea bargaining negotiations, and providing clear guidelines and standards for the conduct of prosecutors and law enforcement officials.

To the Judiciary, to address the potential challenges associated with plea bargaining negotiations, the study recommend the Judiciary take the action to advocate for reforms to the criminal justice system, such as the introduction of sentencing guidelines concerning plea bargaining this is to reduce the incentives for defendants to plead guilty and to increase the likelihood that they will receive fair and appropriate sentences. Also the study recommended the court should establish clear guidelines for conducting plea bargaining negotiations, including a requirement that all parties be afforded an opportunity to present evidence and arguments in support of their respective positions. Also should consider all plea bargaining negotiations are conducted in a formal, designated setting, such as a courtroom or meeting room, to ensure that they are open and transparent.

To Stakeholders the study recommend must educate themselves on the legal rights and protections afforded to accused persons under the law. Also the community and stakeholders should address the lack of awareness about plea bargaining procedures and the fear of involuntary guilt by initiate awareness campaigns to educate members of the community about the procedures of plea bargaining and the rights of accused persons, in order to promote greater understanding in the criminal justice system

ⁱ Fundikila Wazambi, (2022), *Tanzania Human Rights Report, Legal and Human Rights Centre of Criminal Justice Reforms to Safeguard Human Rights*

ⁱⁱ Cap 20 [R.E 2022]

ⁱⁱⁱ Ibid section 3 of Cap 20 [R.E 2022]

^{iv} Bibas, Stephano, (2016), *Plea bargaining in the United States, Issues, controversies, and proposed remedies*. pp. 46.

^v MICHAEL Radelet & ROBERT Pugsley (2013), *Negotiating justice, Plea bargaining, problem-solving, and the right to a jury trial*, pp. 112.

^{vi} FERDICO John, (), *Criminal Procedure For the Criminal Justice Professional*, (8Ed), pp 56.

^{vii} UVIOVO Rosebells, (2019), *An Appraisal of Plea Bargaining agreement in Nigeria Criminal Justice System*, pp.15.

^{viii} *The Constitution of United Republic of Tanzania, 1977 [Cap. R.E 2002] (as amended from time to time)*

^{ix} Ibid Article 13.

^x Ibid Article 13 (6) (a).

^{xi} Ibid Article 13 (6) (b).

^{xii} Ibid Article 59B (2).

^{xiii} Ibid Article 59B (4).

^{xiv} Ibid Article 107A (1) (2).

^{xv} Ibid Article 107B.

^{xvi} Preamble of Cap. 20 [R.E. 2022].

^{xvii} No. 4 2019 (Act No. 11 of 2019).

^{xviii} Section 194A to 194H of Cap 20 [R.E 2022].

^{xix} Ibid section 3 Cap 20 [R.E 2022].

^{xx} Cap 20 [R.E 2022].

^{xxi} Government Notice 180 of 2021.

^{xxii} Ibid section 194(1)A

^{xxiii} Ibid

^{xxiv} Ibid section 194A(2,3)

^{xxv} Ibid section 194B.

^{xxvi} Ibid section 194C.

^{xxvii} Ibid section 194D(2)

^{xxviii} Ibid section 194E.

^{xxix} section 194D(3)

^{xxx} section 194D(4)(a) (b)

^{xxxi} Ibid section 194D (5).

^{xxxii} Ibid section 194G.

^{xxxiii} Section 2 of Cap 6 [R.E 2022].

^{xxxiv} Section 3(1) of the Evidence Act, Cap 6, R.E 2002

^{xxxv} Ibid

^{xxxvi} Ibid section 27.

^{xxxvii} *Ibid* section 28.

^{xxxviii} *Ibid* section 29.

^{xxxix} *Ibid* section 110.

^{xl} Tanzania Human Rights Report, (2020), *Human Rights Protection and the Threat Posed by COVID19 in Tanzania*, pp. 78

^{xli} MILLER Eric, (2005), *the myth of plea bargaining*, *University of Illinois Law Review*, Vol. 4, pp. 1237-1280.

^{xlii} Section 194B of Cap 20[R.E 2022].

^{xliii} *Ibid* Tanzania Human Rights Report, (2020), *Human Rights Protection and the Threat Posed by COVID19 in Tanzania*, pp. 78

^{xliv} Section 194A (3) of Cap 20[R.E 2022].

^{xlv} FREID Marc, (2010), *The ethical dilemma of plea bargaining in criminal law*, *American Bar Association Journal*, Vol. 96, No.9, Pp. 36-42.

^{xlvi} *ibid*

^{xlvii} GARRETT Brandon, (2009), *The problem of false confessions in the post-DNA world*, *New York University Law Review*, Vol. 84, No2, PP. 233-308.

^{xlviii} Section 194D (3) of Cap 20 [R.E 2022].

^{xlix} Criminal Appeal No. 55 of 2021, where the court ordered compensation contrary to the plea bargaining, on appeal the agreed compensation in plea bargaining prevailed.

^l (20043/2014 & 229/14) [2015] ZASCA. 151 (2 October 2015), where the Supreme Court held that, the High Court decided contrary to the agreement in plea bargaining and ordered that the court has no right to sentence different from what was agreed in the plea bargaining.