

**PLEA OF GUILTY AND THE LAW IN TANZANIA: CHALLENGES FACING  
JUDGES AND MAGISTRATES IN CRIMINAL PROCEEDINGS**

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REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS (LLM)**

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**CERTIFICATION**

The undersigned certify that they have read and hereby recommends for acceptance by The Open University of Tanzania a dissertation entitled; **“Plea of Guilty and the Law in Tanzania”** in partial fulfilment of the requirements for the award of Master of Laws (LLM).

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I, **Lila, Shabani Ally**, declare that, the work presented in this dissertation is original. It has never been presented to any other University or Institution. Where other people's works have been used, references have been provided. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfilment of the requirement for the Degree of the Master of Laws (LL.M).

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Signature

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Date

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## **DEDICATION**

This work is dedicated to my fellow judges who are key stakeholders of the judicial system in Tanzania.

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**LIST OF LAWS AND STATUTES**

The Constitution of United Republic of Tanzania, Cap 2 [R.E 2002]

Penal Code [CAP. 16 R.E. 2022]

The Criminal Procedure Act, Cap. 20 R. E. 2019

The magistrates' Court Act, Cap. 11 R. E. 2019

The Evidence Act, Cap 6 R. E. 2019

## **ABSTRACT**

This study provides a comprehensive overview of the topic "Plea of Guilty and the Law in Tanzania" in the context of the legal framework governing plea of guilty in criminal justice system. The study addresses the problem of continued miscarriage of justice resulting from Judges and Magistrates' inappropriate conduct of pleas of guilty proceedings due to procedural irregularities they commit in the conduct of pleas of guilty proceedings. The study employs doctrinal legal research method whereby a critical examination of statutes, case law, and constitution is made and analysis of legal doctrines, principles, rules, and court decisions or precedents related to plea of guilty in criminal proceedings is made. The study has established that in criminal proceedings involving pleas of guilty, there are many mistakes that are made by judges and magistrates. These errors include, but not limited to inaccurate recording of pleas, improper recording of plea of guilty proceedings, insufficiency of narrated facts, inadequate explanation of the rights of the accused and criminal charges. The study has established that all such foregoing erroneous proceedings undermine the reliability and fairness of the overall plea process. The study recommends for a need of enhanced training for legal practitioners which include judges, magistrates, advocates, paralegals to comprehend the overall aspect of plea of guilty recording procedures and its implications in justice delivery. Further, the study recommends for a continued requirement for the prosecution to ensure that the facts they adduce prove the case beyond reasonable doubt within the ambit of the law so as to underscore the significance of a proper conduct of plea of guilty proceedings in Tanzania's legal system.

## CHAPTER ONE

### INTRODUCTION TO PLEA OF GUILTY AND BACKGROUND

#### 1.1 Introduction

#### 1.2 Background to the Plea of Guilty

The plea of guilty holds significant importance in the realm of criminal justice, serving as a fundamental pillar in legal systems worldwide. It represents an acknowledgment of responsibility by the accused person, facilitating a streamlined resolution to criminal cases. By pleading guilty, individuals admit their involvement in the commission of an offense, allowing for expedited judicial proceedings and potentially less sentences. However, the plea of guilty also raises questions and concerns related to its application, potential coercion, and the overall fairness of the criminal justice system.

In Tanzania, as per section 228 of the Criminal Procedure Act<sup>1</sup>, a trial commences by arraignment of an accused person in a court of law, where a specific charge is presented, detailing the nature of the offense allegedly committed and providing sufficient information for the accused to comprehend the accusations. At this stage, the accused possesses the right to either admit the charge by pleading guilty or contest the charge by pleading not guilty. In the event of a guilty plea, the presiding judge or magistrate is required to record the plea and proceed to receive the facts presented by the public prosecutor, which should establish all the essential elements of the charged offense. If the accused admits to the truth of these facts, the presiding judge or magistrate proceeds to convict the accused based on their own guilty plea.

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<sup>1</sup> Criminal Procedure Act [Cap 20 R.E 2022] s.228

However, there are instances where either the trial court refrains from entering a conviction or an appellate court overturns a conviction resulting from a guilty plea. This typically occurs due to concerns regarding the adequacy of the facts presented by the prosecution in proving the charged offence or when there is impropriety in conducting and recording proceedings on plea of guilty by trial judges or magistrates.

Section 229 of the CPA<sup>2</sup> provides an entire procedure on how plea of guilty is to be handled by the court. The section requires that, when the accused person denies the truth of the charge leveled against them, the prosecution side takes the initiative to proceed presenting the evidence and witnesses supporting their case. This stage marks the formal commencement of the prosecution's case and the opportunity for them to present their arguments so as to establish the accused's guilt.

Furthermore, the above section provides the recording requirements during the questioning session. If the accused person makes a plea of guilty, the magistrate or judge, is required to record the response in the same words as stated by the accused. Magistrates are allowed to rephrase the accused's statement in a way which will not affect the core meaning and intention of the statement made. Recording the accused's statement in other words than those stated by an accused, may later exonerate an accused from liability during appeal or appellate courts may order retrial of a convict as is the case with a person who pleaded not guilty even if he pleaded guilty during trial before the lower courts. Adherence to recording procedure ensures transparency, accuracy and a comprehensive record of the proceedings.

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<sup>2</sup> *ibid*

These procedures serve to safeguard the rights of the accused person during the trial when they deny the charge leveled against them.

Ultimately, this research aims to contribute to the existing body of knowledge on criminal justice proceedings in Tanzania by examining the plea of guilty and its implications within the country's legal framework. This study focuses more on plea and plea of guilty recording procedures and proceedings handling. The study is going to disclose errors that are done by magistrates or judges when recording pleas of guilty and when conducting plea proceeding and its legal implications when those pleas are erroneously taken.

## **1.2 Statement of the Research Problem**

The present study aims to investigate the plea and plea of guilty recording procedures and proceedings handling in the context of criminal trials. Specifically, the research seeks to identify and examine potential errors made by magistrates or judges when recording pleas of guilty and conducting plea proceedings. Furthermore, the study aims to shed light on the legal implications that arise when these pleas are erroneously taken. A crucial aspect of the criminal justice system is the accurate and meticulous recording of pleas, particularly when accused persons plead guilty to the charges against them. However, instances of incorrect recording of pleas can occur, potentially leading to significant consequences. When magistrates or judges wrongly record accused persons' plea statements, it can have far-reaching effects on the subsequent legal proceedings and outcomes of the case<sup>3</sup>. One potential implication of incorrectly recorded pleas is that they may form grounds for appeal. If

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<sup>3</sup> Investopedia, "Transposition Error: Definition, Causes, and Consequences", <https://rb.gy/db1xc> accessed July 4, 2023

an accused persons later discover that their pleas were inaccurately recorded, they may challenge the validity of their convictions on own pleas of guilty during the appeal process. In such cases, appellate courts may be compelled to set aside the conviction of the accused and acquit him or order a retrial, as if the accused had never entered a guilty plea.

These errors in plea recording not only undermine the integrity of the criminal justice system but also have broader implications for the accused individuals. Erroneous recording of guilty pleas can lead to unjust convictions, denial of fair trials, and infringement upon the rights of the accused. Such errors may also erode public trust in the legal system and raise questions about its ability to ensure accuracy and fairness in plea proceedings. Therefore, it is imperative to investigate the potential errors in plea recording procedures and the subsequent legal implications they entail. By identifying the common mistakes made during plea proceedings and understanding their consequences, this research aims to contribute to the improvement of plea recording practices. Additionally, this study seeks to highlight the significance of accurate plea recording in upholding the principles of justice, protecting the rights of the accused, and maintaining the overall credibility and effectiveness of the criminal justice system.

### **1.3 Justification or Significance of the Study**

The proposed study on plea of guilty recording procedures and plea proceedings handling holds significant importance for various stakeholders within the criminal justice system. Firstly, the study contributes to legal accuracy and fairness. By examining the errors in plea recording and their implications, the research aims to



ensure that plea of guilty recording and proceedings adhere to established legal standards. Identifying and rectifying these errors helps to guarantee the rights of the accused and maintains the integrity of the criminal justice system.

Secondly, the study emphasizes the protection of the rights of the accused. Erroneously recorded pleas of guilty can have severe consequences for individuals involved in criminal trials. By shed lighting on these errors and their potential impact on subsequent legal proceedings, the study seeks to protect the rights of the accused. It highlights the need for accurate plea recording practices to safeguard against wrongful convictions and ensure that accused are given fair and just treatment. Moreover, the research findings regarding grounds for appeal arising from inaccurately recorded pleas of guilty can have a significant impact on the appellate court system. Understanding the legal implications of such errors can inform the decision-making process of appellate courts, potentially leading to acquittals or orders for retrial. This knowledge contributes to the consistency and reliability of appellate court judgments.

The study also contributes to procedural improvements. Through an examination of current practices and potential errors, the research provides recommendations and guidelines for enhancing plea recording procedures and proceedings handling. These recommendations can be utilized by legal practitioners, judges, magistrates, and policymakers to improve the accuracy and fairness of plea proceedings, ultimately leading to more reliable and just outcomes. Lastly, the study contributes to the existing body of knowledge on plea recording and conduct of plea proceedings

practices and their implications. By conducting comprehensive research and analysis, the study fills gaps in current literature and expands understanding in this field. It provides a foundation for future research, enabling a deeper exploration of plea proceedings and their impact on the criminal justice system.

## **1.4 Objectives of the Study**

### **1.4.1 General Objective**

To examine a legal framework governing plea of guilty recording and conduct of plea of guilty proceedings in criminal cases in Tanzania.

### **1.4.2 Specific Objectives**

The specific objectives of the study are;

- i. To examine the plea recording procedures followed by magistrates or judges in criminal trials, with a specific focus on the recording of pleas of guilty.
- ii. To identify and analyze the potential errors made by magistrates or judges when recording pleas of guilty and conducting plea proceedings.
- iii. To assess the legal implications that arise when pleas of guilty are erroneously recorded, including the impact on subsequent legal proceedings and the outcomes of the case.
- iv. To investigate the potential grounds for appeal that may arise due to inaccurately recorded pleas of guilty and the resulting actions taken by appellate courts.
- v. To explore the consequences of incorrect plea recording and conduct of plea proceedings on the fairness of trials, the rights of the accused, and public trust in the criminal justice system.

## 1.5 Research Questions

The study intends to answer the following questions;

- i. What are the specific procedures followed by magistrates or judges when recording pleas of guilty in criminal trials?
- ii. What are the common errors made by magistrates or judges when recording pleas of guilty and conducting plea proceedings?
- iii. What are the legal implications that arise when pleas of guilty are inaccurately recorded, and how do they impact subsequent legal proceedings and case outcomes?
- iv. What grounds for appeal are typically presented when pleas of guilty are erroneously recorded, and what actions do appellate courts take in response?
- v. How do incorrect plea recording practices affect the fairness of trials, the rights of the accused, and public trust in the criminal justice system?

## 1.6 Scope of the Study

This study is confined to the examination of plea recording and conduct of proceedings on plea of guilty in the context of the Tanzanian legal system. It specifically focuses on the proper recording and conduct of proceedings related to plea of guilty. The study emphasizes adherence to legal procedures as its main purpose, with particular attention given to analyzing case decisions of the Court of Appeal of Tanzania on this subject. The research will delve into the specific legal provisions and procedures outlined in the CPA<sup>4</sup> regarding plea of guilty recording and conduct of such proceedings. It will explore the requirements and expectations

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<sup>44</sup> *ibid*

placed on magistrates, judges, and other relevant stakeholders in accurately documenting and conducting plea proceedings. The study will also examine the implications of errors or deficiencies in the recording and conduct of pleas of guilty proceedings.

The study will primarily rely on the case decisions of the Court of Appeal of Tanzania. These decisions will serve as valuable sources of information and insights into the interpretation and application of the law regarding plea proceedings, including the proper recording of guilty pleas. It is important to note that this study does not encompass a broad analysis of all aspects of criminal trials or plea proceedings in Tanzania. Instead, it concentrates specifically on the proper recording and conduct of proceedings related to plea of guilty. By narrowing its scope, the study aims to provide a focused and in-depth analysis of this crucial aspect of the Tanzanian criminal justice system.

### **1.7 Limitation of the Study**

The study is constrained by limited time and access to materials. Due to time constraints, the researcher failed to explore all aspects of the topic, leading to a narrower analysis. Additionally, limited access to materials such as books and handouts may have restricted the researcher's ability to gather a comprehensive range of sources, potentially impacting the depth of the study. Furthermore, the researcher faced limitations in terms of travel and interactions with scholars. Financial and logistical constraints hindered the ability to meet with experts for discussions on the subject, limiting access to diverse viewpoints and in-depth insights. Moreover, insufficient support from office environments could have affected the progress and

quality of the work, with challenges in balancing personal commitments and professional obligations. Despite all these limitations, the researcher conducted a rigorous study within the available resources. It is important to consider these limitations when interpreting the findings, as they may affect the generalizability and completeness of the research outcomes.

### **1.8 Literature Review**

**Mateka**<sup>5</sup>, In her work “adherence to fair trial principles by High Court of Tanzania”, Mateka discusses that, the court of law is a last resort where civilians may seek justice. The courts need to be operated in a way that, all principles and rules established by the law for the sake of fair trial are followed. The writer narrates that justice cannot be attained if courts neglect to abide to principles set by the law which applies during proceedings. The writer focused much on discussing fair trial by showing procedures which are required to be followed by courts when determining matters. The author examines the legal framework governing both civil and criminal trials.

The relevance of this literature to our study lies in its emphasis on fair trial principles, which are the foundation of the justice system. It provides a broader context for understanding the significance of accurately recording pleas of guilty and conducting proceedings with adherence to legal procedures. Furthermore, Mateka's work helps to raise awareness of potential gaps in the implementation of fair trial principles in the High Court, which can create a space for our study to fill those

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<sup>5</sup> Mateka. A. N. (2020). Adherence to Fair Trial Principles by High Court of Tanzania: a case study of dar es salaam region. Dissertation of Open University of Tanzania.

gaps. The legal gap that our study aims to fill is the specific focus on plea and plea of guilty recording procedures and their implications when errors occur. While Mateka's literature discusses the broader concept of fair trial principles, our study narrows its focus to the specific area of plea recording, which has its own set of challenges and implications. By examining the legal aspects and potential errors in plea recording, our research aims to contribute to the understanding of this specific aspect of fair trial principles, providing insights and recommendations for improvement in the Tanzanian context.

**Rumisha<sup>6</sup>**, in his work “The Right to be Presumed Innocent”, Rumisha discussed that, the commencement of a trial for an individual accused of committing an offense involves their arraignment in a court of law, during which a charge is presented and the accused is asked to enter a plea. The charge must adhere to legal requirements, specifying sufficient details regarding the nature of the offense and other relevant information, enabling the accused to comprehend the allegations and respond accordingly. The accused possesses the right to either admit guilt by pleading guilty or deny the charge by pleading not guilty. If the accused pleads guilty, the presiding judge or magistrate is obligated to record the guilty plea and proceed to hear the facts presented by the public prosecutor. These facts must sufficiently establish all the elements of the charged offense. If the accused admits the truth of these facts, the presiding judge or magistrate proceeds to convict the accused based on their own plea of guilty<sup>7</sup>.

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<sup>6</sup> Rumisha. A (2020). The Right to be Presumed Innocent, a critical analysis of law and practice in Tanzania, Commonwealth Law Review Journal. Creative Connect International Publishers.

<sup>7</sup> *ibid*

Rumisha's work emphasizes the importance of adhering to legal requirements during the plea-taking process. It highlights the need for the charge to provide sufficient details about the offense, allowing the accused to fully understand the allegations. This aligns with our study's focus on proper recording of pleas and the legal implications that arise when errors occur during this critical stage of the trial. The legal gap that our study aims to fill relates to the specific examination of plea and plea of guilty recording procedures. While Rumisha's work touches on the broader topic of the accused's rights and the plea-taking process, our study focuses specifically on the procedures and legal implications surrounding plea recording. By delving deeper into this area, we aim to contribute to the understanding of best practices, potential errors, and the consequences of inaccurately recorded pleas in the Tanzanian context.

**Smith**<sup>8</sup> in his article titled "Against Legal Probabilism," the writer aimed to challenge the concept of legal probabilism, which argues that convictions based on purely statistical evidence should be permissible. Smith questions the idea of convicting individuals solely on statistical probability, particularly in cases where the evidence is purely statistical. He argues that such convictions pose a significant risk of convicting innocent individuals, which goes against the principle of fairness and undermines the accuracy of the criminal justice system.

The relevance of Smith's argument to the topic of plea and plea of guilty in Tanzania lies in the context of evidentiary standards and the burden of proof. In the legal system, a plea of guilty is often considered a strong indicator of accused's culpability,

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<sup>8</sup> Smith, M. (2016), "Against Legal Probabilism".

but it should not be the sole basis for conviction. Smith's argument highlights the need for caution when relying on statistical evidence alone to establish guilt, as it may lead to wrongful convictions and the violation of an individual's right to a fair trial.

By emphasizing the potential risks and injustices associated with convictions based on statistical evidence, Smith's argument raises important considerations for plea taking procedures in Tanzania. It underscores the importance of ensuring that the evidence presented and the procedures followed during plea hearings are proper, fair, and in accordance with the principles of due process. The discussion prompts a critical evaluation of the standards and safeguards in place to protect the rights of the accused and maintain the integrity of the criminal justice system.

Smith's article left one legal gap uncovered. While Smith raises concerns about convictions based solely on statistical evidence, he does not delve into the unique challenges and considerations that arise within the Tanzanian legal system which warrants use of statistical evidence. Thus, a study focusing on plea and plea of guilty in Tanzania could fill this gap by examining the practical and ethical implications of using statistical evidence in the plea process. This study will contribute to the understanding and development of the legal framework surrounding plea taking procedures in Tanzania.



**Helm et al**<sup>9</sup>, in their article titled “Guilty Plea Decisions: Moving Beyond the Autonomy Myth”, the writers focused on the concept of autonomy within the context of guilty pleas. The writer sought to examine if autonomy in guilty plea automatically justifies conviction. Writers described that, autonomy is the capacity for self-determination and self-governance within the context of a plea of guilty. It represents an individual's freedom to make choices that align with their own goals, and desires, without being unduly influenced or coerced by external factors. Autonomy, in the context of plea, goes beyond the mere ability to make a choice. It encompasses the idea that a decision is autonomous when it reflects a person's authentic beliefs and desires, and when there is a meaningful choice available to them.

Writers describe that, when an accused chooses to plead guilty in the criminal justice system, they are voluntarily giving up their right to a full trial. By pleading guilty, they accept the charges against them, and their legal status is immediately transformed into that of a convicted person. Unlike in a trial, where the prosecution must demonstrate the accuser's guilt beyond reasonable doubt, a guilty plea does not necessarily need to be proven as an accurate admission of guilt or reliable evidence of guilt. The writers also describe that, plea of guilty and immediate convictions is important in saving court's time and resources while giving an accused a likely position of his sentence being lessened by court.

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<sup>9</sup> Helm et al (2021), “Guilty Plea Decisions: Moving Beyond the Autonomy Myth” <https://doi.org/10.1111/1468-2230.12676>

On the other hand, basing on research carried by the writers, and as evidenced in their work, there was a lot of cases in England in which accused pleaded guilty in error without understanding the implications of their pleas. Writers gave an example of a case of Michael Holliday who was convicted of a robbery on the basis of a guilty plea which he claimed was entered on the advice of his lawyer. On appeal, clear evidence was presented that someone else committed the offence and evidence showed that admissions made by Mr Holliday were not reliable. Writers formulated an opinion that, even though plea of guilty may speed the conclusion of proceedings, but may likely lead to injustice conviction to lay accused persons.

This work is relevant to the topic of plea and plea of guilty, as it sheds light on the potential for injustice and wrongful convictions that can occur when convictions are entered solely on plea of guilty without considering if an accused actually committed a crime or wrongly pleaded guilty. The example of Michael Holliday's case illustrates the potential pitfalls of relying solely on guilty pleas as a basis for conviction. This work tried to analyze both the pros and cons of guilty plea and it has contributed an important knowledge that can be relied as a framework for conducting this work. Unfortunately, the article was prepared based on information and Europeans legal system hence its suggestions cannot be implemented in Tanzania.

**Starkweather**<sup>10</sup> in the article titled, “The Retributive Theory of "Just Deserts" and Victim Participation in Plea Bargaining”, the writer focus was on the retributive theory of punishment and the concept of restitution as a primary criminal sanction.

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<sup>10</sup> Starkweather A. D., (1992) “The Retributive Theory of "Just Deserts" and Victim Participation in Plea Bargaining”, Indiana University School of Law.

The writer explores how retribution, defined as the restoration of the moral order and the payment of a just deserved punishment, can be achieved through proportionate punishment and the goal of restoring relationships that have been broken by the offender's conduct. The concept of "just deserts" is introduced, which asserts that a person deserves to be punished for their wrongdoing based on the violation of the moral order and the free will to choose to engage in prohibited behavior. Proportionality plays a crucial role in determining the appropriate punishment, with severity of punishment aligning with the seriousness of the offense. The aim is to restore the relationships within the community that have been disrupted by the crime.

The relevancy of the writer's discussion to the study on plea and plea of guilty lies in the consideration of the victim's interest in retributive justice. Restitution is presented as a means to restore the relationship between the offender and the victim by making the offender pay for their crime. It is argued that restitution should be a primary criminal sanction in line with the retributive theory of punishment. By broadening the definition of restitution beyond financial compensation to include both financial and psychological harm, the writer emphasizes the need to address the victim's interests beyond monetary damages. The writer covered the limited role of victims in the plea-bargaining process. Traditionally, victims have been excluded from participating in plea negotiations and judicial hearings.

However, within the framework of retributive justice and the focus on restitution, the study explored ways to incorporate the victim's perspective and interests in the plea-bargaining process. This could involve giving victims a formal role and considering their views when determining the appropriateness of a plea agreement, particularly

in relation to restitution as a means of restoring the harm caused by the offense. This article does not have a direct connection to plea of guilty, but it describes a retributive and restitution theory which are part of theories relied by our study in developing a roadmap through which ideas concerning plea and plea of guilty will be discussed.

**Teichman**<sup>11</sup> in his article titled, "Convicting with Reasonable Doubt: An Evidentiary Theory of Criminal Law", the writer discussed evidentiary theory which proposes that sanctions in criminal law should be distributed in proportion to the strength of the evidence presented against the accused. This theory challenges the traditional understanding that the burden of proof creates a dichotomous penal regime, where guilt proven beyond a reasonable doubt leads to harsh sanctions, while lesser degrees of proof result in reduced punishment or acquittal.

The evidentiary theory argues that, rather than adjusting the standard of proof itself, adjusts the substantive content of criminal offenses to create a correlation between the severity of the sanction and the degree of certainty that the accused deserves to be punished. In this framework, accused whose guilt is proven with a high level of certainty receive the full penalty they deserve, while accused whose guilt is proven to a lower degree of certainty may be convicted of specially crafted offenses that de facto reduce the evidentiary threshold for conviction. The punishments attached to these offenses are discounted to reflect the elevated risk of error.

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<sup>11</sup> Teichman, D., (2018), "'Convicting with Reasonable Doubt: An Evidentiary Theory of Criminal Law", The Hebrew University of Jerusalem. <https://scholarship.law.nd.edu/ndlr>

The relevance or connection of the evidentiary theory of substantive criminal law to plea proceedings lies in the requirement to thoroughly examine the facts and evidence of the case before accepting an accused person's guilty plea. By considering the weight of the evidence adduced and evaluating the strength of the case against the accused, the court can ensure that the plea is entered knowingly, voluntarily, and with a sufficient understanding of the potential consequences. This examination helps to prevent unjust convictions based solely on a plea of guilty, especially in cases where the evidence may be weak or unreliable.

However, the article does not explicitly cover the requirement to assess the facts and evidence of the case before convicting an accused person on their own plea of guilty. This gap will be addressed in our study examining plea and plea of guilty in Tanzania. This study will investigate the practices and procedures surrounding guilty pleas, including the need to thoroughly evaluate the evidence and inform accused of the strength of the case against them before accepting their pleas. By filling this gap, the study informs that, punishment to be given to an accused on his own plea of guilty must be in correlation to the evidence adduced and not solely on the plea of guilty only.

## **1.9 Research Methodology**

### **1.9.1 Doctrinal Methodology**

In the context of the research topic on the procedures of recording plea of guilty and the procedures of conducting plea proceedings, a doctrinal method of research would

be well-suited<sup>12</sup>. This method involves a systematic examination and analysis of legal doctrines, principles, rules, and court decisions or precedents related to the topic. It relies heavily on the study and interpretation of existing legal texts and materials. To align the contents of the research with the doctrinal method, the researcher would primarily focus on collecting and analyzing various international and domestic court decisions or precedents that address cases where an accused person pleaded guilty<sup>13</sup>, but the records were erroneously entered into proceedings in a manner not stated by an accused. The researcher would delve into legal texts such as statutes, regulations, case law, and legal treatises to extract relevant legal principles and doctrines concerning the procedures of recording plea of guilty and the procedures of conducting plea proceedings.

The researcher would gather and analyze court decisions or precedents that discuss the specific circumstances where incorrect statements were entered by magistrate in proceedings and later during appeal stage, the said errors led to a retrial or acquittal. By examining these legal materials, the researcher would identify patterns, inconsistencies, and legal trends in how courts takes and record pleas of guilty. This analysis would allow for a comprehensive understanding of how the errors in recording pleas of guilty may affect accused's rights and may led to unjust convictions in some cases. Furthermore, the researcher would critically evaluate the sources used, assessing the reliability, credibility, and authority of the court decisions or precedents. This evaluation would ensure that the research is based on sound legal

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<sup>12</sup> Oxford Academy, 'Doctrinal Legal Research as a Means of Synthesizing Facts, Thoughts, and Legal Principles', <https://rb.gy/zx208> accessed July 4, 2023

<sup>13</sup> *ibid*

reasoning and contributes to the development and refinement of legal theories and principles regarding the topic.

### **1.10 Conclusion**

Our study on plea of guilty recording procedures and proceedings handling in Tanzania highlights the critical role of accurate plea recording in ensuring fairness and upholding the principles of justice. Through doctrinal methodology, a researcher examined the existing legal framework, identified potential gaps, and assessed the legal implications of inaccurately recorded pleas. Our research has emphasized the need for adherence to legal requirements, such as providing sufficient details in the charge and conducting proper proceedings during the plea-taking process.

By analyzing relevant literature, including works by Mateka and Rumisha, we have established the relevance of our study in addressing legal gaps and contributing to the understanding of plea recording procedures in Tanzania. The findings of our research shed light on the potential consequences of errors in plea recording, such as procedural irregularities and infringements on the rights of the accused. With a focus on enhancing the accuracy and fairness of plea recording, our study aims to provide recommendations and insights that can contribute to the improvement of plea procedures in the judicial system, ultimately strengthening the integrity of the legal process and safeguarding the rights of all parties involved.

## **CHAPTER TWO**

### **CONCEPTUAL AND THEORETICAL FRAMEWORK**

#### **2.1 Introduction**

This chapter briefly explains some fundamental concepts which are connected to the research problem so as to enable readers to understand entire discussion and presentation of research findings. Conceptual framework<sup>14</sup> presents relationship between variables, characteristics or properties that a study intends to investigate. Conceptual framework brings different ideas together and show its difference against one another so as to avoid confusion by readers when reading a study.

#### **2.2 Concepts underlying the Plea of Guilty**

##### **2.2.1 Offence**

Offence refers to a specific act or behavior that is prohibited by law and for which an individual can be held legally responsible. It encompasses a wide range of behaviors that are deemed to be wrongful or unlawful, varying from minor infractions to

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<sup>14</sup> Tools hero, "What is a conceptual framework? Definition, theory and example", available at <https://rb.gy/6tuwo> [Accessed February 15, 2023].



serious crimes. Offences can be categorized into different types based on their nature, severity, and the legal consequences they entail<sup>15</sup>.

The essence of offence, from a global perspective, lies in its role as a fundamental tool for establishing and maintaining social order, justice, and public safety within a society. Offences serve as a means to regulate human behavior and prevent actions that are considered harmful, disruptive, or detrimental to the welfare of individuals and the community as a whole. By defining and criminalizing certain behaviors, offences provide a legal framework to deter potential wrongdoers, hold individuals accountable for their actions, and impose appropriate sanctions or penalties when a violation occurs.

### **2.2.2 Charge**

A charge refers to a formal written accusation against an individual, known as the accused, which alleges that they have committed an offense. It is a crucial component of the criminal justice process as it outlines the specific allegations against the accused and forms the basis for the subsequent legal proceedings<sup>16</sup>. The genesis of a charge typically begins with the investigation of a suspected criminal offense by law enforcement authorities. Based on the evidence gathered during the investigation, the prosecuting authority, such as the public prosecutor, prepares the charge. The charge sets out the specific details of the alleged offense, including the

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<sup>15</sup> Cambridge University, "offence", available <https://dictionary.cambridge.org/dictionary/english/offence> accessed July 4, 2023

<sup>16</sup> Meriam website, "charge", <https://www.merriam-webster.com/dictionary/charge> accessed July 4, 2023

nature of the offense, the time and place it occurred, and any relevant circumstances or actions attributed to the accused<sup>17</sup>.

To constitute a proper charge, certain legal requirements must be met. A proper charge should provide sufficient details and particulars to enable the accused to understand the allegations made against them. It should clearly identify the specific offense(s) with which the accused is being charged, ensuring that they have adequate notice and the opportunity to prepare a defense. Additionally, a proper charge should comply with the relevant legal provisions, such as the provisions of the CPA and other laws<sup>18</sup>.

Arraignment, or the reading of the charge to the accused, is a significant step in the criminal proceedings. It typically takes place in a court of law, where the accused is formally presented with the charge and is asked to enter a plea of guilty or not guilty. The purpose of the arraignment is to inform the accused of the charges against them, provide them with an opportunity to understand the allegations, and allow them to respond accordingly. During the arraignment, the charge is read out to the accused, either by the judge, magistrate, or court clerk. The accused is then given the opportunity to enter a plea, admitting guilt (pleading guilty) or denying the allegations (pleading not guilty). The plea entered by the accused determines the subsequent course of the legal proceedings, whether it involves a trial or other legal processes.

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<sup>17</sup> *ibid*

<sup>18</sup> *ibid*

### 2.2.3 Prosecution

A prosecutor is a legal professional who serves as the representative of the government or the state in criminal cases. Originating from the Latin term "prosequi," meaning "to pursue" or "to follow," the role of a prosecutor can be traced back to ancient Roman law. Over time, the position of the prosecutor has evolved to become an integral part of the modern criminal justice system<sup>19</sup>. In the courtroom, the prosecutor assumes several crucial roles and responsibilities. Firstly, they are responsible for initiating criminal proceedings. After reviewing the evidence collected by law enforcement agencies, the prosecutor assesses whether there is sufficient evidence to support the filing of criminal charges. If deemed appropriate, they initiate the legal process by filing the necessary documents, such as a charge or indictment<sup>20</sup>.

During the trial, the prosecutor plays a central role in presenting the case against the accused. They introduce and examine witnesses, present evidence, and make persuasive arguments to establish the guilt of the accused beyond a reasonable doubt. Through their efforts, prosecutors aim to secure a conviction that aligns with the applicable laws and regulations. Beyond securing convictions, prosecutors also have a duty to protect the interests of justice. They are ethically bound to disclose all relevant evidence to the defense, ensuring transparency and upholding the principles of fairness and due process. By ensuring that the trial proceeds in a just and lawful manner, prosecutors help maintain the integrity of the criminal justice system.

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<sup>19</sup> Meriam website, "prosecution", <https://www.merriam-webster.com/dictionary/charge> accessed July 4, 2023

<sup>20</sup> ibid

Furthermore, prosecutors are often involved in plea negotiations. This involves engaging in discussions with the defense to explore potential plea bargains. By reaching agreements that involve a guilty plea in exchange for reduced charges or sentences, prosecutors contribute to the efficient allocation of resources and expedite the resolution of cases. Lastly, prosecutors provide sentencing recommendations to the court in cases where the accused is convicted. Drawing on their understanding of the case and relevant factors, such as the severity of the offense and the defendant's criminal history, prosecutors offer guidance to the court in determining an appropriate sentence that aligns with the principles of justice.

#### **2.2.4 Accused**

The term "accused" refers to a person who has been charged in court for committing a criminal offence. This formal accusation typically follows an investigation into the alleged crime, during which evidence is collected to support the charges<sup>21</sup>. The term "accused" originates from the Latin word "accusare" and refers to an individual who is formally charged with committing an offense. Throughout history, legal systems have used the concept of accusation to hold individuals accountable for their alleged actions. In modern times, the accused is the party against whom criminal charges are brought, and they are presumed innocent until proven guilty in a court of law. The term signifies the person who is facing allegations and undergoing legal proceedings, and they are entitled to certain rights and protections during the process.

#### **2.2.5 Fair trial**

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<sup>21</sup> Definitions, "Accused", available at <https://www.definitions.net/definition/accuss> accessed July 4, 2023

A fair trial is a cornerstone of a just legal system, ensuring that all individuals, including the accused, are provided with a judicial process that is impartial, transparent and which respects their fundamental rights<sup>22</sup>. It encompasses a range of principles that aim to balance the interests of the state in prosecuting crimes with the protection of individuals' rights. The rights of an accused person in a fair trial are fundamental to preserving their dignity, equality and ensuring justice. These rights include the presumption of innocence, which means that the accused is considered innocent until proven guilty. The accused also has the right to legal representation, enabling them to have a competent defense and ensure that their interests are adequately protected. Other fair trial principles include, adequate time and facilities for the preparation of the defense; right to confront witnesses; right to present evidence and call witnesses; reasoned judgment and right to appeal<sup>23</sup>. In this section some principles of fair trial are explained.

#### **a.) Impartial and Independent Court**

An impartial and independent court is among key principles of a fair trial, ensuring that justice is administered without fear, bias or undue influence. A key aspect of an impartial and independent court is its neutrality or impartiality. Judges and magistrates and other members constituting a court should approach each case with an open mind, free from any preconceived notions or personal interests that could affect their judgment.<sup>24</sup> They should base their decisions solely on the evidence, law

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<sup>22</sup> Fair Trial, "Fair Trial", available at <https://rb.gy/swyp6> accessed July 4, 2023

<sup>23</sup> See Bahadır KILINÇ, A Trial to Understand the Concept of Fair Trial, Selçuk Üniversitesi Sosyal Bilimler Enstitüsü Dergisi • 35 / 2016.

<sup>24</sup> Access to Justice: The Independence, Impartiality and Integrity of the Judiciary Criminal Justice Assessment Toolkit, UN, accessed at <https://www.unodc.org/documents/justice-and-prison->

and legal arguments presented before them, without favoring any particular party. Likewise, an impartial or independent court can be judged from its freedom to determine cases before it free from any external influence. The court should be shielded from any pressures or interferences that could compromise its independence. This includes protection against political, economic, or societal forces that may seek to manipulate or influence the court's decision-making process. Judges should be able to make their rulings without fear of reprisals or undue influence.

The appointment and tenure of judges play a crucial role in maintaining an impartial and independent court. Judges should be selected through a transparent and objective process that considers their merit, qualifications and experience. This ensures that only the most qualified individuals are appointed to the bench. Furthermore, their tenure of service should be secured and protected, allowing them to make impartial judgments without threat of arbitrary removal. Impartiality in case assignments is another essential aspect of an impartial and independent court. Mechanisms should be put in place to randomly and fairly assign cases to judges. This prevents any manipulation or cherry-picking of cases, ensuring that all parties receive equal treatment and a fair hearing.

#### **b.) Transparency**

Transparency is another fundamental principle or concept in fair trial, ensuring openness, accountability, and public trust in the judicial process. It encompasses various aspects that contribute towards the accessibility and comprehensibility of

legal proceedings for all parties involved. One essential aspect of transparency is the public observation of court proceedings. Openness to the public allows interested individuals to witness the administration of justice, ensuring that trials are conducted in open courts, fairly and impartially.<sup>25</sup> Public observation serves as a check on the actions of judges, prosecutors and defense lawyers thereby promoting accountability and preventing secret or unfair trials.

Access to information is another crucial component of transparency. It requires that relevant information, documents and evidence be readily accessible to all parties. This includes providing timely access to court records, case files and legal arguments. Ensuring access to information allows the accused, the prosecution and the defense to prepare their cases adequately and effectively exercise their rights. It also promotes confidence in the fairness of the trial by demonstrating that all relevant facts and evidence are considered. Transparency also entails clear and understandable communication of the proceedings. The language and procedures used in court should be accessible to the parties involved, including the accused and their legal representation. This includes providing interpreters or translators when necessary to ensure effective communication.<sup>26</sup> Transparent communication enables all participants to fully comprehend the proceedings and actively participate in their defense or prosecution.

### **c.) Presumption of Innocence**

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<sup>25</sup> Bibas, Stephanos, "Transparency and Participation in Criminal Procedure", *New York University Law Review*, Vol 81, June (2006), No.3, pp.911-966.

<sup>26</sup> Guide on Article 6 of the Convention – Right to a fair trial (criminal limb), European Court of Human Rights, Council of Europe, 2022 (Last update: 31.08.2022).

The presumption of is another fundamental principle in criminal law that forms an integral part of a fair trial.<sup>27</sup> It is based on the notion that an accused person is presumed innocent until proven guilty beyond reasonable doubt. The presumption of innocence places the burden of proof on the prosecution to establish the guilt of the accused. The accused is not required to prove their innocence but rather to be presumed innocent until the prosecution presents sufficient evidence to prove their guilt. This places the onus on the prosecution to build a strong and convincing case through the presentation of credible evidence and legal arguments.

The presumption of innocence serves several important purposes. Firstly, it acts as a safeguard against wrongful convictions and protects individuals from unjust punishment. It ensures that the accused is not subjected to penalties on their liberty without the proper determination of guilt. Secondly, the presumption of innocence helps maintain the integrity of the legal system by requiring the prosecution to meet a high standard of proof. This standard serves as a protection against arbitrary or unfounded accusations, preventing abuse of power by the state.

The presumption of innocence contributes to the overall fairness of the trial process. It establishes a balance between the power of the state and the rights of the individual, ensuring that the accused is treated fairly and given a fair opportunity to defend themselves against the charges brought against them. In practice, the presumption of innocence means that the judge, the jury, or the fact-finder must approach the trial with a neutral mindset, withholding judgment until the prosecution

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<sup>27</sup>James Bradley Thayer, "The Presumption of Innocence in Criminal Cases" *The Yale Law Journal*, Mar., 1897, Vol. 6, No. 4 (Mar., 1897), pp. 185-212 available at <https://www.jstor.org/stable/780722>.



has presented sufficient evidence to prove guilt beyond a reasonable doubt. It requires that the accused be afforded the right to present a defense, challenge the prosecution's evidence, and confront witnesses against them.

**d.) Right to Legal Representation**

The right to legal representation is another principle of a fair trial, ensuring that the accused has access to legal assistance and can effectively present their case before the court. It is a fundamental right recognized in various legal systems and international human rights standards.<sup>28</sup> Legal representation serves to balance the power dynamics between the state and the accused. It helps to guarantee that the accused, who may have limited legal knowledge or resources, can navigate the complexities of the legal process and protect their rights. By having legal representation, the accused can better understand the charges against them, make informed decisions, and present a good defense.

One of the primary roles of legal representation is to advocate for the interests and rights of the accused. Defense lawyers are responsible for safeguarding the accused's rights throughout the trial, ensuring that they are treated fairly, and that due process is followed. They play a critical role in challenging the prosecution's case, examining the evidence, cross-examining witnesses, and presenting counterarguments. Legal representation also helps to balance the adversarial nature of the criminal justice system. The prosecution, representing the state, presents its case seeking to establish

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<sup>28</sup> Howard Lintz and Yallana McGee, et al, A Basic Human Right: Meaningful Access to Legal Representation, 2015, available at <https://law.unc.edu/wp-content/uploads/2019/10/malr.pdf>. accessed on 22nd October, 2023.

the guilt of the accused. The defense lawyer's role is to counterbalance the prosecution's case, protect the rights of the accused, and challenge the evidence or legal arguments presented by the prosecution. Legal representation provides support and guidance to the accused throughout the trial process.

Advocates can advise the accused on their legal rights, potential legal defenses, and the implications of various decisions. They help the accused make informed choices regarding plea bargains, trial strategies, and the presentation of evidence. Effective legal representation requires competent and qualified advocates who possess the necessary legal knowledge to handle the complexities of criminal cases. It is essential that defense lawyers have access to the relevant resources, such as legal research materials, expert witnesses, and investigative services, to provide the accused with a competent defense.

#### **e.) Adequate Time and Facilities for Defense Preparation**

The adequacy of time and facilities for defense preparation form an essential principle in a fair trial.<sup>29</sup> This principle ensures that the accused has sufficient opportunity to gather evidence, consult with their legal counsel, and prepare a competent defense strategy. Time is a critical factor in the preparation of a defense. Adequate time allows the accused and their legal team to thoroughly review the charges, assesses the evidence presented by the prosecution, identify potential witnesses, and gather relevant information to challenge the case against them. Sufficient time enables the defense to conduct investigations, gather supporting evidence, interview witnesses, and prepare arguments.

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<sup>29</sup> Trechsel, Stefan, 'Adequate Time and Facilities', *Human Rights in Criminal Proceedings* (Oxford, 2006; online edn, Oxford Academic, 1 Feb. 2010), <https://doi.org/10.1093/acprof:oso/9780199271207.003.0009>, accessed 22 Oct. 2023.

In addition to time, the accused must have access to suitable facilities to prepare their defense effectively. This includes access to legal resources such as libraries, research materials, and relevant case precedents. Adequate facilities may also involve secure spaces for confidential consultations between the accused and their legal counsel, ensuring that attorney-client privilege is protected. The availability of time and facilities for defense preparation helps to level the playing field between the accused and the prosecution. It ensures that the defense has a fair opportunity to scrutinize the evidence and present a strong case, which is crucial for the overall fairness and integrity of the trial.

Without adequate time and facilities, the defense may be at a severe disadvantage. Insufficient time may result in rushed preparations, limiting the ability of the accused to fully investigate the case and explore potential defense strategies. Inadequate facilities may hinder effective communication between the accused and their legal team, compromising the quality of legal representation. By providing enough time and facilities to defense side, guarantees equal opportunity to both the prosecution and the defense in their respective cases.

#### **f.) The Right to Confront Witnesses**

The right to confront witnesses in adversarial trial system forms part of fundamental principle in a fair trial. The right to confront witnesses is often referred to as the "right of confrontation" or "cross-examination." This right guarantees that the accused has the opportunity to question and challenge the witnesses presented by the

prosecution<sup>30</sup>. The right to confront witnesses serves several important purposes. First and foremost, it allows the accused to test the credibility, accuracy, and reliability of the witness's testimony.

Through cross-examination, the defense can challenge the witness's version of events, probe inconsistencies in their statements, expose potential biases or motives, and uncover any potential weaknesses in their testimony. This helps ensure a more accurate and reliable presentation of evidence before the court. The right to confront witnesses allows the accused to exercise their right to present a defense. By questioning the witnesses, the defense can introduce alternative theories, present conflicting evidence, challenge the prosecution's case, and provide an opportunity for the accused to present their version of events.

#### **g.) The Right to Present Evidence and call Witnesses**

The right to present evidence and call witnesses is another essential component of a fair trial and is often referred to as the "right of presentation."<sup>31</sup> These right grants the accused the opportunity to introduce evidence and present witnesses in support of their defense. The right to present evidence allows the accused to offer proof and provide supporting materials that are relevant to their case. This includes physical evidence, documents, expert testimony, or any other form of evidence that can assist in establishing their innocence or raising doubts about their guilt. By exercising this

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<sup>30</sup> Muri A. Larkin, *The Right of Confrontation: What Next?* Texas Tech La W Review , Vol. 1:67. 1969-1970, pp.67-86.

<sup>31</sup> Richard A. Nagareda, "Reconceiving the Right to Present Witnesses", Michigan Law Review. Volume 121, Issue 8 (2023).

right, the accused can counter the evidence presented by the prosecution and present their own version of events.

Similarly, the right to call witnesses permits the accused to summon individuals who can provide testimony or provide relevant information that supports their defense. Witnesses may include individuals who were present at the scene of the alleged crime, character witnesses who can attest to the accused's reputation or credibility, or experts in relevant fields who can offer specialized knowledge or opinions. The right to present evidence and call witnesses is crucial for several reasons. It ensures that the accused has the opportunity to challenge the prosecution's case by presenting alternative narratives, introducing additional facts, or providing explanations for their actions.

It also enables the accused to present a robust and comprehensive defense, allowing the court to consider all available evidence before reaching a verdict. Moreover, this right helps balance the adversarial nature of the criminal justice system. It allows the accused to actively participate in their defense, exercise their autonomy, and contribute to the presentation of evidence. By giving the accused the ability to present their own case, it helps ensure a more balanced and equitable trial process.

#### **h.) A Reasoned Judgment**

The right to a reasoned judgment means that parties have a right to receive a written reasoned judgment or decision or ruling issued by a judge or a panel of judges at the conclusion of a trial or hearing. A reasoned judgment is an important element of a fair trial and serves as a key component of the transparency and accountability of the

judicial process. A reasoned judgment provides a detailed explanation of the court's findings of fact, application of the law, and the reasoning behind the final decision or verdict. It outlines the court's analysis of the evidence presented, the legal arguments made by the parties, and how the law is applied to the specific case. The judgment should demonstrate a logical and coherent line of reasoning that justifies the court's decision.

The purpose of a reasoned judgment is multi-fold. First and foremost, it ensures transparency in the judicial process by allowing the parties involved, as well as the public, to understand the basis for the court's decision. It promotes accountability and helps to maintain public confidence in the justice system. A reasoned judgment also serves as a means of appellate review. It provides a written record of the court's decision-making process, allowing higher courts to assess whether the law has been correctly applied and whether any errors have been made. It enables parties to understand the grounds on which they may challenge the decision and facilitates the pursuit of further legal remedies if necessary. Also, a reasoned judgment promotes consistency in the legal system. By providing a clear and logical explanation of the court's decision, it establishes precedents that guide future cases and assist in the development of the law. It allows legal practitioners, scholars, and the general public to analyze the legal reasoning and principles applied in a particular case, contributing to the evolution and refinement of the law.

#### **i.) The Right to Appeal**

The right to appeal is a fundamental principle in a fair trial process in every judicial proceeding. The right to appeal is designed to ensure that parties have the

opportunity to challenge a court's decision if they believe it is incorrect or unjust<sup>32</sup>. It provides a mechanism for review and reconsideration of a case by a higher court. The right to appeal allows an aggrieved party to request a higher court to review the decision of a lower court. This higher court, often called an appellate or appeals court, reexamines the case to determine whether errors were made in the application of the law, the interpretation of evidence, or procedural matters. The purpose of the appeal is to correct any legal errors and promote the fair administration of justice.

The right to appeal ensures that individuals have access to a higher level of judicial review, which helps safeguard against miscarriages of justice and the potential abuse of power. It allows parties to challenge erroneous or unfair decisions and seek a remedy or a different outcome. By providing an avenue for review, the right to appeal enhances confidence in the legal system and upholds the principle of due process. During the appeal process, the appellate court typically reviews the record of the lower court proceedings, including the written judgment, the evidence presented, and the legal arguments made. The parties may submit written briefs and, in some cases, present oral arguments to support their positions. The appellate court then examines the issues raised, analyzes the law, and renders a decision.

The possible outcomes of an appeal vary depending on the jurisdiction and the specific circumstances of the case. The appellate court may affirm the lower court's decision, meaning it agrees with the ruling and upholds it. Alternatively, it may reverse the decision, setting it aside and issuing a different judgment. In some cases,

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<sup>32</sup> Trechsel, Stefan, 'The Right to Appeal', *Human Rights in Criminal Proceedings* (Oxford, 2006; online edn, Oxford Academic, 1 Feb. 2010), <https://doi.org/10.1093/acprof:oso/9780199271207.003.0014>, accessed 22 Oct. 2023

the appellate court may remand the case back to the lower court for further proceedings or a new trial.

A fair trial is a cornerstone of a just legal system, ensuring that all individuals, including the accused, are provided with a judicial process that is impartial, transparent, and respects their fundamental rights<sup>33</sup>. It encompasses a range of principles and safeguards that aim to balance the interests of the state in prosecuting crimes with the protection of individual rights. The rights of an accused person in a fair trial are fundamental to preserving their dignity and ensuring justice. These rights include the presumption of innocence, which means that the accused is considered innocent until proven guilty. The accused also has the right to legal representation, enabling them to have a competent defense and ensure that their interests are adequately protected.

#### **j.) The Right to Public Trial**

Another important right is the right to a public trial, where proceedings are conducted in open court, allowing for transparency and accountability. This ensures that justice is not only done but is also seen to be done by the public<sup>34</sup>. Additionally, the accused has the right to confront the witnesses presented by the prosecution, allowing for effective cross-examination to challenge the evidence and credibility of the witnesses. The right to remain silent is a crucial protection for the accused, preventing self-incrimination and ensuring that they are not compelled to provide evidence against themselves. The accused also has the right to a speedy trial,

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<sup>33</sup> Fair Trial, "Fair Trial", available at <https://rb.gy/swyp6> accessed July 4, 2023

<sup>34</sup> Harold Shapiro. Right to a Public Trial, *Journal of Criminal Law and Criminology* Volume 41 | Issue 6 Article 4. 1951; Also see J B Sanborn Jr, Right to a Public Jury Trial: A Need for Today's Juvenile Court, *Judicature* Volume: 76 Issue: 5 Dated: (February-March 1993) Pages: 230-238.



protecting them from undue delay in the proceedings, which could result in prolonged pretrial detention.

Furthermore, the accused has the right to present a defense, including the ability to call witnesses, present evidence, and challenge the case presented by the prosecution. The trial should be presided over by an impartial judge or, in certain cases, a jury, to ensure a fair assessment of the evidence and the application of the law. These rights collectively contribute to upholding the principles of fairness, justice, and due process in the criminal justice system. They serve as a safeguard against the potential abuses of power and help maintain public confidence in the integrity of the legal system.

### **2.2.6 Plea and Plea of Guilty**

A plea refers to the formal response given by an accused person in a criminal case to the charges brought against them. It is the accused person's statement of whether they admit or deny guilt for the alleged offense. The accused person is the one who enters a plea<sup>35</sup>. They are presented with the charges during the arraignment or the reading of the charge in court. At that point, the accused is asked to respond to the charges by entering a plea. The plea can either be "guilty" or "not guilty."

The essential elements of a plea of guilty include several key factors. First, the accused must voluntarily admit their guilt for the offense charged, demonstrating unambiguous acknowledgment of their wrongdoing<sup>36</sup>. Second, the accused should

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<sup>35</sup> Meriam website, "plea", <https://www.merriam-webster.com/dictionary/plea> accessed July 4, 2023

<sup>36</sup> *ibid*

have a comprehensive understanding of the charges against them, including the nature of the offense and the potential consequences of pleading guilty. Lastly, the plea must be entered without any coercion or undue influence, ensuring that the accused's decision is based on their own free will.

There are different categories or types of pleas that an accused person can enter. These include guilty pleas, not guilty pleas, and, in some jurisdictions, pleas of *nolo contendere* (no contest). A guilty plea is an admission of guilt, accepting legal responsibility for the offense charged. A not guilty plea, on the other hand, asserts the accused's denial of the allegations and maintains their innocence. A plea of *nolo contendere*, while not an admission of guilt, is treated as such for the purposes of the case. The procedure after a plea of not guilty typically involves various stages. These include trial preparation, where both the prosecution and the defense gather evidence and prepare their respective cases. Subsequently, the presentation of evidence occurs during the trial, with the prosecution presenting its case and the defense having the opportunity to challenge the evidence and present its own. The judge or jury then deliberates on the evidence presented and reaches a verdict. In contrast, the procedure after a plea of guilty follows a different course. Once the accused pleads guilty and the plea is accepted by the court, the focus shifts to sentencing. The court determines the appropriate punishment or sentence, taking into account factors such as the seriousness of the offense, the accused's criminal history, and any mitigating or aggravating circumstances presented.

Consequences of pleading guilty include a formal conviction, whereby the accused is

legally deemed to have committed the offense. Additionally, the court imposes a sentence, which can include various penalties such as imprisonment, fines, probation, or community service. An unequivocal plea of guilty refers to a clear and unambiguous admission of guilt by the accused, leaving no room for doubt or uncertainty. It signifies a straightforward acceptance of responsibility for the offense charged. An equivocal plea of guilty, on the other hand, is when the accused's admission of guilt is accompanied by statements or actions that introduce doubt or reservation about their guilt. In such cases, the court may need to clarify the accused's intentions and ensure a genuine and voluntary plea.

### **2.2.7 Narrated Facts**

A fact refers to a piece of information or an event that is known or proven to be true. In the legal context, facts are crucial in establishing the truth or accuracy of a case. Facts can include objective details, observations, events, or circumstances that are relevant to the matter being discussed or examined<sup>37</sup>. Narrated facts, in the context of legal proceedings, refer to the presentation or recitation of these facts in a structured and coherent manner. When facts are narrated, they are typically presented as a chronological account or sequence of events related to the case. This narration is done by the prosecution, defense, or witnesses during the trial or hearing.

The purpose of narrating facts is to provide a comprehensive and organized account of the relevant details surrounding the case. The narration helps the court and the parties involved in understanding the sequence of events, the actions of the

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<sup>37</sup> Lego Desk, "Everything You Need to Know About Facts of the Case", <https://legodesk.com/legopedia/facts-of-the-case/> accessed July 4, 2023

individuals involved, and the overall context in which the alleged offense took place. It assists in presenting a clear and coherent picture of what transpired, allowing the court to make informed decisions based on the evidence presented.

### **2.2.8 Burden of Proof**

The burden of proof refers to the responsibility or obligation placed on a party in a legal case to prove or establish certain facts or elements of a claim. It is the duty of the party asserting a particular proposition or position to provide sufficient evidence and convince the court or tribunal of the truth of their claim. In criminal cases, the burden of proof rests primarily on the prosecution. The prosecution has the responsibility to prove the guilt of the accused beyond a reasonable doubt. This means that they must present enough evidence and arguments to eliminate any significant doubts or reasonable alternative explanations regarding the accused's guilt.

The importance of the burden of proof is fundamental to the fairness and integrity of the legal system. It serves as a safeguard to protect the rights of the accused or the party being accused. By placing the burden on the party making the allegations, it ensures that a person cannot be convicted or held liable based on mere suspicions or unfounded claims. The burden of proof also serves to maintain the presumption of innocence, which is a fundamental principle in criminal law. It requires the prosecution to meet a high standard of proof before a person can be found guilty and subjected to punishment.

This helps prevent wrongful convictions and ensures that the guilt of the accused is established with certainty. Moreover, the burden of proof acts as a check on the power of the state and helps maintain a balance between the interests of the individual and society. It places the onus on the party with the best access to the evidence and resources to present their case convincingly. This helps prevent unjust or arbitrary decisions and promotes a fair and just legal process.

### **2.2.9 Proof beyond Reasonable Doubt**

Proving a charge refers to establishing the truth or validity of the allegations or accusations made against an individual in a legal case. It involves presenting evidence and arguments to convince the court or tribunal that the elements of the charge have been satisfied and that the accused is responsible for the offense. Proof beyond a reasonable doubt is the highest standard of proof required in criminal cases. It is the degree of certainty that the prosecution must reach to establish the guilt of the accused. Beyond a reasonable doubt means that there should be no reasonable or logical doubt in the minds of the jurors or the court about the guilt of the accused based on the evidence presented<sup>38</sup>.

To prove a charge beyond a reasonable doubt, the prosecution must present evidence that is compelling, credible, and sufficient to convince the trier of fact (usually the jury or judge) that there is no reasonable alternative explanation for the accused's innocence. The evidence must be strong enough to exclude any reasonable doubt that might arise from the defense's arguments or alternative interpretations of the facts.

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<sup>38</sup> TCW Lawyers, "Beyond Reasonable Doubt – What's it Mean?", <https://www.twclawyers.com.au/beyond-reasonable-doubt-whats-it-mean/> accessed July 4, 2023

This standard of proof is necessary to safeguard the rights of the accused and to prevent wrongful convictions. It places a heavy burden on the prosecution and ensures that the accused is not convicted based on mere suspicion or speculation. It requires the prosecution to present evidence that is so strong and persuasive that it leaves the trier of fact with a firm conviction of the accused's guilt<sup>39</sup>.

Proof beyond a reasonable doubt is considered the gold standard in criminal law because it reflects the gravity and seriousness of depriving someone of their liberty or imposing significant penalties. It provides a high level of certainty and protects individuals from being convicted on flimsy or unreliable evidence. The principle behind proof beyond a reasonable doubt is to prevent the risk of convicting innocent individuals and to maintain the integrity and fairness of the criminal justice system<sup>40</sup>.

#### **2.2.10 Prima Facie Case**

A prima facie case<sup>41</sup> is a legal term that refers to a case in which the evidence presented by the prosecution is sufficient to establish a case or prove a fact unless the evidence is rebutted or contradicted by the defense. In other words, it means that there is enough evidence to establish a case or fact, unless proven otherwise. In principle it is an early session for a court to determine whether the prosecution can proceed to trial with the accused fully for the crime. At the end of this presentation it may be possible for the client's defence to present an argument that there is 'no case to answer'.

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<sup>39</sup> *ibid*

<sup>40</sup> *ibid*

<sup>41</sup> Black's Law Dictionary 8th Edition

### **2.2.11 Verdict of a Case**

The verdict of a case refers to the decision or determination made by the judge or jury at the conclusion of a trial<sup>42</sup>. It is the final outcome that determines whether the accused is found guilty or not guilty of the charges brought against them. The verdict is based on the evaluation of the evidence, arguments presented, and application of the relevant law to the case. Conviction, in a legal context, refers to a formal declaration or finding of guilt against an individual who has been charged with a crime. It is the result of a successful prosecution, where the court determines that the accused is proven guilty beyond a reasonable doubt based on the evidence presented. A conviction often leads to the imposition of penalties or punishment, which can include fines, imprisonment, probation, or other legal consequences.

Acquittal, on the other hand, means the opposite of conviction. It is a verdict that declares the accused as not guilty of the charges brought against them. When an acquittal is pronounced, it means that the court has determined that the prosecution failed to prove the guilt of the accused beyond a reasonable doubt. The accused is considered innocent in the eyes of the law and is typically released from any further legal penalties associated with the case.

Acquittals can occur for various reasons, such as insufficient evidence, lack of witnesses, inconsistencies in testimony, or a failure to establish all the elements of the offense. It is an important safeguard in the legal system to protect the rights of the accused and to ensure that individuals are not wrongly convicted based on

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<sup>42</sup> Cornell Law School. "prima facie", [https://www.law.cornell.edu/wex/prima\\_facie](https://www.law.cornell.edu/wex/prima_facie) accessed July 4, 2023

inadequate or unreliable evidence. Both conviction and acquittal have significant implications for the accused and can impact their future prospects and reputation. A conviction can result in serious consequences, including a criminal record, loss of certain rights, and social stigma. On the other hand, an acquittal provides vindication for the accused, affirming their innocence and protecting their rights and freedoms.

### **2.2.12 Sentence**

Sentencing refers to the stage in the criminal justice process where the court imposes a punishment or penalty on an individual who has been convicted of a crime. It is the formal determination of the consequences that the convicted person will face for their actions. The purpose of sentencing is to ensure justice is served, maintain public safety, deter future criminal behavior, and provide rehabilitation or retribution where appropriate. The specific sentencing options and considerations may vary depending on the jurisdiction and the nature of the offense<sup>43</sup>. During the sentencing phase, the court considers various factors, including the severity of the crime, the circumstances surrounding the offense, the defendant's criminal history, the impact on the victim, and any mitigating or aggravating factors. The judge has the discretion to impose a range of penalties, such as fines, probation, community service, restitution to the victim, or incarceration<sup>44</sup>.

The sentencing process involves the presentation of arguments from both the prosecution and the defense regarding the appropriate punishment. The court

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<sup>43</sup> Cornell Law School. "Prima facie", <https://www.law.cornell.edu/wex/sentence> accessed July 4, 2023

<sup>44</sup> *ibid*



considers these arguments, along with any pre-sentence reports or recommendations, before making a decision. The judge aims to strike a balance between holding the offender accountable for their actions and considering their potential for rehabilitation. The sentencing phase is a critical aspect of the criminal justice system, as it determines the consequences for individuals who have been found guilty. It is an opportunity for the court to consider the unique circumstances of each case and weigh the interests of society, the victim, and the offender in order to arrive at a fair and just outcome.

## **2.3 Theories of Rights and Public Trial**

### **2.3.1 The Interest Theory of Rights**

The interest theory of rights was formulated by Matthew H. Kramer, a distinguished legal philosopher, and professor of Jurisprudence and Fellow at Churchill College, University of Cambridge<sup>45</sup>. This influential theory posits that the basis of rights lies in the fundamental connection between duties and interests. Kramer's development of the interest theory, first presented in his work "The Quality of Freedom," has greatly contributed to the field of legal and moral philosophy<sup>46</sup>. At its core, the interest theory of rights asserts that a duty towards a person or entity is typically in the interest of that individual or entity. In other words, when individuals are obligated to act in a certain way or to refrain from certain actions, fulfilling those obligations tends to advance or protect the interests of those involved<sup>47</sup>. The interest

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<sup>45</sup> University of Cambridge, "Professor Matthew Kramer", available at <https://rb.gy/blq5l> accessed July 3, 2023

<sup>46</sup> *ibid*

<sup>47</sup> Oxford Academy, "The Interest Theory of Rights", <https://rb.gy/jtepk> accessed July 4, 2023

theory emphasizes that rights emerge from this reciprocal relationship between duties and the realization of essential interests or autonomous choices.

When we apply the interest theory of rights to the context of plea and plea of guilty, it illuminates the nexus between the defendant's interests and the corresponding duties of the legal system. In the realm of criminal justice, the decision to plead guilty is often guided by a careful assessment of the defendant's interests, such as the desire to secure a reduced sentence, minimize legal costs, or avoid the uncertainties of a trial. Under the interest theory, individuals possess the right to pursue their interests, including making informed decisions that significantly impact their own lives.

Moreover, the interest theory underscores the reciprocal nature of rights and duties. In the case of a plea of guilty, the defendant's decision triggers various duties and obligations on the part of the legal system. These responsibilities encompass ensuring that the plea is voluntary, properly informed, and made with an understanding of the potential consequences. By fulfilling these duties, the legal system upholds the defendant's interests, enabling them to exercise their autonomy and pursue their desired outcome within the boundaries of the law<sup>48</sup>.

The interest theory of rights, as formulated by Matthew Kramer, provides a nuanced framework for analyzing the complexities of rights and duties within the context of plea and plea of guilty. By acknowledging the inherent connection between duties

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<sup>48</sup> *ibid*

and interests, this theory recognizes the importance of safeguarding the defendant's autonomy and allowing them to make decisions that align with their own well-being. Furthermore, it highlights the corresponding duties of the legal system in upholding the defendant's interests and ensuring the fair and just administration of justice.

### **2.3.2 The Will Theory of Rights**

The will theory of rights, developed by Herbert L.A. Hart, a prominent British legal scholar, emphasizes the significance of human freedom and liberty. Inspired by Kant's ideas, Hart posits that freedom is the most fundamental right. According to this theory, the purpose of the law is to enable individuals to freely express their will. The will theory, also known as the "choice theory," recognizes that individuals have the right to exercise control over their actions and decisions<sup>49</sup>. In the will theory, the law grants citizens the means to freely express their will, and any limitation on freedom necessitates the authorization of others' rights. Individuals are free to claim their rights or waive them, as they are the subjects of their own rights. This perspective asserts that rights emerge from the human will itself. Legal scholars such as Austin, Holland, Pollock, Vinogradoff, and Holmes define legal rights from the will theory's perspective as "a capacity residing in one person to control, with the consent and assistance of the state, the actions of others."

The will theory highlights the inherent connection between rights and normative control. Possessing a right implies having the authority to determine the boundaries of others' actions, thereby exercising control over a specific domain of affairs. For

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<sup>49</sup> Cambridge Core, "Beyond Normative Control: Against the Will Theory of Rights", <https://rb.gy/d2um0> accessed July 4, 2023

instance, if you have a right to a piece of land, it means you have the freedom to use it as you see fit. Interfering with your freedom to use the land would be deemed wrong unless the other party possesses a valid right. In such cases, you have the option to either allow the use of your land or prevent it by invoking your right and seeking the protection of legal authorities<sup>50</sup>.

Regarding its connection to the plea and plea of guilty, the will theory underscores the importance of individuals' freedom to exercise their rights, including the right to make choices regarding their legal proceedings. When a defendant pleads guilty, they are making a voluntary choice, exercising their freedom to determine the outcome of their case. The will theory recognizes and upholds the individual's right to waive their rights, including the right to contest the charges brought against them and proceed to trial. It acknowledges that individuals have the autonomy to decide whether to insist upon their rights or waive them in favor of a plea agreement<sup>51</sup>. However, it is essential to note that the will theory has attracted criticism in relation to the concept of inalienable rights. According to this theory, individuals have the freedom to waive any right, including the freedom to accept compensation for relinquishing their rights. This aspect raises concerns about the potential for rights to be bargained away, potentially undermining the inherent protection and stability that rights should provide. Also, the will theory raises questions regarding the cognitive capacities of certain individuals, such as infants or individuals with mental disabilities. While they may possess legal rights, they may not have the will or understanding necessary to protect those rights. In response to this criticism,

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<sup>50</sup> *ibid*

<sup>51</sup> *ibid*

proponents of the will theory argue that infants or individuals lacking cognitive capacity can still have their rights safeguarded by guardians or trustees who act on their behalf and exercise their will to protect those rights.

## **2.4 Theories of Punishment**

### **2.4.1 Deterrent Theory**

The deterrent theory is a criminological concept that revolves around the idea of preventing crime by instilling fear of punishment in potential offenders. It operates on the principle that individuals can be dissuaded from engaging in criminal behavior if they believe that the consequences of their actions will be severe and certain. The primary focus of the deterrent theory is on the rational decision-making process of individuals, assuming that potential offenders will weigh the potential risk and costs of committing a crime before deciding whether to act. It suggests that the fear of punishment can act as a deterrent by creating a disincentive for individuals to engage in criminal acts<sup>52</sup>.

There are two main types of deterrence within this theory. The first is specific deterrence, which aims to deter an individual offender from committing future crimes by subjecting them to punishment for their previous criminal behavior. The idea is that experiencing the negative consequences of their actions, such as imprisonment or fines, will make the offender less likely to repeat similar offenses in the future. The second type is general deterrence, which seeks to prevent crime by making examples of offenders and demonstrating to the wider society the punitive consequences of criminal behavior. The logic is that witnessing the punishment of

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<sup>52</sup> Study, "Deterrence Theory of Punishment: Definition & Effect on Law Obedience", <https://rb.gy/vjv5o> accessed July 4, 2023

others will discourage potential offenders from committing crimes due to the fear of facing similar penalties<sup>53</sup>.

The deterrent theory emphasizes two key factors in its effectiveness: certainty and severity. Offenders are more likely to be deterred if they believe that the likelihood of being caught and punished is high. If the risk of punishment is seen as low, the deterrent effect weakens. In addition, the theory posits that the fear of severe consequences will discourage individuals from engaging in criminal acts<sup>54</sup>. The application of the deterrent theory can be seen in various aspects of the criminal justice system, including sentencing policies, law enforcement practices, and public awareness campaigns. For example, harsh penalties for specific offenses are often justified based on the deterrent theory's premises.

However, critics of the deterrent theory argue that its assumptions about the rational decision-making process of criminals oversimplify the complex motivations behind criminal behavior. They contend that individuals do not always act solely out of rational calculations and that social, economic, and psychological factors also play significant roles in criminal conduct. Furthermore, some studies have shown mixed evidence regarding the effectiveness of deterrence as a crime prevention strategy.

The relationship between punishment and crime rates is influenced by various factors, including socioeconomic conditions, individual characteristics, and the potential rewards associated with criminal behavior. These complexities have led to

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<sup>53</sup> Ibid

<sup>54</sup> ibid

ongoing debates in the field of criminology regarding the true impact of deterrence on crime prevention. Despite these criticisms, the deterrent theory remains an influential concept in shaping criminal justice policies and strategies aimed at reducing crime rates. It serves as a basis for discussions surrounding the appropriate use of punishment as a means of deterring potential offenders and maintaining social order.

#### **2.4.2 Preventive Theory**

The Preventive Theory, also known as crime prevention theory, is a criminological concept that focuses on identifying and implementing measures to stop criminal behavior before it occurs. Unlike the deterrent theory, which emphasizes the use of punishment to discourage potential offenders, the preventive theory places greater emphasis on addressing the root causes of crime and implementing proactive strategies to reduce criminal opportunities<sup>55</sup>. The fundamental idea behind the preventive theory is that by intervening early and addressing the underlying factors that contribute to criminal behavior, society can effectively reduce crime rates and create safer communities. It recognizes that crime is often a result of various social, economic, and environmental factors, and by addressing these factors, the likelihood of criminal behavior can be diminished.

Preventive measures can take various forms, including social programs, community initiatives, educational interventions, and targeted law enforcement strategies. These measures are often designed to promote positive behaviors, strengthen social bonds, and provide individuals with alternative opportunities to engage in prosocial

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<sup>55</sup> Legal Service India, "Theories of Punishment", <https://rb.gy/qfmo1> accessed July 4, 2023

activities. One key principle of the preventive theory is early intervention. Prevention efforts often begin early in an individual's life, such as during childhood or adolescence, as research suggests that addressing risk factors early on can have a significant impact on reducing future criminal behavior. By providing support, guidance, and resources to at-risk individuals, preventive initiatives aim to steer them away from criminal paths and towards more positive life trajectories<sup>56</sup>.

Another important aspect of the preventive theory is the identification of risk and protective factors. It recognizes that certain factors, such as poverty, substance abuse, and lack of education, increase the likelihood of criminal behavior, while other factors, such as strong family support and access to education and employment opportunities, serve as protective factors against criminal involvement<sup>57</sup>. Preventive measures seek to mitigate the impact of risk factors and enhance protective factors to create conditions that discourage criminal behavior. Community collaboration is also central to the preventive theory. Preventive initiatives often involve collaboration between various stakeholders, including government agencies, community organizations, schools, and law enforcement. By working together, these stakeholders can develop comprehensive strategies that address local crime issues and create a collective sense of responsibility for crime prevention.

In terms of law enforcement, the preventive theory promotes proactive policing strategies. Rather than solely focusing on reactive responses to crime, law enforcement agencies may adopt preventive policing approaches, such as community policing and problem-oriented policing. These strategies prioritize building positive

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<sup>56</sup> *ibid*

<sup>57</sup> *ibid*



relationships with the community, addressing underlying issues that contribute to crime, and engaging in proactive efforts to prevent criminal activities. Preventive theory also recognizes the importance of rehabilitation and reintegration for individuals who have already engaged in criminal behavior.

In addition to preventing future offenses, preventive approaches may involve rehabilitation programs aimed at addressing the root causes of criminal behavior and facilitating successful reintegration into society after serving their sentences. By providing individuals with the necessary support and skills to lead productive lives, preventive measures can help break the cycle of criminality. The preventive theory offers a valuable complement to traditional punitive approaches. It acknowledges the complexity of crime and the importance of fostering social cohesion and support systems to prevent criminal behavior from taking root in the first place. By adopting preventive strategies, societies can work towards creating safer and more inclusive communities for everyone.

### **2.4.3 Retributive Theory**

The Retributive Theory, also known as the retribution theory or just deserts theory, is a philosophical concept that focuses on the moral justification for punishment based on the principle of "an eye for an eye" or "just punishment." It argues that individuals who commit crimes should be punished in proportion to the harm they have caused, regardless of the potential deterrent effect or the potential for rehabilitation<sup>58</sup>. The core principle of the retributive theory is that punishment should be based on the idea of retribution, which means that offenders deserve to suffer for

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<sup>58</sup> Britannica, "retributive justice", <https://www.britannica.com/topic/retributive-justice> accessed July 4, 2023

their wrongful actions.

Supporters of this theory believe that punishment is morally justified because it balances the scales of justice and upholds the moral order of society. It is seen as a response to the harm caused by the offender, reflecting society's condemnation of the wrongdoing and ensuring that the offender pays their debt to society. According to the retributive theory, the severity of punishment should be determined by the severity of the crime committed. This means that the punishment should be proportional to the harm inflicted. Advocates of this theory argue that punishment should not be influenced by external factors such as the potential for rehabilitation or the deterrent effect on others.

Instead, the focus is on the moral principle of retribution, ensuring that the punishment corresponds to the gravity of the offense. Retributive punishment is often associated with concepts such as just punishment, deserved punishment, or "getting what one deserves." It rejects the idea of punishment as a means to achieve a particular outcome, such as deterring future crimes or rehabilitating the offender. Instead, it emphasizes the moral responsibility of the offender and the need for society to respond with just retribution<sup>59</sup>.

Critics of the retributive theory argue that it is a backward-looking approach that does not consider the potential for rehabilitation or the prevention of future crimes. They argue that focusing solely on punishment for its own sake fails to address the

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<sup>59</sup> *ibid*

underlying causes of criminal behavior and misses the opportunity to reintegrate offenders back into society as law-abiding citizens. Despite the criticism, the retributive theory has had a significant influence on criminal justice systems around the world. Many legal systems incorporate elements of retributive punishment in their sentencing practices, aiming to provide a sense of justice and accountability for both the victim and society. Sentencing guidelines and determinate sentencing laws often reflect the retributive principle of proportionality, ensuring that the punishment fits the crime.

It is important to note that the retributive theory is not the sole approach to punishment in the criminal justice system. Other theories, such as deterrence, rehabilitation, and restoration, also play a role in shaping sentencing practices and the overall philosophy of punishment. The balance between these theories varies across jurisdictions and depends on societal values, cultural norms, and the specific goals of the criminal justice system.

#### **2.4.4 Reformatory Theory**

The reformatory theory, also known as the rehabilitative theory, is a philosophy of punishment that focuses on the transformation and reformation of offenders rather than simply imposing retribution or deterrence.<sup>60</sup> It views criminal behavior as a result of various social, psychological, and environmental factors, and believes that individuals can be rehabilitated and reintegrated into society as law-abiding citizens through appropriate interventions and treatment.

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<sup>60</sup> Ipleaders, "What is the reformatory theory of punishment", <https://blog.ipleaders.in/reformatory-theory-of-punishment/> accessed July 4, 2023

At the core of the reformatory theory is the belief in the potential for personal growth, change, and rehabilitation. It emphasizes the idea that offenders should be given opportunities for education, skill development, therapy, and counseling to address the underlying causes of their criminal behavior. The aim is to equip them with the necessary tools and support to lead productive lives upon their release from custody<sup>61</sup>. Unlike punitive or retributive approaches that focus on punishing offenders for their crimes, the reformatory theory seeks to address the root causes of criminal behavior and provide individuals with opportunities for self-improvement. This can involve educational programs, vocational training, substance abuse treatment, mental health support, and other rehabilitative interventions tailored to the individual's needs.

The application of the reformatory theory in the criminal justice system involves creating rehabilitative programs within correctional institutions, probation and parole services, and community-based initiatives. The goal is to promote personal growth, enhance social skills, foster a sense of responsibility, and ultimately reduce the likelihood of reoffending. Critics of the reformatory theory argue that it can be overly optimistic and may not adequately address the needs of victims or ensure public safety. They contend that some individuals may not be receptive to rehabilitation efforts, and that certain offenses, such as violent crimes, may require a focus on incapacitation or protection of society.

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<sup>61</sup> *ibid*

However, proponents of the reformatory theory argue that it provides a more humane and effective approach to dealing with crime, recognizing the potential for positive change in individuals and aiming to break the cycle of criminal behavior. They emphasize the importance of addressing the underlying causes of crime and promoting social reintegration, rather than simply imposing punitive measures<sup>62</sup>. This theory represents a shift in the philosophy of punishment, emphasizing rehabilitation, personal growth, and the opportunity for offenders to turn their lives around. It recognizes the complex nature of criminal behavior and seeks to provide individuals with the support and resources necessary to reintegrate into society as law-abiding citizens.

### **2.5 Relevance of the Theory (ies) to the Study**

The theories of rights, public trial, deterrence, retribution, and reformatory punishment are all relevant to the study of plea and plea of guilty in the context of criminal justice. The interest theory of rights, coined by Matthew Kramer, emphasizes the connection between having a duty towards someone or something and it being in the interest of that entity. In the context of plea and plea of guilty, this theory underscores the importance of individuals making informed decisions based on their own interests when considering whether to enter a plea or admit guilt. It highlights the need for accused to understand the consequences of their actions and weigh them against their own interests.

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<sup>62</sup> *ibid*

The will theory of rights, developed by Herbert L.A. Hart, focuses on the importance of human freedom and liberty. According to this theory, individuals have the right to freely express their will, and the purpose of the law is to grant them the means to do so. When applied to plea and plea of guilty, the will theory suggests that accused have the right to choose whether to assert their innocence or to accept responsibility for their actions. It recognizes the individual's autonomy in making decisions related to their legal rights.

## **2.6 Conclusion**

The conceptual and theoretical frameworks discussed above provide valuable insights into the complexities of plea and plea of guilty within the context of criminal justice. The interest theory of rights and the will theory emphasize individual autonomy and decision-making in relation to pleading guilty or asserting innocence. The deterrent theory highlights the potential impact of punishment on individuals' decisions, while the retributive theory emphasizes accountability and proportionate punishment. Lastly, the reformative theory underscores the importance of rehabilitation and personal growth. These frameworks offer diverse perspectives that contribute to our understanding of plea and plea of guilty, guiding discussions on fairness, effectiveness, and ethical considerations in the criminal justice system.

## **CHAPTER THREE**

### **LEGAL FRAMEWORK GOVERNING PLEA AND PLEA OF GUILTY IN TANZANIA**

### **3.1 Introduction**

This chapter examines legal framework governing plea and plea of guilty in Tanzania. By analyzing the relevant laws, regulations, and rules. We will explore processes and procedures on how plea proceedings are conducted in the court rooms in Tanzania. Examination of the legal framework is essential so as to know how pleas are taken in court of laws and its outcome when they are wrongly conducted by trial court. Also, the examination of legal framework governing plea will inform the likely impacts of plea of guilty proceedings before the trial courts and upper courts in case of appeal.

### **3.2 The Constitution of the United Republic of Tanzania**

Article 13(6)(a) of the constitution of Tanzania<sup>63</sup>, although not explicitly mentioning the plea process, provides a broader context of ensuring a fair hearing and access to justice. It encompasses the principles that apply to various aspects of the legal proceedings, including the right to enter a plea. The provision emphasizes the state's responsibility to establish appropriate procedures that uphold the principles of equality before the law, fair hearing, and the right of appeal or other legal remedy. These principles are fundamental to safeguard the rights of individuals when their rights and duties are being determined by the court or other agencies.

Within this broader context, the right to enter a plea is an essential component of the fair hearing process. The plea of guilty or not guilty is a critical moment in criminal proceedings where the accused persons respond to the charges leveled against them.

While Article 13(6)(a) does not explicitly mention the plea, it guarantees that

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<sup>63</sup> The Constitution of the United Republic of Tanzania Cap 2 of 1977. Art 13(6)(a)

individuals have the right to present their case and be heard in a fair and impartial manner.

The right to a fair hearing encompasses the right of the accused person to understand the nature of the charges, the consequences of their plea, and the opportunity to provide a meaningful response. It ensures that the plea process is conducted transparently, without coercion or undue influence. By upholding the principles outlined in Article 13(6)(a), the legal system aims to ensure that individuals, including the accused, are treated fairly and their rights are respected throughout the plea process. Article 13(6)(a) of the Tanzanian Constitution establishes a broader framework of fair hearing and access to justice. This framework encompasses the right to enter a plea and ensures that individuals have the opportunity to present their case and be heard in a fair and impartial manner. The provision underscores the importance of upholding the principles of equality before the law and the right to appeal or other legal remedies, which are essential elements of a fair plea process.

### **3.3 Statutes**

#### **3.3.1 The Criminal Procedure Act**

When an accused person is arrested based on reasonable suspicion of committing an offense, it marks the beginning of the criminal justice process. If the evidence gathered by the prosecution is sufficient to establish a prima facie case, the subsequent procedure is the arraignment of the accused before court to answer his charges. During the arraignment, a charge or information outlining the specific allegations against the accused is read out, and the accused is required to enter a plea.



If the accused enters a plea of guilty, the court is obligated to record the plea as nearly as possible in the words he uses and proceed to convict the accused accordingly as per section 228 and 282 of The Criminal Procedure Act<sup>64</sup>. This means that by pleading guilty, the accused accepts responsibility for the offense and the court proceeds to determine an appropriate sentence. On the other hand, if the accused enters a plea of not guilty, it signifies his or her denial of the charges and places the burden of proof on the prosecution. This triggers the trial process, as outlined in Section 229, 279 and 283 of the Criminal Procedure Act.

If the matter is before subordinate court, if an accused enters a plea of not guilty, the prosecutor shall open the case against the accused person and shall call witnesses and adduce evidence in support of the charge. If the matter is before High Court, the court will proceed, where the court trying the case finds it necessary to involve assessors in the trial, to choose assessors and put an accused to trial where the prosecution will produce witnesses to present evidence to establish the guilt of the accused beyond a reasonable doubt. The accused has the right, through advocate or himself, to challenge the evidence presented and cross-examine the prosecution's witnesses as stipulated under section 229(2) and (3) and section 279.

In the event an accused person remains silent either out of malice or due to an inability to directly respond to the charges, the court has the authority, if deemed appropriate, to enter a plea of "not guilty" on behalf of the accused person as provided under section 281 of the Act. Alternatively, if the accused person's silence

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<sup>64</sup> The Criminal Procedure Act, Cap. 20 R. E. 2019. S. 282

or his inability to follow the proceedings is a result of a mental infirmity, the court shall proceed make an order subjecting the accused to a mental hospital for assessment of the accused person's mental capacity in terms of section 219 and 220 of the Act. If it is determined that the accused person is or was of sound mind at the time of the commission of the alleged offence, the trial shall proceed accordingly.

However, if the accused person is found to be of unsound mind, rendering him incapable of presenting a defense, the court shall, under section 219(2) of the Act, make a special finding to the effect that the accused did the act or made the omission charged but by reason of his was insanity, is not guilty of the offence and would, if the offence involved physical violence or damage of property, proceed to order that he be detained in a mental hospital, prison or other suitable place of custody as a criminal lunatic. Thereafter the superintendent of such places may deal with the accused in terms of section 219(4),(5) and (6) of the Act which essentially calls for involvement of the superintendent reporting to the Minister responsible for Health to assess his condition after three years and either order to be discharged or be kept under the care of a person who will ensure his safety.

The recording of the plea by the court is a critical step in the proceedings. It establishes the formal acknowledgment of the accused's plea, whether guilty or not guilty. The court's accurate recording of the plea is essential for maintaining the integrity of the trial process and ensuring that the accused's rights are upheld. While the Criminal Procedure Act does not explicitly address recording of pleas, it offers valuable guidance through Section 210(1) (a) and (b) of the Act regarding the

manner of recording witness evidence. By drawing from these provisions, we can derive a framework for the recording of pleas in court proceedings.

Section 210(1) (a) and (b) stipulate that the evidence of witnesses should be transcribed in writing in the language of the court, employing a narrative approach rather than a question- and-answers format. This requirement emphasizes the importance of capturing a comprehensive and coherent account of the witness testimony. By extension, it suggests that a similar approach can be adopted for recording pleas. Considering the intent behind this provision, it is reasonable to infer that when an accused person enters a plea, the magistrate should ensure that it is recorded in a clear and narrative manner, allowing for a complete understanding of the accused's position. This approach aligns with the broader principles of transparency and accurate documentation within the legal process.

A narrative recording of pleas enhances the clarity and accessibility of the court record, facilitating future reference and review. It enables the parties involved, including the accused, prosecution, and the court itself, to comprehend the plea and its implications accurately. While specific guidelines for recording pleas are provided under section 228(2) of the CPA that, “*when an accused admits the truth of the charge, his admission shall be recorded as nearly as possible in the words he uses*”, the principles and provisions relating to the recording of witness evidence can serve as a valuable reference point in establishing a consistent and reliable procedure for recording pleas in courts of Tanzania.

### **3.3.2 The Magistrates’ Court Act**

Section 20 of The Magistrates Courts Act<sup>65</sup> pertains to the provision for appeals from primary courts in criminal proceedings. It outlines the conditions under which a person convicted by a primary court can appeal against the decision to the district court. The provision also specifies the limitations on such appeals. According to subsection (1) of Section 20, any person who has been convicted of an offense by a primary court or any complainant or the Director of Public Prosecutions in criminal proceedings may appeal against the decision to the district court. This means that both the convicted person and the prosecution have the right to appeal if they are dissatisfied with the judgment or sentence passed by the primary court.

However, subsection (2) of Section 20 imposes restrictions on the right to appeal. It states that no appeal shall be allowed in cases where an accused person has been convicted based on their own plea of guilt, except in instances where they wish to appeal against the sentence or an order for the payment of compensation. This means that if an accused person voluntarily pleads guilty before a primary court, their right to appeal the conviction itself is limited. They can only appeal against the sentence imposed or an order for compensation.

### **3.3.3 The Evidence Act**

The Evidence Act<sup>66</sup> provides rules and principles governing admissibility and presentation of evidence in court proceedings. It provides a comprehensive framework for how evidence should be treated, evaluated and utilized in order to establish the truth in a fair and just manner. The Act encompasses various provisions

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<sup>65</sup> The magistrates' Court Act, Cap. 11 R. E. 2019

<sup>66</sup> The Evidence Act, Cap 6 R. E. 2019

that address different aspects of evidence, including the types of evidence that can be presented, the requirements for admissibility, the weight and credibility assigned to different types of evidence and the procedures for recording and presenting evidence in court.

One important aspect covered by the Evidence Act which is relevant to plea of guilty is the confessions. Section 28 of The Evidence Act addresses the concept of confession. A confession is a statement made by an individual accused of an offense, in which they admit their guilt or involvement in the commission of the crime. It is a form of self-incriminating statement voluntarily made by the accused. In relation to the plea of guilty, a confession holds significant relevance. When an accused person pleads guilty, they are essentially admitting their culpability and accepting responsibility for the offense charged against them. By entering a guilty plea, the accused acknowledges that they committed the crime as alleged by the prosecution.

When an accused pleads guilty, it is a form of confession. By admitting their guilt through the plea, the accused essentially acknowledges their involvement in the offense, which aligns with the concept of confession. It is important to note that the acceptance of a guilty plea is not solely based on the accused's confession or admission. The court must ensure that the plea is made voluntarily and with an understanding of the consequences and implications. The court will also consider other relevant factors such as the accused's competence, the adequacy of legal advice and the presence of any inducement or coercion.

### **3.4 Case Law**

In the case of Michael Adrian Chaki vs. R<sup>67</sup> The appellant, Michael Adrian Chaki, was arraigned and convicted by Ilala District Court based on his own plea of guilty for the offence of grievous harm under section 225 of the Penal Code<sup>68</sup>. The charge against him stemmed from an incident where he allegedly shot the victim, Ezekiel Joshua, causing him grievous harm to his chest and arm. The incident took place on August 8, 2016, in Samora Area within the Ilala District of Dar es Salaam Region. During the proceedings, the appellant entered a plea of guilty to the charge. The prosecution presented the facts of the case, and the trial court found the charge to be proven. As a result, the appellant was sentenced to seven years of imprisonment and was also ordered to pay TZS 3,000,000.00 as compensation to the victim.

The appellant then appealed against the decision to the High Court, but his appeal was dismissed. Subsequently, he filed the second appeal to the Court of Appeal of Tanzania (the Court). The appellant contested the findings of the High Court on three grounds of grievance. Firstly, the appellant argued that the first appellate judge misdirected herself in considering his plea as being an unequivocal. Secondly, he claimed that the law under which he was convicted was not indicated. Lastly, the appellant raised concerns about the admission of exhibits PI, P2, and P3 without proper explanation regarding their origin and custody. The appellant adopted the grounds of appeal, along with written statements and authorities he had previously submitted. He then requested the court to consider his arguments and set him free.

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<sup>67</sup> Cr. Appeal No. 339 of 2017 (unreported).

<sup>68</sup> Penal Code [Cap 16 R.E 2022]

The learned State Attorney, opposing the appeal, argued that the appellant's plea was unequivocal based on the record, and referenced to previous similar cases to support her position. Regarding the second ground, she contended that the appellant was aware of the charge and the law under which he was convicted. As for the third ground, she stated that the admission of the exhibits was unopposed, and it was unnecessary to produce a ballistic expert report since the appellant had pleaded guilty.

The crucial issue for the Court to consider was whether the appellant's plea was unequivocal. The Court stated that, as a general rule, a person convicted based on their own plea of guilty cannot appeal. But there are exceptions to that general rule which were clearly stated in the case. A convict may appeal against conviction and sentence entered on his own plea of guilty on a number of reasons; firstly, if admitted facts were imperfect, ambiguous or unfinished; secondly, that a convict pleaded guilty as a result of mistake or misapprehension; thirdly, that the charge laid at his door disclosed no offence known to law and, and fourthly, that upon the admitted facts a convict could not in law have been convicted of the offence charged.

The court, in this case, went further to establish principles and stages on conducting plea of guilty proceedings. The exact words from the case are quoted herein below;

*"...there cannot be an unequivocal plea on which a valid conviction may be founded unless these conditions are conjunctively met: -*

*1. The Appellant must be arraigned on a proper charge. That is to say, the offence section and the particulars thereof must be properly framed and must explicitly disclose the offence known to law;*

*2. The Court must satisfy itself without any doubt and must be clear in its mind, that an accused fully comprehends what he is actually faced with,*

*otherwise injustice may result.*

*3. When the accused is called upon to plead to the charge, the charge is stated and fully explained to him before he is asked to state whether he admits or denies each and every particular ingredient of the offence. This is in terms of section 228(1) of the Criminal Procedure Act.*

*4. The facts adduced after recording a plea of guilty should disclose and establish all the elements of the offence charged.*

*5. The accused must be asked to plead and must actually plead guilty to each and every ingredient of the offence charged and the same must be properly recorded and must be clear (see Akbarali Damji vs R. 2 TLR 137 cited by the Court in Thuway Akoonay vs Republic [1987] TLR. 92);*

*6. Before a conviction on a plea of guilty is entered, the court must satisfy itself without any doubt that the facts adduced disclose or establish all the elements of the offence charged" [Emphasis added].*

This case established crucial rules that must be followed in plea of guilty proceedings. These rules emphasize the importance of arraiging the accused on a proper charge, ensuring their full comprehension of the charges, recording a clear and unambiguous guilty plea to each element of the offense, and establishing all the elements of the charged offense through the facts presented. Adhering to these established rules is essential in ensuring the validity and integrity of plea of guilty proceedings.

In *Thuway Akoonay vs Republic*<sup>69</sup> the appellant was initially charged with threatening violence, but the charge was later withdrawn and substituted with a new charge of arson. However, the appellant was not called upon to plead to the new charge. The judge in the first appeal believed that the provisions of section 234 of the Criminal Procedure Act had been complied with since the appellant saw no need to recall previous witnesses after the charge of arson had been substituted. The judge concluded that the trial was not a nullity.

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<sup>69</sup> [1987] T.L.R. 92)



However, on further examination, the Court held that it is mandatory for a plea to be taken from an accused person when a new or altered charge is introduced. Failure to do so renders the trial a nullity. The court referred to a previous case, *Akbarali Damji v R*<sup>70</sup>, where it was established that the arraignment of an accused is not complete until a plea is taken. The omission to take a plea cannot be considered to be a curable irregularity. Therefore, since no plea was taken in this case, the trial was deemed a nullity. The appeal was allowed, the conviction was quashed, the sentence was set aside, and the appellant was ordered to be released unless lawfully detained.

This case serves as an important reminder of the necessity to take a plea when a charge is amended. As discussed in this case, failure to call upon the accused to plead to a new or altered charge renders the trial a nullity. The court emphasized that arraignment is not complete until a plea is taken, and the omission to do so cannot be considered a curable irregularity. Therefore, it is crucial for the proper administration of justice to ensure that pleas are taken whenever charges are amended.

In ***Athuman Bakari Meja @ Bodde vs Republic***<sup>71</sup> the appellant, Athuman Bakari Meja, was convicted on his own plea of guilty to charges of house breaking and stealing under Sections 294(1)(a) and 258/265 of the Penal Code, respectively. He was sentenced and ordered to concurrently serve a sentence of five years and twelve months for the respective counts. Dissatisfied with the conviction and sentence, the appellant filed an appeal on five grounds, but the essence of all grounds boiled down to the claim that his plea was equivocal.

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<sup>70</sup> *Akbarali Damji vs R*. 2 TLR 137

<sup>71</sup> Criminal Appeal No. 179 of 2021 (unreported)

During the hearing, the appellant argued that his plea was equivocal, citing procedural errors that invalidated his conviction and sentence. He claimed that he pleaded not guilty during arraignment and that the plea of guilty was later erroneously entered by another trial magistrate. The appellant also asserted that, the facts of the case were not narrated, that is, was not read out to him after the trial court recorded his plea of guilty, as required by the law. He further contended that the trial court failed to ask him why he pleaded guilty and admitted to incriminating facts as well as failed to inform him of the consequences of his plea. The appellant urged the Court to find his appeal meritorious, quash the conviction, and set aside the sentence imposed against him.

On the other hand, the prosecution supported the conviction and sentence which was issued by the lower court, emphasizing that the appellant had indeed pleaded guilty to the charges. Mr. Maleko, a learned Senior State Attorney pointed out that the appellant's plea was unambiguous hence the conviction and sentence issued was within legal scope. Mr. Maleko, to support the prosecution case that, added that section 360(1) of the Criminal Procedure Act, prohibits appeals based on pleas of guilty hence an appellant is barred from appealing against his conviction and sentence.

In determining both appellants' and respondents' arguments, the Court refrained to go along with Mr. Maleko stating that, there are exceptions to the general rule stipulated under section 360(1) of the Criminal Procedure Act, as established in the case of Laurence Mpinga vs. The Republic<sup>72</sup>. The Court expounded that, in certain

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<sup>72</sup> Laurence Mpinga vs. The Republic (1993) TLR 166

circumstances, an accused person convicted on his own plea of guilty may be allowed to appeal against the conviction to higher courts. Such circumstances include the following grounds: *first*, the plea was imperfect, ambiguous, or unfinished, and the lower court erred in treating it as a plea of guilty; *second*, the accused pleaded guilty due to a mistake or misapprehension; *third*, the charge brought against the accused did not disclose an offense known to law.

Furthermore, the Court referred to the case of Michael Adrian Chaki vs. R., as discussed above and cemented the rules established on conducting plea of guilty proceedings. In this case, the Court laid down a set of conditions that must be met for a plea of guilty to be deemed unequivocal and valid. *Firstly*, it is necessary for the appellant to be arraigned on a proper charge. This means that the charge should clearly specify the offense section and provide accurate particulars that explicitly disclose the offense known to the law. By framing the charge correctly, the accused is made fully aware of the specific offense he is being accused of.

*Secondly*, the court must satisfy itself beyond any doubt that the accused comprehends the charges against them. It is crucial to avoid any confusion or misunderstanding that may lead to an unjust outcome. The court needs to be certain that the accused fully understands the nature and consequences of the charges they are facing. The *third* condition emphasizes the importance of clearly explaining the charge to the accused when they are called to plead. The charge should be stated and fully explained, ensuring that the accused has a clear understanding of each and every particular ingredient of the offense. This requirement is in accordance with Section 228(1) of the Criminal Procedure Act.

*Forth*, after recording a plea of guilty, the facts presented should disclose and establish all the elements of the offense charged. The evidence and facts presented should align with the charges, providing sufficient support for the guilty plea. This condition ensures that the plea is based on accurate and substantiated information. The *fifth* condition emphasizes that the accused must plead guilty to each and every ingredient of the offense charged. This means taking responsibility for all the elements and admitting guilt to each one. The plea must be properly recorded, ensuring clarity and accuracy in reflecting the accused's admission of guilt.

*Sixth*, before entering a conviction based on a plea of guilty, the court must satisfy itself without any doubt that the facts presented establish all the elements of the offense charged. The evidence should be carefully evaluated to ensure that it supports the guilty plea and that all necessary elements of the offense have been proven. The Court proceeded to describe plea proceedings that, based on herein above established rules, an unequivocal plea of guilty consists of two crucial stages of pleading. The *first* stage involves the accused pleading guilty to the charge itself, which aligns with rule 1, 2, 3, and 5 outlined above. This means that the accused persons admit their guilt to the specific offence as stated in the charge, demonstrate a clear understanding of the charges, and acknowledge each particular ingredient of the offense.

The *second* stage of pleading requires the accused to admit as being correct and true the facts by the prosecution that they constitute and establish the offence charged, corresponding to rule 4 and 6 above. In this stage, the prosecution has a duty to audibly and understandably present the facts that establish the offense as alleged in

the statement and particulars of the offence. The prosecution is responsible for clearly and adequately explaining the circumstances and the manner in which the offence was committed, using specific and intelligible terms.

The Court concluded that, the appellant's plea of guilty mate the rules or criteria set forth in the case of Michael Adrian Chaki holding that the charge against the appellant was proper, the offense was clearly framed and disclosed the essential ingredients of the offence and the appellant fully understood the charges as he admitted to them and provided incriminating particulars and that the appellant admitted to the facts which established all elements of the offence and the trial magistrate was satisfied that the facts disclosed and established the offence charged.

Furthermore, the Court clarified that the trial court had no legal obligation to inquire why the appellant pleaded guilty but was obliged to inform him of the consequences of his plea. Regarding the custodial sentence imposed by the trial court, the Court acknowledged the principle that emphasizes the reformatory aspect of punishment for first-time offenders, unless the offense is of a serious nature requiring exemplary punishment. The appellant's guilty plea was therefore taken into consideration as an expression of remorse. In this case, the Court held that, considering the appellant's voluntary guilty plea, lack of previous criminal record and the absence of a finding that the offense required exemplary punishment, the trial court should have exercised leniency in sentencing the appellant.

On account of the above, the Court, reduced the sentence on the first count from five years to three years. The case highlights the importance of abiding to criteria or rules

asserted in the case of Michael Adrian Chaki vs. Republic. Failure to abide by the six rules discussed above regarding a plea of guilty proceedings can have significant consequences on the entire proceedings. It may lead to the invalidation of the plea if the accused is not arraigned on a proper charge or if the charge is inadequately explained, potentially requiring trials orders or further legal actions.

The accused's failure to comprehend the charge levelled against him, inadequacy in the facts narrated by the prosecution, failure to plead guilty or admit to each element of the offence, insufficiency in the charge in establishing all the elements of the offence charged and the court's failure to fully inform the accused the consequences of his plea can cast doubt on the validity of the plea of guilty, raise concern about fairness and potentially violate the accused's rights. It is crucial to adhere to these rules to maintain the integrity and fairness of the judicial process.

In **Nkalango Nkumbulwa vs. Republic**<sup>73</sup> an appellant Nkalango Nkumbulwa was charged with rape before Manyoni District Court. The said rape was allegedly done to a 12-year-old girl. The appellant who had no legal representation, and fending for himself as a layman, pleaded guilty before the trial court and was subsequently convicted based on his own plea of guilty. The trial court sentenced him to thirty (30) years imprisonment and it was also ordered that he should be subjected to a corporal punishment of twelve (12) strokes of the cane. Being aggrieved by the decision of the trial court, the appellant filed an appeal challenging his conviction advancing several grounds. The primary contention was that, his plea of guilty was equivocal, meaning that he did not fully comprehend the nature of his plea and the

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<sup>73</sup> Dc. Criminal Appeal 32 of 2022 (unreported)

charges against him when he entered the plea. In support of the appeal, the appellant argued that the police coerced him into admitting to the offence so that he could be released. He maintained his innocence throughout the proceedings.

Upon examining the trial records and the judgment, the appellate court found significant irregularities in the plea-taking process. The court noted that the trial magistrate failed to properly record the appellant's plea and did not ensure that the appellant fully understood the charges and the consequences of his guilty plea. The plea recorded was ambiguous and lacked clarity, leaving doubts as to whether the appellant pleaded voluntarily and with full knowledge of the charges.

The appellate court referred to section 228 of the Criminal Procedure Act that mandate a proper plea-taking procedure, emphasizing that the accused must be informed of and made to understand their rights, and their plea must be immediately recorded to indicate whether they plead guilty or not. In this case, the Court stated that the proper section for taking plea is 228 of the Criminal Procedure Act<sup>74</sup> which reads as follows:

*"(1) The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge.*

*(2) If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words he uses and the magistrate shall convict him and pass sentence upon or make an order against him, unless there appears to be sufficient cause to the contrary.*

*(3) If the accused person does not admit the truth of the charge, the court shall proceed to hear the case as hereinafter provided.*

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<sup>74</sup> Cap 20 [R.E.2019].

*(4) If the accused person refuses to plead, the court shall order a plea of "not guilty" to be entered for him.*

*5)(a) If the accused pleads-*

*(i) that he has been previously acquitted of the same offence; or*

*(ii) he has obtained a pardon at law for his offence, the court shall first try whether or not in fact such plea is true.*

*(b) If the court holds that the evidence adduced (facts narrated) in support of such plea does not sustain the plea, or fit findings that such plea is false in fact, the accused person shall be required to plead to the charge.*

*(6) After the accused has pleaded to the charge read to him in court under this section, the court shall obtain from him his permanent address and shall record and keep it"*

In this case, the Court found that the trial magistrate did not follow the proper procedures as outlined above, leading to a conviction based on a non-existent plea. The irregularities in the proceedings and the equivocal plea resulted in an injustice to the accused. Based on these findings, the appellate court ordered him to face a trial, stating that the interests of justice demanded it. The Court highlighted that an order to face trial should be made, and did so holding that, when the original trial was illegal or defective and it should not cause any injustice to the accused. The case underscores the importance of following proper procedures in the criminal justice system, especially during plea-taking, to safeguard the rights of the victim and those of the accused and avoid potential miscarriages of justice. It also highlights the need for legal representation for accused individuals as self-representation by laypersons can lead to injustice due to ignorance of the legal process.

### **3.5 Conclusion**

The legal framework surrounding plea and plea of guilty involves various provisions and considerations within the criminal justice system. It typically consists of statutory laws, court rules, and established practices that outline the process and



implications of an accused entering a guilty plea. In Tanzania, the plea process allows individuals accused of a crime to admit or deny the charges voluntarily without force. The procedures for entering a guilty plea vary depending on the court involved. In Tanzania specifically, the plea procedure in subordinate courts and High court is provided under Criminal Procedure Act.

Plea before subordinate courts is governed by section 228 of CPA which provides that, when an accused has been arraigned before a court of law to answer his charges, a charge will be read before him and he will be required to enter a plea. If an accused pleads guilty, a magistrate will record a plea in the words as nearly as the words stated by an accused and after all facts are narrated as established in the case of Michael Adrian Chaki vs. R, a magistrate will proceed to convict and sentence him. If an accused pleads not guilty, a magistrate will allow prosecution to proceed by bringing witnesses and exhibits in support of their allegations. In addition, an accused is supposed to plea to every fact read and finally the court will convict and sentence the accused.

Plea to an information before the High Court is governed under section 275, 279, 281 and 282 of the CPA. As per the above sections, if the accused is arraigned before the High Court, the plea procedure is almost the same as that applied before the subordinate court save that instead of a charge what is placed before an accused is an information which is read out to the accused. The procedure is, therefore, as follows; An information will be read upon an accused and he will be required to enter a plea. If an accused pleads guilty, a judge will record a plea in words as stated by an accused, facts of the case will be read upon him and he will be required to

enter plea to every fact constituting the elements of the crime or offence committed. Upon pleading guilty to every fact, then a judge will proceed to convict and sentence him immediately. If an accused pleads not guilty, a court will, like in subordinate courts, proceed to choose assessors where necessary and put an accused to trial where prosecution will present evidence and witnesses to establish the guilt of the accused beyond a reasonable doubt.

What is important in plea taking is to abide with the proper procedure of recording plea as established by the above provisions of the CPA. Proper plea taking or recording by judges and magistrates is essential in protecting accused's rights and it is a duty of a court to ensure that a plea is procured voluntarily or without threat to an accused. Procedural impropriety in plea taking and conduct of proceedings thereof is a serious error which may seriously affect rights of an accused person and proceedings.

## CHAPTER FOUR

### UNCERTAINTY IN PLEA OF GUILTY IN CRIMINAL TRIALS

#### 4.1 Introduction

In the realm of plea taking procedures, the accurate recording of pleas and the proper conduct of proceedings play a crucial role in upholding the integrity and fairness of the criminal justice system. Unfortunately, there have been instances where judges and magistrates have made errors in recording pleas and conducting plea proceedings, particularly when an accused person pleads guilty. These mistakes have had significant repercussions, leading to convictions being overturned on appeal and accused individuals being ordered to undergo trial as if they had not pleaded guilty. This chapter focuses on the mistakes that magistrates and judges make during plea proceedings and the recording of pleas, drawing upon actual case laws that highlight these errors. By examining these cases, we can gain insights into the challenges and implications of inaccurately recorded pleas and flawed plea proceedings in the criminal justice system<sup>75</sup>.

#### 4.2 Narrated Facts and Resultant Insufficiency

In the case of *Michael Adrian Chaki vs. Republic*<sup>76</sup>, the court established a crucial legal requirement for the prosecution to read the facts of the case after an accused person pleads guilty. The court emphasized that despite the plea of guilty, the prosecution still retains the duty to prove the case beyond a reasonable doubt. This landmark decision reaffirms the principle that a guilty plea alone is not sufficient to secure a conviction and imposes a duty on the prosecution that it must provide a

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<sup>75</sup> HG, "Pleading Guilty or Going to Trial: Pros and Cons", <https://rb.gy/8h2cr> accessed July 4, 2023

<sup>76</sup> *ibid*

factual basis to support the plea. When narrating the facts of the case, the prosecution is expected to provide a comprehensive and accurate account of the relevant events and circumstances surrounding the commission of the alleged offence. This includes describing the sequence of events, the actions of the accused person, the victim's involvement and any other pertinent details that are essential for the court's understanding of the case. The narration should be clear, concise and devoid of any ambiguity or confusion as was held in the case of *Daudi Bakari@ Nyagalu vs Republic*.<sup>77</sup>

However, there are several other instances where the narrated facts may be deemed insufficient, leading to potential challenges or problems in the plea proceedings. Firstly, if the facts provided are incomplete or lack crucial details, it can undermine the accused persons' ability to make a fully informed decision about their plea. The accused person has the right to know and understand in details the specific allegations against them in order to exercise their right to a fair trial. Secondly, inconsistencies or contradictions within the narrated facts of the case can also render it insufficient. If the prosecution presents conflicting versions of events or fails to provide a coherent account, it raises doubts about the accuracy and reliability of the facts. In such cases, the court may question the validity of the guilty plea and the overall integrity of the plea proceedings.

Additionally, the prosecution must ensure that the narrated facts align with the elements of the offence being charged. If the facts do not establish all the essential elements of the offense beyond reasonable doubt, the plea may be considered

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<sup>77</sup> *Daudi Bakari@ Nyagalu vs Republic* (Criminal Appeal No. 25 of 2020) [2020] TZHC 4722

imperfect and invalid as described in the case *Lawrence Mpinga v. Republic*<sup>78</sup>. The prosecution bears the burden of proving each element of the offense, regardless of the accused person's plea and any deficiencies in the narrated facts can jeopardize the prosecution's case.

To prevent insufficiency in narrated facts, it is essential for the prosecution to conduct a thorough investigation and gather all relevant evidence before the conduct of plea proceedings. This includes interviewing witnesses, collecting physical evidence and consulting any available documentation or records. By diligently preparing the facts of the case, the prosecution can ensure a robust and reliable narrative that supports the accused person's guilty plea while satisfying the legal requirement of proof beyond reasonable doubt.

The case of Michael Adrian Chaki vs. Republic highlights the legal requirement for the prosecution to read the facts of the case after a plea of guilty by an accused person. The narration of facts plays a critical role in plea proceedings, providing the court with a factual basis for accepting the plea and determining the appropriate course of action. However, it is crucial for the narrated facts to be comprehensive, accurate and aligned with the elements of the offence. Failure to meet these standards can result in insufficiency, potentially leading to challenges and complications in the plea proceedings with the resultant effect of rendering the plea equivocal.

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<sup>78</sup> *Lawrence Mpinga v. R* (1983) TLR 166

### **4.3 Nullification of the Plea of Guilty and Upholding the Principle of Fair Trial**

Nullification of a plea of guilty and upholding the principle of fair trial are essential aspects of the criminal justice system<sup>79</sup>. In certain circumstances, a plea of guilty may be nullified due to various reasons such as failure to ensure that the accused person's right to a fair trial is preserved. One common reason for nullifying a plea of guilty is the existence of a procedural or substantive irregularity during the plea-taking process. This could include instances where the accused person was not properly informed of his rights, coerced into entering plea of guilty or did not fully understand the consequences of their plea.

The court must ensure that the accused person's decision to plead guilty is voluntary, informed and free from any undue influence. Another factor that can lead to the nullification of a plea of guilty is in a situation where it is found, through medical examination, that the accused person lacked the mental capacity to understand the nature and consequences of the plea such as in cases involving mental illness or intellectual disabilities in which situations the court may nullify the plea of guilty so as to safeguard the principle of fairness and protect the rights of the accused.

The nullification of a plea of guilty serves as a safeguard against potential miscarriages of justice and ensures that the accused person's right to a fair trial is respected. It allows for a thorough examination of the evidence, adherence to due process, and the opportunity for the accused person to present defence. By upholding the principle of fair trial, the criminal justice system maintains its integrity and ensures that individuals are not unjustly convicted based on flawed or coerced pleas

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<sup>79</sup> FIJA, "jury nullification", <https://rb.gy/06nsg> accessed July 4, 2023

of guilty.

The nullification of a plea of guilty and the preservation of the principle of fair trial are critical components of the legal system. Whether due to procedural irregularities or issues concerning the accused person's mental capacity, the court must carefully consider and assess the circumstances surrounding a plea of guilty. By doing so, the court upholds the fundamental principles of justice, protects the rights of the accused and promotes the pursuit of truth and fairness in criminal proceedings. As a matter of practice, appellate courts in Tanzania prefer to order accused persons to face trial when they find that the plea was improperly recorded and plea of guilty proceedings not properly conducted by the trial court.

#### **4.3.1 Acquittal for no Case to Answer**

As a matter of procedure and law, when a court determines that evidence presented by the prosecution witnesses is insufficient to establish a prima facie case against the accused, it has the authority to order the acquittal of the accused person. This power is derived from Section 230 of the Criminal Procedure Act<sup>80</sup>, which vests the court with the power to dismiss the charge and acquit the accused if it is satisfied that a case has not been made out against the accused person to necessitate an accused to enter defence. Such is not the case where the court finds that the plea was not properly taken because that signifies that there may have been procedural irregularities or deficiencies in the plea-taking process. This could include instances where the accused was not fully informed of their rights, where there was a lack of

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<sup>80</sup> *ibid*

understanding or failure to comprehend of the nature of the charges or where the accused was coerced or influenced into entering a plea of guilty.

The court's authority to order acquittal under section 230 of the Criminal Procedure Act reflects the importance of upholding the principles of fairness and justice. It recognizes that conviction emanates from strong evidence from the prosecution to prove the accused guilty hence uphold the principle of presumption of innocence. If there are concerns about the validity or propriety of the trial, the court has the power to rectify any procedural defects and ensure that the accused's rights are safeguarded. By ordering acquittal when evidence is insufficient, the court acknowledges that a fair trial requires adherence to proper legal procedures. It prevents the accused from being unfairly prejudiced and it reinforces the integrity of the criminal justice system.

#### **4.3.2 An Order to Face Trial**

When a proper procedure of conducting plea proceedings is not followed, as demonstrated above, courts have ordered accused persons to face trial. This decision is made with the aim of ensuring that the accused is given another opportunity to enter a plea and fully comprehend the case against him. The proper procedure for taking a plea and conduct of plea of guilty proceedings is essential for upholding the principles of fairness, due process and the accused's right to a fair trial. If it is found that the plea procedure was flawed or inadequate, such as when the accused did not fully understand the charges or was not given proper legal advice, the court may determine that an order to face trial is necessary<sup>81</sup>.

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<sup>81</sup> *ibid*



Ordering a trial allows opportunity for the accused persons to have a fresh opportunity to plead and participate in the proceedings. It gives them the chance to understand the nature of the charges, consult with their legal counsel, if any, and make an informed decision regarding their plea. This ensures that the accused's rights are protected and that they are able to actively and effectively enter an informed and focused defense. By ordering a trial, the court recognizes the importance of a proper plea procedure in safeguarding the integrity of the trial process. It acknowledges that a flawed or defective plea taking may undermine the accused's ability to mount a proper defense and may compromise the overall fairness of the proceedings<sup>82</sup>.

It is clear, on the one hand that, a trial carries with it various advantages. The order affords a chance for the trial court to rectify any errors or deficiencies in the original plea proceedings and allows for a more just and accurate determination of the case. It also demonstrates the court's commitment to ensuring that the accused is afforded a fair and impartial trial, where their rights are respected and upheld. However, on the other hand, that may occasion an injustice on the part of an accused who would face trial as it will avail the prosecution to rectify the anomalies in the earlier conducted plea proceedings as it allows chance for them to look for other evidence so as to procure an unjustified conviction. It therefore works injustice on the part of an accused person.

### **4.3 Conclusion**

The key factor contributing to uncertainty in the outcome of an appeal arising from

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Ibid

plea of guilty proceedings is the procedural flaws committed by judges and magistrates during recording of pleas and conduct of plea of guilty proceedings. These infractions can result in convictions being overturned on appeal, leading to the appellate court ordering the accused persons to face trials or taking of other legal remedies. Such procedural flaws not only undermine the integrity of the plea taking process but also have profound consequences for the accused individuals involved who may be subjected to unnecessary or unjust trials. Hence, when dealing with plea taking and proceedings, magistrates need to be so much careful to avoid committing such errors as they may occasion injustice to the accused persons. It is crucial for the court concerned to ensure that the accused persons fully understand the charges against them, their rights, and the implications of entering a guilty plea. Any deficiencies in observing the plea procedure or failure to uphold the principles of fairness can compromise the legitimacy and reliability of the plea process.

An attempt to provide a cure to the infractions arising from plea and plea of guilty proceedings, courts have tried to provide some guidelines on how to handle such proceedings. An example is in the case of *Adan vs Republic* (supra) which provided a detailed procedure of handling such proceedings as hereunder: -

- (i) When a person is charged, the charge and particulars should be read out to the accused person so far as possible in his/her own language, but if that is not possible, then in a language which he/she can speak or understand.
- (ii) The magistrate/judge should then explain to the accused person all the essential ingredients of the offence charged.
- (iii) If the accused admits all the essential elements, then the magistrate/judge

should record what the accused has said as nearly as possible in his/her own words and then formally enter a plea of guilty.

- (iv) The court should then ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, he/she should give the accused an opportunity to dispute or explain the facts.
- (v) If the accused does not agree with the statements of the facts or asserts additional facts which if true might raise a question as to guilt, the court should record a change of plea to not guilty and proceed to hold a trial.
- (vi) If the accused does not deny the alleged facts in any material respect, the court should record a conviction and proceed to hear any further facts relating to sentence.
- (vii) The statement of facts and the accused's reply must be recorded.
- (viii) In the case of a capital offence, court must explain the ingredients of the offence and the sentence in great detail.

As we have endeavoured to explain above, many other decisions of the Court subscribed to the above procedure as being the one giving a proper guide on the conduct plea proceedings.

**CHAPTER FIVE**  
**SUMMARY OF RESEARCH FINDINGS, CONCLUSION AND**  
**RECOMMENDATION**

**5.1 Summary of Research Findings**

Throughout our discussion, several key findings have emerged regarding the uncertainties surrounding the plea of guilty in criminal trials. One crucial finding is the significance of following proper plea procedures to ensure that the accused persons fully understand the charges against them and the implications of entering a guilty plea. When courts fail to adhere to these procedures, it can lead to legal challenges and the nullification of such plea.

Another notable finding is the occurrence of errors in plea proceedings. Mistakes made by judges and magistrates during these proceedings have resulted in convictions being overturned on appeal. These errors can range from inaccurately recording pleas, plea of guilty proceedings, insufficiency of narrated facts to inadequate explanation of the accused rights and the charges undermine the reliability and fairness of the plea process. The principle of fair trial has also emerged as a critical aspect of plea proceedings. It is essential to uphold this principle by ensuring that the accused comprehends their rights, the charges they face and the implications of their plea. Any violations or deficiencies in upholding the principle of fair trial can significantly impact on the legitimacy of the plea process.

In cases where a proper plea procedure was not followed or concerns arise regarding the accused's comprehension to the charge, a court may order accused to face trial.

This gives the accused another opportunity to enter a plea and actively engage with the case against them, ensuring a fair and just process and also causes prolonged trials while they were ready and had pleaded guilty. These findings collectively underscore the importance of procedural fairness, accurate recording of pleas and proper conduct of plea proceedings and continuous improvement in conduct of plea processes. They highlight the significance of judicial vigilance, training, and adherence to established protocols to enhance the reliability and integrity of the plea of guilty in criminal trials.

By addressing the uncertainties and challenges surrounding the plea process, we can strive towards a more just and equitable criminal justice system. There is, lastly, inconsistency in the orders made by appellate court in events where procedural flaws occur. As demonstrated above, in certain cases, even the Court has sometimes ordered the accused to be retried or face a trial. There is need to have a harmonized stance.

## **5.2 Conclusion**

Our discussion focused on the legal framework governing pleas and conduct of the plea of guilty proceedings in criminal trials in Tanzania. We have explored the procedural requirements, the role of judges and magistrates, the implications of errors and uncertainties in the Court's final order and the overarching principles of fairness and justice. One of the key findings the study has explored is the significance of the courts to abide to accurate plea procedures. From the initial arrest to the plea taking process and conduct of proceedings, it is essential to follow the prescribed legal steps to ensure that the accused fully understands the charges and rights.

The recording of pleas, whether of guilty or not guilty, must be done meticulously for the reason that any errors or omissions can have serious consequences for the accused's rights and the integrity of the trial. Another important aspect we have examined is the burden of proof. It is the finding that even when an accused pleads guilty, the prosecution still has the responsibility to present evidence (facts) proving or establishing the charged offence beyond reasonable doubt. This principle ensures that the accused's plea is well informed and voluntary and it upholds the fundamental presumption of innocence.

Throughout our discussion, we have also highlighted the need for fair, proper and transparent proceedings. The principle of fair trial is central to the criminal justice system and any deviations or shortcomings in plea procedures can undermine this principle. Errors, insufficiencies or improper handling of pleas recording and conduct can lead to wrongful convictions, unwarranted appeals and the need for orders of trial. Moreover, we have examined the concept of acquittal for no case to answer which serves as a safeguard against baseless or weak prosecution evidence. Section 230 of the Criminal Procedure Act clothes the court with the mandate to dismiss charges and acquit the accused if the evidence presented is insufficient to require accused enter defense.

This mechanism protects the accused from being subjected to unnecessary trials and upholds the principle that guilt must be proved. Throughout our discussion, we have recognized the challenges and complexities involved in plea procedures. Mistakes made by judges and magistrates can result in the nullification of pleas, the need for an order of trials as well as potential injustices. It is crucial for legal professionals to

be well-versed in the procedural requirements and to exercise diligence and care in plea taking and conduct of plea proceedings.

### **5.3 Recommendations**

#### **5.3.1 Enhanced Training and Education**

To address the uncertainties surrounding plea procedures, it is crucial to invest in comprehensive training and education for legal professionals involved in criminal trials. Judges, magistrates, prosecutors and defense lawyers should undergo training that covers the intricacies of plea taking process, recording and conduct of proceedings so as to ensure that they have a thorough understanding of the legal requirements, procedural guidelines and best practices on the subject. By equipping legal professionals with the necessary knowledge and skills, they can ensure accurate plea recording and conduct of plea proceedings thereby reducing the likelihood of errors and promoting a fair and efficient legal process.

#### **5.3.2 Standardized Procedures**

In order to minimize uncertainties and inconsistencies in plea process, setting and implementation of standardized procedures is essential. Clear and specific guidelines should be established regarding the proper recording of pleas process which emphasize on the use of clear and narrative language. This ensures that the accused's position and understanding of the charges are accurately captured. By adhering to standardized procedures, courts can create a more uniform and reliable system for recording pleas hence reduce the potential errors that may affect the final outcome or verdict of a case.

On the issue of which the proper order which should be made by an appellate court where the accused's plea is overturned and nullified, that is whether to be retried or face a trial, there is need to have a harmonized stance. A consideration being whether the plea taking is a trial or not.

### **5.3.3 Continuous Professional Development**

Continued professional development programs should be established to keep legal professionals abreast of developments in plea procedures. Training workshops, seminars and updates on changes in legislation and precedents are essential for ensuring that legal professionals are well-informed and equipped with the latest knowledge and skills. Continuous professional development empowers legal professionals to conduct plea proceedings effectively consequently minimizing uncertainties and promoting a more reliable and consistent legal process.

### **5.3.4 Public Awareness and Education**

Public awareness campaigns should be conducted to educate the general public about their rights and the importance of accurate plea procedures and case handling in general. By enhancing public understanding, accused will be better informed about their rights and the consequences of their pleas. This can contribute towards more informed decision-making and facilitate a fairer and more transparent criminal justice system. Public awareness initiatives can also foster public confidence in the legal system, promoting trust and accountability.

### **5.3.5 Research and Evaluation**

Ongoing research is vital to continuously improve plea procedures in Tanzania.



Conducting studies that analyze case outcomes, plea recording and gather feedback from legal professionals and accused can provide valuable insights into the effectiveness of current practices. Through research, policymakers can identify areas for improvement, address any shortcomings and develop evidence-based policies and reforms. By fostering a culture of research and evaluation, the legal system can evolve and adapt to better serve the interests of justice.

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