



MALAWI JUDICIARY

PRACTICE DIRECTIONS 1 OF 2026

HANDLING OF PLEA BARGAINING IN PRISON CAMP COURTS

(Made Pursuant to Section 252A of the Criminal Procedure & Evidence Code
Cap 8:01 of the Laws of Malawi)

WHEREAS Section 252A (1) of the Criminal Procedure and Evidence Code Cap. 8:01 of the Laws of Malawi provides legislative authority for plea bargaining in the Malawi Courts;

WHEREAS under S252A (1) the Chief Justice may make rules that shall permit parties to enter into plea bargaining where appropriate;

WHEREAS the work of making rules relating to plea bargaining is on-going;

WHEREAS the prisons of Malawi remain congested and that there is growing need to decongest them;

WHEREAS resource constraints have slowed down the disposition of numerous cases of persons in custody resulting in mounting backlog of cases;

WHEREAS the Courts have for a number of years attempted to reduce prison congestion by holding Prison Camp Courts for appropriate cases;

WHEREAS the law provides for enabling the accused person and the prosecutor in consultation with the victim to reach an amicable agreement on appropriate sentence and in appropriate cases;

WHEREAS early disposal of criminal cases facilitates the reduction of Case backlog and prison congestion;

WHEREAS plea bargaining has the potential to provide for expeditious relief from the anxiety and uncertainty attendant to criminal prosecution while encouraging the accused persons to accept responsibility for their criminal conduct;

WHEREAS victim participation in the adjudicative process promotes public confidence in the Criminal Justice System;

WHEREAS since its enactment as Act Number 14 of 2010, Section 252A has not seen its implementation;

WHEREAS it is deemed expedient to conduct a pilot plea bargaining exercise through Prison Camp Court;

WHEREAS the results of such Pilot Prison Camp Court will inform the development of Rules relating to Plea Bargaining now under consideration;

NOW THEREFORE IT IS NOTIFIED that effective the date of this Practice Direction, for enhancement of the efficiency of the Criminal Justice System by promoting orderly, predictable, uniform, consistent and timely resolution of Criminal matters in appropriate cases;

1. THAT Plea bargaining may be conducted where the accused and the prosecutor in appropriate Criminal Cases may work out a mutually satisfactory disposition of the case with the participation of the victim and subject to court approval.
2. THAT Plea bargaining includes:
 - (a) the accused pleading guilty to a lesser offence; or
 - (b) the accused pleading guilty to only one or more counts of a charge
3. THAT (1) a plea bargain may be initiated orally or in writing by:

- (a) the accused person, either personally or through his or her legal practitioner; or
 - (b) the prosecutor
- (2) a plea bargain may be initiated at any stage of the criminal proceedings before sentence is passed.
4. THAT the prosecutor shall in the interest of justice disclose to the accused person or his legal practitioner all relevant information, documents and other materials obtained during investigation to enable the accused person to make an informed decision regarding plea bargaining.
 5. THAT disclosure shall not extend to any information the disclosure of which would:
 - (a) compromise State security;
 - (b) endanger the safety and security of any witness, or
 - (c) prejudice the integrity of the Criminal Justice process
 6. Where an accused person is represented by a legal practitioner, a public prosecutor shall not engage in any plea negotiations directly with the accused person in the absence of his legal practitioner.
 7. Where an accused person who indicates that he wishes to be assigned a legal practitioner is not assigned the legal practitioner, the public prosecutor shall not engage in any discussions directly with the accused person, until the accused person waives in writing his right to be represented by a legal practitioner.
 8. THAT a public prosecutor:
 - (a) shall, where reasonably practicable, before concluding the plea negotiations obtain, the views of the victim or a member of the immediate family of the victim.
 9. THAT a public prosecutor shall take into account the interests of the victim, complainant and the community having regard to:

- (a) the nature of, and circumstances relating to the commission of the offence;
- (b) the criminal record of the accused person, if any;
- (c) loss or damage suffered by the victim, complainant or community as a result of the offence; and
- (d) any other relevant information.

10. THAT where the victim has died or is incapacitated, the public prosecutor may communicate with a member of the immediate family of the victim.

11. THAT where the victim is a child, views may be obtained from one of his parents or guardian, or where the parents or guardian cannot be found, a social welfare officer.

12. THAT the failure of the public prosecutor to:

- (a) obtain the views of the victim or a member of the immediate family of the victim or social welfare officer, as the case may be, before concluding plea negotiations, or
 - (b) inform the victim, the complainant and the community the substance and reasons for the plea agreement,
- Shall not invalidate the plea agreement.

13. THAT a plea agreement shall:

- (a) be in writing;
- (b) contain the information as may be required in this Practice Direction;
- (c) signed by -
 - (i) the public prosecutor;
 - (ii) the accused person or his legal practitioner;
- (d) sanctioned by the Director of Public Prosecution.

14. THAT where a plea agreement involves a child, the agreement shall be negotiated and executed by the parents, guardian or the child's legal practitioner.

15. THAT before recording a plea agreement, the Court shall inform the accused person of his right to fair trial and shall satisfy itself that the accused person fully understands:

(a) the right to -

- (i) plead not guilty or having so pleaded, to persist in that plea;
- (ii) be presumed innocent until proven guilty;
- (iii) remain silent and not to testify during the proceedings;
- (iv) not to be compelled to give self-incriminating evidence;
- (v) full trial; and
- (vi) be represented by legal practitioner of his own choice and where necessary be represented by a legal practitioner at the expense of the State;

(b) by accepting the plea agreement, he is waving his right to full trial;

(c) the nature of the charge he is pleading to;

(d) any maximum possible penalty, including imprisonment time, community service, probation or conditional or unconditional discharge

(e) any mandatory maximum penalty;

(f) the power of the Court to order forfeiture;

(g) the power of the Court to order compensation;

(h) that by entering into a plea agreement the accused person waives the right to appeal except as to the extent or legality of the sentence or where Judicial Officer imposes a sentence outside the terms of the plea agreement; and

(i) the right of the prosecution in the case of prosecution for perjury and false information, to use against the accused person any statement that the accused person gives in a plea agreement.

16. THAT the charge shall be read and explained to the accused person in a language that he understands and the accused person shall then be availed to enter a plea.

17. THAT the public prosecutor shall lay before the Court the factual basis of the plea agreement and the Court shall determine and be satisfied that there exists a factual basis of the plea agreement.
18. THAT the accused person shall execute the agreement freely and voluntarily, without threats, coercion or undue influence and with full understanding of all relevant matter.
19. THAT a plea agreement confirmation shall be signed by the accused person or his legal practitioner or where the accused is a child, by a parent, guardian or the child's legal practitioner before the presiding Judicial Officer.
20. THAT a Court may reject a plea agreement where it is satisfied that the agreement may occasion a miscarriage of justice.
21. THAT where a Court refuses to accept a plea agreement it shall record the reasons for the rejection and inform the parties of the decision and the reasons for it whereupon the agreement shall become void and shall be inadmissible in any subsequent trial proceedings or in any trial relating to the same facts.
22. THAT the refusal to accept a plea agreement shall operate to preclude any further plea negotiation in respect of the same case, except where the Court in its discretion, recommends that the parties may renegotiate the agreement.
23. THAT a Judicial Officer who presided over a plea agreement that was rejected shall not preside over any subsequent trial of the same case.
24. THAT where the Court accepts a plea agreement:
 - (a) the Court shall enter the factual basis of the plea on record;
 - (b) the plea agreement shall become binding upon the public prosecutor and the accused person;
 - (c) the plea agreement shall become part of the court record.

25. THAT where the plea agreement does not include a recommendation on sentence, the Court shall, when imposing sentence consider -
- (a) the period the accused has spent in detention in respect of the offence;
 - (b) the personal circumstances of the accused person;
 - (c) a written statement or oral statement made by the victim or the complainant or the representative of the victim or complainant in respect of the plea agreement;
 - (d) the stage of the proceedings at which the plea agreement was concluded; and
 - (e) any restitution or compensation contained in the plea agreement.
26. THAT the agreement made by an accused person during negotiations shall be inadmissible for any purpose other than the resolution of the case through plea bargaining.
27. THAT the Court shall not impose a sentence more severe than the maximum sentence recommended in the plea agreement.
28. THAT where the Court is of the opinion that a case warrants a sentence more severe than that recommended in the plea agreement, the Court shall either reject the plea agreement or direct the parties to renegotiate the sentence.
29. THAT in order to facilitate a phased implementation of plea bargaining and to provide practical training for stakeholders a Provisional Pilot Prison Project (the Prison Project) shall be established.
30. THAT the Prison Project shall focus on remand prisoners facing homicide offences at Maula Prison in Lilongwe District;
31. THAT the Prison Project shall involve the following stakeholders;
- (a) Judicial Officers designated to preside over prison sessions;
 - (b) Public prosecutors;
 - (c) Defence Counsel assigned to the prisoner; and

- (d) Any other stakeholders necessary for effective implementation of plea bargaining.
32. THAT prior to commencement, all participants shall undergo training on their respective roles, including the rights of accused persons, procedure for plea bargaining, and safeguards to ensure voluntary and informed participation.
33. THAT inmates shall be sensitized on plea bargaining, including its benefits, procedure, and the legal consequences of any agreement, to ensure informed decision-making.
34. THAT the Prison Project shall operate as follows:
- (a) Prison authorities in collaboration with the Assistant Registrar to prepare a list of inmates interested in participating in the Prison Project, which shall form the basis of a cause list;
 - (b) A cause list shall be produced and provided to both the prosecution and the defence to facilitate preparation and disclosures of evidence;
 - (c) Public Prosecutors shall review the Case dockets and consider evidence to formulate plea offers;
 - (d) Defence Counsel shall review the offers in consultation with their Clients;
 - (e) Victims to be consulted or invited to attend the sessions but their absence shall not impede the continuation of the proceedings or invalidate any plea agreement
35. THAT during the Prison Camp Court proceedings;
- (a) parties shall make offers to the Court;
 - (b) the presiding Judicial Officer shall guide the parties, ensuring procedural fairness and determine whether to accept or reject the offers;
 - (c) the Court shall not impose a sentence contrary to the terms of an accepted plea agreement and may, where necessary direct the parties to renegotiate the agreement.

36. THAT upon satisfaction that an offer is fair, voluntary and in accordance with this Practice Direction, the parties shall execute a plea agreement confirmation in a prescribed form which shall form part of the record.
37. THAT the following practical agreements shall be ensured:
- (a) availability of designated rooms or suitable spaces within the prison premises to serve as Camp Courtrooms;
 - (b) provision of tents, seating and office facilities for Judicial Officers, prosecutors and defence teams;
 - (c) access to essential office equipment including photocopiers, printers and paper to enable immediate drafting of orders;
 - (d) flexibility for prison authorities to facilitate smooth operation including limited use of communication devices as necessary for case management.
38. THAT the Prison Project shall serve as a pilot for full implementation of plea bargaining and may be reviewed and evaluated for effectiveness, efficiency and compliance with fair trial standards before nationwide rollout.

Issued at Blantyre this 23rd day of February 2026.



RIZINE ROBERT MZIKAMANDA SC

CHIEF JUSTICE.