

**CHAPTER 75**

**THE CRIMINAL PROCEDURE CODE ACT**

SUBSIDIARY LEGISLATION

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*List of Subsidiary Legislation*

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**FORM OF CERTIFICATE**

ARRANGEMENT OF SECTIONS

*PRESCRIPTION OF FORM OF CERTIFICATE UNDER SECTION 142(2)*



**FORM OF CERTIFICATE**

[Gazette Notice 574 of 1955]

**PRESCRIPTION OF FORM OF CERTIFICATE UNDER SECTION 142(2)**

IN EXERCISE of the powers conferred by sub-section (2) of section 142 of the Criminal Procedure Code, the Governor has been pleased to prescribe the form of certificate set out in the Schedule hereto for the purposes of the said sub-section.

POLICE C. 9a  
 For use of Criminal Record Office  
 CF. No. ....  
 Docket No. ....

THE KENYA POLICE  
 CERTIFICATE OF PREVIOUS CONVICTIONS  
 (Section 142 (2), Criminal Procedure Code)

CRIMINAL RECORD OFFICE  
 CRIMINAL INVESTIGATION DEPT.  
 P.O. Box No. 336  
 NAIROBI, .....195 ..

To Officer-in-Charge Police,

I hereby certify that the Finger Impressions of ..... taken at ..... Police Station have been searched for and traced and his previous convictions, according to the records of the Criminal Record Office are as follows: \_\_\_\_\_

Court, Place of Trial	Date of Sentence	Sentence	Offence (Quoting Law and Section)	Name Convicted Under

.....  
 Signature of Officer-in-Charge  
 Criminal Record Office

RESULT OF TRIAL ON PRESENT CHARGE (In cases where option of fine is given, state if fine was paid.)

Court, Place of Trial	Date of Sentence	Sentence	Offence (Quoting Law and Section)	Name Convicted Under	CF. No.

Note-ORIGINAL to be returned to the Criminal Record Office. TRIPLICATE to be attached to committal warrant for information of Prison. DUPLICATE for case file. QUADRUPLICATE to be handed into Court for filing with the Court Case file.

Station.....Date .....195 ..

.....  
 Signature of Officer filling in result  
 of trial



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**THE CRIMINAL PROCEDURE (RECORD OF EVIDENCE IN THE SUPREME COURT) RULES**

[Legal Notice 344 of 1958]

1. These Rules may be cited as the Criminal Procedure (Record of Evidence in the High Court) Rules.
2. In cases coming before the High Court the evidence of each witness shall be recorded in the manner prescribed by sections 197, 198 and 199 of the Code for recording evidence in enquiries and trials by or before a Magistrate:

Provided that—

- (i) a Judge of the High Court shall not be required to sign the evidence of each witness or to inform each witness that he is entitled to have his evidence read over to him;
  - (ii) nothing herein shall derogate from the provisions of section 391 of the Code.
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**THE CRIMINAL PROCEDURE (APPEAL  
FROM REFUSAL OF BAIL) RULES**

[Legal Notice 363 of 1959]

1. These Rules may be cited as the Criminal Procedure (Appeal from Refusal of Bail) Rules.
  2. Where a person, convicted on a trial held by a subordinate court, who has entered an appeal to the High Court and has been refused bail by the subordinate court desires to appeal against refusal to the High Court under the proviso to subsection (1) of section 357 of the Code, his appeal against refusal shall be made in the form of a petition in writing presented by the appellant or his advocate.
  3. The petition shall set out clearly and fully the grounds upon which the application for bail to the subordinate court was made and the grounds of the appeal, and shall be lodged with the Registrar of the High Court.
  4. A copy of the petition shall, at least three days before the day fixed for the hearing of the appeal, be served by the appellant or his advocate on the Attorney-General, unless the judge for special reasons dispenses with that service.
  5. An affidavit may be filed on behalf of the Attorney-General in reply to the petition.
  6. The Judge may require either the appellant or the respondent to file an affidavit or an additional affidavit.
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**THE CRIMINAL PROCEDURE (EXPERT WITNESSES FEES) RULES**

[Legal Notice 478 of 1961]

1. These Rules may be cited as the Criminal Procedure (Expert Witnesses Fees) Rules.
  2. (1) A court before which a skilled witness has been summoned by a court to give expert evidence for the purpose of a trial or other proceedings under the Criminal Procedure Code may order that the witness be paid such fee not exceeding one hundred and twenty shillings per day as to the court seems reasonable.  
(2) In addition to any fee ordered to be paid under paragraph (1) the court may order the payment to the witness of an allowance for qualifying to give evidence.
  3. Where a court makes an order under these Rules, the judge or magistrate shall so certify on the record of the case, and thereafter the amount so ordered shall be paid to the witness.
  4. A fee or allowance ordered to be paid under these Rules shall be in addition to any reasonable out-of-pocket and travelling expenses paid under any other written law for the time being in force.
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**PERSONS EXEMPTED FROM LIABILITY TO SERVE AS ASSESSORS**

[Legal Notice 345 of 1962]

The following persons are exempted from liability to serve as assessors—

- (a) Permanent Secretaries of Ministries and of the President's Office;
  - (b) Managing Director, Kenya Railways Corporation;
  - (c) Managing Director, Kenya Posts and Telecommunications Corporation;
  - (d) officers engaged in the administration of justice, including magistrates, officers of the Judicial Department and of the Office of the Attorney-General, the Principal Probation Officer and probation officers;
  - (e) officers of the Prisons Department, the Chief Inspector of Approved Schools and officers on the staffs of approved schools;
  - (f) dentists in active practice;
  - (g) consular offices de carriere and consular employees;
  - (h) mayors; chairmen of county councils; town clerks and clerks to county councils.
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**THE CRIMINAL PROCEDURE (DIRECTIONS IN  
THE NATURE OF HABEAS CORPUS) RULES**

ARRANGEMENT OF SECTIONS

1. Citation.
  2. Application to judge in chambers.
  3. Issue of summons.
  4. Where custody public, copy of summons to be served on Attorney-General.
  5. Affidavits in reply.
  6. Date of return to summons.
  7. Admission to bail pending hearing.
  8. Procedure at hearing.
  9. Order of release to be directed to gaoler.
  10. Habeas corpus ad testificandum.
  11. Production of civil prisoner for trial by court martial or commissioners.
  12. Production of prisoner in court.
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**THE CRIMINAL PROCEDURE (DIRECTIONS IN THE NATURE OF HABEAS CORPUS) RULES**

[Legal Notice 70 of 1948, Legal Notice 474 of 1963]

**1. Citation.**

These Rules may be cited as the Criminal Procedure (Directions in the Nature of *Habeas Corpus*) Rules.

**2. Application to judge in chambers.**

An application for the issue of directions in the nature of *habeas corpus* shall be made in the first instance to a judge in chambers *ex parte*, supported by affidavit in triplicate.

**3. Issue of summons.**

If the application is not dismissed, the judge shall order a summons to be issued directed to the person in whose custody the person alleged to be improperly detained is said to be, requiring his appearance in person or by advocate, together with the original of any warrant or order for the detention, at a place and time named therein, to show cause why the person so detained should not be forthwith released.

**4. Where custody public, copy of summons to be served on Attorney-General.**

The summons shall be accompanied by a copy of all affidavits lodged in support of the application, and where the person detained is in public custody a duplicate of the application, of the summons and of all affidavits lodged in support thereof shall be forwarded to the Attorney-General.

**5. Affidavits in reply.**

Affidavits in reply shall be filed in duplicate, of which one copy shall be served on the applicant.

**6. Date of return to summons.**

The date fixed for the return to the summons shall be as soon as may be convenient after its issue to permit of the attendance of the parties served.

**7. Admission to bail pending hearing.**

Pending the return to the summons, the person detained, if in public custody, may be admitted to bail, and if in private custody may be released on such terms and conditions as the court may deem fit.

**8. Procedure at hearing.**

At the hearing of the summons, the applicant shall begin, and the party resisting the application shall then be heard, and in that case the applicant shall be entitled to reply.

**9. Order of release to be directed to gaoler.**

If the court orders the release of the person detained, the order of the court shall be drawn up and served on the gaoler or other person having the custody of the person so detained.

**10. Habeas corpus ad testificandum.**

Where the evidence of a person who is in public custody is required at a trial or proceeding before a civil court, or before a court martial, or before commissioners acting under the authority of a commission, any party to the trial or proceeding may make application *ex parte* to a judge in chambers supported by affidavit that the prisoner be brought before such court or commissioners for the purpose of giving evidence, and the

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judge may thereupon direct that the prisoner be produced accordingly, and that the party requiring his production lodge a sufficient sum in court to meet the costs thereof.

**11. Production of civil prisoner for trial by court martial or commissioners.**

In the case of a prisoner detained in public custody whose presence is required before a court martial or commissioners acting under the authority of a commission for trial, a judge in chambers may, on application made by the chief military authority, or on behalf of the commissioners, order the prisoner to be produced before the court martial or commissioners for trial, but shall not do so without first hearing the prisoner or an advocate on his behalf.

**12. Production of prisoner in court.**

A judge may, in addition to any other order that he may make under these Rules, order the body of any person alleged to be improperly detained to be produced before him in court.

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**THE CRIMINAL PROCEDURE (REMUNERATION  
OF WITNESSES AND ASSESSORS) RULES**

[Legal Notice 75 of 1948, Act No. 33 of 1963, Legal Notice 474 of 1963]

1. These Rules may be cited as the Criminal Procedure (Remuneration of Witnesses and Assessors) Rules.
2. A criminal court may order payment of the expenses of any person summoned under the Code to attend before a court as an assessor or witness, or as a complainant attending court as a necessary witness, as follows—
  - (a) if a public officer, such reasonable out-of-pocket expenses as he may have incurred, other than those payable from departmental votes in accordance with the regulations obtaining at the time;
  - (b) if a person other than a public officer, his reasonable travelling and out-of-pocket expenses.

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**THE CRIMINAL PROCEDURE (POLICE SUPERVISION) RULES**

[Legal Notice 33 of 1966]

1. These Rules may be cited as the Criminal Procedure (Police Supervision) Rules.
2. In these Rules, "police officer in charge of the area" includes the person in charge of the office of that police officer.
3. Before the date of release from prison of a person who is made subject to police supervision by order under section 343 of the Code (hereinafter referred to as a police supervisee), the officer in charge of the prison shall inform the officer in charge of the Criminal Records Office, Nairobi, and the police officer in charge of the area in which the police supervisee has been directed to reside under section 344(1)(a) of the Code, or, where no such direction has been given, the police officer in charge of the area in which the police supervisee intends to reside after release from prison, of the date of release from prison of that police supervisee.
4. (1) The officer in charge of the prison shall inform every police supervisee before his release from prison of the requirements with which the court has directed him to comply under section 344 of the Code, and shall issue to the police supervisee an identity card (hereinafter referred to as the identity card) in the form in the Schedule in which shall be entered such particulars as are applicable to the police supervisee.
  - (2) A copy of these Rules shall be annexed to each identity card issued under this rule.
5. When a police supervisee has been directed to comply with any requirements specified under section 344 of the Code other than a requirement to reside within the limits of a specified area, he shall, one month before the date of his release from prison, inform the officer in charge of the prison of the area in which he intends to reside after his release from prison and the officer shall enter particulars of that area in the identity card of the police supervisee.
6. Any written consent given under section 344(1) paragraph (b) or paragraph (c) of the Code shall be recorded in the identity card of the police supervisee by the police officer in charge of the area in which the supervisee resides.
7. When a police supervisee has been directed under section 344(1)(d) of the Code to keep the police officer in charge of the area in which he resides notified of the house or place in which he resides, any such notification and the date thereof shall be recorded in the identity card of the police supervisee by that police officer.
8. (1) When a police supervisee has been directed under section 344(1)(e) of the Code to present himself whenever called upon by the police officer in charge of the area in which he is to reside after his release from prison, the police officer of that area shall, before the date of release from prison of the police supervisee, inform him through the officer in charge of the prison of the place at which and date on which he is to present himself, and the officer in charge of the prison shall endorse the identity card of the police supervisee accordingly.
  - (2) Whenever a police supervisee, after the date of his release, presents himself in accordance with a direction under section 344(1)(e) of the Code, the police officer in charge of the area shall record the fact in the identity card of the police supervisee.
  - (3) If from illness or other reasonable cause (the proof of which shall lie upon him) a police supervisee is prevented from presenting himself in person, he may do so in any one of the following ways—
    - (a) in person, to the chief or assistant chief exercising jurisdiction in the area in which he resides; or
    - (b) by oral communication sent by a messenger, and by production of his identity card to the person to whom he has been called upon to present himself.

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(4) Where a police supervisee has presented himself in accordance with paragraph (3) (a) to any person, that person shall inform the person to whom the police supervisee should have presented himself, as soon as may be convenient, that the police supervisee has presented himself, and shall forward the identity card of the police supervisee for endorsement accordingly.

9. (1) A police supervisee shall produce his identity card to the police officer in charge of the area whenever he requires consent to transfer his residence or to leave the area in which he resides, or whenever he makes any notification, or whenever he presents himself in accordance with the Code or any rules made thereunder.

(2) If a police supervisee loses his identity card, he shall forthwith report the loss to the police officer in charge of the area in which he resides and apply to that police officer for a new identity card, which shall be issued to him with the necessary particulars entered therein by that police officer.

10. At the end of the term of police supervision ordered by the court, the police supervisee shall surrender his identity card to the police officer in charge of the area for transmission to the officer in charge of the Criminal Records Office, Nairobi.

11. (1) For the purpose of giving directions or of varying directions under section 344 of the Code, the court may issue a summons to a police supervisee requiring his attendance before the court at such time and place as may be specified.

(2) Sections 145, 146, 147, 148 and 149 of the Code shall apply, mutatis mutandis, to a police supervisee as they apply to a witness.

12. The Criminal Procedure (Police Supervision) Rules are revoked.

SCHEDULE

[r. 4, ss. 343 to 345]

POLICE SUPERVISION—CRIMINAL PROCEDURE CODE

IDENTITY CARD

Supervisee No. ....
Prison No. ....
Name .....
Registration No. ....
Aliases .....
Court in which order made .....
Criminal Court Case File No. ....
Police Case File No. ....
Offence convicted of, with section of law .....
.....
.....
Sentence last served .....

GENERAL DESCRIPTION

Tribe or nationality .....
District of origin .....

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[Subsidiary]

Chief .....

Sub-chief .....

Village .....

Sex ..... Age .....

Height ..... Marks or scars .....

\*Place of intended residence as supplied by police supervisee/place of residence as directed by court .....

.....

.....  
Signature of Prison  
Officer  
Issuing Identity  
Card.

**\*DIRECTIONS OF THE COURT UNDER SECTION OF THE CRIMINAL PROCEDURE CODE**

- (a) To reside within the limits of the ..... (specify area)
(b) Not to transfer his residence to any other area without the written consent of the police officer in charge of the area in which he resides.
(c) Not to leave the limits of the area within which he has been ordered to reside by the court without the written consent of the police officer in charge of the area in which he resides.
(d) At all times to keep the police officer in charge of the area in which he resides notified of the house or place in which he resides.
(e) To present himself whenever called upon to do so by the police officer in charge of the area in which he resides.

\* Strike out whichever is not applicable.

I certify that I have explained the above requirements to the police supervisee .....

and have informed him that if he does not comply with them he is guilty of an offence.

.....  
Officer in Charge  
.....  
Prison.

**TRANSFER OF RESIDENCE**

(Section 344 (1) (b) of the Criminal Procedure Code)

Police supervisee .....is hereby authorized to transfer his residence:-

**PERMIT TO LEAVE THE LIMITS OF THE AREA IN WHICH HE HAS BEEN ORDERED TO RESIDE**

(Section 344 (1) (c) of the Criminal Procedure Code)

Police supervisee ..... is hereby authorized to transfer his residence:-

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From	To	Signature of the police officer in charge of the area consenting to transfer
------	----	--

PERMIT TO LEAVE THE LIMITS OF THE AREA IN WHICH HE HAS BEEN ORDERED TO RESIDE

(Section 344 (1) (c) of the Criminal Procedure Code)

Police supervisee ..... is hereby authorized to leave the limits of the ..... area in which he has been ordered to reside.

Destination	Date of leaving	Period	Instructions	Signature of the police officer in charge of the area consenting
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NOTIFICATION OF PLACE OF RESIDENCE

(Section 344 (1) (d) of the Criminal Procedure Code)

Police supervisee ..... has notified me that he resides at:-

Place	Dale	Signature of the police officer in charge of the area
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REPORTS

(Section 344 (1) (e) of the Criminal Procedure Code)

I hereby certify that I have informed police supervisee .....

C.I.D. Docket No. .... that he is called upon to report on the ..... of each month to ..... police station.

(Signed)

.....  
O.C.S.  
(Name, rank,  
printed

REPORTS

(Section 344 (1) (e) of the Criminal Procedure Code)

Police supervisee ..... has presented himself at:-

Place	To	Date	Signature of police officer to whom supervisee has presented himself
-------	----	------	--

Prison from which released .....

Date released from prison .....

Date of expiry of order .....

Space for photograph when available	Right thumb impression
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**PUBLIC PROSECUTORS APPOINTED UNDER SECTION 85(1)**

ARRANGEMENT OF SECTIONS

*PUBLIC PROSECUTORS APPOINTED UNDER SECTION 85(1)*  
*Appointments of Individual Persons by Name are not Referenced*

SCHEDULES

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**PUBLIC PROSECUTORS APPOINTED UNDER SECTION 85(1)**

[Gazette Notice 1424 of 1957, Gazette Notice 1664 of 1960, Legal Notice 728 of 1961, Legal Notice 343 of 1966, Legal Notice 234 of 1972, Legal Notice 256 of 1972, Legal Notice 179 of 1981]

**PUBLIC PROSECUTORS APPOINTED UNDER SECTION 85(1)*****Appointments of Individual Persons by Name are not Referenced***

All police officers, other than administration police officers, of the rank of Assistant Inspector or above are appointed public prosecutors for Kenya generally.

[L.N. 234/1972.]

The officers designated in the Schedule hereunder are appointed public prosecutors, in any district in which a park or reserve, or any part of a park or reserve, mentioned in that is situated, for offences under the Wildlife (Conservation and Management) Act (Cap. 376) or under subsidiary legislation made thereunder.

[G.N. 1424/1957, G.N. 1664/1960.]

**SCHEDULE**

The Director, National Park of Kenya.

The Warden, Aberdare National Park.

The Warden, Amboseli National Park.

The Warden, Nairobi National Park.

The Warden, Marsabit National Reserve.

The Warden, Mt. Kenya National Park.

The Warden, Tsavo National Park (East).

The Warden, Tsavo National Park (West).

The several persons holding the offices and appointments specified in the first column of the Schedule hereunder are appointed public prosecutors for Kenya for offences under the Acts, or under the provisions of Acts, as the case may be, respectively specified in relation to those persons in the second column of that Schedule, and offences under any subsidiary legislation made thereunder

[L.N. 7281/1961, L.N. 343/1966, L.N. 256/1972, L.N. 179/1981.]

Offices	Acts or provisions of Act
Labour Commissioner. Deputy Labour Commissioner. Assistant Labour Commissioner. Senior Labour Officer. Labour Officer. Senior Labour Inspector. Labour Inspector. Wages Inspector. Principal Registrar, registrar and assistant registrar appointed under the Registration of Persons Act (Cap. 107).	Sections 129, 243(c), (g) and (h), 244 and 266 of the Penal Code (Cap. 63). Registration of Persons Act (Cap. 107). Employment Act (Cap. 226). Regulations of Wages and Conditions of Employment Act (Cap. 229). Mombasa Shop Hours Act (Cap. 232). Trade Unions Act (Cap. 233). Workmen's Compensation Act (Cap. 236). Bankruptcy Act (Cap. 53).

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Offices	Acts or provisions of /
Registrar-General. Deputy Registrar-General. Senior Assistant Registrar-General. Assistant Registrar-General. Legal Assistant in the Registrar-General's Department.	Societies Act (Cap. 108). Books and Newspapers Act (Cap. 111). Births and Deaths Registration Act (Cap. 149) Marriage Act (Cap. 150). Trade Unions Act (Cap. 233). Estate Duty Act (Cap. 483). Companies Act (Cap. 486). Insurance Companies Act (Cap. 487). Banking Act (Cap. 488). Building Societies Act (Cap. 489). Registration of Business Names Act (Cap. 499). Trade Marks Act (Cap. 506). Patents Registration Act (Cap. 508). Unit Trusts Act (Cap. 521).
Principal Immigration Officer. Deputy Principal Immigration Officer. Senior Immigration Officer. Immigration Officer.	Section 11 of the Oaths and Statutory Declarations Act (Cap. 15). Sections 114, 129, 130, 320, 321, 349, 353, 354, 357, 382, 384 and 385 of the Penal Code (Cap. 63). Immigration Act (Cap. 172).
Inspector of Weights and Measures appointed under the Weights and Measures Act (Cap. 513).	Petroleum Act (Cap. 116). Price Control Act (Cap. 504).
Price Inspector	Price Control Act (Cap. 504).
Assistant Commissioner for Co-operative Development and Head of Legal and Field Services.	Co-operative Societies Act (Cap. 490).
Provincial Co-operative Legal Officer. Co-operative Officer, Legal and Field Services.	Co-operative Societies Act (Cap. 490).

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**THE CRIMINAL PROCEDURE (PLEA BARGAINING) RULES**

ARRANGEMENT OF RULES

*Rule*

1. Citation.
  2. Plea agreement.
  3. How to handle information obtained from an accused person.
  4. Private prosecutor may enter into plea negotiations.
  5. Approval of plea agreement.
  6. Initiation of plea negotiations.
  7. Consultations by prosecutor.
  8. Compensation.
  9. Forms.
  10. Factual basis.
  11. Mitigating circumstances.
  12. Sentencing recommendations.
  13. Representation.
  14. Finalisation of agreement.
-





**THE CRIMINAL PROCEDURE (PLEA BARGAINING) RULES**

[Legal Notice 47 of 2018]

**1. Citation.**

These rules may be cited as the Criminal Procedure (Plea Bargaining) Rules, 2018.

**2. Plea agreement.**

A plea agreement may be entered into between the prosecutor and an accused person where —

- (a) an accused person has been charged in court; and
- (b) at any time before the court passes judgment.

**3. How to handle information obtained from an accused person.**

The information obtained from an accused person during the course of plea negotiations shall not be used against him or her during the prosecution of the case if the plea negotiations are ultimately unsuccessful:

Provided that where the failure of plea negotiations is on account of an act or omission by the accused person, the information obtained during plea negotiations may be used during the prosecution of the accused person.

**4. Private prosecutor may enter into plea negotiations.**

(1) A private prosecutor shall notify the Director of Public Prosecutions in writing fourteen days prior to the commencement of his or her intention to enter into plea negotiations with an accused person.

(2) The notification required under subrule (1) shall be accompanied by all relevant materials the private prosecutor intends to rely on in the negotiation process.

(3) Where plea negotiations between a private prosecutor and an accused person are successful, the private prosecutor shall notify the Director of Public Prosecutions of the outcome within seven days and supply the relevant materials relied on during the plea negotiations and a copy of the draft plea agreement.

(4) Where the Director of Public Prosecutions approves a plea agreement between a private prosecutor and an accused person, the Director of Public Prosecutions may, within thirty days of being notified under subrule (3), authorise in writing the private prosecutor to lay the agreement before the court.

**5. Approval of plea agreement.**

A prosecutor shall obtain written approval from the Director of Public Prosecutions or from a person authorised in writing by the Director of Public Prosecutions in this regard before entering into a plea agreement with an accused person.

**6. Initiation of plea negotiations.**

Plea negotiations may be initiated by a prosecutor or the accused person or the accused person's representative.

**7. Consultations by prosecutor.**

(1) Before entering into a plea agreement with an accused person, the prosecutor shall—

- (a) consult with the investigating officer of the case;
- (b) give due regard to the nature of and the circumstances relating to the case, the personal circumstances of the accused, the interests of the community; and

[Subsidiary]

- (c) unless the circumstances do not permit, afford the victim or the victim's legal representative an opportunity to make a representation to the prosecutor regarding the terms of the agreement.

(2) Despite the provisions of subrule (1), the prosecutor shall maintain the sole discretion on whether or not to enter into a plea agreement with the accused person.

#### **8. Compensation.**

(1) A plea agreement may include a clause for the payment of compensation to a victim by an accused person.

(2) Where a plea agreement includes a clause for compensation payable to the victim by an accused person, the value or form of compensation shall be as agreed to after negotiations between the victim and the accused person and endorsed by the prosecutor if, in his or her opinion, the compensation serves the ends of justice.

(3) A proposal to include the payment of compensation to the victim in a plea agreement or any negotiation for compensation payable to the victim may be made or initiated by the accused person or the victim.

(4) Where negotiations for compensation payable to the victim break down or the prosecutor determines that the proposed compensation defeats the ends of justice, the prosecutor shall not include the proposal for compensation in the final draft of the plea agreement.

#### **9. Forms.**

(1) A plea agreement shall be in the form set out in the Schedule to these rules and shall comply with the provisions of sections 137E and 137F of the Criminal Procedure Code (Cap. 75).

(2) Notwithstanding the provisions of subrule (1), the Director of Public Prosecutions may develop other forms for use in drafting plea agreements:

Provided that any other forms developed by the Director of Public Prosecutions shall comply with the provisions of sections 137E and 137F of the Criminal Procedure Code.

#### **10. Factual basis.**

The prosecutor shall present the court with the factual basis of a plea set out in the plea agreement between the office of the Director of Public Prosecutions and the accused person by laying before the court the final plea agreement at the hearing where the accused person pleads guilty in accordance with the terms of the plea agreement.

#### **11. Mitigating circumstances.**

(1) The prosecutor shall present to the court all circumstances of the case including any mitigating circumstances in favour of the accused person at the hearing where the accused person pleads guilty in accordance with the terms of the plea agreement.

(2) The prosecutor shall, at the time that the accused person pleads guilty, call the court's attention to section 137I of the Criminal Procedure Code (Cap. 75) and the Sentencing Policy Guidelines, 2016.

#### **12. Sentencing recommendations.**

(1) A prosecutor and the accused person or his or her legal representative may each make a specific recommendation to the court as to the sentence to be imposed and include the recommendation in the final plea agreement.

(2) Notwithstanding the recommendation of the parties, the court shall retain sole discretion in sentencing.

(3) Where the prosecutor recommends to the court the imposition of a sentence that is more severe than the recommendation included in the plea agreement under subrule (1), the accused person may withdraw his or her plea of guilty and set aside the plea agreement.

(4) Where the accused person recommends to the court the imposition of a sentence that is less severe than the recommendation in the plea agreement, the accused person shall not be permitted to withdraw his or her plea of guilty on that ground alone.

(5) Where the accused person recommends to the court the imposition of a sentence that is less severe than the recommendation in the plea agreement, the prosecutor may recommend to the court any other appropriate sentence.

**13. Representation.**

(1) Where the accused person is not represented by a legal representative, the prosecutor shall inform him or her of his or her right to have a legal representative or any other party of his or her choice.

(2) Where the accused person is a child who has a legal representative, the plea agreement shall be executed by the prosecutor, the child and the child legal representative.

Provided that the court shall ascertain the competency of the child to enter into the plea agreement through *voire dire* examination.

**14. Finalisation of agreement.**

(1) A plea agreement shall be finalised when the prosecutor and the accused person sign the agreement.

(2) Where applicable, the legal representative shall also sign the plea agreement.

(3) Where the plea agreement includes a compensation clause, the complainant shall sign the compensation clause of the agreement.

[Subsidiary]

ODPP/PA/FORM ONE  
(Under rule 9) Page 1

REPUBLIC OF KENYA  
IN THE COURT AT \_\_\_\_\_ OF 20 \_\_\_\_\_  
CRIMINAL CASE NO. \_\_\_\_\_  
REPUBLIC  
-VERSUS-

**THE ACCUSED  
PLEA AGREEMENT**

Pursuant to Section 137A-O of the Criminal Procedure Code, Cap 75 Laws of Kenya, the Accused, \_\_\_\_\_ agrees as follows:

1. The Accused enters into this Plea Agreement and pleads guilty freely, voluntarily, without threat, force, intimidation, or coercion of any kind and without promise or benefit of any kind, other than as contained herein. Interpreter: \_\_\_\_\_ Court: \_\_\_\_\_ Accused: \_\_\_\_\_ Interpreter: \_\_\_\_\_

2. The Accused knowingly, voluntarily and truthfully admits the facts contained herein. Court: \_\_\_\_\_ Accused: \_\_\_\_\_ Interpreter: \_\_\_\_\_

3. The Accused pleads guilty to the offence of \_\_\_\_\_ contrary to SECTION \_\_\_\_\_ of the PENAL CODE CAP \_\_\_\_\_ OF THE LAWS OF KENYA Court: \_\_\_\_\_ Accused: \_\_\_\_\_ Interpreter: \_\_\_\_\_

4. The Accused understands every element of the offense to which the Accused is pleading guilty, and that the maximum potential penalty for that offense is \_\_\_\_\_ Court: \_\_\_\_\_ Accused: \_\_\_\_\_ Interpreter: \_\_\_\_\_

5. Upon acceptance by the Court, and fulfillment by the Accused of all terms and conditions of the Plea Agreement, the Republic agrees the Accused will face no other charges known to the Republic as a result of the instant investigation. **Court:** \_\_\_\_\_  
**Accused:** \_\_\_\_\_ **Interpreter:** \_\_\_\_\_

6. The Accused understands and agrees this Plea Agreement is limited to the criminal charges listed herein and is not a waiver, settlement or compromise of any civil or administrative remedies that may be available to the victim, the government, or any other agency or authority ar that if the Court rejects the plea of guilty, this Plea Agreement shall be rendered null and void and no party shall be bound by it. **Court:** \_\_\_\_\_ **Accused:** \_\_\_\_\_  
**Interpreter:** \_\_\_\_\_ : \_\_\_\_\_ **Interpreter:** \_\_\_\_\_

7. The Accused has been advised by his/her legal representative [initial here if applicable ] and the Court, of his/her Constitutional rights, including the right to trial, the right to examine and cross-examine witnesses, and the Accused being well informed, has knowingly and voluntarily waived these rights, including the right to appeal, and agreed to enter a plea of guilty as set forth in this Plea Agreement. **Court :** \_\_\_\_\_ **Accused:** \_\_\_\_\_ **Interpreter:** \_\_\_\_\_

8. Had the case gone to trial, the Prosecution would have presented evidence sufficient to prove the following facts beyond a reasonable doubt:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ [Continued on Form 2]

[Subsidiary]

9. The Accused shall at all times give complete, truthful, and accurate information and testimony, and agrees not to undertake any act in furtherance of the instant offense, and understands this Plea Agreement does not protect him/her from prosecution related to any new offense. Failure by the Accused to comply with the terms and conditions of this Plea Agreement will permit the Republic to fully prosecute the Accused on all criminal charges that may be brought against him/her.

**Court:** \_\_\_\_\_ **Accused:** \_\_\_\_\_ **Interpreter:** \_\_\_\_\_

10. The Prosecution may, before sentence is passed, submit a Victim Impact Statement or any such evidence pursuant to Section 329 of the Criminal Procedure Code as it deems fit in order to inform the Court as to the proper sentence to be passed, and the Prosecution shall also present to the Court any circumstances of the case including mitigating circumstances in favor of the Accused before sentence is passed.

**Interpreter:** \_\_\_\_\_

**Court:** \_\_\_\_\_ **Accused:** \_\_\_\_\_

11. The Accused understands that the sentence to be imposed upon conviction on his/her plea of guilty is within the sole discretion of the Court. At sentencing, the prosecutor will recommend \_\_\_\_\_. At sentencing, the accused will recommend \_\_\_\_\_.

**Interpreter:** \_\_\_\_\_

**Court:** \_\_\_\_\_ **Accused:** \_\_\_\_\_

12. The Accused understands and agrees no promises, agreements and/or conditions have been entered into regarding the charges herein other than those expressly set out in this Plea Agreement and none shall be entered into, or shall be binding upon the Accused and/or the Prosecution, unless expressly set forth herein, in writing, and signed by the Accused (in the presence of his/her legal representative [initial here if applicable ]) and the Prosecution.

**Court:** \_\_\_\_\_ **Accused:** \_\_\_\_\_ **Interpreter:** \_\_\_\_\_

This Plea Agreement has been approved by the Office of the Director of Public Prosecutions after consultation with the investigating officer(s), any Victim(s), and is being done in the interests of justice after considering all the relevant facts and circumstances.

**Prosecution Counsel:** \_\_\_\_\_

**Date:** \_\_\_\_\_

I admit the facts contained in the Plea Agreement, which has been explained to me in a language I understand, and fully understand the contents of the Plea Agreement. I plead guilty to the charge, and every element set out in the Plea Agreement, because I am guilty. I do this knowingly, freely and voluntarily, and without any threat, force, intimidation, or coercion of any kind.

**Accused:** \_\_\_\_\_ **Representative:** \_\_\_\_\_

**Interpreter:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Entirety of Plea Agreement :**  Yes  No

**Additional provisions of this Plea Agreement are included on the attached Form 2:**  Yes  No

[Subsidiary]

REPUBLIC OF KENYA  
 IN THE \_\_\_\_\_ COURT AT \_\_\_\_\_ OF 20 \_\_\_\_\_  
 CRIMINAL CASE NO. \_\_\_\_\_  
 REPUBLIC  
 -VERSUS-

ODPP/PA/FORM ONE  
 (Under rule 9) Page 2

\_\_\_\_\_

**THE ACCUSED  
 PLEA AGREEMENT**

Continuation from Page 1: [Check if applicable:  ]

Had the case gone to trial, the Prosecution would have presented evidence sufficient to prove the following facts beyond a reasonable doubt:

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**Agreement to Cooperate:** [Check if applicable:  ]

The Accused agrees to provide entirely truthful, complete and accurate information and agrees to fully cooperate with the Court. The cooperation required shall include:

- 1. The accused submitting to an interview by a Children's Officer, Probation Officer, or any other officer as may be ordered by the Court pursuant to this agreement.
- 2. The accused shall disclose any information and materials that may be in his possession that may lead to the fair determination of the matter herein.
- 3. The Accused shall demonstrate good behavior and shall remain arrest free at all times.
- 4. The Accused shall not possess or consume any alcoholic beverages or any substance or thing determined to be illegal under the law.
- 5. The Accused shall attend and meaningfully participate in any treatment and/or counseling as may be ordered by the Court.
- 6. The Accused shall not possess, transport and/or control any weapon, explosive device or firearm.
- 7. The Accused shall immediately inform his/her legal counsel or Probation Officer, of any subsequent arrest, summons and/or questioning by any law enforcement agency.
- 8. The Accused shall inform his/her legal counsel or Probation Officer of any change of address or telephone number within 24 hours of said change.
- 9. The Accused shall not associate himself/herself with any person or be in any place in violation of this Plea Agreement or in violation of the orders of the Court.
- 10. The Accused shall maintain good behavior at all times.
- 11. The Accused shall comply with all court orders.
- 12. The court may impose part or all of the conditions herein as well as other terms and conditions as the Court may deem appropriate.
- 13. Additional conditions:

[Subsidiary]

<p><b>Compensation/Restitution:</b> [ Check if applicable <input type="checkbox"/> ]</p> <p>The parties, both the Prosecution and the Accused, agree:</p> <ol style="list-style-type: none"> <li>1. The victim of this offence is _____ who is the complainant herein.</li> <li>2. The loss suffered by the victim as a result of the offense complained of amounts to _____ Kenya shillings (Ksh).</li> <li>3. The Accused has agreed to compensate the victim \$ _____ Ksh being the financial loss sustained by the complainant.</li> <li>4. Payment of the _____ Ksh shall be made in _____ (weekly/monthly/quarterly) installments until paid in full.</li> </ol> <p>I, _____, the Accused, understand the above noted compensation/restitution agreement and freely and voluntarily agree to abide by the same.</p> <p><b>Accused:</b> _____ <b>Interpreter:</b> _____ <b>Prosecution Counsel:</b> _____</p>	
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