

Victim participation in plea bargain in Uganda

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ABSTRACT : *Uganda's law promises to involve victims in plea bargaining, yet gives them no assured notice, no defined information, no recorded response and no clear remedy when the bargain is concluded without them.¹ The resulting contradiction came to a head in Ongoriya Moses and Another v Uganda², where the Court of Appeal condemned the exclusion of a deceased man's family but then unsettled the statutory limits of appeal late jurisdiction in order to undo the completed plea.³ The judgment's lasting value is in its prospective holding that the prosecutor must inquire into the victim's position and that a trial judge who sees express non-consultation must withhold approval; its order nullifying the conviction is far less secure.⁴ This article develops a theory of meaningful but non-dispositive participation: a victim must be able to affect the decisional record and obtain an intelligible response, while charge control remains with the Director of Public Prosecutions, approval remains judicial and every prejudicial assertion remains answerable by the accused.⁵ The analysis exposes a domestic doctrinal asymmetry: Ugandan appellate courts invalidate pleas when accused-facing recording safeguards are omitted, but the Rules leave victim-facing consultation substantially unrecorded and remedially uncertain.⁶ Comparative decisions from Kenya, South Africa, Canada, the United States and the International Criminal Court are used to test, rather than import, that account of participation.⁷ The reforms proposed are deliberately practical: early notice, proportionate disclosure, supported participation, a reasoned prosecutorial response, a participation certificate, an approval stage judicial inquiry, auditable data and a narrow statutory reopening jurisdiction for exceptional defects.⁸ That design gives victim voice legal consequence without turning grief, anger or forgiveness into a private power over prosecution.⁹*

KEYWORDS - victim participation, plea bargaining, prosecutorial discretion, fair trial, appellate jurisdiction.

¹ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 3(b), 3(f), 4-5, 9 and 11-14.

² *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026), [79]-[131].

³ *Ongoriya* [2026] UGCA 225, [84]-[95], [112]-[131]; Trial on Indictments Act (Cap 25), s 131.

⁴ *Ongoriya* [2026] UGCA 225, [99], [112]-[128].

⁵ Constitution of the Republic of Uganda 1995, arts 28(1), 120(3)-(5), 126(2)(e) and 128; UN General Assembly, 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power' UNGA Res 40/34 (29 November 1985), annex para 6(b).

⁶ *Tatu v Uganda* (Criminal Appeal No 239 of 2016) [2024] UGCA 44 (21 February 2024); *Nuwamanya v Uganda* (Criminal Appeal No 353 of 2017) [2024] UGCA 186 (19 July 2024); *Emuron Samuel v Uganda* (Criminal Appeal No 85 of 2016) [2026] UGCA 182 (18 May 2026).

⁷ *Joseph Lendrix Waswa v Republic* (Petition 23 of 2019) [2020] KESC 23 (KLR), [42]-[43], [63]-[80]; *Wickham v Magistrate, Stellenbosch and Others* [2016] ZACC 36, 2017 (1) SACR 209 (CC), [35]-[45]; *R v Anthony-Cook* 2016 SCC 43, [2016] 2 SCR 204, [32], [51]-[60]; *In re Dean* 527 F 3d 391 (5th Cir 2008), 394-96; *Prosecutor v Thomas Lubanga Dyilo* (Judgment on the Appeals against the Decision on Victims' Participation) ICC-01/04-01/06-1432 OA9 OA10 (11 July 2008), [95]-[104].

⁸ Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.1.6, 2.2-2.3, 2.3.12-2.3.17 and 2.7-2.8; Judiciary of Uganda, *Sixth Strategic Plan for the Judiciary FY 2025/26-2029/30* (January 2026) 66, 82 and 147.

⁹ Andrew Ashworth, 'Victims' Rights, Defendants' Rights and Criminal Procedure' in Adam Crawford and Jo Goodey (eds), *Integrating a Victim Perspective within Criminal Justice* (Ashgate 2000) 185, 188-203; Douglas E Beloof, 'The Third Model of Criminal Process: The Victim Participation Model' [1999] Utah Law Review 289, 296-311.

I. THE CONSTITUTIONAL PROBLEM HIDDEN INSIDE AN EFFICIENT BARGAIN

*Ongoriya Moses and Another v Uganda*¹ did not expose an incidental failure to telephone a bereaved family; it exposed a legal scheme in which the State can settle the public meaning of a death before the people most closely affected know what is being surrendered. The signed form reduced murder to manslaughter, yet the particulars still alleged malice aforethought and the summary of facts still described an intentional shooting.² The victim section was blank, and the prosecutor reportedly treated prison decongestion as sufficient reason to dispense with the family's involvement.³ These were not four versions of the same mistake: the charge discrepancy concerned legality, the unchanged facts concerned evidential sufficiency, the blank record concerned participation and the reference to decongestion concerned the integrity of prosecutorial judgment.⁴ Any analysis that collapses them into a general sense that the bargain was 'bad' loses the discipline needed to decide who breached which duty and what remedy the law permits.⁵

The plea-bargaining Rules themselves created the conditions for that collapse.⁶ Rule 3 speaks warmly of consultation and victim involvement, but rules 4, 5, 9 and 14 reserve initiation, agreement, signature and withdrawal to the prosecutor and accused.⁷ Rule 11 directs the prosecutor to take the victim's interests into consideration without identifying the minimum information, timing, mode of contact, duty to answer or consequence of failure.⁸ Schedule 2 then invites victim views near sentencing, when the charge, facts and recommendation have already acquired the institutional gravity of a completed bargain.⁹ The law thus confuses being present for the disposition with participating in its formation.¹⁰

That distinction matters because a plea does not merely save hearing time.¹¹ It chooses the offence through which the State will name the wrong, fixes the facts that enter the public record, limits the punishment and ordinarily removes the trial at which competing accounts would have been tested.¹² In a homicide case, reducing murder to manslaughter is not a clerical economy; it alters the official account of intention, culpability and the social meaning of the death.¹³ The victim's interest is not a proprietary entitlement to the murder charge, but neither is it exhausted by an opportunity to speak about sentence after manslaughter has been accepted.¹⁴

The constitutional axis is exacting.¹⁵ Article 120 entrusts prosecution to an independent DPP who must consider public interest, the administration of justice and the need to prevent abuse; it does not appoint the prosecutor as counsel for either the accused or the victim.¹⁶ Article 28 protects the accused against coercive adjudication outside a fair legal process, while article 126(2)(e) refuses to reduce substantive justice to procedural formalism.¹⁷ Those provisions do not compete in a crude hierarchy.¹⁸ They require a

¹*Ongoriya* [2026] UGCA 225, [113]-[128].

²*Ongoriya* [2026] UGCA 225, [113]-[116], [120]-[125].

³*Ongoriya* [2026] UGCA 225, [117], [126]-[128].

⁴Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 9 and 11-13; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.2-2.3 and 2.7-2.8.

⁵*Ongoriya* [2026] UGCA 225, [118]-[125], [129]-[131].

⁶Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 3-15 and schs 1-2.

⁷Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 3(b), 3(f), 4-5, 9 and 14.

⁸Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, r 11.

⁹Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, sch 2, steps 14-18.

¹⁰Marie Manikis, 'Recognizing Victims' Role and Rights During Plea Bargaining: A Fair Deal for Victims of Crime' (2012) 58 Criminal Law Quarterly 411, 419-31.

¹¹Stephanos Bibas, 'Transparency and Participation in Criminal Procedure' (2006) 81 New York University Law Review 911, 923-45.

¹²Jonathan Doak, 'Victims' Rights in Criminal Trials: Prospects for Participation' (2005) 32 Journal of Law and Society 294, 296-312; Bibas (n 20) 923-45.

¹³*Ongoriya* [2026] UGCA 225, [113]-[125]; Trial on Indictments Act (Cap 25), sch, Penal Code Act (Cap 128), ss 187-90.

¹⁴Ian Edwards, 'An Ambiguous Participant: The Crime Victim and Criminal Justice Decision-Making' (2004) 44 British Journal of Criminology 967, 973-79; Ashworth (n 9) 188-203.

¹⁵Constitution of the Republic of Uganda 1995, arts 28(1), 120 and 126(2)(e).

¹⁶Constitution of the Republic of Uganda 1995, art 120(3)-(5).

¹⁷Constitution of the Republic of Uganda 1995, arts 28(1), 28(3), 28(9) and 126(2)(e).

¹⁸Ashworth (n 9) 188-203.

process in which the victim can inform and contest a proposed disposition, the DPP can still decide, the judge must independently approve and the accused can answer every matter capable of worsening the legal outcome.¹⁹

The present analysis calls that arrangement meaningful but non-dispositive participation.²⁰ ‘Meaningful’ requires an open decision, usable information, a safe opportunity to contribute and a reasoned treatment of material views.²¹ ‘Non-dispositive’ means that the victim’s approval is neither a condition of prosecution nor a defence to unlawful leniency, and that victim opposition cannot supply jurisdiction missing from statute.²² This is a demanding middle position, not a compromise vocabulary.²³ It insists both that public officials answer affected persons and that renewed coercion against an accused remains tied to law.²⁴

Ugandan appellate doctrine makes the weakness of the present victim safeguard difficult to defend.²⁵ In *Tatu v Uganda*²⁶ and later in *Emuron Samuel v Uganda*²⁷ the Court of Appeal treated the recorded plea safeguards as mandatory because a valid conviction cannot be inferred from an untidy or incomplete court record. *Nuwamanya v Uganda*²⁸ applied the same discipline where the plea had not been fully and clearly explained. These cases protect an indispensable fair-trial interest, but they also reveal a marked allocation of legal seriousness: the accused-facing steps are formal, visible and invalidating, while victim consultation is framed as an interest to be considered and may leave no auditable trace.²⁹ A coherent constitutional system should not weaken the accused’s safeguards; it should bring the victim’s pre-approval safeguard up to the same standard of institutional visibility.³⁰

The claim is not that consultation will reliably produce healing, harsher sentences or public confidence.³¹ The strongest recent systematic review identified only 58 quantitative studies from 2002 to 2021, found heterogeneous measures and outcomes, and recorded only three studies concerning Africa.³² Uganda’s own published criminal-justice data count reports, files, prosecutions, dispositions and convictions, but do not reveal how many eligible victims were notified before plea terms were fixed or whether their representations changed anything.³³ The research study consequently makes a legal and institutional claim, supported by limited empirical evidence: a coercive public decision is better justified when relevant affected interests enter the record before closure and the decision-maker must answer them.³⁴ Whether the redesigned process improves experience in Uganda must be measured rather than assumed.³⁵

¹⁹ Constitution of the Republic of Uganda 1995, arts 28(1), 120(3)-(5) and 128; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 11-13.

²⁰ Beloof (n 9) 296-311; Edwards (n 23) 969-79.

²¹ Ben Bradford, ‘Voice, Neutrality and Respect: Use of Victim Support Services, Procedural Fairness and Confidence in the Criminal Justice System’ (2011) 11 *Criminology & Criminal Justice* 345, 348-63; Manikis (n 19) 425-38.

²² Constitution of the Republic of Uganda 1995, art 120(3)-(5); Trial on Indictments Act (Cap 25), s 131.

²³ Beloof (n 9) 296-311; Ashworth (n 9) 194-203.

²⁴ UN General Assembly, ‘Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power’ UNGA Res 40/34 (29 November 1985), annex para 6(b); Constitution of the Republic of Uganda 1995, art 28(1).

²⁵ *Tatu v Uganda* (Criminal Appeal No 239 of 2016) [2024] UGCA 44 (21 February 2024); *Nuwamanya v Uganda* (Criminal Appeal No 353 of 2017) [2024] UGCA 186 (19 July 2024); *Emuron Samuel v Uganda* (Criminal Appeal No 85 of 2016) [2026] UGCA 182 (18 May 2026).

²⁶ *Tatu* [2024] UGCA 44.

²⁷ *Emuron* [2026] UGCA 182.

²⁸ *Nuwamanya* [2024] UGCA 186.

²⁹ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 9-13 and schs 1-2.

³⁰ Constitution of the Republic of Uganda 1995, arts 28(1), 120(5) and 126(2)(e).

³¹ Robyn L Holder and Elizabeth Englezos, ‘Victim Participation in Criminal Justice: A Quantitative Systematic and Critical Literature Review’ (2024) 30 *International Review of Victimology* 25, 28-46.

³² Holder and Englezos (n 40) 33-43.

³³ Uganda Police Force, ‘Annual Crime Report 2025’ (2 April 2026) <https://upf.go.ug/annual-crime-report-2025/> accessed 7 September 2026; Judiciary of Uganda, *Sixth Strategic Plan for the Judiciary FY 2025/26-2029/30* (January 2026) 66, 82 and 147.

³⁴ Bradford (n 30) 348-63; Holder and Englezos (n 40) 38-46.

³⁵ Holder and Englezos (n 40) 38-46.

The discussion moves from the philosophical foundation of that claim to the internal weaknesses of Uganda's Rules, before returning to *Ongoriya* for close doctrinal examination.³⁶ Comparative law then tests the boundaries of participation, and the final sections identify amendments and remedies capable of giving the proposed right practical form without compromising the constitutional allocation of prosecution and adjudication.³⁷

II. THE PHILOSOPHICAL CLAIM: VOICE WITHOUT OWNERSHIP

Nils Christie's account of 'conflicts as property' remains unsettling because it describes a familiar professional achievement: lawyers make a conflict legally manageable by taking it away from those who lived it.³⁸ Plea bargaining intensifies that appropriation.³⁹ The crucial account of conduct and culpability is produced in a negotiation, not in the public contest of a trial, and the resulting efficiency depends partly on how few voices are allowed to complicate the settlement.⁴⁰ In that setting, exclusion is not an accidental absence from a hearing; it is part of the decisional technology.⁴¹

Christie's metaphor nevertheless becomes dangerous if 'property' is read literally.⁴² A criminal prosecution is an exercise of public coercion, and its legitimacy cannot turn on the wishes of the most forceful family, the most sympathetic complainant or the victim able to retain counsel.⁴³ Some victims seek severity, others safety, compensation, truth, apology or mercy, and a system that equates victimhood with punitive demand will silence the latter while claiming to empower the group.⁴⁴ Private control would also make equal treatment depend upon resources and personality rather than evidence and law.⁴⁵ The proper lesson from Christie is a claim against professional monopoly, not a transfer of sovereign title.⁴⁶

Douglas Beloof's 'third model' supplies a useful correction to a criminal-process map occupied only by the State and accused.⁴⁷ Its force lies in recognising that the victim has interests produced by the proceeding itself: personal safety, dignity, factual recognition, privacy and reparation can all be altered by a bargain to which the victim is formally a stranger.⁴⁸ Yet the third model is constitutionally sound only if standing is distinguished from dominion.⁴⁹ Ian Edwards' 'ambiguous participant' is more faithful to that position because the victim's role changes with the question being decided: direct knowledge may be central to harm and safety, relevant but contestable on facts, and legally non-controlling on charge and sentence.⁵⁰ Ambiguity here is not conceptual failure; it is the reason the incidents of participation must be specified.⁵¹

Procedural-justice research sharpens the distinction between influence and control.⁵² Voice can legitimate an adverse decision when the opportunity is genuine, the treatment respectful and the reasons reveal neutral

³⁶ Nils Christie, 'Conflicts as Property' (1977) 17 British Journal of Criminology 1, 4-10; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 3-15; *Ongoriya* [2026] UGCA 225, [79]-[131].

³⁷ Constitution of Kenya 2010, art 50(9); Criminal Procedure Act 51 of 1977 (South Africa), s 105A; Crime Victims' Rights Act 2004, 18 USC § 3771; Rome Statute of the International Criminal Court, art 68(3).

³⁸ Christie (n 45) 4-10.

³⁹ Bibas (n 20) 923-45.

⁴⁰ Christie (n 45) 4-10; Bibas (n 20) 932-59.

⁴¹ Edwards (n 23) 973-79.

⁴² Ashworth (n 9) 188-203.

⁴³ Constitution of the Republic of Uganda 1995, arts 21, 28(1) and 120(3)-(5); Nils Christie, 'The Ideal Victim' in Ezzat A Fattah (ed), *From Crime Policy to Victim Policy: Reorienting the Justice System* (Macmillan 1986) 17, 18-25.

⁴⁴ Julian V Roberts, 'Listening to the Crime Victim: Evaluating Victim Input at Sentencing and Parole' (2009) 38 Crime and Justice 347, 358-97; Christie, 'The Ideal Victim' (n 52) 18-25.

⁴⁵ Ashworth (n 9) 194-203.

⁴⁶ Christie (n 45) 4-10; Beloof (n 9) 296-311.

⁴⁷ Beloof (n 9) 289-311.

⁴⁸ Beloof (n 9) 296-311; Doak (n 21) 300-15.

⁴⁹ Ashworth (n 9) 194-203.

⁵⁰ Edwards (n 23) 969-79.

⁵¹ Doak (n 21) 303-15.

⁵² Bradford (n 30) 348-63.

engagement with what was said.⁵³ The converse is equally important: an invitation delivered after the bargain is signed may allow expression, but it cannot claim the legitimating quality of participation because the institution has insulated its decision from the speaker.⁵⁴ Such an exercise is managed catharsis.⁵⁵ It asks the victim to perform pain for a process that has already decided what that pain is worth.⁵⁶

The idea of a reasoned response is central to avoiding that result.⁵⁷ In *R v Secretary of State for the Home Department, ex p Doody*⁵⁸ the House of Lords linked the content of fairness to context and recognised that reasons may be required where fairness cannot otherwise be achieved. In plea bargaining, the victim need not receive a judicial opinion from the prosecutor, but material disagreement over charge, admitted facts, safety or compensation should receive an intelligible answer before signature.⁵⁹ Reasons perform two functions at once: they show that voice entered the decision, and they force the official to separate evidence, public interest and administrative convenience.⁶⁰ That separation was conspicuously absent when prison decongestion was offered in *Ongoriya*⁶¹ as if it answered the family's case-specific interest.

The risk of unequal voice cannot be treated as an objection to participation alone.⁶² Silence under the current system is also unequally distributed: rural distance, disability, language, poverty, trauma and dependence on the accused make some victims easier to omit.⁶³ A right triggered only by a sophisticated application will favour precisely the 'ideal victim' whom institutions already find legible.⁶⁴ The answer is not to preserve universal voicelessness; it is to place the initiating duty on the State, permit refusal without penalty, fund basic support and require reasons when contact is said to be impossible or unsafe.⁶⁵

The philosophical position can now be stated without sentimentality.⁶⁶ Victims possess no constitutional entitlement to a preferred charge, but public power cannot claim adequate information or procedural legitimacy while deliberately avoiding their material knowledge and concerns.⁶⁷ Participation must be early enough to matter, bounded enough to protect equality and defence rights, and structured enough to survive workload pressure.⁶⁸ The Ugandan Rules fail that test because they state a value without constructing the legal route by which the value can discipline the bargain.⁶⁹

III. THE RULES' DOCTRINAL ASYMMETRY

The legal weakness begins with vocabulary.⁷⁰ The Rules define a plea agreement as an arrangement between the prosecution and accused, and the prescribed form contains signature lines for those parties and counsel.⁷¹ That

⁵³ Bradford (n 30) 348-63.

⁵⁴ Bibas (n 20) 949-59; Manikis (n 19) 425-38.

⁵⁵ Manikis (n 19) 425-38.

⁵⁶ Bibas (n 20) 949-59; Roberts (n 53) 390-405.

⁵⁷ Marie Manikis, 'Recognizing Victims' Role and Rights During Plea Bargaining: A Fair Deal for Victims of Crime' (2012) 58 Criminal Law Quarterly 411, 425-38.

⁵⁸ *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531 (HL), 560-65.

⁵⁹ Manikis (n 19) 425-38; Simon N Verdun-Jones and Adamira A Tijerino, *Victim Participation in the Plea Negotiation Process in Canada: A Review of the Literature and Four Models for Law Reform* (Department of Justice Canada 2002) 45-68.

⁶⁰ Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.1.6, 2.2-2.3, 2.3.12-2.3.17 and 2.7-2.8.

⁶¹ *Ongoriya* [2026] UGCA 225, [117], [126]-[128].

⁶² Christie, 'The Ideal Victim' (n 52) 18-25.

⁶³ Convention on the Rights of Persons with Disabilities, arts 9, 12 and 13; UN General Assembly, 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power' UNGA Res 40/34 (29 November 1985), annex paras 4-7.

⁶⁴ Christie, 'The Ideal Victim' (n 52) 18-25.

⁶⁵ UN General Assembly, 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power', annex paras 4-7; Office of the Director of Public Prosecutions, *Witness Protection Guidelines* (February 2019) 6-19.

⁶⁶ Ashworth (n 9) 188-203; Beloof (n 9) 296-311.

⁶⁷ Constitution of the Republic of Uganda 1995, art 120(3)-(5); Edwards (n 23) 973-79.

⁶⁸ Constitution of the Republic of Uganda 1995, arts 21 and 28(1); Manikis (n 19) 425-38.

⁶⁹ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 3-15 and schs 1-2.

⁷⁰ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 2-5.

⁷¹ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 2, 4 and 9, sch 1.

allocation is constitutionally defensible because the victim is not a prosecuting party.⁷² The difficulty is that consultation appears in the objectives and in rule 11 without becoming a procedural event that must occur before either party signs.⁷³ A right located in purpose but omitted from sequence is easily honoured in judicial language and ignored in institutional time.⁷⁴

Rule 11 is especially thin.⁷⁵ Its command to take the interests of the victim, complainant and community into consideration does not tell the prosecutor whether those interests may be inferred from a police file or must be sought from the persons concerned.⁷⁶ It does not distinguish consultation from consent, give the victim a right to decline, address multiple or conflicting victims, or require any explanation when the ultimate bargain rejects their position.⁷⁷ The prescribed form's blank space for the victim's views is not an adequate answer because a blank may mean no victim, no contact, refusal, fear, delay, official omission or deliberate exclusion.⁷⁸ A legal record that gives radically different events the same appearance cannot support effective judicial supervision.⁷⁹

The timing defect is reinforced by Schedule 2.⁸⁰ The court first establishes voluntariness, factual basis and the parties' position, then receives victim views in the sequence associated with sentence.⁸¹ By that stage, a family may speak about the consequence of a charge it had no opportunity to contest and the impact of facts already reduced to an agreed narrative.⁸² Judicial power to reject the agreement under rule 13 remains important, but an uninformed victim cannot identify an omission that the agreement itself conceals.⁸³ The design places too much weight on a final hearing and too little on the creation of an accurate record before that hearing begins.⁸⁴

Rule 8 produces a separate constitutional discomfort by allowing a judicial officer to participate in plea discussions and relying on recusal if the negotiations fail.⁸⁵ Recusal after failure does not answer the problem when negotiations succeed.⁸⁶ A judge who helped shape a proposed charge or sentence may later be asked to decide whether the same product is voluntary, factually sound and in the interests of justice.⁸⁷ The risk is institutional commitment rather than personal bad faith.⁸⁸ Approval is a weak safeguard if the approving officer has already invested authority in making the bargain work.⁸⁹

The Rules are much more exact when the accused's consent is at stake.⁹⁰ They prescribe the content of the agreement, counsel's certification, the court's inquiry, the factual basis and the consequences of acceptance.⁹¹ That precision is constitutionally necessary.⁹² It also demonstrates that the drafters knew how to convert a value into a verifiable sequence.⁹³ Victim participation was left at a different level of normativity: expressed as an aim, compressed into a consideration duty and detached from a remedy.⁹⁴

⁷² Constitution of the Republic of Uganda 1995, art 120(3)-(5).

⁷³ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 3(b), 3(f), 9 and 11.

⁷⁴ Manikis (n 19) 425-38.

⁷⁵ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, r 11.

⁷⁶ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, r 11.

⁷⁷ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 9 and 11-13.

⁷⁸ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, sch 1; *Ongoriya* [2026] UGCA 225, [117].

⁷⁹ *Ongoriya* [2026] UGCA 225, [126]-[128].

⁸⁰ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, sch 2.

⁸¹ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, sch 2, steps 1-18.

⁸² *Bibas* (n 20) 949-59.

⁸³ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 12-13; *Ongoriya* [2026] UGCA 225, [113]-[128].

⁸⁴ Manikis (n 19) 419-38.

⁸⁵ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, r 8.

⁸⁶ Constitution of the Republic of Uganda 1995, arts 28(1) and 128.

⁸⁷ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 8 and 12-13.

⁸⁸ Constitution of the Republic of Uganda 1995, art 28(1).

⁸⁹ *Bibas* (n 20) 923-45.

⁹⁰ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 9-13 and schs 1-2.

⁹¹ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 9-13.

⁹² Constitution of the Republic of Uganda 1995, art 28(1) and (3).

⁹³ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 9-13 and schs 1-2.

⁹⁴ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 3(f), 11 and 13.

The Court of Appeal's method in *Tatu v Uganda*⁹⁵ shows what legal seriousness looks like in this field. The Court did not ask whether the accused probably understood the bargain despite an imperfect record; it insisted upon the prescribed recording of the plea because conviction cannot rest on appellate speculation about an unrecorded safeguard.⁹⁶ The constitutional premise was sound, and the Court gave it effect through an exacting view of the record: visible failure defeated the conviction.⁹⁷ That approach protects both the accused and the legitimacy of summary conviction.⁹⁸ Its unspoken implication is equally important: a safeguard that the law does not require to be recorded cannot receive the same appellate protection, however important the court later declares it to be.⁹⁹

*Nuwamanya v Uganda*¹⁰⁰ carried the same logic into the quality of explanation. The Court's concern was not simply that a box had been left empty; the incomplete account of the plea prevented a reviewing court from knowing whether the accused's apparent consent was legally informed.¹⁰¹ The method treated form as evidence of substance, not as an end in itself.¹⁰² That distinction answers the familiar objection that a participation certificate would be bureaucratic: the certificate is justified only if it records the information, opportunity and response through which real consultation can be tested.¹⁰³ A signature alone would merely produce a new ritual.¹⁰⁴

In *Emuron Samuel v Uganda*¹⁰⁵ the Court again quashed convictions where mandatory plea-bargain procedures had not been followed. The decision confirms that Ugandan plea bargaining is a statutory route to conviction, not an informal settlement that can be rescued by a general impression of fairness.¹⁰⁶ Its constitutional consequence is sound: efficiency cannot displace the disciplined proof of a voluntary and lawful plea.¹⁰⁷ Yet *Emuron* also sharpens the victim question because the system now has a settled appellate vocabulary of mandatory accused-facing requirements and no comparably settled account of what makes victim consultation legally sufficient.¹⁰⁸ The difference is not compelled by the Constitution; it is produced by the Rules' drafting and remedial architecture.¹⁰⁹

This asymmetry should not be answered by treating victim consultation as another condition of the accused's guilt.¹¹⁰ The validity of the accused's admission and the legality of the prosecutor's participation process are distinct questions, even when both must be resolved before approval.¹¹¹ That separation permits strong preventive enforcement without making a completed conviction automatically void whenever a prosecutor failed to contact a victim.¹¹² It also prevents the victim's procedural right from being instrumentalised as a device through which the State escapes a bargain it later regrets.¹¹³

⁹⁵ *Tatu v Uganda* (Criminal Appeal No 239 of 2016) [2024] UGCA 44 (21 February 2024).

⁹⁶ *Tatu* [2024] UGCA 44; Trial on Indictments Act (Cap 25), ss 60 and 63; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, r 12.

⁹⁷ *Tatu* [2024] UGCA 44; Constitution of the Republic of Uganda 1995, art 28(1).

⁹⁸ *Tatu* [2024] UGCA 44.

⁹⁹ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 11-13; *Ongoriya* [2026] UGCA 225, [126]-[128].

¹⁰⁰ *Nuwamanya v Uganda* (Criminal Appeal No 353 of 2017) [2024] UGCA 186 (19 July 2024).

¹⁰¹ *Nuwamanya* [2024] UGCA 186; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 9-12.

¹⁰² *Nuwamanya* [2024] UGCA 186.

¹⁰³ *Nuwamanya* [2024] UGCA 186; *Ongoriya* [2026] UGCA 225, [117], [126]-[128].

¹⁰⁴ Manikis (n 19) 425-38.

¹⁰⁵ *Emuron Samuel v Uganda* (Criminal Appeal No 85 of 2016) [2026] UGCA 182 (18 May 2026).

¹⁰⁶ *Emuron* [2026] UGCA 182; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 9-13.

¹⁰⁷ *Emuron* [2026] UGCA 182; Constitution of the Republic of Uganda 1995, art 28(1).

¹⁰⁸ *Emuron* [2026] UGCA 182; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, r 11.

¹⁰⁹ Constitution of the Republic of Uganda 1995, arts 28(1), 120(5) and 126(2)(e).

¹¹⁰ Ashworth (n 9) 194-203.

¹¹¹ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 9-13.

¹¹² *Ongoriya* [2026] UGCA 225, [82]-[95], [126]-[128].

¹¹³ Trial on Indictments Act (Cap 25), s 131; Constitution of the Republic of Uganda 1995, art 28(1) and (9).

The Rules' silence becomes more serious when placed beside article 120.¹¹⁴ A prosecutor must consider the public interest and the administration of justice, but those constitutional criteria do not license an assumption that the prosecutor already embodies every victim perspective.¹¹⁵ The statement in *Ongoriya*¹¹⁶ that the prosecution represents victims is acceptable only as a claim of public responsibility. Read as agency, it would contradict prosecutorial independence, obscure conflicts among victims and make consultation conceptually unnecessary because the representative could be treated as already speaking for the represented.¹¹⁷ The DPP represents the public legality of the prosecution; the victim supplies a perspective that public office cannot manufacture.¹¹⁸

Administrative incentives make these doctrinal omissions practical.¹¹⁹ The Judiciary's current plan counts plea-bargain disposal and clearance performance, while no published indicator measures timely victim notification, reasons for non-contact or judicial refusal for participation defects.¹²⁰ The Uganda Police Force recorded 196,405 cases in 2025, with 115,301 submitted to the ODPP, 79,291 taken to court and 24,899 convictions reported by the cut-off date.¹²¹ Those figures prove neither improper bargaining nor victim dissatisfaction.¹²² They do show an environment in which a safeguard that costs time but leaves no measurable record will predictably lose against an output that institutions count and reward.¹²³

The architecture is thus hollow in a precise sense.¹²⁴ Victim participation has normative visibility but little procedural resistance to haste, and accused participation has procedural form backed by appellate consequence.¹²⁵ *Ongoriya* forced the courts to confront the difference after judgment, when the lawful remedial choices had already narrowed.¹²⁶ That timing explains both the moral force and the doctrinal instability of the litigation.¹²⁷

IV. ONGORIYA: A SOUND WARNING CARRIED BY AN UNSOUND REMEDY

A. The agreement and the legal questions it concealed

The plea agreement in *Ongoriya*¹²⁸ was internally unstable before the victim issue arose. Murder was crossed out and replaced with manslaughter, but the particulars retained an allegation of malice aforethought and the agreed facts described a deliberate shooting.¹²⁹ A conviction for manslaughter can follow where murder is not proved, but the bargain still required facts legally capable of supporting the substituted offence and an explanation for the abandonment of the mental element alleged on the indictment.¹³⁰ Neither the administrative attraction of a plea nor agreement between counsel could cure a mismatch between offence, particulars and factual basis.¹³¹ The trial judge's approval was deficient because rule 12 required an independent legal inquiry, not the judicial registration of a negotiated preference.¹³²

¹¹⁴ Constitution of the Republic of Uganda 1995, art 120.

¹¹⁵ Constitution of the Republic of Uganda 1995, art 120(5).

¹¹⁶ *Ongoriya* [2026] UGCA 225, [103]-[109].

¹¹⁷ Constitution of the Republic of Uganda 1995, art 120(3)-(5); Edwards (n 23) 973-79.

¹¹⁸ *Beloof* (n 9) 296-311; *Ashworth* (n 9) 194-203.

¹¹⁹ Judiciary of Uganda, *Sixth Strategic Plan for the Judiciary FY 2025/26-2029/30* (January 2026) 66, 82 and 147.

¹²⁰ Judiciary of Uganda, *Sixth Strategic Plan for the Judiciary FY 2025/26-2029/30* (January 2026) 66, 82 and 147.

¹²¹ Uganda Police Force, 'Annual Crime Report 2025' (2 April 2026) <https://upf.go.ug/annual-crime-report-2025/> accessed 7 September 2026.

¹²² *Holder and Englezos* (n 40) 38-46.

¹²³ Jerry Z Muller, *The Tyranny of Metrics* (Princeton University Press 2018) 17-35; *Judiciary of Uganda* (n 8) 66, 82 and 147.

¹²⁴ *Judicature (Plea Bargain) Rules 2016*, SI 43 of 2016, rr 3-15.

¹²⁵ *Tatu* [2024] UGCA 44; *Nuwamanya* [2024] UGCA 186; *Emuron* [2026] UGCA 182.

¹²⁶ *Ongoriya* [2026] UGCA 225, [79]-[131].

¹²⁷ *Uganda (DPP) v Ongoriya Moses and Wanamama Mics Isaiah* (Criminal Review Application No 44 of 2024) [2024] UGHCCRD 68 (26 November 2024), 8-16; *Ongoriya* [2026] UGCA 225, [79]-[131].

¹²⁸ *Ongoriya* [2026] UGCA 225, [113]-[125].

¹²⁹ *Ongoriya* [2026] UGCA 225, [113]-[116], [120]-[125].

¹³⁰ Penal Code Act (Cap 128), ss 187-90; *Judicature (Plea Bargain) Rules 2016*, SI 43 of 2016, rr 9(1)(b), 12-13.

¹³¹ *Judicature (Plea Bargain) Rules 2016*, SI 43 of 2016, rr 9 and 12-13.

¹³² *Judicature (Plea Bargain) Rules 2016*, SI 43 of 2016, rr 12-13; *Ongoriya* [2026] UGCA 225, [120]-[128].

The family's exclusion aggravated that defect but did not create it.¹³³ Consultation might have exposed the unchanged account of intention, corrected the harm narrative or identified concerns about sentence and safety.¹³⁴ Consultation could not itself make manslaughter legally available, and family consent could not have validated facts amounting only to murder.¹³⁵ This distinction is vital because it prevents victim participation from becoming a convenient explanation for every failure in the file.¹³⁶ The bargain required separate scrutiny of legality, evidence, participation and sentence.¹³⁷

The record also defeats one part of the later fraud narrative.¹³⁸ If the agreement openly recorded that the victim had not been consulted, the exclusion was visible non-compliance rather than a false representation that consultation had occurred.¹³⁹ Other misrepresentations or collusion could still be proved, but deceit cannot be inferred merely because an accurately disclosed omission was legally serious.¹⁴⁰ In *R G Patel v Lalji Makanji*¹⁴¹ the former Court of Appeal for Eastern Africa held that fraud must be distinctly alleged and strictly proved, although not beyond reasonable doubt. The analytical mistake was to allow the moral gravity of the homicide and the weakness of the bargain to reduce the evidential content of fraud.¹⁴²

B. The High Court: justified alarm, jurisdiction by necessity

The Principal Judge in *Uganda (DPP) v Ongoriya Moses and Wanamama Mics Isaiah*¹⁴³ began from an understandable premise: a six-year sentence following a homicide bargain that excluded the family and retained murder facts demanded judicial attention. The ruling's description of the outcome as a 'handshake' expressed a legitimate anxiety that plea bargaining can become an administrative accommodation between professionals at the expense of public justification.¹⁴⁴ The court was also right to reject the suggestion that consultation became unnecessary because the programme sought to reduce prison congestion.¹⁴⁵ Congestion explains pressure on the system; it does not answer the evidential or public-interest questions in an individual homicide.¹⁴⁶

That moral premise could not carry the court's jurisdictional method.¹⁴⁷ The High Court accepted that the DPP had no statutory appeal from the conviction and that ordinary revision was unavailable, then treated the absence of another remedy as a reason why the Principal Judge could judicially review a decision of a coordinate High Court judge.¹⁴⁸ That step inverted the inquiry required by *Owners of the Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Ltd*¹⁴⁹, where jurisdiction is a prior authority to act, not a conclusion reached after the court decides that action would be just. The point reaches beyond the case: if remedial need can elevate one High Court judge over another, the statutory appellate structure becomes optional whenever a sufficiently troubling judgment is alleged.¹⁵⁰ Article 126(2)(e) resists undue technicality; it does not confer a jurisdiction that Parliament withheld.¹⁵¹

¹³³ *Ongoriya* [2026] UGCA 225, [117], [120]-[128].

¹³⁴ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, r 11; Manikis (n 19) 425-38.

¹³⁵ Constitution of the Republic of Uganda 1995, art 120(3)-(5); Penal Code Act (Cap 128), ss 187-90.

¹³⁶ Edwards (n 23) 973-79.

¹³⁷ *Ongoriya* [2026] UGCA 225, [113]-[131].

¹³⁸ *Ongoriya* [2026] UGCA 225, [117]-[119].

¹³⁹ *Ongoriya* [2026] UGCA 225, [117]-[119].

¹⁴⁰ *Ongoriya* [2026] UGCA 225, [117]-[119].

¹⁴¹ *R G Patel v Lalji Makanji* [1957] EA 314, 317.

¹⁴² *Uganda (DPP) v Ongoriya* [2024] UGHCCRD 68, 12-16; *Ongoriya* [2026] UGCA 225, [118]-[119], [129]-[131].

¹⁴³ *Uganda (DPP) v Ongoriya Moses and Wanamama Mics Isaiah* (Criminal Review Application No 44 of 2024) [2024] UGHCCRD 68 (26 November 2024), 8-16.

¹⁴⁴ *Uganda (DPP) v Ongoriya* [2024] UGHCCRD 68, 12-16; Christie (n 45) 4-10.

¹⁴⁵ *Uganda (DPP) v Ongoriya* [2024] UGHCCRD 68, 12-14; *Ongoriya* [2026] UGCA 225, [117], [126]-[128].

¹⁴⁶ Constitution of the Republic of Uganda 1995, art 120(5); Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.2-2.3.

¹⁴⁷ *Uganda (DPP) v Ongoriya* [2024] UGHCCRD 68, 8-16.

¹⁴⁸ *Uganda (DPP) v Ongoriya* [2024] UGHCCRD 68, 8-12; Trial on Indictments Act (Cap 25), s 131.

¹⁴⁹ *Owners of the Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Ltd* [1989] KLR 1, 14.

¹⁵⁰ Constitution of the Republic of Uganda 1995, arts 28(1), 79(2), 126(2)(e) and 139; Judicature Act (Cap 16), ss 3, 33 and 36.

¹⁵¹ Constitution of the Republic of Uganda 1995, arts 79(2) and 126(2)(e).

The High Court's treatment of fraud weakened the ruling further.¹⁵² It moved from an unchanged police file, a reduced charge, non-consultation and an apparently lenient sentence to findings of impropriety, misrepresentation, collusion and fraud without keeping the elements or evidence of those conclusions separate.¹⁵³ Administrative laxity may support an investigation, an irrational charging decision may justify prospective public-law relief, and a false representation may establish deceit, but none is synonymous with the others.¹⁵⁴ The practical effect was severe: the court quashed a conviction, restored exposure to murder and ordered retrial on a record it simultaneously regarded as insufficiently investigated.¹⁵⁵ Moral clarity about the family's exclusion had become a substitute for remedial calibration.¹⁵⁶

The High Court nevertheless identified a point that should survive reversal.¹⁵⁷ Where consultation is said to be impracticable, the prosecutor must provide facts and reasons rather than a bare conclusion.¹⁵⁸ That requirement follows from the nature of the duty: an unexplained exception cannot be distinguished from disregard.¹⁵⁹ The error was remedial overreach, not excessive concern for participation.¹⁶⁰

C. The Court of Appeal: jurisdiction correctly stated and then abandoned

The Court of Appeal in *Ongoriya Moses and Another v Uganda*¹⁶¹ correctly dismantled the High Court's jurisdictional premise. The Principal Judge's administrative office did not carry appellate or supervisory authority over a coordinate judge, and judicial review could not be used as an appeal against a criminal conviction.¹⁶² Once the plea was approved, it became a judicial conviction and sentence, not a prosecutorial contract capable of cancellation by another High Court judge.¹⁶³ The Court also stated the controlling rule with commendable precision: a *lacuna* does not justify breach of the law allocating jurisdiction.¹⁶⁴ On that reasoning, the review order had to be set aside and the judicial task should have ended unless another competent proceeding was before the Court.¹⁶⁵

The judgment did not stop.¹⁶⁶ Paragraph 84 recorded the DPP's concession that section 131 of the Trial on Indictments Act permits a State appeal from acquittal, not from a High Court conviction.¹⁶⁷ Paragraphs 86 and 87 then suggested that sections 10 and 11 of the Judicature Act and section 34 of the Criminal Procedure Code Act provided a course of appeal.¹⁶⁸ Those provisions state powers available when a competent appeal exists; they do not identify an appellant, extend section 131 or originate a new criminal appeal.¹⁶⁹ Treating remedial powers as the source of appellate standing makes jurisdiction depend upon what the court wishes to do after the merits have been examined.¹⁷⁰

The contradiction became explicit at paragraph 112.¹⁷¹ Having held that the initiating review was incompetent, the Court undertook a 'fresh and exhaustive re-evaluation' of the criminal cause under section 11.¹⁷² Section 11

¹⁵² *Uganda (DPP) v Ongoriya* [2024] UGHCCRD 68, 12-16.

¹⁵³ *Uganda (DPP) v Ongoriya* [2024] UGHCCRD 68, 12-16.

¹⁵⁴ *R G Patel* [1957] EA 314, 317; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.3.12-2.3.17 and 2.7-2.8.

¹⁵⁵ *Uganda (DPP) v Ongoriya* [2024] UGHCCRD 68, orders; Constitution of the Republic of Uganda 1995, art 28(1) and (9).

¹⁵⁶ *Uganda (DPP) v Ongoriya* [2024] UGHCCRD 68, 12-16.

¹⁵⁷ *Uganda (DPP) v Ongoriya* [2024] UGHCCRD 68, 12-14.

¹⁵⁸ *Uganda (DPP) v Ongoriya* [2024] UGHCCRD 68, 12-14; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, r 11.

¹⁵⁹ *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531 (HL), 560-65.

¹⁶⁰ *Ongoriya* [2026] UGCA 225, [79]-[99], [126]-[128].

¹⁶¹ *Ongoriya* [2026] UGCA 225, [79]-[99].

¹⁶² *Ongoriya* [2026] UGCA 225, [79]-[83], [99].

¹⁶³ *Ongoriya* [2026] UGCA 225, [82]-[83].

¹⁶⁴ *Ongoriya* [2026] UGCA 225, [91].

¹⁶⁵ *Ongoriya* [2026] UGCA 225, [79]-[99]; Trial on Indictments Act (Cap 25), s 131.

¹⁶⁶ *Ongoriya* [2026] UGCA 225, [112]-[131].

¹⁶⁷ *Ongoriya* [2026] UGCA 225, [84]; Trial on Indictments Act (Cap 25), s 131.

¹⁶⁸ *Ongoriya* [2026] UGCA 225, [86]-[87]; Judicature Act (Cap 16), ss 10-11; Criminal Procedure Code Act (Cap 121), s 34.

¹⁶⁹ Judicature Act (Cap 16), ss 10-11; Criminal Procedure Code Act (Cap 121), s 34; Trial on Indictments Act (Cap 25), s 131.

¹⁷⁰ *Ongoriya* [2026] UGCA 225, [84]-[95].

¹⁷¹ *Ongoriya* [2026] UGCA 225, [112].

authorises appropriate orders for determining an appeal within jurisdiction; it does not permit an appeal against a civil review order to absorb a separate criminal conviction and transform the DPP into a competent criminal appellant.¹⁷³ Appellate rank is not a general custody of every decision reproduced in the record.¹⁷⁴ If it were, statutory limits on parties, time and subject matter would disappear whenever an appellate court could see an underlying error.¹⁷⁵

*Makula International Ltd v His Eminence Cardinal Nsubuga and Another*¹⁷⁶ does not repair that reasoning. *Makula* refused to use inherent power to enlarge time and then declined to sanction a facially unlawful taxation within a matter properly before the appellate court.¹⁷⁷ It did not hold that illegality creates an originating appeal or that disputed fraud permits an appellate court to reopen a criminal conviction for which legislation supplies no State appeal.¹⁷⁸ The maxim against sanctioning illegality is exercised through jurisdiction; it is not a substitute for jurisdiction.¹⁷⁹

Rule 2(2) of the Court of Appeal Rules offers only a narrow possible route.¹⁸⁰ It permits inherent action to prevent abuse and set aside a judgment proved null and void, but the exceptional language cannot equate serious error with nullity or dispense with pleading, notice and proof.¹⁸¹ The Court did not organise its decision around rule 2(2), identify the exact jurisdictional nullity in the trial court or provide a focused process in which the accused could resist the post-conviction expansion of liability.¹⁸² The order for retrial thus carried a major constitutional consequence without a correspondingly exact jurisdictional foundation.¹⁸³

The practical irony is difficult to miss.¹⁸⁴ The Court rejected the High Court's attempt to fill a remedial gap through judicial review, then filled the same gap through an expansive reading of appellate remedial power.¹⁸⁵ Its merits analysis was often persuasive, particularly on the mismatch between charge and facts, but correctness on the merits cannot retrospectively create the authority to decide them.¹⁸⁶ The constitutional discipline demanded of the plea judge also bound the appellate court.¹⁸⁷

D. Contract, representation and the judgment's durable holding

The Court of Appeal's contractual treatment of the plea requires similar care.¹⁸⁸ *Santobello v New York*¹⁸⁹ establishes that a prosecutor's unfulfilled promise can require relief when a guilty plea rests upon it. The case protects reliance and the integrity of adjudication; it does not reduce a plea to an ordinary private contract or make the victim a third contracting party.¹⁹⁰ *Mabry v Johnson*¹⁹¹ makes the limit clearer by treating an unaccepted plea offer as lacking constitutional significance until embodied in the accused's plea and the court's

¹⁷² *Ongoriya* [2026] UGCA 225, [112]-[125]; Judicature Act (Cap 16), s 11.

¹⁷³ Judicature Act (Cap 16), s 11; Trial on Indictments Act (Cap 25), s 131.

¹⁷⁴ *Owners of the Motor Vessel 'Lillian S'* [1989] KLR 1, 14.

¹⁷⁵ Constitution of the Republic of Uganda 1995, arts 28(1), 79(2) and 126(2)(e).

¹⁷⁶ *Makula International Ltd v His Eminence Cardinal Nsubuga and Another* (Civil Appeal No 4 of 1981) [1982] HCB 11 (Court of Appeal of Uganda).

¹⁷⁷ *Makula International* [1982] HCB 11.

¹⁷⁸ *Makula International* [1982] HCB 11; Trial on Indictments Act (Cap 25), s 131.

¹⁷⁹ Constitution of the Republic of Uganda 1995, arts 79(2) and 126(2)(e); *Owners of the Motor Vessel 'Lillian S'* [1989] KLR 1, 14.

¹⁸⁰ Judicature (Court of Appeal Rules) Directions, SI 13-10, r 2(2).

¹⁸¹ Judicature (Court of Appeal Rules) Directions, SI 13-10, rr 2(1)-(2) and 32; Constitution of the Republic of Uganda 1995, art 28(1).

¹⁸² *Ongoriya* [2026] UGCA 225, [112]-[131].

¹⁸³ Constitution of the Republic of Uganda 1995, arts 23(1), 28(1), 28(9) and 79(2).

¹⁸⁴ *Ongoriya* [2026] UGCA 225, [79]-[131].

¹⁸⁵ *Ongoriya* [2026] UGCA 225, [84]-[95], [112]-[125].

¹⁸⁶ *Ongoriya* [2026] UGCA 225, [113]-[125]; *Owners of the Motor Vessel 'Lillian S'* [1989] KLR 1, 14.

¹⁸⁷ Constitution of the Republic of Uganda 1995, arts 28(1), 79(2), 126(2)(e) and 128.

¹⁸⁸ *Ongoriya* [2026] UGCA 225, [103]-[109].

¹⁸⁹ *Santobello v New York* 404 US 257 (1971), 260-63.

¹⁹⁰ *Santobello* 404 US 257 (1971), 260-63.

¹⁹¹ *Mabry v Johnson* 467 US 504 (1984), 507-11.

judgment. Contract language may illuminate promise, voluntariness and reliance, but public law governs charging authority, judicial approval, punishment and appeal.¹⁹²

The Court's statement that the prosecution stands for victims must also be confined.¹⁹³ The DPP has a constitutional duty to consider public interest and the administration of justice, which includes the legal interests of victims.¹⁹⁴ That duty does not create a solicitor-client relationship or allow prosecutorial assertion to replace actual consultation.¹⁹⁵ A deceased person's relatives may disagree among themselves, a complainant may ask for mercy, and a prosecutor may lawfully reject every view expressed.¹⁹⁶ 'Representation' is constitutionally safe only if it describes responsibility to hear and decide, not authority to speak in the victim's place without contact.¹⁹⁷

The judgment's most defensible rule appears at paragraphs 126 to 128.¹⁹⁸ The prosecutor bears the primary duty to inquire into the victim's position, and a court faced with express non-consultation must decline approval until rule 11 has been satisfied.¹⁹⁹ That rule refuses to presume consultation from the fact of prosecutorial office and locates verification in the approval record, where judicial supervision can discipline but does not displace the DPP's decision.²⁰⁰ The immediate consequence is preventive and modest: adjournment or refusal before conviction, when compliance remains possible and finality has not attached.²⁰¹

That holding should be treated as the organising principle of *Ongoriya*.²⁰² Its authority does not depend upon the later conclusion that the bargain was fraudulent, a conclusion the Court itself found premature and unsupported.²⁰³ The Court's order for further investigation confirms that the existing material established lax administration and serious non-compliance, not completed proof of dishonest intent.²⁰⁴ An investigation may expose misconduct, but it cannot retrospectively supply the evidence on which conviction and liberty were already disturbed.²⁰⁵

E. Mujuni and the remedial gap that courts cannot legislate away

*Mujuni Mpitsi Lawrence v Uganda*²⁰⁶ approached post-plea finality from the opposite direction and exposed the same statutory weakness. The High Court treated itself as *functus officio* after conviction and found no express jurisdiction to reopen the plea judgment through the proposed review route.²⁰⁷ That strict reading honoured institutional finality and led directly to refusal of trial-court reconsideration.²⁰⁸ The judgment is defensible as law but troubling as architecture because a plea procured by proved fraud, founded on a legally impossible charge or entered without jurisdiction may still require a structured route to correction.²⁰⁹

¹⁹² Constitution of the Republic of Uganda 1995, arts 28(1) and 120; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 4-15.

¹⁹³ *Ongoriya* [2026] UGCA 225, [103]-[109].

¹⁹⁴ Constitution of the Republic of Uganda 1995, art 120(5).

¹⁹⁵ Constitution of the Republic of Uganda 1995, art 120(3)-(5); Edwards (n 23) 973-79.

¹⁹⁶ Roberts (n 53) 358-97.

¹⁹⁷ *Beloof* (n 9) 296-311.

¹⁹⁸ *Ongoriya* [2026] UGCA 225, [126]-[128].

¹⁹⁹ *Ongoriya* [2026] UGCA 225, [126]-[128]; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 11-13.

²⁰⁰ *Ongoriya* [2026] UGCA 225, [103]-[109], [126]-[128]; Constitution of the Republic of Uganda 1995, arts 120 and 128.

²⁰¹ *Ongoriya* [2026] UGCA 225, [126]-[128]; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, r 13.

²⁰² *Ongoriya* [2026] UGCA 225, [126]-[128].

²⁰³ *Ongoriya* [2026] UGCA 225, [118]-[119], [129]-[131].

²⁰⁴ *Ongoriya* [2026] UGCA 225, [129]-[131].

²⁰⁵ Constitution of the Republic of Uganda 1995, arts 23(1) and 28(1).

²⁰⁶ *Mujuni Mpitsi Lawrence v Uganda* (Criminal Review Application No 38 of 2025) [2025] UGHACAD 20 (8 September 2025).

²⁰⁷ *Mujuni* [2025] UGHACAD 20.

²⁰⁸ *Mujuni* [2025] UGHACAD 20.

²⁰⁹ Constitution of the Republic of Uganda 1995, arts 28(1), 79(2) and 126(2)(e); Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 12-15.

Read together, *Mujuni*²¹⁰ and *Ongoriya*²¹¹ identify a genuine remedial gap without authorising its judicial repair. The gap is not proof that the Principal Judge possessed coordinate review power, that section 11 created a DPP appeal, or that victim exclusion alone rendered the conviction void.²¹² It is evidence that Parliament and the Rules Committee have not matched the expansion of plea bargaining with a precise exceptional reopening jurisdiction.²¹³ Courts may identify that omission and protect participation before approval; they cannot manufacture the missing State appeal after conviction.²¹⁴

The proper reading of *Ongoriya* is accordingly disciplined rather than celebratory or dismissive.²¹⁵ The judgment is right about the prosecutor's duty of inquiry, the trial court's supervisory responsibility, the legal incoherence of the factual basis and the need to investigate administrative failure.²¹⁶ It is wrong to treat the remedial powers in an existing appeal as a source of jurisdiction over a different conviction.²¹⁷ The victim's exclusion deserved a remedy, but the accused was equally entitled to insist that the remedy come from law.²¹⁸ That is the constitutional point on which a credible model of participation must be built.²¹⁹

V. WHAT MEANINGFUL PARTICIPATION MUST DO

The phrase 'meaningful participation' is often allowed to carry more weight than its content.²²⁰ A legally useful definition must identify what remains open, what information moves in each direction, who can speak, how the decision-maker responds and what the record permits a court to verify.²²¹ These are connected conditions rather than a menu.²²² Notice without information creates attendance, information without a safe opportunity creates silence, voice without response creates performance, and all four without a record leave compliance to official memory.²²³

A. Time and information determine whether voice can matter

Consultation must begin before the prosecutor is finally committed to the reduced charge, agreed facts and sentence position.²²⁴ The precise trigger should be a serious proposal that is concrete enough to explain but still capable of change.²²⁵ Contact at arrest may be premature, while contact after signature is an announcement disguised as consultation.²²⁶ The Rules should use a short response period and permit departure only for recorded urgency, danger, inability to locate after reasonable steps, or an informed decision by the victim not to participate.²²⁷

Information must be sufficient to make the opportunity usable, but it need not expose protected witnesses or the entire prosecution file.²²⁸ At minimum, the victim should receive the proposed offence, an intelligible account of any material change in the alleged facts, the broad sentencing and compensation position, the deadline and the

²¹⁰ *Mujuni* [2025] UGHACAD 20.

²¹¹ *Ongoriya* [2026] UGCA 225, [84]-[95], [112]-[131].

²¹² Trial on Indictments Act (Cap 25), s 131; Judicature Act (Cap 16), s 11.

²¹³ Constitution of the Republic of Uganda 1995, art 79(2); Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 12-15.

²¹⁴ Constitution of the Republic of Uganda 1995, arts 28(1), 79(2) and 126(2)(e); *Ongoriya* [2026] UGCA 225, [91].

²¹⁵ *Ongoriya* [2026] UGCA 225, [79]-[131].

²¹⁶ *Ongoriya* [2026] UGCA 225, [113]-[131].

²¹⁷ *Ongoriya* [2026] UGCA 225, [84]-[95], [112]-[125]; Judicature Act (Cap 16), ss 10-11.

²¹⁸ Constitution of the Republic of Uganda 1995, arts 28(1) and 79(2).

²¹⁹ Constitution of the Republic of Uganda 1995, arts 28(1), 120 and 126(2)(e).

²²⁰ Holder and Englezos (n 40) 28-37.

²²¹ UN General Assembly, 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power', annex para 6; Manikis (n 19) 425-38.

²²² Bradford (n 30) 348-63.

²²³ Manikis (n 19) 425-38; Holder and Englezos (n 40) 38-46.

²²⁴ Criminal Procedure Act 51 of 1977 (South Africa), s 105A(1)(b)(iii); Criminal Procedure Code (Cap 75) (Kenya), s 137D.

²²⁵ Verdun-Jones and Tijerino (n 68) 45-68.

²²⁶ Manikis (n 19) 419-38.

²²⁷ UN General Assembly, 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power', annex paras 4-7; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 3, 5 and 11.

²²⁸ Constitution of the Republic of Uganda 1995, arts 28(1) and 120; Office of the Director of Public Prosecutions (n 74) 6-19.

routes for written, oral or represented views.²²⁹ The notice must also say plainly that consultation does not confer a veto.²³⁰ That warning protects victims from a false promise and prosecutors from the claim that every disagreement is a breach.²³¹

The disclosure question becomes harder where the victim is also a witness.²³² Premature access to detailed statements may contaminate recollection, expose another witness or prejudice an investigation.²³³ The answer is proportionate disclosure, not a blanket refusal to explain the proposal.²³⁴ A prosecutor should identify the gist of the contemplated change and record any redaction or delayed disclosure, while the court remains able to inspect the unredacted basis before approval.²³⁵ That structure keeps victim participation from eroding trial fairness while preventing secrecy from becoming the default institutional convenience.²³⁶

B. Accessibility, safety and disagreement among victims

A formally equal invitation can reproduce exclusion if participation assumes literacy, English, transport, digital access, physical safety and emotional readiness.²³⁷ The minimum process must accommodate interpretation, disability, remote or written contributions and the use of a support person or legal representative where complexity or vulnerability warrants it.²³⁸ Participation must remain voluntary because compelled engagement can expose a victim to retaliation, family conflict or renewed trauma.²³⁹ A recorded refusal is compliance with autonomy; official failure to ask is not.²⁴⁰

Representation cannot be the price of entry.²⁴¹ Counsel can organise complex submissions, protect sensitive material and prevent direct confrontation, but a system triggered only by legal application will favour urban, informed and resourced victims.²⁴² The State should initiate notice and explain available support, while legal representation should be prioritised for homicide, sexual violence, children, persons with disabilities, collective harm and cases involving contested compensation or safety.²⁴³ The prosecutor must still receive direct views from an unrepresented victim in a usable form.²⁴⁴

Multiple victims require an explicit method because ‘the victim’s view’ may not exist.²⁴⁵ Relatives may disagree about charge, punishment, compensation or reconciliation, and one family representative may have interests adverse to a child, dependant or survivor.²⁴⁶ The prosecutor should record material divergence rather than select the most punitive or most convenient voice.²⁴⁷ Where numbers make individual consultation impossible, a reasoned representative arrangement may be used, but it must preserve significant differences and allow a person with a distinct interest to seek separate treatment.²⁴⁸

²²⁹ Criminal Procedure Code (Cap 75) (Kenya), ss 137D and 137I; Criminal Procedure (Plea Bargaining) Rules 2018 (Kenya), rr 7-8.

²³⁰ Constitution of the Republic of Uganda 1995, art 120(3)-(5); *Wickham* [2016] ZACC 36, [35]-[45].

²³¹ *Edwards* (n 23) 973-79.

²³² Office of the Director of Public Prosecutions (n 74) 6-14.

²³³ Constitution of the Republic of Uganda 1995, art 28(1); Office of the Director of Public Prosecutions (n 74) 6-14.

²³⁴ UN General Assembly, ‘Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power’, annex para 6(b).

²³⁵ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 7, 12-13.

²³⁶ *Ashworth* (n 9) 194-203.

²³⁷ Convention on the Rights of Persons with Disabilities, arts 9, 12 and 13; UN General Assembly, ‘Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power’, annex paras 4-7.

²³⁸ Convention on the Rights of Persons with Disabilities, arts 9 and 13; Rome Statute of the International Criminal Court, art 68(3).

²³⁹ Office of the Director of Public Prosecutions (n 74) 6-19.

²⁴⁰ UN General Assembly, ‘Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power’, annex paras 4-7.

²⁴¹ *Joseph Lendrix Waswa* [2020] KESC 23 (KLR), [63]-[80].

²⁴² *Christie*, ‘The Ideal Victim’ (n 52) 18-25.

²⁴³ Victim Protection Act 2014 (Kenya), s 9; Rome Statute of the International Criminal Court, art 68(3).

²⁴⁴ UN General Assembly, ‘Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power’, annex para 6(b).

²⁴⁵ *Roberts* (n 53) 358-97.

²⁴⁶ Rome Statute Rules of Procedure and Evidence, rr 85-90; *Christie*, ‘The Ideal Victim’ (n 52) 18-25.

²⁴⁷ Constitution of the Republic of Uganda 1995, arts 21 and 120(5).

²⁴⁸ Rome Statute Rules of Procedure and Evidence, rr 89-91; *Prosecutor v Thomas Lubanga Dyilo* ICC-01/04-01/06-1432 OA9 OA10, [95]-[104].

C. A response proves consideration; a record proves the response

The prosecutor's duty should be to engage, not agree.²⁴⁹ A victim's position may be factually mistaken, legally unavailable, inconsistent with equal charging practice or unduly prejudicial to the accused.²⁵⁰ The DPP must retain authority to reject it.²⁵¹ What makes the process participatory is an intelligible response to material representations on charge, factual basis, safety, compensation and sentence, showing where the information was accepted, disputed or outweighed.²⁵² Reasons need not reveal privileged strategy or endanger witnesses, but 'public interest' and 'decongestion' are conclusions unless connected to the evidence and lawful criteria in the case.²⁵³

The record should distinguish five matters that *Ongoriya* allowed to run together: the legal offence proposed, the evidence supporting it, the public-interest justification for concessions, the victim's representations and the prosecutor's answer.²⁵⁴ A one-page participation certificate can record identity or representative status, notice, information supplied, mode and date of response, any decline or failed contact, safety measures, the substance of material views and the prosecutor's reasons.²⁵⁵ Sensitive detail may be placed in a sealed annex, with a disclosed gist sufficient for the accused to answer any prejudicial matter.²⁵⁶ The certificate is not valuable because paper is virtuous; it is valuable because appellate courts cannot protect an event that the record makes invisible.²⁵⁷

The accused must receive and be permitted to answer any victim assertion capable of affecting guilt, the agreed facts, sentence or compensation.²⁵⁸ A sincere victim statement does not become reliable proof by reason of suffering.²⁵⁹ Where a statement contradicts the agreed factual basis, the court must require proof, revise the agreement with informed consent or reject it; the assertion cannot enter sentence through an evidential side door.²⁶⁰ This is the point at which meaningful participation and fair trial meet most sharply, and neither interest survives if contradiction is concealed.²⁶¹

D. Independent approval supplies the constitutional boundary

The trial judge should ask a short, direct set of questions before accepting the agreement.²⁶² Was an eligible victim identified; was notice given while terms remained open; what information was supplied; were material views received and answered; why was consultation absent or limited; and has the accused seen and answered every prejudicial representation?²⁶³ The inquiry should verify process rather than invite the judge to bargain on the victim's behalf.²⁶⁴ If a remediable failure appears, adjournment is ordinarily enough; if exclusion was deliberate, the factual basis incoherent or the agreement unjust, rule 13 permits rejection.²⁶⁵

The judge must not ask whether the victim approves.²⁶⁶ Consent would invite prosecutors to pressure reluctant families, avoid victims likely to object and treat forgiveness as a discount purchased from a person who does not

²⁴⁹ Constitution of the Republic of Uganda 1995, art 120(3)-(5); *Wickham* [2016] ZACC 36, [35]-[45].

²⁵⁰ Ashworth (n 9) 194-203.

²⁵¹ Constitution of the Republic of Uganda 1995, art 120(3)-(5).

²⁵² *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531 (HL), 560-65; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.3.12-2.3.17.

²⁵³ Constitution of the Republic of Uganda 1995, art 120(5); *Ongoriya* [2026] UGCA 225, [117], [126]-[128].

²⁵⁴ *Ongoriya* [2026] UGCA 225, [113]-[131].

²⁵⁵ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 9 and 11; Criminal Procedure Act 51 of 1977 (South Africa), s 105A(1)(b)(iii).

²⁵⁶ Constitution of the Republic of Uganda 1995, art 28(1); Office of the Director of Public Prosecutions (n 74) 6-14.

²⁵⁷ *Tatu* [2024] UGCA 44; *Nuwamanya* [2024] UGCA 186; *Emuron* [2026] UGCA 182.

²⁵⁸ Constitution of the Republic of Uganda 1995, art 28(1) and (3).

²⁵⁹ *Wickham* [2016] ZACC 36, [8]-[13], [35]-[45].

²⁶⁰ *Wickham* [2016] ZACC 36, [8]-[13], [35]-[45]; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 12-13.

²⁶¹ Constitution of the Republic of Uganda 1995, art 28(1); UN General Assembly, 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power', annex para 6(b).

²⁶² *Ongoriya* [2026] UGCA 225, [126]-[128]; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 12-13.

²⁶³ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 11-13; Constitution of the Republic of Uganda 1995, art 28(1).

²⁶⁴ Constitution of the Republic of Uganda 1995, arts 120 and 128.

²⁶⁵ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, r 13; *Ongoriya* [2026] UGCA 225, [120]-[128].

²⁶⁶ Constitution of the Republic of Uganda 1995, art 120(3)-(5); *Wickham* [2016] ZACC 36, [35]-[45].

own the prosecution.²⁶⁷ Nor should opposition create a presumption against the bargain, because evidence and consistent public principle remain the controlling considerations.²⁶⁸ The court's task is to ensure that a real opportunity preceded a reasoned public decision and that the resulting plea remains lawful, voluntary and just.²⁶⁹

This account of participation is demanding precisely where it should be and restrained where it must be.²⁷⁰ It requires institutional work before approval, but leaves the legal outcome to accountable public actors.²⁷¹ Comparative law is useful only if it is read against that division of responsibility, rather than mined for attractive language about victims' rights.²⁷²

VI. COMPARATIVE DECISIONS AS CONSTITUTIONAL STRESS TESTS

Comparative borrowing is especially risky in plea bargaining because a familiar rule may perform differently within another prosecution service, appellate structure or remedial culture.²⁷³ The question is not which jurisdiction appears most generous to victims.²⁷⁴ The useful inquiry is whether a foreign arrangement clarifies Uganda's own problems of timing, information, decision, fairness and remedy without displacing articles 28 and 120.²⁷⁵

A. Kenya: constitutional participation, unequal access

Kenya gives the victim's position a firmer textual base than Uganda.²⁷⁶ Article 50(9) requires legislation for the protection, rights and welfare of victims; section 9 of the Victim Protection Act confers participatory rights; and section 137D of the Criminal Procedure Code requires an opportunity to make representations on a proposed plea bargain unless circumstances prevent it.²⁷⁷ The 2018 Rules bring consultation into the formation of the agreement and recognise compensation as a possible term.²⁷⁸ The advantage is not the ceremonial use of 'right'; it is the connection between an identified actor, a defined stage and a subject on which representations can bear.²⁷⁹

The Supreme Court of Kenya in *Joseph Lendrix Waswa v Republic*²⁸⁰ rejected the assumption that recognising victim participation necessarily diminishes the accused. The judgment began from complementarity: victim, accused and public interests can occupy the same constitutional process without becoming identical.²⁸¹ It implemented that premise by allowing participation through counsel after application, while leaving the trial court to control manner and extent for fairness and expedition.²⁸² The resulting separation between standing and prosecution is valuable; the victim may contribute but cannot become a second prosecutor.²⁸³ Its weakness lies in access: a right activated by application and shaped by discretion benefits the victim who knows of it, reaches

²⁶⁷ Christie, 'The Ideal Victim' (n 52) 18-25; Ashworth (n 9) 194-203.

²⁶⁸ Constitution of the Republic of Uganda 1995, art 120(5).

²⁶⁹ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 11-13; Constitution of the Republic of Uganda 1995, art 28(1).

²⁷⁰ Beloof (n 9) 296-311; Edwards (n 23) 973-79.

²⁷¹ Constitution of the Republic of Uganda 1995, arts 120 and 128.

²⁷² Máximo Langer, 'From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure' (2004) 45 Harvard International Law Journal 1, 29-62.

²⁷³ Máximo Langer, 'From Legal Transplants to Legal Translations' (2004) 45 Harvard International Law Journal 1, 5-62; Cynthia Alkon, 'Plea Bargaining as a Legal Transplant: A Good Idea for Troubled Criminal Justice Systems?' (2010) 19 Transnational Law and Contemporary Problems 355, 359-84.

²⁷⁴ Langer (n 281) 29-62.

²⁷⁵ Constitution of the Republic of Uganda 1995, arts 28(1) and 120(3)-(5).

²⁷⁶ Constitution of Kenya 2010, art 50(9); Victim Protection Act 2014 (Kenya), s 9; Criminal Procedure Code (Cap 75) (Kenya), s 137D.

²⁷⁷ Constitution of Kenya 2010, art 50(9); Victim Protection Act 2014 (Kenya), s 9; Criminal Procedure Code (Cap 75) (Kenya), s 137D.

²⁷⁸ Criminal Procedure (Plea Bargaining) Rules 2018 (Kenya), rr 7-8; Criminal Procedure Code (Cap 75) (Kenya), ss 137D and 137L.

²⁷⁹ Victim Protection Act 2014 (Kenya), s 9; Criminal Procedure Code (Cap 75) (Kenya), s 137D.

²⁸⁰ *Joseph Lendrix Waswa v Republic* (Petition 23 of 2019) [2020] KESC 23 (KLR), [42]-[43], [63]-[80].

²⁸¹ *Joseph Lendrix Waswa* [2020] KESC 23 (KLR), [63]-[73].

²⁸² *Joseph Lendrix Waswa* [2020] KESC 23 (KLR), [63]-[80].

²⁸³ *Joseph Lendrix Waswa* [2020] KESC 23 (KLR), [71]-[80].

court and can formulate the request.²⁸⁴ Uganda should adopt the Court's boundary but place minimum notice and invitation duties on the State.²⁸⁵

*Republic v Kiprono*²⁸⁶ confirms that the Kenyan plea process treats victim views as a statutory entitlement rather than a favour extended by the prosecutor. The case matters less for the position the victim took than for the court's recognition that the bargain could not be assessed as a closed arrangement between prosecution and defence.²⁸⁷ That approach gives the approval court a visible legal basis for asking whether consultation occurred.²⁸⁸ Uganda's rule 11 points towards the same inquiry but does not equip the judge with a prescribed record or express exception standard.²⁸⁹

Kenyan practice also rebuts the crude fear that victim participation necessarily increases punishment.²⁹⁰ In *Republic v Njeru*²⁹¹ the victim's family had reconciled with the accused and accepted restitution, so its participation supplied information pointing away from a purely punitive response. The process treated harm as the source of relevant interests, not as proof of a predetermined appetite for severity.²⁹² Reconciliation and reparation consequently became visible to the court rather than being claimed by the prosecutor on the family's behalf.²⁹³ That example strengthens the case for voice while weakening the case for veto: mercy is relevant for the same reason anger is relevant, but neither is law.²⁹⁴

Kenya's 'unless circumstances prevent' proviso remains a warning.²⁹⁵ Without a duty to specify steps taken and reasons for failure, an exception framed around circumstances can become the routine language of workload.²⁹⁶ The Kenyan model is strongest where it fixes timing and standing, and weakest where the reality of access is left to application, discretion and unexplained practicality.²⁹⁷

B. South Africa: a real hearing does not entail dominion

Section 105A of South Africa's Criminal Procedure Act requires a prosecutor, where reasonable and feasible, to afford the complainant or representative an opportunity to make representations on the agreement's contents and compensation before conclusion.²⁹⁸ It improves on Uganda's rule 11 by naming the responsible official, fixing the time and identifying the subjects of engagement.²⁹⁹ Judicial verification then places the agreement within an approval process rather than treating prosecutorial signature as sufficient.³⁰⁰ The statute still uses 'reasonable and feasible', so the quality of reasons and review remains decisive.³⁰¹

*Wickham v Magistrate, Stellenbosch and Others*³⁰² provides the strongest answer to the claim that consultation becomes empty whenever the prosecutor disagrees with the victim. The deceased's father opposed the contemplated bargain, supplied expert material and sought to place a victim-impact account before the court; the prosecutor consulted him but did not surrender control of the prosecution.³⁰³ The Constitutional Court treated

²⁸⁴ Joseph Lendrix Waswa [2020] KESC 23 (KLR), [63]-[80]; Christie, 'The Ideal Victim' (n 52) 18-25.

²⁸⁵ Criminal Procedure Code (Cap 75) (Kenya), s 137D; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, r 11.

²⁸⁶ *Republic v Kiprono* (Criminal Case E004 of 2023) [2026] KEHC 10155 (KLR) (9 July 2026), [27]-[29].

²⁸⁷ *Republic v Kiprono* [2026] KEHC 10155 (KLR), [27]-[29]; Victim Protection Act 2014 (Kenya), s 9(c).

²⁸⁸ Criminal Procedure Code (Cap 75) (Kenya), ss 137D and 137F.

²⁸⁹ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 11-13.

²⁹⁰ *Republic v Njeru* (Criminal Case No 6 of 2015) [2024] KEHC 10817 (KLR), [8]-[17], [23]-[24].

²⁹¹ *Republic v Njeru* (Criminal Case No 6 of 2015) [2024] KEHC 10817 (KLR), [8]-[17], [23]-[24].

²⁹² *Republic v Njeru* [2024] KEHC 10817 (KLR), [8]-[17].

²⁹³ *Republic v Njeru* [2024] KEHC 10817 (KLR), [23]-[24].

²⁹⁴ Roberts (n 53) 358-97.

²⁹⁵ Criminal Procedure Code (Cap 75) (Kenya), s 137D.

²⁹⁶ Muller (n 132) 17-35.

²⁹⁷ Joseph Lendrix Waswa [2020] KESC 23 (KLR), [63]-[80]; Criminal Procedure Code (Cap 75) (Kenya), s 137D.

²⁹⁸ Criminal Procedure Act 51 of 1977 (South Africa), s 105A(1)(b)(iii).

²⁹⁹ Criminal Procedure Act 51 of 1977 (South Africa), s 105A(1)(b)(iii); Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, r 11.

³⁰⁰ Criminal Procedure Act 51 of 1977 (South Africa), s 105A(4) and (7).

³⁰¹ Criminal Procedure Act 51 of 1977 (South Africa), s 105A(1)(b)(iii).

³⁰² *Wickham v Magistrate, Stellenbosch and Others* [2016] ZACC 36, 2017 (1) SACR 209 (CC), [8]-[13], [22], [35]-[45].

³⁰³ *Wickham* [2016] ZACC 36, [8]-[13], [35]-[45].

participation under section 105A as real, but bounded it by prosecutorial responsibility and the magistrate's control of fair proceedings.³⁰⁴ Its contextual inquiry examined the opportunity already afforded, the proposed statement and its tension with the agreed facts instead of announcing an absolute entitlement.³⁰⁵ The father was heard, yet could neither dictate the plea nor use sentence to relitigate contested merits.³⁰⁶

That result is constitutionally persuasive, but the judgment is not beyond criticism.³⁰⁷ The Constitutional Court spoke of participation as a right while giving limited account of how the statutory duty, prosecutorial discretion and victim's remedial standing fit together.³⁰⁸ A short discretionary judgment may protect fairness in the individual case yet leave future complainants uncertain about the minimum content of consultation.³⁰⁹ The Court's observation that the magistrate could have shown greater empathy also reveals a difference between legality and institutional manner: the process may be valid while official incivility still deepens harm.³¹⁰ Uganda should not confuse respectful treatment with legal control, but neither should it treat compliance as complete once a box is ticked.³¹¹

The Western Cape High Court's judgment in *Wickham*³¹² placed particular weight on review before the agreement was disclosed to and acted upon by the criminal court. That timing is not a technical detail.³¹³ It preserves a meaningful preventive remedy while avoiding the finality and double-jeopardy problems that overwhelmed *Ongoriya*³¹⁴. South Africa thus supports a demanding pre-conclusion duty and a restrained post-judgment remedy.³¹⁵

C. Canada and the United States: finality makes timing decisive

*R v Anthony-Cook*³¹⁶ was not a victim-participation case, but its law of joint submissions reveals why a late victim statement is institutionally weak. The Supreme Court of Canada adopted a stringent public-interest test for departure from a jointly proposed sentence because plea certainty supports resolution, resource allocation and accused reliance.³¹⁷ Systemic stability drove a rule of strong judicial deference after agreement, sharply narrowing the space in which a sentencing judge can reconstruct the bargain.³¹⁸ For victim participation, the constitutional lesson is temporal: if the system properly values finality after agreement, it must create voice before the agreement acquires that claim to deference.³¹⁹ Sentencing allocution cannot be advertised as meaningful influence while the governing doctrine tells the judge not to disturb the joint position except in exceptional circumstances.³²⁰

The United States decision in *In re Dean*³²¹ placed that temporal point directly within victims' rights. Prosecutors negotiated a plea before conferring with victims, and the Fifth Circuit held that the statutory right to confer applied during the formative stage rather than beginning after the agreement was presented.³²² The Fifth

³⁰⁴*Wickham* [2016] ZACC 36, [35]-[45].

³⁰⁵*Wickham* [2016] ZACC 36, [8]-[13], [35]-[45].

³⁰⁶*Wickham* [2016] ZACC 36, [35]-[45].

³⁰⁷Jamil D Mujuzi, 'Victim Participation in Plea and Sentence Agreements in South Africa as a "Right": Analysing *Wickham v Magistrate, Stellenbosch*' (2016) 31 Southern African Public Law art 3079, 7-18.

³⁰⁸*Wickham* [2016] ZACC 36, [35]-[45]; Mujuzi (n 316) 7-18.

³⁰⁹Mujuzi (n 316) 7-18.

³¹⁰*Wickham* [2016] ZACC 36, [22], [35]-[45].

³¹¹Bradford (n 30) 348-63.

³¹²*Wickham v Magistrate, Stellenbosch and Others* [2015] ZAWCHC 152, 2016 (1) SACR 273 (WCC), [87]-[95].

³¹³*Wickham* [2015] ZAWCHC 152, [87]-[95].

³¹⁴*Ongoriya* [2026] UGCA 225, [82]-[95], [112]-[128].

³¹⁵Criminal Procedure Act 51 of 1977 (South Africa), s 105A; Mujuzi (n 316) 7-18.

³¹⁶*R v Anthony-Cook* 2016 SCC 43, [2016] 2 SCR 204, [32], [51]-[60].

³¹⁷*Anthony-Cook* 2016 SCC 43, [32], [51]-[60].

³¹⁸*Anthony-Cook* 2016 SCC 43, [51]-[60].

³¹⁹Verdun-Jones and Tijerino (n 68) 45-68.

³²⁰*Anthony-Cook* 2016 SCC 43, [51]-[60].

³²¹*In re Dean* 527 F 3d 391 (5th Cir 2008), 394-96.

³²²*In re Dean* 527 F 3d 391 (5th Cir 2008), 394-96; Crime Victims' Rights Act 2004, 18 USC § 3771(a)(5).

Circuit read timing from statutory purpose: consultation after commitment could not perform the function Congress assigned it.³²³ Yet mandamus relief was refused, leaving a finding of violation without an order capable of reopening the deal.³²⁴ The warning for Uganda is plain: declaring a pre-deal right while withholding a prompt pre-approval enforcement route can reduce the right to appellate disapproval after the institutional choice is irreversible.³²⁵

*In re Wild*³²⁶ supplies a harsher jurisdictional lesson. The en banc court accepted the gravity of the government's treatment of the complainants but held that the Crime Victims' Rights Act did not authorise a freestanding judicial proceeding where no federal charge had been filed.³²⁷ A close reading of the statutory vehicle led to denial of relief despite an acknowledged institutional wrong.³²⁸ The case is uncomfortable for victim-rights scholarship because it shows that moral injury and legal entitlement can diverge sharply when legislation fails to create a forum.³²⁹ It is also the closest comparative analogue to the remedial difficulty in *Ongoriya*³³⁰: a court may condemn the conduct, but condemnation cannot supply the missing jurisdiction without remaking the statute.

The American authorities also reinforce the distinction between agreement and judgment.³³¹ *Santobello v New York*³³² protects the integrity of a plea induced by a prosecutorial promise, while *Mabry v Johnson*³³³ locates constitutional consequence in the plea's embodiment in judgment rather than in an executory offer. Together they explain why ordinary contract analogy is incomplete and why remedial options shrink once a court has convicted.³³⁴ Uganda's strongest protection must accordingly operate before rule 12 approval, with post-conviction reopening confined to grounds and procedures created by law.³³⁵

D. International criminal procedure: affected interests under judicial control

Article 68(3) of the Rome Statute permits victims' views and concerns to be presented where their personal interests are affected, in a manner not prejudicial to or inconsistent with a fair and impartial trial.³³⁶ The formula is valuable because it places the victim's standing and the accused's fairness in the same sentence.³³⁷ Rules 85 and 89 to 93 add definition, application, representation and judicial control.³³⁸ This is an institution with exceptional crimes and resources, so its procedures cannot simply be transferred to an ordinary Ugandan plea session.³³⁹ Its conceptual separation remains useful.³⁴⁰

The Appeals Chamber in *Prosecutor v Thomas Lubanga Dyilo*³⁴¹ treated affected personal interests as the basis for participation while leaving the Chamber to control its manner and protect the accused. Victim status did not create party status; each participatory act had to be tied to a demonstrated interest and procedural fairness.³⁴² The resulting form of standing was bounded rather than prosecutorial.³⁴³ Uganda can use that logic at a simpler

³²³ *In re Dean* 527 F 3d 391 (5th Cir 2008), 394-96.

³²⁴ *In re Dean* 527 F 3d 391 (5th Cir 2008), 394-96.

³²⁵ Manikis (n 19) 425-38.

³²⁶ *In re Wild* 994 F 3d 1244 (11th Cir 2021) (en banc), 1247-69.

³²⁷ *In re Wild* 994 F 3d 1244 (11th Cir 2021) (en banc), 1247-69.

³²⁸ *In re Wild* 994 F 3d 1244 (11th Cir 2021) (en banc), 1247-69.

³²⁹ *In re Wild* 994 F 3d 1244 (11th Cir 2021) (en banc), 1247-69.

³³⁰ *Ongoriya* [2026] UGCA 225, [84]-[95], [112]-[131].

³³¹ *Santobello* 404 US 257 (1971), 260-63; *Mabry* 467 US 504 (1984), 507-11.

³³² *Santobello v New York* 404 US 257 (1971), 260-63.

³³³ *Mabry v Johnson* 467 US 504 (1984), 507-11.

³³⁴ *Santobello* 404 US 257 (1971), 260-63; *Mabry* 467 US 504 (1984), 507-11.

³³⁵ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 12-15; Trial on Indictments Act (Cap 25), s 131.

³³⁶ Rome Statute of the International Criminal Court, art 68(3).

³³⁷ Rome Statute of the International Criminal Court, art 68(3).

³³⁸ Rules of Procedure and Evidence of the International Criminal Court, ICC-ASP/1/3 and Corr 1, rr 85 and 89-93.

³³⁹ Langer (n 281) 29-62.

³⁴⁰ Beloof (n 9) 296-311.

³⁴¹ *Prosecutor v Thomas Lubanga Dyilo* (Judgment on the Appeals against the Decision on Victims' Participation) ICC-01/04-01/06-1432 OA9 OA10 (11 July 2008), [31], [95]-[104].

³⁴² *Lubanga* ICC-01/04-01/06-1432 OA9 OA10, [95]-[104].

³⁴³ *Lubanga* ICC-01/04-01/06-1432 OA9 OA10, [95]-[104]; Rome Statute, art 68(3).

scale: harm grounds an opportunity to contribute on matters affecting the victim, while the legal power to charge and adjudicate remains elsewhere.³⁴⁴

Articles 65(4) and 65(5) of the Rome Statute are particularly relevant to negotiated admissions.³⁴⁵ They preserve the Court's power to seek a fuller presentation in the interests of justice, particularly the interests of victims, and deny binding force to discussions between prosecutor and defence.³⁴⁶ The method avoids both judicial passivity and judicial bargaining: the parties may agree, but the court may insist upon a sufficient record.³⁴⁷ That is the element Uganda should translate, especially after *Ongoriya*³⁴⁸, while resisting the temptation to reproduce the ICC's elaborate representation machinery in under-resourced courts.

The comparative cases converge on one restrained proposition.³⁴⁹ Victim voice can be a legal entitlement without becoming prosecution, but its value depends upon access before institutional commitment and a remedy available before finality.³⁵⁰ None of the jurisdictions supplies a complete Ugandan answer.³⁵¹ Together they reveal the components that Uganda's own Constitution and Rules must align.³⁵²

VII. RECONSTRUCTING UGANDA'S REGIME

Reform must address sequence, remedy and institutional incentive together.³⁵³ A new declaration that victims 'have a right to participate' would add little if prosecutors can still sign first, explain later and leave no record of what occurred.³⁵⁴ A perfect form would also fail if courts are rewarded only for completed bargains or if the sole remedy appears after conviction, when jurisdiction and reliance have hardened.³⁵⁵ The amendments must make lawful participation the ordinary path to an efficient disposition, not an external demand competing with it.³⁵⁶

A. Amend the Rules at the points where power is exercised

Rule 2 should define a victim as the directly harmed person and, where that person is deceased, a child or unable to act, an authorised representative whose interests do not conflict with the victim's.³⁵⁷ The definition should permit representation of collective victims and preserve a competent victim's right to decline participation.³⁵⁸ It should not equate 'victim' with every interested relative, because unbounded standing would make consultation unmanageable and conceal conflicts within families.³⁵⁹

Rules 3 and 5 should permit negotiation to begin but prohibit prosecutorial signature until the participation process is complete or a reasoned certificate establishes a lawful exception.³⁶⁰ The exception should cover an informed refusal, immediate safety risk, inability to locate after specified reasonable steps and genuine urgency that cannot be managed by a short adjournment.³⁶¹ Administrative convenience, an approaching plea camp and

³⁴⁴ Constitution of the Republic of Uganda 1995, arts 120 and 128.

³⁴⁵ Rome Statute of the International Criminal Court, arts 65(4)-(5).

³⁴⁶ Rome Statute of the International Criminal Court, arts 65(4)-(5).

³⁴⁷ Rome Statute of the International Criminal Court, art 65(4)-(5).

³⁴⁸ *Ongoriya* [2026] UGCA 225, [120]-[128].

³⁴⁹ *Joseph Lendrix Waswa* [2020] KESC 23 (KLR), [63]-[80]; *Wickham* [2016] ZACC 36, [35]-[45]; *In re Dean* 527 F 3d 391 (5th Cir 2008), 394-96; *Lubanga* ICC-01/04-01/06-1432 OA9 OA10, [95]-[104].

³⁵⁰ *Anthony-Cook* 2016 SCC 43, [51]-[60]; *In re Wild* 994 F 3d 1244 (11th Cir 2021) (en banc), 1247-69.

³⁵¹ *Langer* (n 281) 29-62.

³⁵² Constitution of the Republic of Uganda 1995, arts 28(1), 120 and 128; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 11-13.

³⁵³ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 3-15; Judiciary of Uganda, *Sixth Strategic Plan for the Judiciary FY 2025/26-2029/30* (January 2026) 66, 82 and 147.

³⁵⁴ *Manikis* (n 19) 425-38.

³⁵⁵ *Muller* (n 132) 17-35; *Anthony-Cook* 2016 SCC 43, [51]-[60].

³⁵⁶ Constitution of the Republic of Uganda 1995, arts 120(5) and 126(2)(e).

³⁵⁷ UN General Assembly, 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power', annex para 1; Rome Statute Rules of Procedure and Evidence, r 85.

³⁵⁸ Rome Statute Rules of Procedure and Evidence, rr 85 and 89-90.

³⁵⁹ *Edwards* (n 23) 973-79; *Roberts* (n 53) 358-97.

³⁶⁰ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 3 and 5; Criminal Procedure Act 51 of 1977 (South Africa), s 105A(1)(b)(iii).

³⁶¹ UN General Assembly, 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power', annex paras 4-7; Office of the Director of Public Prosecutions (n 74) 6-19.

an assumption that the victim will object should be expressly excluded.³⁶² This sequencing leaves negotiation flexible while stopping a completed agreement from being presented to the victim as inevitable.³⁶³

Rule 7 should require a plain-language notice of the proposed offence, the gist of material factual changes, the broad sentence and compensation position, the time for response, available support and the absence of a veto.³⁶⁴ It should authorise redaction and staged disclosure for a recorded investigative, privacy or safety reason.³⁶⁵ Service should be functional rather than tied to a single technology, because digital-only notice would exclude some rural and poor victims while paper-only practice would frustrate urgent or geographically dispersed cases.³⁶⁶ The question is whether information reached the person in a usable form, not whether an official transmitted a message.³⁶⁷

Rule 9 and Schedule 1 should contain a participation certificate with distinct fields for identification, notice, disclosure, mode of response, material views, prosecutorial reasons, opt-out, failed contact and safety measures.³⁶⁸ The certificate should be signed by the prosecutor, not by the victim as proof of consent.³⁶⁹ Where a victim signs, the signature should confirm receipt or accuracy of a recorded view and state expressly that it does not approve the bargain.³⁷⁰ This small drafting choice matters because institutions readily convert acknowledgement into agreement when a form does not protect the distinction.³⁷¹

Rule 11 should replace ‘take into consideration’ with six duties: identify, notify, explain, invite, support and respond.³⁷² It should define material matters to include charge, agreed facts, safety, restitution or compensation and sentence, while permitting the prosecutor to limit repetitive or legally irrelevant submissions.³⁷³ The rule should state that the prosecutor may depart from every victim position but must record an intelligible response to each material concern.³⁷⁴ That wording makes non-dispositive participation legally concrete.³⁷⁵

Rules 12 and 13 should require the court to examine the certificate before the plea is taken.³⁷⁶ An unexplained blank, a post-signature consultation or a response that merely says ‘public interest’ should trigger questions rather than presumptive approval.³⁷⁷ The usual response to curable omission should be a short adjournment with directions; deliberate exclusion, an incoherent factual basis or a bargain contrary to justice should lead to rejection.³⁷⁸ The judge should record the ruling, which gives both victim and accused a reasoned public account without inviting the court to substitute its own negotiation.³⁷⁹

Rule 8 should remove the approving judge from substantive bargaining.³⁸⁰ A judicial officer may explain the process, secure interpretation and counsel, manage time and direct the parties to address an identified defect.³⁸¹

³⁶² *Ongoriya* [2026] UGCA 225, [117], [126]-[128]; Judiciary of Uganda (n 8) 66 and 82.

³⁶³ *Bibas* (n 20) 949-59.

³⁶⁴ Criminal Procedure Code (Cap 75) (Kenya), s 137D; Criminal Procedure (Plea Bargaining) Rules 2018 (Kenya), rr 7-8.

³⁶⁵ Office of the Director of Public Prosecutions (n 74) 6-14; Constitution of the Republic of Uganda 1995, art 28(1).

³⁶⁶ Judiciary of Uganda (n 8) 20-21 and 43; Convention on the Rights of Persons with Disabilities, arts 9 and 13.

³⁶⁷ *Bradford* (n 30) 348-63.

³⁶⁸ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, r 9 and sch 1; *Ongoriya* [2026] UGCA 225, [117], [126]-[128].

³⁶⁹ Constitution of the Republic of Uganda 1995, art 120(3)-(5).

³⁷⁰ *Manikis* (n 19) 425-38.

³⁷¹ *Edwards* (n 23) 973-79.

³⁷² Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, r 11; UN General Assembly, ‘Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power’, annex para 6.

³⁷³ Criminal Procedure Act 51 of 1977 (South Africa), s 105A(1)(b)(iii); Criminal Procedure Code (Cap 75) (Kenya), ss 137D and 137I.

³⁷⁴ Constitution of the Republic of Uganda 1995, art 120(3)-(5); *Wickham* [2016] ZACC 36, [35]-[45].

³⁷⁵ *Beloof* (n 9) 296-311.

³⁷⁶ *Ongoriya* [2026] UGCA 225, [126]-[128]; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 12-13.

³⁷⁷ *Ongoriya* [2026] UGCA 225, [117], [126]-[128].

³⁷⁸ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, r 13.

³⁷⁹ Constitution of the Republic of Uganda 1995, arts 28(1), 120 and 128.

³⁸⁰ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, r 8.

³⁸¹ Constitution of the Republic of Uganda 1995, arts 28(1) and 128.

The judge should not propose the charge or sentence later examined for voluntariness and justice by the same court.³⁸² Separating facilitation from approval protects both the accused and the credibility of the victim inquiry.³⁸³

B. Remedies must follow time, materiality and jurisdiction

Before approval, enforcement should be quick and ordinary.³⁸⁴ A victim should be able to request senior prosecutorial review of non-notification, inadequate information or a failure to respond, with a short deadline that does not suspend proceedings indefinitely.³⁸⁵ Once the agreement is lodged, the victim or representative should be permitted to alert the trial court to a participation defect without acquiring control of evidence, charge or appeal.³⁸⁶ Adjournment and compliance will usually protect the right at little cost because no conviction has yet attached.³⁸⁷

After approval, the remedial question changes.³⁸⁸ Victim exclusion should not automatically void the conviction, because the defect concerns the prosecutor's process and the court's approval rather than the truth of every admission by the accused.³⁸⁹ Automatic nullity would allow official breach to erase the accused's finality and could encourage the State to rediscover the victim whenever a bargain later became embarrassing.³⁹⁰ A proven breach may support disciplinary action, a formal declaration, an institutional complaint, prospective orders against repeated practice or compensation where the elements of a separate legal wrong are established.³⁹¹ These remedies recognise injury without pretending that the victim was a contracting party to the conviction.³⁹²

Parliament should nevertheless create a narrow, leave-based route for exceptional post-conviction defects exposed by *Mujuni*³⁹³ and *Ongoriya*³⁹⁴. The grounds should be confined to want of trial-court jurisdiction, a plea unknown to law, an unlawful sentence, proved fraud on the court or material non-disclosure that made judicial approval legally impossible.³⁹⁵ Victim opposition, a new prosecutorial assessment or dissatisfaction with severity should be expressly excluded.³⁹⁶ Otherwise the new route would become the very State appeal that section 131 presently withholds.³⁹⁷

The application should require personal certification by the DPP or an independent senior delegate, precise particulars, cogent supporting evidence, prompt filing and service, defence counsel and an *inter partes* hearing before renewed custody or retrial.³⁹⁸ Leave should screen weak cases before the accused is exposed again.³⁹⁹ Proof of a reopening ground should not make retrial automatic; the court must consider State responsibility, delay, time served, reliance, evidential deterioration, victim interests and any less coercive remedy.⁴⁰⁰ Article 28(9) permits a superior court to order retrial after conviction or acquittal, but the constitutional exception should operate through a jurisdiction and test prescribed by law.⁴⁰¹

³⁸² Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 8 and 12-13.

³⁸³ Constitution of the Republic of Uganda 1995, art 28(1); Bibas (n 20) 923-45.

³⁸⁴ *Ongoriya* [2026] UGCA 225, [126]-[128].

³⁸⁵ Constitution of the Republic of Uganda 1995, art 120(4)-(5); Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.3.12-2.3.17 and 2.7-2.8.

³⁸⁶ *Joseph Lendrix Waswa* [2020] KESC 23 (KLR), [63]-[80]; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 12-13.

³⁸⁷ *Ongoriya* [2026] UGCA 225, [126]-[128].

³⁸⁸ *Anthony-Cook* 2016 SCC 43, [51]-[60]; *Mabry* 467 US 504 (1984), 507-11.

³⁸⁹ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 4-5 and 9-13.

³⁹⁰ Constitution of the Republic of Uganda 1995, art 28(1) and (9); Trial on Indictments Act (Cap 25), s 131.

³⁹¹ Constitution of the Republic of Uganda 1995, arts 50 and 120; Office of the Director of Public Prosecutions (n 8) paras 2.3.12-2.3.17.

³⁹² *Beloof* (n 9) 296-311.

³⁹³ *Mujuni* [2025] UGHACD 20.

³⁹⁴ *Ongoriya* [2026] UGCA 225, [84]-[95], [112]-[131].

³⁹⁵ Constitution of the Republic of Uganda 1995, arts 28(1), 79(2) and 126(2)(e); Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 12-13.

³⁹⁶ Trial on Indictments Act (Cap 25), s 131; *Santobello* 404 US 257 (1971), 260-63.

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³⁹⁸ Constitution of the Republic of Uganda 1995, arts 23(1), 28(1) and (3), and 120(4); *R G Patel* [1957] EA 314, 317.

³⁹⁹ Constitution of the Republic of Uganda 1995, art 28(1) and (9).

⁴⁰⁰ Constitution of the Republic of Uganda 1995, arts 28(1), 28(9) and 126(2)(e).

⁴⁰¹ Constitution of the Republic of Uganda 1995, arts 28(9) and 79(2).

This remedial design resists the error made at both levels in *Ongoriya*.⁴⁰² The seriousness of an alleged wrong affects the remedy granted within jurisdiction; it cannot establish jurisdiction.⁴⁰³ Prevention should be strong because it is cheap and lawful, while reopening should be rare because it displaces judgment and renews State coercion.⁴⁰⁴ That temporal discipline protects victim participation from being used as a rhetorical route around accused rights.⁴⁰⁵

C. Data must reveal the quality that disposal figures conceal

Uganda cannot assess implementation by counting plea agreements alone.⁴⁰⁶ A system may increase dispositions while consultation becomes later, thinner and more selective.⁴⁰⁷ The absence of published participation data also allows opposite claims to flourish without proof: officials can call the scheme victim-centred, while critics can attribute every lenient outcome to exclusion.⁴⁰⁸ Both positions require evidence.⁴⁰⁹

The ODPP and Judiciary should maintain an anonymised register of eligible victims, successful notice, opt-outs, mode and timing of participation, reasons for non-contact, representation or accommodation, material changes following representations, judicial adjournment or rejection, compensation ordered and compensation paid.⁴¹⁰ Data should be disaggregated by offence, region, age, gender and disability where sample size permits, with small-cell suppression and strict access controls.⁴¹¹ The purpose is to expose systematic non-contact and unequal access, not to create a public register of grief.⁴¹²

No official should be evaluated by whether the victim agreed with the disposition.⁴¹³ Such a measure would invite pressure for consent, selective contact and avoidance of victims expected to dissent.⁴¹⁴ Performance should instead examine timeliness, completeness of the certificate, quality of reasons, lawful approval, compensation follow-through and independently sampled file audits.⁴¹⁵ Those measures reward process integrity without turning victim preference into the public-interest test.⁴¹⁶

Implementation must fit Uganda's actual court system.⁴¹⁷ The Judiciary reported 37 per cent staffing, 271 court points and ECCMIS deployment at 31 courts during the preceding strategy period.⁴¹⁸ A model dependent upon specialist counsel, continuous connectivity and lengthy hearings would be formally attractive and geographically false.⁴¹⁹ The minimum viable process is modest: a standard notice, a trained liaison or prosecutor, a short response window, a one-page certificate, a focused colloquy and a recorded ruling.⁴²⁰ Each can operate on paper while secure digital capacity expands.⁴²¹

⁴⁰² *Uganda (DPP) v Ongoriya* [2024] UGHCCRD 68, 8-16; *Ongoriya* [2026] UGCA 225, [84]-[95], [112]-[131].

⁴⁰³ *Owners of the Motor Vessel 'Lillian S'* [1989] KLR 1, 14.

⁴⁰⁴ Constitution of the Republic of Uganda 1995, arts 28(1), 28(9) and 126(2)(e).

⁴⁰⁵ Ashworth (n 9) 194-203.

⁴⁰⁶ Judiciary of Uganda (n 8) 66, 82 and 147.

⁴⁰⁷ Muller (n 132) 17-35.

⁴⁰⁸ Holder and Englezos (n 40) 38-46.

⁴⁰⁹ Holder and Englezos (n 40) 28-46.

⁴¹⁰ UN General Assembly, 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power', annex paras 4-13; Office of the Director of Public Prosecutions (n 74) 19.

⁴¹¹ Convention on the Rights of Persons with Disabilities, arts 9, 12 and 13; Office of the Director of Public Prosecutions (n 74) 6-14 and 19.

⁴¹² Christie, 'The Ideal Victim' (n 52) 18-25.

⁴¹³ Constitution of the Republic of Uganda 1995, art 120(3)-(5).

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⁴¹⁵ Office of the Director of Public Prosecutions (n 8) paras 2.3.12-2.3.17 and 2.7-2.8.

⁴¹⁶ Constitution of the Republic of Uganda 1995, art 120(5).

⁴¹⁷ Judiciary of Uganda (n 8) 20-21.

⁴¹⁸ Judiciary of Uganda (n 8) 20-21.

⁴¹⁹ Judiciary of Uganda (n 8) 20-21 and 43.

⁴²⁰ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 9 and 11-13; Office of the Director of Public Prosecutions (n 74) 15-19.

⁴²¹ Judiciary of Uganda (n 8) 20-21 and 43.

A staged pilot should compare victim experience, delay, safety incidents, file quality, compensation and plea outcomes across participating and non-participating court points.⁴²² Qualitative interviews are needed because a completed certificate may conceal pressure, incomprehension or disrespect.⁴²³ Quantitative data are also needed because compelling individual accounts cannot reveal unequal regional coverage or routine late contact.⁴²⁴ Reform in the name of victims should be willing to discover that a chosen procedure does not work.⁴²⁵

The legal amendments, remedial discipline and evidence programme form a single design.⁴²⁶ Notice opens the decision, reasons demonstrate influence, the certificate enables review, judicial inquiry prevents avoidable failure, calibrated remedies preserve finality and data shows whether the paper right survives practice.⁴²⁷ Removing any one element would recreate the weakness now found in rule 11.⁴²⁸

VIII. CONCLUSION: THE VICTIM MUST ENTER BEFORE JUDGMENT

Uganda's present law does not exclude victims by silence alone; it excludes them by placing participation outside the sequence through which a plea becomes binding.⁴²⁹ The victim is visible in the Rules' purpose, weakly present in prosecutorial consideration and most audible when the material choices may already be closed.⁴³⁰ That structure invites the appearance of inclusion without its discipline.⁴³¹

The philosophy of participation does not require the prosecution to be handed back as private property.⁴³² It requires public officials to stop treating the person affected by the crime as either an evidential instrument or a sentencing audience.⁴³³ Meaningful but non-dispositive participation gives the victim an informed, safe and supported opportunity to alter the decisional record and receive an answer.⁴³⁴ It leaves the DPP to decide, the judge to approve and the accused to insist upon proof, disclosure and lawful jurisdiction.⁴³⁵

The principal Ugandan authorities reinforce that allocation when read together.⁴³⁶ *Tatu*⁴³⁷, *Nuwamanya*⁴³⁸ and *Emuron*⁴³⁹ establish that plea safeguards must be made visible on the record rather than reconstructed through judicial optimism. *Ongoriya*⁴⁴⁰ extends that insight to the victim when it requires prosecutorial inquiry and judicial refusal upon apparent non-consultation. The stronger reading makes those paragraphs the judgment's durable contribution.⁴⁴¹ It does not require acceptance of the Court's later use of section 11 to disturb a conviction after the initiating review had been held incompetent.⁴⁴²

⁴²² Holder and Englezos (n 40) 38-46.

⁴²³ Bradford (n 30) 348-63; Holder and Englezos (n 40) 38-46.

⁴²⁴ Holder and Englezos (n 40) 38-46.

⁴²⁵ Holder and Englezos (n 40) 38-46.

⁴²⁶ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 3-15; Constitution of the Republic of Uganda 1995, arts 28(1) and 120.

⁴²⁷ UN General Assembly, 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power', annex para 6; Holder and Englezos (n 40) 38-46.

⁴²⁸ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, r 11.

⁴²⁹ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 3-15 and schs 1-2.

⁴³⁰ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 3(f) and 11, sch 2.

⁴³¹ Manikis (n 19) 425-38.

⁴³² Christie (n 45) 4-10; Ashworth (n 9) 194-203.

⁴³³ Beloof (n 9) 296-311; Edwards (n 23) 973-79.

⁴³⁴ Bradford (n 30) 348-63; UN General Assembly, 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power', annex para 6(b).

⁴³⁵ Constitution of the Republic of Uganda 1995, arts 28(1), 120 and 128.

⁴³⁶ *Tatu* [2024] UGCA 44; *Nuwamanya* [2024] UGCA 186; *Emuron* [2026] UGCA 182; *Ongoriya* [2026] UGCA 225, [79]-[131].

⁴³⁷ *Tatu* [2024] UGCA 44.

⁴³⁸ *Nuwamanya* [2024] UGCA 186.

⁴³⁹ *Emuron* [2026] UGCA 182.

⁴⁴⁰ *Ongoriya* [2026] UGCA 225, [126]-[128].

⁴⁴¹ *Ongoriya* [2026] UGCA 225, [126]-[128].

⁴⁴² *Ongoriya* [2026] UGCA 225, [84]-[95], [112]-[125]; Judicature Act (Cap 16), s 11.

The family's exclusion in *Ongoriya*⁴⁴³ was a serious legal wrong. The unchanged indictment and factual basis also gave the approving court compelling reasons to reject the bargain.⁴⁴⁴ Neither proposition authorised a coordinate High Court review, converted administrative laxity into proved fraud or created a DPP appeal from conviction.⁴⁴⁵ Insisting upon that limit does not subordinate victims to finality.⁴⁴⁶ It refuses to vindicate one procedural injury through another exercise of power without law.⁴⁴⁷

The practical answer lies before approval.⁴⁴⁸ Early notice, proportionate disclosure, accessible support, a reasoned prosecutorial response, a participation certificate and a focused judicial inquiry would make exclusion difficult to conceal and cheap to correct.⁴⁴⁹ A narrow statutory reopening route would then address exceptional nullity or proved fraud without using victim dissatisfaction as an unbounded State appeal.⁴⁵⁰ Auditable data would show whether the formal right reaches victims whom geography, poverty, disability or fear now makes easiest to omit.⁴⁵¹

A lawful plea need not deliver the victim's preferred outcome.⁴⁵² It must, however, be a public decision that can show when the victim was heard, what was said, how it was treated and why the final disposition remains lawful.⁴⁵³ Uganda will protect both participation and constitutional legality only when the victim enters before the bargain becomes judgment.⁴⁵⁴

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