

**THE GAZETTE OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

Part II of June 28, 2024

SUPPLEMENT

(Issued on 28.06.2024)



**CODE OF CRIMINAL PROCEDURE
(AMENDMENT)**

A

BILL

to amend the Code of Criminal Procedure Act, No. 15 of 1979

*Ordered to be published by the Minister of Justice, Prison Affairs and
Constitutional Reforms*

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STATEMENT OF LEGAL EFFECT

Clause 2 : This clause amends section 183 of the Code of Criminal Procedure Act, No.15 of 1979 (hereinafter referred to as the “principal enactment”) and is consequential to the amendment made by clause 3.

Clause 3 : This clause amends the principal enactment by inserting new section 183A in that enactment, and the legal effect of the amendment is to make provisions to enable the prosecutor and an accused who is charged in the Magistrate’s Court to enter into a plea agreement at any time before the sentence is passed.

Clause 4 : This clause amends section 195A of the principal enactment and is consequential to the amendment made by clause 6.

Clause 5 : This clause amends section 197 of the principal enactment and is consequential to the amendment made by clause 6.

Clause 6 : This clause amends the principal enactment by inserting new section 197A in that enactment, and the legal effect of the amendment is to make provisions to enable the prosecutor and an accused who is charged in the High Court to enter into a plea agreement at any time before the sentence is passed.

Clause 7 : This clause amends the Second Schedule to the principal enactment and the legal effect of the amendment is to insert new Form No. 23 in that Schedule, in order to specify the format of the plea agreement submitted to the court for the purpose of entering into a plea agreement.

L. D.- O 24/2023

25 (2) Where the parties to a case intend to
negotiate a plea agreement under this section,
the court shall be informed of the same:

Provided that, the court shall not participate in the negotiations for such plea agreement.

5 (3) The prosecutor, the Attorney-at-Law for the accused, or the accused, may initiate the offer to enter into a plea agreement:

Provided that, the prosecutor shall maintain the sole discretion on whether or not to enter into a plea agreement with the accused.

10 (4) If the accused is charged with an offence under the Schedule to the Prevention of Crimes Ordinance (Chapter 22), the Magistrate shall cause the accused to be fingerprinted and call for a fingerprint report.

15 (5) Negotiations for a plea agreement shall be conducted between the prosecutor and the Attorney-at-Law representing the accused:

20 Provided that, where an accused who intends to enter into a plea agreement is not represented by an Attorney-at-Law, the court shall, assign an Attorney-at-Law to negotiate on behalf of the accused if the accused on being asked by the court, so requests.

25 (6) As part of the plea negotiation process, the prosecutor may meet with the Attorney-at-Law for the accused, to ascertain to the satisfaction of the prosecution, a complete description of the criminal conduct engaged in by the accused, and the details of criminal conduct engaged in by others, which the
30 accused may provide as cooperation during the negotiation.

(7) During the plea negotiations, the prosecutor shall-

- 5 (a) consider the nature and the
circumstances relating to the case,
the impact of the commission of the
offence on the victim, the personal
circumstances of the accused, the
interests of the public, and the value
10 of any information provided by the
accused including any cooperation
provided by the accused as part of
the negotiation;
- 15 (b) not use the information obtained
from an accused during the course
of plea negotiations against him
during the prosecution of the case if
the plea negotiations are ultimately
unsuccessful; and
- 20 (c) afford-
 - (i) the victim;
 - (ii) the Attorney-at-Law of the
victim; or
 - 25 (iii) the National Authority for the
Protection of Victims of
Crimes and Witnesses
established under the
Assistance to and Protection
of Victims of Crime and
Witnesses Act, No. 10 of 2023,

a reasonable opportunity to make a written representation to the prosecution regarding the impact of the crime, unless the circumstances prevent such representation.

(8) (a) A prosecutor and the accused or the Attorney-at-Law for the accused, may each make a specific recommendation to the court as to the sentence to be imposed and include the recommendation in writing in the final plea agreement.

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

(c) Where the prosecutor recommends to the court the imposition of a sentence that is more severe than the recommendation included in the plea agreement, the accused may withdraw the plea of guilty and set aside the plea agreement.

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

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

5 (9) (a) The prosecutor shall present the court with the factual basis of the plea set out in the plea agreement between the prosecutor and the accused by presenting the court with the final plea agreement at the hearing, where the accused pleads guilty in accordance with the terms of the plea agreement. The factual basis will be included in writing as part of the completed plea agreement.

10 (b) The plea agreement submitted to the court shall be in the format specified in Form 23 in the Second Schedule.

15 (c) Where the accused is a child, the plea agreement shall be signed by the child's parent or guardian.

(d) A plea agreement shall be finalized when the accused signs the agreement.

20 (10) Upon being satisfied that the accused signed the plea agreement knowingly and voluntarily, the court may accept the plea agreement.

25 (11) Where the court accepts a plea agreement, the agreement shall become binding upon the parties and the court shall proceed to convict the accused accordingly.

(12) An appeal shall not lie from a conviction imposed after the court has accepted the plea agreement and convicted the accused under subsection (11).

(13) An appeal shall not lie from a sentence imposed by the court which falls within the range of punishment recommended by the parties in the plea agreement.

5 (14) Where the court rejects a plea agreement–

(a) the reasons for such rejection shall be recorded and the parties shall be informed thereof; and

10 (b) the plea agreement shall become null and void and the parties shall not be bound by such agreement.

15 (15) Upon rejection, or withdrawal, of a plea agreement, fresh plea negotiations in a trial relating to the same facts may be considered with prior permission of the court.

20 (16) Where the court has rejected a plea agreement under this section, no party shall appeal against, or apply for a review of, the order of the court rejecting the agreement.

(17) For the purposes of this section –

“child” means, a person under eighteen years of age;

25 “prosecutor” shall have the same meaning assigned to such expression in subsection (1) of section 191 of this Code and includes the Director-General of the Commission to Investigate Allegations of Bribery or
30 Corruption established under the

5 Anti-Corruption Act, No. 9 of
2023, an officer of such
Commission authorized by the
Commission or any other
Attorney-at-Law specially
authorized by such Commission
to conduct the prosecution at a
trial of an offence held in the
Magistrate Court on a charge
10 sheet.”.

4. Section 195A of the principal enactment is hereby Amendment
amended in paragraph (b) of subsection (3) thereof, by the of section
substitution for the words “to a lesser offence;”, of the words 195A of the
“to a lesser offence or whether he intends to negotiate for a principal
15 plea agreement under section 197A;”. enactment

5. Section 197 of the principal enactment is hereby Amendment
amended by the repeal of the marginal note to that section of section
and the substitution therefor of the following: - 197 of the
principal
enactment

20 “Plea of
guilty and
sentencing
without
written plea
agreement”.

25 6. The following new section is hereby inserted Insertion of
immediately after section 197 of the principal enactment new section
and shall have effect as section 197A of that enactment: - 197A in the
principal
enactment

30 “Plea of
guilty and
sentencing
with written
plea
agreement”
197A. (1) A plea agreement may be entered
into between the prosecutor and an accused
who is indicted in the High Court, at any time
before the sentence is passed, subject to the
procedures specified in this section.

(2) Where the parties to a case intend to negotiate a plea agreement under this section, the court shall be informed of the same:

5 Provided that, the court shall not participate in the negotiations for such plea agreement.

(3) The prosecutor, the Attorney-at-Law for the accused, or the accused, may initiate the offer to enter into a plea agreement:

10 Provided that, the prosecutor shall maintain the sole discretion on whether or not to enter into a plea agreement with the accused person.

15 (4) If the accused is indicted in the High Court, the court shall cause the accused to be fingerprinted and call for a fingerprint report pursuant to the provisions of paragraph (e) of section 195.

(5) Negotiations for a plea agreement shall be conducted between the prosecutor and the Attorney-at-Law representing the accused:

20 Provided that, where an accused who intends to enter into a plea agreement is not represented by an Attorney-at-Law, the court shall, assign an Attorney-at-Law to negotiate on behalf of the accused if the accused on being asked, so requests.

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(6) As part of the plea negotiation process, the prosecutor may meet with the Attorney-at-Law for the accused to ascertain to the satisfaction of the prosecution, a complete description of the criminal conduct engaged

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in by the accused, and the details of criminal conduct engaged in by others, which the accused may provide as cooperation during the negotiation.

5 (7) During the plea negotiations with the Attorney-at-Law representing the accused, the prosecutor shall-

10 (a) consider the nature and the circumstances relating to the case, the impact of the commission of the offence on the victim, the personal circumstances of the accused, and the interests of the public, and the value of any information provided
15 by the accused, including any cooperation provided by the accused as part of the negotiation;

20 (b) not use the information obtained from an accused during the course of plea negotiations against him during the prosecution of the case if the plea negotiations are ultimately unsuccessful; and

 (c) afford-

25 (i) the victim;

 (ii) the victim's Attorney-at-Law;
 or

 (iii) the National Authority for the Protection of Victims of

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

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

15 (9) (a) The prosecutor shall present the court with the factual basis of the plea set out in the plea agreement by presenting the court with the final plea agreement at the hearing, where the accused person pleads guilty in accordance with the terms of the plea agreement. The factual basis shall be included in writing as part of the completed plea agreement.

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(b) The plea agreement submitted to the court shall be in the format specified in Form 23 in the Second Schedule.

25 (c) Where the accused is a child, the plea agreement shall be signed by the child's parent or guardian.

(d) A plea agreement shall be finalized when the accused signs the agreement.

30 (10) Upon being satisfied that the accused signed the plea agreement knowingly and voluntarily, the court may accept the plea agreement.

(11) Where the court accepts a plea agreement, the agreement shall become binding upon the parties and the court shall proceed to convict the accused accordingly.

5 (12) An appeal shall not lie from a conviction imposed after the court has accepted the plea agreement and convicted the accused under subsection (11).

10 (13) An appeal shall not lie from a sentence imposed by the court which falls within the range of punishment recommended proposed by the parties in the plea agreement.

(14) Where the court rejects a plea agreement—

15 (a) the reasons for such rejection shall be recorded and the parties shall be informed thereof; and

20 (b) the plea agreement shall become null and void and the parties shall not be bound by such agreement.

(15) Upon rejection, or withdrawal, of a plea agreement, fresh plea negotiations in a trial relating to the same charge and facts may be considered.

25 (16) Where the court has rejected a plea agreement under this section, no party shall appeal against, or apply for a review of, the order of the court rejecting the agreement.

(17) For the purposes of this section –

“child” means, a person under eighteen years of age;

5 “prosecutor” shall have the same meaning assigned to such expression in section 193 of this Code and includes the Director-General of the Commission to Investigate Allegations of
10 Bribery or Corruption established under the Anti-Corruption Act, No. 9 of 2023, an officer of such Commission authorized by the Commission or any other
15 Attorney-at-Law specially authorized by such Commission to conduct the prosecution at a trial of an offence held in the High Court on an indictment signed by
20 the Director-General of such Commission.”.

7. The Second Schedule to the principal enactment is hereby amended by the insertion immediately after Form 22 thereof, of the following new Form and shall have effect as
25 Form 23 of that Schedule: -

Amendment
of the second
Schedule to
the principal
enactment

14 *Code of Criminal Procedure (Amendment)*

“No. 23

(Sections 183A and 197A)

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

IN THE COURT _____

CASE No. _____

NAME OF THE ACCUSED: -----

PLEA AGREEMENT

Pursuant to Section 183A/197A of the Code of Criminal Procedure Act, No. 15 of 1979, the Accused, _____ agrees as follows:—

1. The Accused enters into this Plea Agreement and pleads guilty freely, voluntarily, without threat, force, intimidation, or coercion of any kind and without promise or benefit of any kind, other than as contained herein.
2. The Accused knowingly, voluntarily and truthfully admits the facts contained herein.
3. The Accused pleads guilty to the offence of _____ punishable under _____
4. The Accused understands every element of the offence to which the Accused is pleading guilty, and that the maximum penalty for that offense is _____

<p>5. Upon acceptance by the Court, and fulfillment by the Accused of all terms and conditions of the Plea Agreement, the Prosecution agrees that the Accused will face no other charges from the investigation which led to the present indictment.</p>
<p>6. The Accused has been advised by his/her legal representative and the Court, of his/her Constitutional rights, including the right to trial, the right to examine and cross-examine witnesses, and the Accused being well informed, has knowingly and voluntarily waived these rights, including the right to appeal, and agrees to enter a plea of guilty as set forth in this Plea Agreement.</p>
<p>7. The Accused understands that the sentence to be imposed upon conviction on his/her plea of guilty is within the sole discretion of the Court. At sentencing, the prosecutor will recommend _____ At sentencing, the accused will recommend _____.</p>
<p>8. The Accused understands and agrees no promises, agreements and conditions have been entered into regarding the charges herein other than those expressly set out in this Plea Agreement and none shall be entered into, or shall be binding upon the Accused and the Prosecution, unless expressly set forth herein, in writing.</p>
<p>I plead guilty to the offences covered by this Plea Agreement, and every element set out in the Plea Agreement, which has been explained to me in a language I understand. I do this knowingly, freely and voluntarily, and without any threat, force, intimidation, or coercion of any kind.</p> <p>Accused: _____</p> <p>Date: _____”.</p>

8. In the event of any inconsistency between the Sinhala and the Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text
to prevail in
case of
inconsistency

