



Guidelines on Criminal Case Negotiations

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Criminal Case Negotiations

Introduction

In view of the increasing trend towards comprehensive and early disclosure of evidence, Deputy Public Prosecutors and Defence Counsel can often resolve issues of plea and facts to such an extent that running a case through the full criminal process would add little to what counsel can achieve informally.

Discussions between Deputy Public Prosecutors and Defence Counsel which are intended to lead to a narrowing of issues at trial, or which may avoid unnecessary litigation altogether, should form an important and necessary part of the criminal justice system in Brunei Darussalam.

Discussions of this nature should come in the form of Criminal Case Negotiations (CCN). Though not defined in any law in Brunei Darussalam, the CCN aims to embrace several practices: which charges an accused may plead guilty to, how the case may proceed, what the facts of the offence are for the purposes of a guilty plea, and if the case is to proceed to trial, how the issues might be narrowed so as to expedite trial. The CCN can also facilitate prompt, just disposition of cases in a manner more sensitive to the circumstances of the participants than would be possible in a formal trial.

Deputy Public Prosecutors and Defence Counsel are to make their best efforts to reach agreements on such issues as soon as possible.

Background to CCN Process

- Consists of meetings between Prosecutors and Defence Counsel where evidence and collateral issues are shared;
- Voluntary and “Without Prejudice”;
- Initiated to provide an informal platform of open disclosure between parties independent from formal Court administered Pre-trial Conferences (PTCs)

Objective of the CCN Process

- Forthright/Open discussion of the evidence
- Frank disclosure without the formalities of Court
- Results in more thorough investigations
- Results in a more detailed assessment of the case
- Narrows the disputed issues at trial

Objective of the CCN

Resolved cases saves time because it:-

- ✓ Reduces the number of trials in which accused persons plead guilty on the first day of trial
- ✓ Reduces the number of days taken for each trial in view of agreed facts and identified disputed issues
- Early resolution of cases will result in:
 - ✓ Savings in terms of cost and resources
 - ✓ Intangible Advantages
 - Vulnerable victims are spared from trauma of attending court and testifying
 - Facilitates the Accused to make an informed decision
 - Provides accused with an opportunity to express remorse
 - Counters the uncertainty of trial outcomes

When is CCN Conducted?

- **Pre-Charging Stage**
 - ✓ To assist the prosecutor in assessing the decision to charge
- **Post-Charging Stage but Before Trial Commences**
 - ✓ For Plea Bargaining and discussion on evidence
- **Pre-Trial Stage (where accused not likely to plead guilty)**
 - ✓ To discuss agreed facts, narrow down contentious legal issues
- **Pre-PG Stage**
 - ✓ For discussion of the Statement of Facts, Sentencing & Mitigation

How is CCN Conducted?

- Restricted to the Prosecutor and Defence Counsel only
- Excluded Parties
 - ✓ The Court
 - ✓ Enforcement Agencies (unless necessary)
 - ✓ Accused persons
 - ✓ Witnesses / Victim / Family members of victim
- One CCN meeting may be conducted with multiple Defence Counsels involved in the same case
- CCN Meetings may be conducted face-to-face (in person) or via telephone conferences.

Prosecutor's Role at CCN

Before CCN Meeting

- ✓ Study the case thoroughly
- ✓ Clarify extent of disclosure
- ✓ Clear Prosecution's position including "Final" offer

During CCN Meeting

- ✓ Record Minutes of Meeting
- ✓ Seek Clearance of Head of Litigation or Senior DPP, if necessary

After CCN Meeting

- ✓ File Minutes of CCN Meeting
- ✓ Direct Further Investigations, if necessary
- ✓ Clear Position with Head of Litigation or Senior DPP, if necessary

Defence Counsel's Role at CCN

BEFORE the CCN, the defence counsel should obtain the following instructions from the accused:

- ✓ Accused's version of the facts of the alleged crime;
- ✓ Evidence available from the accused;
- ✓ Position of the accused in respect of the charges
- ✓ Indicate what can be agreed on

Statement of Policy

- CCN shall be based on several important principles: fairness, openness, accuracy, non-discrimination and the public interest in the effective and consistent enforcement of the criminal law.
- Both parties should always ensure that when making a plea bargain, that:
 - i) The accused is willing to acknowledge guilt unequivocally
 - ii) The consent of the accused to plead guilty is both voluntary and informed.
- Because of the importance of such discussions, a record in respect of any offers made, or agreements reached must be kept.

Charge Discussion

During CCN, charge discussions may properly include the following:

- Reducing a charge to a lesser offence;
- Withdrawing or discontinuing proceedings related to other charges;
- Agreeing to “Take into Consideration” certain offences in cases involving multiple offences

The following practices are NOT acceptable:

- Instructing or Proceeding with more serious or unnecessary additional charges to secure a negotiated plea;
- Agreeing to a Plea of Guilty to an Offence not disclosed by the evidence; or
- Agreeing to a Plea of Guilty to a charge that inadequately reflects the gravity of the accused’s provable conduct unless, in exceptional circumstances, the plea is justifiable in terms of the benefit that will accrue to the administration of justice, the protection of society, or the protection of the accused.

Agreement on the Facts of the Offence

Where an accused decides to plead guilty, discussions regarding the facts may properly include the following:

- Agreeing not to include in the Statement of Facts to the court facts which are of little or no significance to the charge; and
- Agreeing to rely on an agreed Statement of Facts

The Following Practices are not acceptable:

- An agreement respecting facts which results in or gives the appearance of misleading the court, such as:
 - a. An agreement not to advise the court of any part of the accused's criminal record which is relevant or could assist the court;
 - b. An agreement not to advise the court of the extent of the injury or damages suffered by a victim;
 - c. An agreement to withhold from the court facts that are provable,
 - d. An agreement to outline facts to the court which, when measured against the essential elements of the offence to which the accused has pleaded guilty, would cause the court to reject the plea in favour of a plea of not guilty.

Sentence Discussions

Sentencing Discretion in Brunei Darussalam still lies within the remit of the Court and the following practices remain not acceptable

- a. Recommendations by the Public Prosecutor for a certain range of sentence or for a specific sentence unless invited by the Court;
- b. An agreement by the Public Prosecutor not to oppose a sentence recommendation by a defence counsel;
- c. Any negotiation of sentencing measures which apply by operation of law (e.g. whipping)
- d. An agreement by the Public Prosecutor for a sentence to run concurrently when it would have been proper to run consecutively;
- e. A promise in advance not to appeal the sentence imposed by the Court.

Disclosure of evidence

Deputy Public Prosecutors shall ensure that sufficient disclosure* has been made to the defence counsel prior to the CCN;

Sufficient Disclosure means:

- providing a summary of the Prosecution's case without giving copies of witness statements; and
- providing a copy of the defendant's statement.

During a CCN, Deputy Public Prosecutors may, on a case by case basis, allow a request by a defence counsel to have sight of relevant documentary evidence: photos, report, exhibit list, defendant's statement, co-defendant's statement, video evidence etc

Review

This Policy will be kept under review and may be re-issued in amended form at a later date.