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6. Plea bargaining in Latin America

Máximo Langer and Máximo Sozzo¹

1. INTRODUCTION: ADVERSARIAL CRIMINAL PROCEDURE REFORMS AND PLEA BARGAINING IN LATIN AMERICA

In the past 35 years, almost all the predominantly Spanish-speaking countries of Latin America have introduced substantial reforms to their criminal procedure.² All these reforms have adopted new criminal procedure codes that have been described as ‘accusatorial’ or ‘adversarial’. These codes introduced public and oral trials, put the prosecution in charge of pretrial investigation, created new pretrial judges (*jueces de garantía*) to decide on pretrial detention and other coercive procedural and investigative measures, adopted limited prosecutorial discretion (*principio de oportunidad*) and mechanisms such as diversion to give a non-punitive response to criminal cases, gave new procedural powers to private complainants (that is, alleged victims), and gave new rights and procedural powers to defendants. Many of these reforms have also adopted a system of public and oral pretrial hearings, trial by jury, structured trials divided into the case of the prosecution and the case of the defense, evidence conceived of as evidence by the prosecution and by the defense—instead of as the court’s evidence—and direct and cross-examination to interrogate witnesses.

These reforms have been presented as particularly transformative because, unlike continental European jurisdictions that had already adopted oral and public trials in the nineteenth century, most Latin American jurisdictions kept the Spanish inquisitorial model when they

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² Máximo Langer, “Revolution in Latin American Criminal Procedure: Diffusion of Legal Ideas from the Periphery” (2007) 55 *American Journal of Comparative Law* 617; Máximo Sozzo (ed.), *Reformas de la justicia penal en América Latina: Promesas, prácticas y efectos* (Didot, 2020).

became independent nations in the nineteenth century.³ In this regard, the introduction of oral and public trials in the region at the end of the twentieth century and in the first few decades of the twenty-first century was presented as a paradigm change that would strengthen the rights of the accused at the adjudication stage and bring more transparency to the administration of criminal justice in society. Reformers argued that other features of these adversarial criminal procedure reforms would also advance these goals, including giving more rights to defendants and their defense attorneys at the police stage and throughout the criminal process, eliminating the investigative powers of judges so that they could focus exclusively on pretrial and trial adjudication, liberalizing regulations on pretrial detention, strengthening public defense, introducing public and oral pretrial hearings, and introducing trial by jury.⁴

These Latin American adversarial reforms also promised to make the criminal process more efficient by shortening the duration of prosecutions, creating or strengthening offices of the prosecution, giving more discretion to prosecutors about when to press charges, deformalizing the criminal process, and providing prosecutors with a range of tools—including plea bargaining—to deal with criminal cases without a trial.⁵ In this regard, as Table 6.1 shows, most Latin American adversarial criminal procedure reforms introduced for the first time in their jurisdictions mechanisms that, like guilty pleas and plea bargaining, enable the imposition of criminal convictions without a trial, based on the defendant's consent.

Table 6.1 shows that of 17 predominantly Spanish-speaking Latin American jurisdictions that introduced adversarial criminal procedure codes in the past few decades—out of a total of 19 jurisdictions, also including Brazil and Cuba—thirteen jurisdictions introduced guilty plea procedures or plea bargaining or other mechanisms to reach criminal convictions without a trial for the first time with the adoption of such adversarial codes. Also, even the adversarial reforms that did not introduce these mechanisms in their jurisdictions for the first time still included at least one of these mechanisms to reach criminal convictions without a trial. Of the 19 countries, these types of mechanisms exist in 18; 11 adopted these mechanisms in the 1990s, 6 in the 2000s and only 1 in the 2010s.

This data is important for at least two reasons. First, some commentators have considered that the adversarial system and plea bargaining are in tension with each other because, among other reasons, plea bargaining would be a way to circumvent adversarial criminal trials.⁶ However, Table 6.1 indicates that in the Latin American context, adversarial criminal procedure codes and plea bargaining came hand in hand.⁷ In this sense, the mechanisms to reach criminal convictions without a trial are as characteristic of the adversarial criminal procedure

³ Langer (n 2).

⁴ Langer (n 2); Sozzo (n 2).

⁵ Langer (n 2); Sozzo (n 2).

⁶ For arguments in that direction in the Latin American context, see, e.g., Alberto Bovino, "Procedimiento abreviado y juicio por jurados," in Julio B.J. Maier and Alberto Bovino (eds), *El procedimiento abreviado* (Editores del Puerto, 2001).

⁷ On the connection between the adversarial conception of the criminal procedure as a dispute between two parties before a passive umpire and plea bargaining more generally, see Máximo Langer, "La dicotomía acusatorio-inquisitivo y la importación de mecanismos procesales de la tradición jurídica anglosajona. Algunas reflexiones a partir del procedimiento abreviado," in Julio B.J. Maier and Alberto Bovino (eds), *El procedimiento abreviado* (Editores del Puerto, 2001) 97; 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.

Table 6.1 *Adversarial criminal procedure reforms and mechanisms to reach convictions without a trial in Latin America*

Country	Year of introduction of new adversarial criminal procedure code	Year in which plea bargaining or similar mechanism was introduced for the first time in that jurisdiction	Was plea bargaining or a similar mechanism introduced for the first time as part of a new adversarial code?
Argentina ^a	2014	1997	No
Bolivia ^b	1999	1999	Yes
Brazil ^c	N/A	N/A	N/A
Chile ^d	2000	2000	Yes
Colombia	2004 ^e	1991 ^f	No
Costa Rica ^g	1996	1996	Yes
Cuba	N/A	1994 ^h	No
Dominican Republic ⁱ	2002	2002 ^j	Yes
Ecuador ^k	2000	2000 ^l	Yes
El Salvador ^m	1998	1998 ⁿ	Yes
Guatemala ^o	1992	1992 ^p	Yes
Honduras ^q	1999	1999 ^r	Yes
Mexico ^s	2008	2008	Yes
Nicaragua ^t	2001	2001 ^u	Yes
Panama ^v	2008	2008	Yes
Paraguay ^w	1998	1998 ^x	Yes
Peru	2004 ^y	1994 ^z	No
Uruguay	2015 ^{aa}	2016 ^{bb}	Yes
Venezuela	1998 ^{cc}	1993 ^{dd}	No

Note: See appendix to Table 6.1 at the end of this chapter.

codes of Latin America as the oral and public trial, despite the fact that the former had a much smaller place in the campaigns that promoted the adoption of these reforms.⁸

In addition, the global literature on plea bargaining has yet to explore in a systematic fashion why plea bargaining and other trial-avoiding conviction mechanisms have spread throughout the world.⁹ Table 6.1 suggests that one of the driving forces behind the spread of trial-avoiding conviction mechanisms in Latin America has been the introduction of adversarial criminal procedure codes.

⁸ Langer (n 2); Máximo Sozzo, “Reforma de la justicia penal, americanización y condena sin juicio en Argentina,” in Máximo Langer and Máximo Sozzo (eds), *Justicia Penal y Mecanismos de Condena sin Juicio. Estudios sobre América Latina* (Marcial Pons, 2023).

⁹ Máximo Langer, “Plea Bargaining, Conviction without Trial, and the Global Administratization of Criminal Convictions” (2021) 4 *Annual Review of Criminology* 377; and Máximo Langer, “The Diffusion of Plea Bargaining and the Global Administratization of Criminal Convictions,” in this Handbook.

2. THE REGULATION OF PLEA BARGAINING IN LATIN AMERICAN CRIMINAL PROCEDURE CODES, CASELAW AND THE WORK OF COMMENTATORS: A COMPARATIVE PERSPECTIVE

The parallel adoption of these mechanisms in Latin America in the past three decades does not mean that they present the same features across it. To provide a regional panorama, we put together three tables with information about these mechanisms in each predominantly Spanish-speaking jurisdiction of Latin America. These tables are based on the text of criminal procedure codes, on case law, and on the work of commentators regarding each of these countries, with footnotes that document their sources. As the notes show, we found a substantial number of sources regarding many jurisdictions and a more limited number of sources regarding others. The information about the latter should be taken with special caution. Nonetheless, we have also included the latter jurisdictions in these tables because one of our main goals in this chapter is providing a panorama about the trends in the legislation and caselaw of the region on mechanisms of criminal conviction without a trial.

Though there is variation among jurisdictions in the terms they use to refer to these mechanisms, most jurisdictions use “procedimiento abreviado” (abbreviated procedure); unless noted, we will use this interchangeably with the term “plea bargaining.” American plea bargaining influenced the adoption and regulation of “procedimiento abreviado” and other Latin American trial-avoiding conviction mechanisms.¹⁰ However, Latin American jurisdictions did not simply “copy and paste” American regulations. Rather, they engaged in a process of “legal translation” of American plea bargaining that substantially transformed the way in which criminal convictions may be reached without a trial in Latin American jurisdictions.¹¹ These transformations originated partly in decisions by reformers and policy-makers who were critical or suspicious of certain aspects of American plea bargaining and partly in pre-existing features of Latin American jurisdictions, including its civil law legal tradition.

A. Scope of Guilty Plea and Plea Bargaining and Similar Mechanisms in Latin America

Table 6.2 shows the material, temporal, and subjective scope of these mechanisms in the region according to the text of the codes, the caselaw, and the work of commentators in each country.

¹⁰ 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; Máximo Sozzo, “Reforma de la justicia penal, americanización y condena sin juicio en Argentina,” in Máximo Langer and Máximo Sozzo (eds), *Justicia Penal y Mecanismos de Condena sin Juicio. Estudios sobre América Latina* (Marcial Pons, 2023).

¹¹ On the metaphor of the “legal translation” as a heuristic device to analyze the circulation of legal ideas and institutions between legal systems, see Langer (n 10).

Table 6.2 *Scope of mechanisms to impose criminal convictions without a trial in Latin America*

Country/ characteristics of plea bargaining	Does plea bargaining or equivalent apply to all crimes?	When can plea bargaining or equivalent be applied?	Is fact or charge bargaining allowed?	If there are multiple defendants in the case, must all of them give their consent for plea bargaining to be applicable in the case?
Argentina ^a	No. ^b	Once pretrial investigation has been completed and, in certain cases, until trial is scheduled. ^c	Yes, according to caselaw. ^d	Yes. ^e
Bolivia ^f	Yes.	Until the verdict is issued. ^g	The Criminal Procedure Code does not mention this possibility.	No. ^h
Chile ⁱ	No. ^j	From the formalization of pretrial investigation until before the case is sent to the trial court to hold the trial. ^k	Yes, according to caselaw. ^l	No. ^m
Colombia ⁿ	No. ^o	From the hearing about the charges until the accused is asked at trial about their guilt. ^p	Yes. ^q	No.
Costa Rica ^r	Yes.	At any time until the opening of the trial is ordered. ^s	No. ^t	No. ^u
Cuba ^v	No. ^w	At the start of the oral trial. ^x	No. ^y	The Criminal Procedure Law does not regulate the issue, but commentary has argued that all defendants must consent. ^z
Dominican Republic ^{aa}	No. ^{ab}	Until any time before the opening of the trial is ordered. ^{ac}	Yes. ^{ad}	No. ^{ae}
Ecuador ^{af}	No. ^{ag}	The prosecutor's proposal can be filed from the hearing where charges are presented until the hearing preparatory of the trial. ^{ah}	Yes. ^{ai}	No. ^{aj}
El Salvador ^{ak}	Yes. ^{al}	From the start of the proceedings until an early phase at the public trial. ^{am}	Yes. ^{an}	No. ^{ao}

Country/ characteristics of plea bargaining	Does plea bargaining or equivalent apply to all crimes?	When can plea bargaining or equivalent be applied?	Is fact or charge bargaining allowed?	If there are multiple defendants in the case, must all of them give their consent for plea bargaining to be applicable in the case?
Guatemala ^{pp}	Yes, but a sentence reduction is not possible for certain offenses. ^{qq}	Since charges are issued until the opening of the trial. ^{rr}	The defendant may agree with some charges and reject others. ^{ss} Charges can be dismissed if defendant testifies against other defendants. ^{tt}	No.
Honduras ^{uu}	Yes. ^{vv}	From the initial hearing until before the trial opening decree is issued. ^{ww}	The Criminal Procedure Code (CPC) allows the prosecution not to prosecute some of the offenses against the defendant if he effectively contributes to the investigation of the case. ^{xx}	No. ^{yy}
Mexico ^{zz}	Yes. ^{aaa}	Since the pretrial court considers the person a defendant in the case (auto de vinculación a proceso) until before the trial opening decree is issued. ^{bbb}	According to some commentators, fact and charge bargaining are not allowed. ^{ccc} But prosecutors may not file charges when the defendant gives essential and effective information to prosecute a more serious crime and commits to testify at trial. ^{ddd}	No. ^{eee}
Nicaragua ^{fff}	No. ^{ggg}	At any procedural stage until before the verdict is issued. ^{hhh}	Yes. ⁱⁱⁱ	No, given that the agreement can be used to make an accused testify against other accused. ^{jjj}
Panama ^{kkk}	Yes.	From the charges hearing until before the indictment is filed before the pretrial judge. ^{lll}	Yes. ^{mmm}	No.
Paraguay ⁿⁿⁿ	No. ^{ooo}	Until the preliminary hearing. ^{ppp}	CPC, Arts 420 and 421, does not mention this possibility.	No. ^{qqq}
Peru ^{rrr}	No. ^{sss}	From pretrial investigation is formalized until before the indictment is issued. ^{ttt}	The prosecutor and the defendant may reach an agreement about the circumstances of the criminal act. ^{uuu}	No. ^{vvv}

Country/ characteristics of plea bargaining	Does plea bargaining or equivalent apply to all crimes?	When can plea bargaining or equivalent be applied?	Is fact or charge bargaining allowed?	If there are multiple defendants in the case, must all of them give their consent for plea bargaining to be applicable in the case?
Uruguay ^{www}	No. ^{xxx}	From the time pretrial investigation is formalized until the deadline to file an indictment or request the dismissal of the case. ^{yyy}	According to some commentators, charge bargaining is allowed. But there has been disagreement among commentators on whether fact bargaining is allowed. ^{zzz}	No. ^{aaa}
Venezuela ^{bbb}	Yes. ^{ccc}	From the approval of the indictment at the preliminary hearing until before evidence is presented at trial. ^{ddd}	When the defendant pleads guilty, the judge may amend the charges. ^{ccc}	No.

Note: See appendix to Table 6.2 at the end of this chapter.

Regarding the material scope of these trial-avoiding conviction mechanisms, jurisdictions across the world have been divided on whether they should be applied to all criminal offenses or only a set of them.¹² Given the due process critiques directed at these mechanisms, there have been Latin American jurisdictions that have preferred that their application be limited to the less serious criminal cases. In other jurisdictions, such as Colombia, plea bargaining is not applicable to certain serious offenses—such as homicide and certain sexual crimes against minors—because it was perceived as lenient toward defendants. Table 6.2 shows that, of 18 predominantly Spanish-speaking Latin American jurisdictions, eight allow their application to all criminal offenses, while ten do not. The first group predominates in Central America, the second group in South America.

Regarding their temporal application, Table 6.2 indicates that there are three types of jurisdiction in Latin America. A first minority of jurisdictions only allows the use of these mechanisms if they are used by or before the indictment screening phase (functional equivalent to the grand jury phase in American law). A second group, composed of a majority of jurisdictions, allows for their use before or until the start of the trial. A third group, composed of only two jurisdictions, allows for the use of these mechanisms until the end of the trial. The limitation in most Latin American jurisdictions of trial-avoiding conviction mechanisms to pretrial phases may reflect a more formalistic conception of the criminal process that is characteristic of civil law jurisdictions, and, in many of these jurisdictions, may also be related to the absence of a pleading system like the one that exists in common law.

¹² See, e.g., Evelyne Owiye Asaala, “Balancing Public Interest, Judicial Discretion, the Rights of an Accused Person and Victims’ Rights in Plea Bargaining: The Case of Kenya and South Africa” in this Handbook; Patrick S. Günsberg, “The Spread of Negotiated Justice in Nordic Countries” in this Handbook; Langer (2021) (n 9); Langer, in this Handbook (n 9).

Also in relation to their material scope, there has been a global debate on whether these mechanisms should be used only to agree on a sentencing limit or reduction (what in the United States is called ‘sentencing bargaining’), or also on a charge change or reduction (what in the United States is called ‘charge bargaining’).¹³ A concern in this regard has been that when these mechanisms include a charge change or reduction, the capacity of the criminal legal system to produce convictions that reflect the actual crime committed by defendants is undermined or distorted. In this regard, given the preexisting inquisitorial procedural culture that emphasizes accuracy as one of the main goals of the criminal process, it is not surprising that several Latin American codes do not mention the possibility of engaging in charge bargaining in their regulation of plea bargaining. Similarly, our footnotes explain that courts in some jurisdictions, such as Colombia, have limited the scope of charge bargaining. However, Table 6.2 also shows that many Latin American jurisdictions—either through adversarial code regulations or caselaw—allow not only for a sentencing reduction but also for a charge change or reduction using these mechanisms. The acceptance of charge bargaining by these Latin American jurisdictions may reflect how much adversarial conceptions of the criminal process have penetrated their administration of criminal justice. It is also possible that these jurisdictions have accepted charge bargaining given the social pressure to increase the efficiency of the criminal process, and because it is another tool for judges to manage their caseloads.

Table 6.2 also shows that in almost all Latin American jurisdictions, plea bargaining or its equivalent can be applied to individual defendants even when not all defendants consent to its application in a given criminal prosecution. Among other reasons, this is important because one defendant who consents to the application of plea bargaining may provide information and elements of proof against other defendants, thus aiding criminal investigations.

B. Plea Bargaining Proceedings

Table 6.3 presents information about the proceedings established in each jurisdiction for the use of plea bargaining or its equivalent. In each national context, we provide information about the same mechanism that we began analyzing in Table 6.2.

On trial-avoiding conviction mechanism proceedings, Table 6.3 indicates that, in almost all jurisdictions, procedural regulations explicitly require that the defendant must consent to the application of *procedimiento abreviado* (abbreviated procedure) or equivalent.¹⁴ This Latin American trend is consistent with the global trend given that the defendant’s consent is supposed to provide legitimacy to the convictions imposed through these mechanisms.¹⁵

As for the admission of guilt by the defendant, there have been jurisdictions outside of Latin America—for example, Italy—that do not require such an admission because they have considered that requiring it would contradict the presumption of innocence or other rights.¹⁶

¹³ See, e.g., Samantha Joy Cheesman, “A Socio-legal Analysis of the Impact of the ECtHR Caselaw on the Development of an Abbreviated Trial System in Hungary” in this Handbook; Kevin Kwok-yin Cheng, “Plea Bargaining in Hong Kong: A Question of Definition” in this Handbook; Mrinal Satish, “Plea Bargaining in India” in this Handbook.

¹⁴ In Peru it is sufficient if the defendant does not express his initial opposition to the application of “procedimiento de terminación anticipada.” In Cuba, the defendant or their defense attorney may consent to the application of the trial-avoiding conviction mechanisms (*conformidad*).

¹⁵ Langer, in this Handbook (n 9).

¹⁶ On the Italian regulation, see, e.g., Langer (2004) (n 10).

Table 6.3 Proceedings in plea bargaining and equivalent mechanisms in Latin America

Country/ Plea-bargaining features	Must the defendant consent to the application of plea bargaining or equivalent to their case?	Must the defendant plead guilty or otherwise admit guilt?	May the defense access all the elements of proof collected by the prosecution, police, and other authorities before consenting to plea bargaining?	Does the CPC assume that there must be communications or negotiations between prosecution and defense in plea bargaining or equivalent?	Must the defendant be assisted by counsel during plea bargaining?	According to the CPC, does the court participate in the plea-bargaining discussions or negotiations?	Must the court check whether the defendant voluntarily consents to plea bargaining?	Is an oral hearing before the court established by law?	May the alleged victim participate in plea bargaining or equivalent mechanism?	Is the court verdict after plea bargaining appealable?
Argentina	Yes. ^a	Yes. ^b	Yes. ^c	The prosecutor may receive in her office the defense and his defense attorney. ^d	Yes. ^e	No.	Yes. ^f	No. ^g	Yes. ^h	Yes. ⁱ
Bolivia	Yes. ^j	Yes. ^k	Yes. ^l	Yes. ^m	Yes, at least when plea bargaining is initiated by the prosecutor. ⁿ	No.	Yes. ^o	Yes. ^p	Yes. ^q	Yes. ^r

Country/ Plea-bargaining features	Must the defendant consent to the application of plea bargaining or equivalent to their case?	Must the defendant plead guilty or otherwise admit guilt?	May the defense access all the elements of proof collected by the prosecution, police, and other authorities before consenting to plea bargaining?	Does the CPC assume that there must be communications or negotiations between prosecution and defense in plea bargaining or equivalent?	Must the defendant be assisted by counsel during plea bargaining?	According to the CPC, does the court participate in the plea-bargaining discussions or negotiations?	Must the court check whether the defendant voluntarily consents to plea bargaining?	Is an oral hearing before the court established by law?	May the alleged victim participate in plea bargaining or equivalent mechanism?	Is the court verdict after plea bargaining appealable?
Chile	Yes.	Yes.	Yes. ^s	CPC regulations do not expressly address the issue. But the CPC assumes that plea bargaining (<i>procedimiento abreviado</i>) involves an agreement between the prosecution and the defense.	Yes. ^t	No.	Yes. ^u	Yes. ^v	Yes. ^w	Yes. ^x
Colombia	Yes.	Yes.	Not necessarily. ^y	The prosecution and the defendant may have conversations to reach an agreement. ^z	Yes. ^{aa}	No.	Yes. ^{bb}	The Criminal Procedure Code requires a hearing to issue the verdict. ^{cc}	Yes. ^{dd}	Yes. ^{ee}
Costa Rica	Yes. ^{ff}	Yes. ^{gg}	Yes. ^{hh}	CPC regulations do not address the issue.	Yes. ⁱⁱ	No.	Yes. ^{jj}	No. ^{kk}	Yes. ^{ll}	Yes. ^{mm}

Country/ Plea-bargaining features	Must the defendant consent to the application of plea bargaining or equivalent to their case?	Must the defendant plead guilty or otherwise admit guilt?	May the defense access all the elements of proof collected by the prosecution, police, and other authorities before consenting to plea bargaining?	Does the CPC assume that there must be communications or negotiations between prosecution and defense in plea bargaining or equivalent?	Must the defendant be assisted by counsel during plea bargaining?	According to the CPC, does the court participate in the plea-bargaining discussions or negotiations?	Must the court check whether the defendant voluntarily consents to plea bargaining?	Is an oral hearing before the court established by law?	May the alleged victim participate in plea bargaining or equivalent mechanism?	Is the court verdict after plea bargaining appealable?
Cuba	Yes. ⁿⁿ	Yes. ^{oo}	Yes. ^{pp}	No. ^{qq}	Yes. ^{rr}	No.	The Law of Criminal Procedure (CPL Cuba) does not explicitly establish this requirement.	Yes, since the defendant's agreement must happen at the start of the trial.	The CPL Cuba regulations on the defendant's consent and the abbreviated procedure do not make any reference to the victim or the private prosecutor.	Yes. ^{ss}
Dominican Republic	Yes. ^{tt}	Yes. ^{uu}	Yes. ^{vv}	Yes. ^{ww}	Yes. ^{xx}	The judge convenes the parties to a hearing, at which she requires that they articulate their argument. ^{yy}	CPC, Arts 363–8, does not include this requirement.	The judge convenes the parties to a hearing. But this can be behind closed doors. ^{zz}	Yes. ^{aaa}	Yes. ^{bbb}
Ecuador	Yes. ^{ccc}	Yes. ^{ddd}	Yes. ^{eee}	Yes. ^{fff}	Yes. ^{ggg}	No.	Yes. ^{hhh}	Yes. ⁱⁱⁱ	Yes. ^{jjj}	Yes. ^{kkk}

Country/ Plea-bargaining features	Must the defendant consent to the application of plea bargaining or equivalent to their case?	Must the defendant plead guilty or otherwise admit guilt?	May the defense access all the elements of proof collected by the prosecution, police, and other authorities before consenting to plea bargaining?	Does the CPC assume that there must be communications or negotiations between prosecution and defense in plea bargaining or equivalent?	Must the defendant be assisted by counsel during plea bargaining?	According to the CPC, does the court participate in the plea-bargaining discussions or negotiations?	Must the court check whether the defendant voluntarily consents to plea bargaining?	Is an oral hearing before the court established by law?	May the alleged victim participate in plea bargaining or equivalent mechanism?	Is the court verdict after plea bargaining appealable?
El Salvador	Yes. ⁱⁱⁱ	Yes. ^{mmmm}	Yes. ^{mm}	CPC El Salvador regulations do not mention the issue.	Yes. ^{ooo}	No.	Yes. ^{ppp}	Yes. ^{qqq}	Yes. ^{rrr}	Yes. ^{sss}
Guatemala	Yes. ⁱⁱⁱ	Yes. ^{uuu}	Yes. ^{vvv}	CPC regulations do not mention the issue.	Yes. ^{www}	No.	Yes. ^{xxx}	Yes. ^{yyy}	Yes. ^{zzz}	Yes. ^{aaa}
Honduras	Yes. ^{bbbb}	Yes. ^{cccc}	The answer is not clear from the text of the CPC Honduras. ^{dddd}	Yes. ^{eeee}	Yes. ^{fff}	No.	Yes. ^{gggg}	Yes. ^{hhhh}	Yes. ⁱⁱⁱ	Yes. ^{jjj}
Mexico	Yes. ^{kkkk}	Yes. ^{llll}	Yes. ⁿⁿⁿⁿⁿ	Yes, according to the Supreme Court. ⁿⁿⁿⁿ	Yes. ^{oooo}	No. ^{pppp}	Yes. ^{qqqq}	Yes. ^{rrrr}	Yes. ^{ssss}	Yes. ^{ttt}

Country/ Plea-bargaining features	Must the defendant consent to the application of plea bargaining or equivalent to their case?	Must the defendant plead guilty or otherwise admit guilt?	May the defense access all the elements of proof collected by the prosecution, police, and other authorities before consenting to plea bargaining?	Does the CPC assume that there must be communications or negotiations between prosecution and defense in plea bargaining or equivalent?	Must the defendant be assisted by counsel during plea bargaining?	According to the CPC, does the court participate in the plea-bargaining discussions or negotiations?	Must the court check whether the defendant voluntarily consents to plea bargaining?	Is an oral hearing before the court established by law?	May the alleged victim participate in plea bargaining or equivalent mechanism?	Is the court verdict after plea bargaining appealable?
Nicaragua	Yes, ^{aaaa}	Yes, ^{vvvv}	Yes, ^{wwww}	The prosecution and the defense, with previous expressed authorization by the defendant, may have conversations on an agreement. xxxx	Apparently yes, ^{yyyy}	No.	Yes, ^{zzzz}	The CPC in its regulation on plea bargaining does not mention that a hearing is or must be held. aaaa	Yes, ^{bbbb}	Yes, ^{cccc}

Country/ Plea-bargaining features	Must the defendant consent to the application of plea bargaining or equivalent to their case?	Must the defendant plead guilty or otherwise admit guilt?	May the defense access all the elements of proof collected by the prosecution, police, and other authorities before consenting to plea bargaining?	Does the CPC assume that there must be communications or negotiations between prosecution and defense in plea bargaining or equivalent?	Must the defendant be assisted by counsel during plea bargaining?	According to the CPC, does the court participate in the plea-bargaining discussions or negotiations?	Must the court check whether the defendant voluntarily consents to plea bargaining?	Is an oral hearing before the court established by law?	May the alleged victim participate in plea bargaining or equivalent mechanism?	Is the court verdict after plea bargaining appealable?
Panamá	Yes. ^{ddddd}	Yes. ^{eeeee}	Yes. ^{ffff}	Yes. ^{ggggg}	Yes, according to the Supreme Court. ^{hhhhh}	No.	Yes. ⁱⁱⁱⁱ	The CPC in its regulation on plea bargaining does not mention that a hearing is or must be held. But the caselaw indicates that hearings are held. ^{jjjj}	There are split positions on the issue within the caselaw. ^{kkkk}	Yes. ^{llll}

Country/ Plea-bargaining features	Must the defendant consent to the application of plea bargaining or equivalent to their case?	Must the defendant plead guilty or otherwise admit guilt?	May the defense access all the elements of proof collected by the prosecution, police, and other authorities before consenting to plea bargaining?	Does the CPC assume that there must be communications or negotiations between prosecution and defense in plea bargaining or equivalent?	Must the defendant be assisted by counsel during plea bargaining?	According to the CPC, does the court participate in the plea-bargaining discussions or negotiations?	Must the court check whether the defendant voluntarily consents to plea bargaining?	Is an oral hearing before the court established by law?	May the alleged victim participate in plea bargaining or equivalent mechanism?	Is the court verdict after plea bargaining appealable?
Paraguay	Yes, ⁱⁱⁱⁱⁱⁱⁱⁱⁱⁱ	Yes, ⁱⁱⁱⁱⁱⁱⁱⁱ	Yes, ^{oooooo}	No, ^{ppppp}	Yes, ^{qqqqq}	No.	No, ^{rrrrr}	The judge must hear the defendant and will issue a fair ruling, after having the victim or private prosecutor in the hearing. ^{sssss}	Yes, ^{ttttt}	Yes, ^{uuuuu}
Peru	Yes, ^{vvvvv}	Yes, ^{wwwww}	Yes, ^{xxxxx}	The prosecutor and the defendant may have informal preparatory meetings. ^{yyyyy}	Yes, ^{zzzzz}	The judge will invite the parties to reach an agreement. ^{aaaaa}	Yes, according to the Supreme Court. ^{bbbbb}	Yes, but only a private hearing. ^{ccccc}	Yes, ^{ddddd}	Yes, ^{eeeee}

Country/ Plea-bargaining features	Must the defendant consent to the application of plea bargaining or equivalent to their case?	Must the defendant plead guilty or otherwise admit guilt?	May the defense access all the elements of proof collected by the prosecution, police, and other authorities before consenting to plea bargaining?	Does the CPC assume that there must be communications or negotiations between prosecution and defense in plea bargaining or equivalent?	Must the defendant be assisted by counsel during plea bargaining?	According to the CPC, does the court participate in the plea-bargaining discussions or negotiations?	Must the court check whether the defendant voluntarily consents to plea bargaining?	Is an oral hearing before the court established by law?	May the alleged victim participate in plea bargaining or equivalent mechanism?	Is the court verdict after plea bargaining appealable?
Uruguay	Yes, ^{nnrr}	Yes, ^{rrrrrr}	Yes, ^{hhhhh}	Yes, ⁱⁱⁱⁱ	Yes, according to certain caselaw, ⁱⁱⁱⁱ	No.	Yes, ^{kkkkk}	Yes, ^{lllll}	Yes, ⁿⁿⁿⁿⁿⁿⁿⁿ	Yes, ⁿⁿⁿⁿⁿ
Venezuela	Yes, ^{oooooo}	Yes, ^{pppppp}	Yes, ^{qqqqq}	The prosecutor, the victim and the defendant may request the application of plea bargaining, ^{rrrrr}	CPC, Art. 375, does not establish this requirement. ^{ssssss}	No.	Yes, according to the caselaw. ^{ttttt}	Yes, at least in certain cases. ^{uuuuuu}	Yes, ^{vvvvvv}	Yes, ^{wwwwww}

Note: See appendix to Table 6.3 at the end of this chapter.

However, Table 6.3 shows that in all predominantly Spanish-speaking Latin American jurisdictions the defendant must plead guilty or otherwise admit guilt for trial-avoiding conviction mechanisms to be applied to their case.

There has also been global discussion on whether the defendant must have access to all the elements of proof in the prosecutor's possession before consenting to the application of a trial-avoiding conviction mechanism to the defendant's case.¹⁷ Such access provides to the defendant and their defense attorney information about the strength of the case against the defendant, enabling them to make an informed decision and limiting the prosecutor's ability to make coercive or otherwise unfair plea proposals to the defendant.¹⁸ In this sense, Table 6.3 indicates that, except perhaps for certain cases in Colombia, all Latin American jurisdictions give defendants and their defense attorney access to all the elements of proof in the prosecutor's possession before their case is disposed through plea bargaining. This regulation may be explained not only or not mainly as the result of a public policy decision about how to regulate the proceedings of trial-avoiding conviction mechanisms, but may also reflect a civil law conception of the criminal process within which access to the judicial dossier or prosecutor's files is necessary to be able to exercise the right to defense in any meaningful way, given that in that legal tradition the criminal process is conceived of as a unitary, impartial, and official investigation.¹⁹

Given that, with the use of trial-avoiding conviction mechanisms, the prosecutor often becomes the *de facto* adjudicator of the case—since prosecutors often *de facto* decide who should be convicted, for which offense, and to which sentence—it is important that the defendant and his defense attorney make representations to the prosecutor about the case before the prosecutor makes their final plea proposal.²⁰ Consistent with procedural regulations outside the region that do not acknowledge that the prosecutor may be the *de facto* adjudicator of the case, Table 6.3 shows that Latin American jurisdictions do not establish a defendant's right to a hearing with the prosecutor before the latter makes their plea proposal. However, a good number of Latin American jurisdictions assume that there must or may be communications and exchanges between prosecution and defense to reach a plea agreement.

Whether the defendant is assisted by counsel is a central issue in the proceedings of plea bargaining and other trial-avoiding conviction mechanisms in any jurisdiction. Most Latin American states establish in their criminal procedure codes or in caselaw that there must be a defense attorney participating in plea bargaining proceedings. In almost a third of these jurisdictions, the defense attorney must confirm that the defendant has freely consented to the application of the trial-avoiding conviction mechanism to her case.

There has also been discussion within the United States and globally on whether it is advisable for a judge to participate in the negotiations or discussions on whether the case may be

¹⁷ Jenia Iontcheva Turner, "Plea Bargaining and Disclosure in Germany and the United States: Comparative Lessons" (2016) 57 *William and Mary Law Review* 1549.

¹⁸ Máximo Langer, "Rethinking Plea Bargaining: The Practice and Reform of Prosecutorial Adjudication in American Criminal Procedure" (2006) 33 *American Journal of Criminal Law* 223.

¹⁹ Máximo Langer and Kent Roach, "Rights in the Criminal Process: A Case Study of Convergence and Disclosure Rights," in Mark Tushnet et al (eds) *Routledge Handbook of Constitutional Law* (Routledge, 2013) 273.

²⁰ Langer (n 18).

adjudicated through plea bargaining, and under which terms.²¹ With the possible exceptions of the Dominican Republic and Peru, almost all Latin American criminal procedure codes do not give the judge a role in the negotiation or discussion on the possible agreement. This is consistent with many adversarial criminal procedure codes in Latin America that have redefined the court as a passive umpire whose role is limited to adjudicating the issues raised by the parties.

Table 6.3 also indicates that most Latin American jurisdictions require that the judge checks the voluntariness of the defendant's consent. In some jurisdictions in which the criminal procedure code does not say anything on the topic, caselaw has established this requirement. In most jurisdictions, the judge must check at a hearing whether the requirements of plea bargaining are met, though in a few jurisdictions this hearing is not open to the public.

Consistently with the large role that the Latin American adversarial criminal procedure codes give to the victim of the alleged crime,²² Table 6.3 shows that almost all Latin American jurisdictions establish the right of the victim or the private prosecutor to participate in plea-bargaining proceedings.

Finally, Latin American jurisdictions establish that the parties may appeal verdicts issued after a *procedimiento abreviado* (abbreviated procedure). But in Peru the defendant may not appeal the verdict if the latter stays within the terms of the agreement. In the Dominican Republic, in contrast with the German regulation,²³ the parties may waive their right to appeal as part of the agreement.

C. The Court's Verdict after Plea Bargaining Is Entered

Table 6.4 includes information about the court's verdict and its limits after a *procedimiento abreviado* (abbreviated procedure) or equivalent in each jurisdiction. The first question is whether the court may use *procedimiento abreviado* (abbreviated procedure) or equivalent without the prosecutor's consent. If the *procedimiento abreviado* (abbreviated procedure) or equivalent may only be used with the prosecutor's consent, this gives to the prosecutor the authority to decide when this mechanism is applied, facilitating that the prosecutor becomes the *de facto* adjudicator of the case as previously discussed. Table 6.4 indicates that in most Latin American countries, the *procedimiento abreviado* (abbreviated procedure) can only be applied with the prosecutor's consent, thus facilitating the "administratization" of criminal convictions—that is, facilitating that the prosecutor *de facto* decides who gets convicted, for which crime, and to which sentence, in proceedings that do not present the features that are typically associated with criminal adjudication, such as the possibility that the defendant exercises various trial rights, that the elements of proof that are the basis for a conviction be produced in oral and public hearings, and that adjudicators be members of the judiciary or jurors.²⁴

²¹ See, e.g., Albert Alschuler, "The Trial Judge's Role in Plea Bargaining" (1976) 76 *Columbia Law Review* 1059; Jenia Iontcheva Turner, "Judicial Participation in Plea Negotiations: A Comparative View" (2006) 54 *American Journal of Comparative Law* 199; Nancy J. King and Ronald F. Wright, "The Invisible Revolution in Plea Bargaining: Managerial Judging and Judicial Participation in Negotiations" (2016) 95 *Texas Law Review* 325; Langer (2004) (n 10); Máximo Langer, "The Rise of Managerial Judging in International Criminal Law" (2005) 53 *American Journal of Comparative Law* 835.

²² Langer (n 2).

²³ StPO [German Criminal Procedure Code], §302(1).

²⁴ Langer (2021) (n 9); Langer, in this Handbook (n 9).

Table 6.4 The Court's verdict and its limits in plea bargaining and equivalents in Latin America

Country/Plea bargaining features	May the court apply <i>procedimiento abreviado</i> (abbreviated procedure) to a case without the prosecutor's consent?	May the tribunal convict based only on the defendant's admission of guilt?	May the court enter an acquittal in response to a plea agreement between the parties?	What is the evidentiary standard to enter a conviction after a plea agreement?	Is there a given sentencing reduction established by law when there is a plea agreement?	May the court impose a sentence higher than the sentence recommended by the prosecution in a plea agreement?	Is the opinion of the alleged victim or private prosecutor binding regarding whether the court may accept a plea agreement?
Argentina	No. ^a	No. ^b	Yes, according to some caselaw. ^c	The <i>procedimiento abreviado</i> (abbreviated procedure) verdict must meet the requirements of any verdict. ^d	No.	No. ^e	No. ^f
Bolivia	The defendant or the prosecutor may request the use of <i>procedimiento abreviado</i> (abbreviated procedure) to the case. ^g	No. ^h	There is caselaw that suggests that an acquittal may be entered after a plea agreement. ⁱ	There is caselaw requiring the same standard of "conviction about the defendant's responsibility" to convict after trial and a plea agreement. ^j	No.	No. ^k	No. ^l
Chile	No. ^m	No. ⁿ	Yes. ^o	Controversy exists over the issue among commentators. ^p	No.	No. ^q	No. ^r
Colombia	No.	No. ^s	No. ^t	The plea agreement will only proceed if there is a minimum threshold of elements of proof to infer the participation of the defendant and the commission of the criminal offense. ^u	Yes. ^v	No. ^w	No. ^x

Country/Plea bargaining features	May the court apply <i>procedimiento abreviado</i> (abbreviated procedure) to a case without the prosecutor's consent?	May the tribunal convict based only on the defendant's admission of guilt?	May the court enter an acquittal in response to a plea agreement between the parties?	What is the evidentiary standard to enter a conviction after a plea agreement?	Is there a given sentencing reduction established by law when there is a plea agreement?	May the court impose a sentence higher than the sentence recommended by the prosecution in a plea agreement?	Is the opinion of the alleged victim or private prosecutor binding regarding whether the court may accept a plea agreement?
Costa Rica	No. ^y	The CPC does not explicitly regulate the issue. ^{fr}	Yes. ^z	The same standard of proof that is required to convict after a trial. ^{aa}	Yes. ^{bb}	No. ^{cc}	Yes, in some cases, but not in others. ^{dd}
Cuba	Yes. ^{ee}	No. ^{fr}	Controversy exists over the issue among commentators. ^{gg}	The CPL, Art. 487.7, establishes that in plea bargaining the verdict will be drafted according to the rules established for the County and Popular Tribunals. Certainty. ^{mm}	No.	No when the court decides that no evidence will be produced at trial. ^{hh}	No. ⁱⁱ
Dominican Republic	No. ^{jj}	No. ^{kk}	Yes. ^{ll}		No.	No. ⁿⁿ	The CPC does not explicitly regulate the issue. ^{oo}
Ecuador	No. ^{pp}	No. ^{qq}	No. ^{rr}	The OIPC does not specify the standard of proof.	Yes. ^{ss}	No. ^{tt}	No. ^{uu}
El Salvador	No. ^{vv}	The CPC does not explicitly regulate the issue. ^{ww}	Yes. ^{xx}	The CPC establishes that the plea agreement verdict will be drafted according to the rules to draft any kind of verdict. ^{yy}	Yes. ^{zz}	No. ^{aaa}	No. ^{bbb}
Guatemala	Yes. ^{ecc}	No. ^{ddd}	No. ^{eee}	Reasonableness of the charges. ^{fff}	Yes. ^{ggg}	The CPC does not specify. ^{hhh}	No. ⁱⁱⁱ
Honduras	No. ^{jjj}	The CPC does not explicitly regulate the issue in relation to the court. ^{kkk}	No. ^{lll}	The decision over a plea agreement is a verdict like the trial verdict. ^{mmm}	Yes. ⁿⁿⁿ	The CPC does not specify.	No. ^{ooo}

Country/Plea bargaining features	May the court apply <i>procedimiento abreviado</i> (abbreviated procedure) to a case without the prosecutor's consent?	May the tribunal convict based only on the defendant's admission of guilt?	May the court enter an acquittal in response to a plea agreement between the parties?	What is the evidentiary standard to enter a conviction after a plea agreement?	Is there a given sentencing reduction established by law when there is a plea agreement?	May the court impose a sentence higher than the sentence recommended by the prosecution in a plea agreement?	Is the opinion of the alleged victim or private prosecutor binding regarding whether the court may accept a plea agreement?
México	No. ^{ppp}	No. ^{qqq}	No. ^{rr}	Sufficient elements of proof that corroborate the charges. ^{ss}	Yes. ^{tt}	No. ^{uuu}	Yes, in some cases, but not in others. ^{vvv}
Nicaragua	No. ^{www}	No. ^{xxx}	No. ^{yyy}	The CPC does not specify the standard the court must use to convict the defendant after a plea agreement. ^{zzz}	No. ^{aaa}	No. ^{bbb}	No. ^{ccc}
Panamá	No. ^{ddd}	The CPC, Art 220, does not explicitly regulate the issue.	Yes. ^{eee}	The CPC does not specify the standard in its regulation of plea agreements. ^{fff}	Yes. ^{ggg}	No. ^{hhh}	No. ⁱⁱⁱ
Paraguay	Yes. ^{jjj}	No. ^{kkk}	Yes. ^{lll}	Same requirement as the trial verdict but articulated more succinctly. ⁿⁿⁿⁿ	No.	No. ⁿⁿⁿ	The CPC does not explicitly regulate the issue. No. ^{uuu}
Perú	No. ^{ooo}	No. ^{ppp}	No. ^{qqq}	The Supreme Court has said that to some extent it is not possible to apply criteria like <i>in dubio pro reo</i> to acquit the defendant after a plea agreement. ^{rrr}	Yes. ^{sss}	No. ^{ttt}	No. ^{uuu}

Country/Plea bargaining features	May the court apply <i>procedimiento abreviado</i> (abbreviated procedure) to a case without the prosecutor's consent?	May the tribunal convict based only on the defendant's admission of guilt?	May the court enter an acquittal in response to a plea agreement between the parties?	What is the evidentiary standard to enter a conviction after a plea agreement?	Is there a given sentencing reduction established by law when there is a plea agreement?	May the court impose a sentence higher than the sentence recommended by the prosecution in a plea agreement?	Is the opinion of the alleged victim or private prosecutor binding regarding whether the court may accept a plea agreement?
Uruguay	No. ^{viii}	The CPC, Arts 272 and 273, does not explicitly regulate the issue.	Controversy exists over the issue. ^{www}	Not certainty. ^{xxx}	Yes. ^{yyy}	No. ^{zzz}	No. ^{aaaa}
Venezuela	Yes. ^{bbbbb}	The CPC does not explicitly regulate the issue.	No. ^{cccc}	Certainty. ^{ddddd}	Yes. ^{cccc}	The CPC does not specify.	The CPC does not explicitly regulate the issue.

Note: See appendix to Table 6.4 at the end of this chapter.

As the answers in the last column of Table 6.4 indicate, except in a few situations, almost all Latin American jurisdictions allow for the use of *procedimiento abreviado* (abbreviated procedure) in a case even when the alleged victim or private prosecutor opposes it. In this sense, in almost all Latin American jurisdictions the alleged victim or private prosecutor does not have the authority to decide when these mechanisms are applied. This is also consistent with the administratization of criminal convictions according to which it is the prosecutor, not the victim, who decides who is convicted, for which crime, and to which sentence.²⁵

Table 6.4 indicates that most Latin American criminal procedure codes explicitly forbid that a conviction after a plea agreement be exclusively based on the defendant's admission of guilt. However, this is not necessarily equivalent to the requirement of "factual basis" that we find in the federal criminal process in the United States.²⁶ In fact, possibly reflecting the preexisting inquisitorial conception of the criminal process in which the truth cannot be negotiated or compromised, several Latin American jurisdictions regulate the verdict that follows plea bargaining in the same way as any other verdict.²⁷

First, while in the United States in particular and in common law jurisdictions more generally the court typically must decide whether to accept or reject the guilty plea, about half of Latin American jurisdictions include as a third option that the court enters a judgment of acquittal for the defendant following a *procedimiento abreviado* (abbreviated procedure) or equivalent. Even if available empirical data and anecdotal information reveal that courts rarely acquit the defendant in a *procedimiento abreviado* (abbreviated procedure),²⁸ this regulation reflects a conception of the verdict in a "*procedimiento abreviado*" as not fundamentally different from a verdict issued at the end of a public, oral, and adversarial trial in a good number of Latin American jurisdictions.

In addition, a substantial number of Latin American jurisdictions require an evidentiary standard higher than the vague US standard of "factual basis" to enter a conviction after a *procedimiento abreviado* (abbreviated procedure). These Latin American jurisdictions require the same standard of proof to convict after an oral and public trial and after a *procedimiento abreviado* or equivalent—a standard that is often "certainty," which is a civil law equivalent of proof beyond a reasonable doubt. In the case of *procedimiento abreviado* (abbreviated procedure), such certainty must typically be based on the elements of proof gathered in the judicial dossier or the prosecutor's files.

Regarding sentencing in plea bargaining or equivalent, there has been a global discussion among jurisdictions on whether specific sentencing discounts should be statutorily established when the case is adjudicated through one of these mechanisms. Supporters of this type of regulation argue that statutorily specifying the sentencing discounts the defendant should get after a plea agreement reduces the power of prosecutors to create sentencing differentials between the guilty plea and trial penalties that can be irresistible for defendants. Most Latin

²⁵ Langer (2021) (n 9); Langer, in this Handbook (n 9).

²⁶ Federal Rules of Criminal Procedure (United States of America), Rule 11.

²⁷ Langer (2004) (n 10), 22.

²⁸ Ricardo Lillo, "Condenas sin juicio en la justicia penal chilena. Resultados de un estudio empírico exploratorio en la jurisdicción de Santiago" in Máximo Langer and Máximo Sozzo (eds), *Justicia penal y mecanismos de condena sin juicio. Estudios sobre América Latina* (Marcial Pons, 2023); Máximo Sozzo "¿Más allá de la "angustia de juzgar"? Reforma de la justicia penal, condena sin juicio y mutaciones del rol del juez penal" in Kostenwein, E. (ed.), *Mundos judiciales y dinámicas sociales. Aproximaciones al funcionamiento de la justicia penal* (Fabián di Placido, 2023).

American jurisdictions have adopted this position and their criminal procedure codes establish which specific or maximum sentencing discounts may be given in a case decided through a *procedimiento abreviado* (abbreviated procedure) or equivalent. Only a minority of criminal procedure codes—such as those of Colombia, Guatemala, and Uruguay—condition the size of the sentencing discount to how early in the criminal process the defendant pleads guilty, as it also happens, for instance, in England and Wales and Hong Kong. However, almost all Latin American jurisdictions give substantial authority and power to the prosecutor to determine the sentence by establishing that the court may not impose a higher sentence than that requested by the prosecutor in a *procedimiento abreviado* (abbreviated procedure) or equivalent, thus facilitating the role of the prosecutor as the *de facto* sentencing adjudicator of the case.

3. GLOBAL THEORETICAL DEBATES AND EMPIRICAL STUDIES OF PLEA BARGAINING IN LATIN AMERICA

The previous section has explained and discussed how criminal procedure codes, caselaw, and commentators have regulated plea bargaining across Latin America. In this section, we analyze how Latin American plea bargaining fits within various debates in the academic literature that has studied plea bargaining beyond the region. As part of our analysis, we complement our study of criminal procedure codes, caselaw, and the work of commentators reported in the previous section with empirical data and studies that we and others have produced on plea bargaining in the region. These empirical studies are few and limited to certain jurisdictions, years, and aspects of plea bargaining since, as in many other countries and regions around the world, the empirical study of plea bargaining in Latin America is in its infancy.²⁹

In terms of the rate of use of plea bargaining, many Latin American jurisdictions do not collect or report official data on it. But existing reported official data suggest that the percentage of criminal convictions obtained through trial-avoiding conviction mechanisms vary substantially across the region. For instance, based on official data on individual years, it has been reported that, of total criminal convictions, 21 percent are obtained without trial in Panama, 22 percent in Peru, 61 percent in Costa Rica, 65 percent in the federal courts of Argentina, 81 percent in Colombia, and 91 percent in Chile.³⁰ Based on a time-intensive research study of all of convictions produced per year, it has been reported that between 92.9 percent and 98.8 percent of criminal convictions were obtained without a criminal trial in the province of Santa

²⁹ Langer (2021) (n 9); Langer in this Handbook (n 9); Máximo Langer and Máximo Sozzo, “Introducción: reforma de la justicia penal y mecanismos de imposición de condenas sin juicio en América Latina,” in Máximo Langer and Máximo Sozzo (eds), *Justicia penal y mecanismos de condena sin juicio. Estudios sobre América Latina* (Marcial Pons, 2023). More generally, this reflects the state of the empirical research on criminal justice reform in the región and is linked to different conditions and processes: see Máximo Sozzo (2020) (n 2) and Máximo Sozzo, “Reforma de la justicia penal e imagen y confianza pública,” in E. Kostenwein (ed.), *El imperio de castigar. Contribuciones desde la sociología de la justicia penal* (Editores del Sur, 2020).

³⁰ Langer (2021) (n 9); Langer in this Handbook (n 9).

Fe, Argentina,³¹ and 84.5 percent for drug crimes in the Department of Mar del Plata, province of Buenos Aires, Argentina.³²

Langer recently raised the question of what explains this variation in the rate of criminal conviction without trial in different jurisdictions across the globe, and explored possible hypotheses—including whether trial-avoiding conviction mechanisms apply to all or only a set of criminal offenses, caseload and punitiveness levels of the criminal legal system, trial complexity, and legal tradition and procedural culture.³³ Though studying this question in Latin America is beyond the scope of this chapter, future researchers could fruitfully explore it.³⁴

The variation in the rate of conviction without trial is also important to analyze the phenomenon of administratization of criminal convictions mentioned in Section 2, under the auspices of which prosecutors, the police, and other administrative agencies decide who gets convicted, for which crime, and to which sentence, in proceedings that are not open and transparent to the public and that do not include a trial with its attached defendants' rights to test the elements of proof that are the (conventional) basis for a conviction.³⁵ As explained in Section 1, Latin American adversarial reforms gave more power to prosecutors by putting them in charge of pretrial investigation and by giving them more discretion in pressing charges and by introducing various mechanisms that prosecutors may use to dispose of criminal cases without a trial. In Section 2 we discussed how certain features of plea bargaining in many Latin American jurisdictions have also contributed to the administratization of criminal convictions, such as prosecutorial discretion in pressing charges, the non-existence of guilty pleas, the requirement that the prosecutor must agree that the case be adjudicated through the abbreviated procedure or equivalent, and the limitation that the court may not impose a sentence higher than the sentence recommended by the prosecution in a plea agreement.

Recent quantitative and qualitative empirical studies on plea bargaining in Latin America have confirmed the power that prosecutors and the police have through trial-avoiding conviction mechanisms to decide which defendants get convicted, for which criminal offense,

³¹ Máximo Sozzo, "Reforma de la justicia penal, americanización y condena sin juicio en Argentina" in Máximo Langer and Máximo Sozzo (eds), *Justicia penal y mecanismos de condena sin juicio. Estudios sobre América Latina* (Marcial Pons, 2023).

³² Gabriel Bombini, "Leyes duras ... ¿Acuerdos blandos? Severidad, tensiones y ambivalencias en la aplicación de la Ley de desfederalización de Drogas en Mar del Plata, Argentina" in Máximo Langer and Máximo Sozzo (eds), *Justicia penal y mecanismos de condena sin juicio. Estudios sobre América Latina* (Marcial Pons, 2023).

³³ Langer (2021) (n 9); Langer in this Handbook (n 9).

³⁴ In a separate work, we briefly analyzed this question in four Latin American jurisdictions—province of Buenos Aires (Argentina), province of Santa Fe (Argentina), Chile, and Colombia—in relation to the homicide rate in each of these jurisdictions, and we did not find a relationship between this variable and the rate of criminal conviction without trial. See Máximo Langer and Máximo Sozzo, "Mecanismos de imposición de condenas y sistemas acusatorios en América Latina. Balance y perspectivas" in Máximo Langer and Máximo Sozzo (eds), *Justicia penal y mecanismos de condena sin juicio. Estudios sobre América Latina* (Marcial Pons, 2023). Sozzo has also explored this question considering a broader number of possible explanatory variables regarding the province of Santa Fe (Argentina): Máximo Sozzo, "Reforma de la justicia penal, americanización y condena sin juicio en Argentina" in Máximo Langer and Máximo Sozzo (eds), *Justicia penal y mecanismos de condena sin juicio. Estudios sobre América Latina* (Marcial Pons, 2023). Future studies could include a larger number of Latin American jurisdictions and possible explanatory variables for the rate of criminal convictions without trial.

³⁵ Langer (2021) (n 9); Langer in this Handbook (n 9).

and to which sentence.³⁶ However, the variation in the rate of criminal convictions without trial in Latin America which we have reported in this section indicates that this phenomenon of administratization of criminal convictions is present to various degrees in different jurisdictions.³⁷

Also, regarding the administratization of criminal convictions, there are specific features in the law of Latin American jurisdictions that may make these administratized proceedings fairer than in some jurisdictions outside the region, as discussed in Section 2. First, across Latin America, the defense has a right to access all the elements of proof collected by the police and the prosecutor before consenting to the adjudication of the case through plea bargaining—thus enabling defendants and their defense attorneys to make a more informed decision. Second, there must be a defense attorney present during the abbreviated procedure in most jurisdictions. Third, in many jurisdictions the law establishes which sentence reduction must be applied in the case of plea bargaining—thus reducing the power of prosecutors vis-à-vis the defense. Fourth, in various jurisdictions, the court has a larger role in checking the plea agreement that goes beyond confirming the understanding and voluntariness of the defendant's consent and includes the possibility of acquitting the defendant in response to the plea agreement. Some jurisdictions also require that the judge has certainty about the defendant's guilt before entering a conviction after a plea agreement.

However, the incipient empirical literature on plea bargaining in Latin America indicates that these safeguards do not always work in the law-in-action. First, the role of public defender offices is uneven across the region.³⁸ For instance, a recent empirical study on Mexico has concluded that defendants assisted by public defenders are more likely to plead guilty than defendants assisted by private attorneys, who are more likely to have their cases disposed of without a criminal conviction. These differences may be the result of the more limited resources by public defenders and their membership in the courtroom work group.³⁹ In contrast, an empirical research project on Santa Fe, Argentina, has found that public defenders can often take advantage of the pressures to which prosecutors are subjected and obtain probation or a substantially reduced sentence for their clients.⁴⁰ A qualitative empirical study of Santiago,

³⁶ Bombini (n 32) (on drug cases in Mar del Plata, Argentina); Lillo (n 28) (on Santiago, Chile); Astrid Liliana Sánchez Mejía, “Mujeres, delitos de drogas, preacuerdos y aceptaciones de cargo en Colombia” (on Colombia, with special reference to drug offenses); Javier Wilenmann and Juan Pablo Aristegui, “El delito de baja entidad y la estandarización de los acuerdos en el sistema penal chileno” (on low-level offenses in Santiago, Chile); all published in Máximo Langer and Máximo Sozzo (eds), *Justicia penal y mecanismos de condena sin juicio. Estudios sobre América Latina* (Marcial Pons, 2023).

³⁷ On this point globally, see Langer (2021) (n 9); Langer in this Handbook (n 9) (articulating in both works the “rate of administratization of criminal convictions” to capture this variation).

³⁸ On the impact of the adversarial reforms in the province of Buenos Aires about how public defenders understand their role, see Ezequiel Kostenwein and Pablo Ciocchini, “Defensa Pública y estructura social. Convenciones y compromisos hacia el interior de la justicia penal” (2022) 15 *Quaestio Juris* 2214 (based on interviews with defense attorneys).

³⁹ Miguel Quintana-Navarrete and Gustavo Fondevila, “Public Defenders versus Private Attorneys: A Comparison of Criminal Case Disposition Outcomes by Type of Counsel in Mexico” (2022) *Criminology & Criminal Justice*, OnlineFirst, available at <https://journals.sagepub.com/doi/abs/10.1177/17488958221116999> (accessed February 14, 2023).

⁴⁰ Sozzo (n 34); Máximo Sozzo, “Negociar, acordar y castigar. Modo y práctica de la imposición de sentencias condenatorias en la justicia penal reformada en la Provincia de Santa Fe,” paper presented at the international workshop “Justicia penal, abreviación y negociación en América Latina. Los aportes de la investigación empírica,” organized by Transnational Program on Criminal Justice of UCLA School

Chile, has shown how the public defender office changed its policy and started recommending that defendants not consent to the disposition of their case through a trial-avoiding conviction mechanism because trials frequently end up in acquittal, since witnesses often do not show up to them.⁴¹ Obviously, these divergences regarding the role of public defense are very important, and require further empirical study in the future.⁴²

Another example of the gap between law-in-books and law-in-action is that while Latin American codes and caselaw give greater authority to the court to check the accuracy and fairness of the plea agreement, existing empirical studies have found that in practice judicial control over these agreements is weak. In the case of Chile, there have been recent observations on the limited judicial control of the voluntary nature of the agreement in abbreviated procedures and in simplified procedures with admission of guilt, and on the very low number of acquittals at the end of abbreviated-procedure and simplified-procedure-with-admission-of-guilt hearings—less than 1.5 percent.⁴³ Also, in the case of the Province of Santa Fe (Argentina), it has recently been observed that despite what legal texts establish, the role of criminal judges is more one of “homologation” of the agreements reached by the parties, in a routinized and standardized way. For instance, in only 2 percent of the hearings observed did the judge reject the agreement presented by the parties, and in only 7 percent did the judge decide to amend the charge for not matching the factual allegations or elements of proof provided.⁴⁴

There has also been study of the Americanization of criminal procedure around the world through the diffusion of plea bargaining and other procedural features.⁴⁵ Section 2 has shown that Latin American jurisdictions did not simply “copy and paste” American plea bargaining but rather “translated” it to their context—that is, Latin American jurisdictions rejected or transformed various features of American plea bargaining through decisions by code drafters and other policy-makers or through the changes which plea bargaining underwent in its interactions with different institutional settings and legal cultures. But recent empirical studies have shown that in some respects Latin American plea bargaining-in-action has been Americanized to a greater degree than that which the law-in-books may indicate.⁴⁶ For instance, several Latin

of Law and the “Programa Delito y Sociedad de la Universidad Nacional del Litoral,” city of Santa Fe, Argentina, December 5 and 6, 2019 (on file with the authors). Something similar has been observed in the Province of Buenos Aires (Argentina) at a general level by Pablo Ciocchini: “Reformers’ Unfulfilled Promises: Accountability Deficits in Argentinean Criminal Courts” (2018) 14 *International Journal of Law in Context* 22–42 and in cases related to drug offenses by Bombini (n 32).

⁴¹ Javier Wilenmann and Juan Pablo Aristegui, “El delito de baja entidad y la estandarización de los acuerdos en el sistema penal chileno” in Máximo Langer and Máximo Sozzo (eds), *Justicia penal y mecanismos de condena sin juicio. Estudios sobre América Latina* (Marcial Pons, 2023) (on low-level offenses in Santiago, Chile).

⁴² Langer and Sozzo (n 34).

⁴³ Lillo (n 28) (based on data collected from a random and representative sample of cases); Wilenmann and Aristegui (n 41) (based on qualitative observation of hearings). See also Mauricio Duce, “Los procedimientos abreviados y simplificados y el riesgo de condenas erróneas en Chile: resultados de una investigación empírica” (2019) 26 *Revista de Derecho* (Coquimbo) e3845, <https://revistaderecho.ucn.cl/index.php/revista-derecho/article/view/3845/3280> (accessed 15 February 2023).

⁴⁴ Sozzo (n 28) (based on the observations of hearings, analysis of sentences, and interviews with prosecutors, public defenders, and criminal judges)

⁴⁵ Langer (2004) (n 10).

⁴⁶ Sozzo (n 34); Langer and Sozzo (n 34).

American codes do not expressly contemplate the possibility of charge bargaining; however, empirical studies indicate that plea agreements include agreement on the charges even in jurisdictions whose codes do not contemplate this possibility.⁴⁷ Similarly, as already pointed out, despite the larger role that Latin American codes and caselaw give to the judge to check the accuracy and fairness of plea agreements, in practice judges rarely exercise these powers.

The literature on plea bargaining in the United States has also discussed whether it necessarily entails the use of coercion.⁴⁸ In the Latin American context, an empirical study of plea bargaining in Chile has concluded that there is a risk of coercion given the high sentence for certain offenses if the defendant is found guilty at trial.⁴⁹ Relatedly, another empirical study has pointed out the possible relationship between the larger use of pretrial detention and the large number of guilty pleas and plea agreements in the cases of women charged with drug offenses in Colombia.⁵⁰ However, an empirical study on drug cases in Mar del Plata, Argentina, has found that, in comparison to the United States, prosecutors do not exercise an overwhelming coercive power over defendants.⁵¹ A different study on the departments of the province of Buenos Aires based on interviews with key actors and court observations has noticed that while some actors refer to plea bargaining as an “extortive” practice, plea bargaining has also opened space for “give and take” between prosecutors and public defenders.⁵² Based on these empirical findings, it would be inaccurate to characterize the entire landscape of these mechanisms of conviction without trial in Latin America as coercive—and, conversely, it would also be inaccurate to characterize all of these Latin American mechanisms as “consensual,” since a set of these mechanisms is in practice coercive.⁵³

Another global discussion on trial-avoiding conviction mechanisms is whether they are an expression of a trend towards negotiated criminal justice.⁵⁴ There is no question that the legal design of these mechanisms has frequently assumed communications and negotiations between prosecution and defense in many Latin American jurisdictions, as already discussed in Section 2 of this chapter. However, there are also trial-avoiding conviction mechanisms in the region that do not assume such communications and exchanges even from their legal design.⁵⁵ The available empirical studies also find divergence among Latin American jurisdictions and trial-avoiding conviction mechanisms in this regard, finding that while the practice

⁴⁷ Bombini (n 32) (on Mar del Plata, Argentina, based on an analysis of documents and interviews with criminal justice actors); Sozzo (n 40) (on province of Santa Fe, Argentina, based on interviews with prosecutors, public defenders, and judges).

⁴⁸ See, e.g., Langer (n 18).

⁴⁹ Lillo (n 28).

⁵⁰ Sánchez Mejía (n 36). On the effect of adversarial reforms more generally on pretrial detention levels, see, e.g., Lydia Brashear Tiede, ‘Chile’s Criminal Law Reform: Enhancing Defendants’ Rights and Citizen Security’ (2012) 54 *Latin American Politics and Society* 3.

⁵¹ Bombini (n 32).

⁵² Ciocchi (n 40). In the context of the Province of Santa Fe (Argentina), Sozzo (n 40) has reported similar findings.

⁵³ For a discussion of the empirical and theoretical challenges for the research on the presence of coercion in these mechanisms in the region, see further Langer and Sozzo (n 29).

⁵⁴ Langer (2021) (n 9); Langer in this Handbook (n 9).

⁵⁵ Lillo (n 28); Sánchez Mejía (n 36).

of some of these mechanisms includes negotiations between the parties, the practice of others does not.⁵⁶

There has also been literature, mainly in the United States, on whether the use of plea bargaining has a disparate impact on defendants based on their race, gender, and other characteristics.⁵⁷ Two empirical studies on plea bargaining in Colombia have found gender disparities in this regard.⁵⁸ A recent study of Mar del Plata, Argentina, has also found gender disparities in drug cases.⁵⁹ Future studies could further explore this gender dynamics and other defendants' characteristics such as age, race, class, ethnicity, sexual orientation, immigration status, and more.⁶⁰

Another issue is whether there is a relationship between the use of plea bargaining and incarceration levels.⁶¹ The process of criminal justice reform toward an adversarial model coincided with increased levels of imprisonment in most Latin American countries, although to very different degrees. As has been repeatedly stated in the literature, the evolution of incarceration does not depend on a single factor but rather on a complex conglomerate of elements that act in different dimensions and levels.⁶² However, the diffusion of mechanisms of conviction without trial throughout the region could be a relevant factor since these mechanisms speed up the imposition of convictions and sentences, thus potentially generating greater imprisonment. Two empirical studies on Colombia already mentioned have explored

⁵⁶ Bombini (n 32) (finding high levels of negotiation between prosecution and defense on drug cases in Mar del Plata, Argentina); Sozzo (n 40) (reporting that interviewees describe high levels of negotiation in the province of Santa Fe, Argentina); Wilenmann and Aristegui (not finding high levels of negotiation in low-level-offense cases in Santiago, Chile). See also Langer and Sozzo (n 34).

⁵⁷ See, e.g., Carlos Berdejó, "Racial and Gender Disparities in Plea Bargaining" in this Handbook; Brian D. Johnson and Sean Houlihan, "Criminological Approaches to Plea Bargaining" in this Handbook.

⁵⁸ However, the findings have gone in somewhat opposite directions. See Sánchez Mejía (n 36) (finding, based on an empirical study that uses, among other methods, surveys of female inmates and official data, that plea bargaining combined with public policies on drugs have possibly led to women being convicted without a trial at higher rates than men in drug cases due to the social construction of gender and the larger caring responsibilities towards children that women have); and Ángela Zorro, "Una Evaluación Experimental de los Acuerdos Penales en Colombia" in Máximo Langer and Máximo Sozzo (eds), *Justicia penal y mecanismos de condena sin juicio. Estudios sobre América Latina* (Marcial Pons, 2023) (finding using a cuasi natural experiment, and event-study, difference-in-differences and fixed-effects models, that plea bargaining increased the incarcerated male population while it reduced the incarcerated female population in Colombia in the first years of the implementation of the reform towards an accusatorial model).

⁵⁹ Bombini (n 32) (finding a larger number of cisgender and transgender women than men were convicted through abbreviated procedures in drug cases).

⁶⁰ Outside of the plea bargaining, a recent study has found that darker defendants have lower odds of having their arrests being declared illegal in Mexico. Andrés F. Rengifo, Lorena Avila and David Ibañez, "Criminal Defense Work in a Sample of Arrest Hearings in Three States in Mexico: The Micro-dynamics of Case-level Engagement, Influence, and Strategy" (2023) *Crime, Law and Social Change*, available at <https://doi.org/10.1007/s10611-023-10081-2> (accessed on February 15, 2023).

⁶¹ See, e.g., Albert W. Alschuler, "Plea Bargaining and Mass Incarceration" (2021) 76 *New York University Annual Survey of American Law* 205.

⁶² Máximo Sozzo, "Incarceration: How to Understand Imprisonment Trends" in M. Valverde, K.M. Clarck, E. Darian-Smith, and P. Kotiswaran (eds), *The Routledge Handbook of Law and Society* (Routledge, 2021).

this issue, finding that the use of plea bargaining has increased incarceration levels.⁶³ But the case of Chile presents a more mixed picture. Although initially the adversarial model of criminal justice that introduced conviction-without-trial mechanisms coincided with an increase in the incarceration rate—an increase of 49 percent between 2000 and 2010—this was followed by a 25 percent decrease in the incarceration rate between 2010 and 2022.⁶⁴ Future national, regional, and global studies must further explore this crucial issue.⁶⁵

4. CONCLUSION

This chapter has presented an overview of plea bargaining in Latin America. It has shown that plea bargaining has arrived alongside with adversarial criminal procedure reforms in the region as a mechanism that would increase the efficiency of the criminal legal system. Adversarial criminal procedure reformers presented the oral and public trial as the main innovation of the adversarial reforms. However, in many jurisdictions, the true synecdoche of Latin American adversarial criminal procedures has been plea bargaining, not the oral and public trial.

This chapter has provided a panoramic view of how plea bargaining is regulated in the region and has also analyzed—relying on not only codes, caselaw and the work of commentators, but also incipient empirical studies—how Latin American plea bargaining fits into global discussions.

American plea bargaining was a central influence in Latin America. However, this chapter has shown that Latin American jurisdictions did not simply “copy and paste” American plea bargaining. Rather, they translated it into their national contexts, rejecting or transforming its features either through the decisions by code drafters and other policymakers or through the changes which plea bargaining underwent in its interactions with a different institutional setting and legal culture. In practice, though, there has been more convergence with American plea bargaining than the law-in-the-books may suggest, given, for instance, the weak control that Latin American judges tend to exercise over plea agreements and the widespread use of plea bargaining in some Latin American jurisdictions.

Through the introduction of plea bargaining, there has also been an administratization of criminal convictions in Latin America since prosecutors and the police now have a larger say in who gets convicted, for which criminal offense, and to which sentence. Moreover, prosecutors and the police make these decisions in proceedings that are not open and transparent to the public and that do not include the defendant’s rights attached to criminal trials at which the

⁶³ Sánchez Mejía (n 36) (finding that the introduction of plea bargaining possibly increased the female incarcerated population in Colombia); Ángela Zorro (n 58) (finding that plea bargaining increased the incarcerated male population while it reduced the incarcerated female population in Colombia in the first years of the implementation of the reform towards an accusatorial model).

⁶⁴ On the relationship between adversarial reforms and confinement or punitiveness levels in Chile, see, e.g., Máximo Langer and Ricardo Lillo, “Reforma a la justicia penal juvenil y adolescentes privados de Libertad en Chile: aportes empíricos para el debate” (2015) 19 *Política Criminal* 713 (on juvenile confinement); Javier Wilenmann, “Neoliberal Politics and State Modernization in Chilean Penal Evolution” (2020) 22 *Punishment and Society* 259; Isabel Arraigada, Javiera Farias, and Agustín Walker, “Evolución de la población penal en Chile desde 1991 a 2007: Aproximación a los efectos empíricos de la reforma procesal penal” (2021) 31 *Política Criminal*, 62–82.

⁶⁵ Langer (2021) (n 9); Langer in this Handbook (n 9); Langer and Sozzo (n 34).

elements of proof can be tested before a conviction is entered. Though in the law-in-the-books, Latin American jurisdictions have introduced safeguards in plea-bargaining proceedings that are not present in some other jurisdictions, the few available empirical studies show that these safeguards do not always work as such in actual practice in the region.

Plea bargaining and other mechanisms to reach criminal convictions without trial have become a fundamental component of Latin American criminal legal systems in recent decades and will be present for the foreseeable future. Legal and socio-legal research should further explore how these mechanisms are regulated and work in practice, how they fit with global plea bargaining trends and discussions, and whether and how they can advance the goals of democratic criminal legal systems in the region and beyond.

APPENDIX TO TABLE 6.1

^a Argentina is a federal country; each of its 23 provinces, as well as the Autonomous City of Buenos Aires, have their own criminal procedure code. There is also a code for the federal courts that have also regulated the national criminal and correctional courts of the City of Buenos Aires. In this last regard, it is necessary to mention two different codes: the National Criminal Procedure Code (Law 23.984) that was adopted in 1991 and the new Federal Criminal Procedure Code (Law 27.063) that was adopted in 2014 and has begun to be implemented in the federal courts of only a few provinces. The former Criminal Procedure Code put in place by Law 23.984 is commonly characterized as mixed rather than as adversarial, while the latter is characterized as adversarial. Table 6.1 refers to the regulation of *juicio abreviado* (roughly equivalent to plea bargaining) under the first of these codes (Law 23.984 of 1991) that is still applied in most federal courts and in the national criminal and correctional courts. The *juicio abreviado* (Art 431 bis) was introduced in the federal system and in the national criminal and correctional courts through an amendment to this code in 1997 (Law 24.825). A few judges have considered the *juicio abreviado* unconstitutional in Argentina by arguing that: (1) the suppression of the trial violates Art 18 of the National Constitution of the Republic of Argentina, which establishes that no person who lives in Argentina may be punished without trial; (2) the legal requirement that the defendant admits the crime and his participation in it violates the right against compulsory self-incrimination also established by Art 18 of the Constitution; and (3) it violates the right of defense also established in Art 18 of the Constitution, given that the prosecutor decides on the existence of the crime and who the perpetrators were, sets the sentence, and presents her proposal for judicial approval without any prior concrete act of material or legal defense and without production of evidence before the court. See, for instance, “Waszyliszyn, MA” [September 29, 1997] Tribunal Oral in lo Criminal no. 20, Causa 454; “Apolonio Osorio Sosa” [December 23, 1997] Tribunal Oral in lo Criminal No. 23, Causa 451; Cámara Nacional de Casación en lo Criminal y Correccional, Sala 2, CCC 7822/2011/TO1/CNC1, Reg. No. 361, opinion by judge Luis Fernando Niño, para 5.

^b Código de Procedimiento Penal de Bolivia (Criminal Procedure Code of Bolivia), approved by Law 1970 of March 25, 1999, Arts 373 and 374.

^c The Brazilian legal system has mechanisms that provide for ways to give a response to the case without a trial but also without reaching a formal criminal conviction, such as the *transação penal* (penal transaction) and the *acordos de não persecução* (no prosecution agreements). It also has cooperation agreements to obtain information and elements of proof from defendants in criminal investigations. But there is currently no mechanism to impose a conviction without trial in the Brazilian legal system. This is why we refer to Brazil in Table 6.1 as N/A (not applicable).

^d Código Procesal Penal de Chile (Criminal Procedure Code of Chile), adopted by Law 19.696, promulgated on September 29, 2000. There are three mechanisms that present similarities to plea bargaining in the Criminal Procedure Code sanctioned in 2000 in Chile: the *procedimiento monitorio* (monitory procedure), the *juicio simplificado con reconocimiento de culpabilidad* (simplified trial with admission of guilt), and the *procedimiento abreviado* (abbreviated procedure). See Máximo Langer, “Plea Bargaining, Conviction without Trial, and the Global Administratization of Criminal Convictions”

- (2021) 4 Annual Review of Criminology 377; and Máximo Langer, “The Diffusion of Plea Bargaining and the Global Administratization of Criminal Convictions” in this Handbook.
- ^c The reference is to the Criminal Procedure Code of Colombia, adopted by Law 906 of 2004.
- ^d See Decreto (Decree) 2700/1991 Art 37. The Criminal Procedure Code of Colombia of 1991 was not characterized as adversarial, but as a mixture of adversarial and inquisitorial systems.
- ^e The reference is to the Criminal Procedure Code of Costa Rica, adopted by Law No. 7.594, published on June 4, 1996, which established that the Code would come into effect on January 1, 1998. The *procedimiento abreviado* (abbreviated procedure) is regulated in articles 373 to 375.
- ^f The reference is to the *conformidad* (agreement) that the accused may express at the beginning of the trial, with the indictment filed by the prosecutor in the abbreviated procedure (*procedimiento abreviado*) requesting that a verdict be issued which accords with the indictment, after which the court may end the trial. See Ley de Procedimiento Penal [Criminal Procedure Law], Art 487.4. The CPL Cuba of 1977 preceded the wave of Latin American adversarial reforms and is not considered part of them.
- ^g The reference in the table is to Criminal Procedure Code of Dominican Republic of 2002 adopted by Law No. 76-02. The main regulations on *procedimiento abreviado* (abbreviated procedure) are Arts 363–8 of the code.
- ^h On *procedimiento penal abreviado* (abbreviated criminal procedure) as one of the innovations introduced by the Criminal Procedure Code of Dominican Republic of 2002, see, for instance, Manuel Hernández, “El Juicio Penal Abreviado: paralelismo República Dominicana-Estados Unidos (I)” (2018) <http://z101digital.com/el-juicio-penal-abreviado-paralelismo-republica-dominicana-estados-unidos-i/#:~:text=El%20instituto%20del%20Juicio%20Penal,cambio%20de%20su%20declaraci%C3%B3n%20de> accessed August 25, 2022.
- ⁱ The reference is to the Criminal Procedure Code of Ecuador of 2000, which regulated the *procedimiento abreviado* (abbreviated procedure) in Arts 369 and 370 and which was afterwards replaced by the CIOC Ecuador [Criminal Integral Organic Code] of 2014, currently in force.
- ^j On how the Criminal Procedure Code of Ecuador of 2000 innovated in this regard, see, for instance, Jorge Touma Endara, *Procedimiento Abreviado: Entre the Eficacia Judicial y el Derecho a la no Inculpación* (Corp. Ed. Nac. 2017) 10.
- ^k The reference is to the Criminal Procedure Code of El Salvador of 1998, adopted by Decreto Legislativo [Legislative Decree] No. 904, which introduced the *procedimiento abreviado* (abbreviated procedure) in its Arts 379 and 380, among others. This code was later replaced by the Criminal Procedure Code of 2009 that came into force in 2011.
- ^l On how the Criminal Procedure Code of El Salvador of 1998 innovated in this regard, see, for instance, José María Cansado Pérez et al., *Código Procesal Penal Comentado, Tomo 2* (Consejo Nacional de the Judicatura, 2004).
- ^m The reference is to the Criminal Procedure Code of Guatemala adopted by Decreto [Decree] 51-92 of September 28, 1992, which included the *procedimiento abreviado* (abbreviated procedure) in Arts 464 et seq.
- ⁿ On how the Criminal Procedure Code of Guatemala of 1992 innovated in this regard, see, for instance, Elfego Humberto Barrera Ortiz, *Aspectos considerativos del procedimiento abreviado y sus repercusiones en cuanto a las sentencias condenatorias* (Universidad de San Carlos de Guatemala, 2007), 26 (available at http://biblioteca.usac.edu.gt/tesis/04/04_7145.pdf (visited on August 19, 2022)).
- ^o The reference is to Criminal Procedure Code of Honduras adopted by the Legislative Branch by Decreto [Decree] 9-99-E of 1999, that came into force in 2002. The main regulations on *procedimiento abreviado* (abbreviated procedure) are Arts 403 and 404.
- ^p On how the Criminal Procedure Code of Honduras of 1999 innovated with the adoption of *procedimiento abreviado* (abbreviated procedure), see, for instance, Rigoberto Cuéllar Cruz, ‘El Significado de la Reforma Procesal Penal in Honduras Desde una Perspectiva de Política Criminal: Una Experiencia a Compartir’ (2003) 4 Rev. Derecho 101, 106.
- ^q In the case of Mexico, the reference is not to a criminal procedure code but rather to the constitutional reform of 2008 that included in Art 20 of the Mexican Constitution that the criminal process shall be adversarial and established in Art 20. A. VII. There is the possibility of ending the criminal process earlier with a verdict in cases in which the defendant admits his guilt and does not object to the use of this mechanism. Before the introduction of the National Criminal Procedure Code of 2014, each federative entity of Mexico adopted its own criminal procedure code and some of them adopted codes

characterized as adversarial in the 2000s and before 2008. The first was the legislation of Nueva Leon in 2004. See Francisco Rosendo Olivares, (2022). ‘El imputado en el procedimiento abreviado y la igualdad en el proceso penal acusatorio’ [2022] 4 *Revista Jurídica De Iure* 1.

- ⁱ The reference is to the Criminal Procedure Code of Nicaragua approved by Law No. 406 of 2001. There are two mechanisms in the Code that enable to reach a criminal conviction without a trial: the “acuerdo” [agreement] (Arts 61 and 62) and the *admission de hechos* (admission of guilt) (Art 271 and Art 305.2).
- ⁱⁱ On how the *Acuerdo* (agreement) was an innovation in Nicaraguan law by the Criminal Procedure Code of Nicaragua of 2001, see, for instance, email from Eilyn Cruz Rojas to Máximo Langer (15 July 2019).
- ⁱⁱⁱ The reference is to the Criminal Procedure Code of Panama adopted by Law 63 of 2008 in the provinces Coclé and Veraguas that came into force in the rest of the country by Law 66 of 2011. The main regulation of the *acuerdos* (agreements) is Art 220 of the code.
- ^{iv} The reference is to Criminal Procedure Code of Paraguay approved in 1998 by Law No. 1286/1998. The main regulations on *procedimiento abreviado* (abbreviated procedure) are Arts 420 and 421 of the code.
- ^v On the innovation that the Criminal Procedure Code of Paraguay represented in this regard, see, for instance, Corte Suprema de Justicia, *Código Procesal Penal de the República del Paraguay, Ley N 1.286/98*, Tomo III, (second updated edition, 2001) XVI (referring to the regulation on *procedimiento abreviado* (abbreviated procedure) in the Criminal Procedure Code of Paraguay of 1998 as akin to “a first testing phase on the use of this institution ...”).
- ^{vi} The reference is to the Criminal Procedure Code of Peru approved by Decreto Legislativo [Legislative Decree] No. 957, promulgated in 2004.
- ^{vii} The year 1994 in Table 6.1 refers to Law No. 26.320 of 1994 that introduced the possibility of agreements between the prosecutor and the defendant to end the case earlier for certain drug-trafficking offenses.
- ^{viii} Introduced by Law 19.293, published in the *Diario Oficial* (Official Diary) of 2015. This Criminal Procedure Code of Uruguay came into force in 2017 and its main regulations on “proceso abreviado” [abbreviated process] for adults are Arts 272 and 273.
- ^{ix} The abbreviated process was introduced by Law 19.436, Art 3, September 23, 2016, adopted until the new Criminal Procedure Code, characterized as adversarial, came into effect. On the novelty of these mechanisms in Uruguay law, see, for instance, Corte Suprema de Justicia de the República de Uruguay, Sentencia Definitiva no. 667/2018, May 28, 2018; Evangelina Torres Gugelmeier, “El Proceso Abreviado como Mecanismo de Resolución de Conflictos Penales. Incidencia en la Delincuencia Económica” [2019] 31 *Revista de Derecho de la Universidad de Montevideo* 47, 47, 55 and 57.
- ^x The reference is to Organic Criminal Procedure Code of Venezuela of 1998. The main regulation of the procedure by admission of guilt is in Art 375 of the code.
- ^{xi} The reference is to *Ley de Beneficios en el Proceso Penal* (Law of Benefits in the Criminal Process) of 1993, Arts 9, 10 and 11.

APPENDIX TO TABLE 6.2

- ^a Tables 6.2, 6.3, and 6.4 refer to the regulation of *juicio abreviado* (abbreviated trial) under the Código Procesal Penal de la Nación [Criminal Procedure Code of the Nation] (Law 23.984) [hereinafter CPC Argentina], Art 431 bis, which, as already explained, is still in force in most federal courts and in the national criminal and correctional courts of Argentina.
- ^b CPC Argentina (Ley 23.984), Art 431 bis, para 1 (the abbreviated trial is applicable when the prosecution considers that the imposition of less than six years of imprisonment in the case is enough).
- ^c CPC Argentina (Ley 23.984), Art 431 bis, paras 1 and 2.
- ^d Email from Eugenio Sarrabayrouse, judge of the National Cassation Criminal Court, December 9, 2022 (explaining that charge bargaining happens very often but the issue rarely reaches appeal courts).

- ^e CPC Argentina, Art 431 bis, last sentence. For an exception to this rule created by a trial court and confirmed on appeal, see “Amestoy,” *Cámara Nacional de Casación en lo Criminal y Correccional*, Sala 2, CCC 56144/2005/TO1/CFC3–CNC3, Reg. No. 844/2018, July 11, 2018.
- ^f Tables 6.2, 6.3, and 6.4 refer to the regulation of *procedimiento abreviado* (abbreviated procedure) under the Criminal Procedure Code of Bolivia of 1999 (hereinafter CPC Bolivia) whose main articles on the issue are Arts 373 and 374.
- ^g CPC Bolivia, Art 373.I., 301.I.4 and 326.I.
- ^h CPC Bolivia, Art 373.IV.
- ⁱ As previously discussed, there are three mechanisms that can be assimilated to plea bargaining in the Código Procesal Penal sanctioned in 2000 in Chile (hereinafter CPC Chile): *el procedimiento monitorio* (monitory procedure), *el juicio simplificado con reconocimiento de culpabilidad* (simplified trial with admission of guilt), and *el procedimiento abreviado* (abbreviated procedure). Tables 6.2, 6.3, and 6.4 refer to the *procedimiento abreviado* (abbreviated procedure) regulated in Arts 406 to 415.
- ^j CPC Chile, Art 406, first and para 2 (*procedimiento abreviado* applies to cases in which the prosecutor requests a punishment of up to ten years of imprisonment [presidio or reclusion] for theft and robbery or up to five years of imprisonment for other crimes).
- ^k CPC Chile, Art 407, first and para 2.
- ^l CPC Chile, Art 407, para 4; Corte Suprema de the República de Chile, Sala Segunda Penal, case 34694-2021, *Cristian Eduardo Vega Delgado contra Juzgado de Garantía Coquimbo*, May 28, 2021: “the legislator left to the office of the prosecution the authority to determine in which specific cases the application of abbreviated procedure may be requested [...] In this sense, the prosecutor may amend the charges or consider various conditions that may affect the responsibility [of the defendant] that were present in the specific case.” See, in the same direction, Corte Suprema de la República de Chile, Sala Segunda Penal, caso 22175-2021, *Vergada Sepulveda Pedro Delgado contra Sexto Juzgado de Garantía de Santiago*, March 30, 2021. For discussion by commentators about this issue, see, e.g., Manuel Rodríguez Vega, “Discrecionalidad del Ministerio Público and objeto del juicio abreviado” [2011], XXXVI *Revista de Derecho de la Pontificia Universidad Católica de Valparaíso* 495–529; Cristián Riego, “El procedimiento abreviado in la ley 20.931” [2017] 12 *Política Criminal* 1085–1105, 1089 (pointing out that prosecutors may dismiss neither the prosecution nor a portion of it under the legality principle).
- ^m CPC Chile, Art 406, last paragraph.
- ⁿ El Código de Procedimiento Penal [Criminal Procedure Code] of 2004 (hereinafter CPC Colombia) includes two mechanisms to impose convictions without trial: the *aceptación de la imputación* (guilty plea) (Art 293) and the *preacuerdos* (agreements) (Art 350 et seq.). The information in Tables 6.2, 6.3, and 6.4 refers to the *preacuerdos* (agreements) that are regulated in more detail than the other mechanism.
- ^o CPC Colombia, Art 349 establishes that the agreements may not be used on criminal offenses through whose commission the perpetrator obtained an economic benefit, unless at least 50 percent of that benefit is returned, and it is ensured that the remaining amount will be reimbursed afterwards. In addition, Law 1098 of 2006 establishes that there may not be sentencing reductions for agreements or negotiations between the prosecution and the defendant regarding certain crimes, such as homicides and certain sexual crimes against minors. There are other limitations established by Law 1121 of 2006, Art 26, that refer to the criminal offenses of terrorism, financing terrorism, extortive kidnapping, extortion, and connected offenses; and by Law 1761 of 2015, Art 5, that refer to the crime of femicide.
- ^p CPC Colombia, Arts 350, 352, and 367; Corte Constitucional, Sala Plena, Sentencia SU479/19, 2019, para 45, October 15.
- ^q CPC Colombia, Arts 350 and 351; Corte Constitucional, Sentencia C-1260/05 (the prosecutor has a certain margin of appreciation to determine the allegations against the defendant, but the prosecutor may not freely choose the charges and must act accordingly with the facts of the case; in exercising this authority, the prosecutor may not create new crimes and may only file the charges that under existing criminal law fit the final factual allegations (against the defendant)); Corte Suprema de Justicia, Sala de Casación Penal, Sentencia STP3081, March 10, 2016 (selecting the charges is under the authority of the prosecution); Corte Constitucional, Sala Plena, Sentencia SU479/19, October 15, 2019, paras 47, 48, 51 (describing a directive by the General Prosecutor, head of the office of the prosecution), 54,

- and 57 et seq. For a critical analysis, see Jhon Fredy Peña Bernal, “Los preacuerdos: legalidad, ficción legal and reducción de la pena” [2020] XL-108 *Revista de Derecho Penal and Criminología* 37.
- ^f Tables 6.2, 6.3, and 6.4 refer to the regulation of *procedimiento abreviado* (abbreviated procedure) in the Costa Rican Criminal Procedure Code of 1996 [hereinafter CPC Costa Rica], whose main articles in this regard are Arts 373 et seq.
- ^g CPC Costa Rica, Art 373, para 1. On the constitutionality of this temporal limitation, see Sala Constitucional de la Corte Suprema de Justicia, Sentencia no 04983, June 28, 2000. Despite the clarity of the text of the CPC, some caselaw has held that it is legal to use the *procedimiento abreviado* after the opening of the trial is ordered. See, for instance, Javier Llobet Rodríguez (2012) *Proceso penal comentado (Código procesal penal comentado)* (5th edición, Editorial Jurídica Continental, 2012), Commentary to CPC, Art 373 (citing, among others, Sala Constitucional de la Corte Suprema de Justicia, Sentencia no 5836-99, July 27, 1999; Sala Constitucional de la Corte Suprema de Justicia, Sentencia no 7915-2004, September 8, 2004).
- ^h However, CPC Costa Rica, Art 22.b does allow as part of its regulation of the opportunity principle the partial dismissal of charges in cases of organized, violent, serious, or complex crimes if the defendant efficiently collaborates or provides other assistance to the investigation.
- ⁱ CPC Costa Rica, Art 373, last para.
- ^j The reference in Tables 6.2, 6.3, and 6.4 is to Ley de Procedimiento Penal [Criminal Procedure Law] de Cuba (hereinafter CPL Cuba), adopted by Ley 5 de 13 August 1977, that regulates the *conformidad* (defendant’s agreement) in Art 487.4, among others.
- ^k CPL Cuba, Art 481, according to which abbreviated procedure (within which the defendant expresses their agreement with the indictment at the start of the trial) may be applied to cases for criminal offenses that can be punished with one to eight years of imprisonment when: “1. The defendant was caught red-handed; 2. Being clear that the crime was committed and the defendant’s participation in it, the defendant has admitted their guilt.”
- ^l CPL Cuba, Art 487.4.
- ^m See José Candia Ferreyra, “La Sentencia de Conformidad en el Procedimiento Abreviado Cubano” (1997) 89 *Boletín Mexicano de Derecho Comparado* 415, 419–20 and 429–30.
- ⁿ *ibid* 428–9.
- ^{aa} There are two mechanisms in the Código Procesal Penal [Criminal Procedure Code] of the República Dominicana of 2002 (hereinafter CPC Dominican Republic) that enable reaching a criminal conviction without a trial: the *admisión de culpabilidad en el procedimiento por contravenciones* (the admission of guilt in the petty offenses procedure) (Art 356) and the *procedimiento abreviado* (abbreviated procedure) that admits full agreements (Arts 363–5) and partial agreements (Art 366–8). The reference in Tables 6.2, 6.3, and 6.4 is to the abbreviated procedure regulated in CPC Dominican Republic, Arts 363–8.
- ^{bb} CPC Dominican Republic, Art 363.1 (limiting the application of abbreviated procedure to a criminal act that may receive a sentence of up to 20 years of imprisonment). However, this may include serious crimes like *asesinato* (typically a form of aggravated murder). See, e.g., Primer Tribunal Colegiado de la Cámara Penal del Juzgado de Primera Instancia del Distrito Judicial de Santo Domingo, Sentencia Penal Núm. 54803-2017-SEN-00233, Expediente Núm. 223-020-01-2015-04932, April 6, 2017.
- ^{cc} CPC Dominican Republic, Art 363, para 1.
- ^{dd} CPC Dominican Republic, Art 366: “In any case, the parties may exclusively agree upon the charges and request a trial on the sentence.”
- ^{ee} CPC Dominican Republic, Art 363, last para.
- ^{ff} The reference in Tables 6.2, 6.3, and 6.4 is to Código Orgánico Integral Penal [Organic Integral Penal Code; hereinafter OIPC Ecuador] of Ecuador of 2014, that replaced the Criminal Procedure Code of Ecuador of 2000 to which we referred in Table 6.1 that initially introduced “procedimiento abreviado” in Ecuador. The OIPC Ecuador of 2014 regulates the “procedimiento abreviado” in Arts 635–9.
- ^{gg} OIPC Ecuador, Art 635.1: “The criminal offenses punished with a maximum of ten years of imprisonment can be subject to *procedimiento abreviado* (abbreviated procedure), except for the crimes of kidnapping, against sexual and reproductive integrity, and in the case of crimes of sexual violation against a woman or family members.”
- ^{hh} OIPC Ecuador, Art 635.2. See also Art 651.1.13 on the unified, special, and expeditious procedure. There was a discussion among Ecuadorian courts on whether the application of *procedimiento abre-*

- viado (abbreviated procedure) can be extended to the trial given that Art 221.2 of the Código Orgánico de la Función Judicial [Organic Code of the Judicial Function] establishes that criminal court have jurisdiction to apply the “procedimiento penal abreviado” when it is proposed to them. But such a discussion was decided in favor of the regulation of the OIPC Ecuador, Art 635.2, by the Supreme Court of Ecuador, Resolución No. 09-2018, Registro Oficial [Official Registry] No. 347, October 15, 2018.
- ⁱⁱ OIPC Ecuador, Art 636, para 1: “The prosecutor will propose to the defendant and the public defender or private defense attorney to consent to apply *procedimiento abreviado* (abbreviated procedure) to the case and, in case of consent, they will reach an agreement on the charge and the punishment.” See also OIPC, Art 638. Cf Jorge Touma Endara, *Procedimiento Abreviado: Entre the Eficacia Judicial y el Derecho a la no Inculpación* (Corp. Ed. Nac. 2017) 110.
- ^{ji} OIPC Ecuador, Art 635.5.
- ^{kk} Tables 6.2, 6.3, and 6.4 refer to the regulation of *procedimiento abreviado* (abbreviated procedure) in Código Procesal Penal of El Salvador de 2009 (hereinafter Criminal Procedure Code of El Salvador or CPC El Salvador), adopted by Decreto No. of 2009, that came into force in 2011, whose main regulations on *procedimiento abreviado* (abbreviated procedure) are Arts 417 and 418.
- ^{ll} See A.B. Zacatares, “Procedimiento Abreviado Penal in El Salvador” (2015) <https://cupdf.com/document/procedimiento-abreviado-pnal-en-el-salvador.html?page=2> accessed August 19, 2022).
- ^{mmm} CPC El Salvador, Art 417.
- ⁿⁿ PP El Salvador, Arts 18.1, 20, and 22.
- ^{oo} CPC El Salvador, Art 417, last sentence.
- ^{pp} There are two mechanisms that enable a criminal conviction without trial in Guatemala under the CPC Guatemala originally adopted in 1992: the *procedimiento abreviado* (abbreviated procedure) (CPC, Arts 464–6) and the *aceptación de cargos* (guilty plea) introduced to the CPC Guatemala in 2019 through Arts 491 bis–491 quaterdecies. Tables 6.2, 6.3, and 6.4 refer to this last mechanism because it covers a larger number of crimes.
- ^{qq} CPC Guatemala, Art 491 Quarter. Crimes excluded from a sentence reduction are, among others, torture, extrajudicial execution, aggravated robbery, femicide, and crimes established by the *Ley contra la Narcoactividad* (Law against Drug Activity). Regarding *procedimiento abreviado* (abbreviated procedure), the prosecution may request it if it considered sufficient a sentence of no more than five years of imprisonment. CPC Guatemala, Art 464.
- ^{rr} CPC Guatemala, Art 491 bis.
- ^{ss} CPC Guatemala, Art 491 septies.
- ^{tt} CPC Guatemala, Art 25.6.
- ^{uu} The Código Procesal Penal [Criminal Procedure Code] of Honduras (hereinafter CPC Honduras), already referred to and still in force, also presents the *conformidad del imputado con la acusación* (the defendant’s agreement with the indictment) (see Art 322) and the “*aceptación de culpabilidad en el juicio por faltas*” [admission of guilty at petty offense trial] (Arts 425 and 429) as other ways to reach a criminal conviction without producing any evidence at trial. Tables 6.2, 6.3, and 6.4 refer to “*procedimiento abreviado*,” whose main regulations are in CPC Honduras, Arts 403 and 404.
- ^{vv} Except in the case of recidivism. CPC Honduras, Art 403.
- ^{ww} CPC Honduras, Art 403/1.
- ^{xx} CPC Honduras, Art 28.5. The Criminal Procedure Code also establishes that the superior of the prosecutor of the case must only approve it if the defendant does not try to alter the factual allegations or to transform the criminal offense into a less serious one. CPC Honduras, Art 403.3.b.
- ^{yy} CPC Honduras, Art 403, last paragraph.
- ^{zz} The reference is to Código Nacional de Procedimientos Penales [National Criminal Procedure Code] of Mexico de 2014 (hereinafter NCPC Mexico), Arts 201–207.
- ^{aaa} NCPC Mexico, Art 202, para 4.
- ^{bbb} NCPC Mexico, Art 202, para 1; Suprema Corte de Justicia, Primera Sala, Caso 29442, Resolución No. 1a/J. 10/2020 (10a), August 31, 2020 (judicial thesis establishing that at the oral trial stage the case may be adjudicated through a *procedimiento abreviado* (abbreviated procedure)).
- ^{ccc} See Elías Gerardo Cepeda Morado, *El Procedimiento Abreviado en el Sistema Jurídico Mexicano: Naturaleza, Efectos, Reglas y Condiciones* (Coordinación Editorial del Poder Judicial del Estado de Nueva León, 2016) 29–31, 41–4.
- ^{ddd} NCPC, Art 256, V.

^{ccc} NCPC, Art 207.

^{fff} The reference is here to Código Procesal Penal [Criminal Procedure Code] of Nicaragua de 2001 [hereinafter CPC Nicaragua]. There are two mechanisms in this code that enable reaching a criminal conviction without a trial: the “acuerdo” [agreement] (Arts 61 and 62) and the “admisión de hechos” [admission of factual allegations] (Art 271 and Art 305.2). Tables 6.2, 6.3, and 6.4 refer to the former, which has a more detailed regulation. On the limited use of these agreements in the initial years of implementation of the CPC Nicaragua, see Ileana Arduino, “La reforma procesal penal en Nicaragua,” in Cristián Riego (ed), *Reformas Procesales Penal en América Latina: Resultados del Proyecto de Seguimiento, IV etapa*, (Centro de Estudios de Justicia de las Américas, 2007) 145, 177–9. On the temporal duration of the proceedings in the case of agreements, see *ibid*, at 180–2.

^{ggg} Karina Violeta Camacho Delgado, Ana María Álvarez Hernández and Elery Franks Cruz Salgado, *Principio de Oportunidad en el Proceso Penal Nicaragüense y su Aplicación en los Ministerios Públicos de León and Chinandega en el Año 2005* (Bachelor of Law thesis, National Autonomous University of Nicaragua, 2006) 78–80 (the agreement can proceed in any criminal case, without distinguishing among criminal offenses). But CPC, Art 55, establishes that the opportunity principle (of which the agreement is one of its expressions) will not be applicable in crimes against the State or committed by public officials appointed by the President of the Republic or the National Assembly or that were popularly elected.

^{hhh} CPC Nicaragua, Art 61, para 1. However, “as prosecutorial institutional policy, the General Prosecution has determined that the last procedural step to file such a request, and unless the particularities of the case require otherwise, is until evidence is produced at the oral trial stage.” Camacho Delgado, Álvarez Hernández, and Cruz Salgado, *ibid*, 79.

ⁱⁱⁱ CPC Nicaragua, Art 61 para 1 (through the agreement it is possible to not press some charges, or limit the charges to some offense or offenses and reduce the degree of participation in the criminal offense by the defendant); Art 59.1 (when the defendant effectively collaborates with the investigation, provides essential information to stop the ongoing commission of the offense or that other offenses be committed, or helps to establish the offense under investigation or other connected offenses, the office of the prosecution may not press any or some charges if the offense subject to the opportunity principle is less serious than the offense whose prosecution the defendant facilitates, or the connected offense that is not prosecuted is less serious than the offense whose prosecution the defendant facilitates). On the limits of what can be agreed upon the factual allegations and the charges, see Camacho Delgado, Álvarez Hernández, and Cruz Salgado (n ggg) 86, arguing that the agreement may not be used regarding the stages of execution of the offense and the charges.

^{jjj} CPC Nicaragua, Art 61, para 5 (the prosecution may request that the agreement be kept confidential, to not interfere with another ongoing investigation), and Art 62 (referring to the commitment by the accused in the agreement to testify against another). See also Yesenia Benita Larios Rojas and Eleyne Patricia Grijalva Espinoza, *Aplicación del acuerdo, como manifestación del principio de oportunidad en el Departamento de León en el año 2005* (Bachelor of Law thesis, National Autonomous University of Nicaragua, 2007) 94.

^{kkk} The Table refers to the *Acuerdos* (agreements) regulated in *Código de Procedimiento Penal Panameño* (Panamanian Criminal Procedure Code) of 2008 (hereinafter CPC Panama), Art 220. Other ways to reach a criminal conviction without a trial are the *procedimiento simplificado inmediato* (simplified immediate procedure) (Art 282), the *procedimiento directo inmediato* (direct immediate procedure) (Art 284) and the *procedimiento simplificado* (simplified procedure) (Art 454 a 460).

^{lll} CPC Panama, Art 220, para 1.

^{mmmm} CPC Panama, Art 220, para 3, establishes that the agreement may include a sentencing reduction or not pressing charges.

ⁿⁿⁿⁿ The reference is to *procedimiento abreviado* (abbreviated procedure) under the Código Procesal Penal [Criminal Procedure Code] of Paraguay (hereinafter CPC Paraguay), Arts 420 and 421.

^{ooo} CPC Paraguay, Art 420.1) (limiting the application of abbreviated procedure to criminal offenses that have a maximum sentence of less than five years of imprisonment). See also Corte Suprema de Justicia de la República del Paraguay, *Acuerdo y Sentencia N. 1298*, September 16, 2016 (the abbreviated process may only be used for *delitos* (felonies), not for *crímenes* (crimes)).

^{ppp} CPC Paraguay, Art 420, para 1.

^{qqq} CPC Paraguay, Art 420, last paragraph.

- ^{trr} The reference is to Código Procesal Penal [Criminal Procedure Code] of Peru (hereinafter CPC Peru) approved by Decreto Legislativo [Legislative Decree] No. 957 of 2004. There are three mechanisms that enable reaching a criminal conviction without a trial: the *conclusión anticipada del juicio* (early trial conclusion) (Art 372), the *proceso de terminación anticipada* (early process termination) (Art 468 et seq.), and the *admisión de culpabilidad en el proceso de faltas* (admission of guilt in the petty offense process) (Art 484.3). Tables 6.2, 6.3, and 6.4 refer to the *proceso de terminación anticipada* (early process termination) given that it has the broadest temporal reach and is regulated in more detail. There is also the special process under Law No. 28008 on custom criminal offenses that we do not discuss in this chapter.
- ^{sss} CPC Peru, Art 471, para 2 (excluding from the sentencing reduction in the early process termination, among others, cases in which the defendant is charged for the commission of a criminal offense as a member of a criminal organization, or the defendant has a relationship with a criminal organization).
- ^{ttt} CPC Peru, Art 468.1.
- ^{uuu} CPC Peru, Art 468.5 (allowing an agreement on the circumstances of the criminal act). CPC Peru, Art 468.6 indicates that the judge must consider that the charges are reasonable and there are enough elements of proof to impose the verdict with the sentence indicated in the agreement. The Supreme Court has also said that the judge's legality control includes the relationship between the charges, the factual allegations, and the circumstances of the criminal act. Corte Suprema de Justicia de la República del Perú, V Pleno Jurisdiccional de las Salas Penales Permanente and Transitorias, Acuerdo Plenario No. 5-2008/CJ-116, November 13, 2009, paragraph 10.A.
- ^{vvv} In prosecutions with multiple criminal acts or defendants, agreement by all defendants for all the criminal acts charged against each of them is required. However, the judge may approve partial agreements if the lack of agreement is in relation to connected criminal offenses or in relation to the other defendants, unless this undermines the investigation, or the joinder of cases is indispensable. CPC Peru, Art 469.
- ^{www} The Código Procesal Penal [Criminal Procedure Code] de la República Oriental del Uruguay (hereinafter CPC Uruguay), with its amendment by Law 19.924 of the end of 2020, establishes two mechanisms to reach a criminal conviction without a trial: the *procedimiento abreviado* (abbreviated procedure) (Arts 272–273ter) and the *admisión de su responsabilidad en los hechos por parte del imputado en el proceso simplificado* (defendant's admission of guilt in the simplified procedure) (Art 273 ter 9 and 10). The reference in Tables 6.2, 6.3, and 6.4 is to the abbreviated process established in CPC Uruguay, Arts 272–273 ter, given that is the one with the broader reach of these two mechanisms.
- ^{xxx} CPC Uruguay, Art 272, para 1: “the abbreviated procedure will be applied to adjudicate offenses that are punished with a minimum sentence not higher than four years of imprisonment (*penitenciaría*) or with a punishment different from imprisonment. The abbreviated procedure will be applied neither to the homicide with specially aggravating circumstances (Criminal Code Uruguay, Art 311) nor to the homicide with very specially aggravating circumstances (Criminal Code Uruguay, Art 312).”
- ^{yyy} CPC Uruguay, Art 273.1.
- ^{zzz} Evangelina Torres Gugelmeier, “El Proceso Abreviado como Mecanismo de Resolución de Conflictos Penales. Incidencia en la Delincuencia Económica” [2019] 31 Revista de Derecho de la Universidad de Montevideo 47–68, 59–60 (citing William Corujo Guardia, “Proceso Abreviado: el Proceso Mercado” Estudios *Sobre el Nuevo Proceso Penal; implementación y puesta en práctica in El Nuevo Proceso Penal* 196 (Ed FCU, Montevideo, 2018); and Walter Guerra Pérez, “La Etapa de Conocimiento del Proceso Abreviado” Curso *Sobre el Nuevo Código del Proceso Penal, Ley N 19.293*, Vol. 2 282 (Ed FCU, 2019)).
- ^{aaaa} CPC Uruguay, Art 272 para 2. CPC Uruguay, Art 272 para 3, adds: “In this case, the agreement reached with a defendant cannot be used as evidence against the other defendants.”
- ^{bbbb} The reference is to Código Orgánico Procesal Penal [Organic Criminal Procedure Code] of Venezuela of 1998 (hereinafter OCPV Venezuela). This code includes two mechanisms to reach criminal convictions without a trial: the *admisión de hechos del procedimiento para el juzgamiento de los delitos menos graves* (the admission of guilt in the proceeding for the adjudication of less serious offenses) (Art 371) and the *procedimiento por admisión de hechos* [the proceeding by admission of guilt] (Art 375 and Art 405). Tables 6.2, 6.3, and 6.4 refer to the latter.
- ^{cccc} @leo_rodriguezp, *Procedimiento Especial de Admisión de los Hechos Desde la Perspectiva de la Tutela Efectiva* <https://derechovenezolano.wordpress.com/2020/12/16/procedimiento-especial-de>

-admission-de-los-hechos-desde-the-perspectiva-de-the-tutela-efectiva-por-leo_rodriguezp/ accessed August 28, 2022: “the special procedure by admission of guilt is applicable to the adjudication of any of the criminal offenses in force.”

^{dddd} OCPC Venezuela, Art 375, para 1. See also Circuito Judicial Penal del Estado Monagas, Corte de Apelaciones, Maturín, February 4, 2014, Asunto principal: NP01-P-2010-001595, Asunto: NP01-R-2013-000081.

^{eeee} OCPC Venezuela, Art 375, para 3. However, the Tribunal Supremo de Justicia [Supreme Tribunal of Justice], Sala Constitucional, Expediente No. 16-0203, Sentencia no. 752, August 12, 2016, 24, has held that in the special proceeding by admission of guilt it is not possible, under any circumstance, to issue a criminal conviction for a criminal offense different from the one admitted by the defendant in relation to the indictment by the public or private prosecutor, since this would affect the fundamental rights of all the parties of the criminal process. On the application of the opportunity principle to cases of organized or violent crime in which the defendant effectively collaborates with the investigation or to prevent the commission of crimes, see OCPC Venezuela, Art 40.

APPENDIX TO TABLE 6.3

^a CPC Argentina, Art 431 bis.2.

^b CPC Argentina, Art 431 bis.2.

^c CPC Argentina, Arts 106 (the defense attorney shall have the right to examine the judicial dossier before accepting their appointment) and 204 (the records of the investigation will be open for the parties and their defense attorneys).

^d CPC Argentina, Art 431 bis.2.

^e CPC Argentina, Art 431 bis.2. On the right to counsel more generally, see, e.g., CPC Argentina (Ley 23.984), Arts 104 and 107.

^f The court must meet face-to-face with the defendant and will listen to anything he or she wants to say. CPC Argentina, Art 431 bis.3. But the CPC Argentina does not explicitly establish that the court must confirm the voluntariness of the agreement. However, the caselaw has considered that the voluntariness of the defendant's agreement or consent is one of the requirements of the abbreviated trial. See, e.g., Cámara Nacional de Casación en lo Criminal y Correccional, Sala 2, CCC 7822/2011/TO1/CNC1, Reg No 361, case “Siri,” May 12, 2017, opinion by judge Luis Fernando Niño and opinion by judge Daniel Morín (considering that the defendant's agreement was not voluntary given the prosecutor's threat of a non-suspended sentence if the defendant did not agree with the application of the abbreviated trial); Cámara Nacional de Casación en lo Criminal y Correccional, Sala 2, CCC 72764/2015/TO1/CNC1, Reg No 3349/2020, case “Castro,” December 10, 2020; Cámara Nacional de Casación en lo Criminal y Correccional, Sala 2, CCC 45471/2017/TO1/CNC1, Reg No 3434/2020, case “Levrero,” December 23, 2020; Cámara Nacional de Casación en lo Criminal y Correccional, Sala 2, CCC 39455/2013/TO1/CNC2, Reg. No. 1224/2021, case “Martínez,” September 1, 2021.

^g But the court must meet face-to-face with the defendant and will listen to anything he wants to say. CPC Argentina, Art 431 bis.3.

^h CPC Argentina, Art 431 bis.3 (the tribunal must solicit the private prosecutor's opinion). On the rights of the victim more generally, see CPC Argentina, Art 81.

ⁱ CPC Argentina, Art 431 bis.6. See also, e.g., Corte Suprema de la Nación Argentina, “Recurso de hecho deducido por la Defensora Oficial de Héctor José Aráoz en la causa Aráoz, Héctor José s/ causa no 10.410,” May 17, 2011; Cámara Nacional de Casación en lo Criminal y Correccional, Sala 2, CCC 38152/2016/TO1/CNC1, Reg. No. 658/2018, May 28, 2019, opinion by Judge Horacio Días, para I (the agreement that the case was adjudicated through an abbreviated trial did not imply a waiver that the verdict articulated the grounds for its conclusions) and opinion by Judge Eugenio Sarabayrouse, para I (in the cases under CPC Argentina, Art 431 bis, the rule must be the admissibility of the appeal and this applies even when the court's verdict stayed within the terms of the agreement); Cámara Nacional de Casación en lo Criminal y Correccional, Sala 2, CCC 72764/2015/TO1/CNC1, Reg No. 3349/2020, case “Castro,” December 10, 2020; Cámara Nacional de Casación en lo Criminal

- y Correccional, Sala 2, CCC 7822/2011/TO1/CNC1, Reg No 361, case “Siri,” opinion by Judge Eugenio Sarabayrouse, para 2.d.
- ^j CPC Bolivia, Arts 373.I and II, and 374.2.
- ^k CPC Bolivia, Arts 373.II, and 374.3.
- ^l CPC Bolivia, Arts 94, 281 (*contrario sensu*), and 323, last sentence. The Tribunal Constitucional Plurinacional [Plurinational Constitutional Tribunal] de Bolivia, Sentencia Constitucional Plurinacional 0048/2017-S1, Sucre, 15 February 2017, citing 1659/2004-R October 11 said: “the application for an abbreviated procedure implicitly contains an indictment in which the sentence is required; consequently, it is necessary to present with it all the elements of proof, explaining what each of these elements of proof demonstrate.”
- ^m The CPC says that the defendant may present its request for a *procedimiento abreviado* to the prosecutor. CPC Bolivia, Art 326.II also establishes that when the prosecutor presents the request for a *procedimiento abreviado* [to the court], the request must include the agreement by the defendant and her defense attorney. CPC Bolivia, Art 373.II.
- ⁿ CPC Bolivia, Art 373.II (requiring the agreement by the defense attorney). On the regulation of the right to counsel more generally, see CPC Bolivia, Art 9 and 94.
- ^o *ibid* Art 374.
- ^p *ibid* Art 374, first sentence; 328.II and 113.
- ^q *ibid* 326.I (the victim or private prosecutor may articulate the grounds for their opposition to the application of the abbreviated procedure) and 374, first sentence (the judge will listen to the victim or the private prosecutor). On the need to notify the victim on the hearing about the abbreviated procedure, see, e.g., Tribunal Supremo de Justicia, Sala Penal Segunda, Auto Supremo No. 109/2013-RRC, Sucre, April 22, 2013.
- ^r CPC Bolivia, Art 407, says that the “recurso de apelación restringida” (restricted appeal) may only be filed against verdicts and Art 123 includes among the verdicts those issued at the end of an abbreviated procedure. There is also caselaw that establishes the right to appeal an abbreviated procedure verdict. See Tribunal Constitucional Plurinacional de Bolivia, Sentencia Constitucional Plurinacional 0423/2018-S4, Sucre, August 15, 2019, Sala Cuarta Especializada <https://jurisprudenciaconstitucional.com/resolucion/36758-sentencia-constitucional-plurinacional-0423-2018-s4> accessed August 17, 2022; Tribunal Supremo de Justicia, Sala Penal, Auto Supremo No 801/2018-RRC, September 10, 2018; Tribunal Supremo de Justicia, Sala Penal, Auto Supremo No 079/2021-RA, March 15, 2021; Tribunal Supremo de Justicia, Sala Penal, Auto Supremo No. 024/2022RA, February 15, 2022.
- ^s CPC Chile, Art 182: “The defendant and the other participants in the proceedings may examine and obtain copies, at their cost, of the recordings and documents of the prosecutor’s investigation and those of the police investigation.” See also *ibid* Arts 227 and 228.
- ^t *ibid* Arts 9, 103 bis, 269, and 413.b (requiring the agreement by the defense).
- ^u *ibid* Art 409.
- ^v *ibid* Art 411.
- ^w *ibid* Art 408 (the private prosecutor may oppose the application of the abbreviated procedure in certain cases).
- ^x *ibid* Art 414.
- ^y CPC Colombia, Art 8.j includes the defendant’s right to request the production of, to know, and to challenge the evidence; and Art 15 establishes that the parties shall have the right to know and to challenge the evidence. But Art 288 says that when the prosecution files the initial charge (“formulación de la imputación”), the prosecutor needs to disclose neither the elements of proof, nor the information in its power, and the defendant may plead guilty and get a sentencing discount accordingly with Art 351. See also Corte Constitucional, Sentencia C-1260/05. Consequently, the defendant does not have a right to access the elements of proof collected by the authorities if he pleads guilty or reaches an agreement based on the initial charge and before the prosecutor’s filing of the indictment (“formulación de la acusación”). The Constitution of Colombia, Art 250, and CPC Colombia, Art 337, require that the indictment includes the disclosure of evidence. In that sense, in the guilty plea and the agreement based on the indictment, the accused does have access to the elements of proof in the prosecution’s power. On the disclosure of evidence, see also CPC Colombia, Art 344 et seq.
- ^z CPC Colombia, Arts 348 and 350.
- ^{aa} *ibid* Arts 8.l and 354. See also Corte Constitucional, Sentencia C-1260/05.

^{bb} *ibid* Art 131 and Art 368.

^{cc} Once the agreements are approved, the judge will hold a hearing to issue the verdict. *ibid* Art 351, para 5. It is also necessary that the defendant be personally interrogated to verify the voluntariness of his decision.

^{dd} CPP Colombia, Art 350, was “declared conditionally constitutional [...] by the Constitutional Court through Sentencia C-516-07 of 11 July 2007, Magistrate Opinion by Dr. Jaime Córdoba Triviño; “in the understanding that the victim may also participate in the agreements and pre-agreements between the prosecution and the defendant or accused, for which the victim must be heard and informed about the agreement by the prosecutor and the judge in charge of approving the agreement.” See Jurisprudencia Vigencia sobre Art 350, www.secretariassenado.gov.co/senado/basedoc/ley_0906_2004_pr008.html accessed August 16, 2022. See Corte Constitucional, Sala Plena, Sentencia SU479/19, October 15, 2019.

^{ee} CPC Colombia, Art 176; Corte Suprema de Justicia, Auto de casación del 16 de mayo de 2007, rad núm 27218; CPC Colombia, Art 351, last para; Corte Constitucional, Sentencia C-516-07, July 11, 2007, Magistrate Opinion by Ponente Dr Jaime Córdoba Triviño.

^{ff} CPC Costa Rica, Art 373.a.

^{gg} *ibid*.

^{hh} *ibid* Art 92, para 2, Arts 275, 295, 316, and 317.

ⁱⁱ CPC Costa Rica regulations specifically on *procedimiento abreviado* do not establish this requirement. But CPC, Art 13, does establish it.

^{jj} The CPC Costa Rica does not mention the issue. But the caselaw has established this requirement. See, e.g., Frank Harbottle Quirós, “Control Jurisdiccional ante la Negativa del Ministerio Público a Pactar un Procedimiento Abreviado en Material Penal de Adultos: Criterios Asumidos por la Jurisprudencia Costarricense” (2014) 112 Revista Judicial de Costa Rica 136, 137, https://escuelajudicialpj.poder-judicial.go.cr/Archivos/documentos/revs_juds/Rev_jud%20112/PDFs/06_archivo.pdf citing Sala Constitucional de la Corte Suprema de Justicia [Constitutional Chamber of the Supreme Court of Justice], Sentencia 1998-04864, de las quince horas con veintisiete minutos del ocho de julio mil novecientos noventa y ocho; and, in the same direction, by the same Constitutional Chamber, among others, Sentencia 2001-03113, de las ocho horas con cincuenta y un minutos del cinco de abril de dos mil uno.

^{kk} CPC Costa Rica, Art 375, para 1 (after receiving the dossier, the court will issue its verdict unless it considers appropriate to hear the parties and the victim whose address is known at an oral hearing).

^{ll} *ibid* Art 71.3.e (the victim whose address is known will be heard). The private prosecutor and the civil actor may also participate.

^{mmm} *ibid*, Art 375, last paragraph.

ⁿⁿ CPL Cuba, Art 487.4 (the accused or his defense attorney must express their agreement that a verdict be issued accordingly with the indictment).

^{oo} *ibid* Art 487.4 (the accused or his defense attorney must agree with the indictment).

^{pp} *ibid* Art 485, para 2, and Art 487.1. On the access to the dossier or records of the investigation in the CPL Cuba, see also Art 108, para 1; Art 247, last para; Art 249.2; Art 281; Art 283.

^{qq} See José Candia Ferreyra, “La Sentencia de Conformidad en el Procedimiento Abreviado Cubano” (1997) 89 Boletín Mexicano de Derecho Comparado 419–20 and 429–30.

^{rr} CPL Cuba, Art 487.1. See also *ibid*, Art 485, para 1, that establishes that from the moment in which the prosecutor’s decision to apply the “procedimiento abreviado” is communicated to the accused, the accused will be a party in the process and may appoint a defense attorney. CPL Cuba, Art 485 para 3, adds that if the accused does not appoint counsel, or counsel does not show up or does not make any pleadings, the instructor closes the dossier and sends it to the prosecutor. CPL Cuba, Arts 281–3 establishes that for the opening of the oral trial, the court will appoint a defense attorney for the defendant if the defendant does not appoint one.

^{ss} CPL Cuba, Arts 58.6 and 487.8. Art 487.6 establishes that the verdict will be declared immediately into effect if, when issued, the parties express their agreement with it.

^{tt} CPC Dominican Republic, Art 363.2.

^{uu} *ibid* Art 363.2.

^{vv} *ibid* Art 290 (only the parties may examine the files of the procedure).

- ^{ww} The CPC Dominican Republic Art 366 says that the parties may agree exclusively on the facts of the case in the partial agreements. Regarding the full agreements, the office of the prosecution may propose the application of the abbreviated trial when the defendant admits the factual allegations against him, consents to the application of this procedure, and agrees on the amount and type of punishment and on the civil interests. CPC Dominican Republic, Art 363.2.
- ^{xx} The defense attorney must attest that the defendant has voluntarily and intelligently consented to all the points of the agreement. CPC Dominican Republic, Art 363.3. On the right to defense more generally general in the CPC Dominican Republic, see Art 18.
- ^{yy} *ibid* Art 364, para 2.
- ^{zz} See, e.g., Juzgado de la Instrucción del Distrito Judicial de Villa Altagracia, Judge Pedro M. Ramírez Salce, Sentencia 006-2015, 2015.
- ^{aaa} The private prosecutor must be convened to a hearing with the other parties and must be heard. CPC Dominican Republic, Art 364, para 2. On the victim's rights in the CPC Dominican Republic, see Art 84.
- ^{bbb} The verdict is appealable, but the parties may waive the appeal as part of the agreement. CPC Dominican Republic, Art 21 (the defendant has a right to appeal against criminal convictions) and Art 364, para 4 (the abbreviated procedure verdict is appealable); Primer Tribunal Colegiado de the Cámara Penal del Juzgado de Primera Instancia del Distrito Judicial de Santo Domingo, Sentencia Penal Núm 54803-2017-SS-SEN-00233, Expediente Núm 223-020-01-2015-04932, April 6, 2017, 13, Aspectos Procesales, para 1.
- ^{ccc} OIPC Ecuador, Art 635.3 and Art 637 para 3. See also Corte Constitucional del Ecuador, Sentencia No. 189-19-JH/21, Jurisprudencia vinculante, 8 December 2021, paras 60, 68–9, and 73.
- ^{ddd} OIPC Ecuador, Art 635.3. See also Corte Constitucional del Ecuador, Sentencia No 189-19-JH/21, Jurisprudencia vinculante, 8 December 2021, para 67.
- ^{eee} Constitución de la República del Ecuador, Art 76.7.d; OIPC Ecuador, Arts 5, 454, 487, 490, and 584. This last article is applied unevenly depending on the prosecutor. Some prosecutors do not give access to all the records of the investigation, and it is necessary to file administrative, judicial, and even constitutional actions to access it. See email from Fernando Yávar Umpiérrez to Máximo Langer on October 10, 2022 (on file with the authors). On the duty of prosecutors to give access to the records of the investigation to the defendant in the abbreviated procedure, see Corte Constitucional del Ecuador, Sentencia No 189-19-JH/21, Jurisprudencia vinculante, December 8, 2021, paras 72 (citing OIPC Ecuador, Art 584) and 74.
- ^{fff} OIPC Ecuador establishes that the prosecutor will propose to the defendant and their public or private defense attorney that they agree with the application of *procedimiento abreviado* to the case. OIPC Ecuador, Art 636, para 1.
- ^{ggg} *ibid*, Art 635.4: “The public or private defense attorney will certify that the defendant has voluntarily agreed, without violation of their constitutional rights”; and Art 636, para 2. See also Constitución de la República del Ecuador, Art 76. Corte Constitucional del Ecuador, Sentencia No 189-19-JH/21, Jurisprudencia vinculante, December 8, 2021, paras 75, 77.
- ^{hhh} OIPC Ecuador, Art 637, para 2. See also Corte Constitucional del Ecuador, Sentencia No 189-19-JH/21, Jurisprudencia vinculante, December 8, 2021, paras 69–70.
- ⁱⁱⁱ OIPC Ecuador, Art 637, para 1.
- ^{jjj} *ibid* Art 637, para 2. See also Art 651.1.13 on the unified, special, and expeditious procedure.
- ^{kkk} See Corte Constitucional del Ecuador, Sentencia No 189-19-JH and acumulados/21, Jurisprudencia vinculante, 8 December 2021 (confirming that it is possible to review the proceedings of an abbreviated procedure through habeas corpus and describing in paras 61 and 69 other mechanisms of review in Ecuadorian law).
- ^{lll} CPC El Salvador, Art 417.2.
- ^{mmm} *ibid*, Arts 417.2 and 418 para 3.
- ⁿⁿⁿ The parties have access to the investigation: *ibid* Art 76.
- ^{ooo} The defense attorney must certify that the defendant has freely consented to the application of the *procedimiento abreviado*, and the defense attorney must ratify that he adheres to it: *ibid* Arts 417.3 and 418. See also *ibid* Art 10.
- ^{ppp} *ibid* Art 418, para 2.
- ^{qqq} *ibid*.

- ^{rrr} *ibid* Art 417. The private prosecutor may also propose the application of the *procedimiento abreviado* to the case. Código Procesal Penal de El Salvador (2011), Arts 355 and 358.
- ^{sss} CPC El Salvador, Art 418, previous to last paragraph. See also Sala de lo Penal de la Corte Suprema de Justicia, 192C2021, 46–47, San Salvador, a las ocho horas con veinticuatro minutos del ocho de noviembre dos mil veintiuno (confession by the defendant in the *procedimiento abreviado* (abbreviated procedure) is not enough to declare inadmissible the appeal against a conviction).
- ^{ttt} CPC Guatemala Art 491 bis.
- ^{uuu} *ibid* Arts 491 bis and 491 ter, eighth paragraph.
- ^{vvv} *ibid* Art 491 ter (right to receive from the office of the prosecution copy of the means of investigation that were pursued).
- ^{www} *ibid* Arts 491 bis and 491 ter, third, fourth, and ninth paragraphs.
- ^{xxx} *ibid* Arts 491 ter, paras 6 and 7 and 491 quiniques.
- ^{yyy} *ibid* Art 491 ter.
- ^{zzz} The victim must be heard if they were present. *ibid* Art 491 ter, paras 4, 9, 11, and 12.
- ^{aaaa} *ibid* Art 491 Quaterdecies. Regarding the right to appeal a verdict issued in an abbreviated procedure, see *ibid* Arts 49, 405, 411, and 437.
- ^{bbbb} CPC Honduras, Art 403.2.
- ^{cccc} *ibid*.
- ^{dddd} *ibid* Art 278 establishes that the investigations carried out by competent authorities will be kept secret in relation to any person that is not part of the investigations, as long as the investigation outcomes are not presented to judicial organs. But the property, documents, and other elements of proof gathered in the criminal process should be shown to the defendant and the witnesses, so that they express whether they recognize them: *ibid* Art 251. See also Art 290, last paragraph. The CPC Honduras, Art 316, para 1, establishes that the parties may examine the records of the investigation before the trial.
- ^{eeee} *ibid* Art 403, para 1 (the office of the prosecution must request the application of *procedimiento abreviado* jointly with the defendant).
- ^{ffff} *ibid*, Art 403.4 (the defense attorney must certify that the defendant has been duly instructed about the sense and scope of the *procedimiento abreviado*).
- ^{gggg} *ibid* Art 404 paras 2 and 3.
- ^{hhhh} *ibid* para 1.
- ⁱⁱⁱⁱ *ibid* (the judge shall hear the victim).
- ^{jjjj} *ibid* Art 139, last para, and Art 354.5.
- ^{kkkk} NCPC Mexico, Art 201.III.c.
- ^{llll} Constitución Política de los Estados Unidos Mexicanos, Art 20.A.VII.; NCPC Mexico, Art 201.III.d.
- ^{mmmm} Constitución Política de los Estados Unidos Mexicanos Art 20.B.VI.; NCPC, Arts 50 (the parties will always have access to the content of the digital files that consist of the transcripts/recordings of the hearings); 113.VIII (right by the defendant and his defense attorney to have access to the records of the investigation, other than when exceptions established by law apply); 117 (mentioning, among other duties by the defense attorney, analyzing the records of the investigation file); 128 (duty by the office of the prosecution of not hiding from any of the participants any element that could be favorable for the position they take); 218 para 3 (right of the defendant and his defense attorney to have access to the investigation records when the defendant is under detention or is summoned to appear as defendant); 219 (right of the defendant and their defense attorney to consult the investigation records once convened to the initial hearing); 220; 337 (prosecutorial disclosure of evidence includes access to all the investigation records). On the right of the victim to have access to the investigation records, see NCPC, Art 109.XVII. The judge shall verify that the elements of proof that support the indictment are in the investigation folder, before deciding on the *procedimiento abreviado* (abbreviated procedure). For an analysis of the Mexican Supreme Court's caselaw on this issue, see Julio Veredín Sena Velázquez, "El Control Constitucional del Procedimiento Abreviado en el Sistema Penal Acusatorio" (2018) 7 *Revista del Centro de Estudios Constitucionales* 269–302.
- ⁿⁿⁿⁿ The NCPC Mexico regulation does not mention the issue. But the Mexican Supreme Court has said that both parties must be willing to negotiate within the legal parameters. Suprema Corte de Justicia, Primera Sala, Ejecutoria Num. 100/2021, para 114, December 1, 2021, published on May 13, 2022.
- ^{oooo} Constitución Política de los Estados Unidos Mexicanos, Art 20.B.II and VIII; NCPC, Art 205, para 2 (the judge must hear the defense); Suprema Corte de Justicia, Primera Sala, Ejecutoria Num.

100/2021, December 1, 2021, published on 13 May 2022, paras 63 and 64 (the most important function of the judge is checking that the defendant is waiving with full knowledge of its implications and verifying that there was a communication between the defendant and his defense attorney about these implications given that the person primarily responsible for conveying information in a truthful, specific, and understandable way to the defendant is the defense attorney). See also NCPC, Art 17.

^{pppp} See also Suprema Corte de Justicia, Primera Sala, amparo directo en revisión 532/2019, 2 December 2020 (the judge's function in the *procedimiento abreviado* is not modulating the agreement reached by the parties, but rather verifying that the elements that give validity to the agreement are fulfilled).

^{qqqq} NCPC Mexico, Arts 201.III.A. (the judge shall verify at the hearing that the defendant acknowledges to be duly informed about his right to an oral trial and about the scope of the *procedimiento abreviado*), and 205, para 1; Suprema Corte de Justicia, Primera Sala, Ejecutoria Num. 100/2021, December 1, 2021, published on May 13, 2022, para 63. See also Constitución Política de los Estados Unidos Mexicanos, Art 20.A.VII.

^{rrrr} NCPC Mexico, Arts 201, para 1, and 202, para 2.

^{ssss} *ibid* Arts 202, para 2; 205, para 2. See also NCPC, Art 109.X.

^{tttt} NCPC Mexico, Art 467.IX and X.

^{uuuu} CPC Nicaragua, Art 61, para 1, requires previous express authorization by the accused for the office of the prosecution and defense to be able to have conversations to try to reach an agreement.

^{vvvv} *ibid* Art 61, para 1. In relation to the scope of this requirement, see Karina Violeta Camacho Delgado, Ana María Álvarez Hernández and Elery Franks Cruz Salgado, *Principio de Oportunidad en el Proceso Penal Nicaragüense y su Aplicación en los Ministerios Públicos de León and Chinandega en el Año 2005* (Bachelor of Law thesis, National Autonomous University of Nicaragua, 2006) 81. The CPC Nicaragua, Art 271, also establishes this requirement for the admission of guilt, the other way to reach a criminal conviction without a trial in Nicaragua.

^{wwww} *ibid* Art 103, para 2 (the defense attorneys shall have, once they are appointed, the right to participate in all the proceedings that look for elements of proof); Art 124, para 2 (the parties may obtain at their own cost simple copies of the judicial proceedings without any formalities); Art 245 (the national police will keep the elements of proof until their presentation at trial by the parties' request, and the parties shall have the right to examine them, when they wish, following the conservation and custody controls that the national police establish); Art 269.5 (in the context of the initial hearing, the prosecutor and the private prosecutor shall present the elements of proof obtained by the national police or the office of the prosecution that may favor the accused); Art 273 (establishing, as part of the preparation of the trial, that the person in charge of the custody of documents, objects, and other elements of proof must ensure that they are available to be examined by the parties, from the moment in which each of them offered them as elements of proof and until the end of the trial).

^{xxxx} *ibid* Art 61, para 1.

^{yyyy} CPC Nicaragua, Art 61 seems to say that the office of the prosecution and the defense, with previous express authorization, may have conversations to pursue an agreement. On the right of defense in general in the CPC Nicaragua, see Arts 4 and 103. CPC Nicaragua, Art 260 para 3 says that nonattendance by the defense attorney to a preliminary hearing does not invalidate it and that, consequently, the appointment of the defense attorney will not be a consequence that would give grounds to suspend it.

^{zzzz} *ibid* Art 61 para 3. CPC Nicaragua, Art 271, also establishes this requirement for the admission of guilt, the other form to reach a criminal conviction without a trial in Nicaragua.

^{aaaaa} But see Yesenia Benita Larios Rojas and Eleyne Patricia Grijalva Espinoza, *Aplicación del acuerdo, como manifestación del principio de oportunidad en el Departamento de León en el año 2005* (Bachelor of Law thesis, National Autonomous University of Nicaragua, 2007) 105; and Camacho Delgado, Álvarez Hernández, and Cruz Salgado (n vvvv) 81, that maintain that it is necessary to hold an ad hoc hearing, if the ones established by the code for the substantiation of the agreement before the competent judicial organ are not used.

^{bbbbb} CPC Nicaragua, Art 61, para 4 (before approving the agreement, the judge shall ensure that the victim has been notified and shall give them the opportunity to express their opinion about it). See also CPC Nicaragua, Arts 9 (right of the victim to be a party in the criminal process since its inception and in all its instances) and 110.1 (that includes among the rights of the victim the right to timely learn about the proposal of agreement through which the office of the prosecution will fully or partially end the prosecution).

- cccc *ibid* Art 376.3 says that the judicial decisions that accept an agreement between the other parties without having previously heard the victim are appealable. On which aspects of the judicial decision would be appealable, see Camacho Delgado, Álvarez Hernández, and Cruz Salgado (n vvvv) 88. Art 380 says that all verdicts issued in first instance by the local and district judges shall be appealable.
- dddd CPC Panama, Art 220, para 1, establishes that the agreement is between the office of the prosecution and the defendant.
- eeee *ibid* Art 220.1.
- ffff *ibid* Arts 93.16 (the rights of the defendant include having access to the proceedings, the document, and the elements of proof), 132 (the parties will get, by request and at their cost, copy of all procedural actions), 287 (during the investigation phase only the parties and their representatives may examine the files, and the attorneys may examine the files to decide whether they accept their appointment in the case), 340 (together with the indictment, the prosecutor shall leave copies of the background of the investigation to the accused or his attorney at the court), and 346 (disclosure of evidence).
- gggg During the investigation phase, the defendant may be convened by the prosecutor when she considers it appropriate to reach an agreement allowed by the CPC. The defendant must be assisted by his attorney: *ibid* Art 321.
- hhhh *ibid* Art 220 does not mention the defense attorney. However, the Supreme Court of Justice of Panama has said that the “agreement on the punishment consists of an understanding agreed upon between the office of the prosecution and the defendant or accused duly represented by his defense attorney” Corte Suprema de Justicia de Panamá, Sala Pleno, Ponente Olmedo Arrocha Osorio, December 10, 2019, Expediente 470–19. On the right of defense in CPC Panama, see its Arts 10 and 99.
- iiii The Table says yes to the extent that the judge may reject the agreement for lack of knowledge about the fundamental rights or guarantees or when there are indications of corruption or banality: *ibid* Art 220, para 2.
- jjjj See, e.g., Corte Suprema de Justicia de Panamá, Sala Pleno, Ponente Olmedo Arrocha Osorio, December 10, 2019, Expediente 470–19; Corte Suprema de Justicia de Panamá, Sala Pleno, Ponente Luis Ramón Fábrega Sánchez, June 1, 2020, Expediente 1288-19 (citing Fallo of March 31, 2016 in the Corte Suprema de Justicia de Panamá). The Supreme Court of Justice of Panama has also said that the parties in the agreement on punishment are the representatives of the office of the prosecution, that defendant or accused, and their defense attorney. Corte Suprema de Justicia de Panamá, Sala Pleno, Ponente Luis Ramón Fábrega Sánchez, 1 June 2020, Expediente 1288-19 (citing Fallo of December 14, 2018 of the Corte Suprema de Justicia de Panamá). Corte Suprema de Justicia de Panamá, Sala Pleno, Ponente Víctor L. Benavides P., June 17, 2015, says that the agreement is a legal power of the prosecutor “conditioned in certain way to the will of the defendant duly counseled by an attorney.” See also CPC Panama, Art 278.
- kkkk According to some decisions by the Supreme Court, the answer is no, since the judge has discretion about it. Corte Suprema de Justicia de Panamá, Sala Pleno, Ponente Carlos Alberto Vásquez Reyes, 18 October 2021, Expediente 70283-2021, Entrada 70283-2021; Corte Suprema de Justicia de Panamá, Sala Pleno, Judge Hernán A. De León Batista, Sentencia del 13 March 2019. But other decisions by the Supreme Court of Panama established that the victim has a right to participate and express their opinion. Corte Suprema de Justicia de Panamá, Sala Pleno, Ponente Luis Ramón Fábrega Sánchez, June 1, 2020, Expediente 1288-19 (citing Fallo of December 14, 2018 and Fallo of March 31, 2016 by the Supreme Court of Justice of Panamá). CPC, Art 80.4 establishes the right of the victim to be informed and receive explanations about the proceedings when the victim requests it. See also CPC Panama Art 20. CPC Panama Art 91 also establishes that the private prosecutor is a party in the proceedings.
- llll Verdicts that follow an agreement may be subject to the nullity appeal (“recurso de anulación”). Corte Suprema de Justicia de Panamá, Sala Pleno, Ponente Víctor L. Benavides P., June 17, 2015. On the nullity appeal, see CPC Panama, Art 172 et seq. On the review of judicial decisions, except in the situations indicated in the CPC, see CPC Panama, Art 23. See also CPC Panama, Art 159. It is also possible to challenge these verdicts through the writ of “amparo.” See the various decisions by the Supreme Court of Justice of Panama cited in this chapter.
- mmmm CPC Paraguay, Art 420.2.
- nnnn *ibid*.

^{ooooo} *ibid* Art 322, para 1: “Only the parties, directly or through their representatives, shall be able to examine the files.” See also CPC Paraguay, Art 86, para 1 (right of the defendant to see all the files before being interrogated during the pretrial phase), Art 297 (right of the defendant and their defense attorney to access all the investigations carried out by the national police), Art 347 (with the indictment the office of the prosecution will submit to the judge all the records and elements of proof in their power and will make available for the parties the investigation file), Art 352 (filed the indictment or the other requests by the office of the prosecution and the private prosecutor, the judge shall notify the parties and make available to them the files and the elements of proof gathered during the investigation).

^{ppppp} No, given that the CPC says that the office of the prosecution (Art 420, para 2), the private prosecutor and the defendant may request the application of the *procedimiento abreviado* (abbreviated procedure) jointly or separately. CPC Paraguay, Art 421, para 1.

^{qqqqq} Yes, given that the defense attorney must certify that the defendant has consented freely to the application of “*procedimiento abreviado*.” CPC Paraguay, Art 420. 3). On the regulation of the right of defense more generally, see CPC Paraguay, Art 6.

^{rrrrr} The Table says no because CPC Arts 420 and 421 do not include this requirement. The verification by the court of the voluntariness of the defendant’s consent is not mentioned either by the Supreme Court of Justice of the Republic of Paraguay, Acuerdo and Sentencia N 85, February 24, 2017, 8, in which the defendant had questioned that he had accepted the application of *procedimiento abreviado* to his case.

^{sssss} CPC Paraguay, Art 421, para 2. On the rights of the victim more generally, see CPC Paraguay, Art 68.

^{ttttt} The private prosecutor may participate in the procedure and the judge must previously hear the victim or the private prosecutor. CPC Paraguay, Art 420, para 2.

^{uuuuu} *ibid* Art 421, para 5, and Art 461.9.

^{vvvvv} CPC Peru, Art 468.1 and 2 (moving forward with the *proceso de terminación anticipada* requires no initial opposition to it by the defendant or the prosecutor).

^{wwwww} CPC Peru, Art 468.4: “the prosecutor will present the charges [...] against the defendant and he will have the opportunity to agree with them, in whole or in part, or to reject them.” See also Corte Suprema de Justicia de la República del Perú, V Pleno Jurisdiccional de las Salas Penales Permanente and Transitorias, Acuerdo Plenario No. 5-2008/CJ-116, November 13, 2009, para 7 (the early termination process includes the admission of responsibility by the defendant).

^{xxxxx} CPC Peru, Art 68.3: (“The defendant and his defense attorney will be able to learn about the measures and activities carried out by the police and will have access to the investigations”); Art 84.7 (the defense attorney must have access to the prosecutorial and judicial files to inform herself about the process, without more limitations than those established by law, as well as to obtain copy of the procedural steps taken at any stage of the proceedings); Art 137. 1 (creating the judicial dossier and mandating that it will be made available to the office of the prosecution and the other procedural parties); Art 138.1 (the procedural parties have the legal power to request, at any moment, copies of the procedural steps taken included in the prosecutorial and judicial files, as well as the initial measures and the steps taken by the police); Art 324.1 (only the parties shall be able to learn about the content of the investigation directly or through their duly appointed attorneys in the case. They can obtain copy of the files at any time).

^{yyyyy} *ibid* Art 468.2. See also Corte Suprema de Justicia de la República del Perú, V Pleno Jurisdiccional de las Salas Penales Permanente and Transitorias, Acuerdo Plenario No. 5-2008/CJ-116, November 13, 2009, paras 6 and 7 (referring to the early termination process as an expression of negotiated criminal justice); Corte Suprema de Justicia de la República del Perú, Sala Penal Permanente, June 4, 2021, Expediente 000457-2018, para 8.

^{zzzzz} The early termination hearing will be held with the obligatory presence of the prosecutor and the defendant and the defense attorney. CPC Peru, Art 468.4. On the regulation of the right to defense more generally in the CPC, see Arts 71.2.C., 80 et seq.

^{aaaaa} CPC Peru, Art 468.

^{bbbbb} The CPC Peru does not establish this requirement. But the Supreme Court of Peru has said that “the judge must review if the defendant sufficiently knows the scope and consequences of the agreement that he can reach” and that the “defendant’s consent [...] has to be free, voluntary—without pressures or threats, informed, given with the assistance of an attorney, and with full knowledge of what he is

doing or not doing and of to what he is subjecting himself to once he accepts the agreement.” Corte Suprema de Justicia de la República del Perú, V Pleno Jurisdiccional de las Salas Penales Permanente and Transitorias, Acuerdo Plenario No. 5-2008/CJ-116, November 13, 2009, para 8.

cccccc CPC Peru, Art 468. 1. According to the Supreme Court of Justice of the Republic of Peru, the justification for having a nonpublic preparatory hearing is the “relative publicity of the pretrial investigation and constitutes, from the defendant’s perspective, one of the beneficial effects of this special process, since it aims at his case not being made public.” Corte Suprema de Justicia de la República del Perú, V Pleno Jurisdiccional de las Salas Penales Permanente and Transitorias, Acuerdo Plenario No. 5-2008/CJ-116, November 13, 2009, para 8.

dddddd The prosecutor’s or the defendant’s request shall be communicated to all the parties for a period of five days, that will opine on whether the early termination process should be applied to the case and, in such a case, articulate their requests. CPC Peru, Art 468.3. See also Decisión de la Corte Suprema de Justicia de la República del Perú, Sala Penal Transitoria de 26/07/2021, Expediente 001223-2018; Sala Penal Transitoria de 28/06/2021, Expediente 000297-2020. The attendance by the other procedural parties of the early termination hearing is discretionary. CPC Peru, Art 468.4. On the victim’s rights more generally, see CPC Peru, Art IX.3 (information and procedural participation rights by the person injured by the criminal offense) and Art 95.

cccccc The other procedural parties may appeal the verdict that approves the agreement. CPC Peru, Art 468.7. The defendant may not appeal the verdict, if its early termination sentence respects the limits of the agreement. Corte Suprema de Justicia de la República del Perú, V Pleno Jurisdiccional de las Salas Penales Permanente and Transitorias, Acuerdo Plenario No. 5-2008/CJ-116, 13 November 2009, para 16 (adding that the prosecution and the defendant may appeal the judicial decision that rejects the agreement); Corte Suprema de Justicia de la República del Perú, Sala Penal Permanente de 4 June 2021, Expediente 000457-2018, para 6.1.3 (citing Resolución número 3 de la Primera Sala Penal de Apelaciones de la Corte Superior de Justicia de Cusco).

mmmf CPC Uruguay, Art 272, para 2.

gggggg *ibid.*

hhhhhh CPC Uruguay, Art 64.f (defendant has the right to know the content of the investigation), Art 71.4 (the defense attorney has the right to access the records of the investigation already carried out and that is being carried out, since the preliminary investigation and on absolute equal procedural footing to the office of the prosecution), Art 259.2 (the defendant and his defense attorney shall be able to examine the records of the preliminary investigation carried out by office of the prosecution and by administrative authority), Art 264 (in the investigation file of the office of the prosecution the access by the defendant and his defense attorney to the information contained in the file will be recorded).

iiiiii *ibid* Art 273.1 says that the prosecutor may agree with the defendant on the application of the abbreviated process.

iiiiii *ibid* Arts 272 and 273 do not mention the defense attorney. In contrast, the defense attorney is mentioned by Art 273bis that regulates the abbreviated process for juveniles. But in “application of the general and natural principles of the adversarial penal system, in the proposal, negotiation and the holding of the abbreviate process the defendant shall always be assisted by an attorney.” Evangelina Torres Gugelmeier, “El Proceso Abreviado como Mecanismo de Resolución de Conflictos Penales. Incidencia en la Delincuencia Económica” [2019] 31 Revista de Derecho de la Universidad de Montevideo 59 (citing William Corujo Guardia, “Proceso Abreviado: el Proceso Mercado” Estudios Sobre el Nuevo Proceso Penal; implementación y puesta en práctica in *El Nuevo Proceso Penal* 196 (Ed FCU, Montevideo, 2018); on the right to defense more generally in the CPC Uruguay, see Arts 7, 64.b, 65.c and h, and 72.

kkkkkk *ibid* Art 273.3.

llllll *ibid* Art 273.3. On the publicity of the hearing once the preliminary investigation ends, see CPC Uruguay, Art 135.

mmmmmm *ibid* Art 273.4 (the judge must hear the victim if they are present at the hearing). CPC Uruguay, Art 273.7 establishes that if the victim was not present at the hearing at which the verdict was issued, the victim must be notified about the agreement reached between the prosecution and the defendant. On the victim’s rights more generally in the CPC Uruguay, see Arts 48 and 81.

nnnnnn See, e.g., Tribunal Apelaciones Penal 4o, autos caratulados “AA Violencia Doméstica and D agravado in reiteración real IUE: 2-11973/2019,” May 7, 2020. See also CPC Uruguay, Arts 358

(all judicial decisions are appealable, unless there is an express regulation against it) and 360.2 (the defendant may file appeal and cassation writs against the final verdict).

ooooo OCPC Venezuela, Art 375, para 2.

ppppp *ibid.*

qqqqq *ibid* Arts 127.7 (right of the defendant to know the content of the investigation) and 286, para 2 (the defendant and his defense attorney or attorneys may examine the records of the investigation).

rrrrr *ibid* Art 311.3.

sssss On the rights of defense more generally in OCPC Venezuela, see Arts 127 and 139.

ttttt CPC, Art 375, does not establish this requirement. But the Supreme Tribunal of Justice has said: “it is the judge’s duty cautioning [the defendant that] the admission of the indictment shall be for the crime charged, and the admission must be full and not relative, clear, without any inappropriate pressure nor coercion.” Tribunal Supremo de Justicia, Sala Constitucional, Sentencia No 602 del July 13, 2001. It has also said that the court must inform the defendant about the legal effects of the admission of the factual allegations. Tribunal Supremo de Justicia, Sala Constitucional, Expediente No. 16-0203, Sentencia no 752, August 12, 2016, 23 and 24.

uuuuu “The mentioned special procedure for admission of factual allegations may take place in the intermediate phase (preliminary hearing in ordinary proceedings), as well as at the trial phase (before the trial, and once the indictment is filed, in the ordinary and abbreviated procedure).” Tribunal Supremo de Justicia, Sala Constitucional, Sentencia no. 1066, August 10, 2015. On the admission of factual allegations at the preliminary hearing, see OCPC Venezuela, Arts 311.3, 313.6, and 367, para 2.

vvvvv The victim may request the application of the admission of the factual allegations procedure. OCPC Venezuela, Art 311.3. On the rights of the victim more generally, see OCPC Venezuela, Art 122.

wwwww See, e.g., Tribunal Supremo de Justicia, Sala de Casación Penal, Exp AA30-P-2016-000393, Magistrada Ponente Doctora Elsa Janeth Gómez Moreno, Sentencia no. 222, June 16, 2017 (prosecutor’s appeal).

APPENDIX TO TABLE 6.4

^a CPC Argentina, Art 431 bis.1 (the prosecution may request to proceed with abbreviated trial).

^b *ibid* Art 431 bis.5 (the verdict’s grounds shall be based on the elements of proof collected in pretrial investigation and on the admission by the defendant about the existence of the factual allegation and his participation in it).

^c See, e.g., Cámara Nacional de Casación en lo Criminal y Correccional, Sala 2, CCC 51314/2014/TO1/CNC1, Reg. no. 510/2015, case “Choque,” October 2, 2015, opinion by Judge Eugenio Sarrabayrouse, para 9; Tribunal Oral en lo Criminal y Correccional Nro 15 de the Capital Federal, CCC 55626/2018/TO1, February 3, 2022.

^d See CPC Argentina, Art 431 bis.5 (establishing that CPC Argentina Art 399 that establishes the requirements of the oral and public trial verdict also applies to the abbreviated trial verdict); Cámara Nacional de Casación en lo Criminal y Correccional, Sala 2, CCC 7822/2011/TO1/CNC1, Reg. No. 361, causa Siri, opinion by Judge Eugenio Sarrabayrouse, para 2.d. See also, Cámara Nacional de Casación en lo Criminal y Correccional, Sala 2, CCC 23399/2016/TO2/1/CNC4, Reg. No. 993/221, causa Peralta, opinion by judge Eugenio Sarrabayrouse, para 2; Tribunal Oral en lo Criminal y Correccional Nro. 15 de la Capital Federal, CCC 55626/2018/TO1, February 3, 2022. On this issue, see also Corte Suprema de la Nación Argentina, “Recurso de hecho deducido por the Defensora Oficial de Héctor José Aráoz in the causa Aráoz, Héctor José s/ causa no 10.410,” May 17, 2011. But in the opposite direction, see Cámara Nacional de Casación en lo Criminal y Correccional, Sala 2, CCC 78686/2019/TO1/CNC2, Reg No 992/2021, causa Siri, July 7, 2021, opinion by Judge Morin, para 7 (the same standards will not be required for the abbreviated trial verdict as in cases in which there is an oral and public trial).

^e CPC Argentina, Art 431 bis.5. On the interpretation of this precept by the caselaw, see, e.g., Cámara Nacional de Casación en lo Criminal y Correccional, Sala 2, CCC 2435/2017/TO1/3/CNC3, Reg No S T 251/2019, case “Salvatierra,” March 15, 2019.

- ^f CPC Argentina, Art 431 bis.3 (the opinion by private prosecutor is not binding). See also, e.g., Cámara Nacional de Casación en lo Criminal y Correccional, Sala de Turno, CCC 70499/2019/TO1/CNC1, Reg No S T 1221/2021, June 30, 2021.
- ^g CPC Bolivia, Arts 373.II.323 and 326.I and II. CPC Bolivia, Art 326.II establishes that the defendant shall be able to request the application of *procedimiento abreviado* to the prosecutor with the judge or court's knowledge and that such a request is not binding for the prosecution. CPC Bolivia, Art 326.III adds that the prosecutor must promote case dispositions alternative to the trial from the inception of the proceedings until the pretrial phase ends. The Tribunal Constitucional [Constitutional Tribunal], Sentencia Constitucional Plurinacional 0397/2021-S2, Sucre, July 30, 2021, established that the unjustified nonattendance by the prosecutor to a *procedimiento abreviado* hearing requested by the prosecutor constituted a violation of the right to a speedy trial and the principles of opportunity and responsibility that regulate the work by the office of the prosecution.
- ^h CPC Bolivia, Art 374, last paragraph.
- ⁱ Tribunal Constitucional Plurinacional de Bolivia, Sentencia Constitucional Plurinacional 0048/2017-S1, Sucre, February 15, 2017, citing 1659/2004-R said that the verdict in the *procedimiento abreviado*: "shall rely on the factual allegations admitted by the defendant, or otherwise, shall reject it when there are insufficient elements of proof to issue a verdict without causing harm to the accused, when there is a valid opposition by the victim, or when the ordinary trial will enable a better understanding of factual allegations; that shall even acquit the defendant due to the lack of evidence or because the defendant is not responsible for the crime;" The CPC does not mention the possibility of an acquittal, but it does not explicitly exclude it either.
- ^j Tribunal Constitucional Plurinacional de Bolivia, Sentencia Constitucional Plurinacional 0048/2017-S1, Sucre, February 15, 2017, citing 1659/2004-R, which said: "it is necessary that the judge has the full conviction that the events transpired the way the prosecutor in charge of the investigation presented them and proved at the hearing, because this is determinative on whether this authority accepted the abbreviated procedure." CPC Bolivia, Art 365, establishes that to convict the evidence produced must generate a conviction in the judge or the court about the defendant's criminal responsibility.
- ^k *ibid* Art 374, para 2.
- ^l But the victim's opposition may be a basis to reject the agreement. CPC Bolivia, Art 373.III. See, in this direction, Tribunal Supremo de Justicia, Sala Penal, Auto Supremo No. 642/2016-RRC, Sucre, July 24, 2016.
- ^m CPC Chile establishes that is the prosecutor who must request the application of this procedure. CPC Chile, Arts 409 and 410.
- ⁿ *ibid* Art 412, para 2.
- ^o CPC Chile, Art 412, says in reference to the verdict "[i]n case of being a conviction" and CPC Chile, Art 413.e. explicitly contemplates the possibility that the accused be acquitted.
- ^p See, e.g., G.O. Calderón, "Reflexiones sobre los mecanismos de justicia penal negociada en Chile" [2019] *Revista Chilena de Derecho*, Vol. 46, No. 2, 465, nota 76.
- ^q CPC Chile, Art 412, para 1.
- ^r But if the opposition is justified, the court will reject the abbreviated procedure request. CPC Chile, Art 410, para 2.
- ^s CPC Colombia establishes that the application of the agreements between the possible defendants or accused and the prosecution shall not compromise the presumption of innocence and shall only proceed if there is a minimum of evidence that enables to infer that the crime was committed and the defendant or accused perpetrated it or participated in it. CPC Colombia, Art 327 para 3, and Art 381.1. See also Corte Suprema de Justicia, Sala Penal, Sentencia del October 27, 2008, Rad 29979, cited by Corte Constitucional, Sala Plena, Sentencia SU479/19, October 15, 2019, para 60; *ibid* paras 63 et seq. (describing three positions in the Supreme Court on the scope of the material control of the agreements by the judge). In addition, the prosecutor must present the elements of proof gathered until that point that support the agreement. Corte Constitucional, Sala Plena, Sentencia SU479/19, October 15, 2019, 126.
- ^t The agreements between the prosecution and the defendant shall be accepted by the judge, unless they breach fundamental guarantees, CPC Colombia, Art 351, para 4; Corte Constitucional, Sentencia C-1260-05: "it is the judge's task to control the [...] agreement and its conformity with article 29 of the Constitution, [and to] assess the conditions to determine whether the judge accepts the agreement

since the judge must so explain in the justification of the early criminal conviction; if the judge finds that these requirements are not met, the judge must also reject the agreement. The judge will proceed in the same fashion when the agreements are reached after the indictment is filed.” This decision adds: “v) the agreements are binding to the extent they do not disregard or violate the defendant’s fundamental guarantees (art 351-4 of the Law 906), since vi) if the judge notices such a disregard, the judge must reject the admission of responsibility and will move forward with the proceedings as if there had been a not guilty pleading.”

^u CPC Colombia, Art 327 (also establishing that the application of the agreements shall not compromise the presumption of innocence). See also, Corte Suprema de Justicia, Sala Penal, Sentencia del 27 de octubre de 2008, Rad 29979, establishing that checks on the agreements that the judge must undertake include “the existence of minimum evidence enough to reach a belief, beyond a reasonable doubt, about the participation and responsibility by the defendant in the alleged criminal conduct, in accord with the last clause of article 327 and clause 1o of article 381 of law 906 of 2004,” cited by Corte Constitucional [Constitutional Court], Sala Plena, Sentencia SU479/19, October 15, 2019, para 60.

^v Yes, a reduction of up to half of the sentence that would otherwise be applicable to the case, if the agreement is reached before the indictment is filed. CPC Colombia, Art 351, para 1. Afterwards, the reduction is up to a third. CPC Colombia, Art 352. If the accused pleads guilty at the beginning of the oral trial, the reduction is of a sixth of the sentence that would otherwise be applicable to the pled charges. CPC Colombia, Art 367. See also CPC Colombia, Art 539.

^w The agreements (*preacuerdos*) reached between the office of the prosecution and the accused are binding on the judge unless the agreement ignores or violates fundamental rights. CPC Colombia, Art 351, para 4, and Art 370.

^x Art 351, last paragraph; Corte Constitucional, Sala Plena, Sentencia SU479/19, 15 October 2019, para 51 (describing a General Prosecutor’s directive). See also Jhon Fredy Peña Bernal, “Los preacuerdos: legalidad, ficción legal and reducción de la pena” [2020] XL-108 Revista de Derecho Penal and Criminología 37.

^y CPC Costa Rica, Art 373.b.

^z *ibid*, Art 375, last para. The *procedimiento abreviado* is “a mechanism that simplifies the ordinary criminal procedure and may end with a conviction or an acquittal” (Centro de Información Jurídica en Línea—Convenio Colegio de Abogados—Universidad de Costa Rica (2007) *Informe de investigación. Proceso abreviado en materia penal* 8 www.cijunenlinea.ucr.ac.cr accessed August 17, 2022); and *ibid* 11 (citing Tribunal de Casación Penal, Resolución N 2003-0119, de las diez horas con cuarenta minutos del trece de febrero del año dos mil tres).

^{aa} CPC Costa Rica, Art 375, last para (the *procedimiento abreviado* verdict shall briefly meet the requirements established for verdicts in the CPC). The Costa Rican caselaw and commentators have traditionally considered that the standard of proof to convict is certainty. See, for instance, Centro de Información Jurídica en Línea (*ibid*) 16 (citing Tribunal de Casación Penal, Resolución N.2003-0119, de las diez horas con cuarenta minutos del trece de febrero del año dos mil tres); *ibid* 33 (citing Tribunal de Casación Penal, Resolución N. 005-F-99, de las nueve horas con treinta minutos del quince de enero del mil novecientos noventa and nueve); and Federico J. Campos Calderón and Jeffry J. Mora Sánchez, *Derechos fundamentales y coerción penal. Una visión crítica sobre temas claves del sistema punitivo* (Olejnik, 2022), 73–4.

^{bb} The minimum of the sentencing scale established for the criminal offense may be reduced by up to one third. CPC Costa Rica, Art 374, para 2.

^{cc} *ibid* Art 375, para 3.

^{dd} The victim’s criterion is not binding for the court, except in the cases processed under the proceedings established in the Law of Restorative Justice. CPC Costa Rica, Art 374, para 3. But see also Memorandum 04-FAG-2020 issued by the “Prosecutoría Adjunta de Género” [Gender Adjunct Prosecutorial Section] of the Office of the Prosecution, which establishes in section g that it shall not approve the application of the special abbreviated procedure when the victim does not approve such a request by the defense attorney (cited by Sala Constitucional de the Corte Suprema de Justicia, a las nueve horas veinte minutos del uno de setiembre de dos mil veintiuno, consulta judicial formulada por L.D.U.R., en su condición de J. Penal de La Unión, mediante resolución de las 10:58 horas del 2 de julio de 2021, issued with Exp: 21-016296-0007-CO, Res. No 2021019736). In addition, the agree-

ment by the private prosecutor and the civil actor are necessary for the application of the abbreviated procedure to a case.

^{ee} CPL Cuba, Art 484.

^{ff} The CPL Cuba establishes that “every criminal offense shall be proved independently from the testimony by the accused [...] Consequently, the sole statement by the [accused] shall not exempt from the obligation to produce the necessary evidence to prove the factual allegations.” *ibid* Art 1.

^{gg} See José Candia Ferreyra, “La Sentencia de Conformidad en el Procedimiento Abreviado Cubano” (1997) 89 *Boletín Mexicano de Derecho Comparado* 421–2.

^{hh} CPL Cuba, Art 487.5.

ⁱⁱ See Candia Ferreyra (n gg) 428.

^{jj} CPC Dominican Republic, Art 293 (the office of the prosecution may request the application of the abbreviated procedure with the filing of the indictment); Art 299. 5) (the defendant may request the application of abbreviated procedure); Art 363 (including among the requirements of admissibility of the full agreement that the office of the prosecution proposes it); Art 364, para 1 (upon fulfilling the requirements of the abbreviated procedure, the office of the prosecution files the indictment indicating what sentence it requests); Art 365 (the partial agreement requires agreement by the parties about the facts).

^{kk} See Manuel Hernández, “El Juicio Penal Abreviado: paralelismo República Dominicana-Estados Unidos (I)” (2018) <http://z101digital.com/el-juicio-penal-abreviado-paralelismo-republica-dominicana-estados-unidos-i/#:~:text=El%20instituto%20del%20Juicio%20Penal,cambio%20de%20su%20declaraci%C3%B3n%20de> accessed August 25, 2022.

^{ll} CPC Dominican Republic, Arts 364 and 368; Juzgado de la Instrucción del Distrito Judicial de Sánchez Ramírez [Instruction Court of the Judicial District of Sánchez Ramírez], Resolución Penal Núm 599-2021-SEN-00011, Expediente Penal Núm. 599-1-2020-EPEN-00173, para 9, 8 September 2021; Segundo Juzgado de la Instrucción del Distrito Judicial de La Vega [Second Instruction Court of the Judicial District of La Vega], Sentencia Penal Núm 595-2021-SEN-00010, Expediente Núm 595-2017-EPEN-01129 12, “Análisis de the Acusación,” para 6.

^{mm} CPC Dominican Republic, Art 364, para 4; Primer Tribunal Colegiado de the Cámara Penal del Juzgado de Primera Instancia del Distrito Judicial de Santo Domingo [First Collegiate Tribunal of the Penal Chamber of the First Instance Court of the Judicial District of Santa Domingo], Sentencia Penal Núm 54803-2017-SEN-00233, Expediente Núm 223-020-01-2015-04932, April 6, 2017, 9, “Consideraciones Jurídicas,” para 11. Certainty is also the evidentiary standard to convict after an oral and public trial. See CPC Dominican Republic, Art 338, para 1.

ⁿⁿ CPC Dominican Republic, Art 364, para 3.

^{oo} However, Oficina J.M. Cabral and Baez, “Alcance Constitucional Del Procedimiento Penal Abreviado” in <https://cabralybaez.com/is/publicaciones/item/alcance-constitucional-del-procedimiento-penal-abreviado> accessed August 26, 2022, points out that the abbreviated procedure requires that the office of the prosecution and the victim agree about its application.

^{pp} OIPC Ecuador, Art 635.2: “The prosecutor’s proposal may be filed from the hearing on the formulation of charges to the hearing to assess and prepare the trial.” See also OIPC Ecuador, Art 636, para 1: “The prosecutor shall propose to the defendant and their public or private defense attorney to consent to the application of the abbreviated procedure, and if they accept the prosecutor shall reach an agreement on the charges and the punishment.” OIPC, Art 594 establishes that in the hearing on the formulation of the charges the defendant may request the application of the abbreviated procedure. See also Corte Constitucional del Ecuador [Constitutional Court of Ecuador], Sentencia No 189-19-JH/21, Jurisprudencia vinculante, December 8, 2021, para 69.

^{qq} OIPC Ecuador, Art 509, establishes that if the person under investigation or defendant declares themselves guilty when testifying, the prosecutor shall still gather the evidence to demonstrate the existence of the criminal offense and the responsibility of the defendant. See also Corte Constitucional del Ecuador, Sentencia No 189-19-JH/21, Jurisprudencia vinculante, December 8, 2021, para 72: “this does not imply that the defendant who consents to the application of an abbreviated criminal procedure does not enjoy the constitutional guarantee of the presumption of innocence until the determination of their criminal responsibility in a firm verdict. Consequently, before proposing to the defendant and their defense to agree with the application of the abbreviate procedure, the prosecutor

- must have enough elements of proof that, if they were produced at trial, would be enough to prove the crime and the criminal responsibility of the defendant.”
- ^{tr} OIPC Ecuador, Art 637, para 1, says that if the court accepts the application of the abbreviated procedure, “a conviction will be issued.” See also OIPC, Art 639. The CPC Ecuador derogated in 2014 did explicitly establish the possibility of an acquittal in the abbreviated procedure in its Art 370.
- ^{ss} *ibid* Art 636, para 3 establishes that the sentencing reduction may not be lower than a third of the minimum of the sentencing scale established for the criminal offense. On how this norm must be interpreted, see Corte Nacional de Justicia del Ecuador, Resolución No 09-2018, Registro Oficial No 347, October 15, 2018.
- ^{tt} *ibid* Art 635.6. See also OIPC, Art 638.
- ^{uu} See Jorge Touma Endara, *Procedimiento Abreviado: Entre the Eficacia Judicial y el Derecho a la no Inculpación* (Corp. Ed. Nac. 2017) 27.
- ^{vv} The CPC El Salvador establishes that the prosecutor, the defense attorney, the private prosecutor, or the civil actor shall be able to request the application of the abbreviated procedure. CPC El Salvador, Arts 295.4 and 358.6. But it is also a requirement of the abbreviated procedure that the prosecutor requests the application of any modality of the punishment regime accordingly to the criminal offense charged. CPC El Salvador, Art 417.1.
- ^{ww} The CPC El Salvador establishes that as part of the abbreviated procedure, documents, expert reports, and objects that were offered will be added to the record, and it also regulates the reception of proof during the abbreviated procedure. *ibid* Art 418, paras 4 and 5.
- ^{xx} *ibid* Arts 143 (establishing that a verdict is issued at the end of the abbreviated procedure) and 418, seventh paragraph (“In case of a conviction”).
- ^{yy} *ibid* Art 418, penultimate para.
- ^{zz} *ibid* Art 417: “The punishment regime that can be agreed upon between the prosecutor, the defendant and their defense attorney will be the following: a. The application from a third of the minimum to the minimum of the imprisonment sentence established for the charged criminal offense. b. The request of punishment different from imprisonment when the criminal offenses may be punished with joint or alternative punishment. c. The reduction to half of the minimum of the punishment of weekend arrest, home arrest, or a fine.”
- ^{aaa} *ibid* Art 418, para 7.
- ^{bbb} The negative position of the victim or the private prosecutor is not binding on the judge: *ibid* Art 417.4.
- ^{ccc} The table says yes because it refers to the *aceptación de cargos* (guilty plea). See CPC Guatemala, Arts 491bis and 491 quaterdecies. But the answer is no regarding the *procedimiento abreviado* (abbreviated procedure) that may be requested by the prosecutor. CPC Guatemala, Arts 332 and 464.
- ^{ddd} The table says no since there must exist a minimum of evidence for the application of the guilty plea. See Congreso de la República Guatemala, CA, Dirección legislativa—Control de iniciativas, Número de registro 5132, Fecha que conoció el pleno: August 9, 2016, *Iniciativa de ley presentada por el representante Oliverio García Rodas, Iniciativa que dispone aprobar ley para la aceptación de cargos*, Exposición de Motivos, 3.b.
- ^{eee} CPC Guatemala, Art 491 ter, paras 9 and 10. But in contrast, in the case of the abbreviated procedure the judge may acquit (CPC Guatemala Art 465, para 1).
- ^{fff} See Congreso de la República Guatemala (n ddd) 3.c. In the case of the abbreviated procedure, CPC Guatemala Art 465, para 1, says that the rules on verdicts shall apply, which may mean that the abbreviated procedure verdict requires the same standard for entering a conviction than it must be used to convict after an oral and public trial.
- ^{ggg} There is a sentencing reduction to a half, a third, or a fifth depending on in which procedural phase the defendant or accused pleads guilty to the charges. CPC Guatemala, Art 491 sexies.
- ^{hhh} The CPC Guatemala’s regulation on guilty pleas does not mention the issue. In contrast, in the case of the abbreviated procedure, CPC Guatemala Art 465 establishes that the judge’s sentence shall never be higher than the sentence that the office of the prosecution required.
- ⁱⁱⁱ No, but the sentencing reduction for the guilty plea will not be put in practice until there has been a decent and full reparation to the victim: *ibid* Art 491 duodecies.
- ^{jjj} The office of the prosecutor shall jointly require the application of the abbreviated procedure. CPC Honduras, Art 403, para 1. The prosecutor that participates in the request must first obtain the authorization of their hierarchical superior. CPC Honduras, Art 403.4.

- kkk But the CPP Honduras does explicitly regulate the issue in relation to the office of the prosecution, by establishing that the abbreviated procedure must only proceed for the office of the prosecution if, given the investigation they have done, there is no doubt about the veracity of the defendant's confession or that the defendant is not trying to replace the actual participant in the criminal offense. CPC Honduras, Art 403.3.a and c.
- lll The CPC says that the judge shall issue a verdict imposing the appropriate punishment. CPC Honduras, Art 404, para 4; *ibid* Art 404 para 3 says that if any of the abbreviated procedure requirement is missing, the judge shall reject it and order that the regular proceedings go on.
- mmmm *ibid* Art 139 para 5. The standard for conviction requires that there is no reasonable doubt. See *ibid* Art 339.
- nnn Reduction of a fourth to a third of the sentence if the defendant gave a reparation to the victim. See *ibid* Art 404, para 5.
- ooo We infer this *contrario sensu* given that the defendant still receives a sentencing reduction if the defendant does not give a reparation to the victim, but the sentencing reduction is lower in such a case.
- ppp NCPC Mexico, Arts 201 (to authorize the abbreviated procedure, the judge shall verify that the office of the prosecution requires the application of the procedure), 202, para 1, and 205, para 1; Suprema Corte de Justicia [Supreme Court of Justice], Primera Sala, Caso 29442, Resolución No 1a/J. 10/2020 (10a), August 31, 2020, para 96 (the application of the abbreviated procedure requires a potential benefit for the state and the office of the prosecution has a margin of appreciation on whether it is opportune to apply it); Suprema Corte de Justicia, Primera Sala, Ejecutoria Num 100/2021, December 1, 2021, published on 13 May 13, 2022 (NCPC Mexico, Articles 201.I and 202, para 1, and 205, para 1, establish that only the office of the prosecution may request the application of the abbreviated procedure do not violation the right to access restorative justice).
- qqq Constitución Política de los Estados Unidos Mexicanos [Political Constitution of the United States of Mexico], Art 20.A.VII; NCPC Mexico, Arts 203, para 1 and 205, para 1; Suprema Corte de Justicia de los Estados Unidos Mexicanos, Primera Sala, tesis 1a. CCXII/2016 (10a), August 16, 2016 (the task of the judge is limited to establish that the admission by the defendant about their participation in the criminal offense is not the only piece of data, and rather is related with other pieces of evidence that are consistent with the grounds for the charges).
- rrr NCPC Mexico, Art 203, para 2, says that if the judge does not admit the abbreviated procedure, the proceedings will continue under the regulations established for the ordinary proceedings; Suprema Corte de Justicia de los Estados Unidos Mexicanos, Primera Sala, tesis 1ª. CCXII/2016 (10a), 16 August 2016 (in the case in which there are not enough elements of proof to corroborate the indictment, the adjudicator may reject the abbreviated procedure). Sena Velázquez also seems to have this view: Julio Veredín Sena Velázquez, "El Control Constitucional del Procedimiento Abreviado en el Sistema Penal Acusatorio" (2018) 7 *Revista del Centro de Estudios Constitucionales* 288–91. But Cepeda Morado maintains that the abbreviated procedure verdict may acquit if the indictment is legally inadmissible but not due to lack of evidence: Elías Gerardo Cepeda Morado, *El Procedimiento Abreviado en el Sistema Jurídico Mexicano: Naturaleza, Efectos, Reglas y Condiciones* (Coordinación Editorial del Poder Judicial del Estado de Nueva León, 2016) 6–8.
- sss The judge shall verify that there are enough elements of conviction that corroborate the charges, Constitución Política de los Estados Unidos Mexicanos, Art 20.A.VII; NCPC, Art 203, para 1. The judge must also explain concisely in their verdict the arguments and grounds that she considered. NCPC, Art 206, para 1. On how to interpret this standard, see Suprema Corte de Justicia de los Estados Unidos Mexicanos, Primera Sala, tesis 1a. CCXII/2016 (10a), August 16, 2016.
- ttt Constitución Política de los Estados Unidos Mexicanos, Art 20.A.VII; NCPC, Art 202, paras 3 and 4: "When the accused has not been previously convicted for an intentional criminal offense and the criminal offense to which the abbreviated procedure is applied has an arithmetic median sentence no longer than five years of imprisonment, including its attenuating and aggravating circumstances, the office of the prosecution may request a reduction of up to a half of the minimum punishment of the sentencing scale and up to two thirds of the minimum punishment in the case of negligent offenses [...] In any case, the office of the prosecution may request the reduction of up to a third of the minimum punishment in intentional criminal offenses and up to a half of the minimum punishment of imprisonment in the case of negligent criminal offenses." See also Suprema Corte de Justicia, tesis aislada XIII.P.A.29

- P (10a); Suprema Corte de Justicia, tesis aislada XVII.1o.P.A.47 P (10a); Procurador General de la República, Acuerdo A/017/15, DOF: 23/02/2015.
- uuu NCPC, Art 206, para 2.
- vvv Yes, the opposition is binding if it is well founded. NCPC, Art 201.II. The victim's opposition shall only proceed when it is proven before the judge that the restitution is not duly secured. NCPC, Art 204. See also Art 206 para 3.
- www CPC Nicaragua, Art 60 (establishing that an official of the office of the prosecution makes the decision on whether to dismiss fully or partially the charges) and Art 61 (that refers to an agreement between the office of the prosecution and the defense). See Karina Violeta Camacho Delgado, Ana María Álvarez Hernández, and Elery Franks Cruz Salgado, *Principio de Oportunidad en el Proceso Penal Nicaragüense y su Aplicación en los Ministerios Públicos de León and Chinandega en el Año 2005* (Bachelor of Law thesis, National Autonomous University of Nicaragua, 2006) 75 (it is the prosecutor's exclusive legal power to reject the defense's proposal, estimating, in the opposite direction, that the case should continue through ordinary proceedings). See also Yesenia Benita Larios Rojas and Eleyne Patricia Grijalva Espinoza, *Aplicación del acuerdo, como manifestación del principio de oportunidad en el Departamento de León en el año 2005* (Bachelor of Law thesis, National Autonomous University of Nicaragua, 2007) 84–5, 98, and 104–5.
- xxx CPC Nicaragua, Art 61, paras 4 and 6. See Larios Rojas and Grijalva Espinoza (n www) 76 (pointing out that the agreement is not conceived of as a way to get confessions in cases in which the elements of proof are at first sight insufficient to press charges). See also *ibid* 94–5, 97, 101, and 104–5; and Camacho Delgado, Álvarez Hernández, and Cruz Salgado (n www) 73–4 and 82–3. In the case of the “admisión de los hechos” (the other way to reach a criminal conviction without a trial in Nicaragua), CPC Nicaragua, Art 271, para 2, establishes that if the judge considers it necessary, she may order the production of evidence at a hearing and if the evidence generates doubts on the guilt of the accused, the judge shall reject the guilty plea and order that the criminal proceedings go on.
- yyy CPC Nicaragua, Art 61 para 4 (if the judge approves the agreement, the judge shall issue a verdict immediately under the agreed terms) and para 6 (if the judge rejects the agreement, the judge shall inform the parties and allow the accused to withdraw his agreement that he was criminally responsible). See also Camacho Delgado, Álvarez Hernández and Cruz Salgado (n www) 86; and Larios Rojas and Grijalva Espinoza (n www) 101–92.
- zzz Larios Rojas and Grijalva Espinoza (n www) 99 maintain that the judge may only reject the agreement if the agreement by the defendant was involuntary or based on false facts.
- aaaa See Camacho Delgado, Álvarez Hernández and Cruz Salgado (n www) 88, arguing, based on CPC, Art 77, that the agreed sentence shall not be under the sentencing minimum established by law.
- bbbb The table says no, given that the judge shall issue a verdict under the terms agreed upon by the office of the prosecution and the defense. CPC Nicaragua, Art 61 para 4.
- cccc See Camacho Delgado, Álvarez Hernández, and Cruz Salgado (n www) 83; and Larios Rojas and Grijalva Espinoza (n www) 86–8.
- dddd CPC Panama, Art 220 (once the agreement is reached, the prosecutor shall submit it to the pretrial judge (*juez de garantías*)).
- eeee The table says yes given that the CPC points out: “in case of the defendant being convicted, the sentence shall be imposed”: *ibid* para 4.
- ffff *ibid* Art 220. On the assessment of the evidence in the verdict after the oral and public trial, see CPC Panama, Arts 380 and 427.
- gggg CPC Panama, Art 220, para 3 (the sentence shall not be lower than a third of the sentence that is established for the criminal offense).
- hhhh *ibid* para 3 (the sentence shall not be higher than the one agreed upon).
- iiii Corte Suprema de Justicia de Panamá [Supreme Court of Justice of Panama], Sala Pleno, Ponente Carlos Alberto Vásquez Reyes, October 18, 2021, Expediente 70283-2021, Entrada 70283-2021; Corte Suprema de Justicia de Panamá, Sala Pleno, Judge Olmedo Arrocha Osorio, Sentencia del December 6, 2019; Corte Suprema de Justicia de Panamá, Sala Pleno, Judge Hernán A. De León Batista, Sentencia del March 13m 2019.
- jjjj The defendant may separately request the application of the abbreviated procedure. CPC Paraguay, Art 421, para 1; Art 353.9. See also *ibid* Art 356.8.

kkkk See Corte Suprema de Justicia de la República de Paraguay [Supreme Court of Justice of the Republic of Paraguay], Sala Penal, Sentencia 685, May 27, 2016, voto del Ministro Dr Torres Kirmser.

llll CPC Paraguay, Art 421 para 3.

mmmm *ibid* para 5; See Corte Suprema de Justicia de la República de Paraguay, Sala Penal, Sentencia 685, 27 de May 2016.

nnnn CPC Paraguay, Art 421, para 4.

oooo The prosecutor or the defendant may take the initiative in requesting the holding of the early termination hearing. CPC Peru, Art 468.1. But to move forward the early termination proceeding requires the noninitial opposition to it by the defendant or the prosecutor of the case: *ibid* Art 468.2.

pppp The CPC Peru, Art 468.6 says there shall be enough elements of proof for the judge to issue a verdict based on the agreement. And the Supreme Court of Peru has said that the control of the legality of the agreement that the judge must undertake includes the “requirement of sufficient evidentiary activity.” Corte Suprema de Justicia de la República del Perú [Supreme Court of Justice of the Republic of Peru], V Pleno Jurisdiccional de las Salas Penales Permanente and Transitorias, Acuerdo Plenario No. 5-2008/CJ-116, November 13, 2009, para 10.C. In the same paragraph, the Court added: “This means that the records of the investigation shall allow the conclusion that there is sufficient basis—likelihood that the crime was committed—(i) that the criminal offenses were committed and that the defendant participated in their commission and (ii) that all the requirements to prosecute and punish are present.”

qqqq Corte Suprema de Justicia de la República del Perú, V Pleno Jurisdiccional de las Salas Penales Permanente and Transitorias, Acuerdo Plenario No. 5-2008/CJ-116, November 13, 2009, para 12: “It is clear, given what was explained, that the judge must reject the agreement if the judge notices the noncommission of the factual allegations, that the alleged facts do not constitute a criminal offense or any other similar situation. The appropriate way to proceed is that, once the agreement is rejected, the charges should be considered under the ordinary procedure. It would not be appropriate, given the scope of the judicial control of the agreement, to ask for an acquittal.”

rrrr Corte Suprema de Justicia de la República del Perú, V Pleno Jurisdiccional de las Salas Penales Permanente and Transitorias, Acuerdo Plenario No. 5-2008/CJ-116, November 13, 2009, para 12.

ssss A reduction of a sixth of the punishment. This benefit will be additional and added to the benefit received for a confession, if the confession is useful and prior to the celebration of the special proceeding. The addition of the benefits will not proceed when the defendant is a recidivist or habitual offender, accordingly with Articles 46-B and 46-C of the Penal Code, in which case the defendant only receives the benefit that corresponds to the early termination. CPC Peru, Art 471.

tttt Corte Suprema de Justicia de la República del Perú, V Pleno Jurisdiccional de las Salas Penales Permanente and Transitorias, Acuerdo Plenario No. 5-2008/CJ-116, November 13, 2009, para 11, establishing that the judge “may only reject the agreement if it is apparent that it stipulates a disproportionate punishment or civil reparation or in the case of a punishment that clearly undermines the preventive principle.”

uuuu But the Supreme Court has said that the judge’s control of the reasonableness of punishment includes that “the rights and legitimate interests of the victim are not unduly affected.” Corte Suprema de Justicia de la República del Perú, V Pleno Jurisdiccional de las Salas Penales Permanente and Transitorias, Acuerdo Plenario No. 5-2008/CJ-116, 13 November 2009, para 11.

vvvv The prosecutor must reach an agreement with the defendant. CPC Uruguay, Art 273.1.

wwww *ibid* Art 273.4 says that “the judge shall issue the verdict [...] that, in case of being a conviction [...]” Based on this language, commentators have interpreted that it is possible that the judge acquits in the abbreviated procedure. See Evangelina Torres Gugelmeier, “El Proceso Abreviado como ismo de Resolución de Conflictos Penales. Incidencia en la Delincuencia Económica” [2019] 31 *Revista de Derecho de la Universidad de Montevideo* 47–68, 59–6063, citing the work by Corujo, Gomes, and Guerra. But the Tribunal Apelaciones Penal [Appeal Criminal Court] 2o To, Sentencia Interlocutoria no. 35/2021, February 5, 2021, seems to suggest the opposite: “Only after the judge admits the agreement, the next step shall be taken, which must be issuing a final verdict of guilt.” The same court has repeated this phrase in Sentencia Interlocutoria no 634/2020, October 7, 2020.

xxxx CPC Uruguay, Art 142.3 (the rational certainty standard that applies to conviction after trial does not apply to the abbreviated process).

yyyy *ibid* Art 273.2: “The office of the prosecution when requesting the sentence may reduce the request up to one third of the sentence that would be applicable to the concrete case.” But CPC Uruguay, Art

273.6, establishes that the sentence request by the office of the prosecution shall not be lower than the minimum established for the criminal offense. La Instrucción General [General Directive] No 6 of the Procuraduría General de la Nación [The Office of the Prosecution of the Nation] October 11, 2017 on “Aplicación de vías alternativas de solución del conflicto penal and proceso abreviado” [Application of alternative ways to solve the criminal conflict and abbreviated procedure] “establishes that when negotiating the sentence and when offering a sentence reduction to the defendant, the procedural moment in which the negotiation takes place shall be taken into consideration, benefiting those abbreviated processes that are reached early over those that are reached in later stages of the criminal process.” See Torres Gugelmeier (n www) 61.

^{zzzz} CPC Uruguay, Art 273.4.

^{aaaaa} Corte Suprema de Justicia de the República Oriental del Uruguay, Sentencia Interlocutoria No 2.389/2019, 2 December 2020, 3, Considerando II) (the victim is not a party of the abbreviated procedure and only has standing to question decisions that directly affect them); Corte Suprema de Justicia de the República Oriental del Uruguay, Sentencia Interlocutoria No. 276/2020, September 1, 2020, 3, Considerando II) (the victim is not a party in the abbreviated process).

^{bbbbb} The defendant may request the application of the *procedimiento por admisión de hechos* (the procedure for admission of factual allegations). OCPC Venezuela, Art 375, para 2. See also OCPC Venezuela, Art 311.3 (the prosecutor, the victim, and the defendant may request the application of the *procedimiento por admisión de hechos* (the procedure for admission of factual allegations)).

^{cccc} @leo_rodriguezp, ‘Procedimiento especial de admisión de los hechos desde la perspectiva de la tutela efectiva’ https://derechovenezolano.wordpress.com/2020/12/16/procedimiento-especial-de-admision-de-los-hechos-desde-the-perspectiva-de-the-tutela-efectiva-por-leo_rodriguezp/ accessed January 9, 2023. But this same source adds, citing Tribunal Supremo de Justicia, Sala Constitucional, sentencia No 1066 de fecha 10 August 2015, ponencia de the Magistrada Carmen Zuleta de Merchan: “it is important to emphasize that the judge must explain in detail that the factual allegation that was the basis of the indictment is not justified and that it constitutes a criminal offense sanctioned with punishment by Venezuelan law; otherwise, if that is not the case, the judge has the constitutional duty not to apply the especial procedure for admission of factual allegations and must issue a verdict accordingly with the applicable law to the concrete case.”

^{dddd} CPC, Art 375, does not establish an evidentiary standard to convict. But the standard is certainty according to certain caselaw. Tribunal Supremo de Justicia, Sala Constitucional, Expediente No. 16-0203, Sentencia no. 752, August 12, 2016, 8 (citing decisión of the Juzgado Primero de Primera Instancia).

^{eeeee} The judge may reduce the sentence otherwise applicable to the criminal offense from a third to a half. For certain criminal offenses, the reduction shall be of only one third. OCPC Venezuela, Art 375, paras 3 and 4.