

AN EVALUATION OF PLEA BARGAIN UNDER THE NIGERIAN CRIMINAL JUSTICE
SYSTEM

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TITLE PAGE

AN EVALUATION OF PLEA BARGAIN UNDER THE NIGERIAN CRIMINAL JUSTICE
SYSTEM

LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, GODFREY OKOYE
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DECLARATION

I declare that this research is the result of my individual endeavors, conducted under the guidance of Dr. G. O. Omeh and has not been previously submitted for any academic qualification. All references have been properly shown and acknowledged.

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CERTIFICATION PAGE

This is to certify that the research work titled “AN EVALUATION OF PLEA BARGAIN UNDER THE NIGERIAN CRIMINAL JUSTICE SYSTEM” was carried out by **NNEOMA OLAEDO CHIAMAKA NNAMDI-EZE** under the supervision of **DR. G. O. OMEH**, Associate Dean of the Faculty of Law, Godfrey Okoye University, Enugu State, in partial fulfillment of the requirements for the award of Bachelor of Law (LL. B) Degree.

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Date.....

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Date.....

DEDICATION

This Project is dedicated to God Almighty for everything he keeps doing in my life. To my parents, for being my number one role models

Also, to all those who have dreamt to study this noble profession but never got the opportunity to achieve it.

NNEOMA OLAEDO CHIAMAKA NNAMDI-EZE REG

NO: GOU/U21/LAW/422

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ABSTRACT

Plea Bargain is a concept and plea bargaining is the practice. The concept of plea bargain has become an integral part of modern criminal justice across the world. Plea bargain under the Nigerian Criminal Justice System is a process of negotiating for a lesser punishment or term and this is subject to the approval of the court. This study critically analyses the concept of plea bargain under the Nigerian criminal justice system, by evaluating the nature and scope of plea bargain, the obstacles hindering its application in Nigeria, the efficacy of the administration of plea bargain in the Nigerian Criminal justice system, and the lessons that can be derived by Nigeria from the application of plea bargain in other jurisdictions. By utilising the doctrinal approach, this study analyses the legal rules, principles and doctrines of plea bargain as a concept, by relying on primary and secondary sources. The public perception of plea bargain in Nigeria is not a positive one, as citizens as well as legal scholars view the practice as a means for public officials to facilitate corruption. Plea bargain has tremendous benefit on the criminal justice system, ranging from the inclusion of victim participation to the decongestion of prisons. This study contrasts between plea bargain as applied in Nigeria and plea bargain as applied in other jurisdictions, such as United States of America, Canada, India, Pakistan and France. The following recommendations were suggested in the study: enacting specific laws regulating plea bargain in Nigeria, enacting laws regulating the transparency of plea bargain in Nigeria, not restricting plea bargain to only corruption cases and providing the minimum and maximum sentence to be offered in a plea bargain agreement. The work recommends as follows; that the Nigerian government should enact more legislation regulating the application of plea bargain in Nigeria. There should be an Act regulating the process of plea bargain in Nigeria, separate from ACJA, that the Nigerian government should enact a law that regulates the fairness and transparency of plea bargain agreements, that the use of plea bargain in criminal matters should not be restricted to only corruption cases as plea bargain has the potential to positively and effectively reduce the overall workload of both counsel and the courts, that the minimum sentence a person intending to use plea bargain can get should be regulated by law. This is to make sure that individuals will not rely on plea bargain just to evade appropriate sentencing and that the maximum sentence a defendant intending to offer or accept plea bargain agreement, should be regulated by law. This is to ensure that a defendant is not punished more than is appropriate for the commission of a crime.

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LIST OF ABBREVIATION

ACJA (Administration of Criminal Justice Act).....	5, 14, 18, 30, 35, 36, 39, 57, 58, 59
ACJLs (Administration of Criminal Justice Laws).....	5, 34, 35, 58
AGF (Attorney General of the Federation).....	35, 36
AGS (Attorney General of the State).....	34, 35, 36
CFRN (Constitution of the Federal Republic of Nigeria 1999).....	
CPA (Criminal Procedure Act 1945).....	22
EFCC (Economic and Financial Crimes Commission Act 2004).....	3, 5, 10, 11, 12, 21, 22, 29, 39, 40, 41, 51, 57
FRN (Federal Republic of Nigeria).....	36, 40, 41, 47
LCN (Law Care Nigeria).....	38, 41
NWLR (Nigerian Weekly Law Report).....	36, 39, 40, 43

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Criminal law is the body of law that defining offenses against the community at large, regulating how suspects are investigated, charged, and tried, and establishing punishments for convicted offenders.

Plea Bargaining is an agreement in criminal trials between the prosecutor and criminal defendant to settle the case by pleading to lesser or lighter offenses in exchange for concessions subject to the approval of the court.

Plea Bargaining is a recent development in the Nigeria Criminal Law. In the traditional African societies, the use of plea bargain has been employed although in an informal way. Persons who were accused of offenses would usually receive lesser punishment if they confess to the commission of the crime.

Formally, the concept gained currency in the 19th century when the need to obviate with the delays occasioned by legal technicalities witnessed in adversarial system of trial and the fact that the burden on tax payers money spent on criminal prosecution became unbearable. Securing conviction in otherwise simple criminal trial became an uphill task to the end that several accused persons were saved the pain of physical contact with prison gates.

In most common law jurisdictions, the concept has been applied to the end that a large chunk of convictions come from Plea Bargain. This is the situation in the United States of America where about 95% of convictions derive from the application of plea bargain. In 1970, the American Supreme Court in the case of *Brady V. United States* 397 U.S. 742 pronounced on the constitutionality of the concept.

In Nigeria, the concept found statutory emergence through the Economic and Financial Crimes Commission (Establishment) Act No.1 of 2004. In Section 14 (2) the Act provides thus: “Subject to the provisions of Section 174 of the Constitution of the Federal Republic of Nigeria 1999 (which relates to the power of the Attorney-General of the Federation to institute, continue or discontinue criminal proceedings against any persons in any court of law), the Commission may compound any offence punishable under the Act by accepting such sums of money as it thinks fit, not exceeding the amount of the maximum fine to which that person would have been liable if he had been convicted of that offence.”

The word “compounding” as used in the EFCC Act refers to the powers of the EFCC to drop some of the charges if the defendant is prepared to give up such sums of money as the EFCC deem fit.

Cruising on the altitude, the EFCC has used it in several cases including that of the former Inspector General of Police, Mr. Tafa Balogun, former MD of the then Oceanic Bank PLC to mention a few.

The first enactment in Nigeria, providing a legal framework for plea bargaining, is the Administration of Criminal Justice Law of Lagos State 2007 (ACJL 2007). The ACJL 2007 was later repealed and replaced with the Administration of Criminal Justice Repeal and Reenactment Law of Lagos State 2011 (Lagos State ACJL). The Federal Administration of Criminal Justice Act 2015 (ACJA) and a host of other states legislation have since followed.

Plea Bargaining is relevant in Nigeria because it helps in the reduction in sentencing and prison overload, efficiency in case management and judicial and prosecutorial efficiency.

However, there are a lot of controversies surrounding the concept of plea bargaining and this controversies centers on the fairness of plea bargain which includes encouraging defendants, including the innocent, to plead guilty out of fear of harsher penalties if convicted at trial and this can be said to undermine justice. This Research will resolve the issue of the constitutionality of plea bargain and the controversies surrounding the concept of plea bargain. This study is important because there is a need to understand how plea bargaining functions under the Nigeria Criminal Justice System and a better implementation of plea bargaining in Nigeria. **1.2**

Statement of the Problem

It is a known fact that plea bargain is now part of Nigeria’s Criminal Justice System, though its application has raised a lot of concerns. Due to the lack of speedy dispensation of justice, the

need for an alternate means has become glaring. Nigerian courts in the administration of justice have started making leeway for accused persons to plead guilty for a reduced form of punishment. Therefore, appropriate authorities can make legislations that preserve the rights of the defendant to choose the option of plea bargain thereby directly affecting the speedy dispensation of justice.

This research work will examine the applicability of plea bargain in the Nigerian criminal justice system.

1.3 Research Questions The questions emanating from the research are;

- I. Does the concept of plea bargain ensure fairness and transparency in criminal trial? II. Does the concept of plea bargain cure the problem of delay in criminal trial?
- III. What are the challenges, controversies and criticism of the concept of plea bargain in Nigeria?
- IV. What are the lessons from other more developed jurisdictions?

1.4 Aim and Objectives of the Study

The aim of this undergraduate law project is to review the concept of plea bargain and the practice of plea bargaining in Nigeria and its specific objectives are;

- I. To ascertain whether the concept of plea bargain is a cure to delay in criminal trial
- II. To determine whether plea bargain ensures fairness and transparency
- III. To examine the challenges, controversies, criticism and abuses connected to the practice of plea bargaining in Nigeria
- IV. To identify the lessons derivable from other jurisdictions

1.5 Scope and Limitations of the Study

The geographical scope of this study will be mainly Nigeria. In terms of the subject matter, this study meticulously examines and reviews the concept of plea bargain under the Nigerian Criminal Justice System.

The focal point of this study is directed at the practice, conceptual framework, theoretical framework, statutory provisions, implications and challenges of plea bargaining under the Nigerian Criminal Justice System. It scrutinizes how plea bargaining is regulated under the Administration of Criminal Justice Act (ACJA) 2015, Administration of Criminal Justice Laws of relevant states (ACJLs), the Economic and Financial Crimes Commission (EFCC) Act 2004.

This study addresses the foundation of plea bargaining, its historical evolution, rationale for the use of plea bargain, types and parties to a plea bargain. It also addresses the statutory provisions and judicial decisions and reported cases where plea agreements have been applied. This study will also address the effect of plea bargain in the speedy dispensation of justice, the impact of plea bargain on Anti-Corruption cases and lessons from other jurisdictions. In undertaking this study, it is important to take note and reduce the gaps that have shaped the depth of this study.

Geographically, this research concentrates on the Nigerian Criminal Justice System. Temporally, the fixed time period frame of this study is restricted, and any legislative or regulatory developments subsequent to the isolated time may not be well incorporated, knowing the peculiar nature of criminal laws that can evolve in different time. Several limitations can affect this research. The inconsistency in judicial interpretation and limited number of reported plea bargain cases holds a limitation in this research.

Lastly, this research is also limited by the evolving nature of criminal justice reforms in Nigeria, which means that new decisions, amendments, or policies may emerge after the completion of this research. Regardless of these limitations, this study provides a well detailed and valid analysis of plea bargaining as it currently operates under the Nigerian Criminal Justice System.

1.6 Significance of the Study

The significance of this law project is to show the importance of the research of plea bargain under the Nigeria Criminal Justice System and this importance cannot be over emphasized.

This study is important because it provides a well detailed understanding of how plea bargaining operates under the Nigerian Criminal Justice System. Through the review of the statutory provisions under the Administration of Criminal Justice Act (ACJA) 2015, the EFCC Act, and relevant laws, the study impacts valuable knowledge to the course of criminal law and procedural reforms in Nigeria.

The contribution of this study to the legal practice cannot be well overstated as it provides legal officers with highlighted areas where the current plea bargaining framework is either inadequate, unclear, or susceptible to abuse. The findings and recommendations of this study can guide reforms aimed at strengthening fairness and transparency in the application of plea agreement. This study emerges as a definitive reference point, assisting in a deep knowledge of the necessary legal structures and laws.

This project plays a special role as it will serve as an educational resource material in the Nigerian Criminal Law. Aspiring law students, undergraduates in other fields, frequent researchers, and legal professionals will benefit from the well detailed explanation of the concept of plea bargain under the Nigerian Criminal Justice System.

Furthermore, this study is important to the general public, especially considering the controversies surrounding the plea bargains in high-profile corruption cases. By carefully examining this research, the public will be aware and have a better knowledge, understanding and trust in the justice system.

In final essence, this undergraduate law project will start as a large beacon of empowerment and high progress in the Nigerian Criminal Law and aims to leave a deep mark on legal practice and scholar education and also awareness in the society.

1.7 Research Methodology

The types of research methodology for undergraduate project research mostly in law includes the following; doctrinal or library-based, quantitative, qualitative, mixed, action research, case studies, ethnography, survey based, interviews, observation/participation observation, secondary data analysis

Doctrinal or library-based research is one of the most frequent methodology which is usually adapted by people partaking in research in law. Doctrinal research portends the question, what is the law in a particular manner. The doctrinal research is preoccupied with the study of the legal doctrine and how it was invented and it applies. These procedures involve study of legal issues in order to ascertain the need for further study.

This work is mostly library and internet-based, with an examination of the subject matter in the primary and secondary sources of Nigerian law.

The doctrinal research approach was applied in this study, Textbooks written by notable researchers, Professors of law and experts from both the local and international communities were consulted as secondary sources of data. Articles from respectable publications, as well as other scholarly literature on the issue, were also consulted.

1.8 Literature Review

Plea bargain is an essential feature of Nigeria's criminal justice system following its adoption under the Administration of Criminal Justice Act (ACJA) 2015. There are different definitions given to plea bargain by some notable writers. The definition of plea bargain also seem to vary depending on the jurisdiction and the context of its use.

Notable amongst the various definition is the one that reads thus:

“the process whereby the accused and prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to the courts approval. It usually involves the defendant pleading guilty to a lesser offence or to only one or some of the courts of the multicount indictment in return for a lighter sentence than that possible for the graver charge” The writer sees the inadequacies in this definition being that the first part of the definition suggests that plea bargains are “mutually satisfactory dispositions”. While it is very true that the bargain struck must be agreed upon by both parties to the bargain and guilty plea made intelligently and voluntarily, this does not actually guarantees a mutually satisfactorily result. This is more so as the prosecutor may be forced to present a highly favorable offer to a defendant as a result of errors in procedure that may cause evidentiary problems at trial. On the other hand, the strength of the prosecutors that bargain power they present the defendant with almost equally unfavorable choices.

Nchi, S. I. defines plea bargain as “an informal arrangement whereby the accused person agrees to plead guilty to one or some charges in return for the prosecution agreeing to drop the charges or a summary trial”.

The above definition only shows that it is the accused that agrees to one or some charges in return for the prosecution agreeing to drop the charges. The writer is of the view that the defendant should have added “...Prosecution agreeing to two other charges or for a lenient sentence”. It is pertaining to sentence bargain and in such regards, sentences can be bargained. In another event, Ekpo, N. Esq. Chairman of the Independent Practices and other Related Offences Commission on his paper presentation described plea bargain as:

“the process whereby the accused and prosecutor in a criminal case work out a mutually satisfactory disposition of cases subject to court’s approval. It usually involves the defendant pleading guilty to a lesser offence or go only one of some of the counts of a multi- count indictment in return for a lighter sentence than that possible for a graver charge”.

The writer sees another inadequacy in the above definition of plea bargain in the sense that the writer would criticize the involvement of the court in plea bargain negotiations being that the court is not supposed to be a party to any issues before it.

Plea bargain in much developed criminal jurisdiction have no provision for interference of the court as the practice is basically defendants or offenders in the cases.

In another definition plea bargain has been seen as “the process of negotiation between the parties in a criminal case involving the defendant’s agreement to plead guilty in return for the prosecutors concession reducing either the sentence or the seriousness of the charge”. The writer sees the inadequacies in this definition being that it is unsatisfactory as it seems to suggest that of accused person stands to face only one charge. In the actual sense, an accused person may face multiple charges during criminal trial.

Another writer, Agaba J. A said that plea bargain involved the prosecutor, the accused, the victim and the court.

The writer is of the opinion that the court is non-existent in the negotiation process between the parties to a case. This is so because the court is not made to be interfering in any negotiation process holding to the common principle of unbiased and fair adjudication of justice.

Plea bargain can also be said to have been imported into our justice system by Section 14(2) of the Economic and Financial Crimes Commissions (EFCC) Act, which provides as follows: “Subject to the provisions of Section 174 of the Constitution of the Federal Republic of Nigeria 1999 the commission may compound any offence punishable under the act by accepting such sum of money as it thinks fit not exceeding the maximum amount to which a person would have been liable if he had been convicted of that offence.”

Although this provision does not expressly mention the acceptance of plea bargain in the Nigeria justice system, it gives way to it as a form of justice by way of implication. This section gives EFCC the authority to accept perhaps a sum of money not more than the prescribed fine of that offence as an alternative to litigation in a court of competent jurisdiction.

Plea bargain was ushered into Nigerian criminal justice system to alleviate certain pressing issues such as congestion of courts, prolonged prosecutions, and the delay in trials. However, these problems are still part and parcel of the Nigerian criminal justice system currently.

CHAPTER TWO

CONCEPTUAL CLARIFICATION AND THEORETICAL FRAMEWORK

2.1 Conceptual Clarification

Conceptual clarification refers to the systematic process of defining, distinguishing, and organizing abstract concepts to reduce ambiguity and ensure consistent usage within a specific domain. It can also be said to be the way ideas are broken down for clear understanding of what it means, how it is used and what it does not include.

This is essential because it helps to establish a common ground that ensures accurate communication and policy development.

There is no concept in the law that does not have its origin, strength, system of operation and rancor. Plea bargain as a nascent concept in the Nigerian Criminal Justice System has its trace, its operational mode.

Loosely defined it as that which is viewed as a deal between the prosecutor and the accused wherein the defendant pleads guilty to a charge less than. The original or receives sentencing and consideration for pleading guilty to the criminal charge.

The practice of plea bargain is very new in Nigeria. It was never part of the Nigerian Criminal Justice System until 2004 when the Economic and Financial Crimes Commission was established. It is the EFCC Act that is the first Federal enactment that is seen introducing the concept into the Nigerian Criminal Justice System.

2.1.1 Meaning of Plea Bargain

The term “plea bargain” is derived from the words “plea” and “bargain”. The word “plea” has been defined to mean an accused person’s formal response of “guilty,” “not guilty” or no contest to a criminal charge. The word “bargain” on the other hand literally means the act of negotiating a settlement. In law, bargain is defined as an agreement of two or more persons to exchange a promise for a performance.

Plea Bargain which is also known as plea agreement or plea deal is a legal structure in criminal law where the defendant agrees to plead guilty to a charge as consideration for leniency from the prosecutor. These concessions can include a reduction in the harshness of the charges, the dismissal of some charges or a more lenient sentencing.

According to the Black’s Law Dictionary, plea bargain is said to mean:

“A mutual understanding between a prosecutor and a criminal defendant who pleads guilty to a lesser offence or to one or more multiple charges in exchange for some concession by the prosecutor, usually a more lenient sentence or a dismissal of other charges.”

There are different categories of plea bargain, such as charge bargaining, where a defendant pleads to a lesser offence and sentence bargaining, where the expected sentence is agreed upon before a guilty plea.

The concept of plea bargain has gained recognition under the Administration of Criminal Justice Act, where it is defined in Section 494 of Administration of Criminal Justice Act (ACJA) 2015 to mean:

“...the process in criminal proceedings whereby the defendant and the prosecution work out a mutually acceptable disposition of the case; including the plea of the defendant to a lesser offence than that charged in the complaint or information and in conformity with other conditions imposed by the prosecution, in return for a lighter sentence than that for the higher charge subject to the court’s approval.”

Therefore, it is wise to say that plea bargain is a mutual agreement between parties in a suit. A person cannot partake in a plea bargain by proxy. “When practicing plea bargain, the accused forfeits his right to enter a plea of not guilty as well as his right to demand a full trial and instead, he acquires the right to bargain for benefit. The prosecution as well as the accused person or persons partaking in such agreement need to be specifically stipulated to avoid any confusion and ambiguity. The appropriate time for entering a plea bargain agreement can be either during

the presentation of the prosecution's evidence or after, however, it must be before evidence of the defence is given.

2.1.2 Types of Plea Bargain

Plea bargain is a blanket term used to connote many distinct concepts such as:

1. Prosecutorial plea bargain: This refers to discussions amongst the prosecuting party and the accused's counsel. The discussion concerns the charges which will be brought against the accused and will be provided for trial. The discussions also includes attestations that the accused is ready to plead guilty to certain offences.
2. Judicial plea bargain: Here, the counsel for the defendant coupled with the prosecution attend the Judge in his private Chamber and discuss with the Judge about the probable sentence of the accused. Through this, counsel for the defendant indicates that the defendant will plead guilty.
3. Charge bargaining: This occurs when the accused person pleads guilty to an offence he allegedly committed, and in return the prosecution has the option to withdraw one or more of the charges or files a lesser charge.
4. Sentence bargaining: Here, the prosecutor promises to recommend to the court specific sentence or bargained sentence, after the defendant agrees to enter a guilty plea. It can also be done directly with the trial judge.
5. Fact bargaining: Fact bargaining usually entails an admission to certain facts by the accused in exchange for a promise from the prosecution for not introducing other established facts as evidence before court. It is the most rarely used form of plea bargaining.

2.1.3 Parties to a Plea Bargain

There are parties to a plea bargain, parties are basically two and they include:

1. The prosecution
2. The defendant

1. The prosecution: The prosecution is one of the parties to a plea bargain. A prosecutor is a legal officer who represents the government in a criminal proceeding. The Attorney General is the chief law officer for the government. This conception of prosecutor also covers private prosecutors for the purposes of plea bargain. A private prosecutor is a counsel employed privately for purpose of initiating a criminal proceeding. There are specific obligations imposed on the prosecutor, and they include:
 - Charges are not to be bargained away or dropped unless the prosecutor is certain that there is no substantial evidence to prove the case in court
 - The prosecutor is to disclose any information that will negate the guilt of the accused to the defence and on time.
 - He is also to disclose to the defence, and the court all unprivileged mitigating information known to him.
 - The prosecutor is to have reasonable ground to suspect that the accused committed the crime and sufficient evidence to the charge filed against the accused.
 - The prosecutor should avoid overcharging as a way to pressure the accused into plea bargain.
 - The prosecutor is expected not to fabricate evidence
 - The prosecutor is expected not to intentionally take advantage of the ignorance of the accused but to rather refer the accused to bodies like the legal aid council before the terms of the agreement is concluded.
 - The prosecutor is to ensure that the judgement upon the plea of the defendant is enforced. In a situation where assets, property or money is to be transferred by the

offender, the prosecutor should make sure it is transferred to the victim or any person lawfully entitled to it.

- The prosecutor is to involve and consult the officer who investigated the case.
- The prosecutor is expected to be transparent with all interested parties and even the general public.

The defendant: The defendant is another party to a plea bargain. A defendant can be said to be a person who is accused of committing an offence. The consequence of entering into a plea bargain is that the defendant waives some constitutional rights such as the right to confront accusers, the right against self-incrimination, and the right to appeal the sentence resulting from the plea. The defendant must have the capacity, both in age and mentally to enter into the plea bargain before he can be bound. However, the plea must be entered by the defendant knowingly and voluntarily with the advice of a competent counsel. Where the defendant is not represented by a counsel or, in the case of defendant minor who lack full capacity, it might be helpful to ensure that before accepting the plea the court must obtain a written “waiver of counsel” from the defendant, beside reflecting in the court’s record that the defendant understands his right to an attorney and is waiving that right.

2.1.4 Evolution of the Concept of Plea Bargain

The concept of plea bargain started way back in the traditional African societies, though it was in an informal way. Persons who were accused of offences would usually receive lesser punishment if they confess to the commission of the crime.

Formally, the concept of plea bargain gained recognition in the 19th century when the need to obviate with the delays occasioned by legal technicalities witnessed in adversarial system of trial and the fact that the burden on taxpayers money spent on criminal prosecution became unbearable.

The modern concept of plea bargain found its strongest root in the united states and evolved extensively during the 19th century.

In most common law jurisdictions, the concept of plea bargain has been applied to the end that majority of conviction obtained come from plea bargain. This is the situation in the United States of America where about 95% of convictions derive from the application of plea bargain.

In the states of California, plea bargain has assumed such a popular acclaim that the parties and their attorneys are at liberty to reduce the plea bargain agreement into a prescribed written format that can be filed in court for the court to adapt same as its judgement in a criminal proceedings.

In 1970, the American Supreme Court in the case of Brady V. United States 397 U.S. 742 pronounced on the constitutionality of the concept.

Following the success of the concept of plea bargain in the United States, plea bargain has gradually spread to other legal system across the world.

In India, Plea bargain was introduced into legal system in 2006 by statute. The statute however made the procedure applicable in criminal proceedings involving only minor offences which do and attract a punishment of more than 7 years.

Pakistan is one country that views plea with a suspicious. It however introduced the procedure into its legal system in 1999 as an anti-corruption Law. The reason for this procedure in Pakistan is to allow persons accused of official corruption to return what they have stolen as determined by investigators and prosecutors and regain their liberty with infracted political rights and damaged reputation. In Pakistan, the procedure benefits the society by having what has been taken from it restored while the perpetrator of the evil act is set free after being stigmatized. The procedure is at the instance of the accused person who makes an application making a frank disclosure of all he took from the public till the application is scrutinized by the National Accountability Bureau who if satisfied, endorses the application and presents same to court. The court decodes on whether or not to accept the application. Whether the court accepts the application, the accused stands convicted but is not sentenced. After the conviction, the accused is discharged but barned from taking part in any elections or holding any public office. Furthermore, the accused is dismissed from any public office occupied by him and is disqualified from seeking or obtaining a loan from any bank. Apart from corruption cases, formal plea bargain are not popular in other cases in Pakistan.

In Canada, plea bargain is more restricted. This is because Canadian judges are not bound by the crown's sentence recommendations. The crown's prosecutors are however free to make such recommendations on the basis of a plea agreement with the defendant. In practice however, the crown will usually recommend a punishment to the court higher than what was agreed under a plea bargain while the defense will be urging a sentence far lower than that agreed upon with the crown prosecution when they appear before the judge. The aim is to enable the sentence of the court to fall within the range of that agreed upon in the plea bargain.

In England and most of the other common law such as Australian State of Victoria idea, it is only the court that determines the appropriate penalty for an offence.

However, in Nigeria, plea bargain was first established by the Economic and Financial Crimes Commission (Establishment) Act No. 1 of 2004. It gained notoriety when it was used by the EFCC in 2005 to settle the case of corruption against former Inspector-General of Police, Tafa Balogun. The EFCC has generally defended itself on the basis of the provision of SECTION 14(2) of the EFCC Act, 2004 which reads inter alia:

“the commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence.”

It is also worth noting that some have declared that plea bargain has existed in certain statutes on criminal justice even before the enactment of the EFCC Act 2004, in particular SECTION 180(1) of the CRIMINAL PROCEDURE ACT and that therefore its use by the EFCC was not something done in abstraction or without statutory precedents. SECTION 180(1) CPA provides:

“when more charges are made against a person and a conviction has been had on one or more of them, the prosecutor may, with the consent of the court, withdraw the remaining charge or charges or the court, of its own motion, may stay trial of such charge or charges.”

2.1.5 Rationale for the Use of Plea Bargain

The rationale for the use of plea bargain refers to the reasons and justification for allowing an accused person to plead guilty to a lesser charge or receive a lighter sentence instead of going through a full trial.

The rationale for the use of plea bargain centers on balancing judicial efficiency with the practical needs of the prosecution, defense, and victims. It is primarily the tool to resolve criminal cases without the time, expense, and uncertainty of a full trial.

It is common knowledge that criminal trials in Nigeria particularly corruption cases have witnessed undue delays occasioned by either interlocutory applications or delay tactics employed by defense lawyers to the end that cases last for over ten years in court. These difficulties paved way for the use and application of plea bargain.

There are many reasons for plea bargaining and they fall into three categories which includes:

Firstly, some jurists maintain that it is appropriate as a matter of sentencing policy to reward defendants who acknowledge their guilt. Several reasons were advanced in support of this position, notably, that a bargained guilty plea may manifest an acceptance of responsibility or a willingness to enter the correctional system in a frame of mind that may afford hope for rehabilitation over a shorter period of time than otherwise would be necessary.

Plea bargaining is also a factor in reforming the offender by accepting the responsibility for their actions and by submitting them voluntarily before the law, without having an expensive and time consuming trial. It reduces the workload of the prosecutors enabling them to prepare for the gravest case by leaving the effortless and petty offences to settle through plea bargaining.

In cases where aged witnesses have the vital role to prove a charge against the accused, their death or non-cooperation, may be a real cause of adverse conclusion of the case. Here, the prosecution avoids a chance of acquittal and the accused avoids a chance of conviction for more serious charges with higher punishment. From the angle of victim also, plea bargaining is a better substitute for his ultimate relief as he can avoid a lengthy court process to see the accused convicted. The system gives a greater relief to a large number of under trials lodged and in jails of the country and helps reduces the long pendency in the courts. Plea bargain allows both parties to avoid a lengthy criminal trial and may allow criminal defendants to avoid the risk of conviction at trials on a more serious charge. In Nigeria, criminal proceedings may be instituted in Magistrates' courts on a charge by a bringing a person arrested without warrant before the

court, the charge sheet specifying the name and occupation of the person charged, the charge against him and the date and place where the offence is alleged to have been committed. Also, in the High Court, by information of the Attorney General of the state in accordance with the provisions of the law and by information filed in the court after the accused has been summarily committed for perjury by a judge or magistrate under the Administration of Criminal Justice Law.

Thus, a criminal defendant charged with a felony theft charge, the conviction of which would require imprisonment in state prison, may be offered the opportunity to plead guilty to a misdemeanor theft charge which may not carry a jail term. Therefore, plea bargaining reduces the possibility of detention during extensive trial and retrial processes. The accused can have his case completed more quickly and know what the punishment will be instead of facing uncertainty.

Some advocates of plea bargaining also see it not primarily as a sentencing device but as a form of dispute resolution. These advocates maintain that it is desirable to afford the accused and the state, either party would have insisted on trial. It precludes the possibility of having a serious offender escape justice because of some real or imagined weakness in the case.

Furthermore, plea bargaining has supports on grounds of economy or necessity, thus viewing it as a sentencing device or a form of dispute resolution than as an administrative practice. This is because advocates argue that society cannot afford to provide trials to all the accused who would demand them if guilty pleas were unrewarded. It reduces the overall financing cost of criminal prosecution and enables the prosecution to devote more time and resources to other cases and earn their quickly.

2.2 Theoretical Framework

A theoretical framework can be said to be the reviewing of already existing theories of a certain topic or subject matter to limit the scope of relevant data. A theoretical framework employs language, representation, industries, and audiences to streamline arguments and ideas.

Plea bargain is predicated on the framework of criminal settlement. The prosecutor and the defendant settle by entering into agreement that reformable their disputes to maximize their respective interests. The interest are classified into: reduction of cost, maximization of ex ante value, and mitigation of risk. In a plea bargain, all stakeholders (including the officer carrying out the investigation, the prosecutor, the victim of the offence, the complainant and the accused person), join hands to willingly resolve the pending criminal case through a participatory process and to the shared contentment of one another. If the plea bargain is successful, the defendant will likely get a reduced punishment and disposal of the issue. If the plea bargain however fails, the matter will continue from the point where the plea bargain was filed.

2.2.1 Administrative Theory

The administrative theory of plea bargain focuses on the management of cases in a time efficient way. According to this theory, the primary and most fundamental reason for employing a plea bargain is to adjudicate a plethora of cases within the criminal justice system. The prosecution's council will be able to effectively determine cases by making an offer to the defendant. The content of this offer is usually reduced sentence or charges in exchange for a guilty plea to bypass lengthy trials. This theory prioritises managing a myriad of cases (with emphasis on the caseload volume), over arriving at the best outcome of justice. The administrative theory emphasizes on the role of the prosecution in setting out the terms and conditions of plea bargain agreement and side-lining the defendant to the position of a passive participant whose only power is his ability to accept or reject the offer.

2.2.2 Shadow of Trial Theory

Shadow of trial theory relies on the perceived expectations of trial outcomes. The theory entails that before any plea deal is agreed to, the prosecution and defence will consider the likely outcome of the trial. This is called casting the shadow over the negotiation. The perceived outcome of the trial will determine if the parties accept the plea deal. This entails that each party will evaluate their chances of winning the case, the probability of conviction and the potential sentence to be given before agreeing to the terms of any plea deal.

2.2.3 Prospect Theory

The prospect theory is similar to the shadow of trial theory due to the fact that they both deal with the evaluation of outcomes. However, the differing factor is that in prospect theory, before a plea bargain is accepted, the defendant leans towards weighing probable losses more heavily than probable gains. This often leads them to choose plea bargain because of its certainty even if it is the more unreasonable option. Thus, according to this theory, more thought is wasted on the severity of the sentence or charges if proven guilty (probable losses) rather than reduced sentence or charge if guilt is accepted (Probable gain). For the defendant to escape the probability of heavier loss, the defendant is very likely to choose plea bargain because a reduced sentence or charge is more certain. However, some have criticized this prospect theory as being contradictory on the basis that objectively speaking, criminal defendants are likely to perceive trial as the probable gain because they are more risk-seeking and willing to gamble that they will get away with the crime. To conclude that criminal defendants will choose the certainty of plea bargain (and still be convicted for the crime) over the 50-50 chance of getting out free will be to suggest that criminals are unfailingly risk averse. This strains credulity and cannot resolve the contradiction.

CHAPTER THREE

LEGAL FRAMEWORK OF PLEA BARGAIN UNDER THE NIGERIAN CRIMINAL JUSTICE SYSTEM

3.1 Overview of the Nigerian Criminal Justice System

Criminal Justice System is the consolidative institution which a person accused of the commission of an offence passes through until the allegations against him are dropped or disposed of, or even until the court has given its judgment. The criminal justice system has five constituents which are: the law, the society, the law enforcement agencies, the court system, and correctional centres/institutions. The relationship between these constituents is relatively easy to understand. The law prohibits certain acts and omissions for its criminality. These laws are obeyed and are only enforceable within the community or a specified geographical entity. Law enforcement agencies ensure compliance with these laws. Any person subject to the force of the law who defects will be taken to court to ensure justice following the constitutional right to fair hearing/trial. Once such a person is found guilty, he/she will be taken to a correctional centre for reformatory purposes.

Nigeria's criminal justice system is dual in nature. It operates a federal constitutional democracy where criminal justice is attainable at the federal level and state level. With regards to plea bargain at the federal level, the Administrative of Criminal Justice Act (2015) was enacted to ensure that criminal justice is attained, meanwhile, at the state level, various Administration of Criminal Justice Laws of various states apply.

3.2 Legislation Governing on Plea Bargain under Nigerian Laws

The statutory basis for plea bargaining is primarily anchored in the Administration of Criminal Justice System (ACJA) 2015 at the federal level and various Administration of Criminal Justice Laws (ACJL) at the state level.

However, before formal statutory codification, plea bargaining operated in Nigeria through sectoral provisions. Section 14(2) of the Economic and Financial Crimes Commission Act 2004 empowered the EFCC to compound offences under that Act by accepting sums of money exceeding the maximum. Fine applicable, which effectively enabled negotiated settlements in corruption and financial crimes cases. Additionally, Section 180(1) of the now largely obsolete Criminal Procedure Act allowed prosecutors to withdraw surplus charges with court consent, which some commentators argued provided an implicit basis for plea negotiations. Despite these provisions, there were skepticism whether they provided a comprehensive legal framework for plea bargaining; indeed, critics, including former Chief Justice of Nigeria, Dahiru Musdapher, described the practice as lacking clear statutory foundation in federal criminal law prior to formal codification and this brought about the significant development in the Nigeria criminal procedure, which is the enactment of the Administration of Criminal Justice Act 2015 (ACJA), which formally integrated plea bargaining into the criminal justice framework. **3.2.1 Administration of Criminal Justice Act (ACJA) 2015**

The Administration of Criminal Justice Act (ACJA) 2015, specifically Section 270, provides that plea bargaining in Nigeria promotes a speedy and efficient justice and rehabilitation.

The purpose of the Administration of Criminal Justice Act as deliberated in section 1 of the Act is to protect the interests and rights of the defendant and victim, to ensure efficient management of justice institutions, to shield the society from crimes, and to ensure effective administration of criminal justice in Nigeria.

The Administration of Criminal Justice Act is a panacea brought to amend and straighten out the crooked, corrupt and half-hearted application of plea bargain in the past. Section 494 of the Act defined plea bargain as the process in criminal litigation where there is an agreement between the prosecution and the defendant, where the defendant agrees to enter a guilty plea in return for a lower sentence or charge and in adherence with the conditions imposed by the prosecution.

Both the defendant and the prosecution can offer a plea bargain agreement. The prosecutor can, however, only accept a plea bargain if, in his view, to accept such a plea bargain will be in line with public interest and policy as well as the need to hinder the abuse of legal process. Plea

bargain under the Administration of Criminal Justice Act can be offered either before arraignment in court, or after arraignment but before the defendant lays his case open.

Plea bargain agreement under the Administration of Criminal Justice Act must be reduced to writing, thereby removing the uncertainty and ambiguity that may arise in oral agreements. The document must contain the plea bargain agreement terms, which shall also state that prior to that agreement, the defendant was made aware of his right to silence and the consequences of pleading guilty. The agreement must have the signature of the prosecutor, defendant, and interpreter if one was used. The document or its copy will then be presented to the Attorney General, however, consent of the Attorney General is not needed.

Participation of the court or presiding judges in the agreement is prohibited under the Administration of Criminal Justice Act. The presiding judge cannot take part in the negotiating of the plea deal; the only part they play is to confirm if the terms of the agreement were agreed on from the defendant. The judge presiding on the matter confirms from the defendant whether he admits to the alleged crime and if he agreed the agreement without duress or undue influence. When this is done, the judge will then convict and sentence the defendant in accordance with the plea bargain agreement. The judge can also give a sentence higher than that prescribed in the plea bargain agreement if the lower sentence is not in line with justice or does not serve as a deterrent. If the judge ascertains that the defendant entered into the plea deal due to undue influence, or involuntarily, the plea bargain agreement will be discarded, and a plea of 'not guilty' will be entered by the judge on behalf of the defendant as trial proceeds. When the trial continues due to this reason, no reference shall be made to the proposed plea bargain as to do so will be an infringement on the defendant's right to presumption of innocence. Any judgement made by the court pursuant to the plea bargain agreement has finality. One of the parties to the agreement cannot renege on it. The decision is deemed a court judgement, and the defendant therein cannot be tried, convicted and sentenced again on the same offence.

An important implication of plea bargain under the Administration of Criminal Justice Act is that it emphasises victim participation. When the defendant offers a plea deal, the prosecution cannot accept such a proposition without the victim's consent. The victim is also given ample opportunity to present his representations as to the terms of the agreement, compensation or restitution as the case may be. The Administration of Criminal Justice Act also specifically provides for forfeiture of the proceeds of the crime by the defendant, and the transfer and vesting of those proceeds in the victim of the crime.

Furthermore, the Federal Government has introduced the Administration of Criminal Justice Amendment Bill, 2026 to promote clearer procedural safeguards and sentencing guidelines to ensure consistency, transparency, judicial oversight and public confidence in negotiated guilty pleas.

3.2.2 Administration of Criminal Justice Law (State Laws)

The first enactment in Nigeria, providing a legal framework for plea bargaining is the Administration of Criminal Justice Law of Lagos State, 2007 (ACJL 2007). The ACJL 2007 was later repealed and replaced with the Administration of Criminal Justice Repeal and Reenactment Law of Lagos State 2011 (Lagos State ACJL). This ACJL was later amended in 2021.

The ACJL came to being and made express provisions for the application of plea bargaining (now amended in 2021). This was the very first attempt at codifying plea bargain in Nigeria, however, it was only applicable in Lagos State. Section 75 of Lagos State Administration of Criminal Justice Law 2015 now section 77 of Lagos State Administration of Criminal Justice Law 2021 recognises the concept of a plea bargain and its procedure in Lagos state. It states that the prosecutor and a defendant or his legal practitioner may, before the plea to the charge, enter into an agreement in respect of a plea of guilty by the defendant to the offence charged or a lesser offence of which may be convicted on the charge.

Similarly, Anambra State in Nigeria in 2010 also enacted the Administration of Criminal Justice Law which equally made provision for adoption of plea bargain. This Act however is not as detailed as the Lagos State Administration of Criminal Justice Law.

Delta State also enacted the Plea Bargain Guidelines for Prosecutors in Delta State, 2024.

Subsequently, the Administration of Criminal Justice Act 2015 particularly sections 270-277 provided a comprehensive framework which has been adopted by several states in Nigeria.

3.3 Role of the Court in Plea Bargain Agreement in Nigeria

The law stipulated the extent of participation by the court in the plea bargain agreement and the residual powers that the court can exercise. The prosecutor is duty bound to inform the court that the agreement has been reached between the parties and the presiding judge or magistrate shall inquire from the defendant to confirm the terms of the agreement, to ascertain that defendant admits all the allegations contained in the charge and to determine whether the defendant entered into the agreement voluntarily without any influence or threat before acting upon the terms as contained in the agreement.

The court is not bound to impose the agreed sentence. The court reserves the power and discretion to decide whether the sentence is the appropriate sentence for the offence having regard to the sentence prescribed for the offence by substantive criminal law and the provisions of any applicable Sentencing Guidelines. However, where the judge or magistrate is not in agreement with plea bargaining punishment by proposing a higher one than the one agreed upon, the defendant has choice either to agree with the higher punishment or withdraw from the plea bargain agreement wherein the case will be transferred to another judge and start de novo with mandate that reference shall not be made to previous plea of guilty or earlier plea bargaining agreement, no admission contained therein or statement relating thereto shall be admissible against the defendant. Once the parties agreed on the content of plea bargaining and the trial judge satisfied with same, the defendant cannot be tried for the same offence again to avoid double jeopardy.

The decision of the court thereon is final without any right of appeal against same save where fraud or illegality is alleged or established that will warrant appeal or set aside of the decision.

Therefore, the provision of the act as it relates to plea bargaining is a step further in the advancement of our criminal justice system in order to aid and assist quick dispensation of justice and to avoid unnecessary delay of criminal matters, even though, the Act fails to specifically mention offences that parties can enter into plea bargaining agreement and those that could not. Most importantly, the provisions are silent on the procedures to be adopted to ensure that victims' rights are enforced and complied with.

3.4 Power to Authorise Plea Bargain

A common provision in the Administration of Criminal Justice Laws (ACJLs) is that the power to consider and approve plea bargain is conferred on the Attorney General of the State (AGS). This, however, does not preclude law officers working in the office of the AGS from considering and recommending plea bargains for the approval of the AGS subject to any direction or policy adopted by the AGS. Prosecutorial powers are conferred on AGS by the Constitution. Law officers exercise prosecutorial powers on behalf of the AGS and subject to the AGS's direction. The implication of specifically conferring the power to consider and approve plea bargain on the AGS, is that any person prosecuting under State Laws cannot conclude any plea bargain without the AGS's approval. Such other prosecuting authorities are subject to the AGS's powers under the constitution and by the ACJL cannot conclude plea bargains without the AGS's approval. Arguably, the intention of the legislator is to ensure that the practice of plea bargaining is strictly regulated and to preclude police prosecutors from concluding plea bargain agreements without the approval of the AGS. This would prevent the plea bargain process from being "commercialized."

In Lagos, the position is clear that only prosecutors who are law officers may conclude a plea bargain because section 76(11) of the Lagos State ACJL specifically provides that "prosecutor" for the purpose of the section means a Law Officer.

The ACJA specifically vests the power to consider and approve plea bargain in a prosecutor and not on the Attorney General of the Federation (AGF). This approach is also adopted in Kaduna State. The significance of this approach is that a prosecutor can conclude a plea bargain without requiring a specific approval of the AGF or the AG of Kaduna State unless there is policy directive requiring approval. The approach adopted under the ACJA is perhaps dictated by expediency. Officers in the Directorate of Public Prosecutions at the Federal Ministry of Justice prosecute cases in Federal High Courts all over the country and many of them are not resident in the Federal Capital Territory. It would be an administrative nightmare and fraught with logistic challenges to expect that the AGF consents to all plea bargain proposal by all federal prosecutors. In addition, there are several federal prosecuting authorities established by Law and empowered to prosecute criminal cases. Such authorities prosecute cases and consequently can conclude cases by plea bargaining subject to the overriding powers of the AGF to take over or discontinue such prosecutions. Conversely, the territory covered by the AGS is much small and, therefore, logistically more manageable. It is, however, significant to note that in the States, a practice is

evolving of the AGS creating an advisory unit in the AGS's office to process and advise the AGS on plea bargain proposals. The AGF may however adopt policies and procedures to regulate the approval of plea bargain by prosecutors who are law officers. Prosecutors under the ACJA does not extend to police officer who are not legal practitioners prosecuting under Federal Acts. The ACJA precludes police officers who are not legal practitioners from prosecuting cases.

The power to consider and approve plea bargains also extend to prosecuting authorities established by legislation including the Economic and Financial Crimes Commission and the Corrupt Practices and Other Related Offences Commission. They are not required to obtain the AGF's approval before concluding any plea bargain. The power of prosecuting authorities to conclude plea bargain agreement is however subject to the AGF's supervisory powers over public prosecution under the constitution.

3.5 Benefit of Plea Bargain to the Nigerian Criminal Justice System

The benefits of a plea bargain are very commendable under a permissible criminal justice system. Authors such as Howe have argue that the practice of plea bargain is quite beneficial because it maximises punishment while saving cost and time. Plea bargain ensures that victims of the offence are protected and shielded from the stigmatisation that usually ensues.

Plea bargain has some incentives which make it a good innovation in Nigeria concerning the government, the judges, the prosecutor and the defendant. These will be treated systematically.

2. **The Government:** Plea bargain is important to the government because it is one of the factors that reduces the congestion of prisons in Nigeria. Nigeria's penal institutions are severely overcrowded, with mostly persons awaiting trials. The average duration of criminal trials, counting from the commencement of the action till conviction of the defendant, takes about 11 years. This, coupled with the fact that the judiciary is understaffed and it usually results in protracted trials is enough to make prison congestion a major problem which can be solved through plea bargain.
3. **The Judges:** Congestion in prisons is not the only problem with the administration of criminal justice in Nigeria. The Nigerian courts are equally congested with a plethora of cases, which causes the delay in seeing a case to the end. Incessant adjournments can be linked to strikes, public holidays, religious holidays, fatigued and overworked judges. To alleviate this congestion, plea bargain can be used as an incentive by reducing the amount of cases that go to court or that finishes trial in court.
4. **The Prosecutor:** A trivial incentive for the prosecutor can be viewed from the perspective of the prosecutor's workload. This is trivial because it is personal to the prosecutor. Plea bargain lightens the workload and work schedule of the prosecutor. A more important incentive which plea bargain offers to the prosecutor is an assured and certain conviction. Due to the nature of plea bargain in Nigeria, the conviction of the defendant is very certain because the defendant agrees to enter a guilty plea with regard to the offence he is being accused of. Even if the evidence of the prosecutor is weak, the fact that the defendant failed to make a case to defend himself is enough to win the case.
5. **The Defendant:** Plea bargain is more cost-effective for the defendant than traditional litigation. Since litigation takes times, the defendant will be forced to pay more for his counsel over a long period. Also, plea bargain, unlike criminal litigation does not make use of the bail system, thus, the defendant is spared of from paying huge amounts of money as bail. Another incentive towards the defendant is predictability of result. During trial, it is uncertain which of the parties will have the case resolved in their favor, and if it is not in the favor of the defendant, it is still uncertain in relation to the sentence and punishment. When there is a plea bargain agreement, the result or outcome is quite clear. The defendant will be found guilty, and the punishment and/or sentence agreed upon.

In Nigeria practice, the benefit of plea bargain has been succinctly stated in the case of Federal Republic of Nigeria v Lucky Nosakhare Igbinedion & ors. They are:

1. The defendant can avoid the cost of criminal trial, the possibility of a heavier punishment, and the negative publicity that will accrue as a result of the trial.
2. The prosecution saves time and cost of a lengthy trial.
3. Both sides are spared the uncertainty of going to trial.
4. The court system saves the burden of conducting a trial on every crime charged.

In essence, the benefit of plea bargain revolves around cost efficiency, certainty, and reduction of workload for all the parties involved, irrespective of whether it is a judge, defendant, prosecutor or even victim of the offence.

3.6 Judicial Attitude and Notable Case Laws

The Nigerian criminal justice system has generally adopted a meticulous but increasingly receptive attitude towards plea bargain, with the increasing congestion of courts and correctional facilities, plea bargain has been recognized as a practical mechanism for speedy dispensation of justice.

The introduction of plea bargain into the Nigeria criminal justice system has brought about different judicial reactions. Some judges have accepted it as a pragmatic mechanism for speedy dispensation of justice while others have expressed their concern which is that it may encourage corruption and injustice. Judicial attitude towards plea bargain in Nigeria is therefore described as conservative but evolving.

Plea bargain gained statutory recognition under Section 270 of the Administration of Criminal Justice Act (ACJA) 2015. However, Nigerian courts have subsequently interpreted and applied these provisions in various notable cases, thereby shaping the judicial attitude towards plea bargain in the Nigerian criminal justice system.

In *Tafa Balogun v. The Federal Republic of Nigeria*, the EFCC arraigned the former Inspector General of Police (IGP) on 70 counts of money laundering and theft of about 13 billion naira, from 2002 to 2004. Upon a plea bargain, the charges were reduced by 88.6 percent to 8 counts, to which he pleaded guilty. He was convicted and sentenced to 6 months imprisonment on each of the counts, to run concurrently and 1.5 million Naira fine.

In *Federal Republic of Nigeria v. Cecilia Ibru*, the EFCC arraigned the accused person on 25 counts of money laundering and sundry economic and financial crimes. Pursuant to a plea bargain, the offences were reduced by 88 percent, to three counts of lesser offences of authorising loans beyond her credit limit, rendering false accounts and approving loans without adequate collateral. As part of the plea bargain the court sentenced the defendant to six months imprisonment, which she was allowed to serve out in the comfort of a private room of an exclusive hospital, allegedly due to a health challenge.

Similarly, in *Federal Republic of Nigeria v. Diepreye Alamiyeseigha* the former Governor of Bayelsa State was arraigned on 33 counts of political corruption, money laundering, illegal acquisition of property and false declaration of assets". Upon a plea bargain, the charges were reduced by 81.8 percent, to 6 counts of lesser offences.

He pleaded guilty to the lesser offences and forfeited some properties in exchange for a lesser sentence. He was convicted and sentenced two years on each count, all the sentences ran concurrently from the day he was arrested and detained. Consequently, he only spent a few days in prison because he was first detained about two years before the judgement.

In January 2008, the EFCC arraigned Lucky Igbinedion, who was the Governor of Edo State from 1999-2007, at the Federal High Court Enugu, on 191 counts of corruption, money laundering and embezzlement of 2.9 billion Naira. Pursuant to a plea bargain, the ex-Governor's charges were reduced by 99.5 percent, to one count of failure to declare his interest in a bank account in the declaration of assets form of the EFCC. He was convicted on that one count and ordered to forfeit three houses, refund 500 million naira and sentenced to six months imprisonment with an option of 3.6 million naira fine, which he promptly paid. It is notable that the EFCC appealed against this judgement, not on the plea bargain process but only in respect of the option of fine. Furthermore, another attempt in 2011 to prosecute the same ex-Governor failed because the court upheld the ex-Governor's objection that it would amount to double jeopardy and an abuse of the court process, having entered a plea bargain in the earlier case in 2008.

CHAPTER FOUR

CHALLENGES FACING THE PRACTICE OF PLEA BARGAIN IN NIGERIA AND LESSONS FROM OTHER JURISDICTION

4.1 Challenges to the Application of Plea Bargain in Nigeria

The application of plea bargain in Nigeria has been doused in a plethora of controversies and scandals, with a host of people doubting the efficacy of plea bargain in deterring future wrongdoers from committing crimes. Since plea bargain is used primarily in high profile financial crimes, it has been a point of contention as to whether plea bargain helps in the long run, or if it encourages people to engage in looting of public funds. Despite the controversies, plea bargain is still applied in Nigeria to high profile corruption cases.

A major challenge to the application of plea bargain in Nigeria is the public conception of plea bargain. In a study conducted by Aidonojie, it is quite glaring that the majority consider plea bargain as immoral. In that study, four hundred and five (405) respondents were asked certain questions, and it was found that plea bargain is an effective tool of prosecution which can and should be used for minor criminal cases and not for high profile corruption cases as it encourages future wrongdoers to commit the crime and get a lesser sentence. The respondents were questioned about the legal challenges that arise from the use of plea bargain in high profile financial cases, and their responses were as follows:

1. Plea bargain will encourage embezzlement of public funds by criminal who hope to get a lighter sentence or reduced charge if they are eventually caught.
2. Plea bargain will end up mocking the Nigerian Criminal Justice System, as plea bargain will fail to deter future wrong doers, and instead allow them to indulge in games of hide and seek.
3. It will lead to an abuse of power and selfish gain by the prosecution and the defendant.
4. Plea bargain perpetuates soft justice for high end criminals, by giving them a leverage.

From the above, it is quite glaring that the application of plea bargain to high profile corruption cases in Nigeria is not morally accepted. The use of plea bargain in Nigeria is mostly challenged because corruption is a very major and hefty crime, and the application of plea bargain in Nigeria allows perpetrators of the crime to get away with punishment, thus failing to deter the public from these sorts of crimes. However, if plea bargain is used in Nigeria to determine minor crimes, it will result in fewer legal challenges arising.

Some other challenges to the application of plea bargain in Nigeria include:

1. Lack of Awareness: The use of plea bargain in Nigerian courts have no awareness. Most people who have knowledge of plea bargain already in some way connected with the criminal justice system. It is not uncommon that a lot of Nigerians do not know what plea bargain is, and as such do not rely on it for the determination of other matters.
2. In theory, plea bargain realizes that justice is not a one-way traffic, it involves the defendant, the victim of the crime, the court, and the community at large. However, in practice, plea bargain is centered on the accused person who benefits, rather than on the victim of the offence.
3. The death of legal framework dedicated to the application and operation of plea bargain in Nigeria is one for concern.

However, there is the possibility of abuse of plea bargaining privileges given to both the prosecution and the defendant when same is not carefully exploited. **4.2 Public Perception and Criticism of Plea Bargaining in Nigeria**

Public perception is a factor that influence the effectiveness of plea bargaining in any justice system. In Nigeria, negative public perceptions in the judicial system have profound implications for the acceptance and legitimacy of plea bargaining as a mechanism for resolving criminal cases. These issues often stem from perceptions of corruption, inequality and lack of transparency, all of which undermine confidence in the process.

One of the primary issues affecting public perception is the belief that plea bargaining disproportionately benefits the wealthy and powerful. For example, agreements that allow offenders to return only a fraction of stolen funds while avoiding lengthy prison sentences foster the perception that plea bargaining is a tool for the elite to escape justice. This creates public outrage and diminishes trust in the fairness of the criminal justice system.

Transparency is another major factor contributing to public distrust. In many cases, the terms of plea agreements are not made public, leaving room for speculation about backroom deals and corrupt practices. When the public is unaware of the rationale behind pleas deals or the conditions imposed on defendants, it becomes difficult to trust that these agreements serve the interest of justice. The secrecy surrounding some plea agreements reinforces the perception that they are used to shield offenders from accountability rather than to promote efficiency or restorative justice.

Public skepticism towards plea bargaining can lead to a lack of cooperation with law enforcement and prosecutorial agencies. Victims may refuse to participate in negotiations or provide input on restitution if they believe the process will not result in fair outcomes. Additionally, defendants may be reluctant to enter into plea agreements if they perceive that doing so will not protect their interests or result in public condemnation, even if they fulfill the terms of the agreement.

Although plea bargain is a useful tool in the dispensation of justice in Nigeria, it has come under scrutiny and heavy criticism among scholars, members of the public, activists, law enforcement agencies, jurists and many other eminent figures on various grounds. Critics contend that the practice of plea bargaining should be done away with because it emboldens criminals, demoralizes victims and society, and erodes public confidence in the criminal justice system. Dahiru Masdapher, former Chief Justice of Nigeria also share this view when he stated that the concept of plea bargain is dubious and is a threat to the criminal justice system in Africa. While plea bargaining is beneficial, it poses a lot of prospects in making the administration of justice better and easier, it also has a number of drawbacks that need to be addressed. Thus, plea bargain is generally criticized for these following reasons:

1. Susceptible to abuse

It is common knowledge that the idea of plea bargain itself is sketchy to an extent, especially in Nigeria where corruption is very rampant. There are corrupt officials in virtually every level, arm and branch of the government in Nigeria and the judiciary is not exempted from this. According to Transparency International, as of 2023 out of 180 countries, Nigeria ranks 145 in the corruption perception index. Plea bargaining should not become a means by which individuals who have committed serious offenses can avoid severe punishments. Instead, it should be designed to effectively address the issue of delay in the justice system. The results of a plea agreement should not be laughable or undermine the credibility of our justice system.

This notion propelled Francis Famoroti when he argued that it is illogical that a person adjudged guilty for a criminal offence attracting a jail term is let off the hook with a lighter sentence after entering into a plea bargain with the prosecution. Granting lenient sentences to offenders can escape legal consequences through plea bargaining. These factors can discourage victims from reporting crimes, consequently weakening the overall effectiveness of the justice system. It also sends a message to other offenders that justice can be bought and sold and that they can easily “beat the system. In addition to this, prosecutors have the upper hand in a plea agreement and may abuse this power imbalance for selfish gains.

2. Coercion of defendants

A defendant may be forced to take a plea argument as a result of fear of a higher sentence upon trial especially where a defendant does not have proper legal representation or is unfamiliar with the criminal justice. This could be a result of fear of a longer sentence or because of threats and torture that may face particularly during investigation and in decision. It is common knowledge that Nigerian detention facilities and prisons are environments characterized by extreme hardship and fear.

Guidorizzi, also stated that one the most important criticism of plea bargaining is that it may be forced on defendants. Coercion, both overt and subtle, can compel defendants to plead guilty, even if they are innocent. Fear of lengthy trials and torture or threats that they may be subjected to in detention coupled with the enticing possibility of a reduced sentence, can make defendants susceptible to manipulation and pressure from prosecutors, potentially resulting in wrongful conviction. It is expected that the judge presiding over a plea bargain case supposed to take measures to ensure that the plea bargain agreement was entered into voluntarily and without undue influence however they fail to do so in several cases.

One of such instance is the case of *FRN v. Chukwuemeka*. The court proceedings held on March 5, 2019, were documented in the record of proceedings. Following the charge being read and explained to the defendant, they entered plea of guilty. The prosecution then presented the facts of the case and submitted exhibits for consideration. Acknowledging the existence of a plea agreement, the court proceeded to sentence the defendant to a one-month term of imprisonment without inquiring from the defendant if he was aware of the agreement and whether it was voluntarily consented to.

3. Unequal and inconsistent sentencing

The rule of law provides for equality of everybody before the law, however, in the practice of plea bargain, reducing sentences for a person just because of a plea deal, while maintaining the same sentence for other offenders creates sentence disparities. From another angle, plea bargaining creates an uneven playing field, favoring the rich and privileged who can secure advantageous deals through superior legal representation. This fosters a sentence of injustice, where justice becomes negotiable, accessible only to those with the means to buy it.

4.3 Lessons from Other Jurisdiction

1. United States of America

The use of plea bargain to settle matters originated in the United States of America. Plea bargain is now an indispensable part of the American criminal justice system, with multiple cases being resolved with plea bargain rather than with jury trial. There are no restrictions as to the type of cases to which plea bargain is applied to in the United States of America. This is an indication that even murder and terrorism cases can be resolved by plea bargain. Plea bargain in the United States of America is subject to the approval of the court. It also differs based on the rules of plea bargain in a particular state or jurisdiction.

According to statistics, 95% of criminal cases in the United States of America have been resolved by plea bargains. Plea bargains are strictly subjected to the approval of the Court. Furthermore, different states and jurisdictions have different procedure for the application of the procedure in the United States.

The Federal Centenary guidelines are usually applied in relation to Federal offences. These guidelines were created to ensure that a uniform standard is applied by the Federal Courts in the adoption of plea bargain in criminal proceedings. These guidelines provide for two kinds of plea agreement. The first type of agreement consists of an ordinary recommendation to the court with respect to the defendant's plea of guilt. This is not however binding on the Court.

Under this arrangement, the prosecutor recommends to the Court based on a plea agreement between him and the defendant that a lenient sentence should be handed down on the defendant in exchange for the defendant's plea of guilty. As this recommendation is not binding on the court, the court can go ahead to impose the maximum sentence despite the recommendation from the prosecutor. This is because; the agreement is first submitted to the Court for its acceptance or refusal. Once the court accepts the agreement, it is bounded to sentence in line with the agreement.

In situations where the Court disapproves of the agreement after it has been submitted to it, the defendant is free to withdraw his guilty plea whereupon a full trial is ordered. But where the court accepts the agreement, it cannot thereafter resile from imposing its sentence in line with the agreement after the defendant has pleaded guilty.

In the states of California, plea bargain has assumed such a popular acclaim that the parties and their attorneys are at liberty to reduce the plea bargain agreement into a prescribed written format that can be filed in court for the court to adopt same as its judgment in a criminal proceedings.

There are some features of the American judicial system that have promoted the growth and development of plea bargain. The first is the well-established and functional practice of

adversarial jurisprudence in the American Legal system. Another factor that has helped the system to grow is the absence of compulsory prosecution. Furthermore, private prosecution is not known to the American judicial system. In other words, prosecution for offences cannot be maintained by the victims of such offences.

Canada

Plea bargaining is more restricted in Canada. This is because Canadian Judges are not bound by the crown's sentence recommendations. The Crown's prosecutors are however free to make such recommendations on the bias of a plea agreement with the defendant.

In practice however, the crown will usually recommend a punishment to the court higher than what was agreed under a plea bargain while the defense will be urging a sentence far lower than that agreed upon with the crown prosecution when they appear before the judge.

The aim is to enable the sentence of the Court to fall within the range of that agreed upon in the plea bargain. The Canadian Courts are aware of this practice and tends to encourage it, as a way of checking any abuse of the plea bargain system. This goes to show that Canada is aware of the possibility of converting the plea bargain procedure into an engine for perpetuating protection fraud.

India

Plea bargain was introduced into the India legal system in 2006 by statute. The statute however made the procedure applicable in criminal proceedings involving only minor offences which do not attract a punishment of more than 7 years. However, property offences in the nature of socio-economic crimes such as the looting of the public treasury and offences committed against a woman or a child less than 14 years of age are excluded from the application of the procedure. Thus, embezzlement of public funds such as was the case of Former American Fraudulent, Spiro Agnew and the molestation of children as in the case of Michael Jackson are excluded from the application of the procedure in India.

Similarly, those cases of economic corruption by political office holders as in those cases being handled by the Economic and Financial Crimes Commission (EFCC) in Nigeria cannot benefit from the procedure in India.

Pakistan

Pakistan is one country that views plea bargain with a lot of suspicion. It however introduced the procedure into its legal system in 1999 as an anti-corruption Law. The purpose of the procedure in Pakistan is to allow persons accused of official corruption to return what they have stolen as determined by investigators and prosecutors and regain their liberty with infracted political rights and damaged reputation. In Pakistan, the procedure benefits the society by having what has been taken from it restored while the perpetrator of the evil act is set free after being stigmatized. The procedure is at the instance of the accused person who makes an application making a frank disclosure of all he took from the public till. The application is scrutinized by the National Accountability Bureau who if satisfied, endorses the application and presents same to Court. The Court decides on whether or not to accept the application. Whether Court accepts the applications, the accused stands convicted but is not sentenced. After the conviction, the accused is discharged but barred from taking part in any elections or holding any public office. Furthermore, the accused is dismissed from any public office occupied by him and is disqualified from seeking or obtaining a loan from any bank.

Apart from corruption cases, formal plea bargain are not popular in other cases in Pakistan. The prosecutor is however free to drop a charge in return for the defendant pleading guilty to lesser charges. Parties have no right to bargain about the penalty to be imposed on a defendant since this is solely at the discretion of the Court.

France

Plea bargain in France exists as a concept known as "comparution sur reconnaissance préalable de culpabilité" (herein after referred to as CRPC), which can be translated to mean "appearance on admission of prior guilt". This is an adaptation of the American concept of plea bargain, where some principles were borrowed from. The application of CRPC in France is limited to misdemeanours with a principal penalty of a fine or a sentence of five years' imprisonment. Here, a public or district prosecutor takes statements where the defendant acknowledges his/her guilt in relation to the alleged crime, and makes a proposal. If the defendant accepts the proposal, he is presented before the president of the Tribunal de Grande Instance, who approves the

appearance on preliminary recognition of guilt. If the proposal is not accepted by the defendant or not approved by the Tribunal, the prosecutor will then refer the matter to the criminal court. The prosecutor cannot offer a prison sentence exceeding a year and a half of what is incurred, or, in the case of a fine, a sum of money exceeding the statutory required maximum.

The lessons that the Nigerian Criminal Justice System can adopt from the French application of *comparution sur reconnaissance préalable de culpabilité*, and the United States application of plea bargain include the use of plea bargain in other cases, not limiting itself to only corruption cases; the use of plea bargain in misdemeanours and the exclusion of offences which imply adversarial debate.

It is important to note that plea bargain as a concept is not positively received in some countries. For example, in Malaysia, plea bargain is outrightly rejected even though there are some features of negotiation in their justice system. In India, attempts have been made, by creating certain provisions, to incorporate the concept of plea bargain into the justice system, however, the Indian Supreme Court does not find it permissible to rely on plea bargain.

Other Common Law Jurisdictions

In England and most of the other common law such as the Australian State of Victoria idea, it is only the Court that determines the appropriate penalty for an offence. Plea bargaining is usually conducted between the prosecutor and the defendant. The prosecutor usually drops some of the charges against the defendant in exchange for the defendant pleading guilty to a lesser charge. The court is not usually involved in the bargaining process even though it is aware of the process. The penalties are not usually bargained.

Civil Law Countries

Plea bargain is abhorred in most civil law jurisdictions as they consider same as debating justice to ordinary trade by barter. In Central African Republic which is a civil law country, the offence of witchcraft if successfully established attracts a very heavy penalty. However, defendants who confess to the crime are usually given midst sentences. This procedure is a form of plea bargain. In Estoma, a limited form of plea bargain is available to defendants in offences that do not attract more than four years punishment. Where a defendant pleads guilty to such an offence under a plea bargain agreement, he gets a 25% reduction in punishment for saving the Court and the prosecution the rigours of a full trial. France often regarded as the mother of all law country introduced a limited form of plea bargain into its jurisprudence at 2004 in a form known as *pleader capable* in respect of very minor offences.

In this system, the public prosecutor proposes to suspect of relatively minor offences a penalty not exceeding one years imprisonment in return for a plead of guilty. The Judge was aligned to accept the deal if the suspect accept the proposal.

Plea bargaining was introduced into the Republic of Georgia in 2004. The substance of the Georgian plea bargaining procedure is similar to that of the United States and other common law jurisdictions. This is in spite of the fact that Georgia is a civil law country. Georgia has a statutorily established procedure for the practice of plea bargaining. It is the cardinal principle of plea bargaining in Russia that the procedure must be based on the freewill of the defendant. In order to ensure this, the defence counsel is obligated to participate in the process.

The defendant also retains the right to reject a plea bargain agreement and opt for a full trial at any stage of the procedure before judgment.¹⁸ As a further protection of the defendants right, all the information obtained from the defendant under a plea agreement are treated as “without prejudice” and cannot be used against him if full trial is later resorted to. The defendant can also appeal against a judgment delivered on the basis of a plea bargain of the plea agreement was concluded by deception, coercion, violence or threat.

In concluding a plea agreement in Georgia, the prosecution must take into consideration the public interest, severity of the punishment and the personal characteristics of the defendant. For a plea agreement to have legal effect, it must receive the approval of the court. To give such approval, the court must satisfy itself that the agreement was concluded on the basis of the freewill of the defendant and that the defendant fully acknowledges the essence and consequence of the plea agreement.

Before convicting a defendant on the basis of a plea agreement evidence exists to sustain the conviction. In other words, it is not just enough that the defendant has pleaded guilty to the charges. The court must also ensure that the agreement is legitimate and that there is no shade

of illegality surrounding same. The prosecutor is also obliged to consult with the victim and ensure that the damage done to him is compensated before concluding a plea agreement. Statistics reveals that out of the 19,556 people against whom judgments were rendered in 2010 in Georgia, 15, 867 or 79.5% of such people were convicted on the basis of successfully concluded plea agreement.

Plea bargain has appeared only in few instances in Germany. The German Criminal procedure does not however have what can be correctly described as a system of plea bargaining. In Italy, plea bargaining is in respect of sentences and not the charges. The purpose of plea bargaining in Italian jurisprudence is to avoid the rigors of a full trial in return for a lenient sentence for the defendant. The procedure is known as *patteggiamento*. It is however within the jurisdiction and powers of a judge to refuse or accept the plea bargaining.

Finally, a limited form of plea bargaining exist in Roland. The procedure is activated by agreement between the defendant who accept to plead guilty, the prosecutor and the victim, subject to the approval of the Court. It is only applicable in minor offences which punishment does not exceed ten years imprisonment. All the parties to a plea agreement in Roland however have the right to appeal against the judgment based on the plea agreement.

Criticisms have however trailed the practice of plea bargaining both in common law and civil law countries. in common law countries, the system has been criticized on the ground that it infringes the rights of an individual guaranteed by the European Convention of Human Rights which has been incorporated into the United Kingdom's Human Rights Acts, 1998.

According to this reasoning, people who might have been acquitted for lack of evidence often plead guilty to lesser charges out of fear. In Civil countries, the system has been criticized for reducing justice to barter. The system is also difficult to practice in civil law countries because a plea of guilty does not absolve the prosecution from its duty to present a full case. In the absence of evidence to support the plea of guilty, a defendant can still be acquitted of an offence in civil law jurisdictions since the jurisprudential practice in those industries are inquisitorial rather than adversarial.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATION AND CONCLUSION

5.1 Summary of Findings

This study aims at critically analysing the concept of plea bargain under the Nigerian criminal justice system. From this study, we can see the evolution of plea from the EFCC Act till when it was formally introduced into the Nigerian criminal justice system by the enactment of the ACJA 2015. Plea bargain as applied in Nigeria is however limited to the settlement of high profile financial crimes and corruption cases involving public officials. This can be seen in the cases of Tafa Balogun and Cecilia Ibru who were high ranking public officials that committed fraud and corruption and resolved same with plea bargain. Although it can be argued that plea bargain is an alternative to criminal litigation, in practice, plea bargain is only an alternative to litigation of corruption cases. This is because other genres of offences are yet to be resolved using plea bargain, and the practice has thus been termed the ‘watch dog of the politicians.’

The concept of plea bargain perpetuates restorative justice. It is notable that justice is not a one-way street as it should accommodate the victim of the offence, the person committing the crime, and also the society at large. Plea bargain does this by ensuring that the victim has adequate opportunity to make representations as to the type and severity of the punishment intended for the offender, as well as giving suitable punishment to the person who committed an offence. These punishments are for the good of the community/society the offence affected. The punishments are usually in the form of reparation and returning of the proceeds of the crime. One admirable trait of plea bargain as a restorative justice is that plea bargain does not make it a point of sole focus to punish the defendant. The rehabilitation and reintegration of the offender into the community is vital. This ensures promotes the healing and reconciliation of the victim of the offence and the person who committed said offence. Plea bargain also helps in the delivering of justice within a reasonable time as the delay in court processes and procedure do not occur in plea bargain.

The ACJA 2015 and the ACJLs are the laws that guide plea bargain under the Nigeria criminal justice system. These laws provide for the procedure of pleas bargain, the parties in a plea bargain agreement and the role of the court in a plea bargain agreement. Plea bargain has a huge impact on the Nigeria criminal justice system. The benefit of plea bargain to the Nigerian court system and prison congestion is also not one that can be overlooked. Plea bargain helps tremendously to reduce the workload of the court by reducing the number of cases that go through complete trials, thereby reducing the inmates who are awaiting trial, resulting in the decongestion of prisons.

The obstacles currently hindering the application of plea bargain in Nigeria can all be linked to the public perception of plea bargain as immoral. From the earlier applications of plea bargain in Nigeria, it can be construed that plea bargain encourages public officers to loot huge sums of money and public revenue and getaway with a slap on the wrist. The perpetrators of corruption use the practice as an excuse to commit crimes and get a soft landing, completely bypassing the court system so that the heinousness of their crimes do not come to light. This public perception can unfortunately not be faulted because of cases like that of John Yakubu. Which is the most provocative instance of the misuse of plea bargain in Nigeria. Other obstacles to plea bargain’s application is the lack of public awareness and the lack of multiple legislation on plea bargain in Nigeria.

The Nigerian criminal justice system can adopt an important lesson from other jurisdictions with specific interest in United States of America and France. The lesson includes the nonrestriction of the matters that can be resolved with plea bargain, and the subjection of plea bargain to the discretion of the courts. In both USA and France, plea bargain is not reserved solely for corruption cases. It can be used in any criminal matter in USA including murder, however, in France, it can be used for any criminal matter that is a misdemeanor. Nigeria can learn to increase the matters that can be resolved with plea bargain, not limiting it to corruption cases. Also, in the above jurisdictions, plea bargain is subject to the discretion of the court, unlike in Nigeria where the court plays a minimal role in plea bargain which revolves around sentencing the defendant in accordance with the provisions of the plea bargain agreement.

5.2 Recommendations

This study makes the following recommendations:

- 1.The Nigerian government should enact more legislation regulating the application of plea bargain in Nigeria. There should be an Act regulating the process of plea bargain in Nigeria, separate from ACJA.
- 2.The Nigerian government should enact a law that regulates the fairness and transparency of plea bargain agreements.
- 3.The use of plea bargain in criminal matters should not be restricted to only corruption cases as plea bargain has the potential to positively and effectively reduce the overall workload of both counsel and the courts.
- 4.The minimum sentence a person intending to use plea bargain can get should be regulated by law. This is to make sure that individuals will not rely on plea bargain just to evade appropriate sentencing.
- 5.The maximum sentence a defendant intending to offer or accept a plea bargain agreement, should be regulated by law. This is to ensure that a defendant is not punished more than is appropriate for the commission of a crime.

5.3 Conclusion

Plea bargain occurs when a defendant agrees to plead guilty to a crime he is accused of committing with the intention of getting a reduced sentence or charge. It involves negotiation and agreement with the victim of the crime. Plea bargain in Nigeria is regulated by the Administration of Criminal Justice Act, which provides the procedure for plea bargain, and the role of the parties and the courts. However, the Federal Government introduced the Administration of Criminal Justice System, 2015 to repeal and reenact the existing Act and make provisions for a more transparent process in the plea bargain agreement and sentencing process. Plea bargain is an alternative to traditional criminal litigation, and acts as a form of restorative justice because of its victim centered nature. Plea bargain does not focus solely on the punishment of the defendant, but more on victim compensation and restitution. In Nigeria, plea bargain is used primarily for resolution of high profile financial and corruption crimes. While its application in this area is of great benefit to the criminal justice system, it will be more advantageous to apply the principles of plea bargain to other areas of criminal litigation.

BIBLIOGRAPHY

BOOKS

Bello Akeem, *Overview of Plea Bargaining in Nigeria* (University of Lagos Press, 2020)

JOURNAL PAPER

Scott RE and Stuntz WJ, 'Plea Bargaining as Contract' (1992) 101 The Yale Law Journal 1909.

ONLINE JOURNAL

Adekunle Saheed Abiola, Ajepe Taiwo Shebu, 'Effective Application Of Plea Bargaining In Nigeria: Challenges and Way Forward' (2026)9(1). African Journal of Law, Ethics and Education <<https://ajleejournal.com/index.php/ajlee/article/download/318/303>> accessed 25 May 2026.

Carol A Brook et al, 'A Comparative Look at Plea Bargaining in Australia, Canada, England, New Zealand, and the United States' (2015) [57] Wm & Mary L. Rev. 1147 <https://heinonline.org/hol/cgi-bin/get_pdf.cgi?handle=hein.journals/wmlr57§ion=30> accessed 29 May 2026.

Eze C, Eze Amaka G, 'A Critical Appraisal of the Concept of Plea Bargaining in Criminal Justice Delivery in Nigeria' (2015) 3(4) Global Journal of Politics and Law Research 31,35 <<https://ejournals.org/wp-content/uploads/A-Critical-Appraisal-of-the-Concept-of-PleaBargaining-In-Criminal-Justice-Delivery-in-Nigeria2.pdf>> accessed 29 May 2026.

Idehen, SO, & Daudu, S, 'Combating the Cankerworm of Corruption through Plea Bargaining in Nigeria' (2020)8(2). Journal of Law and Criminal Justice <https://jclcj.thebrpi.org/vol-8-no-2-december-2020-abstract-10-jllcl>> accessed 25 May 2026.

Ikuru Onome Pette and MOI Nwabuo, 'Plea Bargaining in Nigeria, the Law Practice and Challenges' (2024) [05] <https://www.allmultidisciplinaryjournal.com/uploads/archives/20240723110426_A-24166.1.pdf> accessed 29 May 2026.

Kalu Favour Helen et al, 'Accelerated Criminal Justice System In Nigeria Through Plea Bargain' (2024) [1] Alex Ekwueme Federal University Law Journal <<https://www.nigerianjournalsonline.com/index.php/AEFULJ/article/view/5387>> accessed 13 April 2026.

Mudasiru Oladosu Surajudeen, 'Democracy, Plea Bargaining and the Policies of Anti-Corruption Campaign in Nigeria (1999-2008)' (2015) [9] African Journal of Political Science and International Relations 335 <<https://academicjournals.org/journal/AJPSIR/article-full-text/F9DCA3854830>> accessed 29 May 2026.

Shaista Amin, 'Doctrine of Plea Bargaining: An Adjunct of Criminal Justice System' (2018) [8] International Journal of Research in Social Sciences 648 <<https://www.indianjournals.com/ijor.aspx?target=ijor:ijrss&volume=8&issue=11&article=048>> accessed 3 June 2026.

Zakiyya Haruna, 'A Critique Of Corruption Plea Bargaining In Nigeria: A Social Harm And Damage Perspective' (2024) [20] Unizik Law Journal <<https://journals.ezenwaohaetorc.org/index.php/ULJ/article/view/2845>> accessed 29 May 2026.

NEWSPAPER

Azeez B, 'Official Corruption in Nigeria's Judiciary' (Business Day NG, July 7, 2023) <<https://businessday.ng/opinion/article/official-corruption-in-nigerias-judiciary>> accessed 25 May 2026.

FRN v. Lucky Igbinedion, Charge No FHC/EN/6C/2008 ; Sahara Reporters, 'Igbinedion Gets Easy Plea Bargain, No Jail Time, Keeps Billions Stolen Funds Keeps Vast Properties' <<https://saharareporters.com/2008/12/30/igbinedion-gets-easy-plea-bargain-no-jail-timekeeps-billions-stolen-funds-keeps-vast>> accessed 21 May 2026.

Nigeria: Submission to the United Nations Human Rights Committee, 126th Session, 1-26 July 2019 – Amnesty International' (Amnesty International, June 1, 2021) <<https://www.amnesty.org/en/document/afr44/0473/2019/en>> accessed 25 May 2026.

Odia Peter, 'Abuse of Plea Bargain in Nigeria' (Sahara Reporters 23 June 2011) <<http://saharareporters.com/2011/06/23/abuse-plea-bargain-nigeria>> accessed 21 May 2026.

Vanguard, 'CJN Abolishes Plea Bargain' (Vanguard News, November 17, 2011) <<https://www.vanguardngr.com/2011/11/cjn-abolishes-plea-bargain/>> accessed 25 May 2026.

ONLINE MATERIALS

Abiola Adekunle Saheed, Shebu Taiwo Ajepe, 'Effective Application Of Plea Bargaining In Nigeria: Challenges and Way Forward' (2026)9(1). *African Journal of Law, Ethics and Education* <<https://ajleejournal.com/index.php/ajlee/article/download/318/303>> accessed 25 May 2026.

Aidonojie Paul Atagamen, et al, 'The Legal Impact of Plea Bargain in Settlement of High Profile Financial Criminal Cases in Nigeria' (2021) [5] *Sriwijaya Law Review* 161 <<https://www.academia.edu/download/113117918/pdf.pdf>> accessed 25 May 2026.
Nwaibe v State (1996) 9 NWLR (Pt. 472

Ayodele John Alade, 'Reflection on Economic and Financial Crime Commission (EFCC): Corruption and the Use of Plea Bargain in Nigeria' (2014) [2] *Journal of Management Sciences and Humanities* 55 <https://www.academia.edu/download/89637231/Pub_6_7.pdf#page=65> accessed 18 May 2026.

Bello A. 'The Emergence of Plea Bargaining in Nigeria' [2020] UNILAG Repository 3 <<https://ir.unilag.edu.ng/bitstreams/66a1d4eb-27d2-4222-91a5-fdedfd761fc9/download>> accessed 6 May, 2026.

Carol A Brook et al, 'A Comparative Look at Plea Bargaining in Australia, Canada, England, New Zealand, and the United States' (2015) [57] *Wm & Mary L. Rev.* 1147 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/wmlr57§ion=30> accessed 29 May 2026.

Eko Solicitors, 'Plea Bargaining in Nigeria: The Ultimate Thing To Know' (2026) <<https://ekosolicitors.com/plea-bargaining-in-nigeria-the-ultimate-thing-to-know>> accessed 13 April 2026.

Guthrie Chris, 'Prospect Theory, Risk Preference, and the Law' (2003) [97] *Nw. UL Rev.* 1115 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/illlr97§ion=34> accessed 13 April 2026.

.

Gowdy B, 'Leniency Bribes: Justifying the Federal Practice of Offering Leniency for Testimony' 60 Louisiana Law Review

<<https://digitalcommons.law.lsu.edu/lalrev/vol60/iss2/3>> accessed 25 May 2026.

Guidorizzi D, 'Should We Really 'Ban' Plea Bargaining? The Core Concerns of Plea Bargaining Critics' [2013] *Introduction to Criminal Justice* 191

<<http://dx.doi.org/10.1515/9781503627352-018>> accessed 25 May 2026.

Iwuagwu O. Golden, 'The Concept of Plea Bargain under the Administration of Criminal Justice Act, 2015' (Paper presented at the training workshop for staff of the commission on the ACJA 2015) slide 10 <<http://icpc.gov.ng/wp-content/uploads/downloads/2015/10/TheConcept-Of-Plea-Bargain-Under-ACJA-2015.pptx>> accessed 3 June 2026.

Jolly Richard Lorren and Prescott JJ, 'Beyond Plea Bargaining: A Theory of Criminal Settlement' (2021) [62] BCL Rev. 1047 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/bclr62§ion=32> accessed 13 April 2026.

Lucian E Dervan, 'The Surprising Lessons from Plea Bargaining in the Shadows of Terror; (2010) [27] Ga. St. UL. Rev. 239 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/gslr1r27§ion=21> accessed 13 April 2026.

Mordi CA, 'The Use of Plea Bargain in Nigerian Criminal Law' (2018) 09 Beijing Law Review p. 153 <<http://dx.doi.org/10.4236/b1r.2018.92011>> accessed April 28, 2026.

Mr Abhas Srivastava and Namita Jain, 'Exploring The Theoretical Intersections Of Plea Bargaining Vis-À-Vis Restorative Justice In Criminal Trials' (2024) [8] *Socio Economic Challenges* 116

<<http://socioeconomicchallenges.com/index.php/SEC/article/download/119/141>> accessed 13 April 2026.

Nigeria: Submission to the United Nations Human Rights Committee, 126th Session, 1-26 July 2019 – Amnesty International' (Amnesty International, June 1, 2021) <<https://www.amnesty.org/en/document/afr44/0473/2019/en>> accessed 25 May 2026.

Oniye Shuaib, 'Plea Bargaining under Administration of Criminal Justice Act: How Best in Fighting Financial Crimes in Nigeria' <<https://api-kwasuspace.kwasu.edu.ng/server/api/core/bitstreams/18ae3424-7907-47c0-a40e0880d5c87edc/content>> accessed 24 May 2026.

Shawn D Bushway, et al, 'An Explicit Test Of Plea Bargaining In The "Shadow Of The Trial" (2014) [52] *Criminology* 723 <<https://onlinelibrary.wiley.com/doi/10.1111/17459125.12054>> accessed 13 April 2026.

Sule Peter, 'Plea Bargaining, Cost-Benefit Analysis and the Redefinition of Justice: A Philosophical Appraisal of the Nigerian Experience

<https://www.academia.edu/download/53717400/SULE_PETER_Redefinition_of_justice_K.pdf> accessed 18 May 2026.

Udechukwu Nzube, 'Plea Bargaining in Nigeria and France: Analysis and Comparison' [2004] Available at SSRN 4965620 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4965620> accessed 29 May 2026.

Zakiyya Haruna, 'A Critique Of Corruption Plea Bargaining In Nigeria: A Social Harm And

Damage Perspective' (2024) [20] *Unizik Law Journal*
<<https://journals.ezenwaohaetorc.org/index.php/ULJ/article/view/2845>> accessed 29 May 2026.