EFFECTIVE APPLICATION OF PLEA BARGAINING IN NIGERIA: CHALLENGES AND WAY FORWARD

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Abstract

Plea bargaining has emerged as an important instrument in the administration of criminal justice system in Nigeria. It aims at expediting criminal trials, reducing case backlogs and decongesting prisons. Through negotiated agreements, defendants in criminal trials may plead guilty to lesser charges in exchange for lighter sentences or other concessions, thereby saving time and resources. However, the effective application of plea bargaining in Nigeria faces numerous challenges such as corruption, inadequate legal frameworks, among others. It is against this backdrop that this paper seeks to examine the challenges of plea bargaining in the administration of criminal justice in Nigeria. The paper revealed that the absence of clear guidelines for plea agreements and inadequate victim involvement affect the credibility of plea bargains. The paper further reviewed the provisions of the Administration of Criminal Justice Act (ACJA) 2015, which seek to regulate plea bargaining for insufficient safeguards to prevent abuse. The research recommended among others that the need for a specialized unit for plea bargains among the prosecutorial agencies, enhanced judicial oversight, the formulation of standardized plea guidelines, strengthening victim participation and imposing stricter penalties for abuse of the process are fundamental towards ensuring plea bargaining promotes efficiency, transparency and restorative justice.

Keywords: Plea bargaining, Criminal Justice System, Negotiated Agreement, Prosecutorial Misconduct and Victim participation

1. INTRODUCTION

Plea bargaining has emerged as a significant tool in the Nigerian criminal justice system, offering an alternative to lengthy and costly trials. It allows defendants to negotiate reduced charges or lighter sentences in exchange for a guilty plea, thereby expediting case resolution and decongesting the courts. The introduction of plea bargaining into Nigeria's legal framework, particularly through the Administration of Criminal Justice Act (ACJA) 2015, reflects a broader global trend toward alternative dispute resolution in criminal matters.[1]

Despite its potential benefits, the application of plea bargaining in Nigeria has been met with significant challenges that hinder its effectiveness.[2] These challenges range from legal and institutional constraints to ethical concerns and socio-political influences. In high-profile corruption cases, for example, the public perceives plea bargaining as mechanisms for shielding politically exposed persons from full accountability.[3] Additionally, the absence of clear prosecutorial guidelines and judicial reluctance to embrace plea agreements further complicate its implementation.

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[1]Mwuese, MM, & Aboho, B, 'Plea Bargain as an Instrument of Fast-Tracking Criminal Justice Delivery under the State Administration of Criminal Justice Law of Benue State' (2020) *Benue State University Law Journal* 247-262

[2] Eze, TC, & Eze, AG, '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* 31-43

[3] Peters, D, 'Public Prosecution and the Concept of Restorative Justice in Nigeria' *Fountain Quarterly Law Journal Ekiti State Ministry of Justice, Ado Ekiti* (2005) l (2) 79.

This article critically examines the challenges affecting the effective application of plea bargaining in Nigeria. It explores the legal, ethical, socio-political, and operational barriers that impede its success. Furthermore, it discusses potential reforms and recommendations aimed at strengthening plea bargaining as a viable tool for achieving justice while maintaining public confidence in the judicial system.

2. CONCEPTUAL CLARIFICATIONS

2.1 Plea Bargaining

Plea bargaining is the process by which a defendant and a prosecutor reach a mutually agreeable resolution to a criminal case, with the approval of the court. Garner[4] defined it as a negotiated agreement where the defendant pleads guilty to a lesser charge or one of multiple charges in exchange for some concession from the prosecutor, a more lenient sentence or the dismissal of other charges. The Supreme Court of Nigeria, in the cases of Gava *Corp. Ltd v. FRN*[5] and *PML (Nig.) Ltd v. FRN*[6] confirmed this definition. Parties in a criminal trial may enter into plea bargain, with the agreement required to be explicitly made in writing to avoid inconsistencies that can arise with oral agreements.[7]

Plea bargaining refers to a situation where a defendant pleads guilty to a charge or lesser charge in exchange for a lighter sentence.[8] It has also been described as a negotiation process in which the defendant agrees to plead guilty in return for the prosecutor's concessions, either by reducing the

[4] Garner, BA, Black's Law Dictionary, (9th Edition, West Publishing Co., St. Paul, Minn, 2004) 1452
[5]Gava Corp. Ltd v. FRN (2019) 10 NWLR (pt. 1679) 139 at 160
[6] (2018) 7 NWLR (pt. 1619) 448 at 480 paras B-C. SC.
[7]Gava Corp. Ltd. (n, 18) at 178 para. H.
[8]Albanese, J, 'Transnational Crime and the 21st Century: Criminal Enterprise, Corruption and Opportunity' (Oxford University Press, 2020)

severity of the charge or the sentence. Nchi[9] defines plea bargain as an informal arrangement where the accused agrees to plead guilty to certain charges in exchange for the prosecution dropping other charges or opting for a summary trial.

2.2 Plea Negotiation

Plea negotiation is the process through which a defendant and a prosecutor engage in discussions to reach a mutually acceptable resolution in a criminal case. It involves bargaining over aspects of the case, such as the charges, the defendant's plea or the potential sentence, with the goal of avoiding a full trial.[10] During plea negotiation, the prosecutor may agree to reduce the severity of the charges, recommend a lighter sentence, or dismiss certain charges in exchange for the defendant's agreement to plead guilty to a specific charge. Plea negotiation is a subset of plea bargaining and emphasizes the communication and compromise between the parties to settle the case efficiently.

2.3 Plea Agreement

A plea agreement is the outcome of the plea-bargaining process, where the prosecutor and the defendant reach a mutually acceptable resolution in a criminal case.[11] This resolution involves the defendant agreeing to plead guilty to specific charges or a lesser offense in exchange for certain concessions from the prosecution. These concessions often include a reduction in charges, a recommendation for a lighter sentence or the dismissal of other pending charges.[12] The plea agreement reflects the compromises made during the bargaining process. For the prosecution, it ensures a conviction, saving time and resources that would otherwise be

[9] Nchi, SI, 'The Nigerian Law Dictionary' (2nd edn, Green World Publishing Company Ltd, 2000) 403

[10] Flynn, A, 'Bargaining with Justice: Victims, Plea Bargaining and the Victims Charter Act 2006' *Monash University Law Review* (2017) 37 (3) 73.

[11] Ibid

[12] Agbi v. F.R.N (2020) 15 NWLR (Pt. 1748) 416

spent on a trial. For the defendant, it offers the opportunity to secure a more favorable outcome than might result from a trial, such as reduced penalties or avoiding the uncertainty of a harsher sentence.[13]

A major requirement of the Administration of Criminal Justice Act for a plea bargain agreement is that it must be in writing.[14] By the provision of this Act, a non-written agreement is not acceptable and invalid. In the case of *RomrigNig Ltd vs FRN*[15]it was held in the case that reducing plea bargain into writing is most logical as it would prevent the inconsistencies that trail oral evidence such as distortion of agreement by the parties at will.

2.4 Plea of Guilty

A plea of guilty is an admission by a defendant in a criminal case that he committed the offence as charged.[16] The defendant must make the plea voluntarily, without any form of coercion or undue influence and with a clear understanding of the nature of the charges, the potential penalties, and the implications of their plea. The court must ensure that the defendant is competent to make such a decision and that the plea is unequivocal.[17]

The court of Appeal in *Rickey Tarfa Mustapha vs Federal Republic of Nigeria*[18] held that when a defendant pleads guilty, it eliminates the need for a full trial, thus promoting judicial efficiency and saving time and resources for the court. However, the prosecution is often required to present a summary of the evidence to establish a prima facie case, even when a guilty plea is entered. While a guilty plea may result in leniency

[13] Stuntz, WJ, 'Plea bargaining in the United States (Oxford University Press, 2013); JF Meyer, 'History of Plea Bargaining in the United States' <https://www.britannica.com/topic/plea-bargaining> accessed 19 August 2024
[14]Section 270(1) Administration of Criminal Justice Act, 2015
[15] (2014) LPELR-22795
[16]Amanchukwu vs FRN (2009) 8 NWLR (PT. 1144) 475
[17]Ibid
[18](2017) LPELR-43131

during sentencing, such as reduced penalties in recognition of the defendant's remorse, the court is not bound to accept a negotiated sentence and retains discretion within the bounds of the law.

The plea of guilty is closely tied to plea bargaining, where the defendant may agree to plead guilty in exchange for reduced charges or a lighter sentence.[19] This mechanism is particularly valuable in managing the caseload of the courts and encouraging cooperation from defendants. In Nigeria, the Administration of Criminal Justice Act, 2015 ensures that plea of guilty is entered voluntarily, with adequate consultation and in a manner consistent with the interests of justice.[20]

2.5 Plea of Not Guilty

Plea of not guilty is a response by a defendant in a criminal case, where he is challenging the prosecution to prove beyond reasonable doubt.[21] Under the Administration of Criminal Justice Act (ACJA), 2015, a plea of not guilty may also be recorded if the defendant remains silent or refuses to respond to the charges.[22] The plea is rooted in the constitutional principle of the presumption of innocence, as enshrined in Section 36(5) of the 1999 Constitution of Nigeria (as amended). This principle ensures that a defendant is considered innocent until proven guilty by the prosecution through credible evidence. Once the plea of not guilty is entered, the case proceeds to trial.

The prosecution bears the responsibility of presenting evidence to substantiate the charges, while the defense is afforded the opportunity to challenge the evidence, cross-examine witnesses, and present its case. The trial culminates in the court determining the guilt or innocence of the defendant based on the evidence adduced. The plea of not guilty

[19]Section 270(4) of the Administration of the Criminal Justice Act, 2015
[20] Ibid, section 270(9)
[21]Ibid, section 274
[22]Ibid, 276

underscores the right of every accused person to a fair trial, a cornerstone of the justice system aimed at safeguarding the rights of the individual and upholding the rule of law. When a defendant pleads not guilty in plea bargaining, it indicates his intention to contest the charges, thereby initiating a trial.[23]

2.6 Victim of Crime

In ancient societies, the term 'victim' had a dual meaning, closely connected with religious and sacrificial practices.[24] The concept of a victim referred to someone or something a person or animal offered in a ritual sacrifice to appease gods or supernatural forces. This act was believed to maintain cosmic or social harmony, avert disaster, or express gratitude to the divine.[25] The victim played a crucial role in the ritual, symbolizing purity or worthiness to be offered to deities. Over time this concept has evolved, it has led to the modern understanding of a victim as someone who suffers harm or loss.[26]

The ancient use of 'victim' differs from current understanding, where the term describes someone who suffers harm as a result of a crime, accident, or other misfortune.[27] Nonetheless, the historical association with sacrifice highlights the enduring link between suffering and societal or cosmic order.[28] Over time, the term has evolved to encompass a broader meaning, now commonly used to describe individuals who suffer harm, loss, or hardship for various reasons, such as victims of natural disasters, diseases, or accidents.[29] According to Black's Law Dictionary, a victim is someone

[23]Rickey Tarfa Mustapha SAN vs FRN (2017) LPELR-43131
[24]Rahman, MA, 'Victimology: Concept and History of Victimology' https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2257668 accessed 2September 2024
[25]Ibid
[26] Ibid
[27]Ibid
[28] Ibid
[29]Ibid

harmed by a crime, tort, or other wrongdoing.[30] It is significant to state that the limitation in these definitions is the exclusion of the family members of a person who has been killed. Therefore, a crime victim can be understood as someone who has experienced physical, psychological, financial, or emotional harm or loss due to a crime, and this definition may also extend to the family or caregiver of someone who was injured or killed.[31]

3. PLEA BARGAINING PRACTICE IN NIGERIA

Plea bargain is a negotiated agreement between the prosecution and the defence. The defendant agrees to plead guilty and the prosecutor in return provides certain concessions or benefits to the defendant.[32] The use of plea bargain is a significant tool for expediting trials and managing cases within the criminal justice system. This may take the form of reduced charges in cases involving multiple charges or recommendation for lighter sentencing.[33] Plea bargain is recognized as offering mutual benefits to various stakeholders in the criminal justice system.[34] This includes the prosecutors, defendants, judges, victims and the public. For defendants, plea bargaining provides a way to achieve speedy disposal of their cases and also help to avoid the anxiety and uncertainty of a trial and the possibility of facing the maximum penalties prescribed by law. Prosecutors benefit from plea bargain by avoiding time-consuming trials, which in turn preserves valuable and limited prosecutorial resources.[35]

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[30] Garner, BS, 'Black's Law Dictionary', (9th Edition, West Publishing Co., St. Paul, Minn, 2004) 1452

[31] Flynn, A, 'Bargaining with Justice: Victims, Plea Bargaining and the Victims Charter Act 2006' *Monash University Law Review* (2017) 37 (3) 73.

[32] Robert, ES, & Stuntz, WJ, 'Plea Bargaining as Contract', Yale L.J. (1992)101 1911 - 1912.

[33] Alschuler, AW, 'The Prosecutors Role in Plea Bargaining', U. Chi. L. Rev. (1968)36 50, 50

[34]Ibid

[35]Ibid

Similarly, Judges find relief from congested court cause list. Plea bargain also conserves the state and judicial resources due to the expedition in determination of cases. The victims may also benefit from plea bargain because it saves them from the public emotional and psychological strains.[36] Plea bargain involves negotiations between the defendant and the prosecutor to reach an agreement in which the defendant pleads guilty in exchange for reduced charges or a favorable sentence.[37] This means that both the defendant and the prosecutor work together to reach a mutual agreement subject to the approval of the court. Therefore, the defendant is required to plead guilty to a lesser offence or some of the charges in a multiple indictment for a more lenient sentence than what might be imposed for the full charge.

In the United States, plea bargaining was recognized as far back as 1967, when an influential report by the President's Commission on Law Enforcement and Administration of Justice documented the widespread use of plea bargaining and recommended its practice.[38] The report suggests that plea agreements would eliminate the inherent risks associated with adversarial litigation. This is because courtroom litigation is a game of chance and regardless of the strength of the evidence and the quality of the prosecution, there is always an element of chance in the outcome of a particular case. Both sides involved in a trial have a vested interest in minimizing these inherent risks.

[36] Acevedo, R, 'Is a Ban on Plea Bargaining an Ethical Abuse of Discretion'? A Bronx County New York Case
Study. Fordham L. Rev. (1995) 64 987
[37] Langbein, JH, 'Torture and Plea Bargain' ed Philosophy of Law Wardsworth, London (1995) 1
[38]Meyer, JF, 'History of Plea bargaining in the United States' <https://www.britannica.com/topic/plea-bargaining> accessed 17 May 2023

In Nigeria, Plea bargain was adopted by Section 270 (1) of the Administration of Criminal Justice Act.[39] Before the enactment of the Administration of Criminal Justice Act, 2015, section 14(2) of the Economic and Financial Crimes Commission Act[40] introduced the concept in Nigeria.[41] *It was applied in several Nigerian cases under the* Economic and Financial Crimes Commission Act, *including those of Cecilia Ibru,*[42]*Tafa Balogun,*[43]*Igbinedion*[44] *and Alamieyeseigha.*[45]

Section 14(2) of the Economic and Financial Crimes Act provides thus:

> Subject to the provision of Section 174 of the constitution of the Federal Republic of Nigeria 1999 (which related to the power of the Attorney General of the federation to institute, continue, takeover or discontinue criminal proceedings against any person in any court of law), the Commission may compound any offence punishable under this Act by accepting such sum of money as it thinks fit not, exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence. To compound means to agree for consideration not to prosecute a crime while it consists of the receipt of some property or other consideration in return for an agreement not to prosecute or inform one who has committed a crime.

[39] Administration of Criminal Justice Act, Laws of Federation of Nigeria, 2020

[40] Economic and Financial Crimes Commission Act, CAP E15, Laws of Federation of Nigeria, 2020.

[41]Olufemi, A, 'The process and practice of Dispute Resolution and Arbitration in Nigeria' (Princeton and Associates Publishing Co. Ltd: Ikeja Lagos, 2021)

[42] FRN vsDr (Mrs) Cecilia Ibru FHC/ABJ/CR/L/297/2009

[43] FRN vsTafaBalogun FHC/ABJ/CR/14/2005

[44] FRN vsIgbinedion FHC/EN/68/2008

[45] FRN vs DSP *Alamieyeseigha (2006) 16 NWLR (Pt 1004) 1*

The provision of the EFCC Act allowed a few high-profile cases instituted by the EFCC to be concluded on the basis of plea bargaining. The first was the case of the world biggest scam (at that time) of $242m by certain Nigerians, Mr Emmanuel Nwube, Mrs Amaka Anyemba and Mr. Nzeribe Okoli against a Brazilian banker. The fraudsters obtained the money by promising a member of the bank staff a commission for funding a non-existent contract to build an airport in Nigeria's capital Abuja.[46] Emmanuel Nwude was sentenced to 25 years, while Nzeribe Okoli was sentenced to 12 years follows negotiations in which they agreed to plead guilty to 16 of the 91 original charges, and to forfeit assets worth at least $121.5 million to the victims of the scam. Amaka Anajemba, on the other hand was sentenced to two and a half years in prison in July after agreeing to return $48.5 million to the Sao Paolo-based Banco Noroeste, which collapsed after the theft. The second case involved the alleged stealing of about N14b against the former Inspector General of Police, Mr. Tafa Balogun,[47] who was arraigned for stealing and laundering 100 million dollars from the police treasury. A 70-count charge was brought against him, and he pleaded guilty to 8 counts of failing to comply with lawful entries in contravention of section 38(2)(b) of the EFCC Act. He was convicted and sentenced to a term of six months in jail on each of the eight counts and the sentences were to run concurrently. He also forfeited assets estimated to be about 16billion naira, and paid a sum of only 500, 000 on each of the eight counts charges. After the Economic and Financial Crime Commission (EFCC) Act 2004, the Administration of Criminal Justice Law, 2007[48] came to being and made express provisions for the application of Plea bargaining in Nigeria. The Law was re-enacted in 2011, and later in 2015 a recent Administration of Criminal Justice Law (Lagos State) was passed into Law. The Anambra

[46]CNET, Nigerian email scammers jailed <https://www.cnet.com/tech/tech-industry/nigerian-e-mail-
scammers-jailed/> accessed 26 February 2025
[47] FRN V. Tafa Adebayo Balogun& 8 Ors (FHC/ABJ/CR/14/2005)
[48]Administration of Criminal Justice Act of Lagos State 2007

State Criminal Justice System towed the path of Lagos State and enacted theirs in 2010. This, of course, was possible since under the Nigeria legislative framework, it is not the exclusive preserve of the Centre to enact laws to regulate the Criminal Justice System. Also, in 2015, the Administration of Criminal Justice Act was enacted to provide for the administration of criminal justice and for related matters in the courts of the Federal Capital Territory and other Federal Courts in Nigeria.

The Administration of Criminal Justice Act was enacted in 2015. Section 494 of the Act,[49] defines Plea bargain as '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'.

Section 270 of the Act[50] gave an outline of the procedure for the application of Plea bargaining in Nigeria. In 270(10), it outlined the processes to be taken for the administration of Plea bargain in Nigeria, detailing the role of the Prosecution, the role of the Defendant and the role of the Court in the practice of Plea bargaining in Nigeria. Section 270(2),[51]stipulate that the prosecution may enter into plea bargaining with the defendants with the consent of the victim or his representative during or after the presentation of the evidence of the prosecution but before the presentation of the evidence of the defense, provides that all the following conditions are met:

i. the evidence of the prosecutions is insufficient to prove the offence charged beyond reasonable doubt,
ii. where the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative

[49]Administration of Criminal Justice Act, 2015
[50]Ibid
[51]Ibid

iii. Where the Prosecutor is of the view that the offer or acceptance of a plea bargain is in the interest of justice, the public interest, public policy and the need to prevent abuse of legal process, he may offer or accept the plea bargain.

By virtue of Section 270(8) of the ACJA, the presiding judge or magistrate before whom the criminal proceedings are pending shall not participate in the plea discussion.[52]Their role is only to ascertain whether the defendant admitted the allegation in the charge to which he has pleaded guilty and entered into the agreement voluntarily and without undue influence.[53] However, the Presidential Advisory Committee Guidelines,[54] further empowered the court to retain an absolute discretion as to whether or not it sentences in accordance with the joint written submission from the parties.

4. CHALLENGES AFFECTING THE EFFECTIVENESS OF PLEA BARGAINING IN NIGERIA

The challenges affecting the practice of plea bargaining in Nigeria are summarized under the following headings:

4.1 Prosecutorial Overreach and Limited Judicial Oversight

The administration of plea bargaining in Nigeria has faced significant criticism due to widespread abuse, much of which stems from the disproportionate power granted to the prosecution and the limited role of the judiciary in the process. Section 270 of the Administration of Criminal Justice Act (ACJA) 2015 vests the prosecution with substantial discretion to initiate and negotiate plea bargains with defendants. This provision effectively gives the prosecution free rein in plea bargain negotiations, with

[52] Agaba, JA, 'Practical Approach to Criminal Litigation in Nigeria'(3rd edn Bloom Legal Temple Press, Lagos 2017) 620.
[53] Section 270 (10) of the ACJA
[54]emanated from the Presidential Advisory Committee Against Corruption (PACAC) 2016 group which is aimed
to support the elaborate provisions of the Administration of Criminal Justice Act, 2015

little to no judicial oversight at the critical stages of the process. Section 270(8)[55] of the ACJA explicitly restricts the involvement of judges during plea bargain negotiations. Judges are prohibited from participating in the discussions between the prosecution and the defense. Although the court retains the authority to approve or reject the plea agreement, its lack of involvement in the initial negotiation phase leaves the prosecution with unchecked power, often leading to abuse.

Prosecutors, in some instances, have used their discretion to negotiate lenient sentences or penalties for defendants, particularly those with significant financial or political influence. This has fueled public perception that the system is biased in favor of the wealthy and politically connected, eroding trust in the justice system.

This systemic imbalance persists, as the prosecution continues to wield excessive power in negotiating plea deals, often resulting in outcomes that undermine the goals of justice and deterrence. The lack of judicial oversight not only creates opportunities for abuse but also undermines efficiency, fairness, and justice which are the core principles of plea bargaining.[56] Without the ability to actively participate in or review the terms of plea agreements, judges are unable to ensure that the outcomes of plea bargains align with the principles of proportionality and deterrence. This weakens the system's credibility and creates a perception that justice can be negotiated, rather than upheld.

4.2 Inconsistency

Inconsistency in the application of plea bargaining in Nigeria significantly undermines its effectiveness and credibility as a legal tool in the criminal justice system. Plea bargaining, if applied consistently and transparently, can serve as an effective mechanism to decongest courts, reduce delays in

[55]Ibid

[56] Esoimeme, EE, Esq, 'Has the Concept of Plea Bargaining Been Abused in Nigeria's Criminal Justice System'. *SSRN Electronic Journal* January 2014

trials, and ensure proportionate punishment for offenders. However, in Nigeria, the absence of uniform guidelines, lack of oversight, and arbitrary application have hindered the realization of these benefits, creating a system that appears biased and unreliable.

While Section 270 of the Administration of Criminal Justice Act (ACJA), 2015, provides a legal basis for plea bargaining, it fails to prescribe detailed procedural rules or sentencing guidelines. This gap has led to variations in how plea bargains are negotiated and approved, depending on the discretion of individual prosecutors or judges. For instance, some prosecutors may grant lenient terms to high-profile defendants accused of serious offenses, while others impose harsher conditions on less influential defendants charged with minor crimes. Such disparities erode public confidence in the fairness and impartiality of the justice system.

The inconsistency in plea bargaining is particularly glaring in cases involving economic and financial crimes, where defendants are often granted disproportionately lenient sentences. For example, in the case of *EFCC v. Christian Nwosu*,[57] the Economic and Financial Crimes Commission (EFCC) negotiated a plea bargain with the defendant, who was accused of misappropriating N30 million. The presiding judge rejected the agreement, describing the proposed sentence as inadequate given the gravity of the offense. Similarly, in *EFCC v. Olademeji Abiola*[58], the EFCC proposed a six-month sentence for the defendant, who faced a five-count charge of fraud and possession of fraudulent documents. The court rejected the plea agreement, emphasizing that it failed to achieve the deterrent effect necessary to prevent similar crimes. These cases highlight how prosecutorial discretion, without judicial oversight or clear guidelines, can lead to outcomes that undermine the integrity of the justice system.

[57] (2016) 17. NWLR (PT. 1541) 226 AT 290
[58] (2019) LCN/1276 (CA)

The absence of uniform sentencing guidelines compounds the problem.[59] The inconsistent application of plea bargaining also affects the overall efficiency of the criminal justice system. Plea bargaining is intended to expedite the resolution of cases, thereby reducing the burden on courts and prisons. However, when the process is applied inconsistently, it creates uncertainty and delays, as judges may reject poorly negotiated agreements or defendants may refuse to accept terms they perceive as unfair.

4.3 Judicial Discretion

Judicial discretion plays a significant role in shaping the practice of plea bargaining in Nigeria, affecting its application, fairness, and overall effectiveness.[60] While plea bargaining is primarily a negotiation process between the prosecution and the defense, judicial discretion serves as a crucial checkpoint that can either validate or reject plea agreements. Section 270(8) of the Administration of Criminal Justice Act (ACJA) 2015 explicitly prohibits judges from participating in plea bargaining negotiations. Their involvement is restricted to ensuring that the plea agreement meets procedural requirements, such as confirming that the defendant voluntarily entered the plea and fully understands its implications. Judges are also tasked with determining whether the agreed terms align with the law.

This limited role undermines the potential of judicial discretion to ensure fairness and consistency in plea bargaining.[61]Judicial discretion affects plea bargaining in Nigeria through inconsistencies in how judges evaluate and approve plea agreements. Judges have varying interpretations of the law

[59] Peters, D, 'Public Prosecution and the Concept of Restorative Justice in Nigeria' *Fountain Quarterly Law Journal Ekiti State Ministry of Justice, Ado Ekiti*(2005) l (2) 79.
[60]Peters, D, 'Public Prosecution and the Concept of Restorative Justice in Nigeria' *Fountain Quarterly Law Journal Ekiti State Ministry of Justice, Ado Ekiti*(2005) l (2) 79.
[61]Ayorinde, B, 'Nigeria: A Reformatory Approach To The Criminal Justice System In Nigeria' (2018)https://www.mondaq.com/nigeria/public-order/293894/a-reformatory-approach-to-the-criminal-justice-system-in nigeria accessed on the 15February 2025.

and differing approaches to sentencing, leading to unpredictable outcomes in plea bargaining cases. While some judges may strictly adhere to the letter of the law, others may be more lenient or take a broader view of justice.

4.4 Lack of clear guidelines and practice direction

The absence of clear sentencing guidelines in the application of plea bargaining in Nigeria is one of the most significant flaws in the system and a major factor contributing to its misuse. Without a structured framework to prescribe the extent of sentence reductions and establish uniform principles for judges to follow, it becomes exceedingly difficult to eliminate the exploitation of plea bargaining by corrupt officials. This lack of clarity opens the door to arbitrary decision-making, inconsistency, and manipulation of the system for personal or political gain. In contrast, other jurisdictions provide well-defined sentencing guidelines that regulate the process of plea bargaining and reduce opportunities for abuse.

The absence of a clear standard for sentence reductions also hampers judicial oversight, as judges lack a baseline against which to assess the fairness of plea agreements. This inconsistency undermines public confidence in the system, reinforcing perceptions of bias and inequality.

4.5 Capacity Gaps

Lack of specialized training is one of the major challenges facing the institutions in charge of plea bargaining. Prosecutors often lack the expertise to evaluate cases for plea deals or negotiate terms that align with justice and public interest. Similarly, defense attorneys may be unable to adequately advise their clients on the benefits or risks of plea bargaining, especially indigent defendants who rely on overstretched public defenders.

The absence of clear procedural guidelines and resources worsens these gaps. Prosecutorial agencies and courts are often overburdened with caseloads, leaving little room to prioritize or standardize plea bargaining. This lack of capacity also impacts the integration of restorative justice

principles, such as victim restitution, which requires specialized knowledge and resources to implement.[62]

Capacity gaps lead to inefficiencies, inconsistencies, and reduced public trust in plea bargaining, undermining its potential to enhance the criminal justice system. The institutions using plea bargaining apply it sometimes when they have insufficient evidence to establish the guilt of the defendants.[63] In such situations, the prosecution can secure a conviction without having to present a strong case in court because once a defendant pleads guilty to a crime or charges, it effectively ends the trial.[64] This can lead to abuse of the system, where convictions are secured without meeting the burden of proof required in criminal trials.[65] Furthermore, the prevalence of plea bargaining can inadvertently encourage inadequate investigations and weak legal defences.[66] When the focus shifts from a thorough examination of the evidence in court to the negotiation table, there may be no reason for police to conduct rigorous investigations and for defence counsel to prepare robust cases for trial.[67] This could lead to injustices and hinder the search for truth in the legal process.

4.6 Lack of Specialized Units

The absence of a specialized unit in prosecutorial agencies dedicated to plea bargaining undermines the effectiveness of this legal tool in several ways, leaving its practice inconsistent, inefficient, and often inequitable. Without a specialized unit, plea bargaining lacks clear procedural and administrative

[62]Ibid
[63]Ibid
[64] Chinwe, AM,' The Use of Plea bargain in Nigeria Criminal Law' (2018) 9(2) BLR153-161
[65] Okwori, NA, 'Plea Bargaining: A Trial Procedure that Negates Fundamental Rights of the Accused
(SAGE Publication, 2010)
[66] Ibid
[67]Leaders & Co. Ltd vs Bamaiyi (2010) 18 N.W.L.R. (Pt. 1225) 329, 340 @ PARAS A-B Fabiyi, J.S.C

oversight within prosecutorial agencies. This absence results in arbitrary practices and the uneven application of plea bargains, depending on the discretion, capacity, or interest of individual prosecutors. These disparities create perceptions of bias or favoritism, eroding public trust in the justice system.[68]

Prosecutorial agencies, already burdened with overwhelming caseloads, often struggle to prioritize and dedicate sufficient attention to cases that could benefit from plea bargaining. The lack of a specialized unit exacerbates this challenge by failing to streamline case selection or allocate resources specifically for plea bargaining processes. As a result, many cases that could have been efficiently resolved through plea agreements proceed to full trials, contributing to delays, case backlogs, and prolonged detention for defendants awaiting trial.

The absence of a dedicated plea-bargaining unit also affects the quality of negotiations. Prosecutors without specialized training in plea bargaining may lack the skills or knowledge to negotiate fair and effective agreements. This lack of expertise can result in poorly structured deals that fail to adequately reflect the severity of the offence, the interests of the victim, or the broader goals of justice. In some instances, this can lead to disproportionately lenient agreements for serious crimes or excessively harsh terms for minor offences. Without a designated unit, plea bargaining in prosecutorial agencies is susceptible to abuse and corruption. Prosecutors may exploit the lack of oversight to pursue plea deals for personal or political gain, particularly in high-profile corruption cases. The absence of institutional safeguards also leaves defendants vulnerable to coercion, especially those without access to competent legal representation. These practices undermine the integrity of the justice system and weaken its ability to deliver equitable outcomes.

[68]Ibid

The absence of a specialized unit results in missed opportunities to institutionalize restorative justice principles within plea bargaining. Without a centralized body to oversee and implement plea agreements, prosecutors are less likely to incorporate victim restitution, community service, or other restorative measures into negotiated deals. This omission limits the potential of plea bargaining to serve as a tool for reconciliation and rehabilitation.[69] The lack of a specialized unit also affects the efficiency of prosecutorial agencies in managing cases involving plea agreements. In the absence of a specialized unit, plea bargaining becomes an ad hoc process that consumes valuable time and resources, further straining prosecutorial agencies.[70]

4.7 Slow Judicial Processes

The effectiveness of plea bargaining is significantly affected by the slow pace of judicial processes, particularly in countries like Nigeria, where systemic delays are a hallmark of the criminal justice system. Plea bargaining is designed as a mechanism to expedite the resolution of criminal cases, reduce court backlogs, and save time and resources for all parties involved. However, the sluggish nature of judicial proceedings often nullifies these intended benefits, creating challenges that compromise the efficiency and fairness of plea bargaining.[71]

One of the primary effects of slow judicial processes is the delay in initiating and concluding plea agreements. A plea bargain typically requires the active participation of prosecutors, defense attorneys, and judges. However, when the judiciary is bogged down with an overwhelming number of pending

[69] Danjuma, I & Chuan, GC, 'The Extent of Voluntariness in Plea Bargaining for Economic and Financial Crimes in Nigeria' (2015) 23 (3) *IIUM Law Journal* 485

[70] Ayorinde, B, & Co, 'Nigeria: A Reformatory Approach To The Criminal Justice System In Nigeria' (2018) <https://www.mondaq.com/nigeria/public-order/293894/a-reformatory-approach-to-the-criminal-justice-system-in-nigeria> accessed on the 15th June 2025.

[71] Linus, YA, 'Plea Bargain and the anti-corruption Campaign in Nigeria' Global journal of interdisciplinary social science, 2014 3(4) 116

cases, these stakeholders often lack the time and capacity to prioritize plea negotiations. This delay affects the ability of the judiciary to resolve cases swiftly and reduce the time defendants spend in pretrial detention. In Nigeria, where pretrial detention accounts for a significant portion of the prison population, slow judicial processes exacerbate overcrowding and diminish the utility of plea bargaining as a tool for alleviating this problem.[72]

The protracted nature of judicial proceedings also creates disincentives for defendants to engage in plea bargaining. Defendants may perceive that entering into a plea agreement will not significantly hasten their cases' resolution due to the systemic inefficiencies of the courts.[73] For instance, even after a plea agreement is negotiated, it requires judicial approval, which can be delayed by congested dockets, adjournments, and the unavailability of judges. As a result, defendants may opt to proceed to full trial, believing that the time saved through plea bargaining is negligible. This negates the intended purpose of the process and perpetuates delays in the criminal justice system.

Victims of crime and the broader public also lose confidence in the plea-bargaining process when judicial delays are evident.[74] When cases drag on despite negotiated agreements, it creates the perception that plea bargaining is ineffective or, worse, a mechanism for shielding offenders from justice.

4.8 Public perception and trust issues

Public perception and trust are factors that influence the effectiveness of plea bargaining in any justice system.[75] In Nigeria, negative public perceptions and a lack of trust in the judicial system have profound implications for the acceptance and legitimacy of plea bargaining as a mechanism for resolving

[72]Ibid
[73] Ibid
[74]Ibid
[75]Chinwe, AM, 'The Use of Plea bargain in Nigeria Criminal Law' (2018) 9(2) BLR 153-161

criminal cases. These trust issues often stem from perceptions of corruption, inequity 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.[76] 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 plea deals or the conditions imposed on defendants, it becomes difficult to trust that these agreements serve the interests 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.

The implications of these trust issues are far-reaching. 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.

[76]Idehen, SO, & Daudu, S, 'Combating the Cankerworm of Corruption through Plea Bargaining in Nigeria' (2020)8(2). Journal of Law and Criminal Justice <http://jlcjnet.com/journals/jlcj/Vol_8_No_2_> accessed 23 February 2025

5. ANALYSIS OF SELECTED CASES ON PLEA BARGAINING

The adoption of plea bargain across the States and under the ACJA is a recent development. Consequently, most of the cases involving plea bargaining take place in the trial High Courts and Federal High Courts and are not reported in most Law Reports. Only a handful of decision on plea bargaining have found their way to the appellate courts and the Law Reports. The following cases will be examined to demonstrate the inconsistency in the application of plea bargaining in Nigeria.

5.1 KaroIjire v. FRN[77]

The appellant was arraigned on the 23rd of July 2019, the appellant was arraigned before the High Court of the Federal Capital Territory sitting at Nyanyan, Abuja on a three-count charge bothering on the offences of inducement, cheating and impersonation punishable under sections 322 and 324 of the Penal Code by the Respondent. The charge is dated 15th July 2019 but filed on the 16th July 2019 while a plea bargain agreement of the parties was filed on the 23rd July 2019.

The trial court did not comply with the plea agreement which the trial judge described as follows:

> I have read the plea bargain agreement. Parties agreed on ridiculous terms of one month imprisonment. Let me say that incumbent on the court to adopt the agreement intoto. Courts have a duty to enforce the provisions aimed at redeeming the image and integrity of this country. It has appropriate law that can deter persons from engaging in cybercrimes…. Consequently, the convict is hereby sentenced to a term of 3 years imprisonment on the three-count charge.

[77] CA/A/1033c/2019

The Court of Appeal while commenting on the position of the trial judge stated that the law requires that if the trial judge intends to impose a heavier sentence, the law requires the judge to inform the accused person of the development to enable him exercise his right under section 270(11) c of the ACJA either to go along that line or refrain from the agreement earlier entered into by altering his plea. It is against this position that the court of appeal quashed the 3 years sentencing imposed by the trial court and imposed 6 months.

The position of the trial is judge is not founded in law. Once a plea-bargaining agreement has been entered into, it is binding on the parties. The prosecution is called to state the facts of the case and also tender the plea bargain agreement. The judge is not bound by the agreement but if there is any reason why the judge will impose a heavier punishment on the parties particularly the defendant must be informed so that he can know the effect of his plea and if there is need for change of plea.

5.2 PML (Nig.) Ltd. v. FRN[78]

The appeal concerned the issue of plea bargain and double jeopardy. The prosecution filed a charge[79] against Lucky Nosakhare Igbinedion and 6 others. The prosecution subsequently entered a plea bargain agreement with Lucky Nosakhare Igbinedion after which the charge was amended against only Lucky Nosakhare Igbinedion and Kiva Corporation who were listed as 1st and 3rd defendants. The appellant in the instant case PML (Nig.) Ltd. and 4 others were not mentioned in the amended charge. Lucky Nosakhare Igbinedion and Kira Corporation pleaded guilty to offences against them and were convicted and sentenced. The prosecution subsequently filed another Charge No. FHC/B/11C/2011 against Lucky Nosakhare Igbinedion and 6 others at the Federal High Court Benin Division. The appellant and other defendants filed a joint application at the Federal High Court Benin.

[78](2017) LPELR 43480 SC

[79]Charge No. FHC/EN/6C/2008 filed at the Enugu Division of the Federal High Court in 2008

They challenged the fresh charges on ground of double jeopardy. The trial judge dismissed the charges against Lucky Nosakhare Igbinedion. The court dismissed the application of the other defendants including the appellant. The appellant's appeal to the Court of Appeal was dismissed and an appeal was filed at the Supreme Court. The Supreme Court unanimously dismissed the appeal. The court held that the plea bargain agreement in Charge No. FHC/EN/6C/2008 did not involve the appellant. And there was no plea bargain between the appellant and the prosecution.

The Appellant, who insisted that they agreed that the principal actor, Lucky Igbinedion, should take the fall, has not provided any evidence of such an agreement with anyone. Even, if there was such an agreement for one accused to take the fall, the Court of Appeal was absolutely on point when Justice Amina Adamu Augie JSC held that plea bargain must be a conscious and deliberate act between the prosecution and an accused with a plea of guilty being an overt act on the part of the accused in evidence of the plea bargain. The concept of plea bargain clearly operates in personam, so to say, and not by privy or proxy.

The decision of the Court of Appeal on this issue cannot be faulted, thus, the concurrent findings of the two lower Courts remain intact. It is also an important point and worthy of note in the reasoning of Augie JSC above is that a defendant seeking to rely on a plea agreement must have personally suffered a conviction in consequence of the plea agreement. This implies that a defendant against whom the prosecution dropped charges cannot rely on any plea agreement between the prosecution and other defendants who pleaded guilty and were convicted.

5.3 Romrig (Nig.) Ltd. v. FRN[80]

The facts of this case are similar to the facts in the case of PML (Nig.) Ltd. v. FRN (supra). The appellant was involved in a charge instituted at the

[80] (2018) 15 NWLR (pt. 1642) 284 at 319 paras. B-C.

Federal High Court Enugu, involving Lucky Nosakhare Igbinedion and 6 others. The appellant was the defendant in that charge. Lucky Nosakhare Igbinedion was convicted and sentenced pursuant to a plea agreement which did not involve the 5th defendant in that charge. In a fresh charge at the Federal High Court Benin, the appellant who was the 5th defendant in the earlier charge opposed the fresh charge on the ground of double jeopardy and condonation. The application of the appellant for a dismissal of the charge was dismissed at the Federal High Court Benin and at the Court of Appeal. The Supreme Court affirmed the decision of the trial court and the Court of Appeal. The Supreme Court held, inter alia, that there was no plea agreement between the appellant and the prosecution at the Federal High Court Enugu.

In the absence of evidence of any plea agreement between the appellant and the prosecution the appeal was dismissed. The Supreme Court also made the following important pronouncements on plea bargain:

> (i) A plea bargain cannot be taken or entered in absentia. This is because a plea bargain must be a deliberate and conscious act taken by the accused and the prosecution. In the instant case, the appellant did not enter a plea bargain with the prosecution.
> (ii) A plea bargain is only valid or effective when agreedupon by the prosecution and the accused in person and not by proxy.
> (iii) Only directors of an accused corporate entity can represent such company in a plea bargain agreement.
> (iv) An accused cannot inherit the benefit of a plea bargain with a co-accused no matter the relationship.

The decisions in *Romrig (Nig) Lid. v. FRN* and *PML (Nig,) Lid. v. FRN* emphasised the need for defence counsel to ensure that a plea agreement contain all items on which the parties reached an agreement. The importance of this is underscored by section 270(7)(b) of the ACJA, which

require that a plea agreement must state fully the terms of the agreement and any admissions made.

It is the responsibility of the defence counsel to ensure that any issue on which the parties reach an agreement beneficial to their clients are incorporated in the plea agreements. If the 5th defendant had been incorporated as a party to the agreement reached at the Federal High Court Enugu and convicted, the prosecution would not have been able to file a fresh suit against it in Benin.

6. CONCLUSION AND RECOMMENDATIONS

Plea bargaining has the potential to enhance the efficiency of Nigeria's criminal justice system by reducing trial delays, decongesting courts, and easing prison overcrowding. However, its effective application remains hindered by various challenges, including legal inconsistencies, judicial reluctance, prosecutorial discretion, capacity gaps, lack of specialized unit for plea deals, corruption, and public mistrust. In high-profile corruption cases, plea bargaining is often viewed as a tool for political favoritism rather than justice, further eroding confidence in the system.

Similarly, the lack of clear procedural guidelines and inadequate training for legal practitioners contribute to its inconsistent implementation. Addressing these challenges requires a balanced approach that safeguards the rights of defendants while ensuring that justice is served. Strengthening the legal framework, promoting judicial oversight, and fostering public trust are essential steps toward making plea bargaining a more effective tool in Nigeria's criminal justice system.

To enhance the effectiveness of plea bargaining in Nigeria, the following measures should be considered:

i. Legislative Reforms: An amendment of the Administration of Criminal Justice Act (ACJA) is required to provide explicit and

uniform guidelines and practice direction for plea bargaining in order to have a uniform practice.

ii. Strengthen inter-agency collaboration between the police, judiciary, and correctional services to streamline plea negotiations. Empowering the judiciary with a more active role in plea bargaining could address these issues. By allowing judges to participate in the evaluation of plea agreements during negotiations and ensuring that proposed sentences meet the standards of fairness and justice, the abuse of plea bargaining could be significantly curtailed.

iii. Furthermore, strengthening institutional accountability within prosecutorial agencies could help curb abuses of discretion. Regular audits of plea agreements, public disclosure of the terms of high-profile deals, and mandatory reporting to oversight bodies could introduce much-needed transparency to the process.

iv. Incorporating victims' rights into the plea-bargaining framework, such as requiring consultation with victims or their representatives, could also help ensure that the agreements reflect broader societal interests rather than just the priorities of the prosecution.

v. Additionally, creating clear and transparent guidelines for the prosecution to follow when negotiating plea deals would further reduce the potential for exploitation and restore public confidence in the criminal justice system.

vi. It is also important to implement specialized training programs for judges, prosecutors, and defense attorneys on the principles and best practices of plea bargaining.