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## **FROM THE EDITOR-IN-CHIEF AND CHAIRMAN OF THE EDITORIAL BOARD**

I am most delighted to introduce to you Volume 5 of the Plateau State University Law Journal (PLASULJ). I am optimistic that this edition is educative, insightful and thought-provoking encounter with current and cutting-edge issues, bordering on different areas of law. These wide range of issues addressed by various authors in these Journals are of great value to private legal practitioners, academics, Judiciary and the society at large. It is believed that recommendations proffered will eventually become policy documents for government's action and implementation, which will in turn bring about growth and development in the legal and socio-political firmaments of Nigeria.

I am particularly grateful to the committed and dedicated staffers of the Faculty of Law, and our external reviewers, for their tireless and relentless sacrifices, towards ensuring the quality of the published articles. I equally appreciate the non-teaching staffers for their assistance in enhancing a conducive atmosphere for the work.

To the focused, supportive and visionary Vice-Chancellor of Plateau State University, Professor Shedrack Gaya Best, together with his management team, I am most grateful for support in all facets towards the promotion of academic scholarship, which has propelled us to publish Volume 5 of the Faculty of Law Journal.

The members of the Faculty's Editorial Advisory Board, who are made up of iconic legal averters and colossus in various fields of law, deserve utmost appreciation, for their wise counsel and support. I equally express deep appreciation to Professor Alphonsus Okoh Alubo, SAN who is on ground in the faculty, and from whom we have learnt, and are still learning, in the faculty. To God Almighty, I ascribe all the glory and for His faithfulness.

**Dr. Mark Y. Danung, PhD, BL, MCI Arb. (UK)**

***Editor-in-Chief***

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# EXAMINATION OF THE CONCEPT OF PLEA BARGAINING IN CRIMINAL PROCEEDINGS IN NIGERIA

Sarah R. Garba\*  
Chakaam N. Dalan\*  
Mark Y. Danung\*\*\*

## Abstract

*This study examined the concept of plea bargaining in criminal proceedings in Nigeria. A plea bargain is a legal agreement between a defendant and the prosecution in a criminal proceeding wherein the defendant pleads guilty to a lesser charge in exchange for a lenient sentence. This practice has been in force in Nigeria for a while before the Administration of Criminal Justice Act 2015. Plea bargaining has helped reduce the costs and time spent in prosecuting criminal cases in court. However, it has also been the subject of much displeasure among laymen and the educated alike as it is most often viewed as a machinery for aiding and abetting the 'crimes' of corrupt members of the society wherein they plead to a lesser offence and are easily let off the hook. This study therefore seeks to address this gap where plea bargaining has become a subject of displeasure among members of the society. Some of the findings in study is that plea bargaining is an instrument of dispensing justice and ensuring that the cost of litigation and time spent on litigation is reduced. Secondly, that the concept of plea bargain is one that should be encouraged although certain modifications be put in place to avoid it being a tool that corrupt individuals use as a cover to get light sentences. This study recommended that there should be proper training and retraining for critical stakeholders in the criminal justice sector such as judges, prosecutors, lawyers, amongst others to enable them appreciate the nature and scope of plea bargain proceedings thereby advancing the course of justice, another recommendation is that the existing legal framework that provide for plea bargain should be reviewed when necessary to meet up with changing times. Furthermore, there should be a more precise template in the application of plea bargain in the justice system and its usage to avoid it being perceived as selective by members of the public. This study used doctrinal method of legal research.*

**Key Words:** Plea Bargain, Corruption, Justice, Nigeria.

## 1.1 Introduction

The use of plea bargain in Nigeria has come under mistrust and speculation from all quarters and this is because it has been viewed as a cloak with which corrupt individuals are covered and a means by which even more corrupt prosecutors line their pockets. To many, the practice contradicts their expectation of the sense of justice for the looters of public funds and it is

incomprehensible to them how highly-placed corrupt individuals of many millions and billions of naira are allowed to get away with miserably small sentences in the name of plea bargain, while thieves of smaller sums or thieves of the same millions and billions of naira but without the high-level placement or connections bag the weighty sentences generally more commensurate to their offences<sup>1</sup>. Consequently, many question the justifiability and legality of the practice, saying that it is alien to Nigerian statutes on criminal matters and downright unfair in its applications, it is seen as selective. Away from the perception of Nigerians and its application, the concept of plea bargain has been used in several judicial systems across the world and has achieved a great level of success. More than sixty percent (60%) of the cases in England, USA, and Australia are settled through plea bargain.<sup>2</sup>

Plea bargain came into limelight after the American Civil War<sup>3</sup> but it was significantly used in the 19<sup>th</sup> century. In the case of *Brady v United States*<sup>4</sup>, the United States Supreme Court formally recognized plea bargaining as a procedure for the resolution of cases. Similarly, in the case of *Santobello v New York*<sup>5</sup>, the

Court held that plea bargain is to be encouraged because if every criminal case were subjected to a full-scale trial, the States and the Central Government would need to multiply by many times, the number of judges and court facilities.

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\*Sarah R. Garba, LL.B, B.L, LL.M, Ph.D. (in view) is a Lecturer in the Faculty of Law, Plateau State University, Bokokos. She could be reached via the phone no: +2347061283633 or through email: sarahrgarba@plasu.edu.ng.

\*\* Chakaam N. Dalan, LL.B, B.L, LL.M, Ph.D. (in view) is a Legal Practitioner and Head of Department, Public and International Law, Faculty of Law, Plateau State, University, Bokokos. He could be reached via phone no: +2347037682760 or through email: chakaamdalan@plasu.edu.ng.

\*\*\*Mark Y. Danung, Ph.D., BL, MCI Arb. (UK), Notary Public is a Legal Practitioner, seasoned academic and the Dean of Law, Faculty of Law, Plateau State University, Bokokos. He could be reached via phone on +2347036153578 or through email: danungmark@yahoo.com.

1 Tope Adebayo, 'The Legality of the use of Plea Bargain in the Nigerian Criminal Justice System' <https://www.mondaqlaw.com>. Accessed 14 October, 2024.

2 The Economist, 'The troubling spread of plea bargain from America to the World' <https://www.theeconomist.com/international/2017>. Accessed 14 October, 2024.

3 Alschuler A.W, 'Plea Bargaining and its History' *Columbia Law Review* (1979) (79) (1) 1-43.

4 [1970] 379 US 742.

5 [1971] 404 US 257.

Unlike the United States of America, Britain did not have any legal protocols for plea bargaining until 2009.<sup>6</sup> The concept of plea bargain was used to decide the popular fraud case that involved *Mabey v Johnson*<sup>7</sup>, a construction firm that was accused of winning business by bribing politicians and top officials in six countries. The countries are Ghana, Bangladesh, Mozambique, Madagascar, Jamaica and Angola. The company pleaded guilty to corruption and agreed to pay more than £6.5m in exchange for avoiding jail terms for its executives.<sup>8</sup>

The first enactment in Nigeria that provided 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 Re-enactment Law of Lagos State 2011 (Lagos State ACJL)<sup>9</sup>. The Administration of Criminal Justice Act 2015 (ACJA) and a host of other State legislations have since followed. Other recent developments impacting the practice of plea bargain in Nigeria include the adoption of Sentencing Guidelines across the States, Practice Directions and the emergence of Plea Bargain Manual issued by the Attorney General of Lagos State and other prosecuting authorities. In Nigeria, plea bargain was first used in the case of *FRN v Nwude & Ors*<sup>10</sup>. In that case, the accused, Chief Emmanuel Nwude and 6 others were arraigned before the High Court of Lagos State for the offences of laundering of funds, obtaining money by pretense, forgery and altering of forged documents. They posed as officials of the Federal Ministry of Aviation and defrauded a Brazilian national of the sum of over \$190m as part of the fee for the construction of an elaborate Abuja airport. The accused persons were convicted after they changed their initial plea to guilty and they were made to forfeit the properties they illegally acquired to the victims.

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6Olugbile D. O, 'An Appraisal of the use of Plea Bargaining in the Nigerian Justice System' *African Journal of Law, Political Research and Administration* (2023) (6)(2) 102.

7 justiceghana.com

8Sarprong, David and Adams, 'The Mabey and Johnson Bribery Scandal: A Case of Executive Hubris' *Thunderbird International Business Review* (2019) (61) 92) 387-396.

9<https://ir.unilag.edu.ng/UNILAG> Repository. The Emergence of Plea Bargaining in Nigeria. 1-12. Accessed 15 October, 2024.

10 [2004] Id/92c/2004.

The first-time plea bargain was used by the Economic and Financial Crimes Commission (FCC) in Nigeria was in the case of the former Inspector General of Nigeria, Tafa Balogun<sup>11</sup>. Despite its notoriety in Nigeria, plea bargain has and will always be a solution to the problem of court congestion. Therefore, because of its relevance to the Nigerian justice system and the solutions it can provide, there is a need to analyze the concept of plea bargaining as it is currently being used in Nigeria and come out with suggestions on how it can be more effective and impactful in the Nigerian judicial system.<sup>12</sup>

## **1.2 Definition of Plea Bargain**

Plea bargain is defined as an arrangement between the defendant and the prosecutor whereby the defendant pleads guilty to a lesser charge in exchange for a more lenient sentence or an arrangement to drop other charges<sup>13</sup>. It can also be defined as an agreement in criminal law proceedings whereby the prosecutor provides a concession to the defendant in exchange for a plea of guilt or *nolo contendere*<sup>14</sup>. The EFCC Act 2003<sup>15</sup> seems to have adopted the concept of plea bargain and the section provides as follows:

**S.14(2)16:** Subject to the provisions of Section 174 of the Constitution of the Federal Republic of Nigeria 1999<sup>17</sup> (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 this 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.

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<sup>11</sup> Tafa Balogun v The Federal Republic of Nigeria [2005] 4NWLR (Pt.324) 190.

<sup>12</sup> Olugbile (n6) 103.

<sup>13</sup> [https:// www.oxforddictionary.com](https://www.oxforddictionary.com). Accessed 14 October, 2024.

<sup>14</sup> This means no contest or no defense.

<sup>15</sup> Section 14 (2) of the EFCC Act 2003.

<sup>16</sup> See section 14(2) of the EFCC Act

<sup>17</sup> See section 174 CFRN

Similarly, Section 270 of the ACJA 2015<sup>18</sup> specifically provides for plea bargain in criminal proceedings and goes ahead to outline guidelines for the applicability of plea bargain.

It is important to note that plea bargain is only enforceable in criminal cases and not civil cases. Whichever form a plea bargain takes, an important feature is that the plea agreement is not binding on the court and is subject to the approval of the court. Where a plea bargain includes a charge bargain and a sentence bargain, the agreed sentence is only a recommendation to the court. The court is not bound to impose the agreed sentence. The court reserves the power and discretion to decide whether the sentence is appropriate for the offence having regard to the sentence prescribed for the offence by substantive criminal law and the provisions of any applicable Sentencing Guidelines.

## 2.1 Types of Plea Bargain

There are three main types of plea bargain and each type involves sentence reductions with such reductions achieved in different ways.

- a) **Charge bargaining:** the defendant in this form of plea bargain agrees to plead guilty to reduced charges (e.g., the defendant can plead guilty to aggravated assault rather than murder). Here, the defendant pleads guilty to some of the charges against him.
- b) **Sentence bargaining:** the prosecutor informs the defendant of the sentence he would get if he pleads guilty to the offence he is being charged with as opposed to the sentence he would receive if he pleads not guilty and the case is taken into full trial. One of the most visible forms of sentence bargaining occurs when the defendant pleads guilty to murder in order to avoid the death penalty<sup>19</sup>. This type of plea bargain can also occur in less serious offences.
- c) **Negotiation count bargaining:** the defendant who is facing multiple charges may be allowed to plead guilty to fewer counts. The charges in this case need not be identical as the prosecutor may drop any charge or charges in exchange for a guilty plea.

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<sup>18</sup> See section 270 of ACJA 2015.

<sup>19</sup><https://www.britannica.com/pleabargaining>. Accessed 15 October, 2024.

Plea bargain can also be expressed where the defendant or his lawyer discuss the possibility of entering a guilty plea with the prosecutor or the trial judge. This is done with the aim of enjoying the benefits of such a plea. Plea bargain can also be implicit and this occurs when trial judges adopt a pattern of treating defendants who plead guilty to offences leniently than those who do not. This form of plea bargain was adopted by the Hon. Justice A. Shuaibu of the Federal High Court Kaduna in the case of *FRN v Usman Ya'u*<sup>20</sup>. In this case, the defendant was arraigned by the NDLEA<sup>21</sup> for possession of some grams of cannabis sativa of which the sentence is not less than 5 years imprisonment. The defendant pleaded guilty to the charge and was sentenced to 3 months imprisonment by the judge.

## **2.2 Plea Bargain Under the Administration of Criminal Justice Act 2015**

The law provides that for a plea bargain agreement to be valid, it must be reduced to writing and it must be stated that the defendant has been informed of his rights, it must contain the precise terms of the agreement including any admission made by the defendant, and it must be signed by the prosecutor, the defendant, the legal practitioner and an interpreter (if this was needed)<sup>22</sup>. The ACJA further requires that a copy of the agreement be forwarded to the Attorney-General of the Federation<sup>23</sup>. Since the concept of plea bargain is not automatic, there are some conditions that must be met before the defendant can enter into such agreement with the prosecutor. Section 270 (2) of the ACJA lists the conditions as follows:

- a) The evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt;
- b) Where the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative;

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<sup>20</sup> *FRN v Usman Yau*. FHC/KAD/265c/2017.

<sup>21</sup> National Drugs Law Enforcement Agency.

<sup>22</sup> Section 270 (7) ACJA 2015.

<sup>23</sup> Section 270 (7)(d) ACJA 2015.

- c) Where the defendant, in a case of conspiracy, has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders.

Where the defendant or prosecution intends to initiate plea bargain proceedings, it must be done before the commencement of trial or during the trial process, but it must be done before the presentation of defense<sup>24</sup>. It is important to note that the Court reserves the right to order the parties to dismiss the plea bargain proceedings where the court is satisfied that the defendant cannot be convicted on the basis of the plea agreement, or where the defendant withdraws from the plea bargain.<sup>25</sup>

### **3.1 Plea Bargain under the Administration of Criminal Justice Law 2007 of Lagos State**

The concept of plea bargain is also provided by the Administration of Criminal Justice Law of Lagos State 2007. According to section 75 of the ACJL:

The Attorney-General of the State shall have power to consider and accept a plea bargain from a person charged with an offence where the Attorney General is of the view that the acceptance of such plea bargain is in the public interest, the interest of justice and the need to prevent abuse of legal process.

From the above provision of the law, the Attorney General of the state is the one saddled with the responsibility to initiate, consider or accept a plea bargain agreement with a defendant. Section 76<sup>26</sup> lays down the procedure and guidelines for plea bargaining in Lagos State. The section provides that the prosecutor and a defendant or his legal practitioner may 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. Where a plea agreement is reached, the prosecutor shall inform the Court of the agreement and the judge or magistrate shall inquire from the defendant to confirm the correctness of the agreement. If the answer is in the affirmative, the presiding judge or magistrate shall ascertain whether the defendant admits the allegations in the charge to which he

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<sup>24</sup> Section 270 (2) ACJA 2015.

<sup>25</sup> Section 270 (10) ACJA 2015.

<sup>26</sup> Section 76 ACJL 2007 Lagos State.

has pleaded guilty and whether he entered into the agreement voluntarily and without undue influence<sup>27</sup>. The Court can in its own discretion, choose to either convict the defendant on his guilty plea or enter a plea of not guilty for the defendant and proceed to trial (the Court will do this if it is not satisfied with the plea agreement). Thus, where the burden of proof on the prosecution cannot be discharged or where it will be insufficient to prove the guilt of the accused beyond reasonable doubt, the prosecutor may enter into an agreement with the defendant to plead guilty to the offence charged for a lesser offence or to a lesser offence which carries a lighter punishment<sup>28</sup>.

It is worthy of note that the above provisions have been amended by Sections 8 and 9 of the ACJL (Amendment) 2021. The provisions of Section 76 of the ACJL has been repealed and Section 77 has been amended to include plea bargaining which has similar provisions with Section 270 of the ACJA<sup>29</sup>. This is indeed a commendable feat and it shows that the judiciary of Lagos State is in tune with the ever-changing procedure of plea bargaining.

### **3.2 Plea Bargain under the Economic and Financial Crimes Commission Act**

Section 14 (2) of the EFCC Act 2004 empowers the Commission to compound any offence punishable under the Act and accept any sum of money it deems fit as long as it does not exceed the maximum amount to which the defendant would have been liable if he were convicted. It is thus clear that the EFCC is empowered by the Act to enter into plea bargain agreement with accused persons and this has been used in several high profile cases (although the provisions of the Act does not expressly provide for plea bargaining only compounding offences).

Just recently, the EFCC entered into a plea bargain agreement with the former Accountant – General of the Federation, Anamekwe-Nwabouku over his alleged involvement in a N1.6 billion

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<sup>27</sup> [https:// www.paulusoro.com/May 26/2023. Plea Bargain under Nigerian Law](https://www.paulusoro.com/May%202023.Plea+Bargain+under+Nigerian+Law). Accessed 15 October, 2024.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

fraud<sup>30</sup>. However, the EFCC has been accused of being used a tool by corrupt individuals to evade the wrath of the law by entering into plea bargain deals and thus, get away with embezzlement of public funds. As earlier stated, a careful reading of the provisions of Section 14(2) of the EFCC Act will show that there is nowhere plea bargain is expressly provided for unlike it is in the ACJA and ACJL.

However, it may be argued that the purport of the EFCC Act may be the concept of Withdrawal of Complaint under Section 355 of the ACJA which provides that where a complainant at any time before a final order is made in a case, satisfies the court that there are sufficient grounds for permitting him to withdraw his complaint, the court may permit him to withdraw the complaint and shall thereupon acquit the Defendant. It may also be argued to mean reconciliation as provided under Section 23 of the High Court Law of Lagos State, 2019 which provides that in criminal cases, the High Court may encourage and facilitate the settlement in an amicable way of proceedings for Common Assault or for any other offence not amounting to a felony and not aggravated in degree, on terms of payment of compensation or other terms approved by court<sup>31</sup>. Whatever coloration is given to the provision of Section 14 (2) of the EFCC Act, the Commission has settled a lot of cases using plea bargain and the concept is one that has come to stay. Although the use of plea bargain by the EFCC is one that has been met with a lot of speculation and mistrust, it has undoubtedly been a tool through which high profile cases which would have taken a long time in court and thereby cost a lot in terms of prosecution, have been speedily resolved.

#### **4.1 Plea Bargain Practices from other Jurisdictions**

##### **i. Development of Plea Bargaining in the United States of America**

The development of plea bargaining in USA is mainly by judicial decisions because the constitution of the US does not specifically state anything about plea bargaining, but it is judiciary that was the first to allow it.<sup>32</sup>

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<sup>30</sup><https://www.dailytrust.com/allegedN1.6billionfraud-ex-agf--efcc-enter-pleabargain-agreemnt>. Accessed 15 October, 2024.

<sup>31</sup><https://www.paulusoro.com> (n 26).

<sup>32</sup> Raunak, Dimpal, 'A Global Perspective on Plea Bargaining: Comparative Analysis of India, USA, Australia, Germany and , the UK', [https:// paper. ssm.com](https://paper.ssm.com), Accessed 20<sup>th</sup> February 2026.

Then, some states, like New York, sought to ban plea bargaining but later had to reconcile with the legal practice and theory of plea bargaining.<sup>33</sup> There were decisions which were tacitly being approved by the courts like in *People v Brown* <sup>34</sup>, in this case the defendant approached the trial judge and pleaded guilty in the summary trial but the appellate court reprimanded the trial judge meanwhile recognizing the plea bargained guilty plea of the defendant. Then, in *Bayliss v People*<sup>35</sup>, the court again gave consent to a plea bargain where the bargain was in front of the trial judge, prosecutor and the accused to ensure that there was no duress or undue influence upon the defendant.

Finally in *United States v Bayaud* <sup>36</sup>, the federal court was of the opinion that the bargain which was between the accused and the district attorney could not be retracted by the accused when he lost all his chances of negotiating with the Washington State for lesser punishment. Hence, a plea bargain is somewhat of a structured bargain that has evolved over the course of time in the US because the legislature was imposing stricter penalties for even minute offences; therefore, judicial response to the legislature has been a voluntary bargain between the state and the accused to get a sentence which is comfortable for both the parties involved.<sup>37</sup>

## **ii. Development of Plea Bargaining in India**

Plea bargaining is a fairly new concept in India, Chapter XXI-A was added when the parliament passed the Criminal Law (Amendment) Act, 2005 effective on 5 July 2006.<sup>38</sup> Plea bargaining is

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<sup>33</sup> Ibid

<sup>34</sup> *People v Brown*, 54 Mich. 15, 19 N.W. 571 (1884).

<sup>35</sup> Raunak, Dimpal(n31)

<sup>36</sup> *United States v. Bayaud*, 23 F. 721 (S.D.N.Y. 1883).

<sup>37</sup> Ibid

<sup>38</sup> Ibid

mostly a concept that originated in the USA, but it was subsequently introduced in India.<sup>39</sup> The reasons for the introduction of plea bargaining can be seen in the Report of the Indian Law Commission where the Commission pointed out that there were many cases where the accused were spending their time in jail before the beginning of the trial.<sup>40</sup> Their time in jail exceeds far most the maximum punishment if he or she had been convicted in that offence.

Then in the 154 Report the Law Commission again was of the view that plea bargaining should be introduced to remedy the delayed disposal of criminal cases and also to help with the suffering of the accused that were languishing in jail, thus overriding the apprehensions like illiteracy, pressure from the prosecution side etc.<sup>41</sup> The Law Commission again reiterated the stand of the 154<sup>th</sup> Law Commission for the incorporation of plea bargaining within the Indian Criminal Justice System.

### **iii. Development of Plea Bargaining In Australia**

Australia shares a lot of similarities with the United States of America and the United Kingdom.<sup>42</sup> Initially, the Australian court mainly started with a guilty plea in *Ada Selman's* case, where the accused had pleaded guilty to the charges in the police court, but there was no certain bargain that took place there. Australian courts did not officially recognize plea bargaining until the 1970s or 1980s because the socio-political conditions during the mid-20th century were not good.<sup>43</sup> Plea bargaining was the outcome of the guilty plea system, which had to be put into place by judicial interpretation.<sup>44</sup>

### **iv. Development of Plea Bargaining in United Kingdom**

Earliest records of plea bargain can be seen in the Anglo-Saxon community, where it could be seen that plea bargaining was done in an unstructured manner and that too in civil cases for determination of the compensation between the plaintiff and defendant but later on, the traditional

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<sup>39</sup> Ibid

<sup>40</sup> Ibid

<sup>41</sup> Ibid

<sup>42</sup> Ibid

<sup>43</sup> Ibid

<sup>44</sup> Ibid

plea bargain had been regulated by the customary Anglo-Saxon un-codified laws.<sup>45</sup> Later on, after the conquest of William in 1066, the bargain which happened between private parties was expanded further by statutory provisions adding one more party, i.e. the Crown (State).<sup>46</sup> In the end, it is moral and religious procedures that enable the evolution of legal procedures. In the 15<sup>th</sup> and the 16<sup>th</sup> centuries, the bargain took place between the state and private parties on civil cases only because the common law said that an agreement to stifle prosecution was seen as unlawful. Then, courts, through the use of precedent, evolved the plea bargain mechanism where matters of less gravity were concerned. Here, the courts were open to having a bargain between the prosecutor and the accused.<sup>47</sup>

#### **v. Development of Plea Bargaining in Germany**

A plea bargain is a fairly new concept in Europe and especially Germany.<sup>48</sup> Basically, plea bargain is an Anglo-American concept of law, and it has been recently adopted within Germany.<sup>49</sup> Plea bargain has not been formally adopted in Germany, but it inherently exists in the system by the name of “informal agreement” or “guilty plea.”<sup>50</sup>

#### **4.2 Key Objectives of Plea Bargain in Nigeria**

The objectives of pleas bargain in Nigeria include:

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<sup>45</sup> Ibid

<sup>46</sup> Ibid

<sup>47</sup> *Keir v Leeman*, 6 Q.B. 308 (1844), [https:// vlex.co.uk](https://vlex.co.uk)> Case Law, Accessed 20<sup>th</sup> February 2026.

<sup>48</sup> Raunak, Dimpal(n 31)

<sup>49</sup> Ibid

<sup>50</sup> Ibid

### **i. Judicial and Prosecutorial Efficiency**

Plea bargain can streamline the adjudication process for the prosecutors and judges. This will enable prosecutors focus their time and expertise in investigating other serious and complex cases, while judges can handle other higher volume of cases.<sup>51</sup>

### **ii. Victim and Witness Considerations**

An essential objective of plea bargain is the potential benefit to victims and witnesses of crimes. The prolonged legal proceedings under adversarial system can contribute to prolong distress and trauma. Plea bargain offers faster and less confrontational means of achieving closure and reduces the emotional and financial strain associated with lengthy trials.<sup>52</sup>

### **iii. Efficiency in Case Management**

One of the key objectives of plea bargain is efficiency in case management. The introduction of plea bargain under the Administration of Criminal Justice Act (ACJC) was partly motivated by the need to resolve cases more swiftly.<sup>53</sup> By enabling defendants to plead guilty to lesser offences or negotiated sentences, plea bargain facilitate quicker case resolution compare to full trials, which often spans several years.<sup>54</sup> This time-saving benefit is crucial in a legal system grappling with chronic case delays.<sup>55</sup>

## **5.1 Challenges of Plea Bargain in Nigeria**

### **i. Public Perception Issues**

The Nigerian public often perceives plea bargaining as a mechanism that allows corrupt politicians, highly placed individuals and powerful elites to evade justice. High-profile corruption

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<sup>51</sup> Asabe Waziri Justice Advocacy Initiative (AWJAI), *Plea Bargaining in Nigeria's Justice System*, <https://awjai.org>> Accessed 20<sup>th</sup> October, 2025.

<sup>52</sup> Ibid

<sup>53</sup> Ibid

<sup>54</sup> Ibid

<sup>55</sup> Nurudeen Okikiola, 'Plea bargain in Nigeria' (2025), <https://www.researchgate.net>> Accessed 22<sup>nd</sup> October, 2025.

cases are most often times resolved through plea deals have fueled this perception, leading to a decline in public trust in the judicial system.

## **ii. Erosion of Legal Principles**

The concept of Plea bargaining challenges fundamental legal principles such as the presumption of innocence and the right to a fair trial which are enshrined in section 36 of the Constitution of the Federal republic of Nigeria, 1999(as amended)<sup>56</sup>. By incentivizing guilty pleas, the practice potentially erodes the prosecution's burden to prove guilt beyond a reasonable doubt. Innocent defendants may plead guilty to lesser charges simply to avoid the uncertainty and risk associated with trial outcomes.

## **iii. Inequality in Application**

Empirical studies indicate that plea bargaining disproportionately benefits defendants with financial resources and access to skilled legal representation. Poor defendants often lack the bargaining power to negotiate favourable deals, leading to disparities in sentencing outcomes.<sup>57</sup> The unequal application of plea bargaining undermines the principle of equal access to justice, which is a fundamental tenet of Nigeria's legal system.<sup>58</sup>

## **5.2 Criticisms Against Plea Bargain**

The Economic and Financial Crimes Commission (EFCC) faces strong criticism for its use of plea bargaining in Nigeria. A former Chief Justice of Nigeria described plea bargaining as questionable and stated it was never part of our judicial system until it was introduced by the EFCC.<sup>59</sup>

At the same event, former Justice of the International Court at The Hague, Prince Bola Ajibola, warned that plea bargaining undermines the rule of law and how corruption is addressed in Nigeria while Dr Chidi Odinkalu, former Chairman of the NHRC Governing Council, clarified that the

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<sup>56</sup> Constitution of the Federal republic of Nigeria, 1999.

<sup>57</sup> Nurudeen Okikiola (n55).

<sup>58</sup> Ibid

<sup>59</sup>A speech by Fmr. CJN Dahiru Musdapher (Rtd.) made at the 5th Annual General Conference of the Section on Legal Justice of the Nigerian Bar Association at Abuja on November 14, 2011, available at PLEA BARGAIN: CJN slams EFCC – Vanguard News (vanguardngr.com), Accessed 20th February 2026.

notion of plea bargaining being a recent addition to Nigerian law is misleading, citing Section 180 (1) of the Criminal Procedure Act<sup>60</sup> which allows prosecutors to drop additional charges or pause trials when a defendant faces multiple charges and is convicted on some.

Plea bargaining in Nigeria has legal foundations predating the EFCC Act of 2004<sup>61</sup>, with asset recovery as a primary aim. The Criminal Procedure Act<sup>62</sup> and section 13(2) of the EFCC Act<sup>63</sup> are not the only laws addressing this practice; section 76 of the Lagos State Criminal Justice Law of 2007<sup>64</sup> also provides extensive regulations. While plea bargaining offers benefits like case management and reduced delays, it has often been misapplied in Nigeria, necessitating a clear policy to ensure proper use and prevent potential abuses.<sup>65</sup>

In a paper supporting the procedure used by the EFCC, Mr Ibrahim Larmode, the then Chairman of the Commission, shared his views to the effect that many cases, such as those against former Governors (now Senator) Uzor Kalu, Chimaroke Nnamani, Saminu Turaki, and Joshua Dariye, started as far back as 2007 but have made very little progress due to issues within the Justice system that delay trials.<sup>66</sup> Larmode's perspective is understandable since he leads an agency advocating for changes in criminal trials.<sup>67</sup>

However, the idea of allowing property criminals to return stolen money in exchange for their freedom is not inherently bad but may likely lead to social upheavals. It is the position of this research work that what is returned must match what was stolen for a deal to be fair.

Additionally, the freedom granted to someone who has returned their stolen money should come with conditions just like we have under Pakistan's National Accountability Ordinance 1999.<sup>68</sup>

It is worthy to note that section 14 (2) of the EFCC Act 2004 provides that:

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<sup>60</sup> See Section 180 (1) of the Criminal Procedure Act.

<sup>61</sup> See the EFCC Act of 2004

<sup>62</sup> See Criminal Procedure Act

<sup>63</sup> See Section 13(2) of the EFCC Act

<sup>64</sup> See the Criminal Justice Law of 2007

<sup>65</sup> Ademola , Olumide, 'An Appraisal of the Constitutionality and Applicability of Plea Bargaining Under the Nigerian Criminal Justice System', <https://www.researchgate.net>, Accessed 20<sup>th</sup> February 2026.

<sup>66</sup> Ibid

<sup>67</sup> Ibid

<sup>68</sup> Ibid

Subject to the provision 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 this 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.<sup>69</sup>

The offences outlined in section 174 of the CFRN 1999<sup>70</sup> (as amended) pertain exclusively to those punishable under the EFCC Act, covering financial malpractices, terrorism-related offences, abuse of office by public officials, and general economic and financial crimes, and do not apply to general criminal trials in Nigeria.<sup>71</sup>

The term "compounding" of offences in the Act allows the Commission to drop certain charges in exchange for a sum of money deemed appropriate. However, the provision lacks clear guidelines, leaving the decision to the Commission's discretion, which may lead to potential abuse, such as officers accepting bribes for leniency. To effectively combat corruption, plea bargaining should require the corrupt official to fully confess and return all stolen assets, ensuring greater accountability and transparency.<sup>72</sup>

The EFCC has faced criticism for its handling of high-profile cases, where it often adopts procedures that result in light sentences for serious crimes.<sup>73</sup> In the case of former Inspector General of Police, Mr. Tafa Balogun, the EFCC's approach led to a mere six-month sentence. Similar procedures were noted in the trials of Emmanuel Nwude and Nzeribe Okoli, who defrauded a Brazilian bank, and Chief D.S.P. Alamieyesigha, who faced corruption charges.<sup>74</sup> The public lacks clarity on the amounts stolen and recovered, leaving many to question the effectiveness and fairness of these sentences.<sup>75</sup>

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<sup>69</sup>See Section 14(2) of the EFCC Act 2004.

<sup>70</sup>See section 174 of the CFRN.

<sup>71</sup> Ademola, Olumide (n77).

<sup>72</sup> Ibid

<sup>73</sup> Ibid

<sup>74</sup> Ibid

<sup>75</sup> Ibid

## **6.1 Conclusion**

This study critically examined the meaning of plea bargaining, its nature, and history. The study further examined the types of plea bargaining, plea bargaining under various legislations in Nigeria, such as the Administration of Justice Act, 2015, the Administration of Criminal Justice Law 2007 of Lagos State, the Economic and Financial crimes Commission 2003. The research work examined the concept of Plea bargaining from other jurisdiction like USA, India, Australia, UK and Germany, Key objectives of plea bargain in Nigeria, theoretical framework for examining plea bargaining under the Nigeria's criminal justice system, challenges of plea bargaining in Nigeria were equally examined in this study, Criticisms of the concept of Plea bargaining was examined. The study underscored the need for transparency in any plea bargaining agreement in Nigeria, training and retraining of judges, prosecutors, legal practitioners amongst other critical stakeholders in the judicial and prosecutorial systems, restitution and recovery and protection of defendant's rights. By institutionalizing plea bargaining practices, Nigeria can strike a balance between judicial efficiency and justice delivery. This will ultimately foster public trust and uphold the integrity of the criminal justice system. In the light of the foregoing, the following recommendations are pertinent:

### **1. Strengthen Oversight and Transparency**

To foster confidence of Nigerians about the concept of plea bargain, it is crucial for plea bargain agreements to be subject to rigorous judicial review and that the terms are fair and transparent.

### **2. Training and Retraining of Judges and other Critical**

#### **Stakeholders**

Training and retraining of judges, prosecutors, legal practitioners' amongst other critical stakeholders on ethical and plea bargaining practices will go way in equipping them with the requisite knowledge to handle complex cases that come before them with expertise and confidence.

### **3. Restitution and Asset Recovery**

The concepts of restitution and asset recovery must be made an essential part of any plea bargain agreement especially when it involves financial crimes. This will ensure that the victim and the state are compensated.

4. **Protection of Defendant's Rights**

The Legal Aid Council of Nigeria by virtue of its mandate can play a key role in strengthening defendants' understanding of their rights through mandatory legal aid services during negotiations. It can equally promote legal education and awareness campaigns by informing members of the public about plea bargaining's purpose, benefits, and safeguards against coercion or exploitation.