



ISSUES IN PLEA BARGAIN UNDER NIGERIAN CRIMINAL JUSTICE: A COMPARATIVE ANALYSIS OF THE APPROACHES OF SELECTED JURISDICTION

*Ihua-Maduenyi, David Director**

Abstract

It is without doubt that the need to improve the effectiveness and efficiency of the criminal justice system necessitated the enactment of the Administration of Criminal Justice Act, 2015, and the various States Administration of Criminal Justice Laws. The paper adopted the doctrinal method of research in which reliance was placed primarily on the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the ACJA 2015, ACJLs of selected states and other criminal legislations in the country as well as judicial authorities. Reliance was also placed on secondary sources of information such as opinions of eminent scholars expressed in books and journals. It was found that though plea bargain is a veritable catalyst for speedy trial, its effective utilization is hamstrung by absence of a robust and all-encompassing legal and institutional frameworks adequate and sustainable enough to enhance the smooth application of the concept. It is also found that the practice tends to exclude lawyers and also usurp judicial powers of the courts. It is therefore recommended that there should be a robust and all-encompassing legal and institutional frameworks adequate and sustainable enough to enhance the smooth application of plea bargain in Nigeria, including tackling corruption which is deterring a prosecutor from doing his work impartially to enhance the practicability of the concept of plea bargain.

Keywords: *Plea Bargain, Crime, Crime Law, Nigerian Criminal Justice and Nigerian Legal System*

1.0 Introduction

The Plea-bargain system of administration of justice has played and will continue to play an important role in the administration of Criminal Justice in the Nigerian Legal System. A plea bargain signifies a negotiated agreement between the state and a criminal or defendant who agrees to plead guilty to lesser offence or to one or more multiple charges in exchange for some concession by the state, usually a more lenient sentence or a dismissal of the other charges. No matter the level of criticisms labelled against the concept, plea bargain has found its way directly or indirectly into the Nigeria's gamut of law. A typical example is the Administration of Criminal Justice Law of Lagos.¹ For instance, section 75² of this law provides that notwithstanding anything in this law or any other law, the Attorney-General of the State shall have power to consider and accept a plea bargain from a person charged with any 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.

* LLB, BL

¹ Administration of Criminal Justice Law of Lagos State, 2007

² Ibid, s 7



It is equally important to state that other sundry legislations in the Nigerian Legal System provide for procedures akin to a plea bargaining. For example, section 180(1) of the Criminal Procedure Act provides that when more charges than one are made against a person and a conviction has been had on one or more of them the prosecutor may, with the consent of the court, withdraw the remaining charge or charges or the court, of its own motion, may stay the trial of such charge or charges.³ Also, section 14(2) of the Economic and Financial Crime Commission Act⁴ provides that, subject to the provision of section 174 of the Constitution⁵ 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. The provisions of the above laws give credence to this position. The section states that, when a defendant agrees to give up money stolen by him, the Commission may compound any offence for which such a person is charged under the Act.

In a plea bargain arrangement, the ACJA permits the prosecution to unilaterally conclude a plea agreement with a defendant without specifically indicating a charge and sentence bargain while it expressly allows the prosecution and defence to agree on an appropriate sentence to be imposed by the court.⁶ It comes in the form of a charge and sentence bargain. A charge bargain is usually accompanied by a sentence bargain. The ultimate result of a charge or sentence bargain is that the accused person ends up getting a lighter punishment.⁷ No matter the form a plea bargain takes, a vital factor worthy of note is that, the plea agreement is not binding on the court and is subject to the approval of the court. Bello opines that where a plea bargain includes a charge bargain and a sentence bargain, the agreed sentence is only a recommendation to the court.⁸ This simply means that, in most cases, a court is not bound to impose the agreed terms or sentence of a plea bargain. The court in whichever case reserves the power and discretion to decide whether the sentence is the appropriate sentence for the offence having regard to the sentence prescribed for the offence by substantive criminal law and the provisions of any applicable Sentencing Guidelines.⁹

Like every other concept, the plea bargain concept has been vehemently condemned by some legal practitioners and scholars. For those who argue against the concept, it is their view that plea bargaining is unknown to the Nigerian jurisprudence especially the federal laws. It is seen that the concept is

³ CPA 2004

⁴ Economic and Financial Crimes Commission (Establishment, etc.) Act, Cap E1 LFN 2010.

⁵ Constitution of the Federal Republic of Nigeria, 1999(as amended)

⁶ Administration of Criminal Justice Act, s 270(4)(b)

⁷ A Bello, Overview of Plea Bargaining in Nigeria (University of Lagos Press and Bookshop Ltd 2020)5; C A Mordi, 'The Use of Plea Bargain in Nigerian Criminal Law' (2018)(9) Beijing Law Review; 153-161, 157

⁸ Ibid, 156

⁹ (n 7) 5



being totally criticized for being a novel concept of dubious origin and deserves no place in our law – substantive or procedural.¹⁰ It is also argued that it is being used to provide soft-landing for influential and elitist law-breakers, while ordinary persons who commit crimes of less economic implications languish in prisons.¹¹ Furthermore, in a plea bargain system, it is observed that innocent defendants decide to plead guilty to lesser charges to avoid the risk that they will be found guilty at trial. Plea bargains lead to poor police investigations and attorneys who do not take the time to properly prepare their cases, and finally, that it is unconstitutional because it takes away defendants' constitutional right to a trial by jury. It is against the backdrop of the above criticisms that the dissertation critically analyses the concept of plea bargain under Nigerian Criminal Justice system.

2.0 Conceptual Understanding

Crime

Scholars have argued that as far as criminal law is concerned, that the term crime does not have any simple and universally accepted definition except as provided by domestic statutory legal regime for certain purposes.¹² Hence, they recommended that issues of crime or criminal activities should be approached from criminal investigation, which focuses on the study of facts that are used to inform criminal trials.¹³ It was opined that a complete criminal investigation can include searching, interviews, interrogations, evidence collection and preservation, and various methods of investigation.¹⁴

The word 'crime' is synonymous with 'offence.' Hence in this dissertation, the word crime and offence shall be used interchangeably. Philologically, a crime is an unlawful act punishable by a state or other authority. It is an offense which violates the law or moral standard dictated by the laws or custom of the state and it is disapproved by the society. It is defined as any act or omissions which is forbidden by law and it is punishable by imprisonment or fine. This simply means that for any act to qualify as a crime, such act or omission must be capable of violating the law of the society. Crime is defined as an anti-social behaviour or practice of any wrongdoing which is harmful to one self or against third parties, provided in the criminal law of a State.¹⁵ Sowmya classified murder, robbery, burglary, rape, drunken driving, child neglect and failure to pay taxes as examples of crimes.¹⁶

¹⁰ (n 25)

¹¹ E Nsirim and E Paul, 'Challenges of Plea Bargaining and EFCC'S Performance in Nigeria' (2021)(9)(1) International Journal of Innovative Social Sciences & Humanities Research; 107-116,114

¹² T L Megento and Y T Wolde, 'Child Trafficking as a Profitable Crime in Ethiopia' < <https://www.longdom.org/open-access/child-trafficking-as-a-profitable-crime-in-ethiopia-2375-4435-1000189.pdf>> accessed 27th July 2025

¹³ Ibid.

¹⁴ Ibid.

¹⁵ T Sowmya, 'Crime: A Conceptual Understanding' (2014)(4)(3) Indian Journal of Applied Research 196-198;196

¹⁶ Ibid.



According to the Black's law Dictionary, a crime is an act or omission that the law makes punishable; the breach of a legal duty treated as the subject matter of a criminal proceeding.¹⁷ Crime is an act capable of being followed by criminal proceedings having a criminal outcome. Henry provides a further definition by positing that crime is distinguished from that of wrong or tort and from that of sin, involves the idea of injury to the state of collective community.¹⁸ Statutorily, section 2 of the Criminal Code defines crime as any act or omission which renders the person doing the act or making the omission liable to punishment under the Code or under any Act or Law.¹⁹ while section 4(2) of the Penal Code and the Sharia Penal Code provide that where any provision of the law of a state prohibits the doing of an act, or the making of any omission made an offence, then such act or omission becomes crime.²⁰ In another development, crime is defined as an intentional act in violation of criminal law, which is committed without defence or excuse and penalized by the state as a felony or misdemeanor.²¹ It is described as a breach of the legal norms which attracts a penal sanctions on the violator or the criminal that committed such act or breach.²² According to Blackstone, crime is a violation of the public rights and duties that is due to the whole community considered as a community.²³ The author further stated that any act or omission may constitute a crime on violating public law forbidding or commanding it. It is argued that public wrongs or crimes or misdemeanor constitute a breach and a violation of the public right and duties that is due to the whole community or considered as a community in its aggregate capacity.²⁴

Criminal Law

Criminal Law is defined as the body of law defining offenses against the community at large, regulating how suspects are investigated, charged and tried and establishing punishment for convicted offenders.²⁵ Criminal law is used to depict all that are involved or used in the administration of criminal justice in the broadest sense.²⁶ According to Ogbu, the true distinction between a crime and a civil wrong does not reside in the nature of the wrongful act, but in the legal consequences that may follow it.²⁷ To the author, if the wrongful act or omission is capable of being followed by a criminal

¹⁷ B A Garner Black's Law Dictionary (8th edn, Thompson Web Publishers, 2004) 399

¹⁸ S M Henry, 'Definition of Law' in

¹⁹ Criminal Code Act, Cap. C38, LFN 2004

²⁰ Penal Code Cap. 89 Laws of Northern Nigeria 1963; Sharia Penal Code Law No. 4 of Kaduna-State, 2002

²¹ P Tapper, 'Who is the Criminal' (1948) American Sociological Review 96-102

²² Ibid.

²³ M Jefferson, Criminal Law(Pearson, Education Limited Essex 8th edn, 2007) 12-13

²⁴ C Clark , Analysis of Criminal Liability (1880) 2

²⁵ Ibid 403

²⁶ Ibid.

²⁷ M O N Ogbu, Modern Nigerian Legal System(Second edn, CIDJAP Publishers Ltd, Enugu, 2007), 36



proceedings, then it means that it is regarded as a crime, otherwise called an offence and if it is capable of being followed by a civil proceedings, that means that it is regarded as a civil wrong.²⁸

Against going to full trial, resolution of legal conflict between the prosecution and the accused out of court in a criminal proceeding under the Anglo-American system of justice is achieved mainly within the framework of a plea bargain.²⁹

Criminal Justice System

In a simple parlance, a country's Criminal Justice System means the system through which crimes and criminals are identified, apprehended, judged, and punished. The Criminal Justice System (CJS) refers to a set of government institutions or agencies and systems that aim at apprehending, prosecuting, punishing, and rehabilitating criminal offenders.³⁰ According to Jaja and Lasisi,³¹ the criminal justice system consists of the Law Enforcement, which is seen as the front lines of the criminal justice system, the Courts, which is seen as the part of the criminal justice system where guilt or innocence of a suspect is ascertained at trial and corrections, referred to as the administrative part of the criminal justice system due to its application of sentences and enforcement of punishments. The definition of Criminal Justice System provided by Moses is particularly apt and it sees the system as an embodiment of crime regulating techniques, which represents the whole range of government agencies that function as the instrument of the state to enforce its set rules for the maintenance of peace, order, and tranquility.³²

3.0 Legal and Institutional Framework

Constitution of the Federal Republic of Nigeria, 1999 (as amended)

The Constitution of the Federal Republic of Nigeria 1999 (as amended) is the highest law from which every other law, institution and person derives rights, obligations and powers to perform any act. The constitution is the grundnorm from which other laws such as the Criminal Code Act Cap C38 LFN 2004, Penal Code Law 2004, Administration of Criminal Justice Act 2007, Administration of Criminal Justice Law 2015, Laws of Rivers State, Economic and Financial Crimes Commission (Establishment) Act, 2004, Administration of Criminal Justice Law, 2011, Laws of Lagos State, Independent and

²⁸ Ibid.

²⁹ L Atsegbua, 'Criminal Law in Nigeria; A Modern Approach' <file:///C:/Users/HP/Downloads/CriminalLawinNigeria-TODAY.pdf> accessed 10th August, 2025

³⁰ S A Ogunode, 'Criminal Justice System in Nigeria; For the Rich or the Poor?' (2015)(4)(1) Humanities and Social Sciences Review, 27-39; 29.

³¹ D I Jaja and R Lasisi, 'The Criminal Justice System as Enablement for Social Order in Nigeria' <https://www.ssoar.info/ssoar/bitstream/handle/document/68975/ssoar-nigjsoca-2019-1-iwarimie-jaja_et_al-The_Criminal_Justice_System_as.pdf?sequence=1&isAllowed=y&lnkname=ssoar-nigjsoca-2019-1-iwarimie-jaja_et_al-The_Criminal_Justice_System_as.pdf> Accessed 10th August, 2025

³² J K Ukwaiyi and J T Okpa, 'Critical assessment of the Nigeria Criminal Justice system and the Perennial Problem of awaiting Trial in Port Harcourt Maximum Prison, Rivers State' (2017)(16)(1) Global Journal of Social Sciences, 17-25; 19



Corrupt Practices Commission Act 2004. derive their forces for the regulation of crime in Nigeria from. It is important to state here that the Constitution which gives strength or force of law to these other laws also regulate their functions. This is specifically provided in the Constitution when it stated that, if any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.³³ This simply means that every law enacted by the National Assembly must be consistent with the provisions of the constitution, else it will be declared null and void.

Administration of Criminal Justice Law of Rivers State, 2015

One striking feature of the administration of Criminal Justice Law of Rivers State is that, it enhances quick administration of justice. Generally, the main purpose of the ACJL is to ensure that the system of administration of criminal justice promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim.³⁴ The Administration of Criminal Justice Law of Rivers State was enacted strictly to ensure that the fundamental rights of suspects and persons that come into contact with the justice system, as enshrined in the Constitution are protected.

Taking about plea bargain, the Law in section 277³⁵ provides that notwithstanding the provision of this law or any other law that a prosecutor can receive or consider the proposal of a plea bargain from a defendant charged with an offence, either directly from a defendant or his counsel to deal with or disposal of the case. By the provision of section 277(2), a prosecutor can enter into plea with a defendant, with or without the consent of the victim, or his representative during or after his representation of the evidence of the prosecution, but before the presentation of the evidence of the defence, if; the evidence of the prosecution is insufficient to prove the charge beyond all reasonable doubt, where the defendant has agreed to return the proceed of the crime or make restitution to the victim or representative of the victim and where defendant if be 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. Section 277(3) of the law provides that, 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.³⁶ By the provision of section 277(4), a plea bargain must be accept only in public interest,

³³ Constitution of Federal Republic of Nigeria 1999 (as amended) s 1(3)

³⁴ Bello & Ors v Attorney General of Oyo State (1986) 1 SC 1 at 70 paras. A-B.

³⁵ Administration of Criminal Justice Law of Rivers State, 2015

³⁶ Ibid.



and must reflect the gravity of the offence committed by the defendant,³⁷ and provided such bargain does not limit the power of a magistrate or judge on same matter.³⁸

Furthermore, the law provides for due consultation on the part of a prosecutor before entering a plea bargain. The thrust of section 277(5) lends credence to this assertion when it provides that the prosecutor should only enter into an agreement contemplated in subsection (3) of this section after consultation with the police responsible for the investigation of the case and the victim or his representative, and must have due regard to the nature of, and circumstances relating to the offence, the defendant and public interest...but provided that in determining whether it is in the public interest to enter into a plea bargain, the prosecution shall weigh all relevant factors, including; the defendant's willingness to cooperate in the investigation or prosecution of others, the defendant's history with respect to criminal activity, the defendant's remorse or contrition and his willingness to assume responsibility for his conduct, the desirability of prompt and certain disposition of the case, the likelihood of obtaining a conviction at trial, the probable effect on witnesses, the probable sentence or other consequences if the defendant is convicted, the need to avoid delay in the disposition of other pending cases and others.

Conclusively, by the provisions of section 277(7) and (11), a plea bargain must be reduced into writing and must the presiding judge or magistrate shall ascertain whether the defendant admits the allegation in the charge to which he has pleaded guilty and whether he entered into the agreement voluntarily and without undue influence and may where, the Judge or Magistrate is satisfied that the defendant is guilty of the offence to which he has pleaded guilty, convict the defendant on his plea of guilty to that offence, and may proceed to consider the term of the agreement between the prosecutor and defendant, the ruling shall be delivered by the court in accordance with section 315 of this law, but where the court feels that the defendant cannot be convicted of the offence in respect of which the agreement was reached and to which the defendant has pleaded guilty or that the agreement is in conflict with the defendant's right referred to in subsection (6) of this section, he shall record a plea of not guilty in respect of such charge and orders that the defendant's trial commences.

Criminal Code Act, 2004

The Nigerian Criminal Code is another extant legislation enacted to curb perpetration of crime in Nigeria. It is the top codified law as far as crime is concern in Nigeria and the most relied on in criminal investigation, trial and punishment of criminals. The 2004 Criminal Code Act is derived from the Nigeria Criminal Code Act 1916, Nigeria Penal Code Act 1960 and other criminal laws enacted by Nigerian Parliament from time to time. The purpose of criminal law is to provide the society with a

³⁷ Ibid, s 277(4)(a)

³⁸ Ibid, s 277(4)(b)



set of rules regarding legal and illegal behavior. In other words, criminal law outlines what actions and behaviors are allowed and the one prohibited. It defines what actions are crimes and how to punish those who commit these crimes. For instance, housebreaking or burglary prohibited by section 411 of the Act,³⁹ entering dwelling house with intent to commit felony,⁴⁰ breaking into building and committing felony,⁴¹ breaking into building with intent to commit felony,⁴² breaking into place of worship and committing felony,⁴³ obtaining goods by false pretense⁴⁴ and others.

Another vital object of Criminal Code is to protect the individual rights and freedom, public order and security, state of justice, public health and environment, and communal peace, as well as to discourage commitment of offences. This Law defines the basic principles for criminal responsibility⁴⁵ and types of crimes, punishments and security precautions to be taken in this respect. The purpose of the Criminal Code is to ensure order, peace and the security of the State, its peoples, and inhabitants for the public good. It aims at the prevention of crimes by giving due notice of the crimes and penalties prescribed by law⁴⁶ and should this be ineffective by providing for the punishment of criminals in order to deter them from committing another crime and make them a lesson to others, or by providing for their reform and measures to prevent the commission of further crimes.

Penal Code Law 2004

Like the Criminal Code, the Penal code is applicable to the Northern region of Nigeria. This means that Northern states of Nigeria operate by the provisions of the Penal Code in the determination of criminal conducts, trial and punishment of convicts. The purpose of Penal Code is to provide the Northern States and its citizens with a set of rules regarding legal and illegal behavior. In other words, criminal law outlines what actions and behaviors are allowed and the one prohibited. It defines what actions are crimes and how to punish those who commit these crimes. For instance, section 410 of the code⁴⁷ deals on act of treason and its punishment spelt out in section 411.⁴⁸ Other offences are inciting to mutiny,⁴⁹ causing disaffection among soldiers, police or prison officers⁵⁰ assisting or allowing escape of prisoners of war⁵¹ and others.

³⁹ Criminal Code Act Cap C38 LFN 2004

⁴⁰ Ibid, s 412

⁴¹ Ibid, s 413

⁴² Ibid, s 414

⁴³ Ibid, s 415

⁴⁴ Ibid, s 419

⁴⁵ Ibid, ss 22 to 36

⁴⁶ (n 51) s 36(12)

⁴⁷ Penal Code Law 2004

⁴⁸ (n 51).

⁴⁹ Ibid, s 413

⁵⁰ Ibid, s 414

⁵¹ Ibid, s 415

Courts

The primary duty of the Courts in a democratic state is the interpretation and application of relevant laws to all cases presented to it. This also includes actions and proceedings involving state's organs, authorities or legitimate powers and to any person in Nigeria for the determination of any question as to the civil rights and obligations of that person.⁵² The court is regarded as the final hope for the common man; this means that the courts are to anxiously protect the judicial process from being caricatured or denigrated and for the aim of realizing a conscientious, fair and quick delivery of justice.⁵³ This is an absolute power conferred on the judiciary and the Legislature had no business to veer into the sphere of influence exclusive to the Court as Constitutionally guaranteed without breaching the concept of separation of powers as equally guaranteed by the grundnorm. In the case of *Engr. Charles Ugwu & Anor. V. Senator Ifeanyi Ararume & Anor*,⁵⁴ the court held that Nigeria operates a constitutional democracy with powers constitutionally assigned to three recognised arms of government, namely the Executive, Legislature and the Judiciary. It is the duty of the legislature to make laws which are to be interpreted by the judiciary and executed by the executive arms of the government." Per. Onnoghen JSC.

4.0 Constitutionality of Plea Bargain in the Nigerian Legal System

Authors have continually argued that plea bargain practice is not recognised under the Constitution of the Federal Republic of Nigeria 1999(as amended), hence the concept has no Constitution flavour or backup. They submit that plea bargain in criminal cases appeared on both legal and institutional regime of the Nigerian Legal System in 2005, basically in relation to the prosecution of economic crimes by the Economic and Financial Crimes Commission, and the only legal provision which empowered the EFCC to settle criminal cases with defendants is section 14(2) of the EFCC Act.⁵⁵ The said section, pointedly, empowered the EFCC to compound any offence punishable under the Act by accepting such sums 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.⁵⁶ This period, the EFCC was seen engaging in plea bargaining with persons accused of economic and financial crimes.⁵⁷ A typical example was the Punch report of 2019, where it was reported that Tafa Balogun has withdrawn a suit instituted against

⁵² S.6(6) of the 1999 Constitution of the Federal Republic Nigeria 1999; *Chevron (Nig) Ltd V. Imo State House of Assembly & Ors*(2016) LPELR-41563(CA)

⁵³ *Dingyadi & Anor V. Inec & Ors* (2011) 18 NWLR (pt.1224) pg.154." PER ADEKEYE, J.S.C(P. 40, Paras. A-C)

⁵⁴ (2007) LPELR-3329(SC)

⁵⁵ Economic and Financial Crimes Commission (Establishment, etc.) Act, 2004

⁵⁶ Ibid.

⁵⁷ T Soniyi, 'Balogun Withdraws Suit Against EFCC' (The Punch , November 18, 2005) 8< <https://punchng.com/efcc-withdraws-from-gojes-n5bn-fraud-case/>> Accessed 7th October, 2025



EFCC challenging the powers of EFCC to prosecute him and speculating that the withdrawal might not be unconnected with alleged plans for a plea bargain.⁵⁸

Notwithstanding the above, other authors have argued that the power to plea bargain is conceivable within the general discretionary powers of the Attorney General conferred by the Constitution.⁵⁹ Bello opines that the Attorney General of the Federation (AGF) and the Attorney General of a State (AGS) are conferred with prosecutorial discretionary powers under sections 174 and 211 of the Constitution⁶⁰ to institute, take over, and discontinue criminal prosecution. The Supreme Court in *State v. Ilori*⁶¹ has held that the prosecutorial powers of the AGF and AGS is not subject to judicial review. Hence, it is argued that the prosecutorial power to plea bargain is within the wide powers granted to the AGF and AGS by the Constitution even though not expressly stated in the CFRN 1999(as amended).⁶² Therefore, Bello argued that the laws merely provide a framework for the exercise of the powers of the AGF and the AGS for plea bargaining in our courts.⁶³

It is noteworthy to state that a defendant does not have a constitutional right to demand or insist on a plea bargain with the prosecution, but only a constitutional right to fair trial and legal assistance. Hence, if a defendant will be offered a plea bargain depends entirely on the exercise of prosecutorial discretion. In *Lafler v. Cooper*⁶⁴, Justice Scalia dissenting stated that there is no constitutional right to plea bargain; the prosecutor need not do so if he prefers to go to trial.⁶⁵ Same position applies in Nigeria and Nigeria criminal cases. Having stated that the concept has no constitutional origin, it is imperative to state that the first enactment in Nigeria, providing a legal framework for plea bargaining, is the Administration of Criminal Justice Law of Lagos State 2007. The law was later repealed and replaced with the Administration of Criminal Justice Repeal and Re-enactment Law of Lagos State 2011. After then, the Federal Administration of Criminal Justice Act⁶⁶ and a host of other State legislations, including the Rivers State Administration of Criminal Justice Law⁶⁷ have subsequently emerged. It is noted that 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 for Lagos state.

⁵⁸ ACJL 2007

⁵⁹ A O Bello, 'The Emergence of Plea Bargain in Nigeria' <<https://api-ir.unilag.edu.ng/server/api/core/bitstreams/9ea4dd5b-69f9-4dae-b9a1-7880b540f4e8/content>> Accessed 21 July 2023; A O Bello, 'Plea Bargaining and Criminal Justice in Nigeria: Issues, Problems and Prospects' (2006)(1) Current Law Series, 42-67;49.

⁶⁰ Constitution of the Federal Republic of Nigeria, 1999(as amended)

⁶¹ [1983]1 S.C.N.L.R. 94.

⁶² (n 98)

⁶³ Ibid.

⁶⁴ 132 S. Ct. 1376, 1395 (2012)

⁶⁵ Justice Scalia quoted *Weatherford v. Bursey*, 429 U.S. 545, 561 (1977)

⁶⁶ ACJA 2015

⁶⁷ ACJL, No. 7 2015

5.0 A Critique of the Application of the Concept of Plea Bargain in the Nigerian Legal System

The concept of plea bargain has been applauded for its numerous advantages. For example, legal practitioners commonly perceive plea bargaining as effectuating justice, as it enhances the avoidance of unnecessary litigations, minimizes inconvenience to witnesses and increases the timeliness of case resolution. Notwithstanding, the concept has been seriously criticized. Scholars have argued that plea bargaining results in criminals receiving undeserved leniency, subjects defendants to unjustifiable pressure to forego their constitutional right to a jury trial, that prosecutors wield too much power over defendants and coerce them into accepting plea agreements, that defendants are too often deprived of effective assistance of counsel, as the very nature of plea bargaining requires inadequate representation and subverts many of the values and practices of the criminal justice system⁶⁸

It is seen that in a plea bargain arrangement, officials of the particular financial institutions or state agencies concern are the intermediaries between the accused and the judiciary.⁶⁹ The prosecutor determines what offense should be charged and against whom, and they present the case in court; they are thus both adjudicators and advocates. This practice is recognized as an essential part of the exercise of the state; which may make an informed decision about which charges are to be proceeded upon and whether to give and accept a plea to a lesser charge.⁷⁰ In most cases, prosecutors have been found to use threats that coerce defendants into accepting pleas to secure a conviction when the evidence in a case is insubstantial⁷¹ with the prosecutorial biases influencing the plea bargaining process, as prosecutors are given such wide latitude when they reduce charges for offenders.⁷² It is further opined that prosecutorial discretion also result in harsher penalties for those defendants who opt for going to trial, rather than accepting a plea.⁷³ Conversely, it is found in some cases that those who go to trial are more likely to receive harsher sentences than those who accept a plea when comparable offenses are considered.⁷⁴

To the foregoing, Herssick and Saujani while condemning the wide range of powers a prosecutor or state agency tends to allocate to itself, stated that in an ideal world, the guilty defendant would realize that accepting a plea bargain would allow him to receive a lesser sentence while the innocent defendant's case would be dismissed or, if going to trial, would be acquitted.⁷⁵ He decried that the

⁶⁸ (n 34), 189-190

⁶⁹ D A Sklansky, 'The Problems With Prosecutors' <https://www.annualreviews.org/doi/pdf/10.1146/annurev-criminol-032317-092440> Accessed 22 October, 2025

⁷⁰ R. v. Anderson, 2014 SCC 41.

⁷¹ (Finkelstein, 1975).

⁷² Burke, 2007; Ma, 2002).

⁷³ Ibid.

⁷⁴ (Albonetti, 1991; Britt, 2000; Dixon, 1995; Engen and Gainey, 2000; Kurlychek and Johnson, 2004; Steffensmeier and Demuth, 2000, 2001; Steffensmeier and Hebert, 1999; Steffensmeier et al., 1993, 1998).

⁷⁵ (n 34), 191



system has various mechanisms that impede the plea bargain process, especially, in a place where a trial does not guarantee conviction or acquittal... that a guilty defendant may be willing to take a chance at trial, which is his right, while the innocent defendant may decide to enter into a plea bargain, believing the evidence against him is insurmountable.⁷⁶ The above scenario is exacerbated by the fact that to encourage the defendant to forego his right to trial, the prosecutor in most cases induces the defendant by offering powerful incentives, such as a reduction or dismissal of the charges or a reduction of sentence. The damaging resultant effect of this in the system is that, the next defendant that is confronted with same situation, will quickly plead guilty even to crimes he did not commit instead of risking conviction, and potential time in prison.

Another line of criticisms in a plea bargain setting is the Constitutional right of an accused and inadequacies of punishment. There is no gainsaying the fact that the Constitution of the Federal Republic of Nigeria, 1999(as amended) (CFRN 1999) as amended) guarantees the defendants' right to fair hearing, with particular protection that any such criminal shall be presumed to be innocent until he is proven guilty and the right to be represented by counsel.⁷⁷ It is submitted that the plea bargain practice, which in most cases excludes a defendant's counsel from taking part in the plea bargain negotiation is highly condemnable. Our criminal justice system charges a defense counsel with the responsibility of providing his client with effective assistance of counsel. As a result, defense counsel is the only party with access to all the information necessary to assess the case of an accused, and to recommend the best course to his client. It is defense counsel who ensures that the client is adequately informed about the consequences of critical pleading and trial decisions.

Again, it is argued that to preserve the integrity of the criminal justice system and the separation of powers, it is important that the prosecutor considers the suitability of punishment when deciding whether to enter into a plea agreement. In criminal justice system, the cardinal principle that is observed is the principle of just desert. The principle is to the effect that punishment must be proportional to the unfair advantage the offender has taken by law-breaking. The prosecutor must not bargain away adequate punishment of a criminal in order to ensure conviction through a plea bargain, nor must he usurp both the legislative and judicial powers in defining what measure of punishment is adequate for a criminal. It is on this score that the practice is also questioned for the passive role played by the court. The practice generally limits a magistrate or judge's involvement in plea bargain, despite the important responsibility which a magistrate or judge has to ensure that the plea bargain process meets certain requirements. It is seen that a magistrate or judge's involvement beyond what the law allows can render the guilty plea involuntary.⁷⁸

⁷⁶ Ibid.

⁷⁷ Constitution of the Federal Republic of Nigeria, 1999(as amended), section 36

⁷⁸ State of Louisiana v. Bouie, 2002).



6.0 Conclusion and Recommendations

No doubt, to ensure a speedy trial is one cardinal issue faced by many jurisdictions. Intolerable trial delays, indeterminate pre-trial detentions and indecent attitudes of the investigating officer or prosecuting counsel are compelling factors why an accused hanker for a plea bargain and most times, bargains involuntarily. It is for this reason that this dissertation has seriously advocated that a plea bargain process should be timed and delineated statutorily to conform to the parameters of a fair hearing. If this is done, an accused will see the plea bargain process as predictable and certain. Procedural certainty and a purposeful monitoring of the institutions and officers saddled with such responsibility will enhance the practice and build an accused's confidence, including balancing the rights of all parties.

In light of the above, it is recommended that:

1. robust and all-encompassing legal and institutional frameworks adequate and sustainable enough to enhance the smooth application of the concept is recommended. In the findings, it is seen that the practice tends to exclude lawyers and also usurp judicial powers of the courts. An investigating officer no doubt is saddled with the responsibility of investigating any matter presented to them, but determining or reducing, or even giving reasons to the jury, why a suspect's punishment should be reduced or sacrificed on any other ground amounts to usurpation.
2. It is further recommended that to tackle corruption and enhance the practicability of the concept of plea bargain in institutions saddled with the responsibilities of investigation and prosecution of criminal offenders, especially the police and financial institutions such as the EFCC and ICPC, more lawyers should be immediately employed by the organ of government in which they are employed.