

## PLEA BARGAINING IN NIGERIA: JUSTICE, COMPROMISE, OR INSTITUTIONALIZED INEQUALITY?

**Majebi Samuel Amune\***  
**Modupe Nancy Wiwoloku\*\***  
**Aliu Emosiremeo Veronica\*\*\***

### **Abstract**

*Plea bargaining has become a significant aspect of criminal justice in Nigeria, especially after it was officially recognized by the Administration of Criminal Justice Act 2015. Originally linked to adversarial legal systems such as United States, it was introduced into Nigeria as a practical solution to various issues within the criminal justice system, such as long trials, overcrowded prisons, among others. It has its benefits. However, its increasing use has sparked a lot of discussion among legal experts, professionals, and the general public. There is debate about whether plea bargaining genuinely supports justice or if it compromises fairness and the principle of equal treatment under the law. This article focuses on the conflict between the efficiency that plea bargaining offers and the concerns it brings about justice, transparency, and fairness. The article adopts the doctrinal and analytical approach. The article finds that plea*

---

\* LL.B. (University of Benin); LL.M., M.Phil., Ph.D (Obafemi Awolowo University) Senior Lecturer, College of Law, Joseph Ayo Babalola University, Ilesa, Osun State, Nigeria & Principal Partner, LawDigital Consult. Email: nobleheirs@yahoo.com

\*\* Ph.D, MCI Arb, MLMDC, MCMC, CRJ, MSCMA, Director Restorative Justice and Community Service Department, Ministry of Justice, Ado-Ekiti, Ekiti-State, Nigeria.

\*\*\* LL.M, Doctoral Candidate, ..... Lecturer, Department of Clinical Education and Training, Faculty of Law, Edo State University, Iyamho.

*bargaining has improved procedural efficiency and helped resolve some criminal cases more quickly than through traditional trials. However, there are still major concerns about prosecutorial discretion, transparency in negotiated agreements, among other factors. The lack of clear sentencing guidelines and inconsistent judicial oversight also increases the chance of misuse and undermines public trust in the criminal justice system. On this score, the article suggests several reforms such as enhancing judicial review of plea agreements, creating clearer sentencing guidelines to avoid unfair outcomes among others*

**Keywords:** ACJA, Criminal Justice, Plea Bargaining, Judicial System.

## **1.0 INTRODUCTION**

The evolution of criminal justice in Nigeria witnesses a transition from the repealed Criminal Procedure Act of the Northern and Southern states in Nigeria, to the enactment of forward-looking Administration of Criminal Justice Act with a modern driven mandate. Central to this enactment is the incorporation of plea bargaining. The manifestation of this had been evident in the activities of the EFCC's early efforts to recover looted and stolen items, which was later codified to address judicial backlog and the overcrowding apparent in the typical Nigeria correctional facilities.

Against the above backdrop, the institutionalisation creates division, with supporters viewing that it is capable of reducing judicial workload, saving judicial time and resources, while opponents view it as a tool for wealthy offenders to bargain away their criminal responsibility and culpability, while the average common man becomes a victim of the criminal justice system.

In view of this, this study seeks to examine what plea bargain entails, elucidating the various types of plea bargaining. Similarly, it looks into the criticisms of plea bargaining, while furthering into the provisions of ACJA supporting the idea of plea bargaining in Nigeria. Further, it looks into the early judicial resistance and attitudes of courts towards plea bargain in the early times. Moreover, it examines the question of justice and institutional inequality likely to arise from plea bargaining.

## 2.0 CONCEPTUAL ANALYSIS

### 2.1. Meaning and Nature of Plea Bargaining

Plea bargain is a practice in criminal trial where an accused agrees with the prosecution that he pleads guilty<sup>1</sup> to a lighter offence among one of several offences which he has been charged for on the terms of him receiving reduced sentence.<sup>2</sup> It occurs when the defendant who has been

---

<sup>1</sup> Whenever a defendant pleads guilty to an offence naturally, it is deemed that he has put himself through trial, and as such, no trial will be conducted of which the prosecution is not bound to open his case against the accused. According to 274 of ACJA, where a defendant pleads guilty to an offence with which he is charged, the court shall have his plea recorded as nearly as possible; invite the prosecution to state the fact of the case; and enquire from the defendant whether his plea of guilty is to the fact as stated by the prosecution. Additionally, Where the court is satisfied that the defendant intends to admit the truth of all the essential elements of the offence for which he has pleaded guilty, the court shall convict and sentence him or make such order as may be necessary, unless there shall appear sufficient reason to the contrary. When a defendant pleads guilty to a capital offence however, a plea of not guilty shall be recorded for him.

<sup>2</sup> Albert W Alschuler, 'Plea Bargaining and Its History' (1979) 13(2) *Law and Society Review* 211 - 245; Maximo Langer, 'Plea Bargaining, Conviction Without Trial, and the

charged for a criminal offence accepts the waiver of his right to fair trial in exchange for lenient sentence, or a lesser punishment.<sup>3</sup> The supporters of plea bargain have argued that it fastens criminal trial, adding that it will save the defendant from anxieties and pretrial incarceration, affording him the opportunity to acknowledge his guilt and indicate the acceptance of responsibility for his conduct, and to facilitate the proper kickstart of his rehabilitation.<sup>4</sup>

Plea bargaining may occur before the defendant is formally charged or after arraignment. Resulting from a plea bargain may be the prosecution agreeing not to charge the defendant, the defendant agreeing to plead guilty to a lesser charge; the defendant pleading guilty to one of the charges for the dismissal of other charges.<sup>5</sup>

## **2.2. Types of Plea Bargaining**

In the negotiation between the prosecution and the defendant, one of the areas of negotiation is the charge bargaining. It is also known as count bargaining<sup>6</sup> Here, the defendant who has been charged for multiple

---

Global Administratization of Criminal Convictions' (2021) (4) *Annual Review of Criminology* 377.

<sup>3</sup> Neil Brewer and Amy Bradfield Douglass (eds), *Psychological Science and the Law* (The Guilford Press, 2019).

<sup>4</sup> Blackledge v. Allison, 431 U.S. 63 (1977); Santobello v. New York, 404 U.S. 257 (1971); Herbert S Miller and William F McDonald and James A Cramer, *Plea Bargaining in the United States* (Georgetown University 1978).

<sup>5</sup> G Nicholas Herman, *Plea Bargaining* (3<sup>rd</sup> edn, Juris Publishing 2012).

<sup>6</sup> Roshan Kumar Jha, 'An Overview of The Laws Related to Plea Bargaining Under Nepalese Legal System: A Journey from Vedic Vantage Point to Supreme Court' (2023) *NJA Law Journal* 227; Jeremy Ball, 'Is it a Prosecutor's World?: Determinants of Count

criminal offences may be allowed to plead guilty to a lesser charge, or one of the charges in dismissal for other charges.<sup>7</sup> This type of bargaining is with the involvement of the court and takes place after the charges are filled. Thus, in order not to waste time reviewing the counts individually, the court may choose to dismiss some charges especially when there are repetitive offences.<sup>8</sup>

### 2.2.1 Sentence Bargaining

Here, the prosecution negotiates with the defendant for a lighter sentence to be imposed on the defendant.<sup>9</sup> The defendant agrees to plead guilty to the original offence as charged, and the prosecution works secure a lighter sentence. This may include the reduction of a lengthy prison time, probation, or other alternatives form of sentencing.<sup>10</sup>

---

Bargaining gaining Decisions' (2006) 22(3) *Journal of Contemporary Criminal Justice* 241.

<sup>7</sup> Ibid; Cecilia Y. Nordquist, *The Weight of the Bargain Investigating Prosecutors' Emotions in Plea Bargaining Interactions in a United States Criminal Court* (PhD Thesis, Lund University 2025); Ehi Eric Esoimeme, 'Has the Concept of Plea Bargaining Been Abused in Nigeria's Criminal Justice System?' (2014) 1(1) *Legal Aid Journal* <<https://dx.doi.org/10.2139/ssrn.2462307>> accessed 1 March, 2026.

<sup>8</sup> Jenia Iontcheva Turner, 'Judicial Participation in Plea Negotiations: A Comparative View' (2006) (54) *The American Journal of Comparative Law* 199.

<sup>9</sup> Seraphinus Mariano Agung Serman and Umi Rozah, 'Regulation of Plea Bargaining Policy as a Novelty in Criminal Justice System to Create Effective and Efficient Criminal Law Enforcement: A Study of Ruu Kuhap' (2025) 5(4) *Journal of Law, Politic and Humanities* <<https://doi.org/10.38035/jlph.v5i4>> 2304> accessed 4 March, 2026.

<sup>10</sup> 'Plea Bargains in Criminal Law Cases' (*Justia* 2025) <<https://www.justia.com/criminal/plea-bargains/>> accessed 1 March, 2026.

### **2.2.2 Fact Bargaining**

This is the least used method of negotiation, and in fact, courts do not always allow it.<sup>11</sup> It implies the admission of certain facts by the defendant reducing the burden on the prosecution to prove these facts relied on beyond reasonable doubt. The agreement here is usually that other facts will not be introduced.<sup>12</sup>

### **2.3. Criticisms of Plea Bargaining**

The very notion of plea bargain and what it stands to represent has caused series of controversial analysis of which it has been subjected to several critiques arguing to beam the spotlight on the disadvantages that accompany the concept.

---

<sup>11</sup> Simon & Gilman LLP, 'What are the Different Kinds of Plea Bargains' (*Simon & Gilman LLP* 2021) <<https://www.simgil.com/blogs/4643/index.php/2023/01/18/what-are-the-different-kinds-of-plea-bargains/>> accessed 1 March, 2026.

<sup>12</sup> Kalenike Uridia and Elene Landia and Nikoloz Thomasiani, 'Plea Bargain – Aim, Importance And Problematic Aspects in the Reality of the Us, Germany and Georgia' (2023) 9(25) *Law and World* <<https://doi.org/10.36475/9.1.18>> accessed 3 March, 2026; Richard Fedorow, 'The Pros and Cons of Plea Bargaining in Criminal Cases' (*fedorowiczlaw* 2025) <<https://www.fedorowiczlaw.com/pros-cons-plea-bargaining/>> accessed 1 March, 2026; Micah Schwartbach, 'What Are the Different Kinds of Plea Bargaining?' (*nolo*) <<https://www.nolo.com/legal-encyclopedia/what-the-different-kinds-plea-bargains.html>> accessed 1 March, 2026.

To begin with, the foremost criticism of plea bargaining is that it can induce or coerce an innocent defendant into admitting guilt.<sup>13</sup> When the prosecution has the unlimited discretion to choose what to charge the defendant on, he may through duress, and with the threat of seeking the harshest sentence prevent the defendant from going through a fair trial where his criminal responsibility will be determined.<sup>14</sup> With recourse to this, timid defendant may not be willing to go through the risk of going through a fair trial with the fear of receiving a harsher sentence, and plead guilty in order to receive a lesser sentencing.

Additionally, plea bargain is argued to place eminence on disposing a criminal case rather than rather than constitutional rights and the rule of law. When it prioritises disposing the case, advocates argue that it saves resources and time. However, the ignored part is stripping a criminal case of being decided based on merit in the presence of a neutral judge.<sup>15</sup> Therefore, plea bargain is only a shortcut to a supposed justice.

Another problem with plea bargain is the possibility of trading justice. When a high-profile offender has committed an offence, particularly, financial crime, out of the stolen funds, he may decide to release some of

---

<sup>13</sup> Tina Wan, 'The Unnecessary Evil of Plea Bargaining: An Unconstitutional Conditions Problem and a Not-So-Least Restrictive Alternative' (2007) 17(1) *Review of Law and Social Justice* 33, 40.

<sup>14</sup> Ibid.

<sup>15</sup> Carissa Byrne Hessick, 'The Real Problem with Plea Bargaining' (2023) (101) *Texas Law Review* Online 101, 123 <[https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=1726&context=faculty\\_publications](https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=1726&context=faculty_publications)> accessed 5 March,2026.

the stolen assets and bargain for a lesser sentence than he would actually receive if put through a proper trial.

### **3.0 LEGAL FRAMEWORK GOVERNING PLEA BARGAINING IN NIGERIA**

#### **3.1 Statutory Recognition under the Administration of Criminal Justice Act 2015**

Signed into law by the former President Goodluck Jonathan on the 14<sup>th</sup> of May, 2015, the Administration of Criminal Justice Act 2015 was enacted to repeal the Criminal Procedure Act,<sup>16</sup> Criminal Procedure (Northern States) Act,<sup>17</sup> and the Administration of Justice Commission Act<sup>18</sup> to serve as the main procedural enactment in related to criminal trials pursuant to an offence in an Act established by the National Assembly and other punishable offences in the Federal Capital Territory.<sup>19</sup> Pursuant to 2(2), the Act does not apply a Court Martial.<sup>20</sup>

---

<sup>16</sup> Applicable in Southern Nigeria States.

<sup>17</sup> Applicable in Northern Nigeria States.

<sup>18</sup> By ACJA 2015, s493, “The Criminal Procedure Act CAP. C41 Laws of the Federation of Nigeria, 2004, Criminal Procedure (Northern States) Act Cap. C42 Laws of the Federation of Nigeria, 2004, and the Administration of Justice Commission Act Cap. A3 Laws of the Federation of Nigeria, 2004 are repealed.”

<sup>19</sup> ACJA 2015, s2 (1).

<sup>20</sup> Unlike regular courts that try civilians under the extant laws, a Court Martial is established to try members of the armed forces under military laws.

With the above established background, plea bargaining is defined by ACJA 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”.<sup>21</sup> Distillable from this is that both the prosecution and defendant set out to a negotiation, particularly, as regards the plea of the defendant that he pleads guilty to a lesser offence than what he has been charged for, in which he will be given a lighter sentence than he would have been, if he had been charged for the original offence. Importantly, it is subjected to the approval of the Court, so as to ensure the plea is voluntary, and the defendant understands the consequences.

In light of the foregoing, it becomes lucidly clear that plea bargaining is not a novelty under the Nigerian criminal justice system, and it is notably given a legal recognition under the ACJA 2015. First and foremost, the ACJA empowers the prosecution to consider a plea bargain for a defendant when it is tendered by the defendant himself or through a third party.<sup>22</sup> Additionally, the prosecution may make a proposal of plea bargaining to the defendant who has been charged for an offence.<sup>23</sup> This implies that the prosecution may accept an offer to plead guilty for a lighter offence by the defendant, or make the offer to the defendant.

---

<sup>21</sup> ACJA 2015, s494.

<sup>22</sup> ACJA 2015, s270(1)(a).

<sup>23</sup> ACJA 2015, s270(1)(b).

Additionally, through the consent of the victim or his representative, the prosecution may enter into plea bargaining with the defendant even after the presentation of the prosecution's evidence, but before the defendant opens his case,<sup>24</sup> so far as the evidence adduced by the prosecution is not enough to prove the defendant's guilt beyond reasonable doubt;<sup>25</sup> the defendant has agreed to make reconciliation for the desecration caused by the crime he committed or;<sup>26</sup> in a conspiracy matter and the particular defendant has provided enough information to support the investigation and prosecution of the other offenders.<sup>27</sup>

Further, a prosecutor is empowered to offer or accept the offer of plea bargain, provided that it is in the interest of justice, the public, public policy or to prevent abuse of court processes.<sup>28</sup> When this agreement is entered into, it shall be put into writing in document which must state the terms of the plea agreement and any admission agreed on; be signed by the prosecution, defendant and other necessary parties; the copy of the agreement forwarded to the Attorney General. Notably, the document must that all the necessary information including his right to remain silent, the consequence of not remaining silent, that he is not required to make any confessions that could be used against him, will be passed to the defendant.<sup>29</sup>

---

<sup>24</sup> ACJA 2015, s270(2).

<sup>25</sup> *ibid*, 270(2)(a).

<sup>26</sup> *Ibid*. 270(2)(b).

<sup>27</sup> ACJA 2015, s270(2)(c).

<sup>28</sup> *ibid*, 270(3).

<sup>29</sup> *Ibid*, 270(7).

Further, the Act bars the presiding judge or magistrate from interfering with the discussion in the plea bargain agreement.<sup>30</sup> In addition to that, it has mandated the prosecution to inform the court that a plea bargain agreement had been entered into, after which the court makes inquiry into the terms from the defendant.<sup>31</sup> In view of the foregoing, it is important to reiterate that the presiding judge is not bound to accept the terms of the agreement, and may record a plea of not guilty after a guilty plea had been entered into by the defendant, after which the judge may order for trial to proceed. This is in any situation where the judge is of the opinion 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 as stated in subs. 6.<sup>32</sup> Similarly, when the judge is of the opinion that there is a higher punishment contemplated to the agreed punishment, then shall inform the defendant,<sup>33</sup> of which the defendant may be permitted to withdraw his guilty plea. Subsequently, the case will be put to a trial *de novo* before another presiding judge or magistrate.<sup>34</sup>

### **3.2 The Administration of Criminal Justice Law (Lagos State)**

This is the applicable procedural law in relation to criminal trials in Lagos state. This ACJL is notable because the repealed 2007 ACJL of Lagos state was the first enactment to incorporate plea bargaining, because it was severally amended in subsequent years till the 2021 ACJL of Lagos state.

---

<sup>30</sup> Ibid, 270(8).

<sup>31</sup> Ibid, 270(9).

<sup>32</sup> Ibid, 270(10)(b)

<sup>33</sup> Ibid, 270 (11)

<sup>34</sup> Ibid, 270 (15)(b).

A deeper analysis will not be made into this law and other states ACJLs owing to the fact that the provisions are very similar to those of ACJA.

### **3.3 The Constitution of the Federal Republic of Nigeria**

The supreme law regulating the actions of all forces including citizens and governments within the jurisdiction of Nigeria. Its provisions are supreme and binding, and any law seeking or purporting to override the constitution is invalidated to the extent of its inconsistency.<sup>35</sup>

While the Constitution has not expressly mentioned plea bargaining as the ACJA has done, it establishes the office of the Attorney General for the Federation and States, granting them the power of public prosecution in any offence created by or under any Act of the National Assembly, or State House of Assembly as the case may be.<sup>36</sup>

---

<sup>35</sup> According to section 1 of the Constitution, the “Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.” Similarly, section 3 provides 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.

<sup>36</sup> By 174(1) of the Constitution, “the Attorney-General of the Federation shall have power – (a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any Act of the National Assembly” and by 211 (1), The Attorney General of a State shall have power-(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court-martial in respect of any offence created by or under any law of the House of Assembly.

#### 4.0 JUDICIAL ATTITUDE AND CASE LAW ANALYSIS

The courts across jurisdictions have had to review the applicability of plea bargaining and its manifestation from time immemorial when it emerged, and started developing before gaining widespread acceptability across jurisdictions.

##### 4.1. Early Resistance and Controversies

From the earliest time, one of the ways in which a person can be convicted was through confessional statement, that is the defendant acknowledging his guilt. However, courts were often hesitant to admitting a guilty plea entered into by a defendant<sup>37</sup> and had often advised defendants to withdraw the guilty plea in order to stand a proper trial.<sup>38</sup> As it was observed that courts generally were backward, and reluctant to record a defendant's plea of guilt, and would ask the defendant to retract the admission of guilt.<sup>39</sup>

In furtherance, just like it was expressed towards guilty plea by defendants, courts generally refused any matter where an agreement to subvert justice had been made by both the prosecution and the

---

<sup>37</sup> Albert W Alschuler, 'Plea Bargaining and its History' (1979) 79(1) *Columbia Law Review* 1, 7.

<sup>38</sup> Albert W Alschuler, 'Plea Bargaining and its History' (1979) 79(1) *Columbia Law Review* 1, 9.

<sup>39</sup> This was however criticised by Jeremy Bentham one of the major propounders of the Utilitarian school of law in the 19<sup>th</sup> century who stated that In practice, it is grown into a sort of fashion, when a prisoner has [entered a plea of guilty], for the judge to endeavour to persuade him to withdraw it, and substitute the opposite plea, the plea of not guilty, in its place. The wicked man, repenting of his wicked-ness, offers what atonement is in his power: the judge, the chosen minister of righteousness, bids him repent of his repentance, and in place of the truth substitute a barefaced lie.

defendant.<sup>40</sup> In any case where there appeared to have been a guilty plea from the defendant “mainly from the hope that the punishment, to which the accused would otherwise be exposed, may thereby be mitigated”, the court would grant the leave to the defendant to withdraw the plea.<sup>41</sup> It was the utmost opinion of courts that law favours trials on the merits.<sup>42</sup> Therefore, the court will not permit any form of pressure on the defendant to waive any rights available to him, or advantage, no matter how slight it is. The law will not permit tilting the balance of the scale against him.<sup>43</sup>

#### **4.2 Judicial interpretation of statutory safeguards**

Having being empowered by the Constitution,<sup>44</sup> the role of courts is to safeguard, and ensure the strict adherence to the rule of law to promote the interest of justice. As deducible in the provisions of ACJA, the role of the court in matters relating to the procedure of plea bargain is an active one, and the court is to ensure the strict adherence to the stipulated procedures.<sup>45</sup> In view of the foregoing, the role of the court is to balance the prosecutorial discretion, with the public interest and the need to

---

<sup>40</sup> Jay Wishingrad, ‘The Plea Bargain in Historical Perspective’ (1974) 23(2) *Buffalo Law Review* 499.

<sup>41</sup> *People v. McCrory* (1871) 41 Cal. 458, 462; similarly, in *Swang v. State*, 42 Tenn. 212, 213–14 (1865) it was held that a defendant would be granted the leave to withdraw guilty plea despite plea bargain because state constitutional right to jury trial could not “be defeated by any deceit or device whatever”.

<sup>42</sup> *Pope v. State*, 47 So. 487, 56 Fla. 81 (Fla. 1908).

<sup>43</sup> *O’Hara v. People*, 41 Mich. 623, 624, 3 N.W. 161, 162 (1879).

<sup>44</sup> Constitution of the Federal Republic of Nigeria 1999, s 6.

<sup>45</sup> This is however not to state that courts are allowed to participate in the bargaining process, as 270(8) ACJA has expressly prohibited the presiding judge or magistrate sitting on the criminal case from participating in the discussion as to the acceptance of an offer of plea bargain between the prosecution and defendant.

safeguard the interest of justice, without infringing on the defendant's rights. With recourse to this, as held in *Agbi v. F.R.N*<sup>46</sup> where the court emphasised the voluntariness of the defendant in pleading guilty; that the plea bargain agreement must clearly manifest the accommodation of the defendant obtaining lesser sentence in terms of fine or imprisonment. The court also reiterated that the trial court had the power to scrutinise the terms of plea bargain agreement, and ensure conformity with statutory safeguards and ensure voluntariness.

### **4.3 Standards applied by courts in approving plea agreements**

As earlier noted, pursuant to the authorisation by ACJA, and other ACJLs, an offer of plea agreement may be brought by either the prosecution or the defendant, of which the court has been barred from interfering in the discussion. When this agreement has been entered into by both parties however, the court must be duly informed by the prosecution. Afterwards, the court inquire from the defendant to confirm the terms of the agreement entered into.

Flowing from the above, in cases where the plea agreement had been entered into, the court apply different standards in ensuring there is no perversion of justice and the rights of the defendant had not been contravened through a deceitful means. In light of the foregoing, the court inquire into the terms of the plea agreement to scrutinise whether the choice of the defendant was both informed and voluntary.<sup>47</sup> Additionally,

---

<sup>46</sup> (2020) 15 NWLR (Pt. 1748) 416

<sup>47</sup> Pius Osunyikanmi, 'An Appraisal of Safeguard Against the Abuse of Plea Bargain Agreements Under the Nigerian Criminal Justice System' (2024) 1(2) *Nnamdi Azikiwe University Awka Journal of Private Property Law* 200, 201.

the court seeks to ascertain that the agreement was in accordance with the rule of law, and whether there are sufficient evidence supporting the conviction. In any case where the court is of the opinion that the defendant cannot be convicted for the offence on which the bargain had been made, then a trial is ordered to be proceeded to properly determine the case on merit.

## **5.0 PLEA BARGAINING AND THE QUESTION OF JUSTICE**

### **5.1. Efficiency and Substantive Justice**

One of the main justifications for plea bargaining agreement is that it enables judicial efficiency and expediency. With this, plea bargain has been deemed legitimate under human right law since it includes the prerequisite and minimum standard of being voluntary, informed, explicit, and fact-based plea in order to ensure the fair trial right has not been encroached on.<sup>48</sup>

On the other hand, the overlooked part of the plea bargaining as argued is that plea bargain has turned into a tool for powerful ones to exploit to avoid jail time, and get an undue advantage of being influential lawbreaker, while the less privileged are left to suffer in jail for desecrating the same societal norms.<sup>49</sup> This perspective is predicated on the Marxist theory that places emphasis on the economic power of

---

<sup>48</sup> Ibid.

<sup>49</sup> Chukwuka Ezech, 'Assessing the effectiveness of plea bargains in Nigeria's justice system' (*stears*, 2017) <<https://www.stears.co/article/plea-bargains-as-progress/>> accessed 5 March, 2026.

political actors over even the criminal justice system.<sup>50</sup> A brief assessment into the case of Tafa Balogun, who was appointed as the 21<sup>st</sup> IGP will better demonstrate the foregoing analysis.<sup>51</sup>

After series of newspaper publications that Balogun had diverted public funds, he resigned from the post of the IGP, in which he was later arrested by the EFCC. As stated, "The Police got N2 billion for logistics in the two tiers of elections in April 2003, Lagos State Police Command, which is the largest in the country, with 18,000 policemen, got N6 million; Ogun and other states got N5 million each. Each of the 12 zonal commands got N1 million. In all, the amount disbursed to all the commands amounted to a little over N200 million, leaving him with a net profit of over N1.7 billion."<sup>52</sup>

Subsequent to his arrest, he was arraigned on over 70 count offences on corruption. However, Tafa Balogun entered into a plea bargaining agreement where he agreed to forfeit assets valued at more than seventy billion naira, and received six months imprisonment in return. Additionally, he was fined five hundred thousand Naira for all the 8 charges he pleaded guilty to.

As the first case of plea bargain in Nigeria, the decision was met with public uproar, with the public arguing that the punishment was not

---

<sup>50</sup> Olugbile David Olaleye, 'An Appraisal of the Use of Plea Bargaining in the Nigerian Justice System' (2023) 6(2) *African Journal of Law, Political Research and Administration* 100 <<https://doi.org/10.52589/AJLPRA-FSWJYPTI>> accessed 5 March, 2026.

<sup>51</sup> Tafa Balogun v the Federal Republic of Nigeria Suit No. FHC/ABJ/CR/14/2005 (unreported delivered on 22/11/2005 by Nyako, J.).

<sup>52</sup> Ajayi Femi, Tafa Balogun A Different Super 'Special' Cop, Nigeria World, 2005

equivalent to the offence committed. Be that as it may, what has been overlooked was the voluntary surrender of the assets by the convict. If this was done through a trial, it may be difficult to retrieve those assets.<sup>53</sup>

## 5.2. Impact on victims' rights

Crimes vary, and have different impacts on the victim. While various methods may be employed in reconciling what some crimes have broken, some offences may be deemed too grave than for an apology or an alternative to suffice. Thus, there is the desire for a retributive punishment in the form a capital punishment to be imposed on the criminal defendant.<sup>54</sup>

Viewed from the background that the prosecution has been given the discretion to settle a case with a criminal defendant through plea bargaining, this may at times be done without recourse to the victim's rights. Distillable from the foregoing is that the prosecutions out of the unrestricted discretionary power tend to restrict the victim's interests and rights, thereby entering into a plea bargaining agreement to reduce the charge or sentence to the amazement or annoyance of the victim.<sup>55</sup> A testament of this manifested in the case of *R v. AEM (Snr)*<sup>56</sup>.

---

<sup>53</sup> Olugbile David Olaleye, 'An Appraisal of the Use of Plea Bargaining in the Nigerian Justice System' (2023) 6(2) *African Journal of Law, Political Research and Administration* 100, 110 <<https://doi.org/10.52589/AJLPRA-FSWJYPTI>> accessed 5 March, 2026.

<sup>54</sup> Alfred M. Tijah, 'An Examination of the Rights of Crime Victims in Plea Bargain Agreements in Nigeria' (2019/20) *Benue State University Law Journal* 107, 107.

<sup>55</sup> *Ibid*, 109.

<sup>56</sup> (2002) NSWCCA 58 (13 March 2002)

In the case, five accused kidnapped two 16 years old girls where they forcefully with knife took them to a house, where they were sexually and physically assaulted. The accused were charged with serious sexual and physical assault, theft and kidnapping. Subsequently, the prosecution entered into a plea bargaining where the facts were changed to read that there was no use of knife and the victims voluntarily went to the house where they were only assaulted sexually without a physical assault. When the case ended, the victims felt cheated where one of them stated thus:

I did expect (proceedings) to give me some sort of closure ... But it's been the exact opposite. It's just made things worse, because ... now my story has been changed by the legal system ... The facts were changed and I want to stop that. My story should be told the way it happened. ... Personally, I would rather go through the process of court because at least my story is getting told and they are actually sentenced on what they did and not what they didn't do.

### **5.3. Transparency and public confidence**

It goes without saying that criminal trials often take time to be settled. This is particularly evident in corruption cases. Resultantly, the introduction of plea bargaining was to expedite legal proceedings, reduce judicial backlog, facilitate the recovery of assets in financial crime cases, reduce the workload on public attorneys<sup>57</sup>, also, it is not

---

<sup>57</sup> Jona F Meyer, 'Benefits of plea bargaining in plea bargaining' (Britannica, 2025) <<https://www.britannica.com/topic/plea-bargaining/Benefits-of-plea-bargaining>> accessed 5 March 2026.

aimed to only save time, but to save resources and potentially reduce the uncertainty in the criminal justice system.<sup>58</sup>

Nevertheless, the application of plea bargaining has raised serious concerns over the administration of criminal justice in Nigeria, birthing questions on judicial fairness and political interference in sentencing decisions.<sup>59</sup> These concerns have not been predicated on thin air, but on the chances of plea bargaining afford high-profile law breakers to circumvent the interest of justice, by securing a punishment more lenient than the offence committed. Cases like *FRN v Cecilia Ibru*<sup>60</sup> and *FRN v. Lucky Igbinedion* have highlighted the stark contrast between the magnitude of financial crimes and the lenient punishments imposed on defendants.<sup>61</sup> With recourse to this, the application of plea bargaining has been met with critics from civil societies and activists who argued that it disregards the deterrent purpose of punishment when it affords offenders to negotiate sentence.

## 6.0 INSTITUTIONALIZED INEQUALITY?

---

<sup>58</sup> Kalenike Uridia and Elene Landia and Nikoloz Thomasiani, 'Plea Bargain – Aim, Importance and Problematic Aspects in the Reality of the Us, Germany and Georgia' (2023) 9(25) *Law and World* < <https://doi.org/10.36475/9.1.18> > accessed 3 March, 2026.

<sup>59</sup> Olusegun Temitope Adebajo and Nkechi Aluko, 'The Effectiveness of Plea Bargaining in High-Profile Corruption Cases in Nigeria: Analyzing Sentencing Trends, Judicial Discretion, and Public Perception (2010-2024)' (2025) 4(2) *Law and Economy* 24, 24.

<sup>60</sup> Federal Republic of Nigeria v. Dr (Mrs) Cecilia Ibru, Charge FHC/L.297C/2009.

<sup>61</sup> Olusegun Temitope Adebajo and Nkechi Aluko, *ibid*.

The study into the application of plea bargain in Nigeria reflects a contradistinctive socio-economic reality where judicial efficiency collides with the disparity in status of the defendants. While the system of plea bargain was created to serve as a wheel to judicial effectiveness, it has been argued to be a system which creates sentencing disparity between a high-profile offender and an average common citizen, where the ability to negotiate is tied to one's social and economic status.<sup>62</sup>

### **6.1. Elite Defendants vs. Indigent Accused Persons**

For high ranking people in Nigeria, such as politicians and business moguls, plea bargain serves as an escape route from jail term if put to a proper trial under the criminal justice system. Even with the provision of ACJA, wealthy individuals can use a part of the stolen wealth as leverage, thereby trading a part of the ill-gotten wealth for significantly reduced time or complete avoidance of jail term.<sup>63</sup>

On the other hand, an indigent who has no currency to leverage on, and is usually represented through the legal aid counsel or no counsel at all will be made to face trial for the same offence or even an offence of lesser magnitude. Individuals like these who do not have the access to hire a senior advocate to challenge the evidence of the prosecution are excluded from bargaining processes, creating the idea that justice is sold to the highest bidder like in an auction.<sup>64</sup>

---

<sup>62</sup> Naszya Iman Heidi Bradshaw, 'Racial Disparities in Plea Bargaining: An Examination of Coercive Dynamics in the Negotiation Process'

<sup>63</sup> Emily Stauffer, 'Plea Bargains: Justice for the Wealthy and Fear for the Innocent' (2021) (35) *Byu Prelaw Review* 167.

<sup>64</sup> Ibid; Carlos Berdejo, 'Criminalizing Race: Racial Disparities in Plea-Bargaining' (2018) 59(4) *Boston College Law Review* 1188.

## **6.2. Prosecutorial Bargaining Power**

As explicit in the provision of ACJA, the prosecution retains immense discretionary power over plea bargaining agreements. This imbalance and potential challenges are strengthened due to the lack of judicial oversight in plea bargain discussions between the defendant and prosecution. When the prosecution overcharges by piling up identical charges to scare or threaten a defendant, and the defendant being prosecuted by the state prosecution may be left in darkness of the evidence against him. This leaves the defendant in a situation where he either takes the offer or leaves it, undermining the mutuality of a contract between supposed equal parties.

## **6.3. The Risk of Coercive Guilty Pleas**

In Nigeria where offenders may be incarcerated for a long period of time pretrial, the risk of coercive guilty plea is substantially high. The extreme system and condition of correctional facilities in Nigeria creates a coercive environment where even an innocent individual may plead guilty in order to secure a definitive release. The fear of being sentenced to a harsher punishment if put to a proper trial effectively punishes the witness more. When the choice is between five more years of awaiting trial in a cell or pleading guilty for an immediate two-year sentence, the plea bargain ceases to be a tool of justice and becomes a tool of systemic desperation.

## **7.0 CONCLUSION**

This paper has effectively assessed what plea bargain indicates, as well as looking into the critiques arguing that plea bargain serves an exploitative

tool where the prosecution through the unrestricted discretionary power uses different means into coercing an innocent individual into pleading guilty. That being a means, but not the end as several other criticisms were examined. It has furthered explicated the early resistance shown by courts to guilty plea of defendants where defendants were often advised to withdraw their guilty pleas. This attitude was lucidly evinced in the early plea bargain cases as well where courts have favoured a case being decided based on merit rather than a confession of the defendant stemming from the hope of receiving certain benefits.

Additionally, key provisions of ACJA have been explicated vis-a-vis the ACJL of states. The altercation between plea bargaining and justice was also evaluated where it was shown that plea bargain, especially in the context of usage in Nigeria may serve as a tool for high-profile offenders to escape jail term by leveraging on voluntarily releasing stolen assets. Also, it looked into the contrast between the rationale for plea bargain and its application where it has created series of debates and questions of public confidence in the criminal justice