PLEA BARGAIN: WHAT OPTIONS FOR THE NIGERIAN LEGAL SYSTEM

BY

TOLUWALASE, OLADOTUN

LAW20002920

A LONG ESSAY WRITTEN AND SUBMITTED TO THE FACULTY OF LAW, UNIVERSITY OF BENIN IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS (LLB) OF THE UNIVERSITY OF BENIN, BENIN CITY.

NOVEMBER, 2025

CERTIFICATION

I, Toluwalase, OLADOTUN, with Matriculation Number LAW2002920, hereby certify that apart from references to other persons' works which have been duly acknowledged, the entire work is a product of my research, and this project has neither in whole nor in part been presented for another degree elsewhere.

Toluwalase, OLADOTUN

LAW2002920

APPROVAL

We certify that this project was written and completed by Toluwalase, OLADOTUN, with Matriculation Number LAW2002920 in partial fulfilment of the requirements for the award of a Bachelor of Laws (LL.B) degree.

PROF. EMEKA CHIANU	______________________
PROJECT SUPERVISOR.	**SIGNATURE AND DATE**
DR. O. F. OSUJI	______________________
PROJECT COORDINATOR	**SIGNATURE AND DATE**
PROF. BRIGHT BAZUAYE	______________________
DEAN, FACULTY OF LAW	**SIGNATURE AND DATE**

DEDICATION

This work is dedicated to God Almighty, the lover of my soul.

ACKNOWLEDGEMENT

My Heartfelt appreciation goes to professor Emeka Chianu, for his guidance as my project supervisor. I am also grateful to the entire Faculty of Law, University of Benin for making my undergraduate journey very fruitful.

To my cherished parents, Pastor Oladotun Ojo and Mrs. Ajoke Ojo, your constant prayers, belief and love were the cornerstone of this academic pursuit. My gratitude also extends to my siblings, Okikijesu Oladotun, Abimbola Oladotun, Temitope Ojo and Toluwanimi Alayo for your unwavering love and support.

My sincere gratitude goes my spiritual family, Spring of life Christian Center for your prayers and care towards me.

To my beloved friends, this journey would have been difficult without your support and love. I asked God for a divine friend and He gave me Ese Aize Isibor. Ese, you are a true friend and sister, an embodiment of God's grace and mercy. You have been a great pillar of encouragement and support throughout my undergraduate journey. I really appreciate you and love you. Greg Atalor, I thank you for being a very intentional and warm friend. A very big thank you goes to my roommate Edith Odion, for your love, feeding and warmth. I appreciate the amazing persons

I have been fortunate to meet in my undergraduate journey; Ebohon, Osahon, sis. Jemilat, sis. Praise, sis. Moyo, I love you all.

My appreciation also goes to my big Daddy Mr. Jide Adeniji and Mummy Mrs. Olubumi Adeniji, Daddy John Ojo, Uncle Femi Adebiyi, Uncle Damilare Adedeji, Aunty Deborah, Pastor Dele Dada, Pastor Amosun and Mummy Saki. Your prayers, love, constant care and financial support as pulled me through my undergraduate journey.

To the entire class of Legal Luminaries and all amazing friends and neighbors I am privileged to have encountered in the city of Benin I say a very big thank you.

TABLE **OF STATUTES**

International

1. Chinese Criminal Procedural Law 2018
2. French Criminal Procedural Code 2020
3. Italian Statute of Limitations 2015
4. Italian Code of Criminal Procedure 2019

Nigerian

1. Administration of Criminal Justice Act, Cap. N.11 LFN 2015
2. Administration of Criminal Justice Law, Cap A3 Laws of Lagos State 2021
3. Constitution of the Federal Republic of Nigeria, 1999 (as amended)
4. Economic and Financial Crime Commission (Establishment) Act, 2004
5. Nigeria Police Act, 2020 Cap. N123 LFN
6. Nigeria Correctional Act, 2019 Cap. N.9 LFN

TABLE OF CASES

International

- Brady V. United States (1970) 394 U.S 742
- North Carolina V. Alford (1970) 404 U.S 25
- Santobello V. United States (1971) 404 U.S 257

Nigerian

- Federal Republic of Nigeria V.. Tafa Balogun (2005) 5 NWLR (Pt. 919) 1
- Igbinedion V. Federal Republic of Nigeria (2014) 12 NWLR (Pt. 1420) 1

LIST OF ABBREVIATIONS

- ACJA – Administration the Criminal Justice Act
- CCPL – Chinese Criminal Procedural Law
- EFCC – Economic and Financial Crime Commission
- FCPC – French Criminal Procedural Code
- LCGP – Leniency to Confession of Guilty and Punishment
- USA – United States of America

TABLE OF CONTENT

CHAPTER ONE: INTRODUCTION

CHAPTER TWO: CONCEPTUAL THEORETICAL FRAMEWORK AND LITERATURE REVIEW

CHAPTER THREE: PLEA BARGAIN IN OTHER JURISDICTIONS

CHAPTER FOUR: PLEA BARGAINING UNDER THE NIGERIAN LEGAL SYSTEM

CHAPTER FIVE: CONCLUSION

ABSTRACT

The concept of plea bargain follows a simple logical code that an offer of leniency precedes confession. Plea bargain functions within the administration of criminal justice in a legal system. The core of the concept is to establish an agreement between the prosecutor and the accused, where the accused pleads guilty to a lesser offence or one of multiple charges in exchange for a more lenient sentence or dismissal of other charges. Plea bargain is adopted by legal systems to hasten judicial process in a bid to save resources while also ensuring the administration of justice. The concept has evolved into a safe haven for the accused in the Nigerian legal system.

Plea bargain a tool introduced by the administration of criminal justice system for its efficiency is now being wield by the accused in Nigeria to their favor with a profound level of mastery. However the value of the concept of plea bargain has been proven by the results it produces in other jurisdictions where it applied. This project seeks to appreciate the concept of plea bargain and also highlight the extant provisions of the law on it in Nigeria. It will further evaluate the practice of plea bargain in the Nigerian legal system and highlight the discrepancies which makes it a caricature of that which is practiced in other jurisdictions such as the United States of America, China, Italy and France by a comparative analysis. In conclusion this work would recommend other options open to the Nigerian legal system for future efficiency in its application of the concept of plea bargain.

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

The value and validation of any legal lies in its ability to uphold justice. The nature of the justice is on that is fast – as the Latin maxim states "justice delayed is justice denied" and also cost effective. The Administration of Criminal Justice in a legal system is often caught in a web of problems that makes it unable to deliver the nature of justice that is sought. In some cases the prosecution is unable to present concrete evidence that are beyond reasonable doubts to convict the accused of the offence for which he is charged. In other cases the resources are not available to further investigation into criminal matters and the long period of trial poses a great threat to the administration of justice in criminal matters.

The quest to circumvent these problems in order to ensure that a true nature of justice is upheld has lead to the adoption of the concept of plea bargain in the Administration of Criminal Justice by legal systems. Nchi defines plea bargain as "an informal arrangement whereby the accused person agrees to pled guilty to one or some charges in return for the prosecution agreeing to drop other charges or a summary trial."

There is no doubt that the practice of plea bargain is rooted in the common law, from the Medieval English Common Law court of guilt pardon to accomplices in felony cases. It was also used during the Salem witch trials in 1692 in other to induce confession from persons' accused of witchcraft so as to get a waiver from the death penalty. In modern times however, the significance it has acquired and the popularity it has gained can be traced to the United States of America. The definition of "plea bargaining" varies depending on the jurisdiction and on the context of its use.

The Chief Justice of Nigeria, Justice Dahiru Musdapher at the 5th Annual General conference of the section on the legal practice of the Nigerian Bar Association, in Abuja, said " plea bargain has no place in our law but invented to provide soft-landing for treasury looters". The Honorable Chief Justice made this statement based on the application of the concept in Nigeria. When evaluating the efficiency of the adoption of the concept of plea bargain by the Nigerian legal system we are to take a close look at the law that brought it into practice and other extant provisions, interpretation acts and judicial precedents to get an overview of how the concept is practiced in Nigeria. The deficiency in the practice of plea bargain in Nigeria is rested primarily on the context of the use – as provided by the law, process by which it is carried out and the agents and personnel; that is the prosecution accused persons . It most be noted they the accused persons would not be able to wield the principle of plea bargain to their favor if not for the shortcomings of the legislations, prosecution and judges.

Therefore, this work would define the concept of plea bargain in the context of use in Nigeria legal system and refer to how the concept is practiced in other jurisdictions in other to proffer solutions to it's deficiencies.

1.2. STATEMENT OF RESEARCH PROBLEM

Despite the grown body of research on the controversies and criticisms on the application of the concept of plea bargain in the administration of criminal justice by the Nigerian legal system, it's efficiency and merit cannot be faulted. The concept of plea bargain has been viewed from an opaque lens and thus deemed as a tool by the lawmakers and government officials to above themselves of judgments befitting their criminal activities without appreciating its value in management of resources and haste in trial process. It is without doubt that the Nigerian jurisdiction is one where corruption thrives and there has been a lack of options which the concept of plea bargain can be molded into in line with the Nigerian jurisdiction.

This work would by a thorough revision of the extant provisions of the law on the concept of plea bargain and case law define the concept in the Nigerian jurisdiction and by a comparative analysis of the concept's application in other jurisdictions highlight the discrepancies in the implementation of the concept in Nigerian and offer options by which the concept of plea bargain can be molded to be effective in the atmosphere of the Nigeria jurisdiction.

1.3. RESEARCH QUESTIONS

I. What is the origin of plea bargain?

II. How does plea bargain works?

III. Benefits of plea bargain?

IV. Criticisms on the application of plea bargain.

V. How does plea bargain work in the United States of America, France, Italy and China?

VI. How does plea bargain work in Nigerian?

VII. What are the options open to the Nigeria legal system on the adaptation of plea bargain?

1.4. AIMS AND OBJECTIVES

The aim of this work is to proffer options that would re-mold the concept of plea bargain into one that is favorable for application in the Nigerian legal system. Specific objectives of this study includes:

1. To appreciate the origin, evolution and types of the concept of plea bargain.
2. To evaluate the key feature and application of the concept of plea bargain.
3. To appraise and criticize the concept of plea bargain in general.

4. To analyze the implementation of the concept of plea bargain in other jurisdictions.
5. To define the concept of plea bargain in the Nigerian legal system through a critical analysis of extant legislations and case law.
6. To highlight the discrepancy in the application of plea bargain in the Nigerian legal system.
7. To proffer options by which the concept of plea bargain can be molded in the Nigerian legal system for its effective application.

1.5 SCOPE OF STUDY

This study would examine in general the concept of plea bargain and specifically evaluate the application of the concept in the administration of criminal justice in the Nigerian legal system. This work would also examine the concept of plea bargain in other jurisdictions – United States of America, France, Italy and China and then give recommendations for options by which the concept of plea bargain can be molded into in the Nigerian legal system.

1.6. SIGNIFICANCE OF STUDY

The concept of plea bargain has been continually exploited by the accused in the Nigerian legal system which defeats the purpose of it's adoption and jeopardize justice which is the core foundation of the legal system. This study is therefore significant in proffering better options by which the concept of plea bargain can be adopted by the Nigerian legal system to the benefit of the administration of criminal justice system and the accused on a balanced scale.

1.7. RESEARCH METHODOLOGY

This study is set to employ the doctrinal research method. Reliance will be on relevant legislations and case law as primary source of authority. Reference will also be made to textbooks, articles, books, legal journals and online publications as a secondary source of material.

1.8 CHAPTERS OVERVIEW

Chapter Two: Conceptual, Theoretical Framework and Literature Review

- Conceptualization of plea bargain.
- Theoretical Framework.
- Literature review.

Chapter Three: A Comparative analysis of how Plea Bargain works in other Jurisdictions

- Plea bargaining in the United States of America
- Plea bargaining in France.
- Plea bargaining in Italy.
- Plea bargaining in China.

Chapter Four: Legal Framework for Plea Bargain in the Nigerian legal system

- The administration of criminal justice system in Nigeria: the roles of the prosecution and judges.
- Legislations on plea bargain in Nigeria
- Case study

- Criticisms on the application of plea bargain in the Nigerian legal system.

Chapter Five: Conclusion

- Summary of findings.
- Recommendations.
- Conclusion.

CHAPTER TWO

CONCEPTUAL THEORETICAL FRAMEWORK AND LITRATURE REVIEW

2.1 CONCEPTUAL FRAMEWORK

A. DEFINITION OF PLEA BARGAIN

One of the most prolific writers on plea bargain in America, John Langbein defines plea bargain as an act that “occurs when the prosecutor induces a criminal accused to confess guilt and to waive his right to trial in exchange for a more lenient criminal sanction that would be imposed if the accused were adjudicated guilty following the trial. The prosecutor officers leniency either directly, in form of a charge reduction, or indirectly, through the connivance of the judge, in the form of a recommendation for reduced sentence that the judge will follow. In exchange for procuring this leniency for the accused, the prosecutor is relived of the need to prove the accused’s guilty, and the court is spared having to adjudicate it. The court condemns the accused on the basis of his confession without independent adjudication”

In 1975, the Law Reform Commission of Canada defined plea bargain as “any agreement by the accused to pled guilty in return for the promise of some benefit.”

The Black Law Dictionary defines plea bargain as: “ the process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant’s pleading guilty to a lesser offense or to only one of some of the counts of the multi-count indictment in return for a lighter sentence than that possible for the graver charge.

Alschuler, however is of the opinion that the Black Law Dictionary definition given on plea bargain seems to exclude “The unilateral exercises of prosecutorial or judicial discretion, such as an unqualified dismissal or reduction of charges. Plea bargain includes the exchange of official concessions for actions other than entry of a guilty plea, such as offering restitution to the victim of a crime, giving information or testimony concerning other alleged offenders or resigning from public office following allegations of misconduct.”

Alubo also went on to criticize the definition given by the Black Law Dictionary. According to him the first part of the definition suggests they plea bargains are "mutually satisfactory dispositions". While it is quite true that bargain struck must be agreed upon by both sides of the bargain and guilt plea must be made intelligently and voluntarily this does not guarantee a mutually satisfactory result. The prosecutor may be forced to present a highly favorable offer to the defendant as a result of errors in the procedures that may cause evidential problems at trial. On the other hand, the strength of the prosecutor's bargaining power may present the accused with almost equally unfavorable choices. For example, the prosecutor's offer may involve merely not taking advantage of broad powers granted by the legislature such as nor overcharging the accused, not charging him as a multiple offender or grouping several convictions for the same incident into a single sentence. In either case, the description "mutually satisfactory dispositions" clearly belies the true nature of the situation.

As seen in Black's law definition of Plea bargain, the phrase "subject to court approval" suggest some sort of judicial review of plea bargain agreement prior to acceptance by the judge. However, the true nature of plea bargain includes situation where the judicial review is non-existent. Implicit plea bargaining by definition is never officially subject to court approval. It involves situations where accessed negotiates for certain concessions but instead are presented with the fact that if they go to trial they will be punished more severely. Despite the lack of formal agreement to this bargain, this type of plea bargaining is made quite explicit to the accused but not subject to court approval. In addition, prosecutors can independently drop charges against the accused in exchange of a guilty plea. Moreover, the judges seldom rejects plea bargaining agreement involving sentencing recommendations by the prosecutor. In our view therefore, the phrase “subject to court approval” may obscure the reality of plea bargaining and inappropriately limit the definition of plea bargain.

Finally, the suggestion that plea bargaining “usually involves the accused pleading guilty to a lesser offence in return for a lighter sentence” also distorts the reality of plea bargaining by ignoring the vase array of concessions that may be offered to the accused in exchange for his guilty plea. The variety of concessions the state offers accused extends to the limit of the prosecutor’s and judge’s imagination.

Thus a more comprehensive definition given by Alshuler states that “ plea bargain is the defendants agreement to plead guilty to a criminal charge based on negotiations with the reasonable expectation of receiving some consideration from the state.”

B. ORIGIN

Plea bargain started as an informal arrangement to get accused persons to pled guilty or confess other offenders in exchange for a lighter sentence. Professor John H Langbein’s study of the preliminary examination in renaissance English discussed a statute enacted in1484 that authorized the justice to convict the defendant of a summary offence when he confessed his crime and authorized the justice to hold the defendant for prosecution as a felony if he denied his guilt. The concept as always been adopted informally by various legal systems. The United States of America was however the first jurisdiction in which a well developed system for plea bargain emerged.

George Fisher’s work shows how case load pressure on judges increased through the late 19^{th} century and he says it comes not from criminal adjudication but from burgeoning civil case law of newly invented tort remedies for industrial accidents. Fisher contented that the seeds of plea bargaining were down in the criminal courts of Middlesex county, Massachusetts in 1780-19000.

The first plea bargains occurred in prosecution of victimless crime (liquor selling violation). In a detailed account of how a fixed-penalty sentencing scheme allowed an overburdened prosecutor to arrange non-judicial outcome for charges for selling liquor without a license would be dropped to one charge, to which defendants would pled *Nolle contendere* and be sentenced to a pre-determined fine and court costs. Prosecutors could control the entire process. Judges were barely involved. Fines and court cost were paid and no one got hurt.

Later in 1840's, a successor District Attorney charged liquor violations with a single count to which defendants would pled guilty, with an understanding that the judges would probably impose the previously established typical punishment for that crime. Even without explicit deals the guilty plea rate did not drop. In sum, the system evolved from a situation in which all criminal cases went to trial, to explicit bargains to implicit bargain in 40 years. The trial penalty emerged as well, if a defendant Insisted on his innocence but was convicted after trial, prosecutor double the court cost.

Overworked judges of the last quarter of the century, turned to the plea bargaining for relief for their out of control civil case loads, because they had far greater power to coerce pleas on the criminal side than induce settlement on civil side. The practice grew then on. In 1995, the New York became the 38th state of the United States of America to enact a law allowing plea bargaining formally.

In other countries such as Germany and some countries in Western Europe, it is a variant, a genre of plea bargaining that is practiced. The practice is know as the Penal Order which allows for settlement outside the court between prosecutors minor offences know as *Vergehan* bur insist that all felonies know as *Verthrochon* must compulsorily be prosecuted. The prosecutor writes to the accused informing him of the offence and his proposal to convict if he is not heard from within a week.

2.2 THEORETICAL FRAMEWORK

A. HOW PLEA BARGAIN WORKS

A plea bargain can only reduce the outcome of an adjudication but it does not extinguish it completely. Once an accused agrees to a plea bargain and is convicted according, he cannot rescind on his guilty plea. If he does, his sentence would be raised more higher than the previous conviction.

Plea bargain is a discretionary tool, which the prosecution (Attorney General) must use sparingly and in deserving case. The prosecutor can either offer or accept a plea bargain agreement.

A victim may be consulted during the plea bargain process. Although, plea bargaining is a settlement outside the court, the court must approve of the content of the plea bargain and also ensure that accused entered into the agreement voluntarily.

The accused is usually viewed to be the weaker party in a plea bargain agreement. Thus, in respect to an accused in plea bargain the following conditions must be met:

a) The accused must be aware of their right to a fair hearing.

b) The accused must be aware of the nature of charge against him and resulting punishment as prescribed by law.

c) The accused must be educated on the result of plea bargain; that is, he incriminate himself and waives his right to trial to cross-examine his accuser.

d) He must be informed of the penalties associated with the plea bargain.

Usually, an accused can withdraw a guilt plea that has not yet been accepted by the judge. An accused may also be able to withdraw his or her guilty plea if sentencing has not yet occurred and if the judge rejects the plea bargain to which the accused has pleaded. However, where a defendant agreed to plead guilty and he is convicted and sentenced accordingly, but later withdraws his guilty pleas, be will be punished more severely than the previous sentence.

B. THEORIES IN SUPPORT OF PLEA BARGAIN

1. Rational Choice Theory

- Defendants weigh options: Defendants make rational decisions based on the potential costs and benefits of going to trial versus accepting a plea bargain.
- Prosecutors optimize outcomes: Prosecutors aim to maximize convictions and minimize resources spent on trials.

2. Game Theory

- Plea bargaining as a negotiation: Plea bargaining is a strategic interaction between prosecutors and defendants, where each side tries to achieve their goals while minimizing risks.
- Cooperative and non-cooperative games: Plea bargaining can be seen as a cooperative game, where both sides work together to reach a mutually beneficial agreement, or a non-cooperative game, where each side pursues their own interests.

3. Economic Theory

- Cost-benefit analysis: Plea bargaining can be seen as a cost-benefit analysis, where defendants weigh the potential costs of going to trial (e.g., longer sentence, higher costs) against the benefits of accepting a plea bargain (e.g., reduced sentence, lower costs)
- Efficient allocation of resources: Plea bargaining can help allocate resources more efficiently, as it reduces the number of trials and allows prosecutors to focus on more serious cases.

4. Sociological Perspectives

- Power dynamics: Plea bargaining reflects power imbalances between prosecutors and defendants, with prosecutors often holding more power and influence
- Social norms and expectations: Plea bargaining is shaped by social norms and expectations, such as the expectation that defendants will cooperate with prosecutors to avoid harsher sentences.

C. TYPES OF PLEA BARGAIN

- ❖ Charge Bargain: A plea bargain whereby a prosecutor agrees to drop some of the counts or reduce the charge to a less serious offence in exchange for a plea of either guilt or no contest from the defendant. For example an accused charged with burglary may be offered the opportunity to pled guilty to "attempted burglary."
- ❖ Sentence Bargain: An agreement between a prosecutor and a defendant whereby the defendant promises to pled guilty or no contest to the stated charge in return for a lighter sentence. This can help the prosecution to obtain a conviction if, for example, an accused is facing serious charges and is afraid of being hit with the "maximum" sentence. A sentence bargain may allow that prosecution to obtain conviction of the most serious charge, while assuring the accused of an acceptable sentence. Typically, sentence bargains can only be granted if they are approved by the trial judge. Many jurisdictions severely limit sentence bargaining.
- ❖ Fact Bargain: An agreement between a prosecutor and a defendant whereby the defendant stipulates that some facts are true in exchange for the prosecutor not introducing certain other facts into evidence. Some statues or sentencing guidelines specify that certain increases or decreases in sentencing range must occur if certain facts are proven. E. g; a drug offence may carry a mandatory minimum sentence of the offender had a prior drug felony, possessed a certain amount of drug or played a supervisor role in a drug conspiracy.

D. BENEFITS OF PLEA BARGAIN TO THE ACCUSED

i. Frank Easterbook claims that plea bargain gives accused more autonomy. The bargaining does, in fact give the accused more control of the case as a is just that, a bargain. Plea bargains are not one sided ‘take it or leave it’s offers, they are negotiations between the prosecution and the accused. This inherently gives the defendant a greater ability to control their own fate.

ii. It saves the accused time as a trial protracts for a long period. In countries where the trial system is still very archaic a trail make take between 5-15 years. Plea bargain is very straight forward and cut the need for such prolonged trials.

iii. Plea bargaining cuts cost for the accused. It reduces the legal fee and general expenses incurred in a prolonged trial.

iv. Plea bargain allows criminals who accept responsibility for their action to receive consideration for their remorse in the form of a lighter sentence.

v. Plea bargaining eliminates the need of a public trial.

vi. It eliminates any form of uncertainty and helps the accused in making sure that he does not receive more serious charge or punishment for the criminal acts filled against him.

E. BENEFITS OF PLEA BARGAIN TO THE LEGAL SYSTEM

i. Plea bargain reduces the burden of case on judges. Aaron Larson said “ if every case in the justice system went to trial, the court would be so overloaded that they would effectively be shut down”

ii. It eases the prosecution in the discharge of their duty as otherwise they would be hard pressed to properly allocate resources to each trial. In an accusatorial system, it reduces the burden on the prosecution for a through investigation so as to prove beyond all reasonable doubt.

iii. It eliminates the potential of an appeal thus reducing the workload on the courts.

iv. Plea bargain complements the provision on compounding offences.

v. It also provides an opportunity for the prosecution to get information which may be very crucial and useful from the accused in exchange for some concession.

vi. It reduces prison overcrowding. With the application of plea bargaining the accused are usually given a lighter sentence which results to shorter time in prisons, payments of fine and other forms of sentencing.

vii. Plea bargain avoids the necessity of a public trial and may protect the innocent victims of crimes against the trauma of giving evidence in open court.

F. CRITICISMS ON THE APPLICATION OF PLEA BARGAIN

i. Plea bargain is coercive. That is a subtle intent to use force in its application. According to Alschuler, plea bargain is a “perfectly designed system to produce conviction of the innocent” our Criminal Justice System is supposed to assume that every accused is innocent until proven guilty but Alshuler states that plea bargaining “makes the defendant half guilty”. While some argues that the accused still has a choice, Langbien describes how “ the problem with choice arguments is that they neglect the main dynamic of plea bargaining which is the pressure that the prosecutor puts in you to do it his way”. Shulhofer also describes how “ defendants … even if they are innocent … face enormous pressure to … accept a plea.”

ii. Plea bargaining by coercing guilty pleas, prevents discovery of truth. There is poor case preparation and investigation on the part of the prosecution. There are situations in which an offender is apprehended committing a felony yet the prosecution will charge the offender with a misdemeanor rather than the actual crime.

iii. Plea bargain can lead to the conviction of the innocent. An innocent person may plead guilty in the case of an accused who cannot raise bail and who is being held in custody in a jail or detention facility. Due to the long period of trial which may take years, an innocent accused who is offered a plea bargain that involves a sentence of less time than he would otherwise spend in jail awaiting trial may choose to accept the plea arrangement and pled guilty.

iv. Plea bargaining is focused on providing easy release for the accused, without consideration of the pains and demand for justice of the victim.

v. Accused convicted on plea bargain are rarely deterred from committing such crimes again as they take plea bargaining as an easy way out of standard punishment.

vi. Plea bargain as the element of coercion. Coercion is the actual or threatened use of force to compel a person to act in a manner. Coercion has been surreptitiously used by the prosecution to elicit plea of guilt from accused persons thus, negating the constitutional right of the accused person. In 1988, a woman was raped and murdered at an Austin, Texas Pizza Hut restaurant where she worked. Based on an hunch that the crime was committed by a Pizza Hut employee with a master key, olive began questioning employees of the chain restaurant. Chris Ochoa and his roommate Richard Donzigar, worked at a different Austin area Pizza Hut but became the main suspects when they were observed drinking beer and appearing to toast the victim. Mr. Ochoa and Me. Donzigar were subsequently convicted of the crime. Both convictions grew out of a false confession by Mr. Ochoa. It was later discovered that his confession was coerced and interrogators had threatened him with death penalty. Years after their convictions, letters detailing the crime were sent to the police, to then Governor George W. Bush's office, at the District Attorney's Office. The author of the letters, Achim Marino, had apparently undergone a religious conversion while in prison and felt obligated to confess the Pizza Hut rape and murder incident. The DNA evidence form the original crime scene was retested. It exculpated both Mr. Ochoa and Mr. Donzigar, while implicating Mr. Marino.

2.3. LITERATURE REVIEW

One of the prolific writers on plea bargaining in Nigeria, Alubo writes on plea bargain in relation to a contract. To him plea bargain has a semblance of a contract to a certain extent. It seems to have most, if not all, the ingredients of a valid contract. A valid contract has the following elements:

a)Offer

b)Acceptance

c)Consideration

d)Legality

e)Intention to create legal obligation

In terms of offer, we submit that this element of contract is also present in plea bargaining. This takes the form of proposals for bargain presented to the other party for the purpose of deliberation and possible adoption. There are also cross offers and counter offers made by parties to plea bargain before conclusions and agreements are finally reached. It is said that the offer comes in form of concessions to the accused that a lesser charge will be substituted for the one he is currently charged with or that some of the changes brought against him are dropped or still if the accused person pleads, the prosecution will not move for maximum sentence or punishment.

Acceptance is another vital element in plea bargain process. The prosecutor presents his offer to the accused which the later has to accept before the said plea bargain becomes effective. It should be noted that the accused is also free to make counter offers or cross offers in the process, whish is also subject to acceptance by the prosecution. On this note, it is significant to say that in the absence of acceptance, plea bargaining is a exercise in futility. Acceptance here simply means approval of the terms of the bargain as presented by the offeror.

Consideration is said to be *sine qua non* in every valid contract. It refers to something valuable in the eyes of the law proceeding from the offeree to the offeror in the performance of the contract. Consideration need not be adequate but has to be valuable. In the context of plea bargain, consideration is the pled of guilt emanating from the accused person in favor of the prosecution. It is valuable since it saves the prosecution the pains of proving the guilt of the accused person during the trial as the burden of proof is always on the prosecution which standard of proof is that of proof beyond reasonable doubt.

In terms of legality, it is also a matter of common knowledge that every valid contract must pass legality test. This means that a contract is void which the subject is an illegality; hence no action can arise from such contract. This is expressed in the Latin maxim: "*Ex turpi contractu non oritur action*". The implication is that every subject of contract must be legal so as to give life to the contract. In the context of plea bargaining, we submit that it is also legal for the accused to submit what the plea should be. In some way, it is legal for the prosecution to choose what charges to be prefer against the accused. It is also legal for the judge to decide whether or not to pronounce maximum sentence on an accused person or shoe leniency, in view of availability of mitigating or aggravating factors. We submit that guilt plea is enough mitigating factor to justify leniency.

Intention to create legal obligations is an essential element of a valid contract. This means that both parties to a contract must intend that the contract is legally binding and enforceable, especially those between spouses. In some way, parties to a plea bargain also intend that the plea bargain be binding. However, the level and extent of the binding nature of plea bargain is still doubtful. This is consequent upon the fact that the parties to a plea bargain are at liberty to change their position.

Frank H. Easterbrook, a judge for the United States Court of Appeals for the Seventh Circuit, views plea bargaining as a highly efficient "shadow market" where both prosecutors and defendants engage in a mutually beneficial, contract-like exchange, driven by self-interest and risk aversion. He believes defendants, preferring certainty, trade away procedural rights for reduced sentences, while prosecutors reduce costs by avoiding trials. Easterbrook argues this system functions effectively despite potential imperfections and even suggests that the underlying contractual framework provides a valuable structure for the legal system, though he sees it as a matter for evolving legislation and judicial interpretation, not fixed constitutional rules. Easterbrook eliminates or rather relegates the role of the judge and in a plea bargain arrangement. Irrespective of terms negotiated by the prosecution and accused in a plea bargain, the agreement is still subject to the approval of a trial judge .

In an interview with PBS Frontline magazine, Albert Alschuler a renowned professor of law and criminology at the University of Chicago said

“I think nothing is good about plea bargaining. I mean, sometimes it can have a good effect. It can get you out from under some horrible mandatory minimum sentences and from some bad federal sentencing guidelines. But I could go on for the entire interview talking about what’s wrong with plea bargaining. We could start with the sentences that it leads to. The mark of a good legal system is that it minimizes the effect of tactical choices on its outcomes. What sentence a guy gets should depend on what he did, or maybe on who he is, but not on whether or not he’s exercised a tactical decision to exercise a right or not to exercise a right. You have two people who’ve committed the same crime. They have the same background, and one is going to get twice as severe a sentence as the other because he’s exercised the right to trial. I think it’s a perfectly designed system to produce conviction of the innocent.”

It is without doubt that while the need for the adoption of the concept plea bargaining is glaring for all to see, it’s application also come with some defaults which are disadvantageous to the underlining foundation of justice in any legal system.

CHAPTER THREE

PLEA BARGAIN IN OTHER JURISDICTIONS: A COMPARATIVE ANALYSIS

3.1 The United States Of America (USA)

The US is the first country to adopt the concept of plea bargaining in its criminal justice system. The US Supreme Court recognized plea bargain as a formal procedure for the resolution of criminal cases in 1970 when it declared plea bargaining as constitutional in the Brady V. United States . Thus the US Supreme Court established that in order for a plea bargain to be legally valid, both the prosecutor and the accused must honor the terms of the agreement. Consequently, all plea bargains must be approved by the judge to be considered legally binding.

The US judiciary is an adversarial system, which by its nature places the judge in a passive 'umpire' like position. The judge depends almost totally on the two parties, the prosecution and the accused, to construct, articulate and present factual record. The judge definitely cannot take any step to independently find, verify or assess information about the case in order to evaluate the strength of the case against the accused.

- Consequently, the prosecution and the accused clearly control the result of the case, either by asserting their rights or by bargaining them away. Also prosecutors have amole decision making power to decide whether to prosecute a case or not, depending on various variables from the quality of the evidence to the credibility of the accuser and other witnesses. This substantial discretion gibes the prosecution the legal power and flexibility to negotiate and plea bargain, especially when the odds are not that good for different reasons or the cases are numerous, involving accused who have limited financial means to mount vigorous defense and therefore have little choice but to settle.

Plea bargains are extraordinarily common in the American legal system, accounting for roughly 90% of all criminal cases.

In the United States of America, defendants who plead guilty to a charge or charges are sentenced less severely than those who insist on a trial. Favored treatment is said to be granted to defendants who plead guilty to the charge or charges are sentenced less severely than those who insist on trail, because the abbreviated vision of the case history may be less offensive than the story that unfolds at the full trial and because the judges may believe that the defendant who pleaded not guilty has committed perjury in his defense.

There are restrictions and prohibitions contained in the United States Attorney Manual that prohibits the entering into plea agreements in certain circumstances, and they are;

- The US Attorney may not make plea agreements which prejudices the civil and tax liability without express agreement of the affected divisions or agencies.
- No attorney for the government may seek out a death penalty to coerce a plea.

- In any case where a defendant has tendered a guilty plea but denies he or she committed the offence, the attorney for the government should make an offer of proof of all facts know to the government to support the conclusion that the defendant is guilty.

- The US attorneys are instructed to require an explicit stipulation of all the facts of a defendant's fraud against the United States (tax fraud, Medicare/Medicaid fraud, etc.) when agreeing to plea bargain.
- The US Attorneys are instructed not to accept "Alford plea" where the defendant tenders a guilty plea but denies that he or she committed the crime.

It is said that an average criminal case in America disposed of through the use of plea bargaining. In Santobello v. New York , the US Supreme Court held thus:

"The disposition of criminal charges by agreement between the prosecutor and the accused, sometimes loosely called 'plea bargain,' is an essential component of the administration of justice. Properly administered, it is to be encouraged."

3.2 CHINA

China has a concept in its criminal justice system that adopts the plea bargaining Concept and it is called the "Leniency to Confession of Guilt and Punishment" (would be referred to as LCGP hereafter). The primary reason for the country's adoption of this system is to deal with caseload pressure and optimize legal resources. China started it's own version of speedy trial and plea bargaining programs in 2014 as an experiment conducted by the Supreme People's Court and Supreme People's Protectorate in China for two years in eighteen cities. By the end of September, 2018 the percentage of cases solved by means of the LCGP was 53.68% over the course of two years. The trial process of these cases lasted no more than ten days. Only 3.35% of all the case solved through plea bargaining were appealed. In the first of 2020, 82.2% of cases were solved through plea bargaining.

In October 2018, LCGP as china plea bargaining was regulated in the Chinese Criminal Procedural Law (referred to as CCPL hereafter). Article 15 provides that : " a criminal suspect or defendant who voluntarily confesses accused crime, admits the fact and voluntarily accepts punishment may be treated with leniency according to the law. Article 172 provides,that it is the prosecutors that decide whether the case is suitable for plea bargaining and which type of process, such as the normal process or the fast-track process should be used. Article 173-11 provides, that prosecutors can discuss with the suspects and their representatives about the charged facts, crimes and application of law; recommendations on sentencing such as lightened or mitigated punishment; procedures applicable to trials after a plea of guilt; and other relevant issues.

The prosecutors can also negotiate with suspects based on their authority to recommend sentence due to the fact that a lesser sentence is the main motivation for suspects entering a plea of guilt. This is contained in Article 178 II, it provides that, it is an obligation for prosecutors to make sentencing recommendations in a plea bargaining case. Moreover, in the plea bargaining process, judges "shall in principle" follow such sentence recommendations in accordance with Article 201. This means that prosecutors have a quasi final say on sentencing issues in plea bargaining case

One key feature of China's LCGP is that in its negotiations only a sentence bargain can be a deal not a charge bargain or fact bargain. For example, a criminal offence of rape cannot be charged as indecent assault but the prosecutor if rape was actually committed.

Another key feature of the LCGP is that after confession a fast-track simplified trial will be applied respectively in all cases. It also requires ear facts, real and adequate evidence and agreement of the accused.

Lastly, judges have the responsibility to judicially review the voluntariness, authenticity legality of confession. If those elements are not satisfied , the judges will not adopt the sentencing suggested by the prosecutor and if they find that the recommend sentencing is not appropriate, they will overturn it in accordance with the law.

3.3 FRANCE

The concept of plea bargaining was introduced into the French Criminal Procedural Code (FCPC) on the 9th of March, 2004. To the French Criminal Justice System plea bargaining is know as "La comparution sur reconnaissance préalable de culpabilité" (CRPC); and it translates in English as "appeared on prior to guilt recognition".

Article 1.111 of the FCPC provides that: "for misdemeanor punished by a principal penalty of a fine or a prison sentence not exceeding five years, the District Prosecutor may of his own motion or at the request of the party concerned or his advocate, use the present section in relation to any person summoned to this end or brought before him under the provision of article 393, where the person admits the matter of which he is accused".

The provisions of the above article are not applicable to minors under eighteen years of age, to press misdemeanor, to misdemeanors of involuntary homicide, political misdemeanor or to offences for which the procedure is provided for by a special statute. Besides, the CRPC cannot be triggered of the offence constitutes a crime under the French law. For instance, there is no such provision available for offences such as murder or rape.

The French guilty plea procedure, the CRPC involves two phases; the 'sentence proposal' phase and the 'approval hearing' phase.

The 'sentence proposal' phase is the initial phase that involves a brief discussion between the offender, his lawyer and the prosecutor about the facts of the case so the prosecutor can decide what sentence is considered the most appropriate according to the seriousness of the offence as well as the offenders personal and professional situation. During the meeting which is not open to the public, the prosecutor after a brief summary of the facts asks the accused who is assisted by his lawyer to confirm that he or she has committed the offence. The prosecutor then proposes a sentence which the offender is free to accept or refuse.

The statement in which the person admits the matter which he is accused of are received and the penalty suggestion is made by the District Prosecutor in the presence of the advocate of the party concerned and chosen by him or appointed by the bar at his request. Article 495.8 of the FCPC equally allows the defendant to talk freely with his advocate, without the District Prosecutor being present, before communicating his decision. The offender may also be granted a reflection period of ten days before communicating a decision.

If the defendant does not accept the sentence, he must be informed that the case will be tried the normal way, through the traditional criminal justice process with a full trial with no prior agreement on the sentence. If , however, the offender consents to the procedure and accepts the sentence, the case shall reach the second phase.

The second phase which is the ‘approval hearing’ phase takes place promptly after the prosecution and the accused have reached an agreement. During this public hearing, in which the prosecutor presence is not (necessarily) required, the judge ensures they the charges and the prosecution’s case are factually and legally correct and that they match with the accused confession.

Moreover, the judges verifies that the sentence proposed by the prosecution and accepted by the accused is appropriate with regard to the seriousness of the offence. In case the judge approves the guilt plea, a court order is issued and read in public. The order contains the reasons (the legal grounds) for such decision, stating firstly that the person concerned, in the presence of his advocate, has admitted the offences charged and secondly, that those penalties are justified in relation to the circumstances of the offence and the character of it’s perpetrator. The order has effect of conviction judgement. It is immediately enforceable. Therefore if no appeal is lodged, the order is comparable to an enforceable court judgement.

If the judge has any doubt on the case or if he deems that the sentence is not appropriate, the judge can only disapprove the procedure and send the case to be tried before the court. I. Other words, the judge can neither impose nor propose a new sentence they he would believe to be appropriate.

3.4 ITALY

There is a unique regulation of the Italian Statute of Limitations; if the trails last longer than a certain time threshold, defendants must be acquired, regardless of the evidence collected against them. Hence, longer trials reduce defendants incentive towards the use of trial-avoiding procedures that result in a criminal conviction.

One of such trial-avoiding procedure is the ‘Penal order’; if evidence is strong and a custodial sentence is not necessary, a prosecutor can ask a judge to issue a penal order imposing a fine instead of a sentence. Alternatively, when opposing the penal order, the defendant can propose a plea bargaining or ask for a simplified trial.

Plea bargaining is called ‘patteggiamentto’ in the Italian language. It was introduced on the 16th of February 1887 in article 444 of the Italian Code of Criminal Procedure as amended by law no. 134 of June, 2001. The patteggiamentto involves a deal between the prosecutor and the accused, where the accused pled guilty in order for the charges to be reduced by one-third, only for case where it is deemed that the punishment that would, concretely, be handed down is less than five years.

The deal between the prosecutor and the accused must be submitted before the court. The judge is not bound to this deal and after accessing the evidential support of the plea agreement, he can disapprove it, if the evidence shows that the accused guilt is not sufficiently proved , or in the case if proved to be guilty, the proposed punishment for the accused is too lenient. If the accused is deemed guilty and there is proportionality between the committed facts and the proposed punishment, the judge must approve the agreement.

Besides the sentence discount, in all cases plea bargaining entails the following additional benefits for defendants: the proceedings' expenses are not due; ancillary measures cannot be applied (e.g. suspension of drivers license); the conviction is not mentioned in the criminal records when required by non-public entities; the conviction cannot be used as evidence in civil and administrative proceedings; all other effects of the conviction cease if the defendant does not commit a similar crime within a period of two to five years.

The Italian Code of Criminal Procedure provides the possibility for this sentence of approval, the plea bargain agreement, to be appealed before the 'Corte di Cassaziono' (Court of Cassation) the highest Italian court, which rules only on accessing the legality procedure and interpretation of the law. The Corte di Cassaziiono in its sentence 15 Cassazione Penale (1990) 17 , the negotiated admission of guilt was deemed as a 'hypothetical judgement'. The judge is not bound to the parties agreement and must still verify the confession and make a separate and independent review of the facts.

CHAPTER FOUR

PLEA BARGAINING UNDER THE NIGERIAN LEGAL SYSTEM

4.1 THE CRIMINAL JUSTICE SYSTEM

The criminal justice system is a group of government agencies and institutions that work together to control crime, deliver justice, and rehabilitate offenders. Its main components are law enforcement (like police), the courts, and corrections (like prisons), which work in a process to investigate crimes, prosecute offenders, and enforce penalties. The system's overall goals are to ensure public safety, punish those who are guilty, and prevent future crimes.

The criminal justice system is made up of four organs;

- The law enforcement agency
- The prosecution
- The court
- The correctional facilities.

A. THE LAW ENFORCEMENT AGENCY: The foremost law enforcement agency in Nigeria is the Nigerian Police Force. Others include the Economic and Financial Crime Commission (EFCC) , The National Agency for Food and Drug Administration and Control (NAFDAC) and so on.

The police is the first point of contact with the accused or suspect in all criminal system. The Nigerian Police Force is the principal law enforcement and lead security agency in Nigeria. It was designated by the 1999 Constitution of the Federal Republic of Nigeria as the national police of Nigeria, with exclusive jurisdiction throughout the country. The Nigeria Police Act,2020 provides for the duties and powers of the police.

The police as the duty to:

- Maintain law and order
- Protect life and property
- Enforce law
- Assist the public in distress
- Prevent and detect crime.

The police as the power to:

- Investigate criminal matters
- Conduct prosecution before any court of law in Nigeria
- Arrest with or without warrant as the case may be.

The Police Force is however faced with a variety of problems the that makes it almost impossible to perform it's duties and exercise it's power. Major among the problems are:

I. Shortage of Manpower: At the moment, the Nigerian population is approximated at about 220 million with the personnel strength of the Nigerian Police Force also at

370,000. Considering the United Nations projection of 450 people per a police officer, this number is grossly inadequate.

II. Inadequate Funding: Effective, efficient and sustainable Law Enforcement Strategy can only withstand the test of time if both convert and overt operations are effectively funded which is very vital in proactive led policing.

III. Lack of Technological Equipment and Knowledge: In this ere of globalization, every aspect of the organization's operations are required to meet with the new trends. With advanced techy, most crimes have become more sophisticated and evidence are been forged or erased with high technological skills. The Police must be knowledgeable and wee equipped in order to combat such crimes

IV. Corruption: This is the greatest enemy of any development process which tends to make the public officers abuse the function of their officers and ultimately negating effective implementation of the law enforcement drive in the nation. The Nigerian Police Force is infested with this virus.

The Economic and Financial Crime Commission was established in 2004 by an Act of the National Assembly. Section. 7(2) of the Act states they the commission is charged with the responsibility of effecting the provisions of :

a) The Money Laundering Act,2004
b) The Advanced Fee Fraud Related Offences Act, 1995
c) The Failed Banks (Recovery of Debt and Financial Malpractice in Banks) Act, as amended
d) The Banks and Other Financial Institution Act 1991, as amended.

e) Miscellaneous Offence Act and

f) Any other law or regulation relating to economic and financial crimes, including the Criminal Act and Penal Code.

B. THE PROSECUTION: The prosecutors power is the power of any agency or person to commence and continue criminal cases in the court if law against any suspect who has been alleged to have committed an offence. The primary prosecutor is the Attorney-General, who acts directly are through their designated officers and legal practitioners. The Police and other agencies like the EFCC, also have prosecutorial power, though it is subject to the Attorney-General's overriding authority. Private individuals can also act a prosecutors under specific conditions, such as a private person obtaining a 'fiata' or authority.

According to section 66(1) of the Administration of Criminal Justice Act (ACJA) 2015,only a "police officer who is a legal practitioner" can act as a prosecutor. The police officer must be one admitted to practice law by the Body of Benchers and whose name is the roll of lawyers kept by the Supreme Court of Nigeria. Although "non-qualified legal practitioners" in the police force under section 66(2) is conferred with the power to prosecute by implication if we are to apply the literal rule of interpretation where words are clear and unambiguous and as used in the Police Act 2020.

The Attorney-General of the Federation is the Chief Law Officer if the Federation and the Attorney-General of the State is the Chief Law Officer of the State. Section 174 of the CFRN 1999 makes clear the powers of the Attorney-general.

I. *The Attorney-General of the Federation shall have the power.*

a) *To institute and under take criminal proceedings against any person before any court in Nigeria, other than the court-martial in respect of any offence created by or under any Act of the National Assembly.*

b) *To take over and continue any such criminal proceedings that may have been instituted by any other authority or person.*

c) *To discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.*

II. *The powers conferred upon the Attorney-General of the Federation under subsection (1) of this section may be exercised by him in person or through officers of his department.*

Section. 106 ACJA 2015 provides that prosecution of all offences in any court shall be undertaken by either the Attorney-General of the Federation or a Law Officer in his Ministry or Department; a legal practitioner authorized by the Attorney-General; a legal practitioner authorized to prosecute by the ACJA or any other Act of the National Assembly.

C. THE COURT: The Nigeria court system is a multi-tiered structure, each having different jurisdiction and binding power as to it's decisions on lower courts.

I. The Supreme Court: It is the apex court whose decisions are binding on all other courts

II. Court of Appeal: It hears appeals from lower courts and has original jurisdiction in presidential election petitions.

III. Federal High Courts: They have exclusive jurisdiction over specific federal matters outlined in the constitution.

IV. State High Courts: They have the widest jurisdiction for civil and criminal matters within a state.

V. National Industrial Court: it handles disputes related to labor law and other industrial related actions

VI. Election Tribunals: Specifically established to handle case related to election

VII. Customary Court of Appeal: Deals with customary matters

VIII. Sharia Court of Appeal: Deals with sharia law matters

IX. Magistrate Court: Handles minor offences and civil matters.

X. Specialist Courts: These includes courts for specific areas like coroner's court and juvenile courts.

Major drawbacks in Nigeria's court system includes judicial delays, corruption, executive influence and lack of adequate funding and infrastructure. These issues lead to slow case processing, a perception of unfairness and a high cost of litigation that can prevent may poor citizens from accessing justice. Other problems include; political interference in judicial appointments and a reliance on outdated infrastructures, such as manual record-keeping and poorly equipped courtrooms.

D. THE CORRECTIONAL FACILITIES: The Nigerian Correctional Service is the federal agency responsible for all correctional facilities in Nigeria, which are divided into custodial and non-custodial centers. Nigeria does not have physical "non-custodial correctional facilities" in the traditional sense, but it has a non-custodial sentencing system that provides alternatives to imprisonment for offenders, such as community service, probation, and fines. This system is supported by the Administration of Criminal

Justice Act (ACJA) 2015 and the Nigerian Correctional Service Act 2019, which established a directorate to oversee community sentences. These measures aim to reduce prison overcrowding and promote the rehabilitation and reintegration of offenders through alternatives to physical incarceration.

The Nigerian Correctional Act of 2019 has the mandate to ensure safe and humane custody as well as the reformation and rehabilitation of inmates through education, vocational training and medical and psychological services.   There are several lapse in the service of the correctional facilities in Nigeria. They include:

1. Overcrowding: This is the most pervasive problem, with many facilities holding two to three times their intended capacity. As of April 2025, over 68% of the total inmate population were awaiting trial, which is a primary driver of congestion and exacerbates other issues.
2. Dilapidated Infrastructure: Many prisons were built decades ago and lack essential security features like CCTV, proper perimeter walls, and modern amenities. The poor conditions include inadequate ventilation, lighting, and sanitation, which contribute to the spread of diseases.
3. Inadequate Healthcare and Sanitation: Inmates often face poor sanitation, limited access to clean water, and grossly inadequate medical and mental healthcare services. Poor-quality food, sometimes leading to malnutrition, is a common complaint, with some inmates relying on family or charities for basic needs.
4. Corruption: Bribery and corruption are significant problems among staff, including extortion from inmates' families, smuggling contraband, and facilitating special

privileges for some inmates, such as living outside the facility or accepting funds on their behalf.

5. Delayed Justice System: The slow pace of the criminal justice system means many inmates spend years in pre-trial detention, contributing to frustration, overcrowding, and a failure to receive proper rehabilitation or a timely trial.
6. Frequent Jailbreaks: The systemic failures, poor security, and low staff morale have led to numerous jailbreaks across the country, with thousands of inmates escaping, many of whom remain at large. These incidents often involve external attacks by armed groups, highlighting security vulnerabilities.
7. Lack of Rehabilitation Programs: The focus often remains on punishment rather than correction and reintegration. Many inmates do not have access to meaningful educational or vocational training, which increases the likelihood of re-offending (recidivism) upon release.
8. Poor Staff Welfare and Training: Inadequate remuneration and a lack of incentives for correctional officers lead to low morale and can be a factor in corrupt practices and negligence.

4.2 LEGISLATIONS ON THE APPLICATION Of Plea Bargaining In The Nigerian LEGAL SYSTEM

A. THE ECONOMIC AND FINANCIAL CRIME COMMISSION (EFCC) ACT, 2004

The EFCC Act provides for the “compounding” of offenses in Section 14(2), it provides that; “The commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence".

This is the legal basis for plea bargaining in corruption cases. This provision empowers the EFCC to accept a sum of money from a defendant, up to the maximum penalty for the offense, in exchange for dropping some or all charges. The EFCC can use this power to resolve cases, often as a way to recover stolen assets, and must operate under the constitutional powers of the Attorney-General of the Federation. This is however is "subject to the provisions of section 174 of the Constitution" (which grants the Attorney General the power to institute, continue, or discontinue criminal proceedings.

The EFCC acts as the prosecutor and uses its discretion to engage in negotiations with the defendant. The primary goal is to recover stolen funds or assets and to secure a conviction, though sometimes a lesser charge or sentence is accepted. The process can be seen as an informal version of plea bargaining, where the "bargain" is the acceptance of a financial settlement in exchange for leniency on criminal charges. This approach has been used in high-profile cases, such as those involving former governors and bank chiefs.

B. THE LAGOS STATE ADMINISTRATION OF CRIMINAL JUSTICE LAW (ACJL) 2021

This act explicitly provides for plea bargaining, primarily in Sections 75 and 76 of the 2011 Law, as re-enacted and amended in the 2021 version. These provisions were the first legal framework for plea bargaining in Nigeria and served as the model for the federal Administration of Criminal Justice Act (ACJA) 2015.

The Lagos ACJL grants the State's Attorney-General the authority to approve a plea bargain if it serves the public interest, justice, and prevents legal abuse. Either the prosecutor or the defendant (or their lawyer) can initiate the plea bargain process.

Prosecutors must consider various factors, including the defendant's cooperation, criminal history, remorse, the efficiency of prompt case resolution, the likelihood of conviction at trial, and willingness to compensate the victim. The law also requires the prosecution to allow victims or their representatives to provide input, particularly concerning restitution.

All plea bargain agreements must be in writing, signed by the relevant parties, and detail the terms and any admissions. The judge or magistrate does not participate in negotiations. Instead, the court confirms the agreement terms with the defendant, ensuring it was made voluntarily. The court can then impose the agreed-upon sentence, a lesser one, or notify the defendant if a heavier sentence is deemed appropriate.

If the court indicates a heavier sentence, the defendant can accept it or withdraw from the agreement, leading to a new trial before a different judge. Judgments resulting from plea bargains are final, with fraud being the only ground for appeal. The court can also order the transfer of forfeited assets to the victim. These provisions aim to expedite justice, reduce prison overcrowding, and protect the rights of all involved parties.

C. THE ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015 (ACJA)

Section 494 of the Administration of Criminal Justice Act, 2015, plea bargain is defined 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.*"

This act as be adopted by all states in Nigeria with the exception of Bornu state. Thus providing a legal ground for the application of plea bargain in the Nigerian jurisdiction. Section 270 of the act states clearly the procedure for the application of plea bargaining in Nigeria.

Section 270

(1)Notwithstanding anything in this Act or in any other law, the Prosecutor may:

(a) Receive and consider a plea bargain from a defendant charged with an offence either directly from that defendant or on his behalf;

(b) Offer a plea bargain to a defendant charged with an offence

(2) The prosecution may enter into plea bargaining with the defendant, with the consent of the victim or his representative during or after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defense, provided that all of the following conditions are present:

(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; or

(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.

(3) 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.

(4) The prosecutor and the defendant or his legal practitioner may before the plea to the charge, enter into an agreement in respect of:

(a) The term of the plea bargain which may include the sentence recommended within the appropriate range of punishment stipulated for the offence or a plea of guilty by the defendant to the offence(s) charged or a lesser offence of which he may be convicted on the charge; and

(b) An appropriate sentence to be imposed by the court where the defendant is convicted of the offence to which he intends to plead guilty.

(5) *The prosecutor may only enter into an agreement contemplated in subsection (3) of this section:*

(a) After consultation with the police responsible for the investigation of the case and the victim or his representative, and

(b) With due regard to the nature of and circumstances relating to the offence, the defendant and public interest. 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: (i)the defendant's willingness to cooperate in the investigation or prosecution of others; (ii)the defendant's history with respect to criminal activity; (iii)the defendant's remorse or contrition and his willingness to assume responsibility for his conduct; (iv)the desirability of prompt and certain disposition of the case; (v)the likelihood of obtaining a conviction at trial, the probable effect on witnesses; (vi)the probable sentence or other consequences if the defendant is convicted; (vii)the need to avoid delay in the disposition of other pending cases; and (viii)the expense of trial and appeal. (ix)the defendant's willingness to make restitution or pay compensation to the victim where appropriate.

(6) The prosecution shall afford the victim or his representative the opportunity to make representations to the prosecutor regarding:

(a) The content of the agreement; and

(b) The inclusion in the agreement of a compensation or restitution order.

(7) An agreement between the parties contemplated in subsection (3) shall be reduced to writing and shall:

(a) State that, before conclusion of the agreement, the defendant has been informed: (i)that he has a right to remain silent; (ii)of the consequences of not remaining silent; (iii)that he is not obliged to make any confession or admission that could be used in evidence against him

(b) State fully, the terms of the agreement and any admission made, and

(c) be signed by the prosecutor, the defendant, the legal practitioner and the interpreter, as the case may be.

(d) A copy of the agreement signed by the parties in paragraph © of subsection (6) of this section shall be forwarded to the Attorney-General of the Federation.

(8) The presiding judge or magistrate before whom the criminal proceedings are pending shall not participate in the discussion contemplated in subsection (3) of this section.

(9) Where a plea agreement is reached by the prosecution and the defense, the prosecutor shall inform the court that the parties have reached an agreement and the presiding judge or magistrate shall then inquire from the defendant to confirm the terms of the agreement.

(10) 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:

(a) He 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 shall award the compensation to the victim in accordance with the term of the agreement which shall be delivered by the court in accordance with section 308 of this Act; or

(b) He is for any reason 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

(c) 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 order that the trial proceed.

(11) Where a defendant has been convicted in terms of subsection (9) (a), the presiding judge or magistrate shall consider the sentence as agreed upon and where he is:

(a) *Satisfied that such sentence is an appropriate sentence, impose the sentence; or*
(b) *Of the view that he would have imposed a lesser sentence than the sentence agreed, impose the lesser sentence; or of the view that the offence requires a heavier sentence than the sentence agreed upon, he shall inform the defendant of such heavier sentence he considers to be appropriate.*

(12) The presiding Judge or Magistrate shall make an order that any money, asset or property agreed to be forfeited under the plea bargain shall be transferred to and vest in the victim or his representative or any other person as may be appropriate or reasonably feasible.

(13) Notwithstanding the provisions of the Sheriffs and Civil Process Act, the prosecutor shall take reasonable steps to ensure that any money, asset or property agreed to be forfeited or returned by the offender under a plea bargain are transferred to or vested in the victim, his representative or other person lawfully entitled to it.

(14) Any person who willfully and without just cause obstructs or impedes the vesting or transfer of any money, asset or property under this Act shall be guilty of an offence and liable to imprisonment for 7 years without an option of fine.

(15) Where the defendant has been informed of the heavier sentence as contemplated in subsection (11) © above, the defendant may;

(a) *Abide by his plea of guilty as agreed upon and agree that, subject to the defendant's right to lead evidence and to present argument relevant to sentencing, the presiding judge or magistrate proceed with the sentencing, or* *(b) Withdraw from his plea agreement, in which event the trial shall proceed de novo before another presiding judge or magistrate, as the case may be.*

(16) Where a trial proceeds as contemplated under subsection (15)(a) or de novo before another presiding judge, or magistrate, as contemplated in subsection (15) (b):

(a) No references shall be made to the agreement;

(b) No admission contained therein or statements relating thereto shall be admissible against the defendant; and

(c) the prosecutor and the defendant may not enter into a similar plea and sentence agreement.

(17) Where a person is convicted and sentenced under the provisions of subsection (1) of this section, he shall not be charged or tried again on the same facts for the greater offence earlier charged to which he had pleaded to a lesser offence.

(18) The judgment of the court contemplated in subsection 10(a) of this section shall be final and no appeal shall lie in any court against such judgment, except where fraud is alleged.

4.3 CRITICISMS ON The APPLICATION OF PLEA BARGAINING IN NIGERIA

I. Undermining Victims' Rights: Although the Act requires the victim's consent, this right is sometimes considered "symbolic rather than substantive". Prosecutors may engage in plea bargains without adequate consideration for the harm done to the victims or their desire for full justice, as there are no specific remedies provided when victims' rights are violated. It as also become very clear that in Nigeria the application of plea bargaining is boxed to only white-collar crimes committed by highly ineffectual and wealth persons. While the crimes does not have a direct victim, the victims to these crimes is usually a section of or the society at large. In the case of misappropriation and embezzlement of public funds by government officials, the victims are the citizens who were meant to benefit from the proper usage of the funds. However, they are not allowed to air their opinion in the prosecution of such accused as to whether or not a plea bargain agreement should be allowed.

II. Lack of Transparency: Plea bargaining can result in the community being deprived of the Opportunity to know the full truth about the crime, as there is no full public trial. This can erode public confidence in the judicial system, especially in high-profile corruption cases as it ends up as a sham play between the prosecutor and the accused with no regards to the general public that are the victims of this crime. In the case of the former Governor of Edo State, Lucky Igbinedion. He was charged for looting 4.4 billion naira, but with a plea bargaining agreement he was only fined to pay 3.5 million Naira and to forfeit three landed properties to the government.

III. Potential for Prosecutor to abuse his Power: In the first instance, the prosecutor has the power to decide whether or not to charge a vase to court, to continue or to discontinue the case. The prosecutor decides whether or not there is sufficient evidence to convict the accused beyond reasonable doubt in order to decide if a plea bargain would be applied to a case. He as discretion in the charges to be pressed against the defendant and also as to the recommendation of sentencing. He could wield this power correctly and also abuse to either the advantage or disadvantage of the accused

IV. Safe Haven for Corruption Cases: It is interesting to note that the provision for a plea bargain as only been used constantly in corruption cases and not for any other offence. It is no wonder that a former Chief Justice of Nigeria, Justice Dahiru Musdapher said that "plea bargaining has been invented to provide soft landing for treasury looters. It is an obstacle to our fight for corruption. It should never again be mentioned in our jurisprudence". One major reason for the introduction of plea bargaining in any jurisdiction is to reduce the workload on the judges and the prosecution. It is without a doubt that corruption case takes just a small portion of the overall cases in a criminal justice system. Thus, the boxing of plea bargain to only a set of crimes in Nigeria as done nothing to reduce the workload on the criminal justice system and the correctional facilities still get overcrowded.

V. Inadequate Sentencing: .The process might lead to disproportionately light sentences for serious crimes, especially for wealthy or influential individuals who can leverage the system, thus potentially negating the retributive and deterrent purposes of criminal justice. The compounding of sentencing as provided for in s. 14(2) of the EFCC Act as lead to ridiculous Sentencing. In the case of Tafa Balogun v. FRN the were 58 counts of charges against him including for the embezzlement and misappropriation of 100 million Naira. With a plea bargain agreement he was charged for just eight counts of offences and sentenced to six much for each count of offence which was to run concurrently and a fine of 4 million Naira only. Utterly ridiculous.

VI. Immunity from Further Trial: Section 270(17) provides that a person convicted under a plea bargain agreement cannot be tried again on the same facts for a greater offence. While promoting finality, this provision could be criticized if the initial bargain was perceived as too lenient or if new, damning evidence emerged later. It is without an iota of south that most of the cases settled by plea bargaining in Nigeria are unjust but the above provisions cuts off any means for a redress.

VII. Corruption: The battle against corruption in Nigeria as been in going for a very long time. Corruption as found its way into every sphere of the nation including the criminal justice system. The police for one are know to take bribes, they are friends to the rich and powerful only. The prosecution on the other hand wield the concept of plea bargain for the interest for the accused and not the general public. The judges are bound by political appointment and executive influence, thus are unable to over-rule inappropriate plea bargain agreement. Simply put plea bargain is tool for the wealth and powerful in Nigeria to escape criminal liability.

4.4 OTHER OPTIONS OPEN TO THE NIGERIAN LEGAL SYSTEM

As the adage says “ cutting off the head is not the cure to an head ache” . The fact that the concept of plea bargain seems to have no advantage to the Nigerian legal system does not mean it should be discarded. Instead, the concept should be twerked to a form that is suitable for the Nigerian jurisdiction. From the practice of plea bargain in other jurisdictions it can be seen that they all do not follow the concept of plea bargain in the strict sense as it is practiced in the United States of America, instead the concept is remolded to fit each jurisdiction legal system.

Firstly, the key reasons for the adoption of the concept of plea bargain in Nigeria must be highlighted. They are:

a. To reduce the workload on the judges and prosecution
b. To reduce the length of trials, and
c. To reduce the resources expended in the pursuance of criminal justice.

From this, can tell the areas that the concept of plea bargain should be remolded.

1. Plea bargaining should not be limited to case of misappropriation of funds and embezzlement but instead be limited to misdemeanors only and have a minimum sentencing recommendation. This would appropriately reduce the work load of the judges and the prosecutor.
2. There should be a proper amendment of s.270 of the ACJA in order to mitigate the discretionary power of the prosecution and also give room for the victim to seek redress if not satisfied with the outcome of a plea bargaining. The judges should also be given more right as to know the full fact of the case and the concessions in a plea agreement in order to prevent any funny arrangement between the prosecutor and the accused.
3. There should be a test run on the effect of the amended law on plea bargaining before it is put into practice as done in the Chinese jurisdiction so as to know the efficiency and effective of the law.
4. Most importantly, there should be proper actions to combat corruption in the administration of criminal justice system an the overall assurance of a fast and cost effective justice.

CHAPTER FIVE

CONCLUSION

5.1 Summary Of Findings

It is evident that although plea bargain originated formally from the USA, it as been adopted by different jurisdictions and it's definition is based on the way it is been practiced in each jurisdiction. This study shows the advantages of the concept as well as the disadvantage. The advantages however outweighs the disadvantage. The major advantage of the concept is there it saves resources and time in trials, dislodging a bulk of the workload on the criminal justice system. It also grants the accused a certain level of flexibility and control as the plea bargaining is in reality a bargain.

The work also reviews the thought of various scholars on the concept. Alubo compares the concept of plea bargaining to a contract as the former as all the features of the latter which includes; offer, acceptance, consideration, legality and intention. This is view is complemented by that of Easterbrook who views the concept of plea bargaining as a "shadow market" where the both parties the prosecution and the accused enter into an agreement for there self-benefit in order to avert risk. The accused enters into a plea bargaining to reduce his punishment and save trail cost and time. The Prosecution also adopts the concept to save time and resources and in most cases reach finally as they do not always have enough evidence to convict the accused beyond reasonable doubt.

The various short-comings of the concept of plea bargaining is also highlighted. The wide discretionary power of the Prosecution is a major red-flag in the application of the concept. The prosecution may coerce and pressure the accused into accepting a non-favorable agreement even when he is innocent just because the prosecution is a haste to close a case. The prosecution can also do this to tie down the accused while the real perpetrator goes scot-free. The Prosecution may also enter into a plea bargain to provide a leeway for the accused, leading to the suppression of various key facts, evidence, charges and giving ridiculous sentencing recommendations. The accused persons can also see it as a leverage to commit crimes and have just little punishments. Alschuler believes it to be great injustice for two person's to commit the same crime and while one faces the appropriate sanction of the law the other gets just a pat on the back due to the application of plea bargain. Plea bargaining might encourage criminal activities due to its mild nature of punishment.

The study dives into the practice of the concept in various jurisdictions highlighting the myriad of angles from which the concept could be remolded and applied. The USA seems to adapt an offhand method as most crimes already as a measure of sentencing recommendations if the concept of plea bargain is applied. The judges in the USA takes a passive position thus, the plea bargaining is strict between the accused and the prosecution. The judge is unable to take steps independently to investigate the case or verify the facts presented in the plea bargain agreement. This essential limits the court in its dispensation of justice as. France and Italy only apply the concept to specific crimes for a measure of control. They also have a sentencing recommendation limit so as to ensure that the prosecution does not exercise it's power to recommend sentences indiscriminately. France in particular has a structure for plea bargaining involving two phases, the "sentence proposal" phase and the "approval hearing" phase. While China on the other hand adopts a system similar to the plea bargain concept called the "Leniency to Confession of Guilty and Punishment". The adoption of the concept was previewed with a two-years trial in eighteen cities. With over 80% of China's criminal cases resolved by the concept. This shows the benefit of having the concept of plea bargaining molded into one that fits each distinct jurisdiction .

This work also elucidates on the criminal justice system in Nigeria, it's components and lapses. It further went on to highlight the legislations that allows for the practice of plea bargaining in Nigeria. From the EFCC Act of 2004 which allows for the compounding of charges to the ACJL Lagos State ( ) which was the first act to formally introduce the concept of plea bargaining in Nigeria and laid the foundation for the ACJA 2015 which has been received by various states through their ACJL. .The study shows how the relevant laws on plea bargaining are exercised in Nigeria and also highlight the short-comings of these laws . From the work, it is clear that the concept of plea bargaining as not been well utilized as in other jurisdictions and it's practice as been boxed to cases involving the wealthy and powerful politicians in the country. Thus, defeating the very sole propose of the concept which is to reduce the workload, length of trials and resources expended in criminal justice system

5.2 RECOMMENDATION

- There should be a proper study of the Nigerian criminal justice system. One problem with most if the laws in Nigeria is that they are adopted from the laws of the England and other developed countries without a proper investigation as whether or not the law is needed and suitable for the jurisdiction. The concept of plea bargaining was adopted from the USA legal system without a proper study as to it's compatibility with the Nigerian jurisdiction.
- Based on the study there should be various recommendations targeted at the highlighted problems that the criminal justice system faces. Like in Italy and China, the concept can be remolded to suit the atmosphere of the Nigerian jurisdiction. An experiment should be

conducted on the efficiency and effectiveness of the various recommendations before they are passed into law.

- Plea bargaining should not be applied to cases involves money laundry and corruption by public-office holders. This victims of the these crimes are the general public who are not consulted before the agreement made. It also does not give room for transparency and accountability allowing the public-office holders to exert influence.
- The concept should be applied more in other criminal cases with appropriate exceptions to case like murder and rape. This is because of the sensitive nature of such cases.
- There should be a proper review and amendment to ensure that the power of the Prosecution is properly reduced and balanced by the judiciary. The immerse power of the Prosecution gives room for cohesion and corruption on there part.
- The prosecution has the power to accept or offer plea bargaining based on certain provisions of the law. First when the prosecution is unable to get sufficient evidence to pursue the conviction of the accused. However, it is important to note that the reason why the prosecution is unable to get sufficient evidence to prosecute a case is due to the lack of resources, technology and technical knowledge on the part of the police force which carries out investigation. Thus, it is important that the police force is well equipped and trained so as to avoid instances where the prosecution is forced to enter into a Plea bargaining to the advantage of the accused due to lack of evidence.
- The entire facts and concession made in a plea bargain should be know to the judge. This is to ensure that the accused is not pressured to accept the offer and also to prevent the concept from being used as a means for the bad guys to maneuver there way out of appropriate

punishment. The judiciary should also be free from executive influence and political appointment.

- In general there must be a fight against corruption. The plea bargaining is not to become a tool to assist corruption but instead a tool to aid the administration of criminal justice in Nigeria. There should be a proper check and investigation on the application of the powers of the prosecution and the discretion of the judges in accessing a plea bargain and adoption of recommended sentences.

5.3 CONCLUSION

The concept of plea bargaining as proven to be more of an advantage than a disadvantage to a criminal justice system in upholding justice. The justice being of such nature that is fast and cost effective. With a critical examination of the application of plea bargaining in the United States of America, France, Italy and China it is clear that for a country to achieve brilliant results in the application of plea bargaining the concept must be molded into a form that is suitable for that jurisdiction. The current provisions on plea bargaining in Nigeria are nor suitable for the jurisdiction as it instead breeds injustice. Thus, there most not only be a review of the laws on plea bargaining in Nigeria but also a repair of the lapses in the various organs of the criminal justice system in Nigeria. Only then can there be a dispensation of a fast and cost effective justice in the Nigerian criminal justice system.