

## UNDERSTANDING PLEA BARGAIN AS AN ALTERNATIVE DISPUTE RESOLUTION IN THE ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM IN NIGERIA\*

### Abstract

The use of Alternative Dispute Resolution mechanisms is mostly propagated in civil disputes. It is also a known fact that issues of crime cannot be amicably settled as the State has the sole discretion in determining who is to be prosecuted or not. Despite this fact, plea bargaining has emerged as a prominent mechanism within the criminal justice system, offering an alternative means of resolving criminal cases in Nigeria. This paper examines plea bargaining as an alternative dispute resolution method and its implications within the Nigerian legal framework. The paper adopted a doctrinal research method which encompasses a comprehensive review of relevant literature, statutes and case law, this paper looks at the public concerns about application of plea bargaining in Nigeria. This paper concluded that plea bargaining has demonstrated its value for expeditiously resolving criminal cases and alleviating the strain on court systems and incorporating a wider spectrum of ADR approaches, Nigeria can benefit from a more comprehensive and balanced approach to resolving disputes. The work recommended the amendment of the extent laws on plea bargaining to limit the courts involvement in the entire process.

**Keywords:** Plea Bargaining, ADR, Criminal Justice, Criminal Law. Nigeria

### 1. Introduction

Search for justice is as old as the existence of man on earth.<sup>1</sup> From the time of Hammurabi<sup>2</sup> till date, the quest for the best and most expedient way of attaining justice has been a major concern of men.<sup>3</sup> With growth of industries and urban development, new challenges in resolution of disputes and management of criminal activities have posed great danger to the existence of society.<sup>4</sup> With the rate of unemployment coupled with the solace of the internet to kill boredom, new criminal techniques and skills are learnt, the same way new mechanisms of resolving criminal matters must be developed.<sup>5</sup> Niki Tobi<sup>6</sup> criticized the justice system that the delay is scandalous and emphasized that, delay in civil trials is not as bad as in criminal matters because the liberty of the citizen is at stake. This necessitates the need for an alternative in the administration of criminal justice system in Nigeria. In Nigeria, it takes minimum average of three to ten years for a case to be tried and decided in courts of first instance.<sup>7</sup> In some instances, accused person spend over seven years before eventually discharged or discharged and acquitted for an offence leveled against him and some cases take up to fourteen to thirty-one years at the Supreme Court before being concluded.<sup>8</sup> To resolve this, plea bargain was established as a means of resolving criminal matters without conducting a full blown criminal trial in court.<sup>9</sup> Plea bargain has also been employed as a tool in the criminal justice system to manage the caseload of the court and prison decongestion.<sup>10</sup> It is against this backdrop that this research work examines plea bargain as an integral part of the broad and inclusive idea of the alternative dispute resolution in the administration of criminal justice system in Nigeria.

### 2. Conceptual Clarification

#### Plea Bargain

The origin of plea bargain can be traced back to the American legal system during the eighteenth century to address the shortcomings in full trials.<sup>11</sup> Initially, it was an informal practice, but it has gained acceptance within the Courts, it became firmly established in both Federal and State Criminal Procedure Rules. Plea bargain achieved its global

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<sup>1</sup> Shouvik, K. G, *Plato and his search for Justice* (2008) West Bengal National University of Juridical Sciences 14.

<sup>2</sup> Pearn, J, 'Hammurabi's Code: A Primary Datum in the Conjoined Professions of Medicine and Law' (2016) 84 (3) *Medico-Legal Journal* 125. Hammurabi is the 6<sup>th</sup> Amorite King of the Old Babylonian Empire and he reigned from 1792 to 1750 BC.

<sup>3</sup> Agaba, J.A, *Practical Approach to Criminal Litigation in Nigeria* (3<sup>rd</sup> ed, Emerald, Oyo State, Nigeria, 2015) 623

<sup>4</sup> Ibid, 622

<sup>5</sup> Ibid, 623

<sup>6</sup> Ibid

<sup>7</sup> *Aiguoreghian v. State* (2004), 3 NWLR (Pt. 860) 367.

<sup>8</sup> See the cases of *Aigureghian v State* (2004), 3 NWLR (Pt. 860) 367; *Ubani v State* (2003) 18 NWLR and *Oronti v Onigbajo* (2012) 12 NWLR (Pt 1313) 23.

<sup>9</sup> Nuhu M. I and Ansab B.Y, 'The Use of Alternative Dispute Resolution Mechanisms in the Criminal Justice System: An appraisal of Relevant Nigerian Laws' (2020) 3(1) *Bayero Journal of Private and Commercial Law*

<sup>10</sup> Ibid

<sup>11</sup> Usoro, P 'Plea Bargaining Under Nigerian Law' (2023) <[https://www.paulusoro.com/resources/plea-bargaining-under-nigerian-law/#\\_ftn4](https://www.paulusoro.com/resources/plea-bargaining-under-nigerian-law/#_ftn4)> accessed 05 October 2023

recognition in 1970 in the landmark case of *Brady v. United State*.<sup>12</sup> Plea bargain was formally introduced in Nigeria by Section 270 (1) of the Administration of Criminal Justice Act.<sup>13</sup> However, before the enactment of the Administration of the Criminal Justice Act, plea bargain was applied under section 14(2) of the Economic and Financial Crimes Commission Act.<sup>14</sup> The Act made an attempt at introducing the concept of plea bargain in Nigeria.<sup>15</sup> It was applied in several Nigerian cases under the Economic and Financial Crimes Commission Act, including those of Cecilia Ibru,<sup>16</sup> Tafa Balogun,<sup>17</sup> Igbinedion<sup>18</sup> and Alamiyeseigha.<sup>19</sup>

### **Alternative Dispute Resolution**

Alternative Dispute Resolution (ADR) is not a strange concept that has just been introduced in Nigeria. It is dated back to the pre-colonial period. Generally, ADR is all encompassing. It includes arbitration, mediation, negotiation, conciliation, mini trial, expert determination, early neutral evaluation, med-arb, ombudsman and other hybrid ADR processes.<sup>20</sup> Movement for modern Alternative Dispute Resolution began in the early sixties, when a lot of developed countries developed interest in the area.<sup>21</sup> In pursuit of the actualization of this new area of interest, several conferences were held by eminent jurists and lawyers. One of such conference was the Pound Conference held in Minnesota, USA in 1979, where leading jurists gathered to address the dissatisfaction with the justice system.<sup>22</sup>

### **3. Administration of Criminal Justice System in Nigeria**

The governance structure of Nigeria reflects principles similar to those found in the United States.<sup>23</sup> It has a republican system delineated into Executive, Legislative and Judicial branches. It also ensures a system of checks and balances which safeguard and regulate individual powers.<sup>24</sup> Meanwhile, the legal system operates under the framework of Nigeria federal and state criminal and civil law. Within this legal framework, the constitution serves as the groundnorm of the criminal justice system. It outlines the powers, jurisdiction and the composition of the courts and safeguards the rights of individuals, including the right to a fair trial<sup>25</sup> and protection against arbitrary detention.<sup>26</sup> The Criminal Justice system embodies the societal apparatus designed to uphold and enforce the standards of behavior vital for safeguarding individuals and communities.<sup>27</sup> It constitutes the collective efforts of society aimed at protecting itself from actions deemed criminal.<sup>28</sup> Additionally, it encompasses the cohesive integration of governmental mechanisms tasked with upholding the law and addressing criminal activities. These mechanisms encompass various entities such as law enforcement agencies responsible for crime prevention and control, notably the Police.<sup>29</sup> They also include the Chief Law Officer or Prosecutor responsible for legal proceedings,<sup>30</sup> the Judiciary tasked with the administration of justice, and the Prisons Services<sup>31</sup> involved in confinement and rehabilitation.

Nigeria criminal justice system involves a sequence of stages involving law enforcement agencies, the courts and correction of offenders. It begins with law enforcement agencies investigating suspected crimes and making arrests as mandated to maintain peace and uphold criminal laws.<sup>32</sup> Subsequently, the accused undergoes a court trial where innocence or guilt is determined. The system aims to protect innocent individuals and ensure justice for victims.<sup>33</sup>

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<sup>12</sup> 25 L.Ed., 2d 747(1970).

<sup>13</sup> Administration of Criminal Justice Act, Laws of Federation of Nigeria, 2020

<sup>14</sup> Economic and Financial Crimes Commission Act, CAP E15, Laws of Federation of Nigeria, 2020.

<sup>15</sup> Abifarin Olufemi, *The process and practice of Dispute Resolution and Arbitration in Nigeria* (Princeton and Associates Publishing Co. Ltd: Ikeja Lagos, 2021)

<sup>16</sup> *FRN vs Dr (Mrs) Cecilia Ibru* FHC/ABJ/CR/L/297/2009

<sup>17</sup> *FRN vs Tafa Balogun* FHC/ABJ/CR/14/2005

<sup>18</sup> *FRN vs Igbinedion* FHC/EN/68/2008

<sup>19</sup> *FRN vs DSP Alamiyeseigha (2006) 16 NWLR (Pt 1004) 1*

<sup>20</sup> Goldberg, Sander and Roger, *Dispute Resolution* (Little Brown & Co. Boston, USA: 1992), p. 21

<sup>21</sup> Kehinde, A., 'The Lagos Multi-Door Court House and the Judge: A New Beginning' (2004) 8 *MPJFIL* p.340

<sup>22</sup> Peters D., *Arbitration & Conciliation Act Companion* (Dee-Sage Nigeria Limited, Lagos, Nigeria: 2006), P.368

<sup>23</sup> Ayorinde, B. (2014). A reformatory approach to the criminal justice system in Nigeria

<<http://www.mondaq.com/x/293894/Public+Order+/A+Reformatory+Approach+To+>> accessed 20 December 2023

<sup>24</sup> Ugwuanyi, E. (2011). Nigeria's criminal justice system: Problems and challenges. <<https://www.elombah.com...id=9135:nigerias-criminal-justice-system-problems>> accessed 20 December 2023

<sup>25</sup> See Section 36(4) of the Constitution of federal Republic of Nigeria, 1999 as amended. CAP C 12 LFN 2020

<sup>26</sup> Section 35 Ibid

<sup>27</sup> The President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (United States Government Printing Office, Washington D. C., February, 1967), 7

<sup>28</sup> F. Adler, G.O.W. Mueller & W.S. Laufer, *Criminal Justice: An Introduction* (2ndEd, McGraw Hill Higher Education, 2000) 7

<sup>29</sup> Constitution of the Federal Republic of Nigeria 1999 (CFRN), s.21

<sup>30</sup> CFRN 1999, Sections 174 & 211

<sup>31</sup> Section 1 of the Correctional Service Act, 2022

<sup>32</sup> Nuhu M. I and Ansab B. Y., 'The Use of Alternative Dispute Resolution Mechanisms in the Criminal Justice System: An appraisal of Relevant Nigerian Laws' (2020) 3(1) *Bayero Journal of Private and Commercial Law*

<sup>33</sup> James, M. F 'Alternative Dispute resolution and the Ontario Court' (Paper presented at the International Bar Association Meeting in Lagos, 1995) 1.

The complexity of plea bargain can be overwhelming and intimidating for those unfamiliar with its intricacies. It is a tripartite arrangement between the prosecutor, defendant and the court. Despite this arrangement, the court is not bound by the agreement of the parties and can impose a higher punishment.<sup>34</sup> With the plea agreement, the prosecutor leads evidence to tender the agreement reached by the parties. These administrative inefficiencies at times hinder the system from effectively delivering justice.<sup>35</sup> In light of these challenges, plea bargain emerges as a potential alternative to the prevailing punitive system in Nigeria. With roots tracing back thousands of years, plea bargaining diverges from the traditional retributive justice model by prioritizing healing, rehabilitation and community involvement in resolving crimes. It draws on traditional and religious beliefs to emphasize repairing harm and seeking resolution outside the conventional criminal justice system.

#### 4. Is Plea Bargain an ADR in the Criminal Justice System?

ADR is the use of methods such as mediation, conciliation and Arbitration to resolve disputes without resulting to litigation.<sup>36</sup> ADR is recognized and restricted to civil suits.<sup>37</sup> Plea bargain in the administration of criminal justice system has been described as a variant of ADR.<sup>38</sup> It has also been described as an effective way of dealing with matters quickly and ensure that persons who are willing to either admit or plead guilty to a lighter offence or who based on the evidence can be tried for a smaller offence, this could be a way to reduce the number of persons who are in custody.<sup>39</sup> ADR in criminal justice system brings the accused and the victim together for restitution or compensation. ADR in criminal justice system will be to deal with criminal cases without the need to proceed to trial. Some of these schemes may additionally involve bringing together of victim and offender in an attempt to restore the harm done to the victim.<sup>40</sup> This also involves restitution. An example of restitution is to return looted sum in corruption trial. Plea bargain form part of trial in court, it must also be sanctioned by the court. ADR and plea bargain are not the same but are similar because they use the same method to achieve the same objective. Plea bargain is recognized in the criminal justice system as a tool of resolving criminal matters while, ADR has not gained legislative and judicial approval.

Although, ADR has not been accepted as a means of resolving criminal matters in Nigeria, it has been firmly rooted in the Nigeria's criminal justice system with the allowance of compounding of offences under the Penal Code Act in the Northern Nigeria. Certain offences under the Penal Code Act may be compounded with or without the leave of the court. These offences include Causing hurt,<sup>41</sup> Mischief,<sup>42</sup> Criminal trespass,<sup>43</sup> Defamation,<sup>44</sup> Adultery,<sup>45</sup> Criminal Intimidation,<sup>46</sup> and Grievous hurt without provocation.<sup>47</sup> While, the Criminal Code does not have any provision on compounding of offences. In fact, the Criminal code criminalizes compounding of offences.<sup>48</sup> Be that as it may, the partial applicability of compounding of offences as alternative to settling criminal matters in Nigeria is not ADR neither does plea bargain substantively mean ADR though it operates and carries similar features of ADR.<sup>49</sup> Firstly, plea bargain occurs at the pretrial session as is often the case in ADR which usually occur at the early stage within the mainstream judicial system.<sup>50</sup> Secondly, the plea bargain is a confidential procedure similar to the forms of ADR. High level of confidentiality is maintained in the process so that the defendant can speak his mind without any apprehension of threat or danger.<sup>51</sup> Thirdly, plea bargain ensures fast approach since it reduces the time required for

<sup>34</sup> Section 270(4) b and 270(11) a-c of the Administration of Criminal Justice Act, 2015 LFN 2020

<sup>35</sup> Shankar, U. & Mishra, V. (2008). Exploring viability of introducing ADR in criminal law. *Journal of Alternative Dispute Resolution*, 7(3), 37-48.

<sup>36</sup> Aboki, Y, *Introduction to Legal Research Methodology (2<sup>nd</sup> Ed Tamaza Publishing Company Limited, Wusasa, Zaria 2009)* 2-3

<sup>37</sup> *BJ Exports & Chemical Processing Co v Kaduna Bassey Andah* (2003) FWLR (pt.165) 445 at 465; 2003, 24 WRN 74)

<sup>38</sup> Abifarin, O, *The process and practice of Dispute Resolution and Arbitration in Nigeria* (Princeton & Associates Publishing Co. Ltd: Ikeja Lagos)

<sup>39</sup> Ibid

<sup>40</sup> Ibid.

<sup>41</sup> Sections 244, 246 of the Penal Code Act

<sup>42</sup> Section 327, 328

<sup>43</sup> Sections 348, 349

<sup>44</sup> Section 392

<sup>45</sup> Section 387, 388

<sup>46</sup> Section 397

<sup>47</sup> Section 245

<sup>48</sup> Section 127 of the Criminal Code

<sup>49</sup> Abifarin, Olufemi, *The process and practice of Dispute Resolution and Arbitration in Nigeria* (Princeton & Associates Publishing Co. Ltd: Ikeja Lagos)

<sup>50</sup> Mwangi W, *Conflict in Africa, Theory, Processes and Institutions of Management*, (Centre for Conflict Research, Nairobi, 2006) 115.

<sup>51</sup> Ladan, M.T. 'Alternative Dispute Resolution in Nigeria, Benefits, Processes and Enforcement in Current Themes in Nigeria Law' (1998) *ILARN*, 249

the trials as the accused pleads guilty to the charges earlier than a normal trial.<sup>52</sup> Fourthly, in a country like India where the societal status is of a great significance, the person against severe charges are instituted, social stigmatization comes as a major repercussion of it. In such a case, a lesser charge or a lesser sentence on the accused can be of some relief to his family and the accused since it may comparatively reduce the burden of societal stigma on the parties.<sup>53</sup>

The implementation of plea bargain as an alternative dispute resolution could have a significant impact on the administration of criminal justice system by shifting focus from punitive measures to a more inclusive and community-driven approach by involving victims, offenders and affected community members.<sup>54</sup> Plea bargain seeks to restore relationships, address harm, promote accountability and offers an alternative to imprisonment and prosecution. Its promising outcomes include reduced recidivism rates and positive rehabilitation for both offenders and victims.<sup>55</sup> Plea bargain has potential benefits of reducing court backlog, avoiding rigours of lengthy trials, speedy dispensation of justice and saves resources.<sup>56</sup> In Nigeria, plea bargain has emerged as an alternative dispute resolution employed in the administration of criminal justice system although this position has not gained legislative and judicial approval. However, there is a growing perspective<sup>57</sup> that emphasizes the need to foster and integrate other complementary alternative mechanisms such as Victim Offender Mediation, Victim Offender Panel, Sentencing Circles, Community Dispute Resolution Programme etc in plea bargain process to make it a full-fledged alternative to the administration of criminal justice system in Nigeria. This proposition stems from the belief that introducing more alternatives can contribute significant improvements in Nigeria's criminal justice system.<sup>58</sup>

### **5. Concerns about Plea Bargain**

Despite these benefits, plea bargain also raises significant concerns. One of the concerns about plea bargaining in Nigeria is the restriction of the practice by the Economic and Financial Crimes Commission (EFCC) on corruption and advanced fee fraud related offences. Plea bargaining has gained popularity in Nigeria, primarily through Section 14(2) of the Economic and Financial Crimes Commission Act,<sup>59</sup> but there appears to be a link between plea bargaining with corruption cases and advanced fee fraud related offences only. This has led to a somewhat emotional and one-sided condemnation of plea bargaining in Nigeria. It is essential to recognize that plea bargaining is a fundamental tool for case management within the criminal justice system.<sup>60</sup> There is no legal basis to restrict the application of plea bargain to corruption cases and advanced fee fraud related offences only.<sup>61</sup> Similarly, plea bargaining can be effectively employed in various types of criminal cases, not just those related to corruption but for less serious offences that may not warrant the allocation of state resources for their prosecution such as tax disputes, assault and theft. At the same, plea bargain should not be applied to serious offences such as rape, homicide, armed robbery and other more serious offences to uphold the core values of the criminal justice system. Therefore, it is essential to view plea bargain as a valuable tool in the criminal justice system, capable of serving the interests of justice in various types of cases.

Another major concern is that the rich and influential members of the society benefit more from plea bargains. Plea bargain has been seriously criticized of benefitting offenders who are rich and influential members of the society.<sup>62</sup> For instance, if the prosecution is not willing to bargain in less serious offences, the implication is that the offender will be sentenced to years of imprisonment while a rich man who embezzles millions of naira receives a plea bargaining agreement with a lighter sentence.<sup>63</sup> This criticism stems out of believe that the Economic and Financial

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<sup>52</sup> Chinwe, A. M, 'The Use of Plea bargain in Nigeria Criminal Law' (2018) 9(2) *BLR*

<sup>53</sup> Poddar, N. 'Lok Adalat: India's Alternative Dispute Resolution Mechanisms' <[www.globalpound.org/2017/05/04/](http://www.globalpound.org/2017/05/04/)> accessed on 1 February 2024

<sup>54</sup> James, M. F 'Alternative Dispute resolution and the Ontario Court' (Paper presented at the International Bar Association Meeting in Lagos, 1995) 1.

<sup>55</sup> Lester, B. J. (2005). System failure: The case for supplanting negotiation with mediation in plea bargaining. *Ohio State Journal on Dispute Resolution*, 20(2), 563-595. <<https://search-ebscohost-com.ezp.waldenulibrary.org/login.aspx?>> accessed 1 February 2024

<sup>56</sup> Ayinla, L.A, Olushola G.H and B.A Ahmad, 'Applicability of Alternative Dispute Resolution and Plea Bargaining in the Nigerian Criminal Justice System' (2014) 2(2) *Africa Nazarene University Law Journal* 183

<sup>57</sup> Ayinla, L.A, Olushola G.H and B.A Ahmad, 'Applicability of Alternative Dispute Resolution and Plea Bargaining in the Nigerian Criminal Justice System' (2014) 2(2) *Africa Nazarene University Law Journal* 188

<sup>58</sup> Ibid

<sup>59</sup> Section 14(2) of the Economic and Financial Crimes Commission Act, 2004

<sup>60</sup> Kalu, K.U, 'Speedy Dispensation of Justice through Effective Case Management in Nigeria.' <[www.nigerianlawguru.com.pdf](http://www.nigerianlawguru.com.pdf)> accessed 19 October 2023

<sup>61</sup> Section 14(2) of the Economic and Financial Crimes Commission Act, 2004

<sup>62</sup> Eze, T.C and Eze, A. G. 'A Critical Appraisal of The Concept of Plea Bargaining In Criminal Justice Delivery In Nigeria' (2015)3(4) *Global Journal of Politics and Law Research*. 31-43

<sup>63</sup> Agaba, J.A Practical Approach to Criminal Litigation in Nigeria (Emerald, Oyo State, Nigeria, 2015) 647

Crimes Commission prosecute majorly the rich and politically exposed members of the society.<sup>64</sup> Although, there is no specific legal limitation preventing the application of plea bargain to the poor offenders but the practice favours the rich than the poor. The law does not discriminate based on an individual's wealth or social status and the police officers, law officers and other prosecutors have the authority to engage in plea bargains as part of their prosecutorial powers.<sup>65</sup> Plea bargains must be sanctioned by the court and it is necessary for the implementation of a plea agreement. Plea agreement encompasses the sentence to be imposed by the court, therefore it must be sanctioned by the court.<sup>66</sup> The court has the discretion to determine the appropriate sentence after a conviction in a criminal case.<sup>67</sup> This plays a fundamental role in approving and implementing the terms of the plea agreement.

Despite the controlled nature of plea bargaining, the prosecution may exert undue pressure on the accused to secure a guilty plea.<sup>68</sup> Defendants might feel compelled to admit guilt to avoid the uncertainty and risks associated with a criminal trial.<sup>69</sup> This raises ethical, moral and fairness issues, as guilty pleas should ideally be voluntary and informed decisions.<sup>70</sup> If an innocent person pleads guilty to a crime he did not commit, he might face unjust penalties such as fines, imprisonment and a permanent criminal record. These consequences affect the fundamental human rights of the defendants and constitute a grave concern for the pursuit of justice.<sup>71</sup> Another concern is the use of plea bargaining to the advantage of the prosecutors in cases where there is insufficient evidence to establish the guilt of the defendants. In such situations, the prosecution can secure a conviction without having to present a strong case in court because once a defendant pleads guilty to a crime or charges against, it effectively ends the trial.<sup>72</sup> This can lead to the abuse of the system, where convictions are secured without meeting the required burden of proof required in criminal trials.<sup>73</sup> Furthermore, the prevalence of plea bargaining can inadvertently encourage inadequate investigations and lackluster legal defences.<sup>74</sup> When the focus shifts from a thorough examination of the evidence in court to the negotiation table, there may be no reason for police to conduct rigorous investigations and for defence counsel to prepare robust cases for trial.<sup>75</sup> This could lead to injustices and hinder the search for truth in the legal process.

## 6. Legal Framework for the Recognition of Plea Bargain as ADR

The recognition and utilization of plea bargain as a form of ADR have evolved over time within the Nigerian legal system. A number of legal frameworks that recognizes plea bargain as a form of alternative means of resolving criminal cases have been identified which includes the Administration of Criminal Justice Act and the Economic and Financial Crimes Commission (Establishment) Act. For the avoidance of doubt, the relevant provisions are as follows:

- i. Section 14(2)<sup>76</sup> of the Economic and Financial Crimes Commission (Establishment) Act, provides as follows:

Subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria 1999 as amended (which relates to the power of the Attorney-General of the Federation to institute, continue, takeover or discontinue criminal proceedings against any person in any court of law), the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, exceeding the maximum amount to which that person would have been liable of if he had been convicted of that offence.

In light of the aforementioned provision, several cases prosecuted by the Economic and Financial Crimes Commission (EFCC) were resolved or adjudicated through plea bargain agreements. Notable among these cases is *FRN v. Tafa Balogun*,<sup>77</sup> wherein Tafa Balogun faced charges related to approximately ₦13 billion acquired through money

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<sup>64</sup>Tope L, 'The Legality of the Use of Plea Bargain in the Nigerian Criminal Justice System' <<https://www.topeadebayollp.com/insights/display/26/THE-LEGALITY-OF-THE-USE-OF-PLEA-BARGAIN-IN-THE-NIGERIA-CRIMINAL-JUSTICESYSTEM#:~:text=Plea%20bargain%20gained%20notoriety%20in%20Nigeria%20when%20it,Nzeribe%20Okoli%20who%20had%20defrauded%20a%20Brazilian%20bank>> accessed 2 August 2022

<sup>65</sup> Section 270(1) (a) of the Administration of Criminal Justice Act, Laws of Federation of Nigeria, 2020

<sup>66</sup> Akeem, O.B 'Plea Bargaining in the Prosecution of Complex Crimes' (Paper Presented at the West African Regional Workshop on Plea Bargaining held at Le Meriden Hotel, Abuja, 2007)

<sup>67</sup>Section 270(10)-(15) of the Administration of Criminal Justice Act, Laws of Federation of Nigeria, 2020

<sup>68</sup> Akinpelu A.S, 'Plea Bargaining In Criminal Prosecution' <[www.acedemia.edu](http://www.acedemia.edu)>accessed 19 October 2023

<sup>69</sup> Chinwe A. M, 'The Use of Plea bargain in Nigeria Criminal Law' (2018) 9(2) *BLR* 153-161

<sup>70</sup> *Miranda v. Arizona*, 384 US 436 (1966)

<sup>71</sup> Okwori, N.A, *Plea Bargaining: A Trial Procedure that Negates Fundamental Rights of the Accused* (SAGE Publication, 2010)

<sup>72</sup> Chinwe, A. M, 'The Use of Plea bargain in Nigeria Criminal Law' (2018) 9(2) *BLR* 153-161

<sup>73</sup> Okwori, N.A, *Plea Bargaining: A Trial Procedure that Negates Fundamental Rights of the Accused* (SAGE Publication, 2010)

<sup>74</sup> *Ibid*

<sup>75</sup> *Leaders & Co. Ltd vs Bamaiyi* (2010) 18 N.W.L.R. (Pt. 1225) 329, 340 @ PARAS A-B Fabiyi, J.S.C

<sup>76</sup> Section 14(2) of the Economic and Financial Crimes Commission (Establishment) Act 2006

<sup>77</sup> Mr. Tafa Balogun forfeited a total of 15 accounts held at Spring Bank. Among these, four accounts had a balance of zero. The cumulative balance across the remaining 11 accounts as of January 2005 amounted to ₦1,226,518,163.09. Additionally, seven treasury bills/commercial papers held in the same bank had a combined balance of ₦1,017,178,719.42. When these two sums were

laundering and theft. The EFCC filed suit No. FHC/ABJ/CR/14/2005 against Tafa Balogun, encompassing 70 charges spanning the period from 2002 to 2004. Subsequently, Tafa Balogun engaged in plea bargain negotiations with the court, agreeing to return a significant portion of the assets and funds in exchange for leniency. As a result, the charges were consolidated into eight counts, and Tafa Balogun, the former Inspector General of Police (IGP), received a concurrent six-month prison sentence for each count, along with a ₦500,000.00 fine per count. Other instances of plea bargain resolutions include *FRN v. Cecilia Ibru*,<sup>78</sup> The former Managing Director/CEO of Oceanic Bank, accused of financial crimes, was brought before the Federal High Court in Lagos on a 25-count charge. Allegedly, 70% of the ₦278 billion non-performing loans (NPLs) that contributed to the bank's financial distress were linked to Mrs. Ibru and her immediate family members. Utilizing various entities and individuals, including Oceanic Homes Savings & Loans Limited, certain professional advisors, her son, daughter, son's nanny, and daughter-in-law, Mrs. Ibru allegedly acquired and obscured ownership of assets, including shares in companies and numerous high-value real properties in Nigeria and abroad. Mrs. Ibru opted to plead guilty to a less severe charge through a plea bargain arrangement. As a result, she received a sentence of six months' imprisonment and a fine. Furthermore, she forfeited 199 assets located worldwide, particularly in the United States, Nigeria, Europe, and the Middle East, along with shares valued at over ₦190 billion (equivalent to over US\$1.5 billion). Had she been convicted on the more serious charges, the consequences would likely have been more severe.

In *FRN v. Alameyeseigha*<sup>79</sup> On or about July 25, 2007, Alameyeseigha entered a guilty plea as to six counts of knowingly making a false declaration by omitting to declare his interest in real properties in Nigeria and South Africa and the aforementioned "Peter Alameyeseigha" Bank of America account in the United States. The trial court convicted Alameyeseigha on or about July 26, 2007, imposing a sentence of two years imprisonment and forfeiture of the property involved in the offences for which he was convicted. On or about July 25, 2007, Alameyeseigha entered into a plea agreement on behalf of his corporation, S & P and Santolina, entering a guilty plea to four counts of money laundering by S&P and a guilty plea to fifteen counts of money laundering by Santolina. On or about July 26, 2007, the trial court convicted S&P, Santolina, and other corporate entities of money laundering and ordered the companies to be wound up. The trial court also ordered the forfeiture of real estate located in Nigeria and three properties held in the name of S&P in London. In addition, the trial court ordered the forfeiture of sums of monies totaling more than \$3,700,000. On 9th July, 2009, the total sum of ₦3, 128,230,294.83 realized from the assets was remitted to the Federal Government through the Federal Ministry of Finance in favour of Bayelsa State. A summary of the assets recovered from DSP Alameyeseigha are as follows: (i) Sales of 5 real estate ₦1,982,915,352.22 (ii) Recovery from Bond Bank ₦1,000,000,000.00 (iii) Legacy Bond recoveries ₦105,314,942.61 (iv) Proceeds from Chelsea Mgt ₦40,000,000.00 (v) proceeds from rent collection ₦60,000,000.00 (vi) Pesal Nig. Ltd bank account ₦ 97,708,387.64 other recoveries are (vii) USA Treasury Cheques \$215,000.00 (viii) Chelsea Hotel Management \$226,000.00 (ix) Chelsea Hotel Management £7,000.00 (x) Chelsea Hotel Management £2,000.00 (xi) Two properties were returned directly to Bayelsa State i.e. Chelsea Hotel and No. 2 Marscibit Street, Ishaku Rabi, Wuse II Abuja. Also in the case of *FRN v. Igbinedion*,<sup>80</sup> Lucky Igbinedion, a former Governor of Edo State, whose 191 counts charge was reduced to one count charge of corruption and after plea bargaining was sentenced to a mere six months imprisonment with option of three million five hundred thousand naira fine. These cases are among cases where plea bargain has been applied in Nigeria.

- ii. Section 270 of the Administration of Criminal Justice Act, 2015 also equally provides for plea bargaining. The provision states as follows:
  - a. 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;
    - (c) 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 process, he may offer or accept the plea bargain.

The aforementioned section permits the prosecutor and the defendant to reach an agreement regarding the recommended sentence for the charged offense or for pleading to a lesser offense. It mandates that the prosecutor must consult with the Investigating Police Officer and the victim, who has the right to provide input on the agreement. Several factors are taken into account when entering a plea bargain agreement, including the defendant's cooperation

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combined, the total reached ₦2,243,696,882.51. After factoring in accrued interest of ₦14,403,634.36, the final figure amounted to ₦2,258,100,516.87.

<sup>78</sup> Federal Republic of Nigeria v. Dr (Mrs) Cecilia Ibru, Charge FHC/L.297C/2009, See also K Oladele, 'Plea bargaining and the criminal justice system in Nigeria' (<http://www.vanguardngr.com> 14th October 2010) <http://www.vanguardngr.com/2010/10/plea-bargaining-and-the-criminal-justice-system-in-nigeria/> Accessed on 4 February 2024

<sup>79</sup> (2006) 16 NWLR PART 1004 PAGE 41

<sup>80</sup> *FRN v Igbinedion & ors* [2014] LPELR-22760CA

in the investigation and prosecution of others, the defendant's criminal record, remorse for the offense committed, expeditious resolution of the case considering trial costs and impact on witnesses, potential appeals, the likelihood of obtaining a conviction and the importance of avoiding delays. The defendant's willingness to compensate the crime victim is also given due consideration. The terms of the plea bargain are then documented in writing, and the Presiding Judge is informed accordingly. The defendant is then asked to confirm voluntarily and without undue influence that they entered into the plea bargain agreement.<sup>81</sup>

Notwithstanding these provisions above, Plea bargains are not automatically granted; specific conditions must be met before a Defendant can avail themselves of plea bargaining. According to Section 270 (2) of the Administration of Criminal Justice Act (ACJA), the prosecution may engage in plea bargaining with the defendant, provided the following conditions are met:

- i. Insufficiency of Prosecution Evidence: The prosecution evidence must be inadequate to prove the offense charged beyond reasonable doubt.
- ii. Restitution or Return of Proceeds: The defendant agrees to return the proceeds of the crime or make restitution to the victim or their representative.
- iii. Cooperation in Conspiracy Cases: In cases of conspiracy, the defendant must fully cooperate with the investigation and prosecution by providing relevant information for the successful prosecution of other offenders.

Also noteworthy is that Plea bargaining under the ACJA must occur before or during trial, but prior to the presentation of the defense evidence.<sup>82</sup> Regarding sentencing in plea bargaining cases, upon conviction, the court will consider the agreed sentence. If satisfied, the court may impose the agreed or a lesser sentence. However, the defendant must be informed and elect to abide by the plea of guilt notwithstanding such sentence.<sup>83</sup> It is important to note that the court retains discretion to impose punishment provided by law on a convict. Nevertheless, the court can order parties to proceed to trial and deviate from a plea agreement if it is not convinced that the defendant can be convicted based on the agreement,<sup>84</sup> if the defendant withdraws from the plea agreement in the case of a heavier sentence,<sup>85</sup> or if the defendant's plea was involuntary.<sup>86</sup>

It is however noteworthy that despite this seeming acceptance and statutory provisions on Plea bargaining in our criminal justice administration, judges play a pivotal role in overseeing the process, ensuring fairness, and ultimately determining whether to accept or reject plea agreements. Thus, unlike other forms of alternative dispute resolution, a plea bargain agreement between the prosecution and defendants in a criminal trial cannot be enforced or completed without the input of the judge. This singular involvement disqualifies plea bargaining from being considered as a form of Alternative Dispute Resolution. Recently, the Arbitration and Mediation Act, 2023<sup>87</sup> was passed into law and it also failed to make any mention or provision for plea bargaining in Nigeria or the application of the said Act in the administration of criminal justice system in Nigeria. In fact, the Arbitration and Mediation Act, 2023 is curiously limited to civil disputes.<sup>88</sup> The true intendment of Alternative Dispute Resolution is to arrive at a peaceful settlement between the parties outside the intervention and input of the courts. Therefore, the plea bargain system as practiced in Nigeria is still hooked on the litigation process.

## **7. Conclusion**

Plea bargaining has demonstrated its value for expeditiously resolving criminal cases and alleviating the pressure on court systems, its exclusive reliance may have limitations and drawbacks. With the incorporation of ADR mechanisms and other approaches like Victim Offender Mediation, Victim Offender Panel, Sentencing Circles, and Community Dispute Resolution Programme, Nigeria can benefit from a more comprehensive and balanced approach to resolving disputes. It will also address certain shortcomings associated with plea bargaining. These alternative avenues provide opportunities for active involvement of all parties, including victims, offenders, and community representatives and it fosters a more inclusive and participatory approach to justice. The evolution of plea bargaining in Nigeria, framed within the broader context of ADR, reflects a response to challenges such as court congestion, resource constraints, and the need for efficient case resolution. The mechanics of plea bargaining, including initiation, negotiation, and judicial approval, demonstrate a departure from traditional adversarial processes, emphasizing a collaborative approach between prosecution and defense. While plea bargaining offers several advantages, such as expedited resolutions and resource efficiency, it is not without its share of criticisms, including concerns about coercion and transparency of the process. It is thus recommended that an amendment to the extant laws is necessary to correct this aberration. The Administration of Criminal Justice Act, 2015 which is the roadmap for the Criminal Justice Laws of most states should be amended to remove the present involvement of the court in the entire process of plea bargaining. It is also recommended that the Arbitration and Mediation Act, 2023 be further amended to accommodate attempts at alternative dispute resolution of disputes of a criminal nature.

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<sup>81</sup> See Section 270(3)-(18) of the Administration of Criminal Justice Act, 2015

<sup>82</sup> Ibid, Section 270 (2)

<sup>83</sup> Ibid, Section 270(11)

<sup>84</sup> Ibid, Section 270 (10) (b)

<sup>85</sup> Ibid, Section. 270(11)

<sup>86</sup> Ibid, Section 270 (10)

<sup>87</sup> Arbitration and Mediation Act, 2023 was passed on 23<sup>rd</sup> May, 2023

<sup>88</sup> The Arbitration and Mediation Act, 2023 in its Explanatory memorandum limited its application to commercial disputes.