LEGAL FRAMEWORKS, MERITS AND DEMERITS OF PLEA BARGAINING AS ALTERNATIVE MECHANISM FOR RESOLVING CRIMINAL DISPUTES IN NIGERIA

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ABSTRACT

The objective of every criminal justice system is to maintain law and order, ensure that offenders are brought to justice, while the rights of the accused and interests of society are all safeguarded. Over the years, Nigeria adopted full adversarial trials in which the prosecution was required to prove the guilt of the accused beyond reasonable doubt. Currently, the rapid increase in criminal cases, chronic congestion of courts, prolonged pre-trial detention, overcrowded correctional centres, and the constitutional imperative of speedy justice have necessitated the introduction of alternative mechanisms such as plea bargaining for resolving criminal disputes. This review paper examined the historical background, legal frameworks, merits and demerits of plea bargaining which has become statutorily recognized under the Administration of Criminal Justice Act 2015 and analogous state laws. The paper appreciates that plea bargaining provides an effective mechanism for reducing court congestion, promoting speedy trials, minimizing litigation costs, and recovering proceeds of crime. However, concerns were also expressed about unequal application, the imposition of lenient punishments for serious offences, and the possibility of abuse by influential offenders. It was thus recommended that for plea bargaining to achieve its intended objectives in Nigeria, prosecutors must exercise their discretion transparently and accountably, while courts must subject every agreement to rigorous scrutiny. Furthermore, similar cases must receive similar treatment irrespective of the social status or political connections of the accused. Conclusively, institutional safeguards and robust judicial oversight must be put in place for plea bargaining to contribute to a criminal justice system that is not only efficient but also substantively just.

Key words: crime, criminal justice system, correctional centers, laws, plea bargain, Nigeria

INTRODUCTION

The primary objective of every criminal justice system is to maintain law and order by ensuring that offenders are brought to justice while simultaneously protecting the rights of the accused and safeguarding the interests of society (Akinseye-George, 2020). Traditionally, criminal cases in Nigeria were determined through full adversarial trials in which the prosecution was required to prove the guilt of the accused beyond reasonable doubt (Okonkwo &Naish, 2010). However, the rapid increase in criminal cases, chronic congestion of courts, prolonged pre-trial detention, overcrowded correctional centres, and the constitutional imperative of speedy justice have necessitated the adoption of alternative mechanisms for resolving criminal disputes (Administration of Criminal Justice Act, 2015, s. 270; Egwu, 2018).

One such mechanism is plea bargaining, which allows an accused person to plead guilty to a criminal charge in exchange for specific concessions from the prosecution (Siegel, 2018). Although plea bargaining has become an accepted feature of modern criminal justice administration in Nigeria, it remains one of the most controversial aspects of criminal procedure (Aguda, 2016). While proponents argue that it promotes efficiency, speedy justice, and asset recovery, critics contend that it often enables influential offenders to escape proportionate punishment and undermines public confidence in the administration of justice (Alemika &Chukwuma, 2005; Oko, 2012).

This paper critically examines the concept of plea bargaining in the Nigerian criminal justice system by discussing its historical development, conceptual meaning, legal framework, merits, demerits, and its relationship with sociological theory, before offering a critical analysis and recommendations for reform.

CONCEPTUAL CLARIFICATION AND NATURE OF PLEA BARGAINING

Plea bargaining is a negotiated agreement between the prosecution and an accused person whereby the accused voluntarily agrees to plead guilty to a criminal offence in exchange for specific concessions from the prosecution (Siegel, 2018). Such concessions may include a reduction in the number of charges, a reduction in the severity of the offence charged, a recommendation for a lighter sentence, restitution or compensation to victims, or the forfeiture of proceeds or instruments of crime (Administration of Criminal Justice Act, 2015, s. 270; Aguda, 2016). Unlike an ordinary guilty plea, which is a unilateral admission of guilt, plea bargaining involves bilateral negotiations between the parties and must receive the approval of the court before becoming effective (Akinseye-George, 2020; McConville, 1998).

It is important to distinguish plea bargaining from related but distinct concepts. First, compounding of offences, governed by Section 494 of the Criminal Procedure Act and Section 355 of the Criminal Procedure Code, allows certain offences to be settled with the consent of the court and the victim, but it traditionally applies to less serious misdemeanours and does not necessarily involve the structured negotiation characteristic of plea bargaining (Criminal Procedure Act, 1945, s. 494; Criminal Procedure Code, 1960, s. 355). Second, a nolleprosequi, which is the discretionary power of the Attorney-General to discontinue criminal proceedings, does not require the consent of the accused and does not involve any admission of guilt (Constitution of the Federal Republic of Nigeria, 1999, s. 174). Plea bargaining, by contrast, requires the affirmative participation of the accused, the prosecution, and the judiciary.

HISTORICAL DEVELOPMENT OF PLEA BARGAINING

Historically, the practice of plea bargaining originated in the United States of America during the nineteenth century. Initially, it operated as an informal arrangement between prosecutors and defendants aimed at reducing delays in criminal trials and easing the workload of an increasingly burdened judiciary (Alschuler, 1979; Fisher, 2003). Over time, American courts recognized and gradually legalized the practice, transforming it into a central component of the criminal justice system. By the mid-twentieth century, plea bargaining accounted for the resolution of approximately ninety percent of criminal cases in the United States, prompting extensive academic and judicial debate regarding its legitimacy (Alschuler, 1979; McConville, 1998).

The practice subsequently spread to other common law jurisdictions, including Canada, England and Wales, Australia, and South Africa, each adapting the mechanism to its local legal and socio-political context (McConville, 1998; van ZylSmit, 2010). In South Africa, for instance, plea bargaining was formally incorporated into the Criminal Procedure Act 1977, providing a statutory template that later influenced criminal justice reforms in Nigeria (van ZylSmit, 2010).

In Nigeria, plea bargaining first gained public prominence through the prosecution of high-profile corruption and financial crimes prosecuted by the Economic and Financial Crimes Commission (EFCC). Prior to 2007, there existed no comprehensive statutory framework governing plea bargaining at either the federal or state level. Consequently, the EFCC relied on Section 14(2) of the Economic and Financial Crimes Commission (Establishment) Act 2004, which empowered the Commission to compound offences under specified conditions (Economic and Financial Crimes Commission Act, 2004, s. 14(2)). This provision effectively allowed the EFCC to negotiate settlements with accused persons in exchange for the restitution of stolen assets and reduced charges.

One of the earliest and most prominent plea bargain cases in Nigeria was Federal Republic of Nigeria v. Tafa Balogun (2005). Tafa Balogun, the former Inspector-General of Police, pleaded guilty to corruption charges involving the misappropriation of billions of naira. As part of the plea agreement, he forfeited numerous assets to the federal government and received a significantly reduced prison sentence compared to the penalties prescribed for the offences charged (Human Rights Watch, 2011; Oko, 2012). The case generated widespread public debate, with many Nigerians arguing that the negotiated punishment was disproportionately lenient relative to the magnitude of the offence and the public harm caused (Alemika & Chukwuma, 2005).

To provide a more structured legal framework for plea bargaining, the Administration of Criminal Justice Law (ACJL) of Lagos State 2007 expressly recognized the practice, particularly under Sections 75 and 76, which outline the procedure for accepting guilty pleas and the power of the Attorney-General to compound offences (Administration of Criminal Justice Law of Lagos State, 2007, ss. 75-76). Subsequently, the Administration of Criminal Justice Act (ACJA) 2015, particularly Section 270, formally incorporated plea bargaining into federal criminal procedure and established the conditions under which it may be applied (Administration of Criminal Justice Act, 2015, s. 270).

A more contemporary illustration is Anambra State Government v. Chidozie Nwangwu (popularly known as Akwa Okuko Tiwara Aki), decided by the High Court of Anambra State in 2024. Chidozie Nwangwu was prosecuted by the Anambra State Government on charges relating to promoting money rituals and offences under the Anambra Homeland Security Law. During the proceedings, he entered into a plea bargain with the prosecution and pleaded guilty to some of the charges. The High Court accepted the plea agreement and sentenced him to terms of imprisonment running concurrently, alongside the imposition of financial penalties and other regulatory conditions (Anambra State Government v. Chidozie Nwangwu, 2024). This case demonstrates that plea bargaining has expanded beyond traditional corruption cases and is increasingly being applied across diverse categories of criminal offences within Nigeria.

THEORETICAL FRAMEWORK: CONFLICT THEORY

The concept of plea bargaining can be most effectively explained through the lens of Conflict Theory, a sociological perspective most closely associated with Karl Marx and subsequently developed by critical criminologists such as Richard Quinney, William Chambliss, and Austin Turk (Marx & Engels, 1848/2002; Quinney, 1970; Turk, 1969). Conflict Theory posits that criminal law is not a neutral or consensual instrument reflecting universal societal values; rather, it is a tool of the dominant economic class designed to protect its interests and maintain the existing social order (Marx & Engels, 1848/2002; Chambliss, 1964).

According to Marx, the superstructure of law, politics, and ideology is determined by the economic base of society. In capitalist societies, the bourgeoisie uses the legal system to legitimize and enforce norms that protect private property and economic privilege, while the proletariat is subjected to criminalization and punitive control (Marx & Engels, 1848/2002). Extending this logic, critical criminologists argue that the criminal justice system operates selectively, applying leniency to powerful offenders while imposing harsh sanctions on the poor and marginalized (Quinney, 1970; Reiman, 2017). Chambliss (1964), in his seminal study of vagrancy laws, demonstrated how laws are historically constructed to control the behaviour of the lower classes rather than to address genuine threats to social welfare.

Conflict Theory provides a powerful explanatory framework for understanding the controversies surrounding plea bargaining in Nigeria. Several high-profile public officials accused of grand corruption have successfully negotiated lighter punishments after returning a fraction of stolen assets, while ordinary offenders accused of less serious crimes--such as petty theft or street-level drug offences--frequently undergo full criminal trials and receive severe sentences (Alemika & Chukwuma, 2005; Oko, 2012). The plea bargain involving TafaBalogun attracted sustained criticism because many Nigerians perceived that the negotiated sentence did not adequately reflect the gravity of the offence or the breach of public trust involved (Human Rights Watch, 2011). Similarly, although the Akwa Okuko Tiwara Aki case demonstrated the procedural utility of plea bargaining in achieving a speedy conviction, it also generated public debate over whether negotiated sentences sufficiently deter similar offences or merely allow affluent defendants to purchase leniency.

From the perspective of Conflict Theory, such cases suggest that access to plea bargaining may depend less on the intrinsic merits of the case and more on the defendant's social status, political influence, and bargaining power (Reiman, 2017). Wealthy defendants can afford experienced legal counsel who possesses the expertise and social capital to negotiate favourable terms with prosecutors, whereas indigent defendants often lack comparable representation and may feel pressured to accept unfavourable agreements to avoid the risk of harsher sentences at trial (McConville, 1998; Oko, 2012). In this sense, plea bargaining may function as a mechanism that reproduces and legitimizes class inequality within the criminal justice system.

Nevertheless, it is important to acknowledge a countervailing perspective. Proponents of procedural justice theory, such as Tyler (2006), argue that when plea bargaining is conducted transparently, with judicial oversight and effective legal representation; it can enhance perceptions of fairness and legitimacy among defendants. Furthermore, restorative justice theorists suggest that negotiated agreements that prioritize victim compensation and community reparation may serve broader social interests than purely retributive trials (Zehr, 2015). While these perspectives do not negate the class-based critiques of Conflict Theory, they suggest that the institutional design of plea bargaining--rather than the concept itself--may be the primary determinant of whether it promotes or undermines justice.

LEGAL FRAMEWORK GOVERNING PLEA BARGAINING IN NIGERIA

The contemporary legal framework for plea bargaining in Nigeria is derived from a combination of federal and state statutes. At the federal level, the Administration of Criminal Justice Act 2015 represents the most comprehensive statutory provision. Section 270 of the ACJA provides that the prosecutor may, with the consent of the Attorney-General of the Federation, enter into a plea bargain with a defendant, provided that the agreement is in writing, signed by the parties, and presented to the court for approval (Administration of Criminal

Justice Act, 2015, s. 270). The section further stipulates that the court must satisfy itself that the defendant understands the nature and consequences of the agreement, that the agreement is voluntary, and that there is a factual basis for the plea.

At the state level, the Administration of Criminal Justice Law of Lagos State 2007 was the first legislation in Nigeria to expressly provide for plea bargaining. Sections 75 and 76 of the ACJL Lagos empower the Attorney-General of Lagos State to compound criminal offences, subject to the approval of the court, and outline the procedure for recording and enforcing plea agreements (Administration of Criminal Justice Law of Lagos State, 2007, ss. 75-76). Several other states have since enacted similar provisions in their respective criminal justice laws, reflecting a growing legislative consensus in favour of negotiated justice.

In the domain of economic and financial crimes, the EFCC Act 2004 remains relevant. Section 14(2) of the Act empowers the Commission to compound any offence punishable under the Act by accepting a sum of money not exceeding the maximum fine prescribed for the offence, provided that the Commission obtains the consent of the Attorney-General of the Federation (Economic and Financial Crimes Commission Act, 2004, s. 14(2)). This provision has been the statutory basis for numerous high-profile plea bargains involving corruption and money laundering.

Additionally, the Criminal Procedure Act (CPA) and the Criminal Procedure Code (CPC) contain general provisions on the compounding of offences. Section 494 of the CPA allows for the compounding of certain offences with the permission of the court, while Section 355 of the CPC contains a similar provision applicable in Northern Nigeria (Criminal Procedure Act, 1945, s. 494; Criminal Procedure Code, 1960, s. 355). Although these provisions predate the modern concept of plea bargaining, they provide a historical foundation for negotiated resolutions in the Nigerian legal system.

CONDITIONS NECESSARY FOR PLEA BARGAINING

Under Section 270 of the Administration of Criminal Justice Act 2015, several conditions must be satisfied before a plea bargain can be accepted. First, the consent of the accused must be voluntary, free from coercion, intimidation, or undue influence (Administration of Criminal Justice Act, 2015, s. 270). The court has a duty to inquire into the voluntariness of the plea and to ensure that the defendant understands the rights being waived.

Second, prosecutorial approval is required. The prosecutor must evaluate whether entering into the agreement serves the interest of justice, taking into account the strength of the evidence, the nature of the offence, and the public interest (Aguda, 2016).

Third, judicial approval is mandatory. The court must examine the agreement to ensure that it is fair, lawful, and consistent with the facts of the case. The court retains the discretion to reject a plea agreement if it finds that the proposed sentence is unduly lenient or that the agreement was procured improperly.

Fourth, the accused should have access to legal representation to fully comprehend the consequences of the agreement (Administration of Criminal Justice Act, 2015, s. 270). The absence of effective counsel raises serious concerns about the fairness of the process, particularly for indigent defendants.

Fifth, the prosecution should possess sufficient evidence to prove the case if negotiations fail, ensuring that the state does not rely on plea bargaining as a substitute for proper investigation.

Sixth, where applicable, the accused may be required to agree to compensate victims or surrender the proceeds of crime. This restorative condition aligns with the objectives of victimology and asset recovery. Seventh, the accused must expressly admit responsibility for the offence, providing a factual basis for the guilty plea. Finally, the plea bargain must promote justice and maintain public confidence in the criminal justice system, a broad but essential requirement that serves as a safeguard against abuse.

MERITS OF PLEA BARGAINING

Proponents of plea bargaining have advanced several arguments in its favour. First, it promotes the speedy administration of justice by eliminating lengthy criminal trials, thereby ensuring that justice is delivered within a reasonable time (Administration of Criminal Justice Act, 2015, s. 270; Egwu, 2018). In a jurisdiction where cases frequently languish in court for several years due to adjournments, witness unavailability, and procedural delays, plea bargaining offers a pragmatic mechanism for resolving disputes expeditiously.

Second, plea bargaining contributes to the decongestion of courts. The Nigerian judiciary handles thousands of criminal cases annually, and the backlog of pending cases has reached crisis proportions in many jurisdictions (Alemika & Chukwuma, 2005). By diverting suitable cases away from full trial, plea bargaining enables courts to allocate greater attention and resources to complex matters requiring detailed adjudication (Aguda, 2016).

Third, the practice reduces litigation costs for both the state and the accused. Criminal trials consume substantial financial, administrative, and human resources, including the deployment of prosecutors, judicial officers, court staff, and security personnel (Siegel, 2018). Plea bargaining minimizes these expenses, allowing the criminal justice system to operate more efficiently within constrained budgets.

Fourth, in corruption and financial crime cases, plea bargaining facilitates the recovery of public funds and illegally acquired assets. Several high-profile plea bargains have resulted in the forfeiture of properties, bank accounts, and business interests that might otherwise have remained concealed during protracted litigation (Human Rights Watch, 2011; Oko, 2012). This restorative dimension of plea bargaining aligns with the broader objective of depriving offenders of the proceeds of crime.

Fifth, plea bargaining protects victims from the emotional and psychological burden of repeatedly appearing in court to testify. Victims of violent or sexual crimes, in particular, may experience re-traumatization during cross-examination; plea bargaining can spare them this ordeal while still securing a conviction (Zehr, 2015). Sixth, prosecutors benefit from the certainty of conviction, avoiding the risk of acquittal due to insufficient evidence, witness intimidation, or procedural defects (McConville, 1998). Finally, by ensuring the quicker disposal of criminal cases, plea bargaining helps reduce prison congestion by minimizing the prolonged pre-trial detention of awaiting-trial inmates, a significant problem in Nigerian correctional facilities (Alemika & Chukwuma, 2005).

DEMERITS OF PLEA BARGAINING

Despite these advantages, plea bargaining is subject to substantial criticism. First, it frequently encourages lenient punishment. Many offenders who have committed serious crimes receive relatively light sentences through negotiated agreements, creating a perception that justice is commodified and that punishment can be purchased (Oko, 2012; Reiman, 2017). The Tafa Balogun case exemplifies this concern, as the public widely perceived the negotiated sentence as inadequate relative to the scale of the corruption involved.

Second, lenient sentences may weaken the deterrent effect of criminal law. If potential offenders believe that they can negotiate significantly reduced penalties by cooperating with prosecutors, the perceived cost of criminal conduct diminishes, potentially encouraging future violations (Siegel, 2018). Deterrence theory suggests that the certainty, celerity, and severity of punishment all contribute to crime prevention; plea bargaining may enhance certainty and celerity at the expense of severity (Beccaria, 1764/1986).

Third, plea bargaining promotes inequality before the law. Critics argue that wealthy and politically connected persons are disproportionately able to secure favourable plea agreements, while poor and marginalized defendants lack comparable bargaining power (Alemika &Chukwuma, 2005; McConville, 1998). This disparity reinforces the class-based critiques advanced by Conflict Theory and undermines the constitutional guarantee of equal treatment under Section 42 of the 1999 Constitution.

Fourth, the practice reduces public confidence in the justice system. Many Nigerians perceive plea bargaining as a form of "negotiated justice" that allows influential offenders to escape full accountability (Human Rights Watch, 2011). When the public observes high-profile corruption suspects receiving minimal sentences after returning a fraction of stolen wealth, trust in judicial institutions erodes, potentially encouraging cynicism and non-compliance with the law (Tyler, 2006).

Fifth, there exists the possibility of coercion. Some innocent defendants, particularly those who are poor, poorly educated, or detained in overcrowded prisons, may plead guilty to avoid the risk of harsher punishment if convicted after trial (McConville, 1998; Oko, 2012). The phenomenon of "false guilty pleas" represents a profound injustice, as it results in the conviction of factually innocent individuals.

Sixth, plea bargains may limit public accountability. Lengthy criminal trials often expose systemic corruption, institutional failures, and networks of criminality through public evidence and witness testimony. Plea bargains, by contrast, may prevent the full extent of criminal conduct from becoming public knowledge, thereby shielding co-conspirators and obscuring the structural roots of corruption (Oko, 2012).

CRITICAL ANALYSIS

The introduction of plea bargaining into Nigeria's criminal justice system represents a significant procedural reform aimed at improving efficiency, reducing delays, and facilitating asset recovery. It has assisted courts in disposing of complex criminal cases more quickly while enabling the recovery of public assets in corruption-related offences that might otherwise have remained beyond the reach of the state (Oko, 2012; Human Rights Watch, 2011). In this regard, plea bargaining serves a pragmatic function that should not be dismissed lightly.

However, the practical application of plea bargaining in Nigeria has remained deeply controversial. The cases of Federal Republic of Nigeria v. Tafa Balogun (2005) and Anambra State Government v. Chidozie Nwangwu (2024) illustrate both the procedural strengths and the substantive weaknesses of the system. In both cases, guilty pleas saved judicial time, conserved prosecutorial resources, and secured convictions without the uncertainty of trial. At the same time, public debate centred on whether the negotiated outcomes reflected the seriousness of the offences, whether they adequately promoted deterrence, and whether they reinforced perceptions of class privilege within the justice system.

From a sociological perspective, the Nigerian experience with plea bargaining validates many of the predictions of Conflict Theory. The availability of high-quality legal representation, the social status of the accused, and the political sensitivity of the case all appear to influence the terms of plea agreements in ways that advantage the powerful (Reiman, 2017; Quinney, 1970). The disparity between the treatment of wealthy corruption suspects and poor defendants accused of minor offences suggests that plea bargaining, in its current form, may function as a mechanism of class-based differentiation rather than a neutral instrument of procedural efficiency.

Yet, the failure of plea bargaining to achieve perfect equality does not necessarily render it irredeemable. The problem may lie less in the concept itself than in its institutional design and implementation. Several reforms could enhance the fairness and legitimacy of plea bargaining in Nigeria. First, the development of sentencing guidelines for plea-bargained cases would reduce arbitrary disparities and ensure proportionality between offence and punishment. Second, mandatory victim consultation and participation in the negotiation process would align plea bargaining with restorative justice principles and enhance public trust (Zehr, 2015). Third, greater transparency--including the publication of plea agreements and the reasons for judicial acceptance--would subject the process to public scrutiny and deter prosecutorial abuse. Fourth, the provision of state-funded legal representation for all defendants in plea bargaining proceedings would mitigate the class-based inequalities identified by Conflict Theory. Fifth, judicial training on the evaluation of plea agreements would strengthen the capacity of courts to reject unduly lenient or coerced agreements.

Ultimately, plea bargaining should not be permitted to serve merely the interests of administrative convenience. Courts must ensure that negotiated agreements reflect the gravity of offences, protect victims' interests, and maintain public confidence in the administration of criminal justice. When subjected to rigorous scrutiny and guided by principles of fairness and equality, plea bargaining can strike an appropriate balance between efficiency, accountability, and justice.

CONCLUSION

Plea bargaining has become an established feature of the Nigerian criminal justice system following its statutory recognition under the Administration of Criminal Justice Act 2015 and analogous state laws. It provides an effective mechanism for reducing court congestion, promoting speedy trials, minimizing litigation costs, and recovering proceeds of crime. Despite these advantages, significant concerns remain regarding its unequal application, the imposition of lenient punishments for serious offences, and the possibility of abuse by influential offenders.

For plea bargaining to achieve its intended objectives in Nigeria, prosecutors must exercise their discretion transparently and accountably, courts must subject every agreement to rigorous scrutiny, and similar cases must receive similar treatment irrespective of the social status or political connections of the accused. The insights of Conflict Theory remind us that without vigilant institutional safeguards, plea bargaining risks becoming yet another instrument through which the powerful evade full accountability while the poor bear the weight of criminal punishment. When applied fairly, consistently, and under robust judicial oversight, however, plea bargaining can contribute to a criminal justice system that is not only efficient but also substantively just.

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