

**FROM PLEA BARGAIN TO 'LOOT BARGAIN' IN SEARCH OF PROCEEDS OF CRIME: A TRAVESTY OF THE NIGERIAN CRIMINAL JUSTICE SYSTEM\***

**Abstract**

*Reforms in the administration of criminal justice and the imperative of compliance with global best practices have propelled the need for speedy trials, efficient and cost effective dispensation of justice. Thus, various means of speedy trial, efficient and cost effective dispensation of criminal justice have evolved. One of such is the concept of Plea Bargain. While plea bargain has its benefit in the form of saving cost of prosecution and ensuring speedy criminal justice dispensation, the disturbing phenomenon in Nigeria, however, is the manner in which the law enforcement agencies have misused the idea in allowing criminal defendants determine or agree to the amount of loot to be returned and still get an insignificant sentence or even fines is worrisome. In plea bargaining, it is only the charges and possibly punishment and not the loot that is bargained. This paper condemns the manner of misuse and abuse of plea bargain in Nigeria and makes laudable recommendation for the effective and efficient use of plea bargain in Nigeria.*

**Keywords:** Plea Bargain, Criminal Justice Administration, 'Loot Bargain', Corruption, Financial Crimes

**1. Introduction**

The administration of criminal justice is one area of the state's responsibility where the need for improved justice delivery is always of optimum concern. This informs the imperative for speedy trial, efficient and cost effective mechanism for criminal justice dispensation. Hence it has become international best practice to adopt the concept of plea bargain as a recovery of proceeds of crime mechanism.<sup>1</sup> Plea bargain was first introduced in Nigeria by the Economic and Financial Crimes Commission (EFCC) in the disposal of some celebrated economic and financial crime cases, assuming section 14 (2) of the Economic and Financial Crimes Commission (Establishment) Act 2003 as an enabling legal framework.<sup>2</sup> Despite the seeming benefits<sup>3</sup> of plea bargain, the disturbing phenomenon in Nigeria is the manner in which the prosecutorial authorities, especially the anti-graft agencies and particularly the Economic and Financial Crimes Commission (EFCC), have misapplied and abused the concept in the prosecution of several celebrated economic and financial crime cases.<sup>4</sup> A situation where a criminal defendant negotiates with the anti-graft agency on the amount of loot to be returned and yet get an insignificant sentence or ridiculous fine is worrisome. The paper insists that, if anything should be bargained, it is the charge and the punishment (sentence and/or fine), subject to the court's approval<sup>5</sup>, and not the loot.<sup>6</sup> And this is even envisaged by various provisions of the EFCC (Establishment) Act 2004.<sup>7</sup>

**2. The Concept of Plea Bargain<sup>8</sup>**

The term 'plea bargain' is derived from the two words, 'plea' and 'bargain.' Plea simply means an accused person's formal response of 'guilty' or 'not guilty' to a criminal charge.<sup>9</sup> It is the criminal defendant's formal answer to a criminal charge,<sup>10</sup> without which the accused is still outside the pale of the court's jurisdiction.<sup>11</sup> The plea involved in plea bargain is a guilty plea. Guilty plea is usually part of plea bargain, and it must be made voluntarily after the accused has been informed of and understands his rights.<sup>12</sup> 'Bargain' on the other hand is a negotiation process whereby an agreement is reached between the parties for exchange of promises or performances.<sup>13</sup> Plea bargain is 'a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of

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<sup>1</sup>GO Adeleke, 'Prosecuting Corruption and the Application of Plea Bargain in Nigeria: A Critique' (April 2012) 3 (1) *International Journal of Advance Legal Studies and Governance* 53.

<sup>2</sup>UK Inyang, *The Legality of the Use of Plea Bargain in the Nigerian Criminal Justice System*. Available online at <<http://topeadebayollp.wordpress.com/2012/03/27/the-legality-of-the-use-of-plea-bargain-in-the-nigerian-criminal-justice-system>> accessed on 12 August, 2014.

<sup>3</sup>These benefits include: a) accused being saved of the time and cost of defending himself at trial, and the risk of harsher punishment, and the publicity of the trial; b) the prosecution saves time and expense of a lengthy trial; c) the court system is saved the burden of conducting a trial on every crime charged; and d) The victim of crime is restituted.

<sup>4</sup>Inyang (n 2).

<sup>5</sup>ibid.

<sup>6</sup>JA Agaba, *Practical approach to Criminal Litigation in Nigeria (Pre-trial and Trial Proceedings)* (3rd edn, Abuja: Bloom Legal Temple 2015) 647.

<sup>7</sup>EFCC (Establishment) Act 2004, ss 20 (1) and 25.

<sup>8</sup>Reginald Anosike Uzoechi, 'Plea Bargain and the Question of Abuse of Right to Fair Hearing in Nigeria: Where Lie the Odds?' (2019) 3:2 *African Journal of Law and Human Rights* 27-37. Available online at: <<https://journals.ezenwaohaetorc.org/index.php/AJLHR/issue/view/68>> supplies an earlier discussion of the concept of plea bargain.

<sup>9</sup>Bryan A Garner (ed), *Black's Law Dictionary* (10<sup>th</sup> edn, St Paul, Minn: Thomson Reuters 2014) 1337.

<sup>10</sup>*Oyem v FRN* (2019) LPELR-47392(SC) 1, 13 paras D-E.

<sup>11</sup>*FRN v Iwuafor* (2019) LPELR-46901(SC); *Okegbu v The State* (1979) 11 SC 1, 9.

<sup>12</sup>Garner (n 9) 1338.

<sup>13</sup>ibid 178.

multiple charges in exchange for some concession by the prosecutor, usually a more lenient sentence or a dismissal of the other charges.<sup>14</sup> This definition of the concept of plea bargain as given by the *Black's Law Dictionary* falls short of the role of the court in the plea bargain process and its implementation.

Plea bargain occurs when a prosecutor and the criminal defendant enter into an agreement whereby the defendant pleads guilty and the prosecutor offers either to move for a dismissal of a charge or charges; recommends to the court a particular sentence or agrees not to oppose the defendant's request for a particular sentence or agrees to a specific sentence in the disposal of the case.<sup>15</sup> Plea bargain consists of the exchange of concessions for a defendant's act of self-conviction. These concessions may relate to the sentence imposed by the court or recommended by the prosecution, the offence charged, or a variety of other circumstances. They may be explicit or implicit and they may proceed from any number of officials. The concession includes unilateral exercise of prosecutorial discretion, such as an unqualified dismissal or reduction of charges. The concession on the part of the defendant may not end at entry of guilty plea, it may include exchange of other official concessions such as offering restitution to the victim of the crime, giving information or testimony concerning other alleged offenders, or resigning from public office following allegation of misconduct.<sup>16</sup> Plea bargain allows both the accused and the prosecutor to concede some points and make some compromise in order to reach a mutually agreeable bargain. The prosecution may create an expression of leniency that is subsequently honoured in exchange for the entry of guilty plea by the criminal defendant.<sup>17</sup> The accused relinquishes the right to go on trial, while the prosecutor surrenders the right to seek the highest sentence or pursue the most serious charge possible. Thus, once plea bargain is adopted as a mode of settling a case, the accused stands convicted although he gets away with a lighter punishment.<sup>18</sup> Such plea bargain does not bind the prosecutor until the criminal defendant has performed all of his own side of the bargain and eventually pleads guilty to the charge as agreed upon.<sup>19</sup>

### **3. Prominent Instances of the Application of Plea Bargain in Financial Crime Cases in Nigeria**

There been various case in Nigeria wherein plea bargain was employed. However, this paper will be setting out 6 famous cases wherein plea bargain has been utilized in the disposal of criminal cases in involving politically exposed and his profile individuals in Nigeria.

#### **Amaka Anajemba**

This is the first instance of the application of plea bargain in the disposal of a financial crime case in Nigeria and the only case, so far, wherein the accused person is not a public individual or a government official. It was the case of *F.R.N. v Emmanuel Nwude & 6 Ors.*<sup>20</sup> wherein Amaka Anajemba, Emmanuel Nwude, Nzeribe Okoli, alongside four companies<sup>21</sup> owned by the accused persons were charged with defrauding a Brazilian banker, Mr Nelson Isakaguchi and his bank, *Banco Noroeste S.A.*, Sao Paulo of the sum of \$242 million. The fraud charges were brought under the Advance Fee Fraud and Other Related Offences Act No. 13 of 1995 as amended by Act No. 62 of 1999, sections 1(1)(2) & (3) and Criminal Code, sections 419 and 516. Eighteen months into the trial, the 2<sup>nd</sup> accused person, Amaka Martha Anajemba, and her husband's company, Fynbaz Nig. Ltd, gave up on the trial and entered a plea negotiation with the prosecutor. In the ensuing plea bargain, she agreed to surrender almost all the assets they illegally acquired through the proceeds of the crime they were being tried for and to plead guilty to an amended charge of 'non-disclosure of assets' dated June 17, 2005.<sup>22</sup> She also pleaded guilty on behalf of Fynbaz Nig. Ltd. to three count charges of money laundering, conspiracy to obtain money by false pretence and obtaining the sum of \$48.5m, being the property of Mr. Nelson Isakaguchi and a company called Shanton Development Corporation by false pretence between April 2, 1995 and January 1998. Apart from the forfeiture order, the company, Fynbaz Nig. Ltd, was also ordered to pay a fine of N1m.<sup>23</sup>

#### **Tafa Balogun**

Tafa Balogun was the first prominent public figure convicted under the EFCC prosecutorial regime. He was a former Inspector General of Police during the regime of President Olusegun Obasanjo. Following allegations of corruption and

<sup>14</sup>ibid 1338; see Administration of Criminal Justice Act 2015, s 494; *People v Orin* 13 CAL. 3d 937 (1975); *FRN v Igbinedion & Ors* (2014) LPELR-22760 (CA) 72-73 paras F-A (per Ogunwumiju, JCA); *Romrig Nig Ltd v FRN* (2014) LPELR-22759 (CA) 24 paras D-F (per Ogunwumiju, JCA); *PML Securities Co Ltd v FRN* (2014) LPELR-22768 (CA) 31-33 paras F-G (per Lokulo-Sodipe, JCA). See also: Abubakri Yekini, 'The Practice of Plea Bargain and its Effect on the Anti-Corruption Crusade in Nigeria' (October 2008) *Social Science Research Network (SSRN)* 1. Available at <<http://ssrn.com/abstract=1279003>> accessed on 25 March 2025; GO Adeleke, 'Prosecuting Corruption and the Application of Plea Bargain in Nigeria: A Critique' (April 2012) 3 (1) *International Journal of Advance Legal Studies and Governance* 53 – 70, 60.

<sup>15</sup>K Oladele, 'Plea Bargain and the Criminal Justice in Nigeria' *The Punch Newspaper* (11 October 2010) 68.

<sup>16</sup>AW Alschuler, 'Plea Bargain and its History' (1979) 79 (1) *Columbia Law Review* 3-4.

<sup>17</sup>SW Howe, 'The Value of Plea Bargain' (2005) 58 *Oklahoma Law Review* 599, 635.

<sup>18</sup>Robert E Scott and William J Stuntz, 'Plea Bargain as Contract' (1991-1992) 101 *Yale Law Journal* 1911.

<sup>19</sup>T Kehinde Adekunle, 'Plea Bargain and the Nigeria Penal System: Giving Judicial Imprimatur to Corruption' (June 2013) 1 *New Ground Research Journal of Legal Studies Research and Essay* 1 – 14, 11. Available online at <<http://www.newgroundresjournals.org/journals/NGRJLSRE>> accessed on 29 January 2025.

<sup>20</sup>(Unreported) Charge No.: ID/92C/2004, judgment of Hon. Justice Joseph Oyewole of Lagos State High Court on 15 July 2005.

<sup>21</sup>Which are Fynbaz (Nig.) Ltd., Emrus Auto Nig. Ltd., Ocean Oil Marketing Co. (Nig.) Ltd and African Shelter *Bureau de Change* Nig. Ltd.

<sup>22</sup>Brought under section 27 (3) (a) of the EFCC (Establishment) Act 2002, now EFCC (Establishment) Act 2004.

<sup>23</sup>United Nations Office on Drug and Crime (UNODC), *Sharing Electronic Resources and Laws on Crimes (SHERLOC)*, available at <<http://unodc.org/cld/case-law-doc/moneylaunderingcrimetype/ngr/2005/chief-emmanuel-nwude-6-ors-id92c2004.html>> accessed on 22 August 2023.

embezzlement of Police treasury, he was, in April 2005, forced to retire as Nigeria's Inspector General of Police.<sup>24</sup> In *FRN v Tafa Balogun & Ors*,<sup>25</sup> Tafa Balogun a former Inspector General of Police was accused of and charged for fraudulently withdrawn billions of naira from the police account and transferred same to his blue-chip companies to buy shares and landed properties and some lodged in foreign accounts. He entered a plea bargain on a six-count charge of money laundering and was consequently sentenced to six months' imprisonment and forfeited all assets he acquired with the fund stolen from the Police treasury.

#### **Diepreye Alamieyeseigha**

In *FRN v DSP Alamieyeseigha*,<sup>26</sup> Diepreye Alamieyeseigha, a former Governor of Bayelsa State was tried on a 33-count charge of corruption, money laundering, illegal acquisition of property, and false declaration of assets. He entered a plea bargain with the EFCC and pleaded guilty to a 6-count amended charge of money laundering and failure to declare assets contrary to section 27 (3) (a) of the EFCC (Establishment) Act 2004. Consequently, he forfeited properties worth billions of naira in exchange for a lesser sentence of two-year term.<sup>27</sup>

#### **Lucky Igbinedion**

In 2008, the former governor of Edo State from 1999 - 2007, Chief Lucky Nosakhare Igbinedion was arraigned by the Economic and Financial Crimes Commission (EFCC) before the Federal High Court, Enugu in charge No FHC/EN/6C/2008 on a 191-count charge of corruption, money laundering and embezzlement of N2.9b of Edo State treasury.<sup>28</sup> In a plea bargain arrangement, the EFCC reduced the 191-count charge to one-count of failure to make declaration of assets contrary to section 27 (3) (a) of the EFCC (Establishment) Act 2004. The terms of the plea bargain were that the prosecutor would reduce the 191-count charge to one-count charge and in return, Lucky Igbinedion will refund N500m, 3 properties and plead guilty to the one-count charge. In line with the plea bargain, on the 18<sup>th</sup> December 2008, the court presided over by Justice A. Abdul Kafarati convicted Lucky Igbinedion on the one-count charge and ordered him to refund N500m, forfeit 3 houses and the court sentenced him to 6 months imprisonment or payment of N3.6m as option of fine.<sup>29</sup>

#### **Cecilia Ibru**

In the case of *FRN v Dr (Mrs.) Cecilia Ibru*,<sup>30</sup> Cecilia Ibru, a former Managing Director and Chief Executive of the defunct Oceanic Bank Plc arraigned on a 23-count charge by the EFCC, which charges were later amended to 25, bordering on criminal manipulation of bank records and depositors' funds. After she struck a plea bargain with the EFCC and pleaded guilty to 3 counts of negligence, reckless grant of credit facility without valuable collateral and mismanagement of depositors' funds, which are counts 14, 17 and 23 respectively of the aforesaid amended charge, she was convicted and sentenced to 18 months' imprisonment. Consequently, over N191bn worth of assets in Nigeria and overseas were seized from Cecilia Ibru in line with the plea bargain agreement with the EFCC and they were handed over to Assets Management Company of Nigeria (AMCON) to manage.<sup>31</sup>

#### **John Yakubu Yusufu**

In the case of *F.R.N. v Esai Dangabar & 5 Ors.*,<sup>32</sup> John Yakubu Yusufu, a former Assistant Director in the Police Pension Office as 5<sup>th</sup> accused person, Esai Dangabar (Director of Police Pension Fund), Atiku Abubakar Kigo (Permanent Secretary), and 3 others were charged on a 20-count amended charge, with the offences bordering on the embezzlement of Police pension fund. Through a plea negotiation, John Yakubu Yusufu pleaded guilty to counts 18, 19 and 20 which accused him of conniving with the other accused persons to convert to their own use, a total sum of N27.2 billion, belonging to the Police Pension Office. An offence defined by section 308 and punishable under section 309 of the Penal Code Act (PCA).<sup>33</sup> On Monday, January 28, 2013, a High Court of Nigeria's Federal Capital Territory, Abuja presided over by Hon. Justice Abubakar Talba convicted John Yakubu Yusuf of the offence of criminal misappropriation and sentenced him to a prison term of 2 years with an option of fine of N250, 000 for each of the 3 counts in a 20-Count Amended Charge, to which he had specifically pleaded guilty. John Yakubu Yusufu was also

<sup>24</sup>See 'Corruption on the Trial? Comparing the EFCC's Performance under Ribadu and Waziri,' *Human Rights Watch*, October 10 2010. Available online at <<http://www.hrw.org/zh-hans/node/101018/section/6>> accessed on 21 September 2023.

<sup>25</sup>(Unreported) Judgment in Charge No: FHC/ABJ/CR/14/2005 delivered by Hon. Justice Binta Nyako of the Federal High Court, Abuja on 22 November 2005.

<sup>26</sup>(Unreported) Judgment in Charge No: FHC/L/328C/2005 delivered by Hon. Justice Mohammed Shuiabu of Federal High Court, Lagos on 26 July 2007

<sup>27</sup>Oladele (n 15).

<sup>28</sup>*FRN v Lucky Igbinedion & Ors.* (Unreported) Charge No.: FHC/EN/6C/2008, judgement delivered by Hon. Justice Abdul Kafarati of the Federal High Court, Enugu on the 18 December 2008.

<sup>29</sup>P Odia, 'Abuse of Plea Bargain in Nigeria,' *Sahara Reporters*, 28 July 2013. Available online at <[www.saharareporters.com/2011/06/23/abuse-plea-bargain-nigeria](http://www.saharareporters.com/2011/06/23/abuse-plea-bargain-nigeria)> accessed on 22 August, 2023.

<sup>30</sup>(Unreported) Judgment in Charge No.: FHC/L/297C/2009 delivered by Hon. Justice Dan Abutu of the Federal High Court Lagos delivered on 8 October 2010.

<sup>31</sup>Femi Babafemi, 'EFCC Press Statement: Bank Fraud: Cecilia Ibru Bags 18 Months Jail Term, Forfeits N190 Billion' *Sahara Reporters*, 8 October 2010. Available at <<http://saharareporters.com/news-page/efcc-press-statement-bank-fraud-cecilia-ibru-bags-18-months-jail-term-forfeits-n190-billion>> accessed on 22 August, 2024; I Anaba, 'Cecilia Ibru Goes to Jail' *Vanguard New Online*, 9 October 2010. Available online at <[www.vanguardngr.com/2010/10/cecilia-ibru-goes-to-jail/](http://www.vanguardngr.com/2010/10/cecilia-ibru-goes-to-jail/)> accessed on 22 August 2024.

<sup>32</sup>(Unreported) Charge No.: FCT/CR/64/2012. Judgment delivered by Hon. Justice Abubakar Talba of the High Court of the Federal Capital Territory, Abuja on 28<sup>th</sup> January, 2013.

<sup>33</sup>CAP 532, Laws of the Federal Capital Territory, Abuja.

ordered to forfeit, to the State, 32 real properties, situate in Abuja and Gombe, and the sum of N325 million, proceeds of his crime, stashed away in banks were frozen.<sup>34</sup> The EFCC appealed against the decision to the Court of Appeal and the Court of Appeal in allowing the appeal upturned the sentence and fine imposed by the trial court and in its place imposed a sentence of six years and a fine of N22.9bn. On Wednesday, 13 April 2022, the Supreme Court affirmed the said decision of the Court of Appeal.<sup>35</sup>

#### **4. Critique of the Application of Plea Bargain in Nigeria**

Plea bargain, if properly utilized, is a worthy handmaid for the efficient dispensation and administration of criminal justice,<sup>36</sup> but this has not been the case in Nigeria. This paper shall hereunder, take a look at certain factors that are posing the challenges for the effective utilization of plea bargain concept and those that are undermining the usefulness of the concept in Nigeria.

##### **'Loot Bargain'**

'Loot bargain' is a coinage by Agaba,<sup>37</sup> which he used in describing a situation whereby an accused person is allowed to bargain and negotiate the amount of his loots to be returned/forfeited while he is allowed keeping a large chunk of the said loots, and thereafter the court will convict him and sentences him to very minimal punishment. It captures a situation wherein the prosecutor derogates from the idea of plea bargaining and instead of bargaining charges, sentence and punishment, they rather bargain the loots. This is done in such a way that billions of naira is stolen, and some paltry millions are refunded to the coffers of the government, while a large chunk of the looted public fund at the end of the day is left for the looter and his/her unborn generations.<sup>38</sup> It is unfortunate and contrary to the stipulation of the laws<sup>39</sup> that the situation in Nigeria is such that, apart from the condemnable leniency on convicts by the courts, these convicts retain a large portion of the loot by which they corruptly enrich themselves.<sup>40</sup> While it is true that in all the instances of the application of plea bargain in the prosecution of financial crimes in Nigeria monies were recovered and properties worth billions of naira seized from the convicts, but all these do not tally with the loot in most cases.<sup>41</sup> In an interview with Vanguard Newspaper of November 16, 2012, Justice Kayode-Eso (of blessed memory) said of plea bargain in Nigeria, that:

They bargain with the judge, bargain with the accused person, he returns half of the money, and then they give him some hairy-fairy punishment – go and serve three months in prison and the three months will, of course, be in the hospital. This is an encouragement for other governors to steal when they come into office.<sup>42</sup>

In criminal jurisprudence, the loot is never bargained. What is bargained is the charge, sentence/punishment. The loot remains always forfeitable.<sup>43</sup> And this is even envisaged by our various financial crimes legislations.<sup>44</sup> In the ideal scheme of plea bargain, the law remains that criminal loots are always forfeitable in criminal jurisprudence. However, the unfortunate situation in Nigeria is that in some instances, political exposed persons are extended the illegal and illegitimate privilege to bargain their loots instead of bargaining plea. This exposes the practice of plea bargain in Nigeria as a catalyst for corruption.<sup>45</sup>

##### **Selective Justice (Picking and Choosing)**

One area of the administration of criminal justice in Nigeria that has manifested an apparent imbalance is in the area of the exercise of prosecutorial discretion to enter into plea bargain with criminal defendants.<sup>46</sup> While it is true that

<sup>34</sup>I Nnochiri, 'Pension Thief Verdict: Justice Talba Bags One-Year Suspension without Pay,' *Vanguard New Online* at <[www.vanguardngr.com/2013/04/pension-thief-verdict-justice-talba-bags-one-year-suspension-without-pay/](http://www.vanguardngr.com/2013/04/pension-thief-verdict-justice-talba-bags-one-year-suspension-without-pay/)> accessed on 26 April, 2023.

<sup>35</sup>Ade Adesomoju, 'UPDATED: Supreme Court Affirms Six Years Jail Term, N22.9bn Fine for Pension Thief, John Yakubu' *Premium Times*, Wednesday, 13 April 2022. Available online at <<https://www.premiumtimesng.com/news/headlines/523570-updated-supreme-court-affirms-six-years-jail-term-n22-9bn-fine-for-pension-thief-john-yakubu.html?tztc=1>> accessed on Thursday 14 April 2023.

<sup>36</sup>Adeleke (n 1) 61.

<sup>37</sup>Agaba, (n 6) 647.

<sup>38</sup>O Joseph, 'Why Encourage Plea Bargaining,' *Punch New Online*, 2 September 2012 available online at <<http://www.punchng.com/opinion/letters/why-encourage-plea-bargaining/>> accessed on 21 September 2023.

<sup>39</sup>Advance Fee Fraud and Other Fraud Related Offences Act 2006, s. 11; Corrupt Practices and Other Related Offences Act 2003, ss. 23 and 41; EFCC (Establishment) Act 2004, ss. 20, 21 and 22; Pension Reform Act 2014, s. 100 (2) and (3).

<sup>40</sup>Adekunle (n 19) 11.

<sup>41</sup>Adeleke (n 1) 63.

<sup>42</sup>Quoted in J Ogunye, 'In Defence of Plea Bargain,' *Premium Time*, February 13, 2013. Available online at <<https://www.premiumtimesng.com/opinion/121369-in-defense-of-plea-bargaining-is-the-problem-by-jiti-ogunye.html>> accessed on 19 April 2023.

<sup>43</sup>Agaba (n 6) 607.

<sup>44</sup>Advance Fee Fraud and Other Fraud Related Offences Act 2006, s 11; Corrupt Practices and Other Related Offences Act 2003, ss 23 and 41; EFCC (Establishment) Act 2004, ss 20, 21 and 22; Pension Reform Act 2014, s 100 (2) and (3).

<sup>45</sup>Discussions on plea bargain and corruption can be found in Reginald A. Uzoechi, 'Reshaping the Amorphous Nature of the Offence of Corruption in Nigeria,' *International Journal of Innovative Research and Development*. Volume 6, Issue 12, December 2017. Available online at: <http://www.ijird.com/index.php/ijird/issue/view/7573>.

<sup>46</sup>O Oyewo and A Bello, 'Criminal Justice Reform – The Case for State Police, Community Police and Other Legal Machinery for the Attainment of Criminal Justice Balance within the Nigerian Federation' in J B Daudu and D Adekunle (eds) *Reforming Criminal Law in Nigeria* (Abuja: Nigeria Bar Association 2012) 206.

prosecuting authorities are vested with the discretion, but that discretion is to be exercised, having regards to the public interest, interest of justice, and the need to prevent abuse of legal process.<sup>47</sup> The emergence of plea bargain in the administration of criminal justice in Nigeria has resulted in a noticeable imbalance in the type of cases in which the prosecutors have plea-bargained with criminal defendants and the outcome of such bargains.<sup>48</sup> The few instances of the plea bargain in Nigeria have been at the instance of former highly-placed public office holders<sup>49</sup> and highly-placed individuals<sup>50</sup> charged with economic and financial related offences. There is no record of plea bargain with any Nigerian 'commoner.' Worst still, these few selective instances of plea bargain have resulted in punishments which are considered a slap on the wrist.<sup>51</sup> If a citizen who stole a goat or a ram can be sentenced to two years imprisonment,<sup>52</sup> then what is the justice in sentencing someone who stole millions and billions of naira of public funds to six months imprisonment?<sup>53</sup> Little wonder then Justice Dahiru Musdapher tagged it a medium 'invented to provide soft landing for high profile criminals who loot the treasury entrusted to them...'<sup>54</sup>

#### **Abuse of Sentencing Discretion and Imposition of Ridiculous Sentences by Judges**

Judicial approval is an essential condition precedent to the effective validity of the plea bargain contracted by the defence and the prosecutor. Plea bargain is therefore ineffective unless and until it is approved by the court.<sup>55</sup> As part of the judge's responsibility in approving plea negotiation, the judge is also duty bound to convict and sentence the criminal defendant accordingly, where the plea negotiation is accepted by the Court.<sup>56</sup> One of the gravest banes of plea bargain in Nigeria is the prevalent abuse of sentencing discretion by our judges in handing sentence of plea negotiation<sup>57</sup> and the leniency of such sentences.<sup>58</sup> In Nigeria today, what is most often condemned is not actually the use of plea bargain, rather, it is the abuse of sentencing discretion by the courts.<sup>59</sup> Take the case of John Yusuf<sup>60</sup> for example; the sentence handed down by Justice Talba was considered unacceptable and an abuse of sentencing discretion. Thus, the National Judicial Council (NJC) suspended Abubakar Talba for twelve months without pay, for handing an 'unreasonable' sentence to John Yakubu Yusufu.<sup>61</sup> Further to that, the EFCC had to re-arrested John Yakubu Yusufu, and arraigned him on different set of charges.

#### **5. Conclusion and Recommendations**

Owing to the complexity in proving certain kind of offences<sup>62</sup> plea bargain has come to be appreciated as an effective means of criminal justice administration. This is notwithstanding its shortcomings if it is not properly handled and managed. In the few instances of the application of plea bargain in Nigeria, there have been manifest abuse and misuse which has subjected the use of the concept to severe criticisms. The problems associated with the use of plea bargain in Nigeria are not inherent in the concept; rather, it is the Nigerian criminal justice system that has subjected the concept to abuse and misuse. In view of the foregoing discussion, this paper considers the following recommendations necessary for the effective and efficient application of plea bargain in Nigeria.

Exploring the Provisions of ACJA 2015, the Administration of Criminal Justice Laws of the Various States of the Federation in the Application of Plea Bargain in Nigeria

<sup>47</sup> CFRN 1999, ss 174 (3) and 211 (3).

<sup>48</sup> Oyewo and Bello (n 46) 207.

<sup>49</sup> Tafa Balagun, a former Inspector General of Police; DSP Alameiyeseiagha, a former Governor of Bayelsa State; Lucky Igbinedion, a former Governor of Edo State; John Yakubu Yusufu, a former Deputy Director, Police Pension Office.

<sup>50</sup> Amaka Anajemba, a former renowned fraudster; Celicia Ibru, a former Managing Director and Chief Executive of the defunct Oceanic Bank Plc.

<sup>51</sup> Adekunle (n 19).

<sup>52</sup> Criminal Code, s. 390 (3)

<sup>53</sup> Oyewo and Bello (n 46) 208.

<sup>54</sup> D Musdapher, 'Legal Practice in Nigeria: Venturing Beyond the Usual Borders' being a paper presented at the Fifth Annual General Conference of the Section on Legal Practice of the Nigeria Bar Association held in Abuja on 14 November 2011.

<sup>55</sup> *People v Orin*, 13 CAL. 3d 937 (1975); Adeleke (n 1) 60.

<sup>56</sup> See Administration of Criminal Justice (Amendment) Law of Lagos State, 2011, s. 76 (7) (a) and (b); Administration of Criminal Justice Act 2015, s. 270 (9) (a) and (b).

<sup>57</sup> Tafa Balagun was handed 6 months imprisonment for looting billions of naira of Police treasury; DSP Alameiyeseiagha was handed 2 years imprisonment for looting and laundering Bayelsa State treasury, which two years he has already served out during the time he spent in detention; Lucky Igbinedion was handed 6 months imprisonment for stealing N2.9 b of Edo State fund, and he was given the option of N3.6m fine which he willingly paid; Cecilia Ibru was handed 18 months imprisonment for mismanaging people's savings in Oceanic Bank, and the 18 months is reckoned with the time she already spent in detention and the rest she spent at Redington Hospital, Victorial Island, Lagos; and John Yakubu Yusufu, who stole N27.2b of Police Pension Fund was handed 2 years imprisonment for 3 counts with an option of N250,000 for each count.

<sup>58</sup> Cecilia Ibru was ordered to return to the hospital after she was convicted and sentenced. One is forced to ask, are there no medical facilities in our prison? Human rights do not extend to right to medical facility of one's choice during lawful detention or imprisonment: see *Abacha v State* (2002) 5 NWLR (pt.761) p. 638; (2002) 2 FWLR (pt.98) p. 863. Lucky Igbinedion was given the option of fine for stealing N2.9 b of Edo State treasury, while John Yusufu was given an option of a ridiculous fine of N750,000 for embezzling N27.2b of Police Pension Fund.

<sup>59</sup> Following the January 28, 2013 sentence of Justice Abubakar Talba of FCT High Court in *F.R.N v Esai Dangabar & 5 Ors.*, (n 32), wherein he sentenced John Yakubu Yusufu to 2 years imprisonment with the option of N750,000 fine, which fine he paid; the NJC had to suspend Justice Abubakar Talba for one year without remuneration for such abuse of sentencing discretion. See: Nnochiri (n 34).

<sup>60</sup> *FRN v Esai Dangabar & 5 Ors* (n 32).

<sup>61</sup> Nnochiri (n 34).

<sup>62</sup> Perhaps the complexity and sophistication of economic and financial crimes in Nigeria has necessitated the use of plea bargain in disposing same.

In all jurisdictions where the practice of plea bargain is well entrenched, there is always in place a set of laws and regulations providing for and regulating the use and application of the concept. In the US for example, the federal<sup>63</sup> and state criminal procedure rules regulate the application and use of plea bargaining with the state of California even providing a seven-page form<sup>64</sup> to guide the prosecution and defence in the formulation of their plea agreement. To check the misuse and abuses of plea bargain, the starting point is to put into proper utility the provisions of the ACJA 2015, and other ACJL's of other states on the use of plea bargain. This is in view of the fact that these laws have put in place sufficient legal framework that should be explored for a proper utilization of the plea bargain. These laws have elaborate guide to regulate the use of plea bargain in Nigeria and these can cure the abuses and misuses of the concept which have been our experience with the use of the concept so far.

#### **Issuance of Sentencing Guidelines and Practice Direction by the State Chief Judges and the CJN**

In jurisdiction where the practice of plea bargain is well developed, there is usually in place sentencing guidelines to check the abuse of sentencing discretion by judges and to ensure uniformity of sentence in similar cases. In the US for instance, the Federal Sentencing Guidelines are followed in federal cases and have been created to ensure a standard of uniformity in all cases decided in the federal courts. Sentencing guidelines are designed to indicate to judges the expected sanction for a particular type of offence. They are intended to limit the sentencing discretion of judges and to reduce disparity among sentences given for similar offences. Although statutes provide variety of sentencing options for particular crimes, guidelines attempt to direct the judge to more specific action that could be taken.<sup>65</sup> In Nigeria today, there is no such sentencing guidelines, hence the many abuses of sentencing discretion by our judges. To achieve uniformity in sentences handed by our judges, the Chief Judges (CJs) of the states and that of the Federal High Court should develop and issue sentencing guidelines for judges to follow, not only in guiding them in plea bargain sentencing, but sentencing generally. This will further prevent the reoccurring abuse of sentencing discretion in sentences preceding plea bargain. Issuance of sentencing guidelines can be achieved by the CJs powers to make rules and practice direction as conferred by statutes.<sup>66</sup>

#### **Evolving and Issuing Practice Guide to Public Prosecutors by the Attorneys-General**

The Attorney-General and the heads of prosecuting authorities should evolve an effective supervisory arrangement in the form of a Practice Guide to guide and regulate the exercise of prosecutorial discretion by prosecutors engaging in plea bargain. In the US for example, the Department of Justice issues guidelines to assist Federal prosecutors in making decisions that fall within their discretion. This not only helps in checkmating the abuse and misuse of prosecutorial powers, but also offers elements of consistency in prosecutorial decision-making.<sup>67</sup> The publication of Practice Guide for prosecutors, containing rules and principles governing issuance of legal advice, plea bargain, etc., will expose prosecutors with the *nitty-gritty* of plea bargain. Such practice guide would encourage and mandate prosecutors to desist from bargaining loots but rather bargain only charges and punishments.

#### **Excluding the Option of Fine as Punishment in Cases Bordering on Economic and Financial Crimes Settled through Plea Bargaining**

One of the elements of abuse of sentencing discretion and misuse of plea bargain as seen in Nigeria today is in the ridiculous imposition of option of fine in lieu of custodial sentence.<sup>68</sup> And in the two instances,<sup>69</sup> the EFCC showed their displeasure with the trend by re-arresting and re-arraigning the accused persons. It is thus recommended that criminal defendants who enter a plea bargain in respect of an economic and financial crime, should not be given an option of fine which they can simply pay from the proceed of their crime. This can be achieved through the issuance of sentencing guidelines and practice guide as discussed above; or through a review of our substantive penal laws dealing with economic and financial crimes and corrupt practice, so as to expressly exclude the option of fine from the prescribed punishment for such offences. The need to expressly exclude the option of fine is that, where such option of fine is not expressly excluded as available punishment any offences, a judge can invoke his sentencing discretion and impose fine.<sup>70</sup>

#### **Organizing Seminars and Workshops for Judges, Prosecutors and Investigators on the Subject Matter of Plea Bargain**

To checkmate the abuses prevalent in the application of plea bargain, there is the need for the entire stakeholders in the criminal justice system on the use and application of plea bargain. The seminars and workshops will provide these key players with the basic knowledge and rudiments of an effective and efficient plea bargain procedure. It will teach the prosecutors that preferring certain kind of lesser charges gives a dent on the criminal justice system. It would further encouraging them to bargain charges not loot. It will teach the judges how to make judicious and judicial use of their sentencing discretion and to avoid handing in ridiculous sentences. With these achieved, these key players will be better equipped with the necessary skills, and knowledge for an effective plea bargain procedure.

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<sup>63</sup>Federal Rules of Criminal Procedure (United States of America), Rule 11. Available at <[http://www.law.cornell.edu/rules/frcrmp/rule\\_11](http://www.law.cornell.edu/rules/frcrmp/rule_11)> accessed on 22 August, 2023.

<sup>64</sup>Form CR-101, Plea Form with Explanations, and Waiver of Rights-Felony, Judicial council of California, accessible at <<http://www.courtinfo.ca.gov/forms/documents/cr101.pdf>> accessed on 22 August, 2023.

<sup>65</sup>For discussion on sentencing guidelines, see MT Landan, *Crime Prevention and Control and Human Rights in Nigeria* (Kaduna: Econet Publication Ltd. 1998) 377.

<sup>66</sup>CFRN 1999, ss 254, 259, 274; etc.

<sup>67</sup>Oyewo and Bello (n 46) 210.

<sup>68</sup>See *FRN v Lucky Igbiniedion & Ors.*, (n 38), Lucky Igbiniedion was given the option a fine of N3.6m in lieu of 6 months' imprisonment; while in *FRN v Esai Dangaba & 5 Ors.* (n 44), John Yakubu Yusufu was sentence to 2 years' imprisonment with an option of N750,000 fine.

<sup>69</sup>Lucky Igbiniedion and John Yusufu Yakubu.

<sup>70</sup>ACJA 2015, s 420 [which has replaced Criminal Procedure Act, s. 382]; Criminal Procedure Code, s. 23; see also the case of *Kayode v The State* (2008) All FWLR (Pt 402) 1014 at 1036-1037.