
HOW TO GUIDE

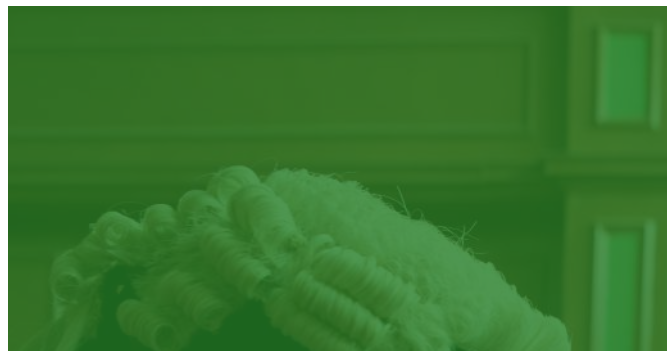
RULE OF LAW AND ANTI-CORRUPTION IN NIGERIA

**How to
introduce
plea bargains
in criminal
trials**

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WHAT IS THE 'HOW TO' SERIES?

The guide is part of a series of products developed by RoLAC to communicate lessons learned from projects and pilots, to provide stakeholders with guidance on how to adapt and replicate the initiative in their own context.

The full series can be downloaded from www.justice-security.ng

WHO IS THIS 'HOW TO' GUIDE FOR?

Influencers and decision makers in the justice sector (judiciary, lawyers, police, anti-corruption agencies, and civil society).

PROBLEM

- There is major congestion in Nigeria’s correctional facilities with over 71,383 inmates (exceeding official capacity by 21,300 inmates).
- 72 percent of the prison population await trial for an average of 750 days due to delays to prosecute.
- These delays are caused by resource limitations that impede courts and prosecuting agencies from trying detainees in a timely manner.
- Delays can lead to a miscarriage of justice for both awaiting trial persons (ATPs) and victims of crime, and erode public trust in the criminal justice system.

BACKGROUND

Nigeria’s National Justice Policy (2017) identified long trial delays as a major obstacle to achieving fair and swift administration of justice.

In criminal trials, delays cause congestions in courts, long pretrial detention and overcrowding in prisons. Judges and prosecutors have caseloads far greater than they can resolve in a reasonable time, causing delays that deprive defendants of fair and timely hearing.

A plea bargain allows the defendant to plead guilty to a lesser offence than the offence originally charged, leading to a reduced sentence. When a plea bargain is accepted, the case does not go through the full trial process, thus providing a speedier resolution. This reduces the number of cases in courts and ATPs in prisons.

Plea bargain provisions are contained in most Administration of Criminal Justice Acts/Laws but are not effectively applied. This is in part because there is no clear structure or uniform standard to guide plea negotiations and ensure consistency in processes and outcomes.

WHAT YOU CAN DO

- Develop and implement a plea bargain process within the Department of Public Prosecutions (DPPs).
- Set up a plea bargain committee in the DPPs office made up of state counsels responsible for managing the process.
- Identify stakeholders who are critical to the process; create awareness among them; and secure their buy-in and support for its successful implementation.

WHAT YOU CAN ACHIEVE

- Quick and efficient disposition of criminal cases by shortening the time required to conclude a case.

- Decongestion of court dockets, prosecutors’ workloads, and correctional facilities. In Lagos, about 380 cases were disposed of through plea bargains between 2019 and 2021. The defendants in these cases would have been in detention pending conclusion of the full trial process.
- Conservation of scarce resources (for the judiciary and prosecuting agencies) for use in cases where a full trial is unavoidable. Resources are also saved in correctional facilities, which spend less on persons detained on remand pending the full trial of their cases.
- It helps parties to achieve closure and much sooner. Suspects could start serving a sentence and anticipate their date of release. Others may be released following conviction because they were detained for a period commensurate to the prescribed prison term. The victim of the offence also finds closure sooner than later and can move on with life. For cases working their way through a trial, such closure could take much longer to achieve, or may never be achieved.

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Plea bargaining is a genuine tool in case management. The emphasis should be on training – for judicial officers, prosecutors and defence lawyers - to ensure we get it right. ”

Hon. Justice J.E Oyefeso

HOW TO DEVELOP AND IMPLEMENT A PLEA BARGAIN PROCESS

Steps for implementation

STEP 1 Secure buy-in of the Ministry of Justice

1 The development of a plea bargain process should be led by the Director of Public Prosecution (DPP) in the Ministry of Justice. The DPP should get the buy-in and support of the Attorney-General. A small committee should be formed to drive the process and develop an action plan. The action plan should include responsibilities for executing each activity. The activities in the plan should include the steps listed below.

STEP 2 Secure buy-in from external stakeholders

2 The DPP should secure the interest of key stakeholders, such as the police, courts, and bar associations. This can be done by hosting specific meetings or through existing coordination platforms, such as criminal justice committees or justice reform teams. Stakeholders should be made aware of the benefits and their expected roles in the plea bargain process. Their feedback should be incorporated in the design of the process.

STEP 3 Develop a plea bargain manual

3 A plea bargain manual should be developed to provide comprehensive guidance on how to apply for a plea bargain, the role of each party, and the processes to be followed. It can include a plea bargain application template; a timebound process map or workflow process; templates for plea bargain reports, and guidance on sentencing (for different types of offences). Manuals from other states can be referenced and adapted to suit the context in each state. The manual should be validated by all stakeholders before final adoption.

The plea bargain manual also outlines the guiding principles for plea negotiations and agreements. These principles help rationalise the discretion of officials and increase consistency in decisions. Each stage in the process is important and having a process map ensures that no stage is skipped. The process map secures the integrity of the negotiations and ensures that it stands up to scrutiny.

STEP 4 Establish a plea bargain committee

4 A plea bargain committee should be made up of prosecutors from the DPP office to review plea applications and negotiated sentences and make sentence or plea recommendations to the Attorney-General. The committee approach reduces chances of abuse, as it ensures that decisions on plea bargain applications are not made by one individual. A terms of reference should be drawn up for the committee to guide its actions. The committee should meet regularly (monthly or bi-monthly) depending on the number of applications received.

STEP 5 Develop and adopt sentencing guidelines

5 An applicant needs a degree of certainty over the likely sentence if they engage in the plea bargain process. Sentencing guidelines adopted by the judiciary to guide judicial discretion when allotting punishment are essential for such certainty. Guidelines from other states can be reviewed and adapted to suit the needs of each state/judiciary. The final guidelines should be subjected to wider stakeholder validation before adoption.

STEP 6 Train users on the plea bargain process

6 Training of judicial officers, prosecutors and defence counsels on the plea bargain process is necessary. These actors all need full knowledge of the plea bargain structure (manual, guides, templates, etc), such as what documents to prepare and file and the manner of proceedings in the courts, and their different roles in the process. Lawyers in the DPP office from other states with practical experience and expertise in plea bargains could be engaged to conduct the training.

STEP 7 Hold stakeholder meetings

7 The DPP should hold regular stakeholder meetings with the judiciary, defence counsels, the police, and other key actors on the development and use of plea bargains. Each actor must be clear on their role in the process. This is essential to ensure its successful adoption.

STEP 8 Create awareness about plea bargains

8 Defendants are the real 'users' of the plea bargain process. Sensitisation at correctional facilities and via lawyers' groups (such as the Nigerian Bar Association and the International Federation of Women Lawyers) is critical. This needs to take place regularly as it is when defendant's get first-hand information about plea bargaining as an option that they resort to the process. Information and communication materials are important and can be used. Sensitisation of the media is necessary to convey the benefits of plea bargaining, build public trust and support for the application and use of plea bargains, and enable them to report more accurately on the issue from an informed background.

STEP 9 Where necessary, review the law

9 In some states, plea bargains can only be made for minor offences. However, there is no reason why the plea bargain system cannot be used for all (or most) categories of offences for maximum impact. Relevant laws should be reviewed and amended to make provisions for plea bargains.

IMPLEMENTING PARTNERS AND THEIR ROLES

Ministry of Justice, Office of the Director of Public Prosecution

Responsible for leading and coordinating the process.

Judicial Officers

Plea agreements signed between the prosecutor and defendants will have to be entered as judgement by the courts. Judges and magistrates need to understand and accept the process and establish policies in the form of circulars or practice directions for implementation in courts. The judiciary will also be responsible for developing and adopting the sentencing guidelines.

Defence Counsel (and defendants)

Defence lawyers need to buy-in to the plea bargain process and understand how it can be beneficial to their clients and their own practice. This is critical to the success of the process as they are the ones who apply for plea bargains. Experience shows that when lawyers are opposed to plea bargaining for any reason, defendants are likely to decline or abandon a plea bargain attempt.

Police

Criminal cases are first investigated by the police. Case files are then sent to the office of the DPP for advice and prosecution. Commissioners of police should guide officers to release case files to the DPP when plea bargains are being considered.

LESSONS LEARNED

Active participation of top decision makers enhances success

Our experience shows that when key decision makers buy into the plea bargain programme and promote it, other actors fall in line. This is one of the salient lessons from Lagos: the Chief Judge and the Attorney - General have been at the forefront of promoting plea bargains, ensuring judicial personnel and prosecutors undergo training and play key roles in promoting awareness. The plea bargain process would not have been as successful in Lagos if these two actors had not been invested in the process.

Plea bargains are an important case management tool

Judges, magistrates, prosecutors, and public defenders have big caseloads and have difficulty disposing them in a reasonable time. The realisation that plea bargains can be used to reduce these caseloads has underpinned efforts to promote, sustain, and increase their use. This became the driving motivation for the proactive measures that Lagos state adopted on plea bargains.

Defence counsels and prosecutors are critical to the success of a plea bargain programme

Due to the conservative nature of the legal profession, many defence counsel do not cooperate with plea bargain processes out of preference for long drawn trial or distrust for plea bargains. Some would opt for discharge for lack of prosecution, while others advised their clients not to take a plea bargain or withdraw from one they have initiated. In one of the states that RoLAC supported, prosecutors were not cooperating because of a mistaken belief that plea bargained cases would attract negative performance reviews. These attitudes underline the need to engage with, train and sensitise these important constituencies about the benefits of plea bargaining.



EVALUATION

Regularly review the plea bargain process for timeliness, efficiency, and fairness.

What to review?

- Workflow – from when plea bargain process is initiated by the defendant or prosecutor to when a plea agreement is endorsed by a court
- Approval rates for sentence recommendations to the Attorney-General
- How often courts endorse negotiated sentences
- User feedback – how are defendants, defence counsels, and prosecutors experiencing the plea bargain process
- Rate defendants or defence counsels apply for and prosecutors offer plea bargains – to show how plea bargains are being accepted and mainstreamed in the criminal justice process
- Prosecutor's performance evaluations

Who should review?

- Plea bargain committees: regular reviews of the process
- The Attorney-General: approvals for sentence recommendations and periodic reviews of the entire process

POLICY DEVELOPMENTS

The enabling law

The ACJA is the legal framework that authorises plea bargaining. The authorization may also be found in legislation for specific crimes.

COSTS

The plea bargain process can result in significant savings in public money for each case, when compared to a full criminal trial.

Costs to consider during the set-up phase:

- Developing and validating the plea bargain manual (and sentencing guidelines)
- Training prosecutors and defence counsel on plea bargain processes and principles
- Setting up and training members of the plea bargain committee
- Providing administrative support and equipment for managing and monitoring plea bargain applications and their outcomes

Ongoing costs:

- Periodic meetings of the plea bargain committee
- Collating data of plea bargain applications and processes
- Regular advocacy campaigns and education for defendants and the public

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To demonstrate our commitment, I led a team of lawyers to the Kirikiri Maximum Correctional Facility for a plea bargain sensitisation exercise. More than 15 plea bargains were executed on site and sanctioned immediately by judges through a virtual court hearing. ”

Onigbanjo SAN, Attorney-General, Lagos state



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I first heard of plea bargains when the committee visited the female correctional centre. Many inmates had reservations about plea bargains, but I encouraged them to apply as it would help solve their long awaiting trials. I have now made 35 applications. Three cases stand out: Hauwa, a mentally challenged individual, had her sentence reduced. Chioma has been released because she had already served her six-year sentence. And Efreke who was contemplating suicide, has had her sentenced reduced and is looking forward to her release. ”

Chinelo, Defence Counsel



Find out more

Rule of Law and Anti-Corruption (RoLAC)

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www.justice-security.ng

The Rule of Law and Anti-Corruption (RoLAC) Programme is working to strengthen the application of law and curb corruption. We work at the federal level and in five focal states: Adamawa, Anambra, Edo, Kano and Lagos.

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