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PLEA BARGAINING GUIDELINES FOR FEDERAL PROSECUTORS, 2023

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SCHEDULE

S. I. No. 84 of 2023

PLEA BARGAINING GUIDELINES FOR FEDERAL PROSECUTORS, 2023

In the exercise of powers conferred on me by sections 150 (1) and 174 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended), sections 105 (1) and 270 of the Administration of Criminal Justice Act, 2015 ("ACJA"), and all other powers enabling me in that behalf, I, Lateef Olasunkanmi Fagbemi, SAN, Attorney-General of the Federation and Minister of Justice, makes the following Guidelines —

[3*rd Day of October,* 2023] Commencement.

PART I—OBJECTIVE AND APPLICATION

Objectives of the Guidelines

1.—(1) The objectives of these Guidelines are to —

(*a*) enhance the efficiency of the criminal justice system for orderly, predictable, uniform, consistent and timely resolution of criminal matters ;

(*b*) guide the prosecution and defendants in reaching a plea bargain agreement that ensures the protection of public interest, the interest of justice and prevents abuse of legal process ;

(*c*) enhance public confidence in the plea bargaining process in Nigeria ;

(*d*) ensure that principles of accountability, equity, integrity and transparency are observed in the exercise of prosecutorial discretion on plea bargain, in line with international best practices ; and

(*e*) reduce case backlog and congestion of correctional centres.

Application and enforce ability

2.—(1) These Guidelines apply to the plea bargaining of offences under section 270 of the ACJA.

(2) From the commencement of these Guidelines, a Prosecutor or Prosecuting Agency is enjoined to enter into plea bargain of offences in accordance with the provisions of these Guidelines.

(3) In exceptional cases, the Attorney-General of the Federation ("AGF") or the Head of a Prosecuting Agency may approve in writing, the conduct of plea negotiations without compliance with the procedures under these Guidelines provided that the Plea Agreement complies with the Schedule to these Guidelines.

(4) Non-compliance with these Guidelines in entering a plea bargain agreement shall not be relied upon by a Defendant as a ground for invalidating the agreement provided that the requirements of section 270 of the ACJA are complied with.

PART II — GENERAL GUIDING PRINCIPLES

Guiding Principles for Plea Bargaining

3.—(1) When considering a plea bargain, the AGF, Head of a Prosecuting Agency or the Prosecutor as the case may be, shall be guided by the following core principles —

(*a*) *accountability* – take responsibility for their decisions and be able to explain them ;

(*b*) *consistenc*y – ensure that the same set of facts are most likely to generate the same decisions every time through giving similar treatment to similar cases, uniformity and consistency in applying relevant principles ;

(*c*) *credibility* – ensure trustworthy decision-making process that delivers confidence ;

(*d*) *objectivity* – ensure that decisions are based on rational application of relevant principles and on an objective analysis of the facts and special circumstances ;

(*e*) *equity* – ensure that the interest of all stakeholders are considered when making decisions ;

(*f*) *integrity* – ensure that decisions are evidence-based, objective, commensurate, proportional to and reflective of the criminality, gravity and circumstances of the crime ;

(*g*) *predictability* – avoid arbitrariness and ensure that every decision-making process follow the same procedure ;

(*h*) *transparency* – ensure that both the decision and the decision-making process are open, transparent, unambiguous and clear ;

(*i*) fairness – ensure that relevant principles are equally applied to all cases ; and

(*j*) *independence* – ensure that decisions are reached without undue influence from any source.

(2) The procedures followed shall —

(*a*) command public and judicial confidence ;

(*b*) ensure that any agreement reached is reasonable, fair and just ; and

(*c*) ensure that Defendants are not under improper pressure to make admissions and that Prosecutors keep proper records of negotiations that have taken place.

(3) In conducting negotiations and presenting a plea bargain agreement to the court, the Prosecution shall act fairly, openly and in the interest of justice.

(4) Acting fairly under sub - guideline (3) of this Guideline means respecting the rights of the Defendant, victim and any other person who is being or may be prosecuted in relation to the offence.

(5) Further to provisions under sub-guideline (4) of this Guideline, the Prosecution shall not put improper pressure on a Defendant in the course of negotiations, including by exaggerating the strength of the case in order to persuade the Defendant to plead guilty, or to plead guilty on a particular basis.

(6) Acting openly under sub-guideline (3) of this Guideline means being transparent with the Defendant, the complainant, the victim and the court.

(7) Pursuant to the provisions of sub - guideline (6) of this Guideline, the Prosecution shall —

(*a*) ensure that full and accurate records of the negotiations are prepared and kept ;

(*b*) ensure that the Defendant or his legal representative has sufficient information to enable him play an informed part in plea bargain negotiations ;

(*c*) communicate with the victim or complainant before deciding on the alternative means of disposal or accepting a reduced basis of plea, including charge for a lesser offence or a lower sentence, wherever it is practicable to do so, so that the position can be fully explained ; and

(*d*) ensure that the charge, basis of plea, Plea Agreement or summary of facts placed before the court fully and fairly reflects the agreement reached by the parties.

(8) The Prosecutor shall not agree to the inclusion of additional matters with the Defendant which are not recorded or provided for under the Plea Bargain Agreement and made known to the court.

(9) Acting in the interest of justice under sub - guideline (3) of this Guideline means that the Prosecution shall ensure that whatever is agreed in the Plea Bargain Agreement –

(*a*) reflects the seriousness and extent of the offence ;

(*b*) assists the court to impose a commensurate sentence reflective of the offence ; and

(*c*) enables the court, the public and the victims to have confidence in the outcome.

(10) The Prosecution shall not agree to a plea bargain proposal which is misleading, untrue or illogical.

(11) The Prosecution shall carefully consider the impact of a proposed means of disposal or plea bargain on the community and the victim, and on the prospects of successfully prosecuting any other person implicated in the offence.

(12) Any charge or sentence agreed or guilty plea accepted shall enable the case to be presented in a clear, simple and straight - forward manner.

Plea bargain in financial crimes

4. In financial crimes, the conditions for consideration of a plea bargain shall in addition to other criteria provided for in these Guidelines, include the surrendering of proceeds of the crime and the agreement by the Defendant to forfeit the proceeds of crime or its equivalent to the State or restitute the victim of the crime as the case may be.

Where the victim of crime is entitled to compensation

5. Where the offence committed by the Defendant may ordinarily entitle the victim of the crime to compensation, consideration of a Plea Bargain or any other alternative method of disposal of the case shall be premised on the Defendant agreeing to compensate the victim and the terms of compensation shall be incorporated in the Plea Bargain Agreement.

Evidence in support of the agreed charge in the Plea Agreement

6. The prosecution shall ensure that the charge agreed upon with the Defendant in the Plea Bargain Agreement is supported or can be sustained by available evidence.

Plea Bargain to be in the public interest and for delivering justice in particular circumstances

7.—(1) The Prosecution shall only enter a Plea Bargain negotiation in the public interest and for delivering justice in the particular circumstances of each case and not merely for the purpose of lessening punitive measures on the Defendant.

(2) The Prosecution shall be alert to any attempt by the Defendant to use plea bargain negotiations as a means of delaying prosecution and shall not initiate or continue negotiations where the Defendant's commitment to the process is doubtful.

(3) In reaching an agreement on plea bargain, the Prosecution and Defendant or his legal representative shall resolve any factual issues necessary to allow the court to sentence the Defendant on a clear, fair and accurate basis.

Factors indicating that a Plea Bargain is not in the public interest

8. The factors that indicate that a Plea bargaining negotiation or agreement is not in the public interest include, where the Defendant —

(*a*) is unwilling to co-operate in the investigation or prosecution of others ;

(*b*) has a history of criminal activity or conviction;

(*c*) is not remorseful or contrite and is unwilling to assume responsibility for his conduct ; or

(*d*) is unwilling to make restitution or pay compensation.

Part III — Initiation of Plea Bargain Negotiations

Initiation of negotiations for Plea Bargain

9.—(1) In the case of the Federal Ministry of Justice, negotiations for Plea Bargain of an offence may be initiated by the Director of Public Prosecutions of the Federation, a Lead Prosecutor where there is a team of Prosecutors, or the Prosecutor handling a case (including an External Solicitor).

(2) In the case of a Prosecuting Agency, negotiations for Plea Bargain may be initiated by the Head of Prosecutions, a Lead Prosecutor where there is a team of Prosecutors, or the Prosecutor handling a case (including an External Solicitor).

(3) Notwithstanding the provisions of sub-guidelines (1) and (2) of this Guideline, negotiations for Plea Bargain may be initiated by a Defendant or Defence Counsel.

(4) In the case of a federal offence prosecuted by the Attorney-General of a State pursuant to AGF's Fiat, a plea bargain negotiation shall not be initiated or concluded unless the written consent of the AGF is first sought and obtained.

Factors to be considered before approving the initiation of Plea Bargain negotiation

10. Before approving the initiation of a plea bargain negotiation, the AGF or Head of a Prosecuting Agency shall take into consideration the following relevant factors —

(*a*) long interval between the commission of the offence and the trial where that has made access to relevant evidence extremely difficult or made a full trial less likely to succeed ;

(*b*) the need to use a Defendant as a prosecution witness ;

(*c*) the need to protect victims of the crime ; or

(*d*) case load management concerns including —

(*i*) the likelihood of a protracted trial and the need to avoid delay in the disposition of other pending cases ;

(*ii*) the cost of prosecution ;

(*iii*) the desirability of a prompt and certain disposal of the case ;

(*iv*) the probable sentence or other consequences where the Defendant is convicted ;

(*v*) protracted period spent in custody while awaiting trial relative to the maximum sentence possible although the chances of conviction are high ;

(*vi*) where evidence at the disposal of the prosecution is insufficient to prove the offence charged beyond reasonable doubt ;

(*vii*) where the Defendant has made full disclosure of illicit gains and agreed to return the proceeds of the crime or make restitution or pay compensation to the victim or his representative ; or

(*viii*) the Defendant's willingness to co-operate in the investigation or prosecution of other suspects to the crime.

Time for commence-ment of Plea Bargain negotiations

11. Plea Bargain negotiations may commence before or after a charge has been filed against a Defendant, during or after the presentation of evidence of the prosecution but before the presentation of the evidence of the defence.

Procedure where Plea Bargain is initiated by the Prosecution

12.—(1) A Lead Prosecutor or the Prosecutor, as the case may be, may submit a written plea application to the DPPF or the Head of Prosecutions of a Prosecuting Agency outlining the factors justifying the commencement of plea bargain negotiation with a Defendant or Defence Counsel.

(2) A written plea bargain application under sub-guideline (1) of this guideline shall contain the proposal to resolve the matter.

(3) Upon the receipt of the application made under sub-guideline (1) of this guideline, the DPPF or Head of Prosecutions of a Prosecuting Agency after considering the relevant provisions of these Guidelines and obtaining the approval of the AGF or Head of Agency may give a written authorization to the Lead Prosecutor or the Prosecutor to negotiate a Plea Bargain with the Defendant or Defence Counsel.

(4) A Prosecutor shall not enter into a plea bargain negotiation with a Defendant or Defence Counsel unless he has received the written authorization of the DPPF or Head of Prosecutions of a Prosecuting Agency as approved by the AGF or Head of the Prosecuting Agency as the case may be.

(5) The Prosecutor upon receipt of a written authorization under sub-guideline (4) may in accordance with Part IV of these Guidelines enter into plea bargain negotiations with the Defence which shall be concluded within a reasonable time in high profile cases and fourteen working days in non-high profile cases, from the date of receiving the approval to negotiate.

(6) The AGF or Head of Prosecuting Agency may, where necessary, extend the time for plea bargain negotiations in non-high profile cases.

(7) Where an agreement is reached at a plea bargain negotiation, a draft of the Proposed Plea Bargain Agreement which shall comply with the provisions of guideline 20 (2) and (3), and the Schedule to these Guidelines shall be submitted by the Prosecutor to the DPPF or Head of Prosecutions of the Prosecuting Agency, as the case may be, for consideration.

(8) The DPPF or Head of Prosecutions of the Prosecuting Agency may invite the Lead Prosecutor or the Prosecutor handling the matter to provide any required information or make any necessary clarification.

(9) In exceptional cases, having regard to the sensitive nature of a case and other public interest concerns, the DPPF or Head of Prosecutions of the Prosecuting Agency may invite the Counsel for the Defendant, the Defendant where unrepresented or any other person to provide any required information or make any necessary clarification.

(10) The DPPF or Head of Prosecutions of the Prosecuting Agency shall within 10 working days of receipt of the proposed Plea Bargain Agreement, consider the proposed Agreement and advise the AGF or Head of the

Prosecuting Agency, as the case may be, on the appropriateness of the proposed Plea Bargain Agreement.

(11) Where the DPPF or Head of Prosecutions of the Prosecuting Agency recommends a Plea Bargain Agreement and the AGF or Head of Prosecuting Agency approves the terms of the Plea Agreement as recommended or with modifications, the DPPF or Head of Prosecution of the Prosecuting Agency shall direct the Lead Prosecutor or the Prosecutor, as the case may be, to liaise with the Defence Counsel for execution of the Plea Bargain Agreement by the Defendant, Defence Counsel and the Prosecutors as provided in guideline 20 (7) of these Guidelines.

(12) Where there is a modification in the terms of the Plea Bargain Agreement as originally submitted by the Prosecutor, the DPPF or Head of Prosecution of the Prosecuting Agency shall direct the Lead Prosecutor or the Prosecutor, as the case may be, to inform the Defendant or Defence Counsel of the modification and its implications, if any.

(13) Where the Defendant accepts the modified Plea Bargain Agreement, the Prosecutor, the Defendant and Defence Counsel shall execute the Agreement in accordance with the provisions of guideline 20 (7) of these Guidelines.

(14) Where the Defendant or Defence Counsel rejects the terms of the modified Plea Agreement, the Plea Negotiation shall be deemed to have broken down.

Procedure where Plea Bargain is initiated by Defence

13.—(1) A Defendant or Defence Counsel may initiate plea bargasin negotiations with the prosecution by writing a plea bargain application letter to the AGF in the case of Federal Ministry of Justice or the Head of Agency in the case of a Prosecuting Agency.

(2) The plea bargain application letter under sub-guideline (1) of this Guideline shall —

(*a*) propose a plea bargain ;
(*b*) set out the willingness of the Defendant to admit criminal liability ; and
(*c*) outline the proposal to resolve the matter.

(3) Upon the receipt of the plea bargain application letter requesting for Plea Bargaining, the AGF or the Head of Prosecuting Agency may decline the request or approve plea bargaining negotiations by the Prosecution.

(4) Where the AGF or Head of prosecuting Agency approves negotiations for plea bargaining, the Prosecutor and the Defendant or the Defence Counsel as the case may be, shall be duly informed in writing through the DPPF or Head of Prosecutions of the Prosecuting Agency.

(5) The Prosecutor shall where the matter is pending in court, upon the receipt of the approval, inform the court accordingly and seek for an adjournment which, subject to the convenience of the court, shall be for a period of not more than 15 working days in the first instance.

(6) The Prosecutor shall in accordance with the provisions of Part IV of these Guidelines enter into plea bargain negotiations with the Defence which shall be concluded within a reasonable time in high profile cases and 14 working days in non-high profile cases, from the date of receiving the approval to negotiate.

(7) The AGF or Head of Prosecuting Agency may, where necessary, extend the time for plea bargain negotiations in non-high profile cases.

(8) Where an agreement is reached at the negotiation, a draft of the agreement which shall comply with the provisions of guideline 20 (2) and (3), and the Schedule to these Guidelines shall be submitted by the Prosecutor to the DPPF or Head of Prosecutions of the Prosecuting Agency for consideration.

(9) The DPPF or Head of Prosecutions of the Prosecuting Agency may invite the Lead Prosecutor or the Prosecutor handling the matter, to provide any required information or make any necessary clarification.

(10) In exceptional cases, having regard to the sensitive nature of a case and other public interest concerns, the DPPF or Head of Prosecutions of the Prosecuting Agency may invite the Counsel for the Defendant, the Defendant where unrepresented or any other person to provide any required information or make any necessary clarification.

(11) The DPPF or Head of Prosecutions of the Prosecuting Agency shall consider the proposed agreement and advise the AGF or Head of the Prosecuting Agency, as the case may be, within 10 working days of receipt of the agreement.

(12) Where the DPPF or Head of Prosecutions of the Prosecuting Agency recommends a Plea Bargain Agreement and the AGF or the Head of the Prosecuting Agency approves the terms of the Plea Bargain Agreement as recommended or with modifications, the DPPF or Head of Prosecution of the Prosecuting Agency shall direct the Lead Prosecutor or the Prosecutor, as the case may be, to liaise with the Defence Counsel for the execution of the Plea Bargain Agreement by the Defendant, Defence Counsel and the Prosecutor as provided under guideline 20 (7) of these Guidelines.

(13) Where there are modifications in the terms of the Plea Bargain Agreement as originally submitted by the Prosecutor, the DPPF or Head of Prosecutions of the Prosecuting Agency shall direct the Lead Prosecutor or the Prosecutor, as the case may be, to inform the Defendant or Defence Counsel of the modification and its expected implications, if any.

(14) Where the Defendant accepts the modified Plea Bargain Agreement, the Prosecutors, the Defendant and Defence Counsel shall execute the Agreement in accordance with guideline 20 (7) of these Guidelines.

(15) Where the Defendant or Defence Counsel rejects the terms of the modified Plea Bargain Agreement, the Plea Bargain Negotiation shall be deemed to have broken down.

Procedure where Plea Bargain is initiated by External Solicitor

14.—(1) Plea Bargain initiated by an External Solicitor shall follow the procedure in guideline 12 of these Guidelines.

(2) An External Solicitor prosecuting on behalf of the State shall not enter into any negotiation for plea bargain with a Defendant or Defence Counsel without the written approval of the DPPF or Head of Prosecutions of the Prosecuting Agency in relation to that specific case.

(3) Where an External Solicitor has been given written approval to engage in plea bargain negotiations —

(*a*) a designated State Counsel shall be present at each meeting ; and

(*b*) the negotiations at the meetings shall be recorded.

(4) Plea Bargain initiated by an External Solicitor shall comply with the procedure for processing the proposed plea bargain through the DPPF or Head of Prosecutions of the Prosecuting Agency as provided for under guideline 12 of these Guidelines.

Conditions for recommending the approval of a Plea Bargain Agreement.

15. In recommending a Plea Bargain Agreement for the approval of the AGF or Head of a Prosecuting Agency, as the case may be, the Prosecutor and the DPPF or Head of Prosecutions of the Prosecuting Agency, as the case may be, shall ensure that —

(*a*) the investigators and the victims of the crime, where traceable, have been consulted and their views sought provided that the Prosecutor shall not be automatically bound by their views ;

(*b*) the recommendation is justified in writing, substantiated by evidence and is based on the Defendant making full admission of liability ;

(*c*) the terms of the proposed Plea Bargain Agreement are in compliance with the provisions of these Guidelines, the ACJA and any applicable Sentencing Guidelines and Practice Directions ;

(*d*) the recommendation states the aggravating and mitigating features arising from the facts of the case, sets out any personal mitigation available to the Defendant, and refers to any relevant sentencing guidelines or authorities ;

(*e*) recommendations state that the Defendant has made full disclosure and is willing to disgorge in full, illicit assets, proceeds or gains from the crime ; and

(*f*) the recommendation would enable the AGF or Head of Prosecuting Agency to protect public interest, the interest of justice and prevent an abuse of the legal process.

PART IV — PROCEDURE FOR CONDUCTING PLEA BARGAIN NEGOTIATIONS

Conducting and recording plea bargain negotiations

16.—(1) Plea bargain negotiations may be conducted by physical or virtual meeting.

(2) There shall be at least two Prosecutors present at each meeting, and the Investigator and the victim may be present where feasible.

(3) The Prosecutor shall not meet with a Defendant who is not legally represented unless the Defendant agrees to the meeting being recorded in a retrievable form, or the meeting being held in the presence of an independent third party provided that all persons present shall sign the minutes of the meetings.

(4) An External Solicitor shall not meet with the Defence unless a State Counsel is present at such meeting.

(5) All meetings between the parties shall be recorded and the minutes signed by the Defendant, his or her legal representative, the Prosecutors or State Counsel present, the Investigator (if present) and the victim (if present), and any other person present at the meeting.

(6) In the case of a virtual meeting, it shall be electronically recorded in addition to the signed minutes.

(7) The Prosecutor shall keep a full written record of every key action and event in the negotiation process, including details of every offer or concession made by each party.

Charge negotiation

17.—(1) The Prosecutor and the Defence may negotiate the charge filed or proposed to be filed against the Defendant.

(2) The negotiation of the charge shall be guided by the provisions of these Guidelines and the proposal made under guidelines 12 (1) and (2) and 13 (1) and (2) of these Guidelines.

(3) The negotiation of an existing or proposed charge may involve the acceptance of —

(*a*) the same charge or a less serious charge than the charge originally filed by the prosecution ;

(*b*) the same charge or a less serious charge than the charge proposed to be filed by the prosecution; or

(*c*) a less serious charge than the charge disclosed by the evidence originally filed in court by the prosecution provided that evidence exists for conviction of the less serious charge.

Sentence negotiation

18.—(1) Where the Prosecutor and the Defence have agreed on the charge, the parties may discuss and agree on what they consider would be an appropriate sentence.

(2) The Prosecutor may include in the proposed sentence, relevant asset recovery and any recommendation for ancillary orders such as compensation, restitution, freezing, seizure and confiscation.

(3) The agreed sentence may be —

(*a*) a reduced sentence for the same charge originally filed against the Defendant which the Defendant pleads or agrees to plead guilty to ;

(*b*) a reduced sentence for the charge proposed to be filed against the Defendant which the Defendant pleads or agrees to plead guilty to ; or

(*c*) a sentence for a lesser charge which the Defendant pleads or agrees to plead guilty to.

(4) The agreed sentence may be a custodial or non-custodial sentence (including fine) provided that any sentence that is recommended shall take into consideration the relevant sentencing principles in any applicable Sentencing Guidelines for the offence which the defendant has agreed to plead guilty to.

(5) The Prosecutor shall make it clear to the Defence that the sentence agreement (including ancillary orders) is not binding on the court and that the court has the ultimate discretion whether to accept any sentence recommended in the Plea Bargain Agreement, impose a lesser sentence, or decide to impose a heavier sentence in accordance with the provisions of the ACJA and any applicable Sentencing Guidelines

Plea bargain negotiation where multiple agencies are involved

19.—(1) During a Plea Bargain Negotiation, the Prosecutor shall inquire from the Defendant whether he has any other pending charge in court or ongoing investigation instituted by any other Prosecuting Agency.

(2) Failure of the Defendant to disclose any such pending charge or ongoing investigation shall be regarded as non-disclosure of material facts which shall invalidate any Plea Bargain Agreement reached by the parties.

(3) Where a Defendant admits to other pending charge by another Prosecuting Agency and wants such charge to be taken into consideration in the Plea Bargain Negotiation, the Prosecutor shall, with the approval of the AGF or the Head of the Prosecuting Agency, as the case may be, and through the DPPF or Head of Prosecutions of the prosecuting Agency, liaise with that other Prosecuting Agency to ascertain their disposition towards a joint plea negotiation for all the charges.

(4) Where that other Prosecuting Agency does not have any objection to a joint negotiation of the charges, the Prosecutors of the two or more Prosecuting Agencies may enter into a joint plea bargain negotiation with the

Defendant in respect of the pending charge and reach an agreement which may be drawn up in separate Plea Agreements for convenience.

(5) Where that other Prosecuting Agency objects to a joint negotiation of the charge, it shall not be bound to enter into joint negotiation of plea bargain with the Defendant.

Plea Bargain Agreement.

20.—(1) All matters agreed between the Prosecutor and the Defendant or Defence Counsel in a plea negotiation shall be reduced into writing as a draft Plea and Sentence Agreement subject to the approval of the AGF or the Head of Prosecuting Agency.

(2) The form and content of Plea Agreement shall, with necessary modifications, accord with the Schedule to these Guidelines.

(3) A Plea Agreement shall include —

(*a*) the Charge-list of the original offence charged and the maximum punishment for each of the offences ;

(*b*) Statement of the Facts as may be agreed by the parties ;

(*c*) acknowledgment of rights of the Defendant and waiver of certain rights ;

(*d*) agreement to plead guilty to the offence charged or other lesser offences ;

(*e*) maximum sentence for the offence agreed upon ;

(*f*) sentencing guidelines (applicable sentencing guidelines, if any), and the factors considered in recommending the sentence ;

(*g*) Sentencing Agreement (the agreed sentence ;

(*h*) attachments ; and

(*i*) date and signature of the Defendant, Defence Counsel and the Prosecutors.

(4) The content of the Plea Agreement may be modified as appropriate, to accommodate the peculiarities of a particular case.

(5) Any agreement regarding giving assistance to the prosecution by the Defendant shall be in a separate document and not included in the Plea Agreement.

(6) The Prosecutor and the Defence counsel shall endorse each page of the draft Plea Agreement but shall not execute such agreement.

(7) After the approval of a Plea Bargain Agreement by the AGF or Head of Prosecuting Agency as prescribed under guidelines 12 and 13 of these Guidelines, the Agreement shall be executed by the Defendant, the Defence Counsel, the interpreter, where applicable, and two Prosecutors.

(8) The Plea Agreement shall, subject to the Order of Court, be binding on the Parties unless where fraud is discovered.

(9) Fraud under sub-guideline (8) of this Guideline shall include lack of full disclosure by the Defendant.

Procedure after execution of Plea Agreement

21. In advance of the Defendant's arraignment or next appearance in Court, the Prosecutor shall file in the Registry of the court —

(*a*) the signed Plea Agreement with attachments (if any) ; and

(*b*) an amended charge as agreed by the parties (where necessary).

Failure of plea negotiation

22. Where a Defendant or Defence Counsel declines to take part in plea negotiation or where the plea negotiation breaks down, the —

(*a*) Prosecutor shall report to the AGF or the Head of the Prosecuting Agency through the DPPF or the Head of Prosecutions, as the case may be ;

(*b*) Prosecution shall take steps to proceed with the trial of the case in court after seven days but not later than 21 days from the date of reporting to the AGF or the Head of the Prosecuting Agency subject to the Court's calendar.

Renewed negotiation

23. Where the plea negotiation breaks down, the parties may only renew the negotiation with the approval of the AGF or the Head of the Prosecuting Agency as the case may be.

PART V — MISCELLANEOUS

Monitoring of Compliance (Submission of plea bargain agreement to AGF)

24. A copy of a plea bargain agreement entered into or executed by or on behalf of a Prosecuting Agency shall in accordance with section 270(7)(d) of the ACJA be forwarded to the AGF within seven days of its execution for record and depository purposes.

Delegation of Power

25. The AGF, Head of Prosecuting Agency, DPPF or Head of Prosecutions of the Prosecuting Agency may, for the purpose of facilitating the implementation of these Guidelines, delegate any of the powers conferred on them in the Guidelines.

Savings and transitional provisions

26.—(1) Subject to the provisions of these Guidelines and the ACJA, approvals or Plea Bargain authorisations granted prior to the entry into force of these Guidelines shall remain valid in accordance with terms and conditions stipulated therein.

(2) Any pending plea bargain application, negotiation or agreement that was not yet finalized at the date of the entry into force of these Guidelines shall be deemed to have been submitted for processing in accordance with the provisions of these Guidelines.

(3) Where plea negotiations have not commenced or have commenced but not concluded before the date of entry into force of these Guidelines, such negotiations shall be conducted in accordance with the provisions of these Guidelines.

(4) Where plea negotiations have been concluded but a Plea Agreement is yet to be executed, it shall not be necessary to comply with the procedure for negotiation under these Guidelines provided that the Plea Agreement complies with guideline 20 and the Schedule to these Guidelines.

Interpretation

27.—(1) The terms used in the ACJA shall apply to these Guidelines.

(2) In these Guidelines —

"*ACJA*" means Administration of Criminal Justice Act ;

"*AGF*" means Attorney-General of the Federation; but may refer to the Attorney-General of a State in relation to plea bargain of a federal offence being prosecuted by the Attorney-General of a State pursuant to the AGF's fiat ;

"*Constitution*" means the Constitution of the Federal Republic of Nigeria, 1999 (as amended) ;

"*DPPF*" means Director of Public Prosecutions of the Federation but refers to Director of Public Prosecutions of the State in relation to plea bargain of a federal offence being prosecuted by the Attorney-General (AG) of a State pursuant to AGF's fiat ;

"*Defendant*" includes a person who is facing criminal charge or who is the subject of any negotiation for plea bargain of any offence and the word "*Defence*" shall be construed accordingly ;

"*External Solicitor or Counsel*" means any private legal practitioner instructed by the AGF or Head of a Prosecuting Agency to prosecute an offence ;

"*Federal Ministry of Justice*" includes Ministry of Justice of a State in relation to plea bargain of a federal offence prosecuted by AG of a State pursuant to AGF's fiat ;

"*High profile case*" means a case which —

(*a*) has a significant international dimension ;

(*b*) requires specialized knowledge of financial, commercial, fiscal or regulatory matters such as the operation of capital markets, banking systems, trust or tax regimes ;

(*c*) involves substantial or significant loss of funds by a Ministry, Department or Agency of government ;

(*d*) involves an alleged misconduct which amounts to an act of professional misconduct ; or

(*e*) involves trans-border activities, terrorism, hostage-taking, kidnapping, organized crime or economic sabotage ;

"*Head of Prosecuting Agency*" means the Chief Executive Officer of a Prosecuting Agency ;

"*Head of Prosecutions*" means the head of the department or unit of a Prosecuting Agency responsible for public prosecutions ;

"*Lead Prosecutor*" means the leader of a prosecution team ;

"*Plea Bargain Agreement*", "*Plea and Sentence Agreement*" or "*Plea Agreement*" means an agreement entered into between the prosecution and a Defendant regarding a charge or sentence against the Defendant recording and evidencing the Plea Bargain of an offence ;

"*Plea Negotiation*" means negotiation or discussion for plea bargain of an offence ;

"*Prosecuting Agency*" means a Government Agency or a statutory body prosecuting or empowered by law to prosecute or investigate and prosecute an offence created by an Act of National Assembly including —

(*a*) Central Bank of Nigeria ;

(*b*) Code of Conduct Bureau ;

(*c*) Economic and Financial Crimes Commission ;

(*d*) Independent Corrupt Practices and other related offences Commission ;

(*e*) National Agency for the Prohibition of Trafficking in Persons ;

(*f*) National Drug Law Enforcement Agency ;

(*g*) Nigeria Custom Service ;

(*h*) Nigeria Police Force ; and

(*i*) Nigeria Security and Civil Defence Corps.

"Prosecutor" means a person prosecuting or having power to prosecute an offence created by an Act of the National Assembly in any court in Nigeria ;

"*Stakeholders*" means the State, the complainant, the victim, the Defendant, and the society at large in the context of section 1(1) of the ACJA, 2015.

"*State*" means the Federal Government of Nigeria or any of the 36 States of the Federation as the case may be ; and

"*State Counsel*" means Prosecuting Counsel employed in the Federal Ministry of Justice or any Prosecuting Agency.

28. These Guidelines may be cited as the Plea Bargaining Guidelines for Federal Prosecutors, 2023. Citation

MADE at Abuja this 3rd day of October, 2023

LATEEF OLASUNKANMI FAGBEMI, SAN
Honourable Attorney-General of the Federation and Minister of Justice

Explanatory Note

(*This note does not form part of these Guidelines but is intended to explain its purport*)

The Plea Bargaining Guidelines for Federal Prosecutor, 2023 seeks to complement and enhance the efficiency of the criminal justice system for orderly, predictable, uniform, consistent and timely resolution of criminal matters; guide the prosecution and defendant in reaching a plea bargain that ensures protection of public interest, the interest of justice and prevents abuse of legal process; enhance public confidence in the plea bargaining process in Nigeria; ensure that principles of accountability, equity, integrity and transparency are observed in the exercise of prosecutorial discretion on plea bargain in line with international best practices and the intendment of the ACJA in order to prevent abuse; and facilitate reduction in case backlog and congestion of correctional centres.

SCHEDULE

(MODEL PLEA BARGAIN FORM)

[*Guidelines* 2(3), 12(7), 13 (8), 20(3) and 25(4)]

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA

[*Or Name and Type of Court as appropriate*]

THE FEDERAL REPUBLIC OF NIGERIA .. .. *Complainant*

and

XY .. .. *Defendant*

PLEA AND SENTENCE AGREEMENT

THIS PLEA AND SENTENCE AGREEMENT IS MADE PURSUANT TO SECTION 270 OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015

Charge

1. The offences with which the Defendant is charged should be listed here and their punishment stated.

Statement of Agreed Facts

2.—(1) The statement of facts agreed to between the prosecution and the Defence on which the guilty plea of the Defendant would be based.

(2) The statement of facts should outline in summary the facts supporting the ingredients of the offence the Defendant is alleged to have committed or agrees to plead guilty to.

Acknowledgment of Rights of Defendants and Waiver of Certain Rights

3.—(1) The Defendants had been informed before the conclusion of this Plea and Sentence Agreement of the following —

(*a*) that he has a right to remain silent ;

(*b*) a right to plead not guilty to any criminal charge brought against him ;

(*c*) that he has been informed of the consequences of not remaining silent ;

(*d*) that he is not obliged to make any confession or admission that could be used in evidence against him ;

(*e*) that he has a right to fair hearing, to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial.

(2) The Defendant knowingly and voluntarily waives the rights set out in sub-paragraphs 1 of this paragraph.

Agreement to Plead Guilty to offence charged or other lesser offence

4. The Defendants accepts the facts stated in paragraph 2 of this Agreement and admits that he is guilty and will plead guilty to the following offences :

- ……..……..
- …….....…….

Maximum Sentence for the Offence Agreed

5.—(1) The Defendant understands that the statutory maximum penalty which may be imposed by the court for the offence is …… [Insert this clause in cases of corruption, economic or financial crime].

(2) The Defendant understands that this agreement shall become vitiated and of no effect where the Defendant makes a materially false declaration, fails or neglects to fully and completely disclose and disgorge the proceeds of crime or assets connected to the crime.

Sentencing Guidelines

6.—(1) The Defendant understands that the court will apply the applicable Sentencing Guidelines/Practice Directions on sentencing in considering the sentence that the prosecution and the Defence recommend in this Plea and Sentence Agreement.

(2) The agreement should state here the factors considered in recommending the agreed sentence including mitigating/aggravating factors.

Sentencing Agreement

7. Pursuant to section 270 of the Administration of Criminal Justice Act, 2015, the State and the Defence agree to recommend as the appropriate disposition the following—

(*a*) a sentence of …….. imprisonment ;

(*b*) fine in the amount of …..... ;

(*c*) where appropriate community service sentence or other non-custodial measures ;

(*d*) where appropriate confiscation of the sum of …….. or listed properties (confiscated properties to be itemized) ; and

(*e*) any other disposition method provided by law such as compensation, etc.

Attachments

8. Any relevant document that could assist the court in considering the recommendations in the agreement may be attached to the Plea and Sentence Agreement, for example, materials provided by the Defendant to the prosecution such as documents relating to personal mitigation.

DATED this ..... day of ....., 202.....

.....	.....
XY	XY
Defendant	*State Counsel*
.....	.....
XY	XY
Defence Counsel	*State Counsel*