

Saheed

Towards an Effective Regime of the Application of Condonation, Compounding of Offences and Plea Bargaining as Veritable Alternative Dispute Resolution (ADR) Mechanisms <https://doi.org/10.53982/alj.2020.0801.09-j>

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### **Towards an Effective Regime of the Application of Condonation, Compounding of Offences and Plea Bargaining as Veritable Alternative Dispute Resolution (ADR) Mechanisms**

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**Abiola Adekunle Saheed\***

#### **Abstract**

The recent court queues, rising costs of litigation, congestion in prisons, expensive nature of management of prisons and time delays has continued to affect the administration of criminal justice system in Nigeria. There is therefore the need to fashion out alternatives to administration of criminal justice. These alternatives if effectively used in the administration of criminal justice system, it will not only reduce the congested nature of our prisons but also reduce the workload of the courts. It is against this backdrop that this paper seeks to examine the effective regime of the application of Condonation, Compounding of offences and Plea bargaining as veritable Alternative Dispute Resolution (ADR) Mechanisms. This paper adopted historical and analytical approaches through the use of primary and secondary documents as contained in published and unpublished materials. The paper revealed that compounding of offences even though it predated plea bargain, Nigeria has not yet made clear and general provisions on compounding of offences under the Penal Laws. The paper concluded that compounding of offences, condonation and plea bargaining are veritable alternative dispute resolution mechanisms embedded in the administration of criminal justice system. It was recommended among others that a uniform and generally applicable law should be enacted on condonation, compounding of offences and Plea bargaining in Nigeria, harmonization of our substantive criminal laws and procedural Criminal Codes in Nigeria and a more suitable sentencing guidelines for plea bargaining.

***Keywords: Criminal Justice System, Compounding, Condonation, Plea Bargain and Alternative Dispute Resolution***

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## 1.0 INTRODUCTION

Justice delayed is denied can be appropriately applied to Nigeria judicial system where over two hundred thousand (200,000) cases are pending in the Federal Courts as of July, 2019.<sup>1</sup> The backlog of cases is even worse at the State level where cases have suffered series of adjournments of cases pending before the High Courts and the lower courts. This huge number of pending cases can be attributed to the inadequate judicial strength of judges in various courts across the country be it the High Courts or the lower courts.<sup>2</sup>

It was the need to clear off this institutional backlog that prompted the conceptualization of an alternative system of settling the cases outside the judicial framework of regular court proceedings in a formal manner so that the twin purpose of speedy disposal of cases as well as delivering timely justice to the victimised, is served. And it is at this juncture that the concept of Alternative Dispute Resolution (ADR) mechanism comes handy in the form of mediation, conciliation and arbitration.

ADR has been an absolutely necessary block in filling the gap between the pending criminal matters before the courts and an instrument of speedy trial for these cases. The much celebrated concept of plea bargaining plays a pivotal role in the applicability of ADR in solving criminal matters. The concept of plea bargaining can be understood as a kind of arrangement between the prosecutor and the accused where the prosecutor agrees to trade the reduction in the seriousness of the charges or the length of the recommended sentence for the accused's promise of a waiver of the right to trial and a plea of guilty to the reduced charges. The concept of mutually beneficial partnership between the partners remains intact here as both the prosecutor and the accused benefit from the settlement. The prosecutor by offering humble concessions to the victim to avoid the expenses and the delay of a trial, especially in the cases where

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<sup>1</sup>Ade Adesomoju, 'Justice suffers as 82 judges handle over 200,000 cases in federal high courts' <<https://punchng.com/justice-suffers-as-82-judges-handle-over-200000-cases-in-federal-high-courts/>>accessed 4 June 2022

<sup>2</sup> Ibid

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evidence of guilty is overwhelming.<sup>3</sup> The government on the other hand avoids the chance of completely letting off an accused by agreeing to a plea of a reduced charge.<sup>4</sup>

ADR in criminal cases can be implemented in by Plea bargaining, Condonation and Compounding offences. However, ADR in the civil context differs from the criminal context.<sup>5</sup> ADR under the criminal context involved the parties, and the state or society. It involved public interest. In plea bargaining there is an admission or assumption of guilt and the blame attached to the act of the offender. Plea bargain exists where an accused person and the prosecutor agree on certain terms through negotiation under which the accused will enter a plea of guilty in exchange for a lesser charge or a favourable sentence recommended by the prosecutor to the judge. The process stated here is quite similar to what is obtainable in civil cases. The major advantage of the plea bargain is that it assists to decongest the cases in court, inmates in prisons and expedite the access to justice.

Over the years, defendants in criminal cases have been remanded in custody over minor disputes.<sup>6</sup> ADR in Criminal Justice System is used to bring the accused and the victim together to retribute or compensate the victim.<sup>7</sup> The idea of ADR in a criminal justice system is to speedily deal with criminal cases.

The major challenge in the application of ADR to crime is the position that crimes are not just committed against a victim but against the state and such crime is subject to public policy. In a case where there has been a murder and the family of the deceased has been financially settled by the victim and the family decides not to prosecute the matter that would not ordinarily stop the state from prosecuting the offender and the state can still proceed with the prosecution of the offender.<sup>8</sup> It is therefore suggested that any form of ADR mechanism adopted and

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<sup>3</sup> *ibid*

<sup>4</sup> Ajetunmobi O Abdulsalam, *Alternative Dispute Resolution & Arbitration in Nigeria, Law, Theory and Practice* (Princeton & Associates Publishing Co. Ltd: Ikeja Lagos)

<sup>5</sup> Abifarin Olufemi, *The process and practice of Dispute Resolution and Arbitration in Nigeria* (Princeton & Associates Publishing Co. Ltd: Ikeja Lagos)

<sup>6</sup> *Ibid*

<sup>7</sup> *Ibid*

<sup>8</sup> *Ibid*

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applied by the nominal complainant and defendant in a criminal case should be done with the consent of the prosecutor.

Compounding of offences, Condonation and Plea Bargaining have been introduced by legislations and sanctioned by the courts over the years in Nigeria in plethora of cases including the case of Federal Republic of Nigeria vs Lucky Igbinedion,<sup>9</sup> Compounding of offences has been described by the court as an act on the part of the victim, who decides to pardon the offence committed by the accused person, and requests the Court to exonerate him.<sup>10</sup> Though, it does not mean that the offence has not been committed, it only means that the victim is willing to pardon it, or has accepted some form of compensation for what he or she has suffered.

The effect of compounding of offences therefore, terminates the legal proceeding against the offender and he is entitled to an acquittal.<sup>11</sup> In *Chidolue vs EFCC*<sup>12</sup> the court held that an offence can be compounded if there is an agreement not to prosecute, the accused has actual knowledge of the crime committed and there must be receipt of some consideration from the accused.

On the other hand, condonation is often used in matrimonial causes, particularly where one spouse, with full knowledge of the matrimonial wrong committed by the other spouse, reinstates the offending spouse, to his or her earlier marital position, with the intention that the spouse whose wrong is condoned does not commit any further matrimonial offence.<sup>13</sup> This would put an end to a suit on dissolution of marriage.

The concept of Plea Bargain is different, it is considered as a complex tool used in the quick dispositions of criminal trials. A plea bargain is simply a negotiated agreement or understanding between the prosecutor and an accused, where the accused is given an option to plead guilty to a lesser offence or to one of the multiple charges in exchange for a lesser sentence or dismissal of the other charges.<sup>14</sup>

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<sup>9</sup>(2014) LPELR – 22760 (CA)

<sup>10</sup> Supra

<sup>11</sup> Abifarin (n. 4)

<sup>12</sup> (2012) NWLR (PT 1292) 160

<sup>13</sup> *Nigerian Army v. Aminu Kano* (2010) 5 NWLR (Pt. 1188) 429 @437

<sup>14</sup> Ibid

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It is against this backdrop that this paper seeks to examine the effective regime of the application of Condonation, Compounding of offences and Plea bargaining as veritable Alternative Dispute Resolution (ADR) Mechanism.

### **Comparative Analysis of Compounding of Offences, Condonation and Plea Bargain in Selected Jurisdictions**

#### **i. Compounding of offences**

Compounding of offence means to come to a settlement or agreement. This consists of a prosecutor or victim of an offence accepting anything of value under an agreement not to prosecute or to hamper the prosecution of a felony.<sup>15</sup> The principles of compounding of offences vary from country to country. Felony offences cannot be compounded in Nigeria.<sup>16</sup>

In Nigeria, there are two penal laws. The first is the Criminal Code Act operative in Southern Nigeria consisting of seventeen states<sup>17</sup> while the Penal Code Law operates in Northern Nigeria consisting of nineteen states.<sup>18</sup> The Penal Code Act provides for certain offences that can be compounded.<sup>19</sup>

Compounding a felony was an offence under the common law of England and was classified as a misdemeanor. It is not compounding for the victim to accept an offer to return stolen property, or to make restitution, as long as there is no agreement not to prosecute. Under the common law, compounding a felony was punishable as a misdemeanor. Many states have enacted statutes that punish the offense as a felony. Compounding a misdemeanor is not a crime. However, an agreement not to prosecute a misdemeanor is unenforceable as being contrary to public policy. Criminal liability for compounding is pervasive in American law, at least in theory. In forty-five states, the compounding of a crime may be prosecuted as a statutory offense, in two others it apparently may be prosecuted as a common law offense.

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<sup>15</sup> O.G, Chukkol 'Condonation and compounding of offences in Nigeria' <<https://thenigerialawyer.com/condonation-and-compounding-of-offences-in-nigeria-by-o-g-chukkol/>> accessed 22April 2022

<sup>16</sup> Criminal Code Act, s127.

<sup>17</sup> Okonkwo C. & Naish *Criminal Law in Nigeria* (Sweet and Maxwell London)

<sup>18</sup> Ibid

<sup>19</sup> Penal Code Act, s339

Compounding has been abolished in England and Wales, in Northern Ireland, in the Republic of Ireland, and in New South Wales. In India, Section 320 of the code deals with compounding of offences. These are less serious in nature and are of two different types as mentioned under S. 320 of the Indian Penal Code, Compounding without the permission of the Court which include offences like adultery, causing hurt, defamation, criminal trespass. While, the Court permission is required before compounding offences like theft, voluntarily causing grievous hurt, assault on a woman with intention to outrage her modesty, dishonest misappropriation of property amongst others, criminal breach of trust.

In *Bhagyan Das vs The State of Uttarakhand*,<sup>20</sup> The Supreme Court of India has observed that a court has discretion to reject a plea to compound an offence having social impact, even if the offence is compoundable under Section 320 of the Code of Criminal Procedure. “Merely because an offence is compoundable under Section 320 CrPC, still discretion can be exercised by the court having regard to nature of offence.”

Offences can be compounded with or without the leave of the court.<sup>21</sup> A victim can compound a case without the consent of the prosecutor. This position was affirmed in the case of *FRN v. Ononye*<sup>22</sup> that the victim can compound a compoundable offence without the consent of the prosecutor.

The Offences which may be compounded with the leave of Court includes causing hurt,<sup>23</sup> Assault or use of criminal force,<sup>24</sup> Mischief, when the only loss or damage caused is loss or damage to a private person,<sup>25</sup> Criminal trespass, House trespass,<sup>26</sup> Criminal breach of contract of service,<sup>27</sup> Adultery,<sup>28</sup> Enticing or taking away or detaining with a criminal intent a married woman,<sup>29</sup> Defamation, Printing or engraving etc, matter knowing it to be defamatory, Sale of printed or

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<sup>20</sup> *CRR No. 465 of 2019*

<sup>21</sup> *Ibid*, s339(1) and (2)

<sup>22</sup> 2018 LPELR 45067 (CA)

<sup>23</sup> Penal Code Act, ss244 and 246

<sup>24</sup> *Ibid*, ss265 and 266

<sup>25</sup> *Ibid*, ss327 and 328

<sup>26</sup> *Ibid*, ss348 and 349

<sup>27</sup> *Ibid*, ss381 and 382

<sup>28</sup> *Ibid*, ss387, 388

<sup>29</sup> *Ibid*, s389

engraved substance containing defamatory matter. Knowing it to contain such matter<sup>30</sup> Criminal intimidation except when the offence is punishable with imprisonment for seven years.<sup>31</sup>

Offences which may be compounded without leave of Court includes Grievous hurt on provocation,<sup>32</sup> Grievous hurt without provocation,<sup>33</sup> Hurt, not grievous, by dangerous weapons,<sup>34</sup> Hurt, or grievous hurt, by act endangering life or safety,<sup>35</sup> Wrongfully restraining or confining any person,<sup>36</sup> Unlawful compulsory,<sup>37</sup> Mischief in relation to water supply, when the only loss or damage to a private person,<sup>38</sup> House trespass to commit an offence other than theft punishable with imprisonment,<sup>39</sup> and Uttering words or making gestures intending to insult the modesty of a woman.<sup>40</sup>

The Criminal Code Act does not have specific mandatory provision on compounding of offences. It provides that that any person who obtain any property or benefit of any kind for himself or any other person upon any agreement or understanding that he will compound or conceal a felony or will abstain from, discontinue or delay a prosecution for a felony will withhold any evidence thereof, is guilty of an offence. If the felony is such that a person convicted of is liable to be sentenced to death or imprisonment for seven years, in any other case, the offender is liable to imprisonment for three years.<sup>41</sup>

The Act also provided that any person who having bought or under pretense or bringing an action against another person upon a penal code, law or statute in order to obtain from him a penalty for any offence committed or alleged to have been committed by him, compound the action without the order or consent of the court in which the action is brought or is to be brought, is guilty of a

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<sup>30</sup> Ibid, ss392, 394 and 395

<sup>31</sup> Ibid, s397

<sup>32</sup> Ibid, s245

<sup>33</sup> Ibid, s247

<sup>34</sup> Ibid, s248

<sup>35</sup> Ibid, s253

<sup>36</sup> Ibid, s256 and 257

<sup>37</sup> Ibid, s280

<sup>38</sup> Ibid, s331

<sup>39</sup> Ibid, s352

<sup>40</sup> Ibid, s400

<sup>41</sup> Criminal Code Act, s127

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misdemeanor and is liable to imprisonment for one year.<sup>42</sup> It is therefore clear from the above that Section 127 of the Criminal Code Act allows misdemeanor to be compounded with the leave of the court.<sup>43</sup>

Another law that allows compounding of offence is the Economics and Financial Crimes Commission Act 2004. Section 14 (2)<sup>44</sup> permits the Economic and Financial Crimes Commission to compound any offence punishable under the Act by accepting such sum of money as it thinks fit not exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence. Under the guise of this law, the concept of plea bargaining has been used in a number of cases.<sup>45</sup> This is therefore an alternative to criminal trial.

## **ii. Condonation**

Condonation means an implied pardon of an offence committed.<sup>46</sup> It is allowed under the Matrimonial Causes Act<sup>47</sup> and the Armed Forces Act.<sup>48</sup> It is viewed under the Matrimonial Causes Act as a defence to an action for divorce that the innocent spouse having forgiven the adulterous spouse cannot now take proceedings.<sup>49</sup>

This implies that there is condonation when one spouse, with full knowledge of the matrimonial wrong committed by the other spouse, reinstates the offending spouse, to his or her earlier marital position, with the intention that the spouse whose wrong is so condoned does not henceforth commit any further matrimonial offence.<sup>50</sup> In such an instance, it will be too late to sue your spouse because the marriage cannot be dissolved on that ground any more.

The Armed Forces Act on the other hand provides that where a person subject to service law under the Act has been condoned of an offence by his commanding

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<sup>42</sup> Ibid, s128.

<sup>43</sup> Ibid,

<sup>44</sup> Economics and Financial Crimes Commission Act 2004 s14 (2)

<sup>45</sup> Federal Republic of Nigeria v. Nwude & Ors (Unreported) suit no ID/92C/2004

<sup>46</sup> Ibid

<sup>47</sup> Matrimonial Causes Act, s26

<sup>48</sup> Armed Forces Act, s171

<sup>49</sup> Ibid

<sup>50</sup> Nigerian Army v. Aminu Kano (2010) 5 NWLR (Pt. 1188) 429 @437



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officer, he shall not be liable in respect of that offence to be tried by a court martial or to have the case dealt with summarily under the Act.<sup>51</sup>

In *Nigeria Army v. Aminu Kano*<sup>52</sup> Aminu pleaded that by virtue of a document in which charges against him were withdrawn and substituted with a final warning letter he could not be subjected to trial anymore as it amounted to condonation by his Commanding officer as provided by the law.<sup>53</sup> The plea was dismissed and at the end of the day, he was found guilty, convicted and sentenced. The Court of Appeal allowed his appeal and in dismissing the appeal filed in the Supreme Court, the court held that it is not in dispute that section 171 of the Act divests a court or tribunal of competence to subject the respondent to any further trial after it has been condoned by the appropriate authority. Thus, if any court or tribunal should proceed to make pronouncements on persons such as the respondent in spite of the condonation and damming the consequences of lack of competence, this court cannot close its eyes on such abnormality or illegality.

In South Carolina, condonation requires proof of forgiveness, express or implied, by one spouse for a breach of marital duty by the other and reconciliation. In most cases, reconciliation can be proved by showing the normal cohabitation of the husband and wife in the family home.<sup>54</sup> If the injured party has full knowledge of the misconduct such as adultery, and the couple resumes or continues living together for “any considerable period of time,” then this act of living together conclusively shows an intention to forgive or condone the marital misconduct. However, even if the parties continue to live together, a lack of sex is a pertinent factor in determining the existence of condonation. For example, in one case the court did not find proof of reconciliation where the husband continued to stay in the home on the advice of his lawyer but the couple didn’t have sex with each other.<sup>55</sup>

Therefore, condonation is the act of forgiving a spouse’s matrimonial misconduct, or a subordinate in the army of his misconduct, it goes beyond that

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<sup>51</sup> Armed Forces Act, s171

<sup>52</sup> 2010 5 NMLR (Pt 1188) 429

<sup>53</sup> Armed Forces Act, s171

<sup>54</sup> Futeral & Nelson ‘What Happens if You Forgive Adultery in South Carolina?’

<<https://www.charlestonlaw.net/condonation-defense-adultery-south-carolina/>> accessed 5 June 2022

<sup>55</sup>Ibid

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to include a restatement. An essential element of condonation is that the overlooking party must have all the details. Where certain details are not known to him or her, there can be no condonation. Hence, condonation must be positive and must involve all the parties.

Condonation can be likened to ADR, even though it has not been accepted as an alternative to criminal justice administration, it has been firmly rooted in our legal system.. Therefore, condonation does not substantively mean an Alternative dispute Resolution but it is a way of resolving a criminal disputes without involving the court.

### **iii. Plea Bargain**

Plea bargaining is an agreement in a criminal case between the prosecutor and the defendant whereby the defendant agrees to plead guilty to a particular charge in return for some concession from the prosecutor.<sup>56</sup> This means that the defendant will plead guilty to a less serious offence or to one of the several charges, in return for the dismissal of other charges and it may mean that the defendant will plead guilty to the original criminal charge in return for a more lenient sentence.<sup>57</sup>

In a Democratic Country like India, judiciary plays a vital role in establishing a state of justice. Justice is desired by each and every person on this earth. But as we all know that justice delayed is justice denied, so it is a matter of concern that how many people actually get justice in due time. There are large numbers of cases which are pending before different courts. The problem of backlog of cases has been haunting the Indian courts for a long time.<sup>58</sup>

Plea Bargaining is so common in the American System that every minute a case is disposed in the American Criminal Court by way of guilty plea. England, Wales, Australia and Victoria also recognises Plea Bargaining. Recent laws impose stiffer sentencing guidelines, especially on repeat offenders, or those who have recently been convicted of other crimes. Prosecutors often offer lighter

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<sup>56</sup>Sara J. Berman ‘The Basics of a Plea Bargain’

<[<sup>57</sup> Chinwe A. M, “The Use of Plea bargain in Nigeria Criminal Law” \(2018\) 9\(2\) \*BLR\*](https://www.nolo.com/legal-encyclopedia/the-basics-plea-bargain.html#:~:text=A%20plea%20bargain%20is%20an%20agreement%20between%20a,judge%20a%20specific%20sentence%20acceptable%20to%20the%20defense.></a></p></div><div data-bbox=)

<sup>58</sup> ‘Plea Bargaining - Concept, perspective and Criticism’

<<https://www.defactolaw.in/post/plea-bargaining-in-india>> accessed 2 June 2022

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sentences as an incentive to avoid the costly trial phase. In fact, sentences handed down to defendants who go to trial have become so much greater than for those who accept a plea bargain, that many feel the gap may be used to coerce an agreement, or to punish individuals who exercise their right to a trial.<sup>59</sup>

In Nigeria, the first procedural law that recognised plea bargain is the Administration of Criminal Justice (Repeal and Re-enactment) Law of Lagos State. Plea bargaining is now provided for under the Administration of the Criminal Justice Act<sup>60</sup> and which has been argued to be a derivative of ADR is a very effective way of ensuring that you can deal with matters quickly and ensure that persons for instance who are willing to either admit or plead guilty to a lighter offence or who based on the evidence can only be tried for a smaller offence who are willing to take the liability for something smaller, this could be a way to quickly help and it will reduce for instance a great deal of the number of persons who are thrown in custody.

Scholars<sup>61</sup> have likened Plea bargain to ADR claiming that even though Plea bargain has not been accepted as an alternative to criminal trial, it has been firmly rooted in our Judicial System as an alternative to an Alternative dispute Resolution. Having shared similar features of ADR.

Firstly, plea bargain occurs at the pretrial sessions as is often the case, this is consistent with ADR which usually occur outside the mainstream judicial system. Secondly, the plea bargaining is a confidential procedure similar to the forms of ADR (negotiation, mediation, conciliation and arbitration). High level of confidentiality is maintained in the process so that the defendant can speak his mind without any apprehension of threat or danger.

Thirdly, plea bargaining ensures fast approach since it reduces the time required for the trial as the accused pleads guilty to the charges earlier than a normal trial. Fourthly, in a country where the societal status is of great significance, the person against severe charges is instituted, social stigmatization comes as a major repercussion of it. In such a case, a lesser charge or a lesser sentence on the

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<sup>59</sup> Ibid

<sup>60</sup> Administration of the Criminal Justice Act, 2015 s270

<sup>61</sup> Abifarin (n. 1)

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accused can be of some relief to his family and the accused since it may comparatively reduce the burden of societal stigma on the parties.<sup>62</sup>

Plea bargain is a process whereby an accused person and the prosecutor enter into negotiation towards an agreement under which the accused will enter a plea of guilty in exchange for a reduced charge or a favourable sentence recommended to the judge by the prosecution.<sup>63</sup> The plea bargain process is quite similar to the pre-trial settlement of civil cases.

It allows both parties to avoid a lengthy criminal trial and may allow criminal defendants to avoid the risk of conviction at trial on a more serious charge. For most defendants, the principal benefit of plea bargaining is receiving a lighter sentence for a less severe charge than wait for result from a conviction at trial.<sup>64</sup>

Another importance of plea bargaining to the defendant is that it is less expensive, it allow the defendant to save lot money on attorney's fees, assuming they are represented by private counsel. Other benefits include getting out of jail, getting over the matter quickly, having a less serious offence in one's record, having a less socially stigmatizing offence on one's record, avoiding loss and publicity.<sup>65</sup>

It is noteworthy to state that for the bargain to be effective, it must be approved by a Court of competent jurisdiction. The parties to a plea bargain agreement are the prosecutor, the defendant and the court.<sup>66</sup>

The court even though it is not bound by the agreement of the parties, it finds plea bargain attractive because it facilitate the speedy disposal of cases and quickly disposes the cases of accused persons who have spent a longer time in custody than the maximum penalty for the offence they are charged with. This is similar to terms of settlement resulting from negotiation, conciliation and mediation agreements or recognition of award in arbitration.

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<sup>62</sup> Chinwe (n. 48)

<sup>63</sup> Ibid

<sup>64</sup> Ibid

<sup>65</sup> Samuel I. "the practice and procedure of plea bargain under administration of criminal justice Act" <<https://punchng.com/practice-procedure-plea-bargain-acj-act/>> accessed 24April 2022

<sup>66</sup> Administration of the Criminal Justice Act, s270 (1-10)

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## **2.0 CONDONATION, COMPOUNDING OF OFFENCES AND PLEA BARGAINING AS VERITABLE ADR MECHANISMS**

Alternative Dispute Resolution (ADR) is a procedure for settling a dispute by means other than litigation. Alternative dispute resolution can take place before a case is taken to court, during trials of cases in court and after judgment in a case.<sup>67</sup>

Compounding of offences and Plea bargaining are of similar character to alternative dispute resolution in the sense that the processes leading to compounding of an offence are either by negotiation, mediation or conciliation which are strands of ADR.

Also, plea bargain as in compounding of offences can be treated as a form of alternative dispute resolution because the end result of compounding of an offence is to prevent full trial and conviction while plea bargain though allows trial but not a full trial, allows punishment to be awarded but in a less severe manner based on the bargaining strength and negotiation prowess of the defendant.

It must be noted that ADR methods are useful in criminal justice administration. A form of ADR in criminal justice administration in the modern Nigeria is compounding of offences under the penal and criminal codes and recently, the introduction of plea bargain by the Administration of the Criminal Justice Act.<sup>68</sup>

Plea bargain from the above analysis could be described as negotiation of criminal charge. Negotiation is an important alternative dispute resolution (ADR) tool that brings disputing parties face to face in order to negotiate a settlement. Where plea bargain occurs in pretrial sessions as is often the case, this is consistent with ADR which usually occurs outside the mainstream judicial system.

Also, when plea bargain agreement is presented to court for sanctioning, this could be likened to submission to mediation, whereby, a third party is brought in to moderate the dispute. One may therefore posit that condonation, compounding of offences, and plea bargain operate like settlement or alternative dispute

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<sup>67</sup> Ajetunmobi (n. 5)

<sup>68</sup> Administration of the Criminal Justice Act, 2015

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resolution which seeks to be fair to all disputants and sustain business or foster relationship, the legal consequence of plea bargain is a conviction while the legal consequence of condonation and compounding of an offence is an acquittal.

The major advantage of these alternatives to criminal justice administration is that it will reduce the workload of the courts, rising costs of litigation, congestion in prisons, expensive nature of management of prisons and time delays which has continued to affect criminal defendants and hence expedite justice. There are simply not enough judges and prosecutors to operate a system in which most accused persons go through a full blown trial without unnecessary delays. Hence, it is necessary to adopt these methods as alternative to criminal justice administration.

### **3.0 Concluding Remarks**

Having examined the concept of condonation, compounding and plea bargaining, one may state without mincing words that condonation, compounding of offences and plea bargaining are veritable alternative to dispute resolution mechanisms embedded in criminal justice system. While some strands of alternative dispute resolution are frequently used to compound an offence or in plea bargaining agreement, it allows the judges to use their discretion on the compoundable offences and sentencing in plea bargaining.

There is need for a legal frame work for the proper recognition of these methods as alternatives to criminal justice administration, it will be advantageous to criminal justice administration in as it will not only reduce the workload of the courts, rising costs of litigation, congestion in prisons, expensive nature of management of prisons and time delays continue that has been affecting criminal defendants and it will also expedite justice administration.

It is therefore recommended that our criminal laws in Nigeria should be harmonized. The dichotomy between North and South has outlived its usefulness. Nigeria is one sovereign state who should have one uniform criminal law and criminal procedure. The criminal laws and criminal procedure laws in Nigeria should have clear and comprehensive provisions on compounding of offences and should equally outline the sentencing guidelines on plea bargain and compounding of offences to prevent abuse of judicial powers and corruption in the administration of criminal justice.

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It is also recommended that defendants in criminal trials should not be coerced into accepting a lesser sentence due to the inability of the Prosecutor to prove his case beyond reasonable doubt, as it is done in some jurisdictions examined, the defendants should be allowed to freely consent to plea bargain and not coerced. The states of the federation are also advised to amend their criminal laws to accommodate plea bargaining, compounding of offences and condonation as tools for effective regime of criminal justice system in Nigeria.