

*Extraordinary*



# Delta State of Nigeria Gazette

**PUBLISHED BY AUTHORITY**

---

**No. 36**

**ASABA — 5th September, 2024**

**Vol. 34**

---

*Delta State Notice No. 37*

The following is published as Supplement to this *Gazette*:

D.S.L.N. 2 of 2024 — *Flea Bargain Guidelines for Prosecutors in Delta State, 2024* ..... B 29 - 51

---

Printed by the Government Printer, Ministry of Information, Department of Printing, Asaba  
WT 17/92024/50

*Subscription Rate: ₦80,000.00; Overseas (Surface Mail) ₦60,000.00 Overseas (Second Class Air Mail) ₦70,000.00  
Present issue is ₦10,000.00*

(75)

**PLEA BARGAIN GUIDELINES FOR PROSECUTORS IN DELTA STATE, 2024**



**TABLE OF GUIDELINES**

**PART I – OBJECTIVES AND APPLICATION**

1. Citation
2. Interpretation
3. Objectives of the Guidelines
4. Application and enforceability

**PART II–GENERAL GUIDING PRINCIPLES**

5. Guiding Principles for Plea Bargain
6. Plea Bargain in financial crimes
7. Where the victim of crime is entitled to compensation
8. Evidence in support of the agreed charge in the Plea Agreement
9. Plea Bargain to be in the public interest and for delivering justice in particular circumstances
10. Factors indicating that a Plea Bargain is not in the public interest

**PART III–INITIATION OF PLEA BARGAIN NEGOTIATIONS**

11. Initiation of negotiations for Plea Bargain
12. Factors to be considered before approving the initiation of Plea Bargain negotiations
13. Time for commencement of Plea Bargain negotiations
14. Procedure where Plea Bargain is initiated by the Prosecution
15. Procedure where Plea Bargain is initiated by the Defence
16. Procedure where Plea Bargain is initiated by External Solicitor
17. Conditions for recommending the approval of a Plea Bargain Agreement

**PART IV – PROCEDURE FOR CONDUCTING PLEA BARGAIN NEGOTIATIONS**

18. Conducting and recording Plea bargain negotiations
19. Charge negotiation
20. Sentence negotiation

**B 30**

- 21. Plea Bargain Negotiations where multiple agencies are involved
- 22. Plea Bargain Agreement
- 23. Procedure after execution of Plea Agreement
- 24. Failure of plea negotiation
- 25. Renewed negotiation

**PART V – MISCELLANEOUS**

- 26. Monitoring of Compliance
- 27. Delegation of Power
- 28. Savings and transitional provisions

**SCHEDULE**

**B 31**

**PLEA BARGAIN GUIDELINES FOR PROSECUTORS IN DELTA STATE, 2024**

**In the exercise of powers conferred on me by sections 195 (1) and 211 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended), Sections 214 and 435(1) of the Administration of Criminal Justice Law, 2022 (As Amended) (ACJL), and all other powers enabling me in that behalf, I, Ekemejoro Ohwovoriole, SAN, Attorney-General and Commissioner for Justice, Delta State, make the following Guidelines-**

[4<sup>th</sup> September, 2024]

Commence-  
ment

**PART I–OBJECTIVES AND APPLICATION**

- 1. These Guidelines may be cited as the Plea Bargain Guidelines for Prosecutors in Delta State, 2024. Citation
  
- 2. The terms used in the Administration of Criminal Justice Law 2022 (As Amended) shall apply to these Guidelines. Interpretation
  - (1) In these Guidelines-
    - “**ACJL**” means Administration of Criminal Justice Law 2022 (As Amended);
    - “**AG**” means Attorney-General of Delta State;
    - “**AGF**” means Attorney-General of the Federation;
    - “**Constitution**” means the Constitution of the Federal Republic of Nigeria,1999 (as amended);
    - “**Court**” includes High Courts, Magistrate Courts, Area Courts and any court exercising criminal jurisdiction in Delta State;

**“DPP”** means Director of Public Prosecutions of Delta State;

**“Defendant”** includes any person against whom a complaint, charge or information is made or who is the subject of any negotiation for plea bargain of any offence;

**“Defence”** shall be construed accordingly;

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

**“Ministry of Justice”** means Ministry of Justice of Delta State;

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

## **B 32**

**“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 a Law of Delta State House of Assembly or whose prosecutorial powers are subject to the control of the Attorney General of the State;

**“Prosecutor”** means a person prosecuting or having power to prosecute an offence created by a Law of Delta State House of Assembly in any court in Delta State of Nigeria;

**“Stakeholders”** means the State, the complainant, the victim, the Defendant, and the society at large in the context;

**“State”** means the Delta State of Nigeria; and

**“State Counsel”** means Prosecuting Counsel employed in the Delta State Ministry of Justice.

3. (1) The objectives of these Guidelines are to- Objectives of the Guidelines
- (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 bargain process in Delta State of 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.

### **B 33**

4. (1) These Guidelines apply to the plea bargaining under Section 214 of the ACJL. Application and enforceability
- (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) 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 214 of the ACJL are complied with.

### **PART II–GENERAL GUIDING PRINCIPLES**

5. (1) When considering a plea bargain, the AG, Head of a Prosecuting Agency, or the Prosecutor as the case may be, shall be guided by the following core principles- Guiding Principles for Plea Bargain
- (a) Accountability–take responsibility for their decisions and be able to explain them;
  - (b) Consistency–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.

## **B 34**

- (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 the 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 Bargain 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 35**

- (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.
6. 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. Plea Bargain in financial crimes
7. 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. Where the victim of crime is entitled to compensation
8. 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. Evidence in support of the agreed charge in the Plea Agreement

- 9.
- (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.
- Plea Bargain to be in the public interest and for delivering justice in particular circumstances

**B 36**

10. The factors that indicate that a plea bargain 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 accept responsibility for his conduct; or
  - (d) Is unwilling to make restitution or pay compensation.
- Factors indicating that a plea bargain is not in the public interest

**PART III—INITIATION OF PLEA BARGAIN NEGOTIATIONS**

- 11.
- (1) In the case of the Ministry of Justice, negotiations for plea bargain of an offence may be initiated by the Director of Public Prosecutions, 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) In the case of an offence prosecuted by an External Solicitor, pursuant to the fiat granted by the AG, a plea bargain negotiation shall neither be initiated nor concluded unless the written consent of the AG is first sought and obtained.
  - (4) 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.
  - (5) 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
- Initiation of negotiations for Plea Bargain



initiated or concluded unless the written consent of the AGF is first sought and obtained.

12. Before approving the initiation of a plea bargain negotiation, the AG or Head of a Prosecuting Agency shall take into consideration the following relevant factors-
- Factors to be considered before approving the initiation of Plea Bargain negotiation
- (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

**B 37**

- (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.

13. 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.
- Time for commencement of Plea Bargain negotiations

- 14.
- (1) A Lead Prosecutor or the Prosecutor, as the case may be, may submit a written plea application to the DPP 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 DPP or Head of Prosecutions of a Prosecuting Agency after considering the relevant provisions of these Guidelines and obtaining the approval of the AG or Head of Prosecuting Agency may give a written authorization to the Lead Prosecutor or the Prosecutor to negotiate a plea bargain with the Defendant or Defence Counsel.
- Procedure where Plea Bargain is initiated by the Prosecution

- (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 DPP or Head of Prosecutions of a Prosecuting Agency as approved by the AG or Head of the Prosecuting Agency as the case may be.

## **B 38**

- (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 14 (fourteen) working days, from the date of receiving the approval to negotiate.
- (6) The AG or Head of Prosecuting Agency may, where necessary, extend the time for plea bargain negotiations.
- (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 guidelines 22 (2), and the Schedule to these Guidelines shall be submitted by the Prosecutor to the DPP or Head of Prosecutions of the Prosecuting Agency, as the case may be, for consideration.
- (8) The DPP 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 DPP 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 DPP or Head of Prosecutions of the Prosecuting Agency shall within 10 (ten) working days of receipt of the proposed Plea Bargain Agreement, consider the proposed Agreement and advise the AG or Head of the Prosecuting Agency, as the case may be, on the appropriateness of the proposed Plea Bargain Agreement.
- (11) Where the DPP or Head of Prosecutions of the Prosecuting Agency recommends a Plea Bargain Agreement and the AG approves the terms of the Plea Bargain Agreement as recommended or with modifications, the DPP 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 22 (6) of these Guidelines.
- (12) Where there is a modification in the terms of the Plea Bargain Agreement as originally submitted by the Prosecutor, the DPP 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 22 (6) of these Guidelines.

- 15.
- (1) A Defendant or Defence Counsel may initiate plea bargain negotiations with the prosecution by writing a plea bargain application letter to the AG in the case of Ministry of Justice or the Head of Agency in the case of a Prosecuting Agency. Procedure where Plea Bargain is initiated by the Defence
- (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 an application letter requesting for Plea Bargain, the AG or the Head of Prosecuting Agency may decline the request or approve plea bargain negotiations by the Prosecution.
- (4) Where the AG or Head of prosecuting Agency approves negotiations for plea bargain, the Prosecutor and the Defendant or the Defence Counsel as the case may be, shall be duly informed in writing through the DPP 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 14 (fourteen) working days from the date of receiving the approval to negotiate.
- (7) The AG or Head of Prosecuting Agency may, where necessary, extend the time for plea bargain negotiations.
- (8) Where an agreement is reached at the negotiation, a draft of the agreement which shall comply with the provisions of guideline 22(2) and the Schedule to these Guidelines shall be submitted by the Prosecutor to the DPP or Head of Prosecutions of the Prosecuting Agency for consideration.
- (9) The DPP 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 DPP 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.

**B 40**

- (11) The DPP or Head of Prosecutions of the Prosecuting Agency shall consider the proposed agreement and advise the AG or Head of the Prosecuting Agency, as the case may be, within 10 working days of receipt of the agreement.
  - (12) Where the DPP or Head of Prosecutions of the Prosecuting Agency recommends a Plea Bargain Agreement and the AG approves the terms of the Plea Bargain Agreement as recommended or with modifications, the DPP 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 22 (6) of these Guidelines.
  - (13) Where there are modifications in the terms of the Plea Bargain Agreement as originally submitted by the Prosecutor, the DPP 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 22 (6) 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.
- 16.
- (1) Plea bargain initiated by an External Solicitor shall follow the procedure in guideline 14 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 AG in relation to that specific case.
  - (3) Where an External Solicitor has obtained 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 DPP or Head of Prosecutions of the Prosecuting Agency as provided for under guideline 14 of these Guidelines.
- Procedure where plea bargain is initiated by External Solicitor

17. In recommending a Plea Bargain Agreement for the approval of the AG, the Prosecutor and the DPP or Head of Prosecutions of the Prosecuting Agency, as the case may be, shall ensure that-
- Conditions for recommending the approval of a Plea Bargain Agreement.
- (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 ACJL and any applicable Sentencing Guidelines and Practice Directions;
  - (d) The recommendations state 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) The recommendations state that the Defendant has made full disclosure and is willing to disclose in full, illicit assets, proceeds or gains from the crime; and
  - (f) The recommendations would enable the AG 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**

- 18.
- (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.
- Conducting and recording plea bargain negotiations

**B 42**

- (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.
- 19.
- (1) The Prosecutor and the Defence may negotiate the charge filed or proposed to be filed against the Defendant. Charge negotiation
  - (2) The negotiation of the charge shall be guided by the provisions of these Guidelines and the proposal made under guidelines 14 (1) and (2) and 15(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.
- 20.
- (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. Sentence negotiation
  - (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 ACJL and any applicable Sentencing Guidelines.

21.

- (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 charges 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 AG or the Head of the Prosecuting Agency, as the case may be, and through the DPP or Head of Prosecutions of the Prosecuting Agency, liaise with the other Prosecuting Agency to ascertain their disposition towards a joint plea negotiation for all the charges.
- (4) Where the 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 Bargain Agreements for convenience.
- (5) Where the 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.

22.

- (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 AG.

Plea Bargain Agreement

**B 44**

- (2) The form and content of Plea Bargain Agreement shall, with necessary modifications, accord with the Forms in the Schedule to these Guidelines.
  - (3) The content of the Plea Bargain Agreement may be modified as appropriate, to accommodate the peculiarities of a particular case.
  - (4) Any agreement regarding giving assistance to the Prosecution by the Defendant shall be in a separate document and not included in the Plea Bargain Agreement.
  - (5) The Prosecutor and the Defence counsel shall endorse each page of the draft Plea Bargain Agreement but shall not execute such agreement.
  - (6) After the approval of a Plea Bargain Agreement by the AG as prescribed under these Guidelines, the Agreement shall be executed by the Defendant, the Defence Counsel, the interpreter, where applicable, DPP and the Prosecuting Counsel and the Plea Bargain Agreement shall be filed in court.
  - (7) Where the court determines that the Plea Bargain Agreement filed by the parties does not satisfy the provisions of section 220(2) of ACJL, the court may give directions as it deems fit for the compliance of the parties in furtherance of an acceptable Plea Bargain Agreement.
  - (8) The Plea Bargain Agreement shall, subject to the Order of Court, be binding on the Parties unless where fraud is discovered.
  - (9) Fraud under sub-guideline (7) of this Guideline shall include lack of full disclosure by the Defendant.
23. 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 Bargain Agreement with attachments (if any); and
  - (b) An amended charge as agreed by the parties (where necessary).
24. 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 AG or the Head of the Prosecuting Agency through the DPP or the Head of Prosecutions of the Prosecuting Agency, as the case may be;
  - (b) Prosecution shall take steps to proceed with the trial of the case in court after 7 (seven) days but not later than 21 (twenty-one) days from the date of reporting to the AG or the Head of the Prosecuting Agency subject to the court's calendar.
25. Where the plea negotiation breaks down, the parties may only renew the negotiation with the approval of the AG or the Head of the Prosecuting Agency as the case may be.

Procedure after execution of Plea Bargain Agreement

Failure of Plea Negotiation

Renewed Negotiation



**PART V–MISCELLANEOUS**

- |     |  |   |
|-----|--|---|
| 26. | A copy of a Plea Bargain Agreement entered into or executed by or on behalf of a Prosecuting Agency shall be forwarded to the AG within seven days of its execution for record and depository purposes.  | Monitoring of Compliance (Submission of Plea Bargain Agreement to AG) |
| 27. | The AG, Head of Prosecuting Agency, DPP 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.   | Delegation of Power   |
| 28. | <p>(1) Subject to the provisions of these Guidelines and the ACJL, 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.</p> <p>(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.</p> <p>(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.</p> <p>(4) Where plea negotiations have been concluded but a Plea Bargain 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 Bargain Agreement complies with guideline 22 and the Schedule to these Guidelines.</p> | Savings and Transitional provisions                                   |

MADE at Asaba this 4th day of September, 2024

**EKEMEJERO OHWOVORIOLE,SAN**

*Honourable Attorney-General and Commissioner for Justice, Delta State*

**EXPLANATORY NOTE**

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

The Plea Bargain Guidelines for Prosecutors in Delta State, 2024 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 bargain process in Delta State of 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 ACJL in order to prevent abuse; and facilitate reduction in case backlog and congestion of correctional centres.

**SCHEDULE**

**PLEA BARGAIN FORM**

[Guidelines 4(3), 14(7), 15(8), 22(2) and 28(4)]

**FORM NO. 1 – PLEA BARGAIN WHEN DEFENDANT IS REPRESENTED BY A  
LEGAL PRACTITIONER**

**(Section 219 ACJL)**

**WHEREAS** the defendant was on the ..... day of ....., 20..... charged with the following offence(s):

- a)
- b)
- c)
- d)

**AND WHEREAS** a plea bargain was on the ..... day of ....., 20..... concluded between the prosecutor and the defendant’s legal practitioner, ..... (name of legal practitioner)

**AND WHEREAS** it was agreed that the defendant shall plead guilty to:

- a)
- b)
- c)
- d)

In consideration that the prosecutor shall take certain course of action mentioned below.

**THE PARTIES AGREE** that the prosecutor shall take the following course of action (indicate by ticking the course of action to be taken)

- a) a recommendation to the court to dismiss other charges
- b) a recommendation to the court as to a particular sentence
- c) an agreement not to oppose a request by the defendant’s legal practitioner for a particular sentence
- d) an agreement that a specific sentence is appropriate for the disposition of the case

Dated this ..... day of ....., 20.....

**(Signed)**  
**DPP**

**(Signed)**  
**Defendant’s Legal Practitioner**

**(Signed)**  
**Defendant**

**(Signed)**  
**Prosecutor**

**B 48**

**FORM NO. 2 – PLEA BARGAIN WHEN DEFENDANT IS NOT REPRESENTED BY  
A LEGAL PRACTITIONER  
(Section 219)**

**WHEREAS** the defendant was on the .....day of ....., 20..... charged with the following offence(s):

- (a)
- (b)
- (c)
- (d)

**AND WHEREAS** the prosecutor informed the defendant that he/she should be represented by a legal practitioner, and the defendant informed the prosecutor that he/she does not wish to be represented by a legal practitioner.

**AND WHEREAS** it was agreed that the defendant shall plead guilty to:

- (a)
- (b)
- (c)
- (d)

in consideration that the prosecutor shall take certain course of action mentioned below.

**THE PARTIES AGREE** that as a result of the defendant pleading guilty to the said offence(s) or testifying against any co-defendant, the prosecutor shall take the following course of action (*indicate by ticking the course of action to be taken*):

- (a) a recommendation to the court to dismiss other charges
- (b) a recommendation to the Court as to a particular sentence
- (c) an agreement not to oppose a request by the defendant for a particular sentence
- (d) an agreement that a specific sentence is appropriate for the disposition of the case

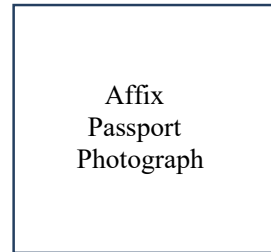
Dated this ..... day of ....., 20.....

**(Signed)  
Prosecutor**

**(Signed)  
Defendant**

**FORM NO. 3 – PLEA BARGAIN QUESTIONNAIRE**

IN THE ..... COURT OF DELTA STATE OF NIGERIA  
IN THE .....  
HOLDEN AT.....



CHARGE NO .....

BETWEEN:

THE STATE .....

COMPLAINANT

AND

A, B, C .....

DEFENDANT

**A. PERSONAL INFORMATION:**

1. Surname: .....
2. First name: .....
3. Other name(s): .....
4. Date of Birth: .....
5. Marital Status: .....
6. Nationality: .....
7. State of Origin: .....
8. Local Government of Origin: .....
9. Residential Address: .....
10. Permanent Home Address: .....
11. Phone & WhatsApp No: .....
12. NIN: .....
13. Other means of Identification: .....
14. Gender: M:  F:
15. Height:.....
16. Color of eyes:.....
17. Do you have any physical disability? YES  NO
18. Next of Kin: .....
19. Next of Kin Address: .....
20. Next of Kin Phone No: .....

**B. EDUCATIONAL/ OCCUPATIONAL/ CAREER INFORMATION:**

1. School(s) attended with Date(s):.....  
.....  
.....  
.....  
.....

**B 50**

2. Nature of Career /Occupation/Type of Business/Place Of Employment: .....  
.....
3. Weekly/Monthly Income: .....
4. Do you have any landed property? Yes  No
5. If yes, set out their particulars/location/title document(s): .....  
.....
6. List out title on other assets/properties you have: .....  
.....
7. Name of your bank(s) and account number(s): .....  
.....  
.....

**C. OTHER INFORMATION:**

1. Have you ever been arrested for any Criminal Offence? Yes  No
2. Have you ever been convicted for any criminal offence? Yes  No
3. If yes, set out the offence(s), nature of conviction and sentence(s) served: .....  
.....  
.....
4. Did the state counsel, defense counselor police prosecutor promise to give to you (or withdraw from you) any benefit if you engage in this Plea Discussions, Bargains and plea generally? Yes  No
5. Do you voluntarily agree to participate in this plea discussions, bargains and plea generally? Yes  No
6. If you are to make financial remittances/restitution, how much are you willing to pay on instalment per week/month?:
7. Would you desire to represent yourself at the plea discussions, bargains and plea generally? Yes  No
8. At plea discussions, bargains and plea generally; would you desire to be represented by a legal practitioner from-
  - (a) The office of the public defender;
  - (b) Any lawyer from the Nigerian bar association; or
  - (c) Lawyer from the legal aid council of Nigeria? (please specify):.....  
.....  
.....  
.....

I, ..... do solemnly and sincerely declare that the particulars given by me herein are to the best of my knowledge true, accurate and complete.



Thumb Print

Signed at .....

This ..... day of....., .....

**BEFORE ME:**

.....  
**COMMISSIONER FOR OATHS/NOTARY PUBLIC**

.....  
Signature of Defendant

**JURAT:**  
The content of this document was read over, explained and interpreted to the Defendant in ..... Language and the Defendant fully understands the same, and hereby makes his/her mark in my presence and in the presence of the person whose name is subscribed as witness(es) to this questionnaire.  
  
.....  
Name/Signature of Interpreter  
Date: .....