JUSTIFIABILITY OF PLEA BARGAIN IN THE FIGHT AGAINST CORRUPTION IN THE NIGERIAN CRIMINAL JUSTICE

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Abstract

This article looks at the legality of Plea Bargain in the Nigerian Criminal Justice System before and after the Administration of Criminal Justice Act (ACJA) 2015and whether its legality or otherwise justifies its use by the EFCC in the fight against corruption in Nigeria. The article examined how Plea Bargain is used in some selected jurisdictions like- Canada, United States of America, India, Pakistan etc. and it tries to compare it to how it has been used so far in the anti-corruption campaign in Nigeria. The article relied on both primary and secondary sources such as Statutes, books, reports, papers presented in seminars, newspapers, journals and internet sources. The findings show that Plea Bargain operates in Nigeria as a mechanism of compromise that discriminates between different classes of people. The rich and powerful have easy access to Plea Bargain but the poor have no such privilege. The article made certain recommendations including the fact that Plea bargain is not fit to fight corruption at all and if it must, very strict and deterrent measures must go along with it in the interest of justice, fairness and equity.

Keywords: Plea bargain, Nigerian criminal justice, crime, corruption, justice, legality

Introduction

Before the enactment of the Administration of Criminal Justice Act (ACJA) in May 2015, Nigerians queried the source of Plea Bargain in the Nigerian Criminal Justice. Many learned jurists, judges and lawyers tried to air their opinions as to the legality or otherwise of plea bargain in the Nigerian law. Some have erroneously argued that Plea Bargain is legal because it is in the Statutes. They relied on some provisions of the Criminal Procedure Act (CPA)[2]and the Economic and Financial Crimes Commission (EFCC) (Establishment) Act, 2004.[3]According to Oputa in *Godwin Josiah v. The State*[4], a good law is one that guarantees justice to the victims, justice to the offender and justice to the society. Many wonder at the progress of the anti-graft agencies so far, in their use of plea bargain to fight corruption. Nevertheless, it will be expedient to look at the concept of plea bargain and its probable effect on the society especially Nigeria where corruption has divested the economy and the image of the country to the international world.

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2 Section 180(1) and (2)

3 Section 14(2)

4 (1985) 1 NWLR 125.

The Concept of Plea Bargain

Plea bargain is an alien practice in the Nigerian Criminal Justice. In simple terms, it is an agreement between the prosecution and the accused person in a criminal trial that often leads to a reduction of the charges against him. The Black's Law Dictionary[5] defines Plea Bargain as a *negotiated agreement between a Prosecutor and a criminal defendant whereby the defendant pleads guilty to lesser offence or to one of multiple charges in exchange for some concession by the Prosecutor, usually, a more lenient sentence or a dismissal of the other charges.* The Administration of Criminal Justice Act (ACJA) made Plea-bargain legal.[6]The ACJA made it quite clear that a Plea bargain can successfully conclude and secure a criminal matter without all the processes of trial. By plea-bargaining, the defendant in a mutual agreement with the Prosecutor pleads guilty without formal trial in exchange to have the prosecutor dismiss some of the charges against him and or recommend a favourable sentence to the judge on behalf of the defendant. Plea bargain is very recent[7] especially in the Nigerian Criminal Justice and different from the common law tradition of criminal trial. Presently, many advanced countries of the world[8]have codified it into their laws. Plea Bargain is the same as plea agreement, negotiated plea or sentence bargain. There are three broad types of Plea Bargain. They are *Count Bargain*, *Charged Bargain* and *Sentence Bargain.*

Count bargain: This is a type of Plea Bargain, which involves the defendant pleading to one or more number of counts but fewer than the counts against him.

Charge bargain: Is where the prosecutor mutually agrees to pass a lesser charge than he originally filed against the defendant if he pleads guilty.

Sentence bargain: Is where the prosecution exchanges a guilty plea for a promise of leniency. Both the Prosecutor and the defendant mutually agree to exchange a guilty plea with a lighter sentence, which the Prosecutor will recommend to the court. Akeem[9] opined that there is no distinct dichotomy between these types of bargains since the result is that the defendant is likely to get a lighter sentence for the offence he has committed in exchange for pleading guilty. Similarly, Jibrin[10] said that Plea Bargain is a generic name for many types of negotiated settlement or resolution of criminal cases. These include charge bargaining, sentence bargaining, specific sentence recommendation, conditional guilty plea, *nolo*

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5 B.A. Garner, *Black's Law Dictionary (9th Ed. 2009) St. Paul, Minn: West Group Pg. 1270.*

6 Section 270 (1)-(18)

7 JH Langbein, 'Land without Plea Bargain: How the Germans do it' [2012] on Jostor<http://www.jostor.org/stable/1288385? Seq=pag_scan_tab_contents> accessed 7 March, 2017.

8 EG McDonald, *From Plea Negotiation to Coercive Justice: Notes on the Respecuification of a Concept,* 13 Law and Soviety, REV. 385, 386 (1979); Goldstein and Marcus, *The Myth of Judicial Supervision in Three 'Inquisitorial Systems: France, Italy and Germany,* 87 (YALE L.J. 1977) 240, 264-79.

9 OB Akeem, 'Plea Bargaining in the Prosecution of Complex Crimes', a paper presented at the West African Regional Workshop on Plea Bargaining held at the Meridian Hotel, Abuja from 2nd-3rd May, 2007

10. O Jibrin, 'Plea Bargaining and Plea Generally under ACJ, Act 2015' being a paper he delivered at an orientation workshop for Judges in FCT on Administration of Criminal Justice held at Asaa Pyramid Hotel, Kaduna on 29th Sept, 2015

contendere plea[11] and *Alford plea.*[12]Many Countries still find it difficult to codify and properly give it a legal framework because it looks suspicious and subject to abuse to encourage injustice and more crimes. Perhaps, the origin of Plea Bargain will help to make the concept clearer.

Origin of Plea Bargain

According to Alsehuler[13] the practice of plea-bargaining has always been with humans because of the inevitability of our non-adjudicative methods of processing criminal cases. This could be because of laziness, bureaucratization, over criminalization and economic pressure.[14]Social scientists believe that plea bargaining is nothing but a principle of bureaucratic interaction that started from historical times[15] which involves some courtroom activism. However, many believe that Plea bargain was a tool created to protect the people in control of power.[16]Notwithstanding, the historical presence of Plea bargain in human society, plea bargain as it is today was first used in the United States of America as part of their belief that society is dynamic and the law must keep abreast of times[17] It grew to be an invaluable tool in the criminal justice. It started with the case of the former Vice-President, Spiro Agnew following his forced resignation on grounds of fraud and corruption.[18]Besides the case of Vice-President Spiro, some believe that plea bargain must have begun from some skeletal speculations of some American Scholars in the 1960s. The United States Supreme Court gave its approval in the case of *Brady v United State.*[19] It gained further grounds in *Perkins v Court of Appeals.*[20]It is now part of the criminal laws of the United States.[21] Many other countries across the globe have adopted the practice of Plea bargain and have codified it into their Criminal Procedure Codes. It is a fact that Plea bargain is a normal thing in the United States as over two-third of the criminal cases are decided based on it.[22]The concept is practically very suitable in the adversarial system of adjudication if well handled. This is because the adversarial system has its many legal technicalities, which sometimes make the Criminal Justice System very complex. This results to unnecessary and sometimes avoidable delays of trial in the dispensation of justice. Sometimes, in the cause of doing justice, great injustice

11 Rule 11, Federal Rules of Criminal Procedure United States of America)

12 Form CR-101, Plea Form with Explanations and Waiver of Rights-Felony, Judicial Council of California.

13 AW Alsechuler, 'Plea Bargain and its History' Columbia Law Review (1979) vol 79 No 1 pp 1-43.

14 M Feeley, 'The Effect of Heavy Caseloads'being an unpublished manuscript presented at the Annual Meeting of the American Political Science Association, San Francisco, California, September 5, 1975 (revised version to appear as chapter 8 of Feeley's book, *The Process in the Punishment*, to be published by the Russel Sage Foundation, New York City) at pg. 26.1

15 M Hermann, *Plea Bargaining: The Experiences of Prosecutors, Judges, and Defence Attorneys* (University of Chicago Press 1978) 28-32.

16 Ibid

17 *AO Olayiwole,* 'The Concept of Plea Bargain: A Verifiable Tool for Justice or Corruption under the Nigerian Criminal Justice System' *http://thenigerialawyer.com/2016/06accessed 7 March 2017.*

18 Ibid.

19 (1970) 394 US 742, 90 SCT 1463, 25 L.Ed.2d 747.

20 (1978) 738 SW 2d 276, 282 (Tex Criminal Appeal)

21 The Criminal Law (Amendment) Act, 2005 in chapter xx1A of Code of Criminal Procedure Rule 11, Federal Rules of Criminal Procedure (USA)

22 Supra, note 15 at pg. 5.

may be encouraged due to technicalities of the law. In addition, some criminals escape justice due to some of these complex technicalities. Many criminal defendants await trial in custody for very long period. Victims suffer in silence because restitution and compensation is least considered in criminal justice. The adversarial system that mostly characterizes the common law criminal justice is rooted on retribution and deterrence. This has led to the problem of prison congestion in most criminal justice.Therefore, where a person steals a property and accepts to negotiate to give back what he has stolen, it will benefit the society and the victim.[23]The defendant will save the time of the prosecutor and the cost of litigation by accepting to return his loot without trial. For this, it is said that he deserves to be encouraged with a lighter sanction.

Plea-bargaining started in America by convention.[24]Some States have gone a step further to provide guidelines the prosecution and defence should follow in Plea bargain.[25]The apex court also commended its use in *Santobello v New York*[26] that it is an essential component of the Administration of Criminal Justice and should be encouraged. The whole essence of a plea bargain agreement is nothing more than getting a reduction in punishment for the defendant and ensuring the prosecution does not altogether lose out in a situation where he does not have all the necessary facts to secure conviction. Plea bargain if well implemented could be a good practice but that notwithstanding, it can have adverse effects on the criminal justice of a developing nation like Nigeria.

Advantages of Plea Bargain

The advantages of Plea bargaining could be summed up into three broad senses thus; it can be implored to take care of the issue of overcrowding and case backlogs in the courts and in the prisons. In addition, it can encourage justice in complex cases especially where the prosecution may not have all the facts to secure conviction. In the light of the changing nature of society, plea bargain will encourage flexibility of the law. It is an alternative non-custodial sentence for criminal cases and will be particularly useful for cases of minor thefts and traffic offences.

Disadvantages of Plea Bargain

Despite its good sides, Plea bargain has its inherent danger in any given society according to how it affects the defendant, the prosecutor, the victim and the society; Plea bargain is generally unfair to the defendant who may be intimidated into accepting guilt when actually he is innocent. It exposes the prosecution to the temptation of corruption and compromise in the course of fighting corruption thereby demeaning his good intentions before the eye of the public. The society has no option but to accept anything the prosecutor and the accused arrive at since it stands the chance of losing out completely if the matter goes

[23] BO Quadri, 'The Law and Practice of Plea Bargain under the Administration of Criminal Justice Act, 2015 being a paper he presented at the Workshop of the Rivers State Administration of Criminal Justice Law, 2016 on Thursday 17th November, 2016 at the NBA House, Port Harcourt, Rivers State.

[24] Supra, note 9.

[25] Supra, note 10.

[26] (1971) 404 US 257, 260 Supreme Court 495 at pg. 498.

through normal trial due to technicalities of the law; thereby raising the issue of transparency in the mind of the people. The success of plea bargain depends on the legal culture, criminal justice system, history of the people and what changes they want to effect in the society. What may work in one country may not work in another country. The concept of Plea bargain or its practice rather, depends on whether the country is a civil law country or a common law country. For example, civil law countries do not accept plea bargain or may only consider it for trivial or minor offences not for very serious criminal offences.[27] In such cases, it can provide an alternative to imprisonment in cases of minor offences thereby decongesting the prisons for more serious crimes. Judges are not involved in such cases. The main goal in this case is not to punish the offender but to restore him. It involves the accused paying the victim or victim's family some compensation. In other words, plea bargain can be victim-centred where the injury is of a private nature, like in cases of assault, theft, etc. in that case, instead of public prosecutors, private prosecutors could be used. The private prosecutors and representatives of the victim come to a mutual bargain to provide reparation to the victim and rehabilitation to the offender. Notwithstanding, specific punishment is meted out to the defendant. This is not without some criticisms. Since it does not involve proper judicial adjudication, it lacks judicial guidance.

Some examples of Civil law countries that practice plea bargain include- France, Russia and Italy. Presently, these countries have statutory provisions for one-third reduction in sentence if the defendant should plead guilty rather than accept a normal criminal trial.[28] In that case, the judge awards the defendant a light sentence. There are different methods of plea bargain in different countries;[29]other countries have laid down guidelines on how plea bargain could suit their peculiar criminal justice systems. For example, Canada, Republic of Georgia, India, Pakistan, United States of America and the United Kingdom as observed below:

CANADA: The practice of Plea bargain is very strict in Canada. This is because of the likelihood of fraud in its practice. The Crown Prosecution Service enters into a bargain with a defendant and then makes its recommendations based on the agreed terms to the judge. Nevertheless, the judge is not bound to follow the recommendations of the Crown Prosecutors. The prosecution recommends a higher punishment above the agreed punishment with the defendant while the defendant pleads for a lower sentence before the judge. This is to give room to the judge to fall within the agreed range of the bargain.[30]

REPUBLIC OF GEORGIA: Georgia only embraced plea bargain recently in the year 2004. They tend to adopt the procedure as used in the United States of America. The

[27] SC Thaman, 'Plea Bargaining: Negotiating Confessions and Consensual Resolution of Criminal Cases', Electronic Journal of Comparative Law (2007) vol. 11 pg. 3.

[28] Supra, note 25.

[29] DT Johnson, 'Plea Bargaining in Japan', cited in MM Feeley and S Miyazawa (Eds) *The Japanese Adversarial System in Context (Palgrave Macmillan 2002) 142-144.*

[30] Ibid.

Administration of Criminal Justice Law of Lagos[31]took the form of the Georgian code on Plea bargain.

UNITED STATES OF AMERICA: As said earlier in this discourse, plea-bargaining as it is today, started from the United States as far back as 1970. It applies in property cases and other offences that do not attract the death penalty. It saves the society the high cost of litigation and to get back some if not all of the stolen property or money in criminal matters. It encourages victim compensation and reparation. In B*radley v United States,*[32] the Supreme Court of America upheld the practice. In Canada, the practice is subject to the court's approval. Being a multi-State Country, different States adopt different procedures of plea bargain in their own jurisdictions. There are federal guidelines to direct the application of plea bargain. This provides a kind of uniformity throughout the country. It involves the prosecution recommending the defendants plea of guilty to the court and later, the prosecution recommends a lenient punishment for the defendant to the court. The court is not bound to accept or reject such recommendations. The court can reject the plea agreement and the defendant will be free to withdraw his plea of guilt also and face a full trial. On the other hand, where the court accepts the plea, it imposes a punishment in line with what the parties agreed on in their plea agreement[33]

PAKISTAN: Plea bargain came into Pakistan through the promulgation of the National Accounting Ordinance of 1999. It was an anti-corruption law in its bid to check corruption, the aim and objective of this legislation is to allow persons accused of official corruption to return what they have stolen as determined by investigators and prosecutors, thereafter regain their liberty with infracted political rights and damaged reputation[34]In Pakistan, the defendant initiates this process. He applies in writing, stating fully his involvement in the case of corruption and stealing of public funds, levelled against him, thereby pleading guilty. The National Accountability Bureau if satisfied forwards it for the court's discretion as to whether or not his plea of guilt is accepted. The court will convict the defendant but will not sentence him; but ban him forever from holding public offices or participate in elections again and is disqualified from obtaining loans from the bank. The court decides what punishment to give.[35]Suffice to say here that the method of plea-bargaining in Pakistan does not undermine justice and the principle of punishment because despite the plea by the defendant, the court still exercises its constitutional right to pass sentence to *deter* the society from doing what the accused did. This is the main criticism of the practice of plea bargain in the fight against corruption in Nigeria.

INDIA: Not until 2006 did plea bargain enter into the Indian Criminal Justice System through its Criminal Law Amendment Act of 2005. India only applies the procedure to minor

31 Administration of Criminal Justice Law of Lagos State (ACJL) 2007.
32 Supra, note 18.
33 Section 11C(i)(c) of the Federal Rules of Criminal Procedure.
34 Supra, note 22 at pg. 14 Para 3.
35 Ibid.

offences of not more than 7years punishment. The Indian criminal justice system does not recognize plea bargain in serious offences like corruption.[36]

Plea Bargain in the Nigerian Criminal Justice System

The Nigerian Criminal Justice System commences when a crime is committed. It goes through arrest, investigation, prosecution of the criminal offender and punishment if found guilty of the criminal law. Before one can move further, it will be expedient to recall what makes an offence a crime or criminal act in the Nigerian criminal law. A *crime* according to Black[37]is an act that the law makes punishable; the breach of a legal duty treated as the subject matter of a criminal proceeding. While a *criminal* (adjective) is having the character of a crime or in the nature of a crime. *Criminal* (noun) is one, who has committed a criminal offence or one who convicted of a crime. Chukkol[38]simply defines crime as an 'anti-social behaviour' while the Criminal Code[39]defines crime as *acts or omissions* that render the person doing the act or making the omission liable to punishment under the Code. Not all offences are criminal. Some acts or omissions are mere moral wrongs. A crime must be an act or omission that threatens the peace, security and wellbeing of society.[40]A learned writer summed it up that a *crime is crime because it consists in wrong doing which directly and in serious degree threaten the security or wellbeing of society and because it is not safe to leave it redress able only by compensation of the party injured.*[41]The public nature of a crime is as evidenced in the contrast between the rules of civil and criminal procedure. For example, while the object of criminal law is the punishment of the offender in order to *deter* other offenders from further criminal acts, the clear objective of civil law is to compensate the aggrieved person.[42]In addition, while civil proceeding is commenced on behalf of the aggrieved parties through his or her retained counsel, criminal proceedings are usually initiated by the State on behalf of the victims of the crime.[43] In addition to these features of crime, a crime is a moral wrong or act that affects the moral values of the society. This viewstems from the mentality of traditional conception of crime, which sees crime as essentially immoral acts deserving of condemnation. This could no doubt be true in the early days of the law when only the most outrageous acts like murder, robbery, banditry, rape etc. where the only criminal misconducts; as observed in the case of *Dadu v NNPC.*[44] However, this need not true today when many acts are termed criminal on grounds of social expediency. Whether an act ought to be a crime simply on the ground of its moral nature has been the subject of vigorous debate in recent times. According to the proponents of the moral nature of crime, crime is a moral wrong because there is a public morality which binds society together

36 Ibid pg. 14.
37 Supra, note 3 at pg. 399.
38 KS Chukkol, *The Law of Crimes in Nigeria,* Ahmadu Bello University Press (2009) pg. 1 Para 4
39 Section 2
40 AB Dambazau, *Criminology and Criminal Justice,* (Ibadan: Spectrum Books Ltd, 2002) pg. 50
41 CK Allen, *The Nature of Crime Journal of Society of Comparative Legislation, vol 22, 1931, pg. 47.*
42 JC Smith and B Hogan, *The Nigerian Criminal Code Companion (Benin: Ethiope Publishing Co, 1985) pg. 21.*
43 A private person may also institute a criminal proceeding but that is not for this Discourse.
44 (1998) 2 NWLR (pt. 538) 355.

and which society may use the criminal law to achieve.[45]This debate sprang from the view of the *Wolfenden* Committee on Homosexual Offences and Prostitution to the effect that the enforcement of morality is not a proper object of the criminal law.[46]The law can be applied in virtually in any area in the interest of the society. The opinion of the *Wolfenden* Committee received a judicial disapproval in the case of *Shaw v Director of Public Prosecution.*[47]The point remains that once a crime is committed, it lends itself to a special procedure, which ends in the form of punishment. It is true that the possibility of punishment is not the only distinguishing mark of a criminal trial, but it is certainly the most important one.[48]With these facts on crime and criminal proceedings in mind, one may proceed to get a clearer understanding on the Nigerian Criminal Justice and the fact that corruption is a crime against humanity and therefore threatens the moral, economic and social wellbeing of any given society if over looked. The Nigerian Criminal Justice presumes that someone who commits a criminal offence is innocent until proved guilty. Such prove must be beyond reasonable doubts. Thus, the prosecution fails in its duty where the ingredient of a crime is not proved beyond reasonable doubt or to the satisfaction of the court. This is in line with the Constitutional provision of presumption of innocence in favour of the accused.[49] The problem with this method is that, before conviction and punishment could be achieved, some accused persons could evade the wrath of the law because the prosecution could not satisfy these requirement of prove beyond reasonable doubts and this makes trial look fake or unjust to the layman since he is convinced that the crime was actually committed. According to Lord Denning in *Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon*,[50]*justice must be rooted in confidence, and the confidence is destroyed when a right thinking person walks away thinking the Judge is biased in the case.* The Evidence Act recognizes this[51]and the court upheld this in the case of *Ibeziako v Commissioner of Police.*[52]In addition, in the case of *Ogbu Nwagu v The State*[53], the court held that subject to certain statutory exceptions[54]the burden of proof beyond reasonable doubt remains on the prosecution all through trial and does not shift to the accused. That the burden can only shift to the accused when the prosecution has proved beyond reasonable doubt.[55]Therefore, *ab initio* the accused person has no duty whatsoever to prove his innocence. This was the observation of the court also in the case of *Woolington v DPP*.[56] This is a common law tradition and a basic characteristic of an adversarial system of criminal justice.[57] In the Adversarial system, the onus is on the

45 L Delvin, 'The Enforcement of Morals', the Maccabean Lectures (1959) vol 451 pg. 29.
46 Supra, note 42.
47 (1962) AC 220; also reported in (1961) 2 ALL ER 446.
48 CO Okonkwo, Criminal Law in Nigeria, (2nd Ed. Sweet and Maxwell, London 1999) pg. 33.
49 Section 36 CFRN 1999 (as amended)
50 (1968)S.C.87.
51 Section 138 (1) and (2) Evident Act Cap. E14 LFN, 2011.
52 (1963) 1 ALL NCR 61.
53 (1966) 1 ALL NCR 207.
54 Sections 139 and 142 Evidence Act 35; (1935) AC 462.
55 Section 138 (3).
56 (1935) AC 462.
57 A procedural system involving opposing counsels contesting with each other to put forth a case before an Independent decision-maker used in common law countries, example; U.K., U.S., Canada and Nigeria.

Prosecutor[58] to prove the guilt of the accused beyond reasonable doubts while his Constitutional right of innocence protects the accused. This follows that once the accused pleads guilty, the prosecution is discharged of the onus to prove and the accused is convicted. This is because there is no more doubt as to his guilt. Therefore, a Plea of guilty can unanimously secure conviction[59] although subject to an exception.[60]The only logical explanation of plea bargain in Nigeria might be that it operates in an Adversarial Criminal Justice System. The accused all through trial is presumed innocent. His pleading guilty makes him loose his constitutional cover of the presumption of innocence. But in the inquisitorial system since he is presumed guilty before trial but awaits the judge to prove that he truly did what he was accused of, his pleading guilty will not stop the judge but merely assists the judge in his investigation. In the words of Mohammed;[61]*it is the constitutional presumption of innocence… that makes it possible to contemplate the idea of bargaining or negotiating his plea.* Due to the technicalities of the law in the adversarial system, plea-bargaining may be necessary to help both the prosecutor and the victims to get reparation albeit little. Ordinarily, victims are least considered in most criminal justice system. Focus is on trial and punishment. Plea bargaining will ensure that victims get back what was lost while the criminal for making public his guilt, should go with a lighter punished. This is the main idea of plea bargain but in Nigeria, the idea is more to favour the political elites in other to spare them the embarrassment of a criminal trial. It also spares the EFCC the trouble of having to employ its professionalism as prosecutors most of whom surprisingly are trained legal practitioners. To this effect, Nigerians are of the opinion that the anti-graft agency itself is corrupt especially when the EFCC has not recorded much success in its fight against corruption.

Not until the advent of the EFCC, Plea bargain was an unknown concept in the Nigerian Criminal Justice. It only came into focus in 2005 when the EFCC used it for the very first time in a corruption matter involving the former Inspector-General of Police, Tafa Balogun. The use of Plea bargain in that case made many Nigerians to raise an eye brow as to what the EFCC meant by letting Tafa off the hook in that manner. Many other prominent Nigerians have benefitted from the use of plea bargain to evade justice in high profile corruption and fraud related matters. These include the former Governor of Bayelsa State D.S.P. Alamieyesagha, Emmanuel Nwude and Nzeribe Okoli both of whom defrauded a Brazilian bank, former Governor of Edo State Lucky Igbinedion, former Director of Oceanic bank Cecilia Ibru etc. The ACJA made plea-bargaining a legal concept in the Nigeria criminal justice. It made elaborate provisions on how the concept could operate in Nigeria. Before ACJA, the only Statute that truly provided for Plea bargain is the Administration of Criminal Justice Law of Lagos State, which stemmed from the Georgian Code on Plea bargain. All other enactments mentioned by many Nigerians were mere speculations as none

[58] A system used in civil law countries whereby the judge conducts the trial, determines what questions to ask and defines the scope and extent of the inquiry used in most of Europe. Example is Japan, Italy, South America, France etc.

[59] Sections 218 CPA and 187 (2) CPC.

[60] Where the offence is punishable by death, a plea of not guilty will be recorded for the defendant even if he pleads guilty.

[61] AY Mohammed, 'Journal of International and Strategic Studies' (JILSS) vol. 3. Pg. 61.

particularly mentioned plea bargain nor did any explained how it could effectively operate in Nigeria. This was a further puzzle to many Nigerians as to where the EFCC borrowed the concept. This was against the Principle of Legality, which encourages a strict adherence to law.[62]The principle established in effect that a person is not guilty under a criminal law that is non-existent. The EFCC claimed to be acting on the provision of the EFCC Act.[63]The Commission has to use its own discretion, which encourages arbitrariness. In addition, the provision empowers the Commission to accept any amount it deems fit provided it does not exceed the maximum amount imposed by the supposed offence. This provision exposes the Commission to corruption. Mustapher[64] expressed his dislike when he said that *Plea Bargain is a novel concept of dubious origin. It has no place in our law- substantive or procedural, it was invented to provide soft-landing for high profile criminals who loot the treasury entrusted to them…it should never again be mentioned in our jurisprudence...*

In Nigeria, there is no proper understanding of the concept of Plea bargain by the law enforcement officers and besides, what is being plea bargained is public funds, thereby, plunging the whole nation into the economic recession which is presently biting hard on the masses. The concept of plea bargain is not ripe for the Nigeria criminal justice.[65]If the state allows the accused to return some of his loots and get no punishment thereafter, more looting will be encouraged. The only legislation that specifically provided for Plea bargain prior to the coming of the ACJA was the ACJL,[66]which as explained earlier, stemmed from the Criminal Code of Georgia, which in turn is an adopted from the United States. In addition, the Administration of Criminal Justice Law of Anambra State[67] has similar provision in cases of stealing or receiving stolen goods. This is to the effect that while imposing sentences, if the prosecution cannot secure conviction, the court may order restitution or compensation to the victim from the accused person. However, in the case of Anambra State, the Attorney General has the sole power to recommend Plea bargain not the trial judge or magistrate. More so, Plea bargain is not applicable to all cases or persons. For instance, it is not applicable to capital offences and crimes involving violence. The pitfall in the Anambra State ACJL is that the Attorney General may be influenced thereby breaching the rights of victims and besides, it tends to usurp the Constitutional role of the courts.[68]Some portions of the ACJL on plea bargain, were incorporated into the ACJA[69]

Plea Bargain Under the Administration of the Criminal Justice Act (ACJA), 2015

The ACJA came into force on the 15th of May 2015. Its main objective is to promote the efficient management of the criminal justice, encourage the speedy dispensation of

62 E Azinge and L Ani (Eds) 'Plea Bargain in Nigeria: Law and Practice', *Nigerian Institute of Advanced Legal Studies* (2012)pg. 14.

63 Section 14(2) EFCC Act, 2004.

64 D Mustapher, 'Legal Practice in Nigeria: Venturing Beyond the Usual Boarders' being a paper he presented at a press conference organized in Abuja on November 14, 2011.

65 K Esho, in an interview published in the Vanguard Newspaper on November 18, 2012.

66 Administration of Criminal Justice Law of Lagos State, 2007.

67 Administration of Criminal Justice Law, of Anambra State, 2010.

68 Section 6 of the 1999 Constitution.

69 Section 270 (3).

justice, protect society from crime and protect the rights and interests of both the defendant and the victim.[70]It builds upon the existing framework of criminal justice administration by merging the provisions of the CPA and CPC into one detailed Federal Act that should apply uniformly all over the country.[71]The ACJA not only preserved the two criminal procedures but also added new innovative provisions to promote efficiency and justice in the Nigeria Criminal Justice. It also tends to fill the various *lacunas*, which existed in the two Codes. It has an extensive provision on Plea-bargaining in Nigeria.[72]Section 270(3) provides a wider scope of the powers of the Attorney General to initiate plea bargain to the effect that even other officers in the Attorney General's department can initiate Plea bargain on his behalf. This is in line with the judgement of the apex court in *Osahon v Federal Republic of Nigeria*.[73]It ensures that there is no shady deal between the Prosecutor and the defendant against the victim. After the all parties have signed the agreement,[74]it is taken to the Attorney General of the Federation for approval.[75]The court is duty bound to award the compensation to the victim in accordance with the terms of the agreement.[76] The Act[77]provides a kind of Alternative Dispute Resolution to quicken the course of justice in criminal proceedings. The whole idea of Plea bargain as provided by the ACJA is transparent and encourages restorative justice to the defendant, the victim and the State. All the parties to the agreement have to report to the courts, thereafter.

The issue now is whether Plea bargain is an effective tool in the anti-corruption campaign in Nigeria especially with the present realities of its effects on the economic wellbeing of the country.

Plea Bargain and the Anti-Corruption Campaign in Nigeria

Corruption is in effect the impairment of a public official's duty by bribery.[78]It is also the act of doing something with intent to give some advantage inconsistent with official duty and the rights of others.[79]Corruption is a *vice* among humans, which needs urgent tackling because of its tendency to destroy the society. It is not a problem to taken for granted because it is deadly to any society.[80] No wonder many countries have put out stringent measures to tackle the menace of corruption. The recession Nigeria is facing today is because of corruption. There is corruption all over the world in various degrees of manifestation but corruption in Africa has no rival. Nigeria is a victim of corruption. There is corruption in the government, civil service, private sector, commerce, politics, academic institutions, churches,

70 Section 1 (1) Administration of Criminal Justice Act, 2015.
71 The CPA and CPC were two laws operating in one country.
72 Supra, note 4.
73 (2006) 5 NWLR pt. 973 pg. 361.
74 Section 270 (7)(c)
75 Section 270(7) (d).
76 Section 270 (10).
77 Section 270 (6).
78 Supra, note 3.
79 Ibid.
80 V Egwemi, 'Political Corruption and the Challenges of Sustainable Development in Nigeria: Focus on the Third Term Agenda' NASHER Journal 5(1) 178-185.

mosque etc. Every Nigerian is a victim of one corrupt practice or the other and yet plea bargain has compromised its eradication in Nigeria.

God never intends man to lack the basic needs of life- food, water, shelter, clothes and healthy body. The Bible[81] and the Quran[82] both point to the fact that God intends man to live in abundance. The cause of the scarce resources and poverty in the land is because of corruption. Man devised ways to immerse wealth for himself at the detriment of others due to greed. Corruption is the abuse of public office for private gain.[83]In fact, any form of unjust enrichment, whether public or private is corruption.[84]Osoba[85]defines corruption as an anti-social behaviour. It includes fraud, extortion, money laundering, theft, bribery, nepotism, laundering of illicit proceeds, patronage, oil bunkering, election malpractice, exam malpractice, immorality etc. Naturally, Africans value public morals and every family build this into their young ones as part of the nurturing process. In fact, people try to preserve their family image and reputation by upholding a virtuous living standard of contentment and honesty. Although, people are not entirely virtuous but the incidence of corruption was at its lowest ebb and no individual culprit can go scot-free if found guilty.[86]Corruption as seen today, started with the advent of the White man to Nigeria, which gradually destroyed the people's value system.[87] The first set of incidence of corruption falls back to the era of slave trade. The Portuguese and other western nations came to the shores of Nigeria to exchange human beings for items like mirrors, walking sticks, umbrellas, hot drinks, breads, shoes, brass etc.[88] Gradually, the Chiefs became corrupt as the White man used all forms of corrupt practices to entice them into corruption against their people. After the era of the slave trade, the same white men now termed administrators continued in the corrupt practices by conniving with the chiefs to squander the people's wealth. Nigerians inherited corruption at independence,[89]as part of the government the Whiteman passed on to them. The Nigeria Military later expanded the scope and methods of corruption as seen today.[90]Presently, it is a mark of foolishness for one not to be corrupt in Nigeria.[91]The 'service' culture has died

81 Genesis Chapter 1:28 of the Holy Bible.

82 Chapter 17: 70 of the Holy Quran.

83 OECD Observer N'260, March 2007 http://www.oecdobserver.org/news/fullstory.phd/aid/2163/Defining_ Corruption.html accessed 7 March, 2017.

84 E.O Victor, 'Corruption in Nigeria: A New paradigm for Effective Control' www.africaeconomicanalysis.org/ Article/gen/corruptiondikehtm.html> accessed 7 March, 2017.

85 O. Osoba, 'Corruption in Nigeria: Historical Perspectives', Review of African Political Economy, 1996 cited by Mulinge MM and GN Lesefedi: 'Corruption in Sub-Saharan African'. Towards a More Holistic Approach', African Journal of Political Science (2002), vol 7 No. 1<http://www.Africaneconomicatia> accessed 7 March, 2017.

86 Ibid.

87 In pre-colonial Africa, everybody was subject to the laws of the land. Even the King is under check of the Priest or Priestess as the case maybe who are also controlled by the gods of the land.

88 E Oyibo, 'The Scope of Bribbery and Corruption in Nigeria' 2012 <http://www.nigeriavillagesquare.com> Accessed: 13 March, 2012, 11.06am. Also, MM Mulinge and GN Lesetedi (Supra, note 85).

89 ibid.

90 Ibid.

91 F Omotosho, 'Corruption, Private Accumulation and Problem of Development in Nigeria'. *The Social Sciences* 1(4): 335-343, 2006-http://www.medwelljournals.com/fulltext/TSS/2006/335-343. pdf.. See also,

giving way to looting and bribery among public office holders. The leaders see political positions as opportunity to take themselves and their families out of poverty forever. Bad leaders are lobbied into power through electoral corruption thereby sabotaging the will of the people. What good can come from a country where lawmakers;[92]law enforcement agencies[93] political parties; [94]the intellectuals; [95]the presidency[96] and the judiciary[97] are corrupt? No wonder, the international world rates Nigeria as one of the most corrupt nations of the world.[98]Due to its hazardous and damaging nature, Corruption is not to be handled lightly in any given society and certainly not in a growing economy like Nigeria.[99]It is not easy to fight corruption. This is because the corrupt use their powers, influence as well as loots to fight justice. It is even worse where the judiciary is compromised and leaders are protected by immunity. These leaders manipulate laws to give them a soft landing after they must have left office. The scourge of corruption in Nigeria seems to have defied solution.[100]Each political regime comes to power promising to eliminate the practice and punish the offenders only to fall into the same pattern of its predecessors.[101]

Nigeria started its war against corruption very seriously during the tenure of former President Olusegun Obasanjo. This led to the formation of the EFCC in 2002. They were empowered by the EFCC (Establishment) Act, 2002. Before the coming of EFCC, the Nigerian police were empowered to check and prosecute crimes in Nigeria,[102]with the power of the Criminal Code.[103] The Criminal Code Act made it a felony for public officers to ask for, receive or obtain any property or benefit for any service done in the course of duty, the

'Nigerians' Poor Status, Nigeria Tribune, Friday 25th January, 2008 <http://www.Tribune.com.ng/25012008/ edit.html> accessed 5 November, 2017.

92 S Oduleye, 'What a Country!' http://www.dawodu.com/oduyelafor:html. Also, see A. A Akintokunbo, 'Nigeria's Senate Presidency and a Whiff of Corruption', http://nigeriaworld.com/articles/2007/june/ 113.html.

93 Ibid.

94 The PDP National Chairman and Four others were recommended for trial by the Investigation Unit of the Independent Corrupt Practices and other Related Offences Commission over alleged N104million Fraud in the National Economic Intelligence Committee <.http://www.thenationonlineNg.com/dynamicpage.asp? id=57076.>

95 Notable professors have been involved: Prof Fabia Osuji, the Minister of Education, Prof Aborishade, Former Minister of Aviation, Prof Grange, the Minister of Health

96 EO Oyibo, 'President Obasanjo's War on Bribery and Corruption in Nigeria a success or failure? It is a Colossal, Unmitigated Failure and a Lost Cause' http://www.nigeriavillagesquare.com.> Accessed: 10 July, 2008'10.34.

97 NI Scam, 'Nigeria: Judges and Divine Responsibility', 21 July 2008, <http://allafrica.com/stories /200807211 158.html>accessed 7 March, 2017.

98 '1997 Corruption Perception Index Transparency International', <www.transparency.org/content/doenload /2913/18025/file/cpi1997.pdf> accessed 7 March, 2017.

99 Supra, note 81.

100 Ibid.

101 Ibid.

102 GO Akolokwu, 'Criminality and the Police Force in Nigeria: Obstructions to Administration of Justice in Nigeria', (Schalesworths Journal of Democracy Review) vol. 1 No. 12005<http://Schalesworth, centre.org/CHAPS3capital>

103 Chapter 12 of the Criminal Code, CAP 77 LFN, 1990.

penalty for corruption was 7years imprisonment.[104]The fact that the Criminal Code was not effective in the fight against corruption was evident by much criticism by many writers.[105]The failure of the Police to tackle corruption led to the enactment of the Code of Conduct Bureau[106], which had its legal backing from the Constitution itself.[107]The Bureau was supposed to enforce high moral standard and accountability among public servants[108]and to check the extravagance and sporadic spending of looted wealth.[109]Despite all the good intentions of the Code of Conduct Bureau, it still faced similar limitations as the Nigerian Police Force.[110]This led to the formation of the Independent Corrupt Practices and Other Related Offences Commission (ICPC) in 2000 and powered by the ICPC Act. Initially, there was some disapproval as many felt that the problem is not in the law but in its implementation. However, the apex court allowed it to stay in AG of *Ondo v AG Fed &Ors*[111]due to the fact that its meant to fight corruption. ICPC was saddled with the mandate of investigating top government officials and to fight corruption[112]Following the ICPC closely was the EFCC[113]in 2004. It was in answer to the Financial Task Force (FTF) concern about Nigerian Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) laws.[114]They were empowered to investigate, prevent and prosecute offenders who engage in money laundering, embezzlement, bribery, looting etc.[115]It was also within the scope of the Commission to trace, identify, freeze or confiscate the profit of such illegal activities. The EFCC is empowered to enforce the Criminal and Penal codes as well as all the previous anti-corruption and anti-money laundering laws. The EFCC prescribed punishments ranging from fine, forfeiture and imprisonment of up to 5years depending on the offence committed aside from terrorist financing and terrorist activities which is life imprisonment.[116]One of the weapons EFCC is using to fight corruption is Plea bargain. Many feel that Plea bargain encourages speedy trial.[117]Others agreed that the practice is justified on penological grounds because it encourages rehabilitation of offenders who by pleading guilty, become remorseful and such people may not necessarily get full punishment. On the other

[104] Section 98B (1)

[105] O Okechukwu, 'Subverting the Scourge of Corruption in Nigeria: A Reform Prospectus'[2010] < wwwlaw.nyu.edu/journals/JILP/issues/34/pdf/34_2_h.pdf.htm> accessed 7 March, 2017.

[106] Cap C15 LFN 2004

[107] Schedule 5 pt. 1 1999 Constitution.

[108] ID Kabiru, 'The Constitutional Fight against Corruption in Nigeria: Is it Enough? <http://www.icgfm.org/documents/journalFinal viii No 1pdf£page_69> accessed 3 April, 2017

[109] Supra, note 106.

[110] The Corrupt Practices and Other Related Offences Act, 2000, Act No5, Laws of the Federation of Nigeria.

[111] (2002) 9 NWLR pt. 7 pg., 772.

[112] Citizens Handbook on ICPC, EFCC Zero Corruption Coalition, 2006.

[113] EFCC (Establishment) Act, LFN 2004.

[114] N Ribadu, 'Nigeria's Struggle with Corruption', being a paper presented to the United States Congressional House Committee on International Development Washington DC May 18, 2006 p.4

[115] supra, note 114 sections 6 and 7.

[116] Supra, note 114 section 15.

[117] O Kayode, 'Plea Bargaining: An Indispensable Tool in the Criminal Justice System' Published 08/30/2007,http://www.chatafrikarticles.com/article/898/1/Plea-Bargaining-An- Indispensable-Tool-In-The-Criminal-Justice-ystem/pageI.htm.

hand, some feel that Plea bargain is against the whole idea of our Criminal Justice System.[118] They argued that the essence of legislating against crime in society is to stop people from offending and the only way to *deter* people from crime is by punishing offenders. Without punishment, the idea of deterrence will be jeopadized.[119]Until the coming of the ACJA, Plea bargain was not in any Nigerian Statutes.[120]Many learned jurists had at one point or the other decried its use.[121]It is injustice for a thief who stole a 'handset' to be imprisonmentfor2years; or a road traffic offender to have one year in prison. While someone, who stole billions of naira belonging to the people is made to refund some of his loot with 6months in prison, which most often ends in private and expensive clinics on health grounds or pay a fine in lieu of imprisonment.

Conclusion

Plea bargain may be a useful tool in the criminal justice system but its disadvantages outweighs its advantages especially in the fight against corruption in Nigeria. A crime is a wrong against humanity. It is an injustice against the whole of society and if overlooked can lead to a total breakdown of law and order. Corruption is a crime against humanity and a menace in the Nigerian Criminal Justice. The current recession the country is facing is a result of decades of corruption in high places. Nigeria is one of the most blessed countries of the world. It has enough mineral resources to keep its population comfortable for generations but corruption has devastated the people's wealth. Looters invest their loots abroad to the detriment of the economy. Nigeria has no good image in the international world. No wonder Prime Minister David Cameroun, during his welcome speech to President Buhari on his first State visit to the United kingdom on his assumption of duty as the Nigerian President and Commander in Chief of the Armed Forces, said Nigeria is a 'fantastically corrupt' nation, an adjective many Nigerians agreed was a fair assessment of the country. Many have mixed feelings as to the use of Plea bargain to fight corruption in Nigeria. While some feel it could be a way to decongest the courts and the prisons others strongly oppose its use on the ground of the shoddy motive behind its introduction into the Nigerian legal system and its evident fraudulent application.[122]Very serious offences of corruption have been greatly compromised through Plea-bargain. According to Tarhule[123]this will encourage criminality. Only the rich seem to have benefitted from Plea bargain in Nigeria while the poor gets the wrath of the law for stealing a mere handset.

Before the EFCC started using Plea bargain in Nigeria, many offenders in history have variously pleaded guilty thereby saving the time of the prosecution and that of the court, and yet they got summary judgement and punishment accordingly. Plea bargain as used by the EFCC and ICPC in Nigeria in their fight against corruption is discriminatory against the

[118] Ibid.

[119] OB Ajibola, 'Plea Bargain is Corruption'<www.punchng.com/Articleaspx?theartic=Art2007> accessed 7 March, 2017.

[120] N Victor, 'Nigeria: The Problem with Plea Bargain', Vanguard Newspaper, 10 October, 2007.

[121] A G Balogun, '*Nolle Prosequi* and Plea Bargaining: The Evasive Rule of Criminal Prosecution? Unpublished, May, 2008.

[122] K Akogun, 'Nigeria: Senate Condemns Misuse of Plea Bargain Rule'. This day Newspaper, April 3, 2009

[123] Ibid.

poor masses and only services the interest of the rich and influential Nigerians who are ready to bribe their way with their loot in the guise of plea bargain. This raises serious doubts as to the justifiability of Plea bargain in Nigeria. It puts out justice for sale to the rich and powerful. In addition, it raises many issues as to the sincerity and commitment of government in the on-going fight against corruption in Nigeria. It is true that the legality of plea bargain in Nigeria is no longer in contention but it is not justified in the fight against corruption. Despite its highly commendable and elaborate provisions, the ACJA seems to have neglected to screen out offences that should be plea bargained as is the case of India, Pakistan, United kingdom and other countries studied earlier. The prevalence and destructive nature of corruption in the Nigerian economy makes the use of plea bargain unwise to fight corruption. When a crime is prevalent and very notorious as well as threatens the peace and stability of any given society, the best principle of punishment to apply should be deterrence and retribution not rehabilitation. Corruption is as serious as armed robbery and kidnapping. It needs strict measures if the fight against corruption must succeed. If not handled with caution, there will be more stealing with impunity and the economy will collapse eventually leading to other crimes like kidnapping, armed robbery, oil bunkering, rape, ritual killings, electoral crimes etc. as evidenced today in Nigeria. It is either the EFCC lacks the necessary competence and professionalism to fight corruption or they are themselves compromised by the corrupt. The recent acquittal of Justice Ademola Adeniyi and his wife who were found with a whooping sum of N300million, which they claim, was a gift in a country where the average Nigerian cannot afford two square meals in a day, on grounds of lack of proper investigation by the EFCC is both painful and confusing to the common person. One will ask what kind of 'gift' and why such a big 'gift' to a judicial officer? The lack of proper investigation by the EFCC has flawed many corruption cases thereby making the whole idea of fighting corruption a mirage to the poor Nigerian who walk away thinking the judge is unjust.

The article emphasises that the continuous use of Plea bargain in the Nigerian Criminal Justice is a threat to democracy and undermines the fight against corruption. In addition, the paper has looked at some other jurisdictions of the world that practice Plea bargain. In most of the countries studied, Plea bargain is excluded in corruption and fraud related matters and those who allow it have other punitive measures that go with it in other to *deter* others. Moreover, in each of these countries studied there is full supervision of the judiciary who exercise their constitutional right to punish crimes. For example, in Pakistan, the court convicts the offender but withholds sentence, but disqualifies him from contesting elections again or from holding political offices or taking loans from the bank and his or her reputation is damaged in the society. If this is adopted in Nigeria, public confidence in the courts and the EFCC will be restored.

Although, one must applaud some recent development in the fight against corruption in favour of the EFCC and indeed the people of Nigeria. For example, the 5years jail term without an option of fine awarded against the former Governor of Adamawa State Bala James Ngilari is worth applauding. This is justice, although; much is desired in the fight against corruption.

In the light of the above, this discourse recommends that; like India, plea bargain's not suitable for corruption matters or other serious criminal offences. Corruption should be at *per* with the offence of murder, kidnapping, armed robbery etc. and should carry equal punishment. On the contrary, the Pakistan style is to be encouraged with other deterrent measures to go along with the plea agreement. If this is the case, only public officers who invested their loots in the country should benefit from it. The court must carry out their constitutional obligations to punish by being fully in charge to decide appropriate sanctions to go alongside whatever the prosecutor and defendant agree. Only minor offences should be plea-bargained to decongest the prisons. In future review and amendment of the ACJA, the Act should be made to state clearly, the category of offences that can be plea-bargained. This will add colour to the Nigerian Criminal Justice as it is in other countries where Plea bargain is used. In the fight against corruption in Nigeria, the value system of the people needs to change. People need to be reoriented not to adore and praise sing the corrupt rich men and women of the society, the jingles and media must be used to change the psyche of the people towards the right direction and churches should stop preaching prosperity to the people but should teach the love for God and fellow man. It is important to access public opinions before passing a law. This will help to build public confidence and trust in the legal system. EFCC, judges and lawyers need special training to understand the concept of Plea bargain. The fact that a particular concept is working in one country does not guarantee that it will work in another. It is expedient to consider the peculiar circumstances of the people before adopting foreign ideas into their Criminal Justice. Finally, corruption is a serious wrong against humanity and capable of destroying lives and causing anarchy. Any criminal trial involving corruption must be such that can assure public confidence in both its process and outcome. Caution must be observed in the use of Plea-bargain to fight corruption. For it to be a good legal concept in the Nigeria criminal justice, plea bargain must encourage fairness, justice and equity for a better Nigeria.