# PLEA BARGAIN IN NIGERIA: A CASE FOR LIMITATION OF THE SCOPE

**Uzochukwu Emmanuel Ibekwe***

**Abstract**

Unarguably, plea bargain is a concept globally recognized in the administration of criminal justice as a reformative tool for speedy justice delivery. Plea bargain is regarded as an alternative dispute resolution mechanism applied only in criminal cases whereby a defendant enters into a mutual agreement with the prosecutor to enable such criminal defendant to obtain a lesser punishment or charge before a court of law. Nigeria has adopted the concept of plea bargain as part of its criminal jurisprudence. The Administration of Criminal Justice Act[1], clearly reveals the presence of plea bargain in the Nigerian criminal jurisprudence. It was discovered in the course of this research that plea bargain as it is constituted today has a negative impact on the economic development of Nigeria. A situation where the corrupt citizens would steal billions of Naira only to return a paltry sum through the platform of plea bargaining has drained the Nigerian economy. Hence there is need to urgently address this menace by limiting the scope of plea bargaining to exclude social economic crimes, rape and defilement. This is what this article seeks to achieve. A doctrinal research methodology was adopted by reference to relevant primary and secondary sources of law. The article recommended *inter alia* that the scope of Plea bargain under the Nigerian administration of criminal justice be amended so that it will not apply to offences against women, children below the age of fourteen (14) years and to offences affecting the socio-economic conditions of Nigeria. This will greatly assist in the crusade against corruption, bearing in mind that corruption affects the socio-economic condition of Nigeria.

**Key Words**: Plea, Plea Bargain, Crime, Administration of Criminal Justice

## 1. Introduction

In every society, crime is a wrong against the whole community and the perpetrator is treated as an enemy of the society. A tooth for a tooth, an eye for an eye, a life for a life was the forerunner of criminal justice.[2] As time advanced, the injured person (the victim of crime) agreed to accept compensation, instead of killing or retaliating against the offender. The application of these principles remained within the domain of the parties for a long time, until gradually this function came to be performed by the state. Consequently, the rights of each person became protected by the state through the promulgation of laws, especially criminal law.

The ultimate aim of criminal law is to protect the lives and properties of individuals against invasion, protection of the weak against the strong and the law-abiding against the violent. To protect rights of the citizen, the state prescribes the rules of conduct, sanctions for their violations, machinery to enforce sanctions and procedure to protect the machinery[3]. To

* **Uzochukwu Emmanuel Ibekwe,** Ph.D, Principal Solicitor, Primestone Legal Practitioners, Oweri, Imo State, ibekweuzochukwu45@gmail.com

1 2015

2 See: King James Version of the Holy Bible, Exodus *Chapter 21:24*

3 Justice Malimath Committee on Reforms of Criminal Justice System, Government of India, *Ministry of Home Affairs*, Vol.1March 2003,5

achieve the foregoing, every state prohibits certain human conduct that is considered inimical and compels the performance of certain conduct which are beneficial to members of the society. It is a crime to engage in those acts that are prohibited or to refrain from doing those acts that are imposed on individuals for the benefit of others.[4] These processes are usually embedded in statutes (both substantive and procedural laws) and judicial precedents. It is the above perspective that Verma submitted that civilization, from the very beginning, has been grappling with incidents of crime and the ways and means to control them because it cannot be eliminated.[5] Hence, different jurisdictions have tried over the ages to evolve a criminal justice system suitable for their demographic characteristics and guided by other considerations[6].

Administration of criminal justice encompasses the entirety of the whole processes undertaken by the state to investigate, prosecute and punish offenders starting from a complaint is laid to the police or any other appropriate security agency up to the time of sentencing and performance of the sentence imposed on the offender. These processes are time-consuming, energy-sapping and capital-intensive. Civilized societies depend on speedy administration of justice. However, the criminal justice administration system in Nigeria is bedeviled with delay in justice delivery as a result, an ever-increasing number of litigations that have overburdened the courts from all corners; limited numbers of court considering the litany of cases; unnecessary adjournments, transfer of judges and magistrates which leads to some cases starting de novo amongst others.

Plea bargain is a process that makes it possible for criminal prosecution to be concluded even without a trial.[7] hence, it becomes a speedy alternative to a full-blown trial. It has been observed that certain national economic interests are sacrificed at the altar of plea bargain, although the concept is not entirely a wreck. This article, therefore, seeks to examine the doctrine of plea bargain to determine its continued relevance and proffer solutions to its adoption and adaptability to achieve better results.

## 2. Clarification of Terms

### 2.1 Crime

The most important duty of any state is to protect the lives and properties of its citizens and even aliens who are within its territorial jurisdiction.[8] This the state does by prohibiting those acts which it considers dangerous or inimical or which have the capacity to disturb the peace of the state by adversely affecting the lives and properties of individuals within the state. On the other hand, the state can also compel individuals to perform some acts which are beneficial to others, failing which the state punishes the offender. This may otherwise be referred to as omission. Notably, these acts or omissions are prohibited using the instrumentality of the laws enacted by various legislative bodies, and punishments are ascribed to such prohibited acts and/or omissions to instill obedience in the people. To this end, Wechsler[9] observed that:

4 See *Section 303* of the Criminal Code, Cap.C38, Laws of the Federation of Nigeria, 2004,as revised on the duty to provide necessaries.

5 Verma, J.K., *Plea Bargaining-Concept and Potential*,(1st edn.,Nagpur,All India Reporter,2011),13.

6 Ahmed,M "Plea Bargaining: A Comparative Study",(2008),Vol.3*Cochin University Law Review*,106.

7 Robert,E.S and Williams, J.S "Plea bargain as a Contract",*Yale Law Journal*,2001,1911.

8 See for instance, *section 11* of the Constitution of the Federal Republic of Nigeria, 1999, (as amended).Hereinafter referred to as the Constitution

9 Wechsler, H., "The Challenges of a Penal Code", in Glanville, W., *Textbook of Criminal Law*, (London Stevens, 1978), 3.

Whatever views one holds about penal law, no one will question its importance to our society. This is the law on which men placed their ultimate reliance for protection against all the deepest injuries the human conduct can inflict on individuals and institutions. By the same token, penal law governs the strongest force that we permit official agencies to bear on individuals. Its promise as an instrument of safety is matched only by its power to destroy.

The task of giving a comprehensive definition is by no means easier when one tries to define the word crime which is, but only a branch of law.[10] Okonkwo captured this when he opined *inter alia*:

> What for instance is a crime? Why is a particular type of conduct made criminal, and why should some forms of harmful activity not be criminal? What is the object of criminal law? How does the community react to the criminal act, and why does it react the way it does? These and many other questions inevitably arise from consideration of criminal law. One cannot ignore its sociological context, because at every single criminal trial...some of these issues are present. Nor is it open to a criminal lawyer to argue that these matters do not concern him and that his job is merely to expound the law...[11]

Smith and Hogan[12] also observed the difficulty in attempting to proffer a definition of crime in the following words:

> An attempt to define a crime at once encounters a serious difficulty. If the definition is a true one, it should enable us to recognize any act (or omission) as a crime, or not a crime by seeing whether it contains all the ingredients of the definition. But a moment's reflection will suffice to show that this is impossible. When parliament enacts that a particular act shall become a crime or that an act, which is now criminal, shall cease to be so, the act does not change in nature in any respect other than that of legal classification. Its entire observable characteristic is precisely the same before and after the statute comes into force. Any attempt at definition of a crime will thus either include the act at a time when it is not a crime or exclude to when is...

Regardless of the difficulties encountered in an attempt to define crime with precision, three basic approaches have been developed in an attempt to ascertain the meaning and nature of crime and they are: *a posterior, procedural and a prior. A posterior* approach connotes inductive reasoning which arrives at cause from the effect. Using this approach, one cannot understand at a stretch the constituents of a crime unless after commission. In line with this method, Morris defined crime *inter alia*: crime is what society says is crime by establishing that an act is the violation of the criminal law. Without law there can be no crime.[13] More so, under the Nigerian Penal laws, crime was defined in this directive, thus *section 2* of the Criminal Code and Penal Code defined crime as: an act or omission, which renders the person doing the act or making the omission liable to punishment under this Code.

### 2.2 Plea

Plea is an integral part of arraignment; hence, it is pertinent to briefly examine arraignment. Arraignment simply entails calling on the accused to take his plea after the charge has been read to him in the language he understands. The term arraignment refers to the procedure

10 Okonkwo, C.O.& Naish, M.E., *Criminal Law in Nigeria*, (2ud edn., London, Sweet & Maxwell, 1980),18

11 *Ibid*

12 Smith, J.C.& Hogan, B., *Criminal Law,* (4th ed., London, Butterworth, 1978),10.

13 Russell, W. O., *Crime*, (11th ed., London, Butterworth, 1958), 215

where the accused person is brought before the court and while standing in or sitting in the dock or adjacent to it, has the charge or allegations read to him in the language he understands. It is the initial step in a criminal prosecution whereby the accused is brought before the court to hear the charges against him and enter a plea.[14] This stage is paramount because criminal trials commence at arraignment.[15] *Section 271* of the Administration of Criminal Justice Act[16] made elaborate provisions regarding the procedure for arraignment, thus:

> (1) Before a defendant takes his plea, the court shall inform him of his rights under the provisions of section 269 of this Act.
> (2) The defendant to be tried on a charge or an information shall be:
>  (a) brought before the court unfettered unless the court sees cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court; and
>  (b) called upon to plead instantly unless, where the person is entitled to service of the information, he objects to the non-service and where the court finds that he has not been duly served.
> (3) the court shall record the fact that it is satisfied that the defendant understands the charge or information read over and explained to him in the language he understands, and shall record the plea of the defendant to the charge or information as nearly as possible in the words used by him.

From the foregoing, there are three fundamental procedures in the arraignment of a Defendant. Firstly, the Defendant must be informed of his rights in accordance with *section 269* of the ACJA, which provides that where a Defendant appears before a court on a summons, he may be required to enter the dock or to stand or sit adjacent to it. Secondly, the Defendant must be placed before the court unfettered. Thirdly, the charge or information shall be read over and explained to the Defendant by the registrar of the court or any officer of the court and the Defendant must be called upon to take his plea. The third requirement of reading and explaining the charge to the Defendant is based on the constitutional provision that a person charged with a criminal offence shall be entitled to be informed promptly in the language he understands and in detail of the nature of the offence.[17] These three requirements are conjunctive and failure to comply with any of them renders the entire proceedings a nullity.[18] The court must record the plea of the accused before trial can begin as failure to do so would render the trial a nullity.[19] However, it is not mandatory to have the charge or information read and explained to the accused to the satisfaction of the court on record. In *Solola v State*,[20] the Supreme Court stated the position thus:

> the position of the law should not be stretched to a point of absurdity by reading into it that the Judge must record that the charge was explained to the

14 Garner, B., *Black's Law Dictionary*, (8th edn., New York, West Publishing Co., 2004), 114.
15 See *Oyediran v. Republic*, (1967), NMLR, 122. See also Nwadialo, F., *The Criminal Procedure of the Southern States of Nigeria*, (2nd edn., Lagos, MIJ Professional Publishers Limited, 1987), 22.
16 2015, hereinafter referred to as ACJA
17 See section 36(6)(a) of the 1999 Constitution (as amended).
18 See the following cases: *Sunmabo v. State*, (1967), NMLR, 314; *Kalu v. State*, (1998), 13, NWLR, (Pt.583), 55; *Tori v. National Park Service of Nigeria,* (2009), ALL, FWLR, (Pt. 380), 1578.
19 *Ede v. State*, (1986), 5, NWLR, (Pt. 42), 530.
20 (2005), ALL FWLR, (Pt.269), 1756

> accused to his satisfaction before taking his plea. It will be impeaching the integrity of the judge to do that, as no Judge will take the plea of an accused if he is not satisfied that the charge was read and explained to his satisfaction.

Plea brings a Defendant within the jurisdiction of the trial court. In the light of the above, the Supreme Court in *Nwafor Okegbu v State*,[21] held that it is only when a Defendant pleads either guilty or not guilty, as the case may be, that issues are joined in a criminal trial, and until this happens, he is technically outside the pale of the court's jurisdiction. This, without more, justifies the fundamental nature of plea as a constituent element of arraignment.

### 2.3 Plea Bargain

It is a tough task to define plea bargain because its meaning is sometimes elusive and can encompass a variety of practices. The term can be used to describe many different situations and relationships. Plea Bargain is not a monolithic concept.[22] The definition of plea bargain varies depending on the jurisdiction and on the context of its use. While searching for dictionary meaning one can get meaning only after connecting the two words together, that is, plea meaning to bring forward one's excuse, justification, and defences and bargain which means to arrive at an agreement of favourable purchase.[23]

Plea bargain otherwise known *as plea deal or plea agreement or copping a plea*[24] is an agreement between the prosecutor and the defendant whereby the defendant agrees to plead guilty to a particular charge in return for some concession from the prosecution. It may be seen as an informal agreement in which an accused agrees to plead guilty to one or some charges in return for the prosecution agreeing to drop other charges or a summary trial.[25]

Plea bargain involves an active negotiation process whereby an offender is allowed to confess his guilt in court if he so desires in exchange for a lighter punishment that would have been fixed for such offence. Plea bargain usually occurs prior to trial but may occur at any time before a judgment is rendered.[26] Black's Law Dictionary defines it as the process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence.[27]

To this end, plea bargain is a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence, or to one of multiple charges, in exchange of some concession by the prosecutor usually a more lenient sentence or a dismissal of the other charges. In the Indian case of *Thippeswamy v. State of Karnataka*[28] it was observed that plea bargaining in criminal cases occurs where accused instead of defending his case in proper defense simply pleads guilty under a promise or assurance that he would be let off lightly.

Similarly, Oxford Dictionary defines plea bargain as an arrangement between the prosecutor and defendant whereby the defendant pleads guilty to a lesser charge in exchange for more

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21 (1979), 11, SC, 11.

22 Clark, P. "The Public Prosecutor and Plea Bargaining", 60 *Australian Law Journal,* 1986, 199

23 Ranjam, D.R., "The New Horizon Opens in Criminal Law Plea Bargaining" *Criminal law Journal,* 2007, 120

24 *Ibid*

25 Nchi,S.I., *The Nigerian Law Dictionary*,(2nd edn.,Jos, Green World Pub.Coy.Ltd.,2000),203

26 Sikri, A.K.J., "Reforming Criminal Justice System: Can Plea Bargaining be the Answer?", *Naya Deep, Vol. CII,* 2007,43-44.

27 Garner, B. A., *Black's Law Dictionary*, (6th edn., West Publishing Co., 1990), 1173.182

28 AIR, 1986, SC, 747.

lenient sentence or an agreement to drop other charges.[29] Plea bargain consists of the exchange of official concession for a defendant's act of self-conviction.[30] It is an agreement by the accused to plead guilty in return for the promise of some benefit.[31] According to Advanced Law Lexicon, plea bargain is a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of the multiple charges in exchange for some concession by the prosecutor, usually a more lenient sentence or a dismissal of other charges. It is also termed as plea agreement or negotiated plea.[32]

According to Okorie, plea bargaining is a procedure within a criminal justice system whereby prosecutors and defendants negotiate a plea and dispose of a case before trial.[33] It is understood to serve the interest of judicial economy, although it is often pursued to secure the cooperation of defendants to serve as witnesses in other criminal cases in exchange for a bargain as to criminal charges.[34] The above submission aptly captured the essence of plea bargain which according to Okorie is twofold: judicial economy and luring the defendant to act as witness in other criminal charges.[35]

Be that as it may, the ACJA operational in Nigeria used the term plea bargain and defined same as a process in criminal proceedings whereby the defendant and the prosecution work out mutually acceptable disposition of the case; including the plea of the defendant to a lesser offence than that charged in the complaint or information and in conformity with other conditions imposed by the prosecution, in return for a lighter sentence than that for the higher charge subject to the Court's approval.[36]

From the foregoing therefore, plea bargain is a voluntarily entered agreement reached in a criminal case to finally settle it with an object of reducing the risk of undesirable orders for either side. The bargain struck may relate to the following matters:[37]

a. a reduction in the charge to a lesser or included offence;
b. a withdrawal of other charges, or a promise not to proceed on other charges;
c. a recommendation of a promise as to the type of sentence that can be expected (fine, probation, conditional discharge, imprisonment and so on);
d. a recommendation or a promise as to the severiy of the sentence (amount of fine or length of imprisonment);
e. a reduction of charges or a withdrawal of other charges in exchange for testimony against a co-accused;
f. a promise not to institute other possible charges or proceedings. A promise by police or prosecutor to reduce a charge, withdraw a charge, not to institute proceedings, or to recommend leniency in return for the accused cooperation in the arrest or prosecution of the other offenders;
g. a promise to delete reference to the sentencing of the offence, or personally embarrassing circumstances of the offence, or previous criminal record;
h. a promise not to charge friend of family of the accused who might be actually or incidentally involved in the offence with which the accused is charged;

29 Simpson, J., *Oxford Dictionary*, (4th edn., London, Oxford University Press, 1995), 393.184
30 Alshuler, A.W., "Plea Bargaining and it's History", 79 *Columbian Law Review,* 1979, 3.
31 Clark, P., op. cit
32 Ramanath, P. A., *Advanced Law Lexicon*, (3rd edn., Nagpur, Wadhwa and Company, 2005),3607.
33 Okorie, C.K., "Plea Bargain a Clog in the Fight Against Corruption in Nigeria", 2018, I, (1), *ABLR, Vol. 1, No. 1*
34 *Ibid*
35 *Ibid*
36 See *section 494* of ACJA
37 Clark, P., op.cit.

i. A promise to arrange for sentencing before a particular judge who has a reputation for leniency, or a threat to have the accused tried or sentenced by a certain judge who is notorious for sternness and severity;
j. Agreement for the prosecution not to appeal against sentence, and
k. Taking other offences into account.

### 2.4 Corruption

Corruption as a concept is not susceptible to a strait jacket definition.[38] Its definition is a question of perspective and purpose.[39] In order to underscore the inability to precisely define corruption, a learned law author submitted and correctly too, that none of the Codes or Laws in Nigeria (Criminal Code and Penal Code) as well as international instruments on corruption defined corruption, possibly because of the difficulty in ascribing to it a precise definition.[40] He further submitted that the first attempt to define corruption was made by Senturian who posited that corruption is the misuse of public power for private profit.[41] Many other definitions ascribed to corruption almost toed the same line. Corruption may be defined as an act marked by the dishonest and improper use of one's power or position,[42] or bribing an office holder,[43] or abuse of authority for personal or organizational gain.[44] The Black's Law Dictionary defines corruption thus:

> Illegally; a vicious and fraudulent intention to evade the prohibitions of the law; something against or forbidden by law; moral turpitude or exactly opposite of honesty involving intentional disregard of law from improper motives. An act done with intent to give some advantage inconsistent with official duty and the rights of others. The act of an official or person who unlawfully and wrongly uses his station or character to procure some benefits for himself or for another person contrary to duty and the rights of others.[45]

According to Transparency International, corruption is the abuse of entrusted power for private gain.[46] Corruption has been defined judicially as receiving or offering of some benefit as a regard or inducement to sway or deflect the receiver from the honest and impartial discharge of his duties.[47] All the above definitions are very much correct, but very restrictive.

## 3. Challenges of Plea Bargain under the Administration of Criminal Justice Law in Nigeria

The ACJA introduced plea bargain in criminal justice administration in Nigeria for the first time in 2015. *Section 270* of the ACJA provides that:

> (1) Notwithstanding anything in this Act or in any other law, the Prosecutor may:
> (a) receive and consider a plea bargain from a defendant charged with an offence either directly from that defendant or on his behalf; or
> (b) offer a plea bargain to a defendant charged with an offence.

38 Okorie, C. K., *Corruption*, (Owerri, Department of Public Law, Faculty of Law, Imo State University,2015), 1
39 *Ibid*
40 *Ibid*
41 *Ibid*
42 Quirk, R., *Longman Dictionary of Contemporary English*, (London, Longman Group UK Ltd.,1987), 231
43 Woodley, M., *Osborn's Concise Law Dictionary,* (10th Edn, London, Sweet and Maxwell, 2005), 116
44 Kruse, M., "Corruption". *https://en.m.wikipedia.org./wiki*. Assessed on 24/06/2020
45 Bruse, A., *Black's Law Dictionary,* (7th edn, St. Paul Minn, West Group, 1997), 348
46 Akinukuotu, E., "What is Corruption?" *www.transparency.org/whatiscorruption*. Assessed on 24/06/20
47 *Biobaku v Police*, (1951), 20, NLR, 20.

(2) The prosecution may enter into plea bargaining with the defendant, with the consent of the victim or his representative during or after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defence, provided that all of the following conditions are present:
   (a) the evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt;
   (b) where the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative, or
   (c) where the defendant in a case of conspiracy has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders.

From the foregoing therefore, plea bargain is a voluntarily entered agreement reached in a criminal case to finally settle it with an object of reducing the risk of undesirable orders for either side. The bargain struck may relate to the following matters:[48] Certain characteristics of plea bargain are deducible to wit:

**a.** a reduction in the charge to a lesser or included offence;
b. a withdrawal of other charges, or a promise not to proceed on other charges;
c. a recommendation of a promise as to the type of sentence that can be expected (fine, probation, conditional discharge, imprisonment and so on);
d. a recommendation or a promise as to the severiy of the sentence (amount of fine or length of imprisonment);
e. a reduction of charges or a withdrawal of other charges in exchange for testimony against a co-accused;
f. a promise not to institute other possible charges or proceedings. A promise by police or prosecutor to reduce a charge, withdraw a charge, not to institute proceedings, or to recommend leniency in return for the accused cooperation in the arrest or prosecution of the other offenders;
g. a promise to delete reference to the sentencing of the offence, or personally embarrassing circumstances of the offence, or previous criminal record;
h. a promise not to charge friend of family of the accused who might be actually or incidentally involved in the offence with which the accused is charged;
i. A promise to arrange for sentencing before a particular judge who has a reputation for leniency, or a threat to have the accused tried or sentenced by a certain judge who is notorious for sternness and severity;
j. Agreement for the prosecution not to appeal against sentence, and
k. Taking other offences into account.

In a criminal case, the State has to bring an accusation and prosecute the perpetrator to get him convicted of his crime. The State must prove the guilt of the accused beyond reasonable doubt by following the fair trial procedure established by the law. Plea bargaining has been introduced as an alternative to criminal trial. There are some fundamental issues involved that make the institution of plea bargaining objectionable.

Regardless of the merits associated with the use of plea bargain in criminal justice administration, many scholars and practitioners have picked various holes in the application of Plea bargain. Generally, the application of plea bargain in criminal justice administration is

[48] Clark, P., op.cit.

fraught with myriad of demerits that tend to undermine the goals of criminal punishment. There are certain challenges associated with the operation of Plea Bargain in Nigeria and they are as follows:

### 3.1 Plea Bargain Encourages Corruption

It has been argued that plea bargain undermines public trust, which is the kernel of good governance.[49] Criminal justice administration is rooted in public trust to the extent that people have high hopes in the ability of the court to dispense criminal justice without fear or favour. Unfortunately, plea bargain is not pivoted on any principle of punishment, neither retribution, which wreaks vengeance by the society on behalf of itself on the accused, nor the forward-looking utilitarian principles of deterrence, rehabilitation and education of the general public.[50]

It is in the above perspective that the submission of Justice Dahiru Musdapher becomes relevant when he maintained that:

> The sneaky motive behind the introduction of plea bargain into our legal system or its evident fraudulent application.... you will see also that plea bargain is not only a subordination of public's interest to the interest of criminal justice administration, but worst of all, the concept generally promotes a cynical view of the entire legal system.[51]

The above view of the former Chief Justice of Nigeria portrays plea bargaining as a means of deploying the apparatus of justice primarily based on the desires or selfishness of a class of the Nigerian society. It also makes the public skeptical of the integrity and sincerity of the criminal justice system. Worst still, it is jadedly distrustful or contemptuous of the accepted moral standard

Plea bargain has been blamed for the massive corruption ravaging our society in contemporary times. The reason for the persistence of corruption in Nigeria is not the absence of anti-corruption agencies, but lack of political will to ensure that the agencies genuinely succeed in fighting corruption to a standstill. For instance, the adoption of plea bargain in the prosecution of corrupt public officials is a procedure that encourages, rather than deters corruption in Nigeria.[52] Perhaps because embezzlement is a white-collar crime, it is common in Nigeria today to allow highly placed public officials accused of corruption to plea bargain, instead of facing the full wrath of the law. White-collar crimes are characterized by deceit, concealment, or violation of trust and are not dependent upon application or threat of physical force or violence, such acts are committed by individuals or organizations to obtain personal or business advantage.[53]

In addressing the impact of the application of plea bargain to the offence of corruption in Nigeria, the submission of Okorie is very apt and clearly captures its deceptive outlook in the following words reproduced in *extenso* thus:

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49 Adeleke, L. A., "The Practice of Plea Bargaining in Nigeria: Antithesis of the Broken Windows Theory of Corruption", *https://www.researchgate.net/publication/335524123/* Visited 10/12/2020.

50 *Ibid*

51 Musdapher, D., "The Legality of the Use of Plea Bargain in the Nigerian Criminal Justice System", *Vanguard Newspapers*, 6th March, 2012.

52 Marilyn, P. and Donna, M. M., "Health Care Fraud: Physicians as White Collar Criminals? *Journal of the American Academy of Psychiatry and the Law*, 2009,286

53 *Ibid*

> The fact that widespread corruption over the years has been one of the major obstacles to the realization of Nigeria's development objectives is certainly beyond dispute. This is because a substantial chunk of scarce financial resources, which ought to be invested in carrying out development, find their way into private pockets either stashed away vain prodigality. Apart from weakening the efficacy of critical corruption is largely responsible for the unsavory fact that the country unprecedented oil boom of the seventies and early eighties.
>
> In the despicable state of affairs exposed above, it is seems clearly abhorrent that Plea bargain without qualification or limitation was introduced in our criminal justice system by ACJA,... as an official mechanism for giving members of the corrupt cabal in Nigeria legal backing and encouragement in their corrupt ventures, at the detriment of Nigerian's economy, and development.[54]

To this end, it is obvious that plea bargain offers an official means of legitimizing corruption in Nigeria. It makes a mockery of the alleged fight against corruption. Consequently, a situation where after stealing billions of naira, plea bargain wil1 suffice and provide a platform upon which the State will happily receive a token as consideration not to prosecute or reduce the sentence. Thereafter, the state will throw a party for receiving a token from billions of naira stolen and consequently, grant a pardon to the accused. More so, plea bargain provides a legal environment where corrupt officials are celebrated for corruptly siphoning the government treasury, thereby encouraging them to continue in their ventures, which have the potential of destabilizing the economy and development in the state.[55]

The Alamieyeseigha's case, Tofa Blalogun's case, Lucky Igbinedion's case, Cecilia Ibrus's case, Yahaya Yusufu's case and others clearly exposed its toxemic character.[56]

Notably, Musdapher (CJN as he then was), aligned himself with the above submission when he submitted that plea bargaining is a novel concept of dubious origin. It has no place in our law, substantive or procedural. It was invented to provide soft landing to high-profile criminals who loot the treasury entrusted to them. It is an obstacle to our fight against corruption. It should never again be mentioned in our jurisprudence.[57]

It is submitted that the use of plea bargain in criminal justice administration does not adequately take the interest of victims of crime into consideration especially as it concerns corruption-related offences, wherein the masses are the primary victims. One of the conditions precedent to the application of plea bargain under the ACJA is the consent of the victim of the crime in question. In high-profile corruption cases, the victims are the masses, who suffer excruciating deprivation of social facilities on account of corrupt practices. The question that readily comes to mind is whether the consent of the masses who are the victims is sought and obtained in accordance with *section 270 (2)* of the ACJA before the prosecution accepts the terms of plea bargain. The answer to the above poser is in the negative. It is in the above perspective that the masses have lost fate in the application of plea bargain in criminal justice administration.

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54 Okorie, C.K., Plea Bargain a Clog in the Fight Against Corruption in Nigeria, *op. cit*, 78-79

55 *Ibid*

56 *Ibid*

57 Musdapher, D., "The Legality of the Use of Plea Bargain in the Nigerian Criminal Justice System", *Nigerian Tribune Newspaper,* 16th November 2011, 4

### 3.2 Plea Bargain Constitutes a Breach of the Defendant's Fundamental Right

Another challenge associated with plea bargain is that it derogates from certain salient rights of an accused as constitutionally guaranteed. First and foremost, plea bargain appears to be an affront to the presumption of innocence.[58] This principle has enjoyed a long-standing recognition at common law. Every criminal trial begins with the presumption of innocence and the accused is presumed to be innocent unless his guilt is established beyond reasonable doubt by the prosecution.[59] While criminal trial proceeds on the presumption of innocence of the accused, plea bargain proceeds on the presumption of guilt because the accused is expected to plead guilty to attract a lesser punishment.

This presumption of innocence underscores why the burden of proving the guilt of an accused generally lies on the prosecution. Conversely, it is not the duty of the accused to prove his innocence. Specifically, the law is that the burden of proving that any person has been guilty of a crime or wrongful act is on the person who asserts it, whether the commission of such act is or is not directly in issue in the action.[60] Categorically, the burden of proof lies on the prosecution because it is the prosecution that asserts the guilt of the accused. However, this is not without prejudice to the burden placed on an accused to prove particular facts within his peculiar knowledge[61] or to prove that he is entitled to an exception or exemption from, or qualification to, the operation of the law creating the offence with which he is charged.[62] Unfortunately, plea bargain helps the prosecution in this regard to the detriment of the accused in that the burden of proof placed on the prosecution is discharged with the admission of guilt by an accused.

### 3.3 Plea Bargain in Criminal Justice Administration Defeats the Goal of Punishment

In plea bargaining, a prosecutor, more often than not, tries to entice a defendant to plead guilty by making attractive offers-involving a considerable charge or sentence concessions. A defendant who welcomes such offers is privileged to benefit from a more lenient punishment than the legislatively prescribed one. This lenient treatment is tailored to such considerations as case pressure, efficiency, the probable outcome of the trial, considerations which reflect neither the purpose of punishment nor the culpability of the accused.[63] This may not only permit criminals escape the deserved punishment to the dismay of victims and the society, but also may erode the deterrent effect of punishment.[64]

Importantly, plea bargain promotes unnecessary leniency for offenders and projects a cynical view of our legal system. It is noteworthy that the object of criminal law is to punish convicted offenders, while punishment also has its own goal. With the adoption of plea bargaining, the concept of punishment becomes empty and our criminal law is stripped of its essence. In retribution, punishment is imposed in order to relief the public's indignant feelings about a criminal act.[65]

In plea bargain in criminal justice administration defeats the known goals of punishment. Punishment may be for retribution, deterrence, education, rehabilitation or reformation. Retribution entails punishing offenders in a manner proportional to the offence committed.

58 *Section 36(5)* of the Constitution
59 *Ibid*
60 *Section 135(2)* of the Evidence Act 2011
61 *Section 136* of the Evidence Act 2011
62 *Section 139* of the Evidence Act
63 Adeleke, L.A., *op.cit.*
64 *Ibid*
65 Okonkwo, C. O. and Naish, M. E., *Criminal Law in Nigeria*, (2" edn., Ibadan, Spectrum Books Ltd., 2005), 28-37

The sentence in plea bargain most times is not commensurate to the offence committed. Again, the deterrence theory of punishment presupposes that offenders are punished to deter them and would-be offenders from engaging in criminal activities. Unfortunately, the sentence in plea bargain is most times ridiculous and as such does not adequately deter offenders. More importantly, plea bargain defeats the utilitarian goal of punishment. Utilitarian object of punishment is essentially forward-looking; punishment is imposed with an eye to its future result, the fundamental aim being to prevent further crime.[66] Unfortunately, plea bargain provide soft landing for highly placed corrupt individuals and allow them to go away with part of their loot, it can therefore not effectively deter similar crime in the future.

## 4. Plea Bargain in other jurisdictions:

### India

The operation of plea bargain in criminal justice administration in India is governed by the Criminal Law (Amendment) Act[67]. Before 2005, the Supreme Court of India was very much opposed to the application of plea bargain in criminal justice administration and the incorporation of same in the criminal justice process. In *Daga v State of Maharashtra*[68]the Supreme Court for the first time made an observation regarding the efficacy of plea bargain, thus:

> In our opinion, it is very wrong for a court to enter into a bargain of this character. Offences should be tried and punished according to the guilt of the accused; if the court thinks that leniency can be shown on the facts of the case, it may impose a lighter sentence. But the court should never be party to a bargain by which monetary is recovered for the complainant through their agency.

The concept of plea bargain was again condemned in *Meghraj v State of Maharashtra*[69] wherein the Apex Court held as follows:

> To begin with, we are free to confess to hunch that the appellants had hastened with their plea of guilty hopefully, induced by an informal tripartite understanding of life sentence in lieu of nolo contendere stance. Many economic offenders resort to practices the American call 'Plea bargaining' 'Plea Negotiation', Trading out' and 'compromise' in criminal cases as a Trial magistrate drowned by a docket burden nods assent to the sub-rasa ante-room settlement. The businessmen culprit, confronted by a sure prospect of the agency and ignominy of tendency of a prison cell 'trade out' of the situation, the bargain being a plea of guilt coupled with a promise of no jail'. It is idle to speculate on the virtue of negotiated settlement of criminal cases as obtain in the United States. But in our jurisdiction, especially in the area of dangerous economic times and food offence this practice includes on society's interest by opposing society's decision expressed through predetermined legislative fixation of minimum sentences and by subtly subverting the mandate of the law.

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66 *Ibid*

67 2005

68 1968 AIR 1267 1968 SCR (3) 34

69 [1977] 1 S.C.R. 1. See also *Jashraj v. Govt, of Gujrat* [ AIR. 1980 SC 264]. 8 and *Thippaswamy v State of Kamataka*

The Supreme Court of India in *Sheikh and Ors. v State of Gujrat and Anor.*[70], held the practice of plea bargain to be unconstitutional, illegal and would tend to encourage corruption, collusion and pollute the pure fount aim of justice. Even as late as 2000, in *Pradesh v Chandrika*[71], the apex Court reiterated its earlier view that the concept of plea bargaining is not recognized and is against public policy under the UEFW criminal justice system.

However, because of the myriad of cases before the various criminal courts in India, it was imperative to adopt the plea bargain model as a panacea. To give plea bargain legislative backing, in 1991, the 142nd Report of the Law Commission of India considered the issue of introducing plea bargain in Indian criminal justice administration for the first time. Unfortunately, it could not materialize until the 154th Report of the Law Commission of India suggested adopting the system of plea bargain for the disposal of the huge backlog of cases.

Consequent upon all these recommendations, through the Criminal Procedure Code (Amendment) Act, Indian Parliament introduced provisions for plea bargain. Generally, *sections 265A to 265L* of chapter XXI-A of the Code provide a mechanism through which a criminal case can be settled without going to trial. The system provides for a pre-trial negotiation between the accused and the prosecutor during which the accused agrees to plead guilty in exchange for some concession in the form of reducing the quantum of sentences by the prosecutor. It is a kind of compromise; therefore, both sides give a little and get a little.

The process of plea bargain commences when an accused above the age of 18 years files an application for plea bargaining before the commencement of the trial in the court where the case is pending. However, plea bargaining is used in criminal cases where: the punishment provided for the alleged offence is below seven years imprisonment; the accused has not been previously convicted for the same offence; the offence(s) does not affect the socio-economic conditions of India and the offence is not against a woman or a child below the age of 14 years.

With regards to offences that affect the socio-economic conditions of India, *sub-section (2)* of *section 265A* of the Code confers power on the Central Government to determine those offences under the law and specify same for the purpose of application of plea bargain. This simply shows that in India, plea bargain is not available in heinous crimes and that it is only available to those offences triable by magistrates. Hence, the application of plea bargain in criminal justice administration in India is restricted to certain offences of lesser gravity.

Another restriction on the use of plea bargain in criminal justice administration in India is where the statute upon which an accused is charged provides a minimum sentence. In such a situation, plea bargain has no relevance because the court must pass the minimum sentence as prescribed by Law. In *Kirpal v. State of Hariyana*[72] the Supreme Court of India held that neither the trial court nor the High Court has the jurisdiction to bypass the minimum limit of sentence prescribed by law on the premise that a plea bargain was adopted by the accused. The application of plea bargain is very much restricted in this regard since a person who has committed an offence for which the minimum punishment is lesser than seven years cannot have recourse to plea bargaining if the minimum punishment is prescribed by law.

Specifically, *section 265L* of the Code expressly provided that plea bargain is not available to juveniles. Juvenile Justice (Care and Protection of Children) Act[73]protects the rights of juveniles. Thus, whether a child is an offender or a victim, the system of plea bargaining is not

70 (2004)4 SCC 158
71 (AIR 1999 SC. 164)
72 Delivered on 10th September 1990
73 2000

applicable. Therefore, persons less than fourteen years in India are not amenable to plea bargain. This stems from the fact that a plea bargain involves a kind of consensus *ad idem*, which a child has no capacity to enter into such a bargain or agreement in order not to be unduly shortchanged.

Before plea bargain model is adopted in criminal justice administration, the accused must be aware of the provisions relating to plea bargain. To this end, in *Amarbanshi v State of Maharashtra*[74] the court set aside judgment of plea bargain because the accused did not understand its nature at the time he entered into plea bargain. Under section 265B of the Code, the process of plea bargain is set in motion after the issuance of process and when the accused comes to court.

In line with the above requirement, when an accused appears in court, the judicial officer shall inquire from the accused of his knowledge of the provisions of plea bargain. Where the accused is ignorant of the provisions relating to plea bargain, the court shall inform him and the benefits thereto. If the accused decides to take advantage of the provisions of a plea bargain, the judicial officer shall order him to file an application to that effect. The application shall contain the following information: brief description of the case, including the nature of the offence and an affidavit sworn by the accused stating that: he has made an application voluntarily; knows the nature of the offence and quantum of punishment and has not been previously convicted with the same offence. In addressing the fact that the accused must understand the nature of a plea bargain before engaging in same, the court held thus:

> Ordinarily, in serious offences, pleading guilty is to be avoided and it is desirable to direct that the case should be tried. Even if plea is recorded which would be done by distinctly putting to the accused each fact alleged in the charge, which if proved, would constitute an be relieved from its duty of being satisfied that the plea of guilt was with free will, and is genuine and not due to misunderstanding and it the accused are duly represented through Advocate.

Remarkably, there must not be any pressure from any quarters, particularly from the prosecutor or police, as doing same will negate the aims of a plea bargain. It is the duty of the court to ascertain the voluntariness or otherwise of the application for a plea bargain. To satisfy itself of the voluntariness of the application for plea bargain, the accused shall be examined in camera, where the other party to the case shall not be present. Where the court is satisfied that there is no pressure or coercion of any sort from any quarters, the court then issues notice to the public prosecutor or complainant of the case to work out a mutually satisfactory bargain and this may include the payment of compensation to the victims and other expenses during the case by the accused.

To protect the interest of the victims of crime in the plea bargain process, the Supreme Court of India in State of *Uttar Pradesh v Satyendra*[75] held that the Court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.

In a nutshell, the provisions of plea bargain under the Indian criminal justice administration may be summarized as follows: *Section 265A* of the Act states the extent of the applicability of plea bargain in India. Section 265B of the Act makes it mandatory for the accused to move an application for plea bargaining before the trial court and places the discretion on the trial court

74 2009 Crl.L.J 87
75 JT 2009 (4) SC 347, 2009 (3) SCALE 394, (2009) 4 SCC 736

to determine whether such application has been moved voluntarily. *Section 265C* of the Act ensures mutually satisfactory disposition of the case by retaining voluntary participation of all concerned parties in the proceedings. *Section 265D* of the Act envisages the preparation of a report in the event of satisfactory disposition of a case.

**Conclusion and Recommendations**

Again, the administration of criminal justice is currently bedeviled by various challenges which tend to slow down the pace of criminal justice delivery with its attendant consequences. Notably, an ever-increasing number of litigations have overburdened the courts from all corners. This has affected criminal justice administration in Nigeria and has resulted in delayed justice. The adoption of plea bargain as one of the ways to fast-track criminal prosecution is applaudable but must not be applied unrestrictedly. This article has revealed that under the Nigerian law there is no limitation as to the nature of crimes where a plea bargain can be made, unlike India, where plea bargain is not applicable to crimes with more than seven years term of imprisonment or involving juveniles amongst others.

It is recommended that Nigeria's administration of criminal justice be amended so that plea bargain plea bargain will not be applicable offences affecting the socio-economic condition of Nigeria, corruption-related offences, and children below the age of fourteen (14) years. This is because currently, the demerits of plea bargain far more outweigh its merits. Also, there is a need to amend the Administration of Criminal Justice Act to remove the conditions for application of plea bargain, chief among which is that the evidence available against the accused must be insufficient for plea bargain to take place. This condition makes a mockery of plea bargain as the decision to enter into same rests on the accused, thereby making plea bargain a one-sided affair. This would go a long way to prevent accused persons, especially the bourgeoisie in Nigeria, from taking advantage of plea bargain to the detriment of other Nigerians.