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CHALLENGES AND PROSPECTS OF PLEA BARGAIN IN CRIMINAL JUSTICE DEVELOPMENT IN NIGERIA

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Abstract

The Nigerian state being a hybrid and heterogeneous society reflected a peculiar legal system comprised of the received English laws as well as the Statutes of general application that was in force as at 1900, and furthermore, the customary and native laws operational within the southern part of Nigeria, and the Islamic law of the Maliki school applicable in the predominant Moslem North of the country. Consequent on the above, the legal history of the country Nigeria accommodated both the criminal and the penal codes serving both the Northern and Southern divides and reflected mostly the socio-cultural regimes common with regions. Having this as a background, the practice of plea bargain was introduced vide the provision of the Economic and Financial crimes commission. The authors therefore strived to reconcile the practice of plea bargain (introduced in 2004) in a secular and multicultural society, notwithstanding the fact that the customary and sharia laws of the various ethnic groups in Nigeria operating in the Northern and Southern regions is devoid of the concept of plea bargain. Significantly, the introduction and practice of plea bargain portends a challenge in operation against the traditional criminal justice system. The paper therefore maintained that the introduction and practice of plea bargain though a positive step, is however laden with challenges both in administration and operation.

Keywords: Criminal justice, plea bargain, administration of justice, criminal, corruption

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1. Introduction

The Nigerian legal system is a hybrid but peculiar legal system. Against this backdrop is the fact of the presence of the received English laws incidental to the colonial history of the contraption referred to as Nigeria. There are also the Statutes of general application that was in force as at 1900. Considering the secular and heterogeneous nature of the territorial limit called Nigeria, coupled with attendant but subsisting cultures, there are the customary and native laws operational within the southern part of Nigeria, while the Islamic law of the Maliki school is applicable in the predominant Moslem North of the country.¹

Flowing from this brief account of the legal history of the country Nigeria, is the need to reconcile plea bargain in a secular and multicultural society. It should be noted that customary laws of the various ethnic groups in Nigeria is devoid of the concept of plea bargain. Furthermore, the received English laws and Statutes of general application that was in force in 1900 were equally bereft of any provisions appertaining to plea bargain. As an aftermath, these legal trends are likely and must portend a challenge in operation. Put succinctly, the likely interaction between the traditional Nigerian legal system and the introduction of plea bargaining, firstly, in 2004 when the Economic and Financial Crimes Commission² was established and significantly by virtue of this first federal enactment (The EFCC Act) to experiment with a form of plea bargain. The Economic and Financial Crimes Commission (Establishment) Act³ therefore provided the following:

Subject to the provisions of section 174⁴ of the Constitution of the Federal Republic of Nigeria 1999, the commission may compound any offence punishable under the Act by accepting such sum of money as it thinks fit, exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence.⁵

The above section no doubt empowers the EFCC to enter plea bargain with an accused person and it is done by compounding the offence before the case is taken to court: the parties can agree with the suspect who would be told to return all the loot and the offence compounded.

Secondly, plea bargain was also introduced into the Nigerian legal system by the Lagos State Government⁶ and thereafter the National Assembly.⁷ This injection of foreign but novel legal

¹ Obilade Akintunde, *The Nigerian Legal System*, Ibadan: Spectrum Books, 1979, Pp. 7, 12-19

² [Hereafter, The EFCC Act]

³ Act No. 1 of 2004.

⁴ This section relates to the power of Attorney-General of the Federation to institute, takeover or discontinue criminal proceedings against any person in any court of law.

⁵ Section 13(2) of the Act

⁶ The Administration of Criminal Justice Law, 2007

⁷ The Administration of Criminal Justice Act, 2015

practice and procedure is bound to produce various and varying reactions in the Nigerian legal system.⁸

2. Nature, scope, operational development and Challenges to Plea Bargain in Nigeria

Notwithstanding the seemingly necessity for plea bargain, some arguments can also form formidable objections against it. Plea bargaining undercuts the requirement of proof beyond a reasonable doubt and plea negotiation is substantially more likely than trial to result in the conviction of innocent accused persons.⁹ Since the onus of proof rests on the prosecution with the standard of proof as beyond reasonable doubt, it is an affront to the statutory duty placed on the prosecution to prove the guilt of the accused person beyond reasonable doubt. Convicted persons on plea bargain might actually get an acquittal after a full trial as the prosecution might not be able to discharge the onus of proof.

Furthermore, it can be argued that plea bargaining results in unjust sentencing. The practice of plea bargaining turns the accused's fate on a single tactical decision, which, we can say, is irrelevant to just desert, deterrence, or any other proper objective of criminal proceeding.¹⁰ Some critics maintain that plea bargaining results in unwarranted leniency for offenders and that it promotes a cynic view of the legal process.

Critics of plea bargaining also object to the shift of power to prosecutors, power acquired in the course of plea bargaining, noting that sentencing judges often do little more than ratify prosecutorial plea bargaining decisions. They maintain that, even more clearly, plea bargaining makes figureheads of the probation officers who prepare pre-sentence reports after the effective determination of sentence through prosecutorial negotiations.¹¹ Plea negotiation, they say, very frequently results in the imposition of sentences on the basis of incomplete information. In light of the conflicts of interest that beset prosecutors, defence attorneys, and trial judges, critics sometimes contend that plea negotiation subordinates both the public and accused interests to the interests of criminal justice administrators.¹² In their view, the practice also warps both the initial formulation of criminal

⁸ There is the need to balance a foreign practice of negotiating with an offender against the backdrop of our traditional practice of calling a spade a spade, that is to say, allowing the accused person to stand trial and if convicted, then sentenced to either a term of fine or become subject of imprisonment.

⁹ Guilty Plea: Plea Bargaining - Evaluations Of Plea Bargaining. accessed on 21/8/2010

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

charges and, as accused persons plead guilty to crimes less serious than those that they apparently committed.

Finally, critics suggest that plea bargaining deprecates human liberty and the purpose of the criminal sanction by “commodifying” these things—that is, treating them as instrumental economic goods.¹³

Critics of plea bargaining have argued that it derogates from the constitutional right of accused persons to trial. This right is guaranteed by the Constitutions of most countries. For example, the Constitution of the Federal Republic of Nigeria, 1999 provides that every person accused of a crime shall be entitled to a fair trial within a reasonable time.¹⁴

In fact:

A plea bargain is initiated between the government, represented by the prosecutor, and the accused represented by his or her counsel. As with the negotiations of contract or civil agreements, there is no standard structure for negotiations of plea bargains. The negotiations can occur in person or via telephone conversation, typically between representing counsel without the presence of the accused. It may also take the form of an invitation by the prosecutor to the accused and his counsel and at the meeting the prosecutor lays the cards on the table. Where the former is the option taken, the defence counsel is mandated to inform the accused person of the offer, the progress of the negotiations and any incidental matter. In addition, the defence counsel must convey to the accused every formal offer made by the government. This is because the decision to plead guilty belongs to the accused person and him alone.¹⁵

It should be noted that most of the time the prosecutor considers the prosecution’s chances at the trial, going by the nature of the case, the availability of evidence against the accused person and several other factors.

This is necessary to enable the prosecutor weigh the strength of the prosecution’s case and the chances of securing conviction. The strength of the prosecution in the negotiation process is based on the amount of evidence they have against the accused where there are loopholes in their case or they are not likely to secure a conviction on the strength of the evidence in their disposal, they are more likely to be flexible in the negotiation process.

The strength of the prosecution’s case will also affect the accused bargaining strength in the negotiation. The accused can decipher the strength of the prosecution’s case from reviewing all the evidence put before them. It is pertinent to state that the prosecution is obliged to serve a copy of the charge, the proof of evidence which include witness statements, forensic tests and other evidence

¹³ Ibid.

¹⁴ See section 36 of the Constitution. Fair trials also entail the observance of the two rules of natural justice: *Audi alteram partem* and *nemo iudex in causa sua*. The USA by its sixth Amendment guaranteed a right to a jury trial.

¹⁵ C. Oba, Plea Bargain in Nigeria, NIALS Journal of Criminal Law and Justice, vol. II, 2012, P. 41.

that will be used against the accused in court. The defence counsel will then conduct his own investigations and weigh the evidence against his client before advising his client to plead guilty.¹⁶

In practice, when a person is accused of a criminal offence, he may be invited by the prosecutor to his office and then asked to plead guilty to the charge or charges or count(s). He is told clearly that if he fails to plead guilty to the charge(s) and the matter goes to trial; he would be punished severely. In a comparative study in the year 1979, William Felstiner identified the differences between the plea bargaining procedure in the U.S.A. and penal order in Germany.¹⁷ He noted firstly that “in the United States, defendants who plead guilty are, in the aggregate, sentenced less severely than those who insist on trial”,¹⁸ since favoured treatment is granted to an accused person because he has saved the State the expenses of a trial and his plea accepted as an act of repentance and a step towards rehabilitation. Felstiner also noted that a troublesome derivative of plea bargaining is the level of charges brought against defendants, overcharging is the level of charges brought against defendants, overcharging to coerce guilty pleas and undercharging to reward them.¹⁹ It does appear that avoiding or minimizing jail term is the primary concern of an accused person in plea bargaining.²⁰

In plea bargaining, defence lawyers are extremely paramount. Most plea bargaining contracts in the US are conducted for and on behalf of their clients, with prosecutors and defence lawyers making offers and counter-offers in the execution of their briefs.²¹ Alubo has analysed the various attempts that have been made to curtail plea bargaining in various jurisdictions.²²

The practice is obviously very embryonic in Nigeria. It was never part of any Nigerian law until 2004 when the Economic and Financial Crimes Commission was established. Looking at the plethora of statutory provisions in Nigeria, we have no hesitation in asserting that the first federal

¹⁶ Oba, *supra* at p.42

¹⁷ W. L. F. Feistiner, ‘Plea Contracts in West Germany,’ 13 *Law and Society Review*, 309 (1979).

¹⁸ *Ibid.* Feistiner defined a penal order in Germany as a written proposal by the State to a defendant stipulating the crime committed and the penalty to be levied if the defendant does not object.

¹⁹ *Ibid.* See also *North Carolina v. Alford* 400 U.S. 25 (1970); *United States v. Jackson* 390 U.S. 570 (1968); *Hudson v. United States*, 272 U.S. 451.

²⁰ See generally A. O. Alubo., *supra*, at pp. 11-12.

²¹ *Ibid.*

²² These attempts take the form of plea cut-off dates, ban on plea bargaining after felony indictment and total bans on plea. These attempts to curtail plea bargaining have not succeeded in obliterating the plea bargain system. In plea cut-offs, a few jurisdictions provide that courts “shall not accept negotiated pleas once a pretrial conference has been held or after the efflux ion of a given period of time. Plea bargain however, until then, remains an acceptable method of securing a plea as it accelerates or gives impetus to expediting the process of getting a plea. In plea ban, certain states, such as (Alaska in 1975) introduced ban on plea bargain. Charge and sentence bargaining were both banned in Alaska amidst opprobrious remarks from critics. But the number of guilty pleas did not significantly decrease after the ban as prosecutors obtained the same results. Those who pleaded guilty received shorter sentence than those who were convicted at trial. In 1980, the complete abolition of plea bargaining was brought to an end. Analogous to complete ban is ban of plea bargain after indictment but before the grand jury returns felony indictment. In New York when it was introduced in 1992, critics decided it on the ground that there would be catastrophic backlog of cases, jail overcrowding and a violation of a federal order that limits the number of prisoners in city jails.

enactment to experiment with a form of plea bargaining is the Economic and Financial Crimes Commission (Establishment) Act.²³ The said Act provides as follows:

Subject to the provisions of section 174²⁴ of the Constitution of the Federal Republic of Nigeria 1999, the commission may compound any offence punishable under the Act by accepting such sum of money as it thinks fit, exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence.²⁵

The above section no doubt empowers the EFCC to enter plea bargain with the accused and it is done by compounding the offence before the case is taken to court, they can agree with the suspect who would be told to return all the loot and the offence compounded.

The provision of section 13(2) of the EFCC Act indicates that when an accused agrees to give up money stolen by him, the commission may compound any offence for which such a person is charged under the Act. On the effect of the above provision of the EFCC Act, *Alubo* observed that:

Compounding here means the commission may let go of the offence or put more succinctly may agree to drop the charges if the accused is prepared to give up such sums of money as the commission may deem fit in accordance with the Act. It emphasizes by accepting such sums of money. It is obvious that this provision has no universal application to all criminal trials in Nigeria as the negotiations there are expressly limited to offence punishable under the Act, sections 14-18 of the Act provides for the crimes for which the Commission can exercise jurisdiction. These includes: offences in relation to terrorism, offences relating to financial malpractice, offences relating to public officers retention of proceeds of criminal conduct and offences in relation to economic and financial crimes. In practice however, the EFCC plea bargain on other offences.

It is very obvious from our earlier definition of plea bargain that what is obtainable under the EFCC Act is a form of charge bargain.

The statutory blessing given to plea bargaining in Nigeria is not limited to the EFCC Act. In fact, the most commendable step in giving statutory back up to plea bargain in Nigeria is the enactment of the Administration of Criminal Justice Law 2007, Laws of Lagos state, which institutionalized plea bargain in Lagos state. In fact, the EFCC Act earlier cited has been invoked in several cases in Nigeria, especially high profile economic crimes cases in Nigeria. For instance, it was invoked in cases like Tafa Balogun, Emmanuel Nwude, Nzeribe Okoli, Cecilia Ibru among others.

The most recent addition to plea bargain is the enactment: The Administration of the Criminal Justice Act 2015. This statute combined the provisions of the two principal legislations, the Criminal

²³ Act No. 1 of 2004.

²⁴ This section relates to the power of Attorney-General of the Federation to institute, takeover or discontinue criminal proceedings against any person in any court of law.

²⁵ Section 13(2) of the Act

Procedure Act and the Criminal Procedure Code into one principal Federal Act which is intended to apply in all Federal Courts across the entire Federation.

With all the innovations of the Administration of the Criminal Justice Act 2015, one section plays a particularly significant role to fight corruption and that is section 270 on plea bargaining. The section which has 18 sub-sections made very commendable provisions which can be rightly regarded as revolutionary in this area.²⁶ The Act made conscious efforts to avoid many of the perceived shortcomings observed in the ACJL. For example, in the place of “Attorney General” used in section 75 of the ACJL as the person who may consider and accept plea bargain, the ACJA in section 270(1)(a) uses “Prosecutor” meaning that it is not only the Attorney General who can consider a plea bargain.

Also, while the ACJL provides that the Attorney General shall have “power to consider and accept a plea bargain from a person charged with any offence,” the ACJA enlarged and improved on this by providing in section 270(1) that 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.

The implication of the provisions above is that the offer for plea bargain need not come from the defendant. The prosecutor can also initiate the process. This is quite commendable.²⁷ The ACJA makes elaborate provisions in section 270(5) regarding the relevant factors that the prosecutor shall take into account when considering to accept or make an offer of plea bargain. Such factors include: the criminal antecedents of the defendant, his willingness to cooperate with the prosecution in the investigation and eventual prosecution of others involved in the criminal enterprise in question, the expense and time of trial, and much more fundamentally, the willingness of the defendant to make restitution to the victim of the offence. These are not only commendable, they are quite innovative as they are absent under the ACJL.

Furthermore, the ACJA makes impressive inroads in the area of dealing with forfeited items of the defendant to the effect that any asset agreed to be forfeited shall be passed to the victim of the offence or the person entitled to the item without reference to the Sheriff and Civil Process Act and the prosecutor is mandated to show compliance in this regard.²⁸

²⁶ J. A. Agaba, *Practical Approach to Criminal Litigation in Nigeria* (3rd ed.), Abuja, Emerald Publication, 2015, p. 637.

²⁷ Ibid

²⁸ Section 270(12) & (13) ACJA

The law is explicit on the nature of the plea bargain leaving one in no doubt in any particular case whether it is a charge bargain or a sentence bargain or both.²⁹ Section 76(1) ACJL provides: the prosecutor and the defendant or his legal practitioner may before the plea to the charge enter into agreement in respect of:

- a) A plea of guilty by the defendant to the offence charged or a lesser offence of which he may be convicted on the charge, and
- b) An appropriate sentence to be imposed by the court if the defendant is convicted of the offence to which he intends to plead guilty.³⁰

The subsection makes it clear that the parties have to agree beforehand, the nature of the bargain (negotiation) whether it is a charge bargain or a sentence bargain or both.

In Nigeria, under the Constitution, an accused person is presumed innocent until proven guilty.³¹ This presumption of innocence can only be rebutted by the prosecution and this is achieved when the prosecution is able to satisfactorily discharge the legal burden on it to prove its case against the accused person beyond reasonable doubt.³² The Constitution declares its supremacy over all authorities and persons throughout the Federation. Equally, the Constitution provides that: 'if any other law is inconsistent with the provisions of the constitution, this constitution shall prevail, and that other law shall to the extent of its inconsistency be void.'³³

The prosecution at all times has a duty to prove the guilt of the accused beyond reasonable doubt before it can secure conviction. As much as confessional statements raise the issues of voluntariness, the practice of plea bargain in Nigeria is also likely to raise issues of voluntariness of the agreement. Another very fundamental problem the plea bargain practice is likely to bring to the Nigerian Criminal justice system is tendency for abuse of the process by the authorities especially the Attorney-General who already wields enormous powers in the criminal administration.³⁴

Plea bargain comes under fire because it is hidden from judicial scrutiny. Because the agreement is most often made at early stage, the judge has little information about the crime and the defendant and thus cannot adequately evaluate the case. Nor can the judge review the terms of the bargain, that is, check on the amount of pressure put on the defendant to plead guilty. The result of plea bargain is that the judge, the public, and sometimes the defendant cannot know for sure who got what from whom in exchange for what. Plea bargain has also been criticized for breeding disrespect and

²⁹ Section 76(a) & (b)

³⁰ Section 270(4) ACJA

³¹ Section 36(5) of the Constitution

³² Section 135(1), (2) and (3) of the Evidence Act 2011

³³ Section 1(3) of the Constitution

³⁴ <<http://www.matrixsolicitors.com>> Accessed on 2nd June 2016

contempt of law in the situation where it is overused. By stating that criminals look at the judicial process as a game or sham, much like other deals made in life.

Finally, another concern about plea bargain is that innocent people will plead guilty to acts they did not commit. Although it is hard to know how often this happens, some defendants have entered guilty pleas when they have not committed the offence. For example, the Colorado Courts overturned a sentence on the ground that the defendant had been coerced by the judge's statement that he would "put him away forever if he did not accept the bargain."³⁵ Middle class people might find it hard to understand how anyone could possibly plead guilty when innocent. However, people with little education and low social status may lack the confidence to say "no" to an attorney who pressures them to plead guilty. Poor people may feel especially helpless in the stressful climate of the courthouse and jail. If they lack faith in the system's ability to protect their rights and fine them not guilty, they may accept a lighter punishment rather than risk conviction for a serious offense.³⁶

3. Prospects of Plea Bargain in Nigeria xxx edit

Plea bargaining is gaining popularity because of certain merits that flow from it. Several merits flow from the practice of plea bargaining. One of these is that it may approximate the outcomes of true adjudication but at lower cost since the adversary procedure and the Law of Evidence have made trial procedure so costly that it can only be used in respect of serious crimes.

The rationale for plea bargain is the inability of the criminal justice system to handle the volume of Criminal Cases that have emanated from industrialization and increased criminal activities. The need to promote the efficiency of the criminal justice system has been identified as the overriding cause for entering plea bargaining negotiations in general.³⁷

Furthermore, plea bargain is advantageous as it saves time and at the same time avoids the necessity of public trials, thereby protecting innocent victim of crime from the ordeal of giving evidence during trials. Plea bargain also reduces public expenditure which would have been incurred during prolonged trials. For instance, with respect to Nigeria, plea bargaining facilitates decongestion of prisons. The fact that our prisons are overcrowded is no longer news. There is poor sanitary system in the prisons and facilities are not there; where they are, they are dilapidated and therefore not hygienic for human beings.

³⁵ People v Clark (1973) 6 Cal.2d 870

³⁶ George F. Cole and Christopher E. Smith, The American System of Criminal Justice (11th ed.), 2007, Thomson Wadsworth Co., Canada, p 363.

³⁷ C. Oba, *supra*, at p. 42.

Some defenders of plea bargaining maintain that it is appropriate as a matter of sentencing policy to reward criminal defendants (accused persons) who acknowledge their guilt. They advance several arguments in support of this position—notably, that a bargained guilty plea may manifest remorse, an acceptance of responsibility, or a willingness to enter the correctional system in a frame of mind that may afford hope for rehabilitation over a shorter period of time than otherwise would be necessary.³⁸

By diverse imagination, it has been argued that plea bargaining, is not primarily a sentencing device, but as a form of dispute resolution. Some plea bargaining advocates maintain that it is desirable to afford the accused and the state the option of compromising factual and legal disputes. They observe that if a plea agreement did not improve the positions of both the accused and the state, one party or the other would insist upon a trial. These defenders view plea bargaining as essentially indistinguishable from settling a civil lawsuit.³⁹

One of the major advantages of plea bargaining is that it helps prosecutors and the Courts in the effective administration of justice. In all criminal prosecutions, the accused shall enjoy the right to a speedy trial because justice delayed is justice denied. The right to speedy trial cannot be compromised or negotiated away. Speedy trial is a constitutional and common law right. The constitutional guarantee of speedy trial is intended to ensure that accused are not subjected to unreasonably lengthy confinement before trial. In the U.S for example, when prosecutors violate this principle or fail to bring a case to trial for an “unreasonable” period of time, Courts may be inclined to grant a dismissal of the action.⁴⁰

Our Courts are not equipped to handle cases speedily and if the defendants are to be kept indefinitely in prison, not only would it violate their rights, it would also strain and impact tax payers money. In addition, if a practice offends the constitution, it ought to be driven into the shadows. To this effect, the prosecutor may offer the defendant a plea bargain in order to “get on with his life”.⁴¹

Finally, some observers defend plea bargaining on grounds of economy or necessity. Viewing plea negotiation less as a sentencing device or a form of dispute resolution than as an administrative practice, they argue that society cannot afford to provide trials to all the accused who would demand them if guilty pleas were unrewarded—or, at least, that there are more appropriate uses for the

³⁸ Guilty Plea: Plea Bargaining- Evaluations of Plea Bargaining K/a>. accessed on 21/8/2010.

³⁹ Ibid.

⁴⁰ <[⁴¹ Ibid.](http://www. coinpassnewspaper. com/NG/index.php ?option = com content & view =article&id =3]523,plea-bargaining-and-the-critn.> Accessed on 23/8/2010</p>
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additional resources that an effective plea bargaining prohibition would require. Sometimes these defenders add that any attempt to prohibit plea bargaining would prove ineffective and would merely drive the practice underground.⁴²

Plea bargains also help the courts and the prosecutors to manage caseloads.⁴³ It should be noted that the application of plea bargain in the criminal justice system or administration is a step forward in the promotion of administration of criminal justice in Nigeria. Going by the definition, application means the act of putting to a special use or purpose.

To many, the practice conflicts with their sense of justice for the betraying thieves of the public finances or savings; it is incomprehensible to them how highly placed thieves of many millions and billions of naira are allowed to get away with miserable small sentences in the name of plea bargain, while thieves of smaller sums or thieves of the same millions and billions of naira but without high profile placement or connections bag the weighty sentences generally more commensurate with their offences.⁴⁴

As stated above, plea bargain is: a device allowing accused persons in the name of their legal counsel to reach an accommodation with the prosecutor to enable them plead guilty in the court to an offence of lesser gravity than the one(s) the prosecutor wish to charge them with or with which they have already been charged or to one or more of the multiple charges; a accused person may also agree to plead guilty to the offence with which they are charged, all in the bid for a lighter sentence than would/might have been given if the case was prosecuted fully and conclusively (this is not the same as entering guilty at the beginning of a trial in court in hope of getting a light sentence from the court of making an *allocutus* at the end of a trial for mitigation of punishment). Whatever the agreement is, the essence of plea bargain agreement to the defendant is to get reduced punishment.⁴⁵

By its definition and essence, plea bargain entails a trial scenario (or a modified trial scene) and the entry of a guilty plea having negotiated with the prosecution for concessions. The prosecution

⁴² Ibid.

⁴³ In Nigeria, investigation and charging accused persons are done mainly by the police, especially in the southern part of the country. It is after investigation and charging that the matter is referred to the Attorney-office for the DPP's advice. This happens where the offence in question is beyond the jurisdiction of Magistrate Court. There are cases where the DPP's advice takes more than two years to come out. Sometimes the court is moved to discharge the accused person, ordering that whenever the DPP's advice is ready the accused can be charged again. This sometimes leads to the end of the matter. A major source of delay in obtaining the DPP's advice is the poor handling of investigation by the police to the extent that when the file is sent to the Attorney-General's Office, there is little or no information to act on. Most times investigations have to be reopened. See Ibid. at p. 44

⁴⁴ <<http://topeadebayollp.wordpress.com/2012/03/27/the-legality-of-the-use-of-plea-bargain-in-the-nigeria-criminal-justice-system>> Accessed May 9th 2016.

⁴⁵ *ibid*

informs the judge of the terms of the agreement and the judge acts accordingly. It is important to note that the law does not say that an accused person shall be punished simply because his guilt is “apparent/obvious” to everyman on the street; but rather that a person charged with a crime shall be tried before a competent court and shall be convicted if shown before reasonable doubt to be guilty.⁴⁶ This means that a person whose guilt is ‘obvious’ to the man on the street, may be discharged and acquitted by the court, if the prosecution lacks evidence and skill to successfully prosecute a case against them. While this may be absurd and twisted to the laymen, lawyers know that this is the law and the practice. It is also enshrined in the Constitution that no person shall be compelled to incriminate themselves or say things they do not want to whether true or not. This is a fundamental right,⁴⁷ therefore where people are threatened or unduly persuaded or unfairly induced to admit to an offence under plea bargain agreement, this is wrong. The state either has strong evidence against the accused or it hasn’t, it can either prove its case as required by law or it cannot. Before the enactment of the Administration of Criminal Justice Act 2015, the statutory provisions which have been used as justification for plea bargain include Section 180 of the CPA, Section 14(2) of the Economic and Financial Crimes Commission Act and Section 174 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the only piece of legislation that contained the phrase ‘plea bargain’ with circumstances and rules on how to implement the practice was the Administration of Criminal Justice Law (2007) of Lagos State.⁴⁸

Plea bargain shall be applied where the prosecution is of the view that the offer or acceptance of a plea bargain is in the interest of justice, the public interest, public policy and the need to prevent the abuse of legal process, he may offer or accept the plea bargain.⁴⁹ Any agreement reached shall be reduced to writing and shall:

- A. State that, before conclusion of agreement, the defendant has been informed:
 - I. That he has a right to remain silent,
 - II. Of the consequences of not remaining silent, and
 - III. That he is not obliged to make any confession or admission that can be used in evidence against him;
- B. State fully, the terms of the agreement and the admission(s) made;
- C. Be signed by the prosecutor, the defendant, the legal practitioner and the interpreter as the case may be; and a copy of the agreement forwarded to the Attorney General of the Federation.⁵⁰

⁴⁶ Section 135 Evidence Act

⁴⁷ Section 35(2) Constitution of the Federal Republic of Nigeria 1999

⁴⁸ Section 76 of the ACJL

⁴⁹ Section 270(3) ACJA 2015

⁵⁰ Section 270(7) ACJA 2015

Not until the crush of civil litigation brought on by the explosion of personal injury cases in the industrial era did judges begin to appreciate the workload relief plea bargaining promised. It usually involves the defendant's pleading to a lesser offense or to only one or some of the counts or multi-count indictment in return for a lighter sentence than that possible for the graver charge.

However, while both the prosecution and the defendant can bargain on the charges, they do not have the power to decide what the appropriate penalty would be. In US, less than ten per-cent of criminal cases go to trial. A defendant cannot bargain on the issue of penalty which is exclusively determined by the presiding judge even though, it is the prosecutor that sentence recommendation to the judge. The judge, however, is not bound to follow the prosecution's recommendation. The judge must agree to the result of plea bargain before accepting the plea. This implies that the judge reserves the prerogative to reject a bargain if he feels uncomfortable with it or if he is of the opinion that it was not intelligibly or voluntarily entered into by the accused.

A guilty plea must be an informed choice entered into voluntarily by the defendant. Due process of law prohibits all the government from arbitrarily or unfairly depriving individuals of their basic constitutional rights to life, liberty and property.⁵¹ The rules that individuals shall not be deprived of life, liberty, or property without notice and an opportunity to defend themselves predates written constitutions and was widely accepted in England.

Plea bargain offers advantages for defendant, prosecutors, defence attorneys, and judges. Defendants can have their case completed more quickly and know what the punishment will be, instead of facing the uncertainty of a judge's sentencing decision.⁵²

The guilty plea obviously avoids the time, expense, and work of proving guilt at trial. But other important advantages accrue to prosecutor, the court, and even the police as well. Most, if not all, complex corollary issues such as the admissibility of evidence of the propriety of police investigation and arrest practices are largely avoided. In most cases, assuming a competent defendant, the plea assures conviction, whereas the result of a trial, no matter how carefully conducted, is an uncertainty.

Furthermore, law enforcement agencies like the police benefits, directly and indirectly, from a guilty plea. They escape the onerous duty of long court appearances and avoid being challenged by the defence on their methods of arrest, investigation, or interrogation. Indirectly, the defendant pleading guilty may help them solve other crimes by admitting other offences or may implicate other

⁵¹ Sections 33, 35 and 44 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

⁵² George F. Cole and Christopher E. Smith, *The American System of Criminal Justice* (11th ed.), 2007, Thomson Wadsworth Co., Canada, p 358

offenders in the crime. The police, of course, are under pressure to clear their books of unsolved crimes. The defendant who pleads guilty to one count of an offence is more likely to admit other counts and thereby solve, to police satisfaction at any rate, a series of other crimes involved.⁵³

A plea bargain is an agreement in a criminal case between the prosecution and the defendant, where the defendant agrees to plead guilty to a particular charge in return for a concession from the prosecutor.⁵⁴ The idea is that in corruption cases, a defendant agrees to plead guilty to a lesser charge with minimal punishment in exchange for the return of most of their stolen wealth.

In plea bargain, before arraignment there is an agreement between the prosecutor and the accused person to the commission of the crime. It means that, the accused person agrees to have corruptly enriched himself with the sum which he is ready to return to government coffers without being made to undergo full trial.

It is noteworthy to state that the court will confiscate the property, the money stolen in addition to paying a fixed amount of fine by the accused person. I must add that, it is a misconception by the members of the public that a token amount is merely collected from the corrupt persons who undergo plea bargaining. Due care must be taken to ensure that the negotiations are adequately made and guilty pleas are made voluntarily and not by coercion.

In a nutshell, these are the attractions of plea bargain:

- I. Plea bargaining allows persons who admit responsibility for their crimes to receive consideration for their remorse in the form of lighter sentences.
- II. It saves the cost of litigation and thereby conserves judicial funds which would otherwise be wasted on investigating and litigating cases.
- III. The difficulty in proving certain complex cases such as economic crimes committed across many jurisdictions in one operation make plea bargaining quite attractive.
- IV. It helps the court and prosecutors to manage their case loads in ensuring that cases that need not go through plenary trials with attendant frustrations are not allowed to linger on.
- V. A cardinal objective of the justice system is the satisfaction by contending parties that justice has been done. Plea bargain forms a framework wherein the accused and the prosecutor can reach an agreement which settles the matter in what appear to be in the spirit of fairness to all parties concerned.

⁵³Patrick R. Anderson and Donald J. Newman, Introduction to Criminal Justice, (5th ed.), USA, Library of Congress Cataloging-in-Publication, 1993, p 248

⁵⁴Garner B. A (ed. In.C) Black's Law Dictionary (9th ed.) p 1190

- VI. An accused person may, though guilty of a particular charge, be very' crucial in supplying information with respect to the prosecution of another offence which is, perhaps, more serious and the proof of which may prove quite daunting. A good example may be found in the trial of Major AlMustapha and others where Barnabas Jabilla (Alias Rogers) is being used as a prosecution witness. With plea bargain, he can be convicted and sentenced with a lighter sentence and then be used as a prosecution witness because his evidence is very material.
- VII. It may contribute towards the successful prosecution of serious offences because prosecution will now have more time with more serious matters.
- VIII. It avoids the necessity of a public trial and may protect the Innocent victim of crime against the trauma of giving evidence in open court such as in rape cases where they may not want to testify because of the social implications of the evidence to her future.
- IX. It reduces public expenditure incurred in prolonged trials.⁵⁵



⁵⁵ See the Report of the Working Group on the Reform of Criminal Justice and the Honourable Attorney-General and Commissioner for Justice, Lagos State, 2005.