



Plea Bargaining in Nigeria: an Aftermath of the Administration of Criminal Justice Act 2015

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ABSTRACT

The work explores the practice of plea bargaining and its impact in the Nigerian criminal justice system. The concept of plea bargaining is internationally adopted and applied in the paradigm of criminal justice system across the globe. With its adoption, an agreement is reached between the prosecutor and the defendant wherein, the defendant pleads guilty to a lesser charge in exchange for a reduced sentence which is subject to court's approval or acceptance, while the prosecutor on the other hand will secure conviction. This study examines the history of the concept and its application in other jurisdictions. Furthermore, the acceptability of plea bargaining among the citizens, scholars, legal practitioners, and judges is revealed by weighing the merits and demerits of the concept in actual practice. The Legal framework of plea bargaining in Nigeria at both the federal and state level shows the inadequacies of plea bargaining especially before the enactment of the Administration of Criminal Justice Act 2015. The study concludes that if plea bargaining is duly implemented under the criminal justice system; justice will be secured in the long run especially in the trial of white-collar crimes.

Keywords: criminal justice system, Plea bargaining, compounded offence

INTRODUCTION

The pursuit for justice has been in existence from time immemorial. Plea bargaining is one major stride at finding solution to every legal system yearn for justice, especially with humanity that showcases a polarity between the rich and poor, high levels of unemployment, lack of good infrastructural provisions and basic amenities. Plea bargaining is an emergence of Criminal justice administration across the globe in the search for justice and the advancement of speedy trials.

Once a crime is committed under the dispensation of the Nigeria criminal justice system, a thorough and proper investigation is done to determine whether the arrested accused person is to be prosecuted or not. If the suspect is to be tried, as a matter of necessity once the trial begins, the plea of the accused person must be taken, wherein he pleads guilty or not guilty. S 271(3)¹ of the Administration of Criminal Justice Act 2015,² provides that 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.³ The court informs the accused of the form and content of the charge(s), and his fundamental right to a counsel who represents his interest throughout the proceedings. Under the Nigerian Legal system, both civil and criminal proceedings are accusatorial in nature and the accused person is presumed innocent while the prosecution must prove the case beyond reasonable doubt before the accused can be convicted.⁴ Jungle

¹ Administration of Criminal Justice Act 2015, s 271(3).

² Hereinafter known as ACJA in this study.

³ Administration of Criminal Justice (Repeal and Re-enactment) Law of Lagos State 2011, s 211.

⁴ Bolaji Damilare 'The Desirability of Plea bargaining in the Nigerian Criminal Justice System', (2017), www.thelawyerschronicle.com/the-desirability-of-plea-bargain-in-the-nigerian-criminal-justice-system/, Accessed October 4 2017.

justice is not permissible under the Nigerian criminal justice administration even when it is glaring that the accused committed a heinous crime, he should have accessed to be tried in a competent court of law.⁵ Recently, Plea bargaining has been implemented in Nigeria since its enforcement in notable cases which are Igbinedion case,⁶ Cecilia Ibru's case,⁷ John Yakubu case,⁸ and many more. The concept has been a statute of mockery since it seems to be practiced to favour the rich and elite criminals who loot, launder and embezzle public funds for their selfish gains. A prominent example is the case of Mr. John Yusuf a public civil servant who was involved in over N27 billion pension scam was let off the hook with N750,000 only as fine option of two years jail term while a Magistrate Court recently sentenced a man to two years jail term without an option of fine for stealing a goat worth five thousand naira.⁹ Various groups protested against this judgement of which one of them asserted that;

“We once again call for eradication of plea bargain. It is evil, nonsensical, archaic and detrimental to our avowed fight against corruption. We advocate the China option of capital punishment for corruption, in which the family of the convicted and executed persons pay the bill for execution”.¹⁰

Almost all the cases that have adopted the practice of plea bargaining have had the judgements of the courts protested against by various human rights and civil groups. This is because the concept is seen as many to protect white collar criminals from serving long jail terms and also protecting the proceeds of corruption. In other words, there is an obvious problem with the method and process of application of plea bargaining under the criminal justice administration in Nigeria and no difficulty with the concept itself.¹¹

This work explores the historical nature of plea bargaining to review the benefits and demerits. It gives a brief analysis of the position in other jurisdiction and particularly in the Nigeria Criminal Justice System. The irregularities in the legal framework for the invoking, interpreting and applying plea bargaining in Nigeria before the enactment of Administration of Criminal Justice Act 2015 are examined. Recommendations that will assist all stakeholders in the application of plea bargaining are also expressed in this study.

The Emergence of Plea Bargaining across the Globe

One of the most debated and conflicting concept under criminal justice administration in any permissible legal system is Plea Bargaining. There are many expositions of the origin of this concept. One account of the history is found in the book *Plea Bargaining's Triumph: A History of Plea Bargaining in America*,¹² where the author describes the origin and emergence of plea bargaining practices and stated that plea bargaining was first used in the prosecution of victimless crimes. According to Simeon,, in criminal court, the practice of plea bargaining can be traced from Middlesex County in Massachusetts between the years

⁵ Christian Wigwe, 'The Law and Morality of Plea Bargain' (2013), Port Harcourt Law Journal, Volume 1, Number 5, <https://www.researchgate.net/publication/274509676>, Accessed November 3 2017.

⁶ Federal Republic of Nigeria v Micheal Igbinedion [2014] All FWLR Pt. 734, 101 at 144.

⁷ Federal Republic of Nigeria v Mrs Cecilia Ibru [Unreported] Charge No. FHC/L/297C/2009.

⁸ Federal Republic of Nigeria v John Yusuf Yakubu [Unreported] Charge No. FHC/ABUJA/CR/54/12.

⁹ John Bulus, Police Pension Fraud: A chronology of plea bargain Compromises... <https://www.vanguardngr.com/2013/02/police-pension-fruad-a-chronology-of-plea-bargain-compromises/>, Accessed October 3 2017.

¹⁰ *ibid*

¹¹ Abubakari Yekini, 'The Practice of Plea Bargaining and its effect on the Anti-Corruption Crusade in Nigeria' (2008), <https://ssrn.com/abstract=1279003>, Accessed October 2 2017.

¹² Fisher George, *Plea Bargaining's Triumph: A History of Plea Bargain in America*, (Stanford University Press, 2003)

1780-1900 and was mostly used in the proceedings of liquor-selling violations under the mandatory sentencing laws. The prosecutors encountered a system whereby different charges for the sale of liquor without a license would be dropped to one charge and the accused would be sentenced to a prearranged fine and courts. Prosecutors could control the whole process, as Fishers calls it “*an almost primordial instinct of the prosecutorial soul*”.¹³

In most of the history of the common law, Plea bargaining was unknown. Not until the nineteenth century was there significant evidence of the practice in America. In modern times however, the prominence it has gained is traced to the United States of America as this is evident in their criminal justice system.¹⁴ Not until the crush of civil litigation brought in by the explosion of personal injury cases in the industrial era that Judges began to appreciate the workload relief plea bargain promised. Legal technicalities that accompanied the adversarial system of jurisprudence led to delays in the dispensation of criminal justice.¹⁵

An author asserted that the practice of plea bargain is “rooted in Medieval English Common Law court of guilty pardons to accomplices in felony cases”. Furthermore, he said that the fame the concept has gained is however, traceable to the early 1960s when the practice became known in the United States of America.¹⁶ A spectacular origin of plea bargain can be traced to the 15th century. The famous Galileo in 1633 was sentenced and placed under house arrest from the “inquisition in exchange for his reciting penitential psalms, weeding and recanting Copernican heresies”. Likewise, in 1969 so as not to be executed, James Earl pleads guilty for killing Martin Luther King Jr. and gets 99 years.¹⁷

Albert Alschuler is one of the prominent scholars who trace origins of plea bargain in nineteenth century to Europe and post-civil war America, which stemmed from criminal trials in urban North Eastern States during the 1880s. The emergence of the concept is not exclusive to the United State, but it developed faster and more broadly here than most places.¹⁸ The author further opined that in the search for the origins of plea bargain, his opinion has weight because it often generates an emotional reaction, there are two separate ways to take; either ‘a defender’ or ‘antagonist’. Some supporters of plea bargaining have made historical statements without the slightest evidentiary support. Likewise, an antagonist of the concept may assert it is of a bygone golden age, when plea negotiation was not common in “an age from which we departed inadvertently as a result of laziness, bureaucratization, over criminalization, and economic pressure”.¹⁹ Likewise John Langbein holds the view that plea bargaining was unknown during most of the history of common law, and only in the 19th Century was the practice found in either England or the United State.²⁰

¹³ Simeon Sungi, ‘is it Pragmatism or an Injustice to Victims? The use of Plea Bargaining in International Criminal Court’, (2015), *Journal of Theoretical and philosophical Criminology*, Volume 7(2), 23, <http://www.jtpcrim.org/AUGUST2015/Plea-Sungi.pdf>, Accessed November 11 2017.

¹⁴ Ted Eze and Amaka Eze, ‘A Critical Appraisal of the Concept of Plea Bargaining in Criminal Justice Delivery In Nigeria’, (2015), *Global Journal of Politics and Law Research*, Volume 3, Number 4, <http://www.eajournals.org/wp-content/uploads/A-Critical-Appraisal-of-the-Concept-of-Plea-Bargaining-In-Criminal-Justice-Delivery-in-Nigeria2.pdf>, Accessed November 18 2017.

¹⁵ *Ibid*,

¹⁶ Alubo Okoh, ‘Plea Bargain and the Anti-Corruption Crusade in Nigeria’, (2009), *University of Jos Law Journal*, Volume 8, Number 2, 32.

¹⁷ Dirk Olin, ‘The Way We Live Now:9-29-02: Crash Course; Plea Bargain’ (*The New York Time Magazine*, 29 September, 2002), <http://www.nytimes.com/2002/09/29/magazine/the-way-we-live-now-9-29-02-crash-course-plea-bargain.html>, Accessed November 8 2017.

¹⁸ Albert Alschuler, ‘Plea Bargaining and Its History’, (1979), *Law and Society Review of Law and Society Association Journal*, Volume 13, Number 2, 211, <http://www.jstor.org/stable/3053250>, Accessed October 16 2017.

¹⁹ *Ibid*

²⁰ John Langbein, ‘Understanding the Short History of Plea Bargaining’ (1979), *Yale Law School Faculty Scholarship Series Paper 544*, http://digitalcommons.law.yale.edu/fss_papers/544, Accessed November 17 2017.

Lawrence Friedman concurred with Albert Alschuler that plea bargaining did not emerge before 1800, but became prominent in the last third of the nineteenth century as a pertinent aspect of American urban criminal courts. The concept was further re-energised in the twentieth century: especially in the 1920s when the federal courts were faced with large numbers of prohibition cases, and in the 1960s, due to the rise in blue collar crimes. Despite the application of different sources and types of evidence, both authors significantly drew similar conclusions about the history of plea bargaining.²¹

Due to the 19th century industrialization, more cases emerged for trials and the courts were heavily pressured and loaded which resulted in delays caused by legal technicalities. The court paradigm across the globe saw the need for the adoption of non-trial justice systems. This automatically gave birth to the concept of plea bargain. The 20th century is witnessing a wide spread of this notion so as to ensure rapid and cheap. Plea Bargain therefore emerged as a compromise to ensure that criminals were adequately punished.²²

Why Plea Bargaining?

The advantages of plea bargaining are plausible under a permissible criminal justice administration. Plea bargain reduces the work load and pressure on the prosecutor and the judge, thereby saving time” to prepare for grave case by leaving the effortless and petty offences to settle through plea bargain”.²³ Courts are pressured with many cases and it will amount to a breach of the accused’s rights, which would reduce public money if they are kept indefinitely in prison.²⁴ Plea bargain also saves time and energy since the defence counsel does less work than what is expected while he receives the same legal fees or even something higher for securing a reduced sentencing.²⁵

In the dispensation of justice in court, a legal system either adopts the inquisitorial or adversarial method. Under the adversarial system, it is of utmost importance that the accused’s case be proven beyond reasonable, a situation which more often than not gives the offender who may have actually committed a crime the chance of escaping justice and punishment.²⁶ But with the practice of plea bargaining in place, there are higher chances of securing the convictions of the accused persons.

A prominent economic argument for the concept is that it could save tax payers money spent on prolonged trial and enrich the public purse, especially where the bargain includes forfeiture of properties and recovery of looted funds.²⁷ Plea bargain has formed part of several legal systems across the globe and will not disappear since will it guarantee a speedy trial and serves the interest of stakeholders: judges, prosecutors, defence lawyers, and the state.²⁸

²¹ Albert Alschuler, ‘Plea Bargaining and Its History’, (1979), *Law and Society Review of Law and Society Association Journal*, Volume 13, Number 2, 211, <http://www.jstor.org/stable/3053250>; and Lawrence Friedman, ‘Plea Bargaining in Historical Perspective’, (1979), *Law and Society Review Journal of Law and Society Association*, Volume 13, Number 2 <http://www.jstor.org/stable/3053251>; In Mark Haller, ‘Plea Bargaining: The Nineteenth Century Context’, (1979), *Law and Society Review Journal of the Law and Society Association*, Volume 13, Number 2, 279, <http://www.jstor.org/stable/3053253>, Accessed November 12 2017.

²² Scott Howe, ‘The Value of Plea Bargaining’, (2005), *Oklahoma Law Review*, Volume 58:599, 635, <http://adams.law.ou.edu/olr/articles/vol58/howe584.pdf>, Accessed December 7 2016.

²³ Laurie Levenson, ‘Peeking Behind the Plea Bargaining Process: Missouri v Frye and Lafler v Cooper’, (2013), *Loyola of Los Angeles Law Review*, <http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2844&context=llr>, Accessed January 15 2017.

²⁴ Gabriel Adeleke, ‘Prosecuting Corruption and the Application of Plea Bargaining in Nigeria: A Critique’, (2012), *International Journal of Advance Legal Studies and Governance*, Volume 3, Number 1, 61, http://www.icidr.org/ijalsg_vol3no1_april2012/Prosecuting%20Corruption%20and%20the%20Application%20of%20Plea%20Bargaining%20in%20Nigeria-A%20Critique.pdf, Accessed December 2 2017.

²⁵ Charles Ochem, ‘Plea Bargain in the Administration of Criminal Justice in Nigeria’, (n 1).

²⁶ Kehinde Adegbite, ‘Plea Bargaining in Nigeria: Any Legal Foundation?’ (2015), <http://www.thelawyerschronicle.com/plea-bargaining-in-nigeria-any-legal-foundation/9223372036854775807/>, Accessed December 2 2017.

²⁷ Epiphany Azinge, ‘Conviction to Compromise: The Plea Bargaining Option’ (n 53)

²⁸ Abubakar Kagu ‘Plea Bargaining’ (2012) https://www.academia.edu/2993678/Plea_bargaining, Accessed January 20 2016.

One major pivot of natural justice under the dispensation of any legal system is rapid and prompt trial. This type of trial is an attribute plea negotiations have over a normal trial since once the accused plea is taken as “guilty” the only thing left is for the judge to give his judgement. Prompt trial is also a constitutional and common law right.²⁹ The practice of plea bargaining often secures a lenient punishment for the accused person especially if the risk of wrongful conviction is too high.³⁰ If plea bargain is adopted in a trial, the legal loopholes that tend to frustrate criminal trials is reduced and in turn allows repentant criminals the opportunity to show remorse thereby giving closure to the victims or his family.³¹ Plea bargain offers the prosecution an opportunity of securing information about other crimes which otherwise would have remained unsolved or even information that “can prevent future crimes against the society when a defendant may be in consort with some other criminal element”.³² Prisons are overcrowded especially in developing nations, but with the practice of plea bargain, such overcrowded prisons can be decongested. Offenders often prefer the plea bargaining procedure in order to secure lesser charges and lesser punishments for the offence committed.³³

Are there Disadvantages?

There are certain demerits of plea bargain despite the advantages. Plea Bargain involves speedy and prompt trials of cases, but this pre supposes that normal court rules will not be obeyed which may run contrary to natural justice, equity and justice and this has made stakeholders to query this notion.³⁴ Recently, there had been rising concerns on plea bargaining, some opined that it is wrong to dialogue on the defendants’ right and not allow a full process of law to take place. In assuring an accused person of his fundamental human rights, criminal law suggest “that an accused shall be entitled to a fair hearing in public within a reasonable time by a court or tribunal established by law”.³⁵ Realistically, prosecutors seem to prefer plea bargaining as the easier way out thereby breaching the defendants their fundamental human rights. Due process is ‘fair’ system in court, thereby securing the ‘right to a just and fair trial’.³⁶ Where promptness of trial is of utmost essence, “then the prosecutor and judges run the risk of having an ‘expedience-based’ system rather than an ‘evidence-based’ system”.³⁷ One of the harshest critics of plea bargain is that it leads to unfair treatment of the defendant, s/he forced to accept the plea bargain. Threat and coerced plea is an oft-cited disadvantage, legal scholars are concerned that an innocent defendants might accept plea bargain offers when subjected to unconscionable pressure.³⁸

²⁹ News Agency of Nigeria, ‘Lawyers React to the Application of Plea Bargain in Nigeria’, (2016),

<http://leadership.ng/news/492651/lawyers-react-application-plea-bargain-nigeria>, Accessed December 2 2017.

³⁰ Ndjodi Meluwa and Latenda Ndeunyema, ‘Igniting the Plea Bargaining Discourse in Namibia: What is it and do we Need it?’, (2013), <https://www.ssrn.com/abstract=2269614>, Accessed December 2 2017.

³¹ *ibid*

³² Kayode Falade, ‘Plea Bargain: A Dubious Saviour’, (2013), https://issuu.com/73092/docs/binder2saturday_october5_2013, Accessed December 7 2017.

³³ Saka Olokooba and Abdulmalik Adebayo, ‘Plea Bargaining: A Panacea Towards Prison Decongestion in Nigeria’ (2014), Access to Global Online Research Agriculture International Journal of Juridical Sciences, Number 4, Part 139-148, www.juridicaljournal.univagora.ro, Accessed December 7 2017.

³⁴ Linus Akor, ‘Plea Bargain and the Anti-Corruption Campaign in Nigeria’, (2014), Global Journal of Interdisciplinary Social Sciences, Volume3(4), Number 116-121, <http://www.gifre.org/library/upload/volume/116-121-BARGAIN-vol-3-4-gjiss.pdf>, Accessed October 13 2017.

³⁵ Constitution of the Federal Republic of Nigeria 1999 Cap C23 L.F.N. 2004, s 36(4).

³⁶ Moses Chiroma, ‘Challenges of Enforcement of Fundamental Human Rights under the Constitution of the Federal Republic of Nigeria, 1999’, (2010), <http://www.nials-nigeria.org/projects/CHALLENGES%20OF%20ENFORCEMENT%20PROJECT.pdf>, Accessed December 5 2017.

³⁷ Christopher Ogundare ‘Analyzing the Provision for Plea Bargaining under the Administration of Criminal Justice Act, 2015 and its likely impact on the trial of Corruption and other Cases’ (2015), At the Annual General Conference of the Nigeria Bar Association, at the International Conference Center, Abuja

³⁸ Andrew Hessick II and Reshmah Saujani, ‘Plea Bargaining and Convicting the Innocent: the Role of the Prosecutor, the Defense Counsel, and the Judge’, (2002), Brigham Young University Journal of Public Law,

The argument mostly canvassed by a lay person is that plea bargaining is practiced in ways that results in unjustified leniency; this thereby “raises the issue about the supposedly deterrent value of the criminal process”.³⁹ There is a wide parity are between the sentences of those who accept pleas and those who do not and this could make accused persons to believe that plea bargain is a way of receiving reduced punishments. More so, plea bargain has been seen as a concept that favours the rich against the poor and the offenders of white collar crimes as against street offenders.

The Nigerian Situation

In Nigeria, before the introduction of plea bargaining in the Administration of Criminal Justice Act 2015, and the Administration of Criminal Justice Law of various states like Lagos State⁴⁰ and Anambra State,⁴¹ plea bargaining was not a known notion. Plea bargain has no provisions under any of the penal laws. Constitutionally, the utmost provision that relates to the concept are those guaranteed fundamental human right. The constitutions insists on proof of every allegation constituting a crime before conviction and provides that:

“Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty”.⁴²

Previously, there was a dearth of work on the concept among Nigerian authors. For example Doherty in her book ‘*Criminal Procedure in Nigeria*’ did not mention the concept of plea bargain.⁴³ Nwadialo in his thirty five chapter book of ‘*Criminal Procedure in Southern Nigeria*’ did not make reference to plea bargaining,⁴⁴ Legal Practitioners and even judges became aware of plea bargain either in scholarly work done abroad or in other literatures or films.⁴⁵

Practically, the first time an accused person comes in contact with the prosecutor is during arraignment. The only person who would have had contact with the accused before now is the investigating police officer. Some people tend to believe the guilty plea option in our statute book to plea bargain; this assertion cannot hold sway since there is” no negotiation between the prosecutor and the defendant neither is any form of assurance that by so pleading, the defendant will take a lighter sentence”.⁴⁶

There is a relationship between plea bargains and guilty pleas but not all guilty pleas emanates from plea bargains, but plea bargains generally result in guilty pleas. Plea of guilty acceptable in Nigeria is different from that occasioned by plea bargain.

The first traces of plea bargain can be found in the E.F.C.C. Act. The basis for the application of plea bargaining by the Economic and Financial Crime Commission can be found in Section 14(2) of the Economic and Financial Crime Commission Establishment Act.⁴⁷ The concept was first applied in high-profile cases where the defendant were allowed to enter guilty pleas to lesser charges after they have agreed to forfeit most or all the assets acquired with the funds they sued defendant of misappropriating to the state.⁴⁸

Volume 16, Issue 2, 201, <http://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1290&context=jpl>, Accessed November 9 2017.

³⁹ Jed Rakoff, ‘Why Innocent People Guilty’ (2014), <http://www.nybooks.com/articles/2014/11/20/why-innocent-people-plead-guilty/>, Accessed January 11 2017.

⁴⁰ Administration of Criminal Justice (Repeal and Re-enactment) Law of Lagos State 2011, s 75.

⁴¹ Administration of Criminal Justice Law of Anambra State 2010, s 167.

⁴² Evidence Act No. 18 2011, s 36(5).

⁴³ Oluwatoyin Doherty, *Criminal Procedure in Nigeria Law and Practice*, (1st Edition, London Blackstone Press Ltd, 1999).

⁴⁴ Nwadialo Fidelis, *The Criminal Procedure of the Southern State of Nigeria*, (1st Edition, Benin City Ethiope Publishing Co, 1976).

⁴⁵ Ikechukwu Nnochiri, ‘Criminal Justice System: is Plea Bargain Desirable’, (2012), <http://www.vanguardngr.com/2013/04/pension-thief-verdict-justice-talba-bags-one-year-suspension-without-pay/>, Accessed 10 November 2016.

⁴⁶ Charles Ochem, ‘Plea Bargaining in the Administration of Criminal Justice System in Nigeria,’ (n 62).

⁴⁷ Economic and Financial Crime Commission Establishment Act Cap E1 L.F.N 2004, s 14.

⁴⁸ Federal Republic of Nigeria v Dieprieje Alamiesiegha [2006] 16 NWLR. Pt.1004 at 93-9

However, the use of plea bargains in corruption related cases by the Nigerian anti-graft agencies has been filled with corruption itself. More so, there are other issues such as due process, the constitutionality or legality of the procedure within the context of Nigerian law, transparency, and possibility of manipulating the process. This made the committee on Law, Judiciary, Human Rights and Legal Reform of the Nigerian National Conference 2014 recommended that the concept of Plea Bargain should be abolished fear of manipulation of the practice.⁴⁹ Worthy of note is that plea bargain from the is seen by the public as an option that is not extended to every offenders but only those who perpetrate white collar crimes particularly political influential offenders.⁵⁰

This made the immediate past Chief Justice of Nigeria, Justice Dahiru Musdapher, to assert that:

“The concept is not only dubious but was never part of the history of our legal system at least until it was surreptitiously smuggled into our statutory laws with the creation of the Economic and Financial Crime Commission”.⁵¹

Another prior Nigerian Supreme Court Justice, Kayode Eso, granted an interview and said:

“There is no plea bargaining in the Nigerian legal system, and that it was wrongly imported, it is even a corruption to import the concept of plea bargaining into the Nigerian legal system”.⁵²

Jiti Ogunye asserted that long before the existence of the Economic and Financial Crime Commission, plea bargaining has traces in the very old criminal statutes and that the former Chief Justice of Nigeria, Justice Dahiru Musdapher was biased in his declaration that it was alien to the statutes.⁵³ Glaringly, the relevant statute did not expressly use the phrase ‘plea bargaining’, for example, Section 180(1) of the Criminal Procedure Act,⁵⁴ Section 339 of the Criminal Procedure Code,⁵⁵ and Section 174 and 211 of the 1999 constitution of Nigeria.⁵⁶ Rotimi Jacob, in a lecture delivered on plea bargaining opined that, “plea bargaining is not expressly provided for in Criminal Procedure Act or Criminal Procedure Code”. He said further that plea bargaining is not strange to any legal system with common law origin since “the criminal

⁴⁹ Kana Abdulkarim, ‘The State of Plea Bargain in Corruption Trials in Nigeria’, (2016), <http://jilss.thelawyerschronicle.com/wp-content/uploads/2016/11/3-THE-STATE-OF-PLEA-BARGAIN-2.pdf>, Accessed November 22 2016.

⁵⁰ Tope Adebayo ‘Legality of the Use of Plea Bargaining in Nigerian Criminal Justice System’ (2012), <https://topeadebayollp.wordpress.com/2012/03/27/the-legality-of-the-use-of-plea-bargain-in-the-nigerian-criminal-justice-system/>, Accessed November 15 2017.

⁵¹ Musdapher Dahiru, ‘Legal Practice in Nigeria: Venturing beyond the Usual Borders’ (2012), National Association for Jurisprudence Correspondence and Open Society of Justice and Settlement House, (2012), Paper presented at a 2-day Capacity Building Workshop for judicial correspondent at Abuja. In Danjuma Ibrahim and Gan Chaun, ‘The Extent of Voluntariness of Plea Bargaining for economic and financial crimes in Nigeria’ (2015), International Islamic University Malaysia Journal, Volume 23, Number 3, 493, https://www.researchgate.net/publication/300509669_THE_EXTENT_OF_VOLUNTARINESS_IN_PLEA_BARGAINING_FOR_ECONOMIC_AND_FINANCIAL_CRIMES_IN_NIGERIA, Accessed October 8 2017.

⁵² Jiti Ogunye ‘In Defense of Plea Bargaining’ (Premium Times 21 February 2013), www.premiumtimesng.com/opinion/121369-in-defense-of-plea-bargaining-is-the-problem-by-jiti-ogunye.html Accessed October 8 2017.

⁵³ Chidi Anslam ‘Plea Bargaining and the Administration of Justice in Nigeria’, (2012), www.dailytrust.com.ng/sunday/index.php/news/9237-plea-bargaining-and-the-administration-of-justice-in-nigeria, Accessed October 8 2017.

⁵⁴ The Criminal Procedure Act Cap. C41, L.F.N. 2004 [Repealed by the Administration of Criminal Justice Act, 2015].

⁵⁵ The Criminal Procedure Code (Northern State) Act Cap. C42 L.F.N. 2004 [Repealed by the Administration of Criminal Justice Act, 2015].

⁵⁶ The 1999 Constitution of Federal Republic of Nigeria, Cap. C23, L.F.N. 2004, (as amended).

justice system gives much responsibility to the Attorney General and the prosecution, and it allows for taking of plea, and amendment of charges”.⁵⁷

Lagos state was the first state to apply plea bargain under its criminal justice administration in Section 72 of the Criminal Justice Law Lagos State 2011 and it applies only to Lagos State..⁵⁸ Anambra State followed Lagos with the passage of its Administration of Criminal Justice Law of 2010 wherein plea bargain was provided for in Section 167.⁵⁹ Christian Wigwe opines that, “it is not safe to argue that these provisions are sure and adequate legal grounds for application of the plea bargain procedure, because the concept is not derived from a hotchpotch of unrelated statutory provisions”.⁶⁰

Despite various arguments against the legal permissibility of the concept under the criminal justice administration in Nigeria, plea bargaining has been given statutory backing due when the Nigeria’s National Assembly enacted the Administration of Criminal Justice Act 2015 (ACJA). Presently this Act is the only law that legally introduced plea bargaining at the federal level.⁶¹ Since the enactment of the ACJA the concept has formed part of Nigeria’s criminal justice system.

The Initial Legal Framework

Before the enactment of the Section 270 of the ACJA 2015, there has been a relentless debate on the legal framework of plea bargaining in Nigeria, for those who argued that plea bargaining as a legal foundation,⁶² opined that it has existed in certain statute of the criminal justice in Nigeria. The statutory provision though debatable which have been used as validation for plea bargain in Nigeria Criminal Justice System it includes Section 180(1) Criminal Procedure Act,⁶³ Section 339 of the Criminal Procedure Code,⁶⁴ Section 14(2) Economic and Financial Crime Commission Act,⁶⁵ and Section 174 and Section 211 of the 1999 Constitution of the Federal Republic of Nigeria.⁶⁶

The main focus of this work is an exploration of Plea Bargaining under the Administration of the Criminal Justice Act 2015, therefore, only the interpretations under the above mentioned legal provisions which do not connote the concept at all will be summarised in this work as follows;

- i. The prosecutor is the only one with the sole power to decide what happen to the defendant and charges.

⁵⁷ Jacobs Rotimi, ‘Procedural Issues in Plea Bargaining’ (2005), being a paper presented at the West African Regional Workshop on Plea Bargaining held at Le Meridian Hotel, Abuja. In James Agaba, *Plea Bargaining in various criminal justice system*, (n 50).

⁵⁸ Administration of Criminal Justice (Repeal and Re-enactment) Law of Lagos State 2011, s 75.

⁵⁹ Administration of Criminal Justice Law of Anambra State 2010, s 167.

⁶⁰ Christian Wigwe, ‘The Law and Morality of Plea Bargain’, (2013), Port Harcourt Law Journal, Volume 5, Number 1, (n 51)

⁶¹ Samuel Idhiarhi, ‘A Synoptic Appraisal of the Practice and Procedure for Plea Bargaining under the Administration of Criminal Justice Act 2015’, (2016), African Journal of Law and Criminology, Volume 6, Number 112, 24,

https://www.researchgate.net/publication/303844195_A_SYNOPTIC_APPRAISAL_OF_THE_PRACTICE_AND_PROCEDURE_FOR_PLEA_BARGAINING_UNDER_THE_ADMINISTRATION_OF_CRIMINAL_JUSTICE_ACT_2015, Accessed October 8 2017.

⁶² Oladosu Surajudeen, ‘Democracy, Plea Bargaining and the Politics of Anti-Corruption Campaign in Nigeria (1999-2008)’, (2015), African Journal of Political Science and International Relation, Volume 9(9), <http://www.academicjournals.org/journal/AJPSIR/article-full-text/F9DCA3854830#REFERENCES>, October 8 2017 Accessed October 8 2017.

⁶³ The Criminal Procedure Act Cap. C41 L.F.N. 2004, s 180 [Repealed by the Administration of Criminal Justice Act, 2015].

⁶⁴ The Criminal Procedure Code (Northern State) Act Cap. C42 L.F.N. 2004, s 339 [Repealed by the Administration of Criminal Justice Act, 2015].

⁶⁵ Economic and Financial Crime Commission Establishment Act Cap E1 L.F.N. 2004, s 14. Hereinafter known as E.F.C.C Act in this work.

⁶⁶ The 1999 Constitution of Federal Republic of Nigeria, Cap. C23, L.F.N. 2004, (as amended) s 174, s 211.

- ii. Conviction must have been had on one or more of the charges before the prosecutor may apply to withdraw other charges.
 - iii. The defendant as no say in the plea bargain process, there is little or no active involvement of the defendant. This is contrary to plea bargaining which triggers the concept of party autonomy, it means, both the prosecutor and the defendant have control of the outcome of the case.
 - iv. It is presupposed that plea bargaining can only take place where there are multiple charges, excluding a sentence bargaining in single count charges.
 - v. Plea bargaining is wider than compoundable offence
 - vi. The accused in compounded offence does not bear the status or stigma of a convicted person. Because once an offence has been compounded it shall have the same effect, as if, the accused has been acquitted of the charges.
 - vii. No sentence is imposed on the accused in compounded offence.
 - viii. Plea bargaining can be general and compounding of offence is specific in nature.
- Nigeria by virtue of the E.F.C.C Act has legalized the compounding of offences, but this does not connote plea bargaining. The E.F.C.C has consistently denied the use of plea bargaining in prosecution, we are more at ease with E.F.C.C denials because, the commission clearly does not have power to plea bargaining.⁶⁷ The reasons for this submission are thus:
- ix. There is under the provisions of Section 14(2) of the E.F.C.C Act that suggests who should institute the process of plea bargaining.
 - x. The role of the judge in the exercise of the power of the commission to compound an offence was not expressly stated.
 - xi. It did not explain the stage at which a bargain would occur between the commission and the defendants.

It is asserted that under the provisions of all the above mentioned law, it cannot be said that the notion of plea bargaining as it ought to be enumerated is present. For clarifications, there is absolutely nothing in S 339 of CPC, S 18 of the CPA, S 174 and S 211 of 1999 Constitution and S 14 of E.F.C.C Act that proves the basic features of a plea bargain since the concept must be precluded by a former dialogue and agreement between the prosecutor while the court is also involved in all the processes.

Plea Bargaining under the Administration of the Criminal Justice Act 2015

The emergence of the Administration of Criminal Justice Act 2015 is a panacea to advance a new law to ensure justice in trials under Nigeria's criminal justice system. The ACJA 2015 has peculiar attributes that makes it a right representation of plea bargain in Nigeria. Noteworthy is the proposals for the reform of the administration of criminal justice that were developed in 2005 by the National Working Group on the Reform of Criminal Justice in Nigeria.⁶⁸ The enactment of S 270 of the ACJA 2015 amends most of the breakdown surrounding the half-hearted application of the method in the past. The ACJA 2015 which was signed into law in May 2015 has introduced new structure in Nigeria's Criminal Justice Framework and this is evident in S 493 of the ACJA 2015 as follows;

“The Criminal Procedure Act Cap. C41 Laws of the Federation
of Nigeria, 2004, Criminal Procedure (Northern State) Act Cap.

⁶⁷ Tope Adebayo 'Legality of the Use of Plea Bargaining in Nigerian Criminal Justice System' (2012), <https://topeadebayollp.wordpress.com/2012/03/27/the-legality-of-the-use-of-plea-bargain-in-the-nigerian-criminal-justice-system/>, Accessed November 22 2016.

⁶⁸ May Agbamuche-Mbu 'The Act, the Plea Bargain, The Administration of the Criminal Justice Act 2015' (2015), <http://norfolk-partners.com/may16jan/The%20Act,%20the%20Plea%20Bargain,%20the%20Administration%20of%20Crimina%20Justice%20Act%202015-%20MM.pdf>, Accessed December 9 2017.

C42 Laws of the Federation of Nigeria 2004, and the Administration of Criminal Justice Commission Act Cap. A3 Laws of the Federation of Nigeria, 2004 are repealed”.⁶⁹

The Criminal Procedure Code (CPC), Criminal Procedure Act (CPA), and the Administration of Criminal Justice Commission Act (ACJCA) stand repealed with the coming into force of ACJA 2015. The ACJA 2015 applies to all states of the federation; however it is only applicable in Federal courts across Nigeria and FCT.⁷⁰

The purpose of the ACJA is stated in S1:

“The purpose of this Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim”.⁷¹

The ACJA fills the void experienced before under the criminal justice administration in Nigeria by making plea bargain as one of the defences available to a suspect during proceedings. Though recognized in criminal justice administration in Nigeria, practice of plea bargaining only became publicised with the enactment of the ACJA 2015.⁷²

S 494(1) of the ACJA defined ‘Plea bargain’ to mean

“The process in criminal proceedings whereby the defendant and the prosecution work out a 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”.⁷³

S 270 of the ACJA contains the relevant provisions for plea bargaining and it is further divided into 18 subsections. The notion of plea bargaining was embedded in the section as a means available to ensure justice during trial as well as a way of securing the proceeds of criminal activity for the state. There is a general provision that empowers the prosecutor to receive and consider a plea bargain from a defendant or offer a plea bargain to a defendant.⁷⁴ The conditions under which such plea bargain may be entered into are also highlighted in subsection (2) and the plea of such a trial is taken ‘during or after the presentation

⁶⁹ Administration of Criminal Justice Act 2015, s 493.

⁷⁰ Maraizu Iheanyichukwu, ‘Critique of Administration of the Criminal Justice Act (ACJA) 2015’ (2015), <https://guardian.ng/features/critique-of-administration-of-criminal-justice-act-acja-2015-3/>, Accessed December 9 2017.

⁷¹ Administration of Criminal Justice Act 2015, s 270(1).

⁷² Samuel Idhiarhi, ‘A Synoptic Appraisal of the Practice and Procedure for Plea Bargaining under the Administration of Criminal Justice Act 2015’, (2016), African Journal of Law and Criminology, Volume 6, Number 112, 24, https://www.researchgate.net/publication/303844195_A_SYNOPTIC_APPRAISAL_OF_THE_PRACTICE_AND_PROCEDURE_FOR_PLEA_BARGAINING_UNDER_THE_ADMINISTRATION_OF_CRIMINAL_JUSTICE_ACT_2015, Accessed December 8 2017.

⁷³ Administration of Criminal Justice Act 2015, s 494.

⁷⁴ Administration of Criminal Justice Act 2015, s 270(1).

of the evidence of the prosecution, but before the presentation of the evidence of the defence'. Subsection 2 further highlights the conditions for the making of the plea as follows:

- (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".⁷⁵

Subsection (3) extended the conditions for consideration in offering or accepting plea bargain which must be based on 'the interest of justice, the public interest, public policy and the need to prevent abuse of legal process', while what constitutes 'public interest' was further elaborated in subsection (5), in determining whether it is in the public interest to plea bargain, the prosecutor is to take the following issues into considerations:

- (i) "the defendant's willingness to cooperate in the investigation or prosecution of others,
- (ii) the defendant's history with respect to criminal activity,
- (iii) the defendant's remorse or contrition and his willingness to assume responsibility for his conduct,
- (iv) the desirability of prompt and certain disposition of the case,
- (v) the likelihood of obtaining a conviction at trial and probable effect on witness,
- (vi) the probable sentence or other consequences if the defendant is convicted,
- (vii) the need to avoid delay in the disposition of other pending cases,
- (viii) the expense of trial and appeal, and
- (ix) the defendant's willingness to make restitution or pay compensation to the victim when appropriate".⁷⁶

Subsections (4), (6) and (7) indicated the form and constituents of a proposed plea bargain agreement. After an agreement has been reached between the defendant and the prosecutor, the agreement must be reduced into writing,⁷⁷ may include the sentence recommended within the appropriate range of punishment stipulated for the offence or a plea of guilty by the defendant to the offence charged or a lesser offence of which he may be convicted on the charge,⁷⁸ or an appropriate sentence to be imposed by the court where the defendant is convicted of the offence to which he intends to plead guilty.⁷⁹ The Victim or his representative has the opportunity to make representation as regards the content of the agreement,⁸⁰ and the inclusion in the agreement of a compensation or restitution order.⁸¹ Terms of the agreement has to be signed by both parties and it must contain cautionary words that the defendant has the right to remain

⁷⁵ Administration of Criminal Justice Act 2015, s 270(2)(a)(b)(c).

⁷⁶ Administration of Criminal Justice Act 2015, s 270(5)

⁷⁷ Administration of Criminal Justice Act 2015, s 270(7).

⁷⁸ Administration of Criminal Justice Act 2015, s 270(4)(a).

⁷⁹ Administration of Criminal Justice Act 2015, s 270 (4)(b).

⁸⁰ Administration of Criminal Justice Act 2015, s 270 (6)(a).

⁸¹ Administration of Criminal Justice Act 2015, s 270 (6)(b).

silent, he was not forced to make any admission or confession that should be used against him,⁸² before forwarding it to the Attorney General.⁸³

Subsections (8), (9), (10), (11) and (12) stipulated the extent of participation by the court in the plea bargain agreement and the residual powers that the court may exercise. The prosecutor is duty bound to inform the court that the agreement has been reached between the parties and the presiding judge or magistrate shall inquire from the defendant to confirm the terms of the agreement, to ascertain that defendant admits all the allegations contained in the charge and to determine whether the defendant entered into the agreement voluntarily without any influence or threat before acting upon the terms as contained in the agreement.⁸⁴

The duties of the Judicial Officers are highlighted in subsections (10) to (11), which allows them to scrutinize the sentence recommended via the plea agreement and decide whether or not to uphold same. Where a Court convicts, “the Court shall consider the agreed sentence, and may impose that sentence if it deems the sentence appropriate, or impose either a less or heavier sentence”.⁸⁵

Subsection (13) states the effect of a plea bargaining on the vesting of property while subsection (14) states the punishment for an accused person who goes against such vesting of property, which is conviction to imprisonment of 7 years without an option of a fine. Subsection (15) enumerates the procedures that are open to an offender after a plea bargain agreement where the judge is inconsistent with the agreed by proposing a higher one than the one agreed upon. Similarly, where the defendant has been informed of the heavier sentence as contemplated above, the defendant may-

- (a) “abide by his plea of guilty as agreed upon and agree that, subject to the defendant’s right to lead evidence and to present argument relevant to sentencing, the presiding judge or magistrate proceed with the sentencing, or
- (b) withdraw from his plea agreement, in which event the trial shall proceed de novo before another presiding judge or magistrate, as the case may be”.⁸⁶

In a situation where the defendant concurs with the heavier sentence under subsection (15) or the defendant abstains from plea agreement as contemplated in Subsection (15)(b) which will make the proceedings continue as if there was never a plea bargain agreement before another presiding judge or magistrate.⁸⁷ No reference shall be made to the agreement,⁸⁸ no admission contained therein or statement relating thereto shall be admissible against the defendant,⁸⁹ the prosecutor and defendant may not enter into similar plea and sentence agreement.⁹⁰

Subsection (17) recognizes the conviction or sentence arising from a plea bargain amounting to trial shall avail the defendant the plea of double jeopardy, the defendant shall not be tried again on the same fact of the greater offence. Subsection (18) states that once the court or judge has confirmed from the defendant the correctness of the contents of the agreement and having satisfied that the plea bargaining agreement was made voluntarily by the defendant, makes such judgment final with no right of appeal except where

⁸² Administration of Criminal Justice Act 2015, s 270 (7)(a)(b)(c).

⁸³ Administration of Criminal Justice Act 2015, s 270 (7)(d).

⁸⁴ Administration of Criminal Justice Act 2015, s 270 (9)(10).

⁸⁵ Administration of Criminal Justice Act 2015, s 270(11).

⁸⁶ Administration of Criminal Justice Act 2015, s 270 (15)(a)(b).

⁸⁷ Administration of Criminal Justice Act 2015, s 270 (16).

⁸⁸ Administration of Criminal Justice Act 2015, s 270 (16)(a).

⁸⁹ Administration of Criminal Justice Act 2015, s 270 (15)(b).

⁹⁰ Administration of Criminal Justice Act 2015, s 270 (15)(a)(c).

fraud is alleged. The aim of plea bargain under the ACJA is that natural justice should be observed during trials in the interest of the victim and the state.

After all said and done on the effect of ACJA on the concept and practice of plea bargain in Nigeria, the Act has not specifically stated created the differences between offences that could be plea bargained and offences that could not. Furthermore, the procedure for the enforcement and protection of victims' rights are not well lay down.

CONCLUSION

The provisions for plea bargaining under the Criminal Justice and Administration Act are true reflections of the concept under the Nigeria Legal System which has been thoroughly discussed in the course of this work. All the stakeholders in criminal justice administration may not concur on the introduction of plea bargain, but certainly majority agrees that the concept should be effectively part of the criminal justice reform package to serve as part of the solution to address the challenges facing our criminal justice administration. Without any gain saying, if plea bargaining is practiced in Nigeria as it is in other advanced legal systems and administered the way it ought to, it will have positive impacts and efficacy in the paradigm of criminal justice administration. Furthermore, the constitutionally protected rights of the accused person will be protected during trial and in the same vein; trials of cases will be faster. It is therefore concluded that with the introduction of Criminal Justice Administration Act, the practice of plea bargaining will ensure that justice is achieved in any criminal proceedings where it is applied.

RECOMMENDATIONS

It is recommended that counsels, judges and all stakeholders should embrace the practice of plea bargain as one that facilitates justice in the administration of criminal justice in Nigeria. Plea bargain should be dispensed in ways that are fair and just to all suspects irrespective of their status in the society that is, not just a few influential and rich citizens ought to benefit from the practice of plea bargain. To effectively ensure that all suspects enjoy the benefits of the practice of plea bargain, a publicised sentencing criterion should be ensured to reduce the possibility of abuse by operators of plea bargain in the Nigeria criminal justice system. The sentencing criteria must be made available for all concerned particularly judges in order to enforce the rules of natural justice during trials that adopt the practice of plea bargaining. More laws that extensively advances the practice of plea bargain should be enacted by both states and federal government. The type of charges that cannot be brought under the auspices of plea bargain should be highlighted in these laws so as to ensure justice for all.

Lastly, the ACJA which has explicit provisions on the concept of plea bargain under the criminal justice structure should be well embraced by all lawyers, judges and all other stakeholders. If this is done, the controversies surrounding the provisions and practice of plea bargain will fade away while the notion will be well grounded in Nigerian courts.