

Criminal Justice Reforms in Nigeria: An Appraisal of Plea Bargain under the Administration of Criminal Justice Act (ACJA) 2015 and its Envisaged Challenges

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Abstract

Whereas the need for individuals to be vaccinated against the scourge of the dreaded corona virus disease (COVID-19) is arguably to boost immunity and prevent further infection as well as guarantee public health and public safety, it is worrisome to constrain citizens against the exercise of their human freedoms same which are guaranteed by, and enjoy the recognition of, international human rights law as well as the 1999 Constitution of the Federal Republic of Nigeria (CFRN) as amended, being the fundamental law of the land. Following the proclamation by the federal government of Nigeria and replicated by governments of States of the federation on the issue of mandatory vaccination of all employees of the government as a condition for their continued access to their work environment, this paper holds the view that the said directive seeks to place social interests over and above the individual's fundamental rights and therefore in utter violation of the inalienable rights of citizens under the Constitution. The paper calls for the said directive to be struck down for being inconsistent with Chapter 4 of the 1999 CFRN as amended. It is argued that the right to accept any kind of medical exertion upon a person is subject to the discretion of the individual. Forced or compulsory vaccination offends the fundamental rights to privacy of individuals as well as their freedom of thought, conscience and religion pursuant to the provisions of section 38 of the Constitution.

Key Words: Compulsory Vaccination, Covid-19, Public Policy, 1999 CFRN, Fundamental Rights.

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1. Introduction

In the criminal jurisprudence in Nigeria, it would appear that plea bargain as a prosecutorial strategy or tool is an emerging phenomenon. There would appear to be no codified guidelines in relation to it as it obtains in some other jurisdictions. It would also seem that there is a dearth of decided Nigerian authorities on this subject matter as it is an emerging phenomenon¹. Historically, the concept of plea bargain itself originated from the American jurisprudence and became established in the case of *Brady v United State*². Britain and Canada are some of the leading countries having plea bargain system as part of their criminal justice system though with varying degrees of development.³

The practice of plea bargain became popular in Nigeria about a decade ago by the signing into law, the Economic and Financial Crime Commission Act.⁴ However, it was formally codified in 2010 in Anambra State, in Lagos State in 2011⁵ and in May 2015, the Administration of Criminal Justice Act 2015 was signed into law for the Federation of Nigeria⁶ thereby making specific pronouncement on plea bargain.⁷

Plea bargaining which is also known as negotiated plea, sentence bargain or charge bargain⁸ has become a phrase often used in literature on the administration of criminal justice system and it is an ubiquitous part of criminal justice system of most countries world over and

¹ PML (Securities) Co. Ltd, v FRN (2018) 13 NWLR (Pt,1635) 157 at 175.

² 397 U.S 742 (90 S.Ct.1463)

³ Abdullahi, I. 'Plea Bargaining in the United States of America: A model for Nigeria's Criminal Justice System' (2014) 2(4) *International Journal of Business & Law Research*,

⁴ See EFCC 2004 s. 14 (2) The Commission had prosecuted most public and private office holders who have been indicted of corruption. Examples, in 2006, Peter Odili former Rivers State Governor was prosecuted for money laundering, Ayo Fayose of Ekiti State was also prosecuted for stealing, SaminuTuraki Ex-Governor of Jigawa State was arraigned in 2007 for money laundering and misappropriation of funds; Orji Uzor-Kalu of Abia State was in 2007 accused of corruption and money laundering, Joshua Dariye of Plateau State was accused of mismanagement, in 2011 ChimarokeNnamani of Enugu State was accused of money laundering Muritala Nyanko of Adamawa State was in 2014, accused of money laundering. See Uche-Okobi J., the Burden of corruption; Tell (No. 17 April 27 2019)

⁵ See Ss. 75-76 of the Administration of Criminal Justice Law of Lagos State 2007

⁶ See the Administration of Criminal Justice Act 2015, its contents shall be discussed in the latter part of this work

⁷ See S.270 of the Administration of Criminal Justice Act, 2015 which is discussed in full in the latter part of this work.

⁸ PML (Securities) Co. Ltd, v FRN (supra)

international organizations.⁹ It is because of the significant role of plea bargain in criminal process that some commentators, writers and judges alike cannot imagine a criminal justice system without plea bargain.¹⁰

In Nigeria, the debate on the introduction and application of plea bargain into her criminal justice system swirled around and became pronounced within legal and academic circle following its application in a number of cases;¹¹ although, its application was not without opposition.¹²

Prior 2015, S. 14(2) of the Economic and Financial Crime Commission Act was relied upon in the application of plea bargain in Nigeria which was without procedural guidelines¹³. S. 270 of the Administration of Criminal Justice Act, 2015 becomes the first Federal Law that expressly provides for the use of the concept of plea bargain in the criminal jurisprudence of Nigeria¹⁴. The objectives of this work are to examine and critically analyze in detail, the provisions of S.270 of the ACJA with the aim of pointing out salient problems that this section of the Act might generate and to seek possible solutions to these problems.

In achieving this, this article is divided into four sections. Section one provides an in-depth appraisal of the concept of plea bargain, section two examines the types of plea bargain, section three appraises plea bargain as provided for under S.270 of the Administration of Criminal Justice Act, 2015 and the likely challenges in its application under the Nigeria criminal justice system; while section four is on the conclusion and recommendations.

⁹ Prakash, P. 'To Plea or not to Plea: The Benefits of Establishing on Institutionalized Plea Bargaining System in Japan' (2011) 20(3) *Pacific Rim Law and Policy Journal*, .1, see also Savitsky, D. 'The Problem with Pleas Bargaining: Differential Subjective Decision Making as an Engine of Racial Disparity in the United States Prison System' (2009) Ph.D. Thesis, Cornell University) 44

¹⁰ Milto, H. & Loftin, C. 'Mandatory Sentencing and the Abolition of Plea Bargaining: The Michigan Felony Firearm Statute' (1979) 13 (2) *Law and Society Review* 393-340

¹¹ The EFCC had applied the doctrine of plea bargain in cases involving Basil Nkerher see www.419scam.org/emails/2006_07/20/634232.1.htm accessed on 6 April, 2021, Ogunseye T., 'EFCC Recovers N2tnproperty from corrupt politicians;', *Sunday Punch* 17 (19612) November 14, 2010 p. 4., <<http://efccnigeria.org/efcc> and <http://www.nigerianrise.com/Nigeria>> accessed on 20 March, 2020.

¹² <<http://efccnigeria.org/image/efcc-2013-convictions.pdf>.2014> accessed on 18 February, 2021.

¹³ See the Economic and Financial Crime Act, Establishment Act No. 1 2004

¹⁴ PML (Securities) Co. Ltd, v FRN

2. Definition of plea bargain

Like other legal terminologies, plea bargain has no precise definition that is generally accepted, therefore scholars, jurists and the likes tend to define plea bargain from individual perception. However, there are similarities in these different definitions.

Black's law dictionary ¹⁵ defines it as:

‘An agreement between a prosecutor and a criminal defendant, whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for some concession by the prosecutor, usually a more lenient sentence or a dismissal of the other charges’.

The above was reaffirmed by the Nigerian Supreme Court in the case of *Nwude v FRN & Ors*¹⁶

Ayinla, Olusola & Ahmad (2014),¹⁷ see the concept of plea bargain as an agreement in a criminal case between the prosecutor and the defendant whereby the defendant agrees to plead to a particular charge in return for some concession from the prosecutor. Justice Arijit Pasayat¹⁸ in his lecture, describes plea bargain as an active negotiation process whereby an offender is allowed to confess his guilt in court (if he so desires) in exchange of a lighter punishment that would have been given for such an offence. In simple terms, a plea bargain is an agreement between the defense and the prosecution in which a criminal defendant forgo a trial, and instead pleads guilty to a less severe charge (or fewer charges) in order to avoid a potential lengthier sentence that may result if convicted at trial from the original charge or charges.¹⁹

¹⁵ Black's law Dictionary (9thed) edited by Garner B. A.. 1270, see also Cicchini M. D., 'Broken Government Promises: a Contract Based Approach, to Enforcing plea Bargains', (2008) 38 *New Mexico Law Review* 160

¹⁶ (2015) LPELR 25858 (CA)

¹⁷ Ayila, L.A., Olusola G.H. & Ahmad B.A., 'Applicability of Alternative Dispute Resolution and Plea Bargaining in the Nigerian Criminal Justice System' (2014) 2(2) *Africa Nazarene University Law Journal*, 181

¹⁸ Pasayat, A. 'Plea Bargaining' (Speech delivered at Ahmedabad, Gujarat on July 14, 2007). It is a form of negotiation resolving one or more criminal charges against the defendant without trial see also Alkon, C. 'Plea Bargaining as a Legal Transplant: A Good Idea for Troubled Criminal Justice System' <<https://scholarship.law.tamu.edu/facscholar/268>> accessed 10 April, 2021 385. See also Nchi, S.I., 'The Nigerian Law Dictionary' 2nd ed., Green world publishing Ltd., Jos 4032 where he defined plea bargaining as a formal agreement whereby the accused person agrees to plead guilty to one or some charges in return for the prosecution agreeing to drop other charges or a summary trial.

¹⁹ Krammer, G. M. (2005). 'Plea Bargaining Recommendations by Criminal Defense Attorneys: Legal, Psychological, and Substance Abuse Rehabilitative Influences' (2005) p.2., see also Tor, A., Gazal-Ayal, O & Garcea, S.M 'Fairness and the Willingness to Accept Plea Bargain Offers' (2010) 7(1) *Journal of Empirical Legal Studies* 1.

Plea bargaining is an agreed tradeoff between the prosecutor and the defence that involves an admission of guilt to a specific infringement and/or specific facts, in exchange for some reduction in penalty and/or findings on specific facts.²⁰ It could also be bilateral interaction between a prosecutor on one side, and defendant, and his or her lawyer on the other, thereby disregarding the important role that judges sometimes play as defacto bargainers.²¹

In the case of *Santobello v New York*,²² the Supreme Court of the United States of America per Chief Justice Burger, described plea bargaining as the disposition of criminal charges by agreement between the prosecutor and the accused, sometime loosely called 'Plea bargaining'.

3. Features of plea bargaining.

One striking feature that can be deduced from the above definitions is that plea bargaining is an agreement or negotiation. It is a negotiated agreement between the prosecutors and a criminal defendant which by implication presupposes that the accused or criminal defendant and the prosecutor must jointly agree on the contents of the negotiation and expected outcome of the said agreement. It therefore stands to reason that the concept of plea bargain clearly operates in personam and not by privy or proxy²³. In the case of *Igbinedion v FRN*²⁴, where the court was faced on whether a plea bargain can be done in absentia or by representatives of the accused person held that:-

²⁰ Lawrence . J., O'Kane . M., Rab . S. & Nakhwal , J. (2008). 'Hardcore Bargains: What Could Plea Bargaining Offer in UK Criminal Cases?' (2008) *Comp Law* 19. See also, McConkie , .D.S. ' Judges as Framers of Plea Bargaining' (2015) (26)61 *Stanford Law and Policy Review* 66 where he said that plea bargaining refers to defendants giving up their trial related constitutional rights and pleading guilty in exchange for prosecutorial concessions, like lighter sentences and dismissals of charges.

²¹ O'Hear . M .M., 'Plea Bargaining and Procedural Justice. (2008) 42(2) *Georgia Law Review* 414

²² Supra Also in **People v Orin**, the Californian Supreme Court explained that the process of plea bargaining which has received statutory and judicial authorization is an appropriate method of disposing of a criminal case in which the prosecution contemplates an agreement negotiated by the people (the prosecutor) and approved by the court. In **People v Cole** (2001) 88 cal. App. 4th 850-958 plea bargain was held to be an agreement to limit the defendant's penalty in exchange for a guilty plea. Also in **People v. Allan** (1996) 49 cal. App. 4th 1507 the court explained that plea bargain occurs when the defendant admits to a lesser charge or pleads guilty to some charges in exchange for dismissal of other allegations.

²³ PML (Securities) Co. Ltd, v FRN (supra)

²⁴ (2014) LPELR 22766(CA)

‘I am of the humble view that a plea bargain agreement is a post-arraignment agreement of some sort since it may result in a situation where the accused may plea guilty to some charges against him, so that others may be dropped. In the same vein, a plea bargain cannot be done in absentia or by representatives of the accused person. Since the accused must personally make his plea in court, an accused person must also be present personally to negotiate his plea bargain agreement’

If the concept of Plea bargain is a negotiation or an agreement, it means that for it to be effective, all the elements that make a simple contract to be valid must be present. That is, for there to be a valid and acceptable plea bargain in the eye of the law between the prosecutor and a criminal defendant, all the essential elements of a valid contract must be present to wit: there must be offer which may be proposed and made known to the defendant by the prosecutor or by the defendant to the prosecutor,²⁵ or through judicial discretion²⁶. There is need for acceptance; which is to be made by the defendant himself or on his behalf and on his instructions by a counsel after weighing and considering the offer.²⁷ Consideration must also be present for the plea bargain to be valid. In this instance, consideration on the part of the defendant is his plea of guilty (surrendering his constitutional rights to trial, thereby saving the prosecution’s time to prove the case against the defendant beyond reasonable doubt²⁸ and also saving cost that ought to have been incurred had the case went on full trial). On the part of the prosecution, it is his readiness to drop some charges, recommending lesser or minimum sentence or not tendering some facts that may be implicative or detrimental to the defence. More so, parties must be contractually capable,²⁹ there should be free entry and exit and finally, there ought to be intention to create legal relation.³⁰

Although plea bargain is an agreement, unlike a simple contract or agreement, it must be evidence in writing hence, cannot be made orally. In the case of *Igbinedion v FRN*³¹ the court held that:- ‘parties cannot expect the court to act on an imaginary agreement. Even though there was, at that time no procedural law of the Federal High Court or the Criminal Procedure Act regulating plea bargain agreement. I am of the humble opinion that the procedure employed by parties was too casual.

²⁵ See S.270 Administration of Criminal Justice Act, 2015.

²⁶ See *Olugbenga v FRN* (2018) LPELR 47572 (CA)

²⁷ *Ibid*, P. 61.

²⁸ S. 139 (1) of the Evidence Act, Cap E14 LFN 2004.

²⁹ *Adekunle*, Op.Cit. at 12.

³⁰ *Alabama v Smith* (1989)490 US794,109

³¹ *Supra*

Even in ordinary out of court settlement issues, parties reduce their settlement terms into writing and present it to the court. The documentation of a plea bargain agreement is not only desirable, it is most logical as it would prevent the inconsistencies that trail oral evidence such as distortion of agreement terms by parties at will³²

4. Merits and demerits of plea bargaining

Plea bargaining as a legal compromise at its best, allows the criminal justice system to tailor an appropriate resolution to a defendant's case. It has over the years attracted critics and apostles within academics, legal practitioners and the general public. This has accounted for the argument for or against plea bargaining.

4.1. Merits

Despite the criticisms against the practice of plea bargain, there are some advantages associated with the concept. They are:-reduction of the work load of judges as the court is saved of the burden of conducting a trial on every crime charged and the uphill task prosecutors' face in investigating crime makes justice faster and save the time of the defendant³³ and the court. If well utilizes, plea bargain can be reached within a day thus significantly saving the time and resources of the court, prosecutors, individual defendants, increase access to justice, improve human rights practice and greater public trust in the legal system.³⁴It reduces the cost of investigating crime.³⁵The use of the doctrine of plea bargain allows victims to be shielded from the emotional stress and sensationalism of trial.³⁶ If minor cases are plea bargained, it will reduce or decongest the prison.³⁷ Both sides are also spared the uncertainty of going to trial³⁸.

³² Underline ours

³³ Kathuria, S.'The Bargaining Has Been Struck: A Case for Plea Bargaining in India' (2007) 19(2)*Manupatra*, 19(2).60. In *Argersinger v Hamlin*, 407 US 25, 34-36 (1972) cited by Work. M. Creating Constitutional Procedure: Frye, Lafler and Plea Bargaining Reform., (2014) 104(2) JCLC .457., the Supreme Court recognized the problems associated with the mass volume of cases in the legal system.

³⁴ Alkon. C. 'Introducing Plea Bargaining into Post-Conflict Legal System' (A 2011 Research Memorandum for INPROL).11.

³⁵. Adefulu, R, Akinola, O. &Ameh, C.G. 'Lagos Boy Return from Prison' Sunday Sun 6(413) February 27,2011.12. see also Adeleke, Op.Cit.at. 61.

Wan. T.'The Unnecessary Evil of Plea Bargaining: An Unconstitutional Conditions Problem and a Not-So-Least Restrictive Alternative' (2007) 17(1)*Review of Law and Social Justice* .40.

Plea Bargain pros and cons, <http://criminal.findlaw.com/criminal-procedure/plea_bargain_pros-cons.html> accessed on 19 March, 2021. See also Pradeep, K.P. <www.kja.nic.in/.../PLEA%20BARGAINING.pd...>accessed 19

Proponents of plea bargain are of the view that it is appropriate as a matter of sentencing policy, to reward criminal defendant who accepts and acknowledges his guilt. It is obvious that for most criminal defendants to accept their guilt, such person must have been remorseful; accept responsibility, willing and ready to enter the correctional system in a frame of mind that may afford hope for rehabilitation over a short period of more than otherwise would be necessary.³⁹

Another justification for plea bargaining is that it makes the legal system more flexibility. It allows the prosecutor to take into account equitable factors in a particular case so that the punishment can be tailored to the crime and to the person⁴⁰ thereby giving room for greater flexibility in sentencing, allowing the prosecution and defence to construct more individualized sentencing through the informal negotiation process and it can be a useful tool for fighting complex crimes like corruption and organized crime.⁴¹

4.2. Demerits

The concept of plea bargain is no doubt without criticisms. The antagonists of plea bargain posited that Plea bargain is a challenge and an affront to constitutional provisions because certain procedures adopted in reaching a plea bargain agreement does not put into contemplation certain constitutional provisions. Constitutionally, the State represented by the prosecution, is required to proof the crime or allegation against an accused person beyond reasonable doubt.⁴² Its procedures ought to be held in public⁴³ except for few instances

March, 2021. , Shajobi- Ibikunle, D.G. ' Challenges of Imprisonment in the Nigeria Penal System: The way Forward' (2014) 2(2) *American Journal of Humanities and Social Sciences* 97

³⁸ See *Igbinedion v FRN* (supra)

³⁹ <<http://www.law.jrank.org>>pages>1289> guilty.pl...> accessed on 4 August, 2021.

⁴⁰ Wan, Op.Cit. at. 39.

⁴¹ <<http://www.law.jrank.org>>pages>1289> guilty.pl... >accessed on 4 August, 2021.

⁴² See generally S. 36 of the 1999 constitution of the Federal Republic of Nigeria which provides that; in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independent and impartiality. Ss. 4 makes provisions for fair hearing in public within a reasonable time by a court or tribunal. subsection, 5 further provides that every person who is charged with a criminal offence shall be persecuted innocent until he is proved guilty.

⁴³ S. 36(4) Constitution of the Federal Republic of Nigeria 1999.

whereby criminal trial is not allowed to be held secretly. On the contrary, plea bargaining is normally done secretly thereby excluding the publicity of its procedures. It may be used to cover up other matters, including police misconduct, wide-scale fraud or undiscovered crimes.⁴⁴

Adekunle (2012)⁴⁵ opined that plea bargaining is disadvantageous in its effect on the society as the victims of crime decry the lighter punishment or sentences which it produces. It may also lead to coercion;⁴⁶ prosecutors may also be influenced by their personal views of the law without a roving enquiry.⁴⁷ It may leads to conflict of interests and prosecutions may rationalize decisions that serve primarily their own interests thereby undermining the integrity of the criminal justice system.⁴⁸

5. Types of plea bargain

Generally, there is no consensus as to the types of plea bargain.⁴⁹ However, there exist charge bargaining⁵⁰ and sentence bargaining. Others includes count bargaining, fact bargaining, express bargaining, implicit bargaining and specific sentences agreement.

5.1. Charge Bargaining

This type of bargain occurs when a criminal offender who is charged with multiple offences accepts or agrees to plead guilty to a lesser charge⁵¹ or to one or several charges in return for the dismissal of other charges.⁵² Charge bargaining is arranged in such a way that the prosecutor takes out a less serious offence charge which carries a consequent less punishment than what would have been obtainable if the original charge were preferred and the accused successfully prosecuted. The legal implication of charge bargaining is that where a criminal defendant is charged with more than one charge and he agrees

⁴⁴ Appleman, L. 'The Plea Jury' (2010) 85 (731) *India Law Journal* 756.

⁴⁵ Adekunle. T.K., 'Plea Bargaining and the Nigerian Penal System: Giving Judicial Imprimatur to Corruption.', p.12.

⁴⁶ Ibid.

⁴⁷ Appleman supra at. 76

⁴⁸ Ibid.

⁴⁹ Oguche, identified two types of plea bargain, Pradeep mentioned three types and that in international jurisprudence, three are two types namely: express bargaining and implicit bargaining, Santyalluded to four types of plea bargaining.

⁵⁰ PradeepK.P.<www.kja.nic.in/.../PLEA%20BARGAINING.pd...> accessed 19 April, 2021.

⁵¹ PradeepK.P.<www.kja.nic.in/.../PLEA%20BARGAINING.pd...> accessed 19 April, 2021.

⁵² Santhy, K.V.K., 'Plea Bargaining in US and Indian Criminal Law confessions for concession', 85.

to plead guilty to one or more of these charges (usually to a lesser charge), he will be convicted on the charge or charges to which he pleaded guilty while the prosecutor drops the other charges against such criminal defendant.

5.2. Sentence Bargaining

This type of bargaining which was formulated in India⁵³ is used where an offender is charged with an offence that has an alternative punishment. It occurs where the defendant who has been charged with a criminal offence agrees to plead guilty to a charge in exchange for the prosecution agreeing to a minimal punishment. It occurs where a criminal offender bargains for a favourable sentence recommendation by the prosecutor, or bargaining directly with a trial Judge for a favourable sentence.⁵⁴

5.3. Fact Bargaining

This type of bargain is not as commonly used as charge bargaining and sentencing bargaining. Here the prosecutor agrees not to contest the accused version of the facts or agrees not to reveal aggravating factual circumstances to the court. This form of bargaining will mostly occur where prove of some facts or adducing some evidence would lead to mandatory minimum sentence or to a more severe sentence under sentencing guidelines.⁵⁵

5.4. Express bargaining

Express bargaining occurs when an accused or his lawyer negotiates directly with a prosecutor or a trial judge concerning the benefits that may follow the entry of a plea of guilty⁵⁶ and it is mostly used in International Courts.

⁵³ Santhy, K. V. K., 'Plea Bargaining in US and Indian Criminal Law concessions for concessions 86

⁵⁴ Pradeep. K.P. <www.kja.nic.in/.../PLEA%20BARGAINING.pd...> Accessed 19 April, 2021. See also S. 270 (4) (a) ACJL Act 2015.

⁵⁵ Pradeep K.P. <www.kja.nic.in/.../PLEA%20BARGAINING.pd...> accessed 19 April, 2021.

⁵⁶ Santhy. K. V. K., 'Plea Bargaining in US and Indian Criminal Law concessions for concessions 86.

5.4. Implicit Bargaining

This is the negotiation that occurs with meeting face to face. Here the trial judge establishes a pattern of treating accused who plead guilty more leniently than those who exercise the right to trial.⁵⁷

5.6. Specific Sentence

This type of plea bargain is specifically mentioned and provided for under Rules 11 (c) (i) of the Federal Rules of Criminal Procedure of the United States of America. It allow parties to a plea negotiation to determine, modify or suggest the type of sentencing that will be appropriate to dispose of the case and or the section of the sentencing guideline or policy that will not apply.⁵⁸

6. Plea bargain under the Nigerian criminal jurisprudence

There are two schools of thought concerning whether Plea bargain is alien or not to the criminal jurisprudence of Nigeria. On one side is the school of thought that posits that the concept is alien to the criminal jurisprudence of Nigeria and as such the school believes that the concept is new to the criminal justice system of Nigeria while the second school of thought is of the view that plea bargain has been part of the Nigerian criminal jurisprudence prior to 2004 when it was impliedly mentioned in the Economic and Financial Crime Act.

Eso, JSC⁵⁹ (as he then was), Dahiru Musdaphar, Acting C.J.N. (as he then was)⁶⁰ and Prince Bola Ajibola⁶¹ are some of those with the view that plea bargain has never been part of Nigerian law.

The likes of Uwais, C.J.N ⁶²(as he then was) and Jiti Ogunye,⁶³are of the opinion that the concept of plea bargain has always been part of Nigerian criminal justice system. They cited S. 14(2) of the Economic and Financial Crime Act, S. 180 (1) of the Criminal Procedure Act, Ss 75 and 76 of the Administration of Criminal Justice Law of Lagos State 2007 and Ss 174 and 211 of the Constitution of the Federal Republic of

⁵⁷ Pradeep K.P. <www.kja.nic.in/.../PLEA%20BARGAINING.pd...>accessed 19 April,2021.

⁵⁸ Ibid.

⁵⁹ Vanguard Newspaper of November 18, 2012, Musdaphar, D., At a press conference themed: "Legal Practice in Nigeria: Venturing Beyond the Usual Borders", organized by the Nigerian Bar Association Abuja on November 14, 2011

⁶¹ Prince Bola Ajibola (SAN) was cited by Ted C.E. and Eze A.G'A Critical Appraisal of the Concept of Plea Bargaining in Criminals Justice Delivery in Nigeria' (2015)3(4) G.J.P.L.R. 42.

⁶² <www.premiumtimesng.com>opinion> accessed 29 August, 2015.

⁶³ <www.premiumtimesng.com>opinion> accessed 29 August, 2015..

Nigeria as the legal basis for plea bargaining. It is opined that Ss 75 and 76 of the Administration of Criminal Justice Law of Lagos State, 2007 are too recent to be relied upon in arguing that the concept of plea bargain has being part of Nigerian criminal justice system.

Odinkalu (2012)⁶⁴ argues that by virtue of S. 180 (1) of the Criminal Procedure Code, plea bargain has been part of the Nigerian legal jurisprudence. It is opined here that despite the divergent views as to the legal basis of plea bargain in Nigeria, the doctrine of plea bargain, is relatively new in application to Nigerian criminal jurisprudence. This is because, the Criminal Code⁶⁵ and Penal Code⁶⁶ which are the two basic criminal laws applicable in the Southern and Northern part of Nigeria respectively, have no provision for plea bargain.

The provisions of the Criminal Procedure Act quoted above which is said to be the legal basis for the application of plea bargain in Nigeria, applies only to the courts in the Southern part of Nigeria and all the Federal High Courts throughout Nigeria. In the Northern part of Nigeria, the Criminal Procedure (Northern States) Act⁶⁷ is applicable without provisions similar to S. 180 (1) of the C.P.A. Therefore, even if S. 180 (1) of the CPA is interpreted to mean the basis for the application of plea bargain in Nigeria, then it means that plea bargain was limited to the Southern part of Nigeria and the Federal High Court.

The concept of plea bargain became popularized in the Nigerian criminal jurisprudence with the enactment of the Economic and Financial Crime Commission (Establishment) Act No. 1, 2004.; S. 14 (2) of the said Act gives the Commission the leverage to apply the plea bargain principle when it provides that:

‘subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria 1999 (which relates to the power of the Attorney-General of the Federation to institute, continue, takeover or discontinue criminal proceedings against any person in any court of law), the Commission may compound and offence punishable under this Act by accepting such sums 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’

Explaining the above quoted provisions of the law, Alubo⁶⁸ opined that ‘Compounding here means the Commission may let go off the

⁶⁴ Odinaku C., Vanguard Newspaper, June 20, 2012, 1 cited by Adeunle T.K. 13

⁶⁵ Cap C38 LFN 2004.

⁶⁶ Cap P3 LFN 2004.

⁶⁷ Cap C41 LFN 2004

⁶⁸ ALubo, A.O. ‘Plea Bargain and the Anti-Corruption Crusade in Nigeria’(2009) 8(2) *University of Jos Law Journal*, 15 cited by Shittu, W. K., ‘The Prosecutors Role in

offence or put 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. In *LPMS(Securities Ltd. v FRN*⁶⁹, the court held that the first legislation to bring in plea bargain into our criminal jurisprudence is the Administration of Criminal Justice Law of Lagos State 2011 while the second is the Administration of Criminal Justice act, 2015.

7. Plea bargaining under the Administration of Criminal Justice Act (ACJA) 2015

The Federal Government in its efforts to finding lasting solutions to the problems facing the criminal justice system of Nigeria signed into law, the Administration of Criminal Justice Law Act. S.270 of this Act can be construed to be the very first Federal legislation that expressly makes provisions and procedures for the use of the concept of plea bargain⁷⁰. Under sub section 1(a) (b), plea bargain may be proposed by a defendant charged with an offence directly or on his behalf or the prosecutor. One out of the conditions listed under sub section 2 (a-c), must be present before the prosecution can offer or accept to plea bargain. They are that: the evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt, the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative or the defendant, in a case of conspiracy, has fully cooperated with the investigation and prosecution is of the crime by providing relevant information for the successful prosecution of other offenders.

Apart from the above, plea bargain will only be entered into where the prosecutor 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 abuse of legal process, he may offer or accept the plea bargain.

The prosecutor and the defendant or his legal practitioner may, before the plea to the charge, enter into an agreement in respect of the term of the plea bargain which 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

Plea Bargaining' (in a paper presented at the Nigerian Institute of Advanced Legal Studies Roundtable on Conviction to compromise the plea bargain option, Abuja, 2012.)

⁶⁹ Supra

⁷⁰ ACJA 2015

offence of which he may be convicted on the charge and an appropriate sentence to be imposed by the court where the defendant is convicted of the offence to which he intends to plead guilty.⁷¹ The prosecutor may only enter into a plea agreement after consultation with the police responsible for the investigation of the case and the victim or his representative and must have due regard to the nature of and circumstances relating to the offence, the defendant and public interest

What constitute public interest as spelt out in sub section 5 are:

- (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 contribution 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 the probable effect on witnesses,
- (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 where appropriate.

The prosecution shall afford the victim or his representative the opportunity to make representations to the prosecutor regarding the content of the agreement and the inclusion in the agreement of a compensation or restitution order.

Plea bargain under this Act shall be in writing and state that, before conclusion of the agreement, the defendant has been informed that:- i. he has a right to remain silent, ii. the consequences of not remaining silent, and iii. that he is not obliged to make any confession or admission that could be used in evidence against him. Also, the agreement shall state fully, the terms of the agreement and any admission made and shall be signed by the prosecutor, the defendant, the legal practitioner and the interpreter, as the case may be.⁷²

The presiding Judge or Magistrate before whom the criminal proceedings are pending shall not participate in the discussion of the plea agreement. After a plea agreement is reached by the prosecution and the defence, the prosecutor shall inform the Court that the parties

⁷¹ See S.270 (4) a& b ACJA 2015

⁷² See S.270 (7) ACJA 2015

have reached an agreement and the presiding judge or magistrate shall then inquire from the defendant to confirm the terms of the agreement. The presiding Judge shall ascertain whether the defendant admits the allegation in the charge to which he has pleaded guilty and whether he entered into the agreement voluntarily and without undue influence.

Where the presiding Judge is satisfied that the defendant is guilty of the offence to which he has Pleaded guilty, he shall convict the defendant on his plea of guilty to that offence, and shall award the compensation to the victim in accordance with the term of the agreement which shall be delivered by the Court in accordance with section 308 of this Act and if the presiding Judge is for any reason of the opinion that the defendant cannot be convicted of the offence in respect of which the agreement was reached and to which the defendant has pleaded guilty or that the agreement is in conflict with the defendant's right referred to in subsection (6) of this section, he shall record a plea of not guilty in respect of such charge and order that the trial proceed.

It is worthy to state that the presiding Judge is empowered to approve the sentences agreed upon or vary same by either reducing or increasing the sentences agreed upon where he considers it needful to do so.⁷³ Where the defence disagrees with the variation, the case shall be transferred to another Judge to start *de novo* and reference shall not be made at all to the rejected plea agreement⁷⁴.

The presiding Judge shall also make an order that any money, asset or property agreed to be Forfeited under the plea bargain shall be transferred to and vest in the victim or his representative or any other person as may be appropriate or reasonably feasible and the prosecutor shall take reasonable steps to ensure that any money, asset or property agreed to be forfeited or returned by the offender under a plea bargain are transferred to or vested in the victim, his representative or other person lawfully entitled to it. It shall be an offence punishable with seven years' imprisonment for any person who, willfully and without just cause, obstructs or impedes the vesting or transfer of any money, asset or property under the Act.

Where a person is convicted and sentenced under the provisions of this Act, he shall not be charged or tried again on the same facts for the greater offence earlier charged to which he had pleaded to a lesser offence and the judgment of the court contemplated in subsection 10(a)

⁷³ See S 270 911) ACJA 2015

⁷⁴ See S 270 (15 -16) ACJA 2015

of this section shall be final and no appeal shall lie in any court against such judgment, except where fraud is alleged.⁷⁵

8. Perceived challenges in the implementation of plea bargain in Nigeria

S. 270 (1) (a) allows the defence or his representative to enter into a plea agreement. The question is; ‘can a non-lawyer enter into such agreement on behalf of the defence?’ Also, S. 270 (6)(a)(b) of the Administration of Criminal Justice Act 2015 allows victims or his representative to make representation to the prosecutor regarding the contents of the agreement including the issue of restitution or compensation, the law is not wide enough on this important area.

The problems are (1) ‘can the victim direct the prosecution or veto the decision of the prosecution?’ (2) How will the victim concern be made known, is it in oral or in written form? (3) Is the victims’ view relevant and necessary before the court? (4) Is the discretionary power given to the prosecutor in this subsection a negation of victims’ right? To find a clue to these questions, the phrase ‘representation’ as provided for under S. 270 (6)(a)(b) need to be clarified.⁷⁶

The Act is silent on who should be entitled to the proceeds recovered from offenders who plead guilty to a crime where the victim is an artificial person recognized by law with many shareholders. For instance, the non-remittance of these recovered assets to the respective owners had raised the moral question of the *raison d’etat* of the State. That is, in whose interest is the State acting? Interest of the few or majority?⁷⁷ These assets and funds have been remitted to the purse of the Federal Government without taking into consideration the States and other private victims from whom the funds must have been stolen⁷⁸.

⁷⁵See S 270 (17 -18) ACJA 2015

⁷⁶ In some States in the United States of America, the obligation is to confer appears to be limited to notifying, informing or advising victims of a plea bargain or agreement that has already been reached before presenting the proposed plea to the court. While in some, prosecutors must both inform and consult with the victim throughout the plea agreement negotiation process. Victim Input into Plea bargaining, O.V.C. Legal Series 2002.

⁷⁷ Adekunle, ‘Prosecuting Corruption and the Application of Plea Bargaining in Nigeria: A Critique’63.

⁷⁸ Recently, the United Kingdom returned some of the money James Ibori looted from Delta State while he was the Governor to the Nigerian Government. The Federal Government vowed to use the money to complete the Ibadan – Lagos expressway.

Another perceived problem in the application of plea bargain in Nigeria as provided for under the Administration of Criminal Justice Act 2015, is that it is limited in territorial application. Although the purpose of the Act is to ensure that the 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, defendant and the victim,⁷⁹ its application is limited by implication, to courts in Federal Capital Territory, Abuja and Federal High Court.⁸⁰ The Federal High Court in exercising its criminal jurisdiction applies the rules and procedures of the Criminal Procedure Act which is applicable in the Southern part of Nigeria. S. 33 of the Federal High Court Act provides that:⁸¹

‘Subject to the provisions of this section, criminal proceedings before the court shall be conducted substantially in accordance with the provisions of the Criminal Procedure Act and the provisions of that Act shall, with such modification as may be necessary to bring into conformity with the provisions of this Act.’

Plea bargain as provided for under S.270 of the Administration of Criminal Justice Act, is not applicable to State Courts such as Area Court, Magistrate Court and State High court. The implication is that all the Federating States have to enact their own law on plea bargain, domesticate the Act or in the alternative courts can apply the doctrine of covering the field into the application of plea bargain through the Federation of Nigeria as it has been applied to Robbery and Firearms (Special Provisions) Act⁸² which covers all the States of the Federation.

Further to the above is the fact that judgment of the court as contemplated in S. 270 (10)(A) shall be final and no appeal shall lie in any court against such judgment except where fraud is alleged. This constitutes another problem to the effective implementation of the concept of plea bargain in Nigeria as this subsection may create constitutional crises. This is predicated upon the fact that Ss.1 (1) (3), 6 and Chapter VII of the 1999 Constitution of the Federal Republic of Nigeria provide for supremacy of the constitution, judicial powers and courts respectively.

⁷⁹ See S. 1(1) A C JA, 2015.

⁸⁰ See S. 2(1) ACJA, 2015.

⁸¹ Cap F12 LFN 2004.

⁸² Cap. R11 LFN 2004

Also, the Act is silent on cases or crimes which can be plea bargained. In their article, Ayinla, Olusola and Ahmad⁸³ canvassed for the non-applicability of plea bargain to cases such as corruption, rape, fraud and stealing of public funds. The EFCC Act contains cases that can be plea bargained but the ACJA is silent on this crucial issue. This study to some extent aligns with the view of Ayinla, Olusola and Ahmad except that cases on corruption, fraud stealing of public and private fund should not be excluded from being plea bargained but offenders in addition to surrendering that which had been stolen and made to serve some jail term, should be barred from holding any political office for life. Plea bargain being a contractual agreement presupposes that there are other ways through which it can be vitiated such as misrepresentation, mistake and duress.

9. Conclusion

This work appraises the provisions of the concept of plea bargain as provided for in the Administration of Criminal Justice Act, 2015. The Act is a commendable piece of legislation. However; there is the need to amend S. 270 of the Act to take care of the challenges stated above and the need to organize training not only for judicial officers but for legal practitioners, Police, and Judges saddled with the responsibility of implementing the concept of plea bargain as provided for under the Act. The concept of plea bargain being relatively new in the criminal jurisprudence of Nigeria, there is the need for training and continuous training of officials whose duty it is to implement the Act, sensitization of the public on what plea bargain is all about and the expected gains derivable from its inclusion into the Nigeria criminal justice system. It is only the full compliance with this section as provided for in the Act that will ensure the attainment and fulfillment of the objectives of the reform. The use of Plea bargaining should be encouraged in petty crimes so as to decongest the court, correctional facilities in Nigeria and will save Government the cost of maintaining these facilities. Plea bargain will also create room for a true reconciliation among victim, offender, their families and the community if well utilized.

⁸³ Ayila, L.A., Olusola, G.H. & Ahmad, B.A., *supra*189.