

## **A CRITICAL APPRAISAL OF THE CONCEPT OF PLEA BARGAINING IN CRIMINAL JUSTICE DELIVERY IN NIGERIA**

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**ABSTRACT:** *The concept of “plea bargain” is a new phenomenon in the Nigerian legal system. It has been trailed with a lot of controversy. The Economic and Financial Crimes Commission has recently been applying the concept to release many corrupt public officers who should have been in jail. The idea is that they agree to plead guilty for a lesser charge with minimal punishment in exchange for the return of most of their stolen wealth. The opponents of this practice believe that the end result of the practice would be counterproductive in the fight against corruption as it will encourage other public officers to steal public money. This paper examines the origin of the concept, its development across the globe and the issues arising from the emerging practice of plea bargain in Nigeria. The paper also makes some valuable suggestions as to how not to make the practice become a leeway for encouraging treasury looters.*

**KEYWORDS:** Plea Bargaining, Criminal Justice, Legal System.

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### **INTRODUCTION**

The term “plea bargaining” is derived from the words “plea” and “bargain”. The word “plea” has been defined to mean “an accused persons formal response of “guilty”, “not guilty”, or no contest to a criminal charge.<sup>1</sup> The word “bargain” on the other hand literally means that act of negotiating a settlement. In law, it has been defined as follows:

A bargain is an agreement of two or more persons to exchange promise or to exchange a promise for a performance.<sup>2</sup>

A bargain is therefore broader in meaning than a contract since it does not involve sufficiency of consideration. A bargain is not applicable to every contract. A plea bargain is therefore a sort of a criminal charge. The parties involved in a plea bargain are the prosecutor and the defendant/accused person. The Blacks Law Dictionary has deferred plea bargain as:

A negotiated agreement between a prosecutor and a criminal defendant pleads guilty to lesser offence or to one or more multiple charges in exchange for some concession by the prosecutor, usually a more eminent sentence or a dismissal of the other charges.<sup>3</sup>

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<sup>1</sup> Bryan A. Garner (ed. In .C) Black’s Law Dictionary (8<sup>th</sup> ed) (Minnesota: Thompson Web Publishers, 2004) p. 1189

<sup>2</sup> *ibid* at p. 159

<sup>3</sup> *ibid* at p. 1190

The free Dictionary has also defined a plea bargain as a process where a criminal defendant and a prosecutor reach a mutually satisfactory disposition of a criminal case subject to the approval of the court.<sup>4</sup> A further definition has been given by the wikipedia, the free online encyclopedia wherein plea bargain was defined as:

an agreement in a criminal case between the prosecutor and the Defendant whereby the defendant agrees to plead guilty to a particular charge in return for some concession from the prosecutor.<sup>5</sup>

A common thread running through the above definitions is that the defendant may plead guilty to a lesser charge or to one of several charges in return for the removal of the other charges or that the defendant will plead guilty to the charge as it is in return for a more lenient sentence.

The main features noticeable from the foregoing perception of plea bargaining is that the process is at the discretion of the prosecutor subject however to the approval of the court where the charges are already before it. Thus, on the basis of a plea bargain, the prosecutor could decide to withhold the more serious charges. The defendant could on the basis of a plea bargain plead guilty to a lesser charge in exchange for the prosecutor's withdrawal of the more serious charges. Finally, where a plea bargain is approved by the court, it can hand down a more lenient sentence in respect of any charge before it.

## **HISTORY DEVELOPMENT OF THE CONCEPT OF PLEA BARGAINING**

The concept of plea bargain has been traced to the early 19<sup>th</sup> century when the adversarial system of adjudication began to rapidly evolve. <sup>6</sup>Legal technicalities that accompanied the adversarial system of jurisprudence complicated the simple criminal justice system leading to delays in the dispensation of criminal justice. To secure a conviction for an otherwise guilty defendant became an uphill task for many prosecutors. The end product was that most criminals that would have been convicted criminal usually escaped the hangman's nose. In some cases, people remained under detention unnecessarily as a result of legal technicalities occasioning delays in the conclusion of criminal cases. Plea bargaining emerged as a compromise to ensure that criminals were appropriately punished. It is also founded in the policy of the law to ensure that such punishment not only serves as deterrent to would be offenders, but would be in the best interest of society. The idea is that where a person who has stolen property, accepts to negotiate what he has stolen back, society would be better off receiving back what it has lost in terms of property. The criminal on his part for accepting to remedy the loss he has caused the society, should be mildly punished. It remains to be seen whether the act of treasurer looting inflicts only property damage to society. This is so because the very act of looting the public treasury flows from a debased mind and inflicts not only physical and financial injuries to the social psyche but also does moral and spiritual harm to the social fabric of which society is made of.

Nevertheless, most of the capitalist world has accepted plea bargaining back as a standard practice from getting back from property thieves what they have stolen through corrupt

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<sup>4</sup> Legal Dictionary. [thefreedictionary.com/pleabargain](http://thefreedictionary.com/pleabargain) (accessed 18/2/2013)

<sup>5</sup> [http://en.wikipedia.org/wiki/plea\\_bargain](http://en.wikipedia.org/wiki/plea_bargain), P1 of 11

<sup>6</sup> *ibid*

practices. From available statistics, 95% of criminal convictions in the United States have come from plea bargain otherwise known as negotiated pleas. In England and Wales, only 8% of criminal cases proceed to trial in Magistrate Courts while the remaining 92% is resolved by plea bargains.<sup>7</sup> In the British Crown Courts, only 14.3% of criminal cases proceed to trial while the remaining 61.3% are resolved through plea bargains.

### **Global Trends in the Adoption of the doctrine of Plea Bargain**

The adoption of plea bargain for the resolution of criminal cases that are in the nature of crimes has become widely accepted in most of the advanced capitalist economies. In the United States of America that can easily pass for the most developed capitalist economy, plea bargain was employed as early as the 1970's in property crimes and other offences that do not attract capital punishment. The aim was to save the society the huge expenses involved in litigation and to recover for it the stolen common wealth in property crimes cases. In the case of individual victims of property crimes, it was meant to assist such victims to recover what was stolen rather than merely punching the offender with the victim not regaining his property.

In the case of *Bradley V. United States*,<sup>8</sup> the American Supreme Court upheld the practice in 1970. The practice was also applied in dealing with the cases of Former American President, Spiro Agnew who was made to resign on account of corruption charges rather than face trial and Michael Jackson who was to face trial for child molestation. The practice is also being adopted in other common law and civil law jurisdictions within different forms.

### **THE UNITED STATES OF AMERICA**

As has been earlier noted, 95% of criminal cases in the United States of America have been resolved by plea bargains. In this country however, plea bargains are strictly subjected to the approval of the Court. Furthermore, different states and jurisdictions have different procedure for the application of the procedure in the United States.

The Federal Centenary guidelines are usually applied in relation to Federal offences. These guidelines were created to ensure that a uniform standard is applied by the Federal Courts in the adoption of plea bargain in criminal proceedings. These guidelines provide for two kinds of plea agreement. The first type of agreement consists of an ordinary recommendation to the court with respect to the defendant's plea of guilt. This is not however binding on the Court.<sup>9</sup> Under this arrangement, the prosecutor recommends to the Court boasted on a plea agreement between him and the defendant that a lenient sentence should be handed down on the defendant in exchange for the defendant's plea of guilty. As this recommendation is not binding on the court, the court can go ahead to impose the maximum sentence despite the recommendation from the prosecutor. This is because; the agreement is first submitted to the Court for its acceptance or refusal. Once the court accepts the agreement, it is bounded to sentence in line with the agreement.<sup>10</sup>

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<sup>7</sup> [www.Jsfor.org/stable/1142393](http://www.Jsfor.org/stable/1142393)

<sup>8</sup> 394 vs 742.90. S.C.T 1463, 25 L.ED 21747 (1970)

<sup>9</sup> Section 11 (c) (i) (B) Federal Rules of Criminal Procedure.

<sup>10</sup> Section 11 (c) (i) (c) *ibid*

In situations where the Court disapproves of the agreement after it has been submitted to it, the defendant is free to withdraw his guilty plea whereupon a full trial is ordered. But where the court accepts the agreement, it cannot thereafter resile from imposing its sentence in line with the agreement after the defendant has pleaded guilty.

In the states of California, plea bargain has assumed such a popular acclaim that the parties and their <sup>11</sup>attorneys are at liberty to reduce the plea bargain agreement into a prescribed written format that can be filed in court for the court to adopt same as its judgment in a criminal proceedings.

There are some features of the American judicial system that have promoted the growth and development of plea bargain. The first is the well established and functional practice of adversarial jurisprudence in the American Legal system. Another factor that has helped the system to grow is the absence of compulsory prosecution. Furthermore, private prosecution is not known to the American judicial system. In other words, prosecution for offences cannot be maintained by the victims of such offences.

### **Canada**

Plea bargaining is more restricted in Canada. This is because Canadian Judges are not bound by the crown's sentence recommendations. The Crown's prosecutors are however free to make such recommendations on the bias of a plea agreement with the defendant. <sup>12</sup>

In practice however, the crown will usually recommend a punishment to the court higher than what was agreed under a plea bargain while the defense will be urging a sentence far lower than that agreed upon with the crown prosecution when they appear before the judge. The aim is to enable the sentence of the Court to fall within the range of that agreed upon in the plea bargain. The Canadian Courts are aware of this practice and tends to encourage it, as a way of checking any above of the plea bargain system. This goes to show that Canada is aware of the possibility of converting the plea bargain procedure into an engine for perpetuating protection fraud.

### **India**

Plea bargain was introduced into the India legal system in 2006 by statute<sup>13</sup>. The statute however made the procedure applicable in criminal proceedings involving only minor offences which do and attract a punishment of more than 7 years. However, property offences in the nature of socio-economic crimes such as the looting of the public treasury and offences committed against a woman or a child less than 14 years of age are excluded from the application of the procedure. Thus, embezzlement of public funds such as was the case of Former American Fraudulent, Spiro Agnew and the molestation of children as in the case of Michael Jackson are excluded from the application of the procedure in India.

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<sup>11</sup> Farm CR-01, plea form with Explanations and Waiver of Rights – Felony, & (Judicial Council of California)

<sup>12</sup> *Op.cit*

<sup>13</sup> Criminal Law (Amendment) Acts, 2005,  
RH. XX 1 (A)

Similarly, those cases of economic corruption by political offices holders as in those cases being handled by the Economic and Financial Crimes Commission (EFCC) in Nigeria cannot benefit from the procedure in India.

### **Pakistan**

Pakistan is one country that views plea bargain with a lot of suspicion. It however introduced the procedure it into its legal system in 1999 as an anti-corruption Law.<sup>14</sup> The purpose of the procedure in Pakistan is to allow persons accused of official corruption to return what they have stolen as determined by investigators and prosecutors and regain their liberty with infracted political rights and damaged reputation. In Pakistan, the procedure benefits the society by having what has been taken from it restored while the perpetrator of the evil act is set free after being stigmatized. The procedure is at the instance of the accused person who makes an application making a frank disclosure of all he took from the public till. The application is scrutinized by the National Accountability Bureau who if satisfied, endorses the application and presents same to Court. The Court decides on whether or not to accept the application. Whether Court accepts the applications, the accused stands convicted but is not sentenced. After the conviction, the accused is discharged but banned from taking part in any elections or holding any public office. Furthermore, the accused is dismissed from any public occupied by him and is disqualified from seeking or obtaining a loan from any bank.

Apart from corruption cases, formal plea bargain are not popular in other cases in Pakistan. The prosecutor is however free to drop a charge in return for the defendant pleading guilty to lesser charges. Parties have no right to bargain about the penalty to be imposed on a defendant since this is solely at the discretion of the Court.

### **Other Common Law Jurisdictions**

In England and most of the other common law such as the Australian State of Victoria idea, it is only the Court that determines the appropriate penalty for an offence. Plea bargaining is usually conducted between the prosecutor and the defendant. The prosecutor usually drops some of the charges against the defendant in exchange for the defendant pleading guilty to a lesser charge. The court is not usually involved in the bargaining process even though it is aware of the process. The penalties are not usually bargained.

### **Civil Law Countries**

Plea bargain is abhorred in most civil law jurisdictions as they consider same as debating justice to ordinary trade by barter. In Central African Republic which is a civil law country, the offence of witchcraft if successfully established attracts a very heavy penalty. However, defendants who confess to the crime are usually given midst sentences.<sup>15</sup> This procedure is a form of plea bargain. In Estoma, a limited form of plea bargain is available to defendants in offences that do not attract more than four years punishment. Where a defendant pleads guilty to such an offence under a plea bargain agreement, he gets a 25% reduction in punishment for saving the Court and the prosecution the rigours of a full trial. France often regarded as the mother of all law country introduced a limited form of plea bargain into its jurisprudence at 2004 in a form known as *pléa* capable in respect of very minor offences.

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<sup>14</sup> National Accounting Ordinance I. 1999

<sup>15</sup> Graeme Wood (June, 2010), Hex Appeal at <http://www.theathantic.com/metazine/acheives/2010/6/lexappeal/81032>

<sup>16</sup> In this system, the public prosecutor proposes to suspect of relatively minor offences a penalty not exceeding one years imprisonment in return for a plead of guilty. The Judge was aligned to accept the deal if the suspect accept the proposal.

Plea bargaining was introduced into the Republic of Georgia in 2004. The substance of the Georgian plea bargaining procedure is similar to that of the United States and other common law jurisdictions. This is inspite of the fact that Georgia is a civil law country. Georgia has a statutorily established procedure for the practice of plea bargaining. It is the cardinal principle of plea bargaining in Russia that the procedure must be based on the freewill of the defendant. In order to ensure this, the defence counsel is obligated to participate in the process. <sup>17</sup>

The defendant also retains the right to reject a plea bargain agreement and opt for a full trial at any stage of the procedure before judgment.<sup>18</sup> As a further protection of the defendants right, all the information obtained from the defendant under a plea agreement are treated as “without prejudice” and cannot be used against him if full trial is later resorted to.<sup>19</sup> The defendant can also appeal against a judgment delivered on the basis of a plea bargain of the plea agreement was concluded by deception, coercion, violence or threat. <sup>20</sup>

In concluding a plea agreement in Georgia, the prosecution must take into consideration the public interest, severity of the punishment and the personal characteristics of the defendant. <sup>21</sup> For a plea agreement to have legal effect, it must receive the approval of the court. To give such approval, the court must satisfy itself that the agreement was concluded on the basis of the freewill of the defendant and that the defendant fully acknowledges the essence and consequence of the plea agreement. <sup>22</sup>

Before convicting a defendant on the basis of a plea agreement evidence exists to sustain the conviction. In other words, it is not just enough that the defendant has pleaded guilty to the charges. The court must also ensure that the agreement is legitimate and that there is no shade of illegality surrounding same. <sup>23</sup> The prosecutor is also obliged to consult with the victim and ensure that the damage done to him is compensated before concluding a plea agreement. <sup>24</sup> Statistics reveals that out of the 19,556 people against whom judgments were rendered in 2010 in Georgia, 15, 867 or 79.5% of such people were convicted on the basis of successfully concluded plea agreement.<sup>25</sup>

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<sup>16</sup> Les Chifferes – des de la Justice at <http://www.justice.fr/art—pix1-chipresd06.pdf> French Ministry of Justice, October, 2006.

<sup>17</sup> Article 210 of the Criminal Procedure Code of Georgia

<sup>18</sup> Article 213 *ibid*

<sup>19</sup> Article 214 *ibid*

<sup>20</sup> Article 215 *ibid*

<sup>21</sup> *op cit.* at fn. 17

<sup>22</sup> Article 23 *ibid*

<sup>23</sup> Article 212 *ibid*

<sup>24</sup> [http://www.justice.gov.ge/index.php?lang\\_id=ENG&SEC-id-672&info\\_id3605](http://www.justice.gov.ge/index.php?lang_id=ENG&SEC-id-672&info_id3605)

<sup>25</sup> Herman Joachim (1991-1992) bargaining Justice – A Bargain for German Criminal Justice at (<http://heineonline.org/aol/landingpage?Collection=Journals&handle=hein.journals/upitt53&div=268td=&page=53>), U Pitt. L. Rev., p. 755, <http://heineonline.org/hol/landingpage?Collection=Journals&handle=hein.journals/upitt53&div=26&rd=&page=>

Plea bargain has appeared only in few instances in Germany. The German Criminal procedure does not however have what can be correctly described as a system of plea bargaining.<sup>26</sup> In Italy, plea bargaining is in respect of sentences and not the charges. The purpose of plea bargaining in Italian jurisprudence is to avoid the rigors of a full trial in return for a lenient sentence for the defendant. The procedure is known as *patteggiamento*. It is however within the jurisdiction and powers of a judge to refuse or accept the plea bargaining.<sup>27</sup>

Finally, a limited form of plea bargaining exist in Roland. The procedure is activated by agreement between the defendant who accept to plead guilty, the prosecutor and the victim, subject to the approval of the Court. It is only applicable in minor offences which punishment does not exceed ten years imprisonment. All the parties to a plea agreement in Roland however have the right to appeal against the judgment based on the plea agreement.

Criticisms have however trailed the practice of plea bargaining both in common law and civil law countries. In common law countries, the system has been criticized on the ground that it infringes the rights of an individual guaranteed by the European Convention of Human Rights which has been incorporated into the United Kingdom's Human Rights Acts, 1998.<sup>28</sup> According to this reasoning, people who might have been acquitted for lack of evidence often plead guilty to lesser charges out of fear. In Civil countries, the system has been criticized for reducing justice to barter. The system is also difficult to practice in civil law countries because a plea of guilty does not absolve the prosecution from its duty to present a full case. In the absence of evidence to support the plea of guilty, a defendant can still be acquitted of an offence in civil law jurisdictions since the jurisprudential practice in those industries are inquisitional rather than adversarial.

### **The Emergence of Plea Bargaining in the Nigeria Legal System**

Plea bargain has never been part of the Nigerian legal system. This point was eloquently made by the Former Chief Justice of Nigeria, Hon. Justice Dahiru Metaphor. It was the Economic and Financial Crimes Commission (Establishment) Act No. 1 of 2004 that first established the procedure as a possibility in Nigeria.

#### **The EFCC Act provide as follows:**

Subject to the provision 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, take over or discontinue criminal proceedings against any person or in any court of law, the Commission may compound any offence punishable under the Act by accepting such sum of money as it thinks fit, not exceeding the maximum amount to which such person may be liable if he had been convicted of that offence.<sup>29</sup>

The offences referred to under these provisions are those punishable under the EFCC Act and the section does not therefore apply to general criminal trials in Nigeria. The offences listed under the Act include offences relating to financial malpractices offences in relation to

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<sup>26</sup> "How does the Italian Criminal Trial work?" at <http://www.canetrimlex.it/eng/risorse/trial.html>. accessed 14-03-2012

<sup>27</sup> Section 14(2), Economic and Financial Crimes Commission (Establishment) Act, 2004

<sup>28</sup> Sections 14-18 *ibid*

<sup>29</sup> EFCC Act *op.cit*

terrorism, offences relating to public officers retention of abuse of office as well as offences that relate generally to economic and financial crimes.<sup>30</sup>The word “compounding” of offences as used in the Act refers to the power of the Commission to drop some of the charges if the defendant is prepared to give up such sum of money as the commission may deem fit in accordance with the Act.

A closer examination of this provision will reveal several pitfalls. First, it does not provide any definite guidelines as to the basis for adopting the procedure under section 14(2) of the EFCC Act. It is left at the discretion of the Commission. It is submitted that the discretion is too wide and could be open to abuse. Second, the aspect of the same provision which empowers the commission to accept any sum of money “As it thinks fits, not exceeding the maximum amount to which that person would have been liable if he had been convicted under the Act” is a blanket cheque to the officers for so much stolen in exchange of secret gratifications.

For plea bargain to serve any useful purpose in the war against corruption, it is expected that a corrupt public officer who intends to benefit from the procedure should be prepared to confess his deeds and give all and not some or a little of what that person has stolen as verified by the Commission.

The EFCC has applied this procedure in every many high profile cases. In the case of Former Inspector General of Police, Mr. Tafa Balogun, the EFCC adopted this procedure and the accused was jailed for only six months. It has been hinted that the procedure was adopted by the Commission in the trial of Emmanuel Nwude and Nzeribe Okoli who were charged for defrauding a Brazilian Bank. The EFCC also extended the practice to the case Chief D.S.P. Alamieyeseigha who was docked on corruption charges. Furthermore, a Federal High Court in a most laughable manner imposed a paltry fine of N3.5M on Governor of Edo State who was charged with stealing billions of naira from the public on December 28, 2008. He was further served to 12 years imprisonment on six count charge of corruptly enriching himself while he was governor. The sentence was to run concurrently and because he had remained in custody for two years, he was released a few two years; he was released a few days after under a plea bargain agreement. In the case of Mrs. Cecelia Ibru, a Former Managing Director of Oceanic Bank, she accepted to forfeit the assets worth over N150 Billion which she fraudulently acquired by her office.<sup>31</sup> As a result of a plea bargain agreement, she received a light punishment of six months imprisonment. The most recent and rabidly criticized case was that of one Mr. John Yakubu Yusuf on January 2013, who got a punishment of two years imprisonment or the option of a fine of seven hundred and fifty thousand naira (N750,000,000) under a plea bargain agreement with the EFCC after stealing several billions of naira from the pension fund. The puzzling thing in all these sentence however is that the general public is kept aloof as to what was stolen and what was recovered from the thief so as to justify the pious sentences.

In Lagos State of Nigeria, it would appear that support for plea bargain can now be found in the provisions of the Administration of Criminal Justice Law (ACJL), 2007. The law provides as follows:

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<sup>30</sup> *Op.cit*  
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The prosecutor and a defendant or his legal practitioner may before the charge enter into an agreement in respect of –

1.
  - a. A plea of guilty by the defendant to the offence charged or a lesser offence of which he may be convicted on the charge and
  - b. An appropriate sentence to be imposed by the Court if the defendant is convicted of the offence to which he is to plead guilty.
2. The prosecutor may only enter into an agreement contemplated in subsection (1) of this section -
  - a. After consultation with the police officer reasonable for the investigation of the case and if reasonably feasible, the victim.
  - b. With due regard to the nature of and circumstances of relating to the offence, the defendant and the interest of the community.
3. The prosecution, if reasonably feasible shall afford the complainant or his representative the opportunity to make representation to the prosecutor regarding.
  - a. The contents of the agreement and
  - b. The inclusion in the agreement of a cooperation or retribution order.
4. An agreement between parties contemplated in subsection (2) shall be in writing and shall be signed.
5. The presiding Judge or Magistrate before whom criminal proceedings are pending shall not participate in the discussion contemplated in subsection (1).

Provided that he may be approached by counsel regarding the contents of the discussion and he may inform them in general terms of the possible advantages of discussion, possible sentencing options or the acceptability of a proposed agreement.
6. Where a plea agreement is reached by the prosecution and defence, the prosecutor shall inform the Court that the parties have reached an agreement and the presiding Judge or Magistrate shall then inquire from the defendant to confirm the correctness of the agreement.
7. The presiding Judge or Magistrate 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 without undue influence and may-
  - a. If satisfied that the defendant is guilty of the offence to which he has pleaded guilty convict the defendant on his plea of guilty to that offence, or,
  - b. If he is for any reason of the opinion that the defendant cannot be corrected of the offence in respect of which the agreement was reached and to which the defendant had pleaded guilty or that the agreement is in conflict with the defendant rights referred to in subsection (4) of this section, he shall record a plea of not guilty in respect of such charge and order that the trial proceed.

8. Where the defendant has been convicted in terms of subsection (7) (a), the presiding Judge or Magistrate shall consider the sentence agreed upon in the agreement and if it is –
  - a. Satisfied that such sentence is an appropriate sentence, impose the sentence, or
  - b. if the view that he would have imposed a lesser sentence than the sentence agreed upon in the agreement impose the lesser sentence, or
  - c. Of the view that the offence requires a heavier sentence than the sentence agreed upon in the agreement, he shall inform the accused of such heavier sentence he considers to be appropriate.
9. Where the accused have been informed of the heavier sentence as contemplated in subsection (8) (c) above, the defendant may-
  - a. Abide by the plea of guilty as agreed upon in the agreement, 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 the plea agreement, in which event, the trial shall proceed denovo before another presiding Judge or Magistrate as the case may be
10. Where a trial proceeds as contemplated under subsection (9) (a) or denovo before another presiding Judge or Magistrate as contemplated in subsection (9) (b):-
  - a. No reference shall be made to the agreement;
  - b. No admission contained therein or statement relating thereto shall be admirable against the defendant, and
  - c. The prosecutor and the defendant may not enter into a similar plea and sentence agreement.

The provision for plea bargaining in the Administration of Criminal Justice Law (ACJL) of Lagos State, 2004 as outlined above is quite explicit. There is a controversy about the fact that the procedure is statutorily acknowledged and promoted in Lagos State of Nigeria. The provision for plea bargain under this Lagos State Law is quite similar to that contained in the Criminal Procedure Code of the Republic of Georgia. It is to be noted however that the old Criminal Procedure Law of Lagos State showed a similar concern when it provided that where in a charge of stealing or receiving of stolen property, the Court is of the opinion that the evidence adduced by the prosecution is insufficient to ground conviction, but wrongful convention or detention of property is established, the court may order the restoration of the stolen property and award damages against the defendant./accused person.

In Anambra State of Nigeria, the Administration of Criminal Justice Law of 2010 has also joined the push towards the adoption of plea bargain as an accepted procedure in criminal proceedings. It is however not detailed as the Lagos State Administration of Criminal Justice Law. The power to approve a plea bargain was conferred on the Attorney General by the Anambra State Law. It also went ahead to specify the class of persons and offences to which

the procedure is inapplicable. The Administration of Criminal Justice Law of Anambra State, 2010 provided as follows:

1. Notwithstanding anything in this law or in any other law, the Attorney General of the State shall have power to receive, consider and accept a plea bargain from any person charged with any offence either directly from that person charged or on his behalf, by way of an offer to accept to plead guilty to a lesser offence than that charged.
2. Where the Attorney-General is of the view that the acceptance of such a plea bargain is in the interest of justice, public interest, public policy and the need to prevent the abuse of the legal process, he may accept such plea and the Court seized of the matter shall be so informed and shall proceed to enter a guilty plea to such lesser offence and impose the punishment accordingly.
3. When a person is convicted and sentenced under the provisions of subsection (1) of this section, he shall not be charged or tried again on the same fact that the higher offence earlier charged for which he has pleaded to a lesser offence.
4. The provisions of this section shall not apply to persons -
  - a. Charged with capital offence or any offence involving the use of violence.
  - b. Persons who had in the last ten years, been convicted and sentenced for any such similar offence or any offence involving grievous violence or sexual assault.

It is submitted that the Anambra State Law does not leave discretion in proceedings involving plea bargain. There are no safeguards against undue influence and the infringement of the rights of the defendants by the Attorney – General. The provision is applicable to all offence except those that attract capital punishment and those that involve the use of violence. To this extent, it is unwieldy as the procedure accommodated all manner of offences outside those expected in subsection of section 167. The provision invests so much power on the Attorney – General to the exclusion of the courts before which a matter is pending. The Court cannot be expected to swallow all kinds of agreement concocted by the Attorney – General in the name of a plea bargain as this will amount to a violation of the judicial powers guaranteed by the constitution of the Federal Republic of Nigeria 1999 as amended.

In summary, the procedure of plea bargain was unknown to the Nigeria judicial system until 2004 when the EFCC Act appears to have smuggled it into our jurisprudence. This has been followed by the Administration of Criminal Justice Law of Lagos State, 2007 which involves the prosecutors, the defendant, subject to the approval of the courts as practiced in other jurisdictions. The Administration of Criminal Justice Law of Anambra State which came into effect in 2010 also adopted the procedure. But unlike the Lagos State, it left the control of the procedure solely in the hands of the Attorney – General to the exclusion of the Courts, thus pointing to a conflict with the judicial powers of the court guaranteed by the condition in furtherance of the doctrine of separation of powers.

## **An Appraisal of the Applicability of the Doctrine of Plea Bargain in Nigerian Jurisprudence.**

The practice of plea bargain by the EFCC has come under heavy criticism by jurist and other eminent Nigerians. A former Chief Justice of Nigeria had this to say about plea bargain:

The concept is not only dubious but was never part of our judicial system – at least until it was sumptuously smuggled into our statutory laws by the Economic and Financial Crimes commission.

According to the leaned jurist, the concept is a threat to the criminal justice system in Africa. At the same event where the eminent jurist made the above comment, a former Justice of the International Court at The Hague, Prince Bola Ajibola (SAN) had this to say:

It will make a mockery of the entire process of dealing with corruption. The rule of law is clear. Those who are found guilty of any crime committed within Nigeria should be duly and adequately punished.

Delivery a paper in support of the procedure as practiced by the EFFCC Mr. Ibrahim Lamode, the Chairman of the Commission had this to say:

We are all witnesses to the fact that cases commenced as far back as 2007 against some former Governors such as Uzor Kalu, Chimaroke Nnamani, Saminu Huraki and Joshua Dariye have hardly made any meaningful progress in the trial because of regular exploitation of the inherent problems in the Justice system to tunicate trials.

The above view point from Larmode is understandable coming from the Chairman of the Agency pushing for the popularization of the procedure in criminal trials. It is however the position of this paper that the procedure as presently practiced will lead to nothing other than a social upheaval. This does not however mean that the very idea of getting property criminals to return their loot in exchange for their freedom is bad in itself. However, what to be returned must tally with what was stolen before a deal can be struck. Furthermore, the freedom that should avail treasury water after he has returned his loot must be a qualified kind of freedom.

## **RECOMMENDATIONS**

It is bad enough to be confined in jail for a long time and the stigma of an outcast criminal is even worse. Nigeria can adopt the plea bargain in a modified form procedure like other developing countries such as India and Pakistan. There should be federal laws that explicitly provides for the procedure as against the present situation.

Any enactment explicitly providing for the adoption of plea bargaining in criminal trials should be restricted to property related offences and should have as its major aim, the restoration or restitution of the stolen property. Before the procedure is evoked in corruption cases, what was stolen must be conclusively verified. Third, for any defendant to benefit from the procedure, he must be prepared to return all that he stole.

Fourth, the defendant should only be discharged and not acquitted. He should be disqualified from holding any public office for life. Where he is a public officer, he should be dismissed from that public office. As is the practice in Pakistan such a convict should be disqualified from seeking or obtaining any bank loan in the country.

Fifthly, to drive home the evil of treasury looting in the psyche of the public, the defendant who has been convicted but discharged should be taken to a town hall meeting in his town or village where his shameful conduct shall be publicly declared to his kith and kin by the EFCC and the public informed about the compassionate grounds upon which the convict was discharged.

Finally, it is in order to have a special courts for the expeditious disposition of cases determined on the basis of plea bargaining especially as it related to corruption cases.

## **CONCLUSION**

The practice of plea bargaining was unknown to Nigeria jurisprudence until the enactment of the Economic and Financial Crimes Commission (Establishment) Act, in 2004. The practice has also been provided for in some state laws. There is yet no federal enactment explicitly providing for the use of the procedure in criminal proceedings. The procedure has also come under heavy criticism by eminent Nigerians.

The procedure is practiced in developed societies with stable economies and judicial systems. It cannot be applicable in Nigeria as it can easily be abused. This paper recommends the Pakistan and Indian model of plea bargaining as being suitable for our level of socio-economic development. Restitution as a cardinal principle of punishment is globally recognized. Nevertheless, the present practice where the EFCC engage in secret deals with treasury looters who are discharged and acquitted after they surrender only a little of what they have stolen is not only counterproductive but emboldens treasury looters.