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Examining the Role of Judicial Officers in Administering and Preventing Abuse of Plea Bargain as a Prosecutorial Strategy in Nigeria

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ABSTRACT: *Stakeholders in administration of criminal justice system have been critical of the concept of plea bargain. The complaint is that it promotes corruption because of its leniency to corrupt politicians and fraudulent businessmen and women owing to its abuse. Some critics of plea bargain argue that a system of negotiated criminal justice undermines deterrence as one major aim of criminal sanctions. Others maintain that repeat offenders who are familiar with the workings of the criminal justice system are able to negotiate more favourable sentences than first offenders. Still, others view plea bargain as benefiting only the rich since the poor hardly negotiate their charges and sentences. This paper argues that since a trial court has the final say on plea bargain agreement, there is no logical basis for fear of its abuse by parties to it unless the judiciary also lends its courts to corrupt practices. Plea bargain is open to every offender with equal opportunity for legal representation. The paper examines the importance of plea bargain and the role of judicial officers in its implementation. It concludes that courts are firmly in control of trials based on negotiated pleas as well as regular criminal trials, and are able to guide against abuse of this vital prosecutorial strategy. The paper recommends, inter alia, inserting express provisions in the criminal procedural laws empowering judicial officers to bar parties to criminal proceedings and their representatives from abandoning negotiated pleas. Doctrinal method of research is used in collating and analysing relevant sections of the Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999), Administration of Criminal Justice Law of Lagos State 2021 (ACJL Lagos), the Administration of Criminal Justice Act 2015 (ACJA), judicial authorities, and learned articles*.

KEYWORDS: role of judicial officers, administering, preventing, abuse, plea bargain.

INTRODUCTION

In an accusatorial or adversarial system of criminal jurisprudence, an accused person or a defendant is a king. The State which has accused him of committing a crime has the duty to prove beyond reasonable doubt that he actually committed the offence. He is presumed innocent until the contrary is proved. Generally, he has no duty to prove his innocence[1], and so

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[1] Constitution of the Federal Republic of Nigeria 1999 (hereinafter CFRN), s 36 (5), Evidence Act 2011, s 135; *Commissioner of Police v Emmanuel Amuta* (2017) LPELR-41386 (SC). However, there are exceptions to the

could choose to say nothing in his defence because no person who is tried for a criminal offence shall be compelled to give evidence at his trial.[2] The reverse is the case with the inquisitorial system of criminal jurisprudence where an accused person or a defendant has a role to play in clearing himself from guilt as one person sits as both the prosecutor and the judge.[3] A defendant is not presumed innocent in an inquisitorial system of adjudication. In the trial of Jesus Christ, for instance, Pilate sat both as the prosecutor and the judge in *Gabbatha*. Pilate scourged Jesus. He put many questions to Jesus in trying to establish his guilt. He, also, asked Jesus' accusers similar questions. He brought Christ forth to the Jews that they might know that he found no fault in him. Even though he did not find Jesus guilty as charged, he still delivered him over to the Jews to crucify.[4] Another feature of inquisitorial system of criminal jurisprudence is secret trial as against public trial in adversarial system of criminal jurisprudence.[5] In adversarial system, members of the public have the right of ingress to or egress from trial courts. This makes courts to be on guard so as not to be accused of bias or likelihood of bias because justice should not only be done but be seen to be done.[6]

Under the traditional African criminal justice system, the accused person shares the duty of proof with his accuser. Whereas his accuser adduces evidence to prove his guilt on the balance of probability, he has the duty to prove his innocence.[7] That is part of the reason for trial by ordeal.[8] One thing common to these three systems is the search for the truth. No judgment is given nor punishment inflicted on a defendant unless the trial court, tribunal or the elders are convinced about the guilt of the accused. It is difficult to tell the truth. Discovering the truth is easier in traditional, non-conventional trial where oath-taking is both a means to an end and an end in itself to the truth discovery process.[9]

Truth is life. You shall know the truth, and the truth shall set you free.[10]

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general rule that the prosecution has the duty of proving the guilt of the defendant beyond reasonable doubt. In the exceptions, a defendant has the duty to prove some facts on the preponderance of evidence. He merely introduces the facts or defences with particulars, and the prosecution takes over from there to disprove the facts or defences, and to prove the guilt of the defendant beyond reasonable doubt. See the proviso to CFRN, s 36 (5), defences of: provocation, self-defence, intoxication, insanity, accident or alibi, facts within the knowledge of the defendant, bar pleas, etc -*Yanor & Anor v State* (1965) 1 All NLR 193, *Ozaki v State* (1990) All NLR 122, Evidence Act 2011, ss 139, 141, Criminal Code 1916, ss 28-29, 417, *Edu v C.O.P.* (1952) 14 WACA 164, *Rahman v C.O.P.* (1973) NMLR 87.

[2] CFRN 1999, s 36 (11), Administration of Criminal Justice Act 2015 (hereinafter ACJA), s 301, Administration of Criminal Justice Law of Lagos State 2021 (hereinafter ACJL), s 240, Evidence Act 2011, ss 179, 180, 181, *Abidoye v F.R.N.* [2014] 5 NWLR (Pt. 1399) 30 at 58; *Kajawa v State* [2018] 8 NWLR (Pt. 1622) S.C. 446.

[3] *Ideh v State* [2019] 6 NWLR (Pt. 1669) S.C. 479 at 498-499.

[4] The Holy Bible, John 19: 1-16.

[5] CFRN 1999, s 36 (4), ACJA, s 259, ACJL, s 200.

[6] CFRN 1999, s 36 (1), (4); *Garba v University of Maiduguri* [1986] 2 SC 128.

[7] See generally I Oraegbunam, 'Crime and Punishment in Igbo Customary Law: The Challenge of Nigerian Criminal Jurisprudence' 1-31.

[8] Criminal Code 1916, s s 207 (1), 208, 209; Penal Code 1960, s 214.

[9] *Njoku v Ekeocha* (1972) 2 ECSLR 199; *Okpuruwu v Okpokam* [1988] 4 NWLR (Pt. 90) C.A. 554; *Agu v Ikewibe* (1991) 3 NWLR (Pt. 180) S.C. 385 at 407; *Chukwudozie Anyabunsi v Emmanuel Ugwunze* (1995) 7 S.C.N.J. 55 at 70; *Onwu v Nka* (1996) 7 S.C.N.J 240 at 255; *Umeadi v Chibunze* [2020] 10 NWLR (Pt. 1733) S.C. 405.

[10] Holy Bible, John 8:32, 14:6; Exodus 20:16.

A defendant who voluntarily confesses to a crime and pleads for mercy may most likely get a lighter punishment than one whose conviction is obtained after a tortuous trial. It is to compensate for telling the truth that defendants who admit their guilt before trial or in the course of trial are given soft sentences.[11] This is beneficial to both the accused and the society. This is what plea bargain does. After all, administration of criminal justice system is not all about punishment. Rehabilitation is central to administration of criminal justice system.[12] Plea bargain is an arrangement or agreement in writing between the Attorney-General or the prosecutor in which the defendant pleads guilty to all or some offences charged in return for a lighter punishment.

Meaning of Plea Bargain

The ACJL 2021 of Lagos State that introduced Plea Bargain into the Nigerian Criminal Justice System does not define it. The Law provides that notwithstanding anything in the Law or in any other law, the prosecutor may subject to the approval of the Attorney-General and Commissioner of Justice of the State have power to receive and consider a plea bargain from a defendant charged with an offence either directly or on behalf of the defendant; or offer a plea bargain to a defendant charged with an offence. Where the Attorney-General and Commissioner for Justice is of the view that the offer or the acceptance of such a plea bargain is in the interest of justice, public policy, and the need to prevent abuse of legal process, the Attorney-General and Commissioner for Justice may offer or accept the plea bargain.[13] The latter legislation, ACJA, defines plea bargain as '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.[14]' The Black's Law Dictionary defines plea bargain as 'a negotiated plea 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 concessions by the prosecutor, usually a more lenient sentence or a dismissal of the other charges'.[15] It is also termed plea agreement, negotiated plea, and sentence bargain. The concessions include the defendant: pleading guilty to a lesser charge in severity and number of counts, and excluding some facts which would have been more disadvantageous to the defendant.

Despite that plea bargaining has been in existence for close to one and a half Centuries, yet it is a continuing source of controversy. Some critics argue that a system of negotiated criminal justice undermines the deterrent effectiveness of punishment and can be used by influential people to evade legal sanctions. Others maintain that offenders with prior criminal records and more experienced with the criminal justice system are able to negotiate more favourable sentences.[16] Proponents of these views see plea bargain as undesirable because it weakens the

[11] *Kelly v F.R.N., infra (*n 68), 479.
[12] ACJA, ss 270 (13), 319-328, 461, 467, 468; ACJL Lagos, ss 347(1), 348 (1), (2), (3).
[13] ACJL Lagos, s 77 (1), (2).
[14] ACJA, s 494 (1).
[15] BA Garner (ed), *Black's Law Dictionary* (9th edn, St. Paul Minnesota: West Pub. Co 2009) 1270.
[16] D Newman, 'Conviction: The Determination of Guilt or Innocence Without Trial' (1966); JQ Wilson, *Thinking About Crime* (1975) cited in Douglas Smith *infra* (n 17), 2.

deterrent and incapacitative effectiveness of the criminal law by allowing some defendants to minimise their punishments.[17] Additional attacks on plea bargaining focus on the alleged coercion by law officials. Plea bargain is characterised as a series of threats and promises by the legal officials that induce defendants to forfeit many of their constitutional and procedural rights to plead guilty to offences with which they are charged. The coercion arguments are based on the belief that defendants convicted after full criminal trials are condemned to harsher sentences than those convicted on their negotiated pleas. Since it is natural for defendants to seek reduction of their criminal sanctions, pleading guilty to offences is made attractive by an explicit agreement or implication that their sentences will be reduced in exchange for a guilty pleas. This promise induces defendants to plead guilty in order to obtain lighter sentences. This dual sentencing structure has been criticized because it penalizes defendants for exercising constitutionally guaranteed legal rights and subordinates due process concerns to crime control objectives.[18]

The above points against plea bargain are not sustainable under the Nigerian criminal procedure. The plea bargain is concluded between the prosecutor and the defendant who is represented by a legal practitioner. Plea bargain can be initiated by the prosecutor or the defendant. Again, when the plea bargain agreement is finally struck between the parties, the court has to satisfy itself that it was voluntarily made before acting on it. It contains the facts that the defendant was reminded about his right to make any admission of committing any offence. It is almost impossible to coerce a defendant to plead guilty to an offence when his lawyer is part of the process leading to the negotiated plea.

There are views in support of plea bargains. Scholars argue that statutory penalties are harsh, and that tailoring punishment through charge and sentence adjustments makes the criminal justice system more responsive to the exigencies of individual cases.[19] Plea bargain is also considered an efficient method of allocating criminal justice resources. Prosecutors seek to maximize the deterrent and incapacitative value of their available resources, while defendants seek to minimize their individual costs of criminal activity.

Origin of Plea Bargain in Nigeria

Prior to 2007 when the Administration of Criminal Justice Law of Lagos State was enacted, the concept of plea bargain was alien to our criminal justice jurisprudence. The closest to plea bargain was compounding felonies where the accused person or defendant would undertake to return proceeds of crime with a promise by the Attorney-General or prosecutors in his chambers not to charge the defendant to court. It is an offence for an ordinary person to compound a felony.[20] It seems that under Appendix C to the Administration of Criminal Justice Law 2019 of Kano State, individuals, who are victims of criminal offences, are empowered by the Law

[17] D Smith, (n 16), 2; LY Akor, 'Plea Bargain and the Anti-Corruption Campaign in Nigeria' [2014] 3(4) *G.J.I.S.S.* 161-121.
[18] D Smith, (n 17), 3.
[19] P Utz, 'Settling the Facts: Discretion and Negotiation in Criminal Courts' (1978); Manard, 'Defendant Attributes in Plea Bargaining: Notes on the Modeling of Sentencing Decisions' [1983] 29 *Soc Probs*. 347, 347-60 cited in D Smith (n 18).
[20] CO Okonkwo, *Okonkwo and Naish on Criminal Law in Nigeria* (2nd edn, Ibadan: Spectrum Law Publishing 1980) 65; Criminal Code 1916, s 127.

to compound certain offences under the Penal Code Law of that State. The Economic and Financial Crimes Commission Act has a similar provision.[21] Compounding offence consists of an agreement not to prosecute the defendant; the defendant has knowledge of the actual offence committed, and the prosecution must receive some consideration from the defendant.[22] The striking difference between compounding felonies and plea bargain is that courts are not involved in compounding felonies while courts have the final say on plea bargain. In the former, the prosecution and the defence conclude and execute the agreement without any recourse to the court, no criminal proceedings having been instituted. In the latter, the defendant has been charged to court and the court reserves the discretion to accept or reject the plea bargain either in part or in whole. It is, therefore, wrong to equate compounding offences with plea bargain as if the two concepts are one and same. It has been written that in Nigeria plea bargain was not employed until 2004 when the Economic and Financial Crimes Commission (Establishment, etc) Act (EFCC Act) was enacted. According to the author, section 14 (2) of the EFCC Act provides that the Commission may compound any offence punishable under the Act by accepting such sums of money as it deems fit, exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence.[23] This is compounding felonies, and not plea bargain. Compounding offences is usually limited to property offences where the suspect agrees to return money or the monetary value of the property stolen in order not to be charged to court. In the present case, compounding offences is limited to offences created by the EFCC Act only. On the other hand, plea bargain covers every class of offences, and the defendant could be sentenced to imprisonment, fine, restitution or compensation or community service upon his guilty plea in a negotiated plea. To that extent, he has become an ex-convict with its debilitating effects such as not being able to hold public office, positions of trust, etc, unless pardoned.[24] A suspect who has returned loots in compounding offence arrangement has not been charged, tried, convicted nor sentenced, and cannot be called an ex-convict. The argument that section 180 of the repealed Criminal Procedure Act provided for plea bargain, is with due respect, unfounded.[25] That section simply empowered a prosecutor with the consent of the court or the court on its own volition to withdraw remaining charges or to stay their trial where a defendant who was charged with many offences had been convicted of one or more of them in a trial.

It has even been argued that plea bargain is neither new nor strange to Nigerian legal jurisprudence because sections 174 and 211 of the CFRN 1999 dealing with the prosecutorial powers of the Attorneys-General of the Federation and State respectively provide for it.[26] This is, with due respect, unfounded. The power of the Attorney-General to enter a *nolle prosequi* is by no stretch of imagination equated to plea bargain. If for nothing, a defendant who has benefited from the Attorney-General's power to terminate criminal proceedings can be arraigned for the same offence because the legal effect of *nolle prosequi* is a mere discharge

[21] Economic and Financial Crimes Commission (Establishment, etc) Act 2005, s 14 (2).
[22] *EFCC v Chidolue* [2012] 5 NWLR (Pt. 1292) C. A. 160.
[23] VV Tarhule, *Corrections under Nigerian Law* (Lagos: Innovative Publications 2014) 380.
[24] *Falae v Obasanjo (No. 2)* [1999] 4 NWLR (Pt. 599) 476.
[25] E Azinge and L Ani (eds), *Plea Bargain in Nigeria: Law and Practice* (Lagos: NIALS 2012) iv.
[26] AU Kalu, 'The Role of Plea Bargain in Modern Criminal Law' (Being a Paper presented at the Roundtable on Plea Bargain organised by the Nigerian Institute of Advanced Legal Studies held at the Supreme Court of Nigeria Complex Abuja on 3 April 2012) cited in VV Tarhule (n 23), 380.

and not acquittal.[27] On the other hand, a defendant who has been convicted and sentenced under a plea bargain agreement cannot be tried for the same offence(s) negotiated. He will raise a bar plea of *autre fois convict.*[28]

The Lagos Law was repealed and re-enacted in 2011, amended in 2015 and 2021 respectively. The Administration of Criminal Justice Act 2015 was enacted by the National Assembly of the Federal Republic of Nigeria. Most States in Nigeria have adopted ACJA with provisions for plea bargain or negotiated plea.[29]

The irony of the Nigeria State is that the concept of plea bargain was introduced into its criminal jurisprudence for the first time in the 21st Century. Douglas Smith wrote that guilty pleas became a major method of case disposition in the late 19th century.[30] As at 1987 when he conducted the research under reference, plea bargain counted for over 85% of all the felony convictions.[31] Alubo writes that the practice of plea bargain is rooted in common law from the Medieval English Common Law Court of guilty pardons to accomplices in felonious cases. According to the learned author, the significance and popularity gained by plea bargain is traceable to the early 1960s when it became a common practice in the United States of America. In the case of *James Earl Ray*[32], the defendant who was charged with the murder of Martin Luther King Junior pleaded guilty to the charge and got a sentence of imprisonment for 99 years. *Spiro Agnew*[33] in 1973 resigned his vice-presidency pleading no contest to the charges of failing to report income and in the process got three years of probation and a fine of $10,000.[34] This history of plea bargain is not entirely right in the light of Douglas Smith's submission that plea bargain hard gained ground in America in the late 19th Century.

Offences Amenable to Plea Bargain

A careful examination of provisions of the Administration of Criminal Justice Law of Lagos State 2021 and the Administration of Criminal Justice Act 2015 show that no specific offence is mentioned as amenable to plea bargains. The implication is that plea bargain applies to all offences. That much has been confirmed by the Supreme Court of Nigeria in the case of *PML (Securities) Co. Ltd. v F.R.N.*[35]It is akin to a defendant pleading guilty to an offence. A defendant can plead guilty to any offence even though the law creates an exceptional procedure where he pleads guilty to a capital offence. In that exceptional case, the court records a not guilty plea for him, and proceeds with a full trial where the prosecution has to prove the guilt

[27] *State v Ilori & Ors* (1983) 14 NSCC 69 at 75, CFRN 1999, ss 174 (1), (c), 211 (1), (c).
[28] CFRN 1999, s 36 (9).
[29] ACJL Lagos, s 77; ACJA, s 270.
[30] DA Smith, 'The Plea Bargaining Controversy' [1987] 77 (3) *The Journal of Criminal Law and Criminology* 1-21.
[31] A Alschuler, 'Plea Bargaining and its History' (1979) 79 *Colum. L. Rev.* 1, 40-43; Friedman, 'Plea Bargaining in Historical Perspective' [1979] 13 *Law & Soc. Rev.* 247, 248-59, cited in DA Smith (n 30), 2.
[32] LY Akor (n 17), 118.
[33] History.com Editor, Vice President Agnew Resigns, https//www.history.com/this-day-in-history/vice-president-agnew-resigns, accessed on 30 May 2021.
[34] AO Alubo, 'Plea Bargaining: History and Origin' in E Azinge and L Ani (eds), *Plea Bargain in Nigeria: Law and Practice* (Lagos: NIALS Press 2012), AO Alubo, 'Plea Bargain and the Anti-Corruption Crusade in Nigeria' 8 (2) *University of Jos Law Journal* 1 cited in LY Akor (n 32), 118.
[35] [2018] 13 NWLR (Pt. 1635) S.C. 157.

of the defendant beyond reasonable doubt before he could be convicted, and sentenced to death. In other words, a defendant can summarily be convicted and sentenced on his guilty plea in non-capital offences but in capital offences, he cannot be convicted and sentenced on his guilty plea. The prosecution must lead evidence to prove the guilt of the defendant beyond reasonable doubt before his conviction and subsequent sentence. If a defendant accused of a capital offence, say murder, wishes to enter into a plea bargain agreement with the prosecution, he may admit a lesser offence, say manslaughter or attempted murder. On sentence, they may agree on imprisonment for few years and fine or fine in lieu of imprisonment.[36] Facts and circumstances of the case may warrant the trial court to accept the negotiated offence and punishment. For instance, in *Christopher Amobi v State*[37], the Supreme Court of Nigeria sentenced the appellant to a fine of thirty five British Pounds or imprisonment with hard labour for four months for causing death by dangerous driving.[38]

The essence is to ensure that the process is not abused. If it is possible to apply plea bargain to capital offences with mandatory sentence of death, it follows that it could apply to offences carrying minimum sentences upon conviction. In regular criminal trials, judicial officers do not have any discretion to exercise in reducing or increasing mandatory and minimum sentences respectively.[39] In plea bargain, parties could negotiate to reduce mandatory and minimum sentences since the concept applies to all classes of offences and sentences. This is where plea bargain is more flexible and accommodating than regular criminal trials. Defendants can be summarily convicted and sentenced on their negotiated plea, and sentenced in respect of both capital and non-capital offences. On the other hand, defendants can only be summarily convicted and sentenced on their guilty pleas in respect of non-capital offences. Once it is a capital offence, the trial court is bound to record a plea of not guilty and commence a full trial with its attendant time and resource consumption.[40] Plea bargain accommodates every class of offence. It is more restorative in approach than the regular trial procedure that aims at punishing the offender without much thought on his rehabilitation, restoration, restitution to victims of offences, and re-integration of the offenders into the society.

From the foregoing, it is erroneous to think, as many do, that the practice of plea bargain is limited to property, economic, or financial offences only. There is no doubt that more economic, corruption, and property offences are resolved by plea bargain. But that does not mean that plea bargain cannot be used for any other category of offences. The argument that plea bargain enables the prosecution to concentrate on serious cases and dispenses less serious offences by way of plea bargain is erroneous. It has also been argued that 'because judges, not

[36] *Thomas v State* [1994] 4 NWLR (Pt.337) S.C. 129. In this case, Thomas was convicted for manslaughter and sentenced to imprisonment for 10 years for slapping the deceased who slumped and died. On appeal, the Court of Appeal of Nigeria reduced the sentence to a fine of N1000.00 or imprisonment for three years in default. The Supreme Court of Nigeria upheld the sentence on further appeal to it.
[37] Referred to by the Court in the case of *Udoye v State* (1965) NMLR 197 at 199.
[38] FO Agbo, 'Alternatives to Imprisonment in the Administration of Criminal Justice in Nigeria' [2016] 2 (1) *ABUAD Journal of Public and International Law (AJPIL)* 228-255.
[39] *Ushie v State* (2012) LPELR-9705 (CA), *Balogun v A.-,G., Ogun State* [2002] 6 NWLR (Pt. 763) S.C.512, *Odogwu v State* (2013) LPELR-22039 (CA), *Yusuf v F.R.N.* (2017) LPELR-43830 (SC).
[40] ACJA, s 274 (3), ACJL Bayelsa State 2019, s 212 (3), *Samuel v State* [2021] 2 NWLR (Pt. 1761) C.A. 451, *R v Kofi Mansu* (1947) 12 WACA 113, *Nkie v State* [2014] 13 NWLR (1424) S.C.305 at 329-330; AF Afolayan, *Criminal Litigation in Nigeria* (3rd edn, Enugu: Chenglo Law Publications Ltd 2016) 253-256.

prosecutors, controlled most sentencing, plea bargaining was limited to those rare cases in which prosecutors could unilaterally dictate a defendant (accused person)'s sentence.[41]' It is argued that plea bargain positions prosecutors for the prosecutions of serious offences while putting their cards on table for the less serious offences.[42] Plea bargain is amenable to any offence: simple offences, misdemeanours, and felonies. The only possible argument one may proffer, though not borne out of the letters of ACJA, ACJL, or judicial authorities in Nigeria, is that plea bargain may not be used for capital felonies. Economic and financial crimes and high profile corruption cases, majority of which are prosecuted through plea bargain in Nigeria, cannot by any stretch of imagination be classified as less serious offences.[43] Note, however, that under s 272 (15) ACJL 2019 of Kano State, plea bargain does not apply to the offences of: culpable homicide offences, terrorism, unnatural offences, acts of gross indecency, thuggery, *qazf*, robbery, theft, drinking alcohol and related offences.

Making Valid Plea Bargain Agreements

Sections 77 (1), (2), (3) of ACJL Lagos and 270 (1), (2), (3) ACJA empower the Attorney-General and Commissioner for Justice of Lagos State, the Attorney-General of the Federation, and the prosecutors respectively to accept negotiated plea from a defendant if they are of the opinion that its acceptance is in the public interest, the interest of justice and the need to prevent abuse of legal process. Section 270 (1) ACJA and section 77 (1), (a) allow the prosecutor to receive and consider a plea from a defendant or offer him a plea. This is different from the wording of section 75 of the ACJL Lagos 2011 where a plea bargain seemed to proceed from the defendant to the prosecution only although in practice either of them could initiate the process.

It may be entered into between the prosecutor and the defendant or his counsel in respect of: a plea of guilty by the defendant to the offence charged or a lesser offence for which he may be convicted on the charge, and an appropriate sentence to be imposed by the court if the defendant is convicted of the offence to which he intends to plead guilty.[44] This is after the prosecutor has consulted the investigating police officer, the victim, and has considered the nature and circumstances relating to the offence, defendant and interests of the community or the public.[45] The agreement is to be in writing and signed by the parties to it, including defence counsel and interpreter if any.[46] It must contain the following information: that before the conclusion of the agreement, the defendant was informed that he has the right to remain silent and the

[41] D Olin, *Plea Bargain*, The National Editor, The American Lawyer cited in J Ogunye, *Criminal Justice System in Nigeria: The Imperative of Plea Bargain* (Lagos: Grafix & Images 2005) 186.
[42] S Oguche, 'Development of Plea Bargain in the Administration of Justice in Nigeria: A Revolution, Vaccination against punishment or mere Expediency' in E Azinge and L Ani (eds), *Plea Bargain in Nigeria: Law and Practice* (Abuja: NIALS Press 2012) 97.
[43] JA Agaba, *Practical Approach to Criminal Litigation in Nigeria* (Revised 3rd edn, Abuja: Bloom Legal Temple 2017) 608-611. See the negotiated cases of: Tafa Balogun, former Inspector-General of Police charged with embezzling public funds to the tune of N10billion; Cecilia Ibru, former Managing Director of the defunct Intercontinental Bank Ltd charged, *inter alia*, with giving loans of N20billion without due approvals, and John Yakubu, former Deputy Director of Police Pensions charged with fraudulent conversion of N32.8billion of the Police Pension Fund, discussed in LY Akor *supra* (n 34), 119.
[44] ACJL Lagos, s 77 (4), ACJA, s 270 (4).
[45] ACJL Lagos, s 77 (5) , ACJA, s 270 (5) .
[46] ACJL Lagos, s 77 (7) (a), (b), ACJA, s 270 (7) (a), (b).

consequences of not remaining silent, and that he is not obliged to make any confessions or admissions; full statement of the terms of the agreement and any admissions made.[47] In other words, the negotiated plea must be a voluntary act of the defendant not influenced by either the police, the prosecutor, or the court. It must be a blind plea, which is a plea of guilt made without the promise of concession from either the judge or the prosecutor.[48] What this means is that whatsoever concession is given to the defendant must be an acceptance by the prosecution or the judge following an offer to plea bargain by the defendant. The concession must not proceed from the prosecutor to induce the defendant into making a plea bargain agreement. A copy of the plea agreement should be forwarded to the Attorney-General of the Federation.[49] The magistrate or judge before whom the defendant is arraigned or to be arraigned must not take part in meetings and agreement leading to negotiated plea.[50] Section 76 (5) of the 2011 ACJL of Lagos State provided that the counsel negotiating a plea bargain for the defendant could approach the judge or magistrate before whom the defendant was tried for information in general terms of the possible gains of the discussions, possible sentencing options or acceptability of a proposed agreement. This is no longer part of the law. The prosecutor shall give the complainant or his representative the opportunity to make representations to the prosecutor as touching: the contents of the agreement and inclusion of compensation or restitution order in it.[51] It is mandatory to involve the victim in the plea bargain agreement generally and in making representations regarding compensation or restitution order.[52]

Role of Judicial Officers in Plea Bargains

Judicial officers are in charge of their courts. They have the duty to participate actively in proceedings, holding the scale of justice evenly between parties. They are not passive observers. Judges and magistrates control any procedure in their courts. Plea bargain is not an exception. The powers to do so are expressly and specifically conferred on the courts while some of their powers are derivable from their inherent jurisdiction. Role of judicial officers in administering plea bargains will be discussed under two subheadings: before trial and at trial.

Role of Judicial Officers in Plea Bargains Preparatory to Trials

Plea bargain is in many respects similar to taking plea before a trial court. However, the processes leading up to the plea bargain agreement are not judicial procedures, and courts do not have any active role to play there. It is like police investigating alleged commission of offence in which judges or magistrates have no say. It is after the investigation is concluded, and the suspects charged to the court that a judge or magistrate takes control of the proceedings. It is to be noted that plea bargain may commence before criminal proceeding is instituted or in the middle of trial after the case has been filed in court. In any case, the magistrate or judge before whom the defendant is arraigned or to be arraigned must not take part in an agreement leading to a negotiated plea.[53] Under section 76 (5) of the ACJL Lagos 2011, the counsel in plea negotiation could approach the judge or magistrate for information in general terms of the

[47] ACJL Lagos, s 77 (7) (a), (c), ACJA, s 270 (7), (a), (c).
[48] BA Garner, *supra* (n 15), 1269.
[49] ACJA, s 270 (7), (d).
[50] ACJL Lagos, s 77 (8), ACJA, s 270 (8).
[51] ACJL Lagos, s 77 (6), ACJA, s 270 (6).
[52] *Ibid.*
[53] ACJL Lagos, s 77 **(**8**),** ACJA, s 270 (8).

possible gains of the discussions, possible sentencing options or acceptability of a proposed agreement. It made judicial officers somewhat judges in their own causes, thereby making plea bargain agreements susceptible to allegations of bias or likelihood of bias against those judicial officers. This is no longer part of the 2021 amendment.

Role of Judicial Officers in Plea Bargains at Trials

The prosecutor informs the court about the agreement on the next day of court sitting. Following the information, the magistrate or judge confirms: the correctness of the agreement, if the defendant admits the allegations in the charge to which he has pleaded guilty and whether he entered the agreement voluntarily without undue influence.[54] After confirming the above, he makes orders: convicting the defendant on his plea of guilty to the offence contained in the agreement. He may decide to record a plea of not guilty in respect of the offence for which plea is negotiated and to which the defendant has pleaded guilty, and order trial to proceed if he is of the opinion that the defendant cannot be convicted of the offence or that the agreement is not voluntary, not made in writing, and not signed as the law requires.[55]

If the magistrate or judge convicts the defendant upon the plea bargain, he may impose the sentence contained in the agreement or lesser sentence if he thinks it is appropriate in the circumstance. If he decides to impose a lesser sentence than that agreed by the parties, he has to inform the prosecution, who is at liberty to withdraw his offer of plea bargain.[56] ACJA does not provide for a similar notice to the Prosecutor or his power to withdraw the offer of plea bargain. If he decides to impose heavier sentence than the one contained in the agreement, he will inform the defendant.[57] The defendant has the right to maintain his plea of guilty and agree with the judge subject to his right to lead evidence and present argument relevant to sentencing. He may withdraw his plea of guilty in which case the trial starts *de novo* before another magistrate or judge.[58] In either case, the plea agreement with its contents- the statements, admissions, plea of guilty, sentence, are not admissible in evidence in the trial; nor the parties allowed to negotiate another agreement with respect to the same offence.[59] Similarly, when a person is convicted and sentenced under the negotiated plea, 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.[60] As in compounding felonies, only law officers are empowered to enter into plea bargain with defendants.[61] The prosecutor and the defendant cannot conclude a plea bargain without the consent of the victim of an offence or his representative.[62] Other conditions precedent to negotiating a plea include: the defendant's willingness to co-operate with the investigation or prosecution of other offenders involved in the offence(s); the defendant's history with respect to criminal activity; the defendant's remorse or contrition and his willingness to assume responsibility for his conduct; the desirability of the prompt and certain

[54] See ACJL Lagos, ss 77 (9), (10), 213; ACJA, s 270 (9), (10) ACJA; Evidence Act 2011, s 29 (2).
[55] ACJL Lagos, s 77 (11), ACJA, s 270 (10), (b).
[56] ACJL Lagos, s 77 (12), (b), (i), ACJA, s 11 (b).
[57] ACJL Lagos, s 77 (12), ((b),(ii), ACJA, s 270 (11), (c).
[58] ACJL Lagos, s 77 (13), (a), (b), ACJA, s 270 (15) (a), (b).
[59]ACJL Lagos, s 77 (14), (a), (b), ACJA, s 270 (16) (a), (b), (c).
[60] ACJA, s 270 (17), ACJL Lagos, s 77 (15).
[61] ACJL Lagos, s 77 (1), (2), (3), ACJA, s 270 (1), (2), (3).
[62] ACJA 270 (5), ACJL Lagos, s 77 (3), (5), (a).

disposition of the case; the likelihood of obtaining a conviction at the trial and the probable effect on the witnesses, the probable sentence or other consequences if the defendant is convicted, the need to avoid delay in the disposition of other pending cases, the expense of trial and appeal, and the defendant's willingness to make restitution or pay compensation to the victim or his representative where appropriate.[63] The presiding judge or magistrate shall 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 or as may be directed by the court.[64] It is the duty of the prosecutor to ensure that such money, asset or property gets to anybody entitled to it.[65] Any person who wilfully and without a just cause, obstructs or impedes the vesting or transfer of any such money, asset or property, commits an offence under ACJA and ACJL Lagos punishable upon conviction by 7 years of imprisonment without an option of fine.[66]

The judgment of the court based on the plea bargain is not appealable unless if the plea bargain is later found to be fraudulent.[67] This subsection, which is absent in ACJL Lagos, has been struck down in the case of *Kelly v F.R.N.*[68] as being inconsistent with the right of appeal conferred on defendants in section 241 of the CFRN 1999. Again, the defendant cannot be charged or tried on the same facts for the greater offence earlier charged but to which he has pleaded guilty to a lesser offence.[69]

Another advantage of plea bargain is that the defendant has an absolute right to change his plea of guilty in a plea bargain without court's discretion where the trial court intends to impose a heavier sentence than that contained in the negotiated plea. As in a guilty plea, the court can accept the plea bargain whole and entire, convict and sentence a defendant on his negotiated plea. The court may, also, reject the plea bargain in its entirety, and ask the defendant to plead to the offences disclosed in the charge or enter a plea of guilty *suo motu*, and continue with full trial before the same court. Thirdly, the court may accept the charge but decide to vary the sentence. In this case, the court must inform the prosecution about its intention to impose a lighter sentence or inform the defendant about its intention to impose a heavier sentence than the one contained in the negotiated plea. The defendant has the right to accept the varied plea bargain subject to his right to lead evidence at sentencing hearing. He may refuse any variation or amendment to the plea bargain. In that case, the trial starts *de novo* before another judge. No mention will be made to the failed negotiated plea nor the parties allowed to enter into another plea bargain in respect of the same offences. Similarly, the prosecution is at liberty under the ACJA to withdraw his offer of plea bargain upon being informed by the court of its intention to impose a lighter sentence.

When the court decides to vary the negotiated sentence, it must inform the defendant. The court cannot accept the guilty plea and increase the sentence without the consent of the defendant.

[63] ACJA, proviso to s 270 (5), ACJL Lagos, proviso to s 77 (5).
[64] ACJA, s 270 (12), ACJL Lagos, s 77 (16).
[65] ACJA, s 270 (13), ACJL Lagos, s 77 (17).
[66] ACJA, s 270 (14). ACJL Lagos, s 77 (18).
[67] ACJA, s 270 (18).
[68] [2020] 14 NWLR (Pt. 1745) C.A. 479.
[69] (n 60) above.

What this means is that the trial judge or magistrate does not have any discretion to exercise in rejecting the decision of the defendant to change his plea if he wishes to do so upon learning that the trial court intends to impose a heavier punishment than the one agreed to by the parties in the negotiated plea. In order words, whereas the trial court has discretion to allow or reject the change of a defendant's plea in normal criminal trial, the court is bound to allow the defendant change his plea from guilty to not guilty in a plea bargain whenever the court decides to increase the agreed sentence. In *Kelly v F.R.N.*[70], the appellant was arraigned on a three-count charge of cheating contrary to section 320 (a) of the Penal Code Act, Laws of the Federation of Nigeria (Abuja) 2004 and punishable under section 322 of the same Act. The charge was accompanied by a summary of evidence of witnesses and a plea bargain agreement executed by the appellant and the respondent in which the appellant agreed to forfeit and restitute $500 USD recovered from the appellant to the victim and a term of six months imprisonment or a fine of N300,000.00 in lieu of imprisonment. The appellant pleaded guilty to the charge based on a plea bargain. The counsel to the parties adopted the plea bargain agreement and urged the trial court to convict and sentence the appellant on the terms agreed. On the basis of the appellant's guilty plea and the adopted plea bargain agreement, the trial court convicted the appellant as charged, and adjourned for sentencing of the appellant. At the resumed hearing of the case, the appellant sought to withdraw his plea of guilt and replace it with a plea of not guilty because he had information that the trial judge had decided to impose a heavier sentence of imprisonment for three years than imprisonment for six months agreed upon by the parties in the plea bargain agreement. The trial court held that the appellant was estopped from withdrawing his guilty plea because he had been convicted on the basis of his plea. It held that it would not revisit its decision convicting the appellant. It ordered the forfeiture and restitution of $500 in accordance with the plea bargain agreement. It, however, sentenced the appellant to imprisonment for three years in accordance with section 322 of the Penal Code Act instead of the six-month imprisonment agreed to in the plea bargain agreement.

Dissatisfied with the judgment of the trial court, the appellant appealed to the Court of Appeal. His case was that the court below erred by refusing to allow him change his plea to not guilty and by sentencing him under the Penal Code instead of in accordance with the executed plea bargain agreement. The respondent raised a preliminary objection to the competence of the appeal in its brief of argument. The respondent argued that under section 270 (18) ACJA 2015, a judgment based on a plea bargain could only be set aside if the plea bargain was obtained by fraud, and that the appellant did not raise any element of fraud in the course of the trial proceedings. On the merits, the respondent argued that the trial court informed the parties that it intended to impose a heavier sentence than the parties agreed. The respondent further argued that the appellant had been convicted before he sought to withdraw his plea of guilt, and that at that time the trial court was already *functus officio.* In determining the appeal, the appellate court had to consider the provisions of section 270 (10) (a), (b), (11), (15), and (18) of ACJA 2015. The Court unanimously allowed the appeal. The appellate court held that in this case, contrary to the respondent's argument, a combined reading of the provisions of section 270 of ACJA 2015, particularly subsections 9, 10, 11, and 15 thereof show that the principle or doctrine of *functus officio* does not apply to an adopted plea bargain agreement until sentence has been validly imposed on the defendant by the trial court fulfilling the statutory procedures

[70] *Kelly v F.R.N. supra* (n 68), 479.

laid out in section 270 (9), (10), (11), and (15) of ACJA.[71] The appellate court exercised its power under section 15 of the Court of Appeal Act to sentence the appellant to imprisonment for six months, and refund of $500 fraudulently obtained from an American.

A similar decision was reached in *Agbi v F.R.N.*[72] In this case the defendant was arraigned on 18 July 2018 at the High Court of the Federal Capital Territory, Abuja, on one-count charge of cheating by fraudulently obtaining the sum of $1000 from three Americans. The charge was accompanied by a summary of evidence of witnesses and a plea bargain agreement dated 27 June 2019 entered into and executed by the parties. In the negotiated plea, the defendant agreed to plead guilty to the charge and to forfeit the proceeds of crime. The parties agreed that upon conviction, the appellant would be sentenced to imprisonment for one month or an option of fine. After the appellant had taken his plea in line with the plea bargain agreement, the prosecution called the attention of the trial court to the negotiated plea attached to the charge and urged the court to convict and sentence the defendant based on it. The court convicted the defendant on the plea agreement but ordered that he be remanded in the prison custody deferring sentencing to a later date. In sentencing the defendant, the trial court held that imprisonment for one month agreed by the parties was ridiculously too low; that it was not bound to follow the plea bargain in its entirety. It held that cybercrimes dent the image of Nigeria and affect its integrity; that the Cybercrimes (Protection and Prohibition) Act provides for harsh and appropriate punishment for the crimes. Relying on section 270 (11), (c) of ACJA, the Court sentenced the appellant to imprisonment for three years. The appellant was aggrieved by the decision of the trial court and appealed to the Court of Appeal, which unanimously allowed the appeal. The court held that in the criminal jurisprudence in Nigeria, plea bargain as a prosecutorial strategy or tool is an emerging phenomenon having no codified guidelines in relation to it as it obtains in other jurisdictions.

It is true that plea bargain is an emerging phenomenon in Nigeria's criminal justice system, and that there is a dearth of local judicial authorities on plea bargain as an emerging phenomenon. The first legislation that brought plea bargain into Nigerian criminal justice jurisprudence is the ACJL of Lagos State 2007, repealed and re-enacted in 2011, and amended in 2015 and 2021 respectively. The second legislation is the ACJA 2015, which provides in its section 270 (1) that notwithstanding anything in the Act or in any other law, the prosecutor may receive and consider a plea bargain from a defendant charged with an offence either directly from that defendant or on his behalf or offer a plea bargain to a defendant charged with an offence. The National Assembly of the Federal Republic of Nigeria enacted the ACJA 2015 that provides for a plea bargain agreement, which must be reduced into writing, even if the offer for plea bargain is made orally.[73]

However, it is the view of the present author that the relevant sections of the ACJA and ACJL of various States in Nigeria have sufficient provisions for the practice of plea bargain in Nigeria. To that extent, those provisions serve as codified guidelines for the practice of plea

[71](n 70), 538.
[72] [2020] 15 NWLR (Pt. 1748) C.A. 416.

[73] *Romrig (Nig.) Ltd v F.R.N.* [2018] 15 NWLR (Pt. 1642) S.C. 284; *PML (Securities) Co. Ltd. v F.R.N.* [2018] 13 NWLR (Pt. 1635) S.C. 157.

bargain in Nigeria. The Presidential Advisory Committee Against Corruption has Plea Bargain Manual 2016, which contains guidelines to be followed when considering the disposal of a criminal allegation on corruption through plea bargain. Even though the Plea Bargain Manual like the Judges' Rules does not have the force of law, it adds to the literature on codified guidelines to practice and procedure of plea bargain in Nigeria. There is no doubt that a nation like the United States of America has more developed guidelines in statutes, executive policies, instruments, and case law.[74]

In the case of *Bando v F.R.N.*[75] the trial court imposed a stiffer sentence than that agreed by the parties without reference to the defendant. On appeal to the Court of Appeal against the decision of the trial court, the appellate court held that although the trial court could in its wisdom impose a heavier sentence than the one contained in the negotiated plea, it was duty-bound to inform the defendant of such a higher sentence to enable the defendant choose between admitting the higher sentence or withdrawing his guilty plea under section 76 (9) of the ACJL Lagos. The appellate court concluded that the failure of the trial judge to comply with the provisions section 76 (8) and (9) of the ACJL Lagos amounted to denial of defendant's right to fair hearing. This case was decided based on the ACJL Lagos of 2011.

Practical Essence of Court's Role in Plea Bargain

Some lay and learned people are strongly opposed to the concept of plea bargain. Their major reason is that it encourages corruption. A defendant commits an offence for which he should serve three-year sentence but it is negotiated down to a fine of N300,000. The opponents do not calculate the time and resources that go into full trial of cases. More than that, they forget the heavy duty on the prosecution to prove the guilt of the defendant beyond reasonable doubt. The opponents of plea bargain also fear that the process may be abused and compromised. To allay the fears of the opponents of plea bargain, magistrates and judges are given significant roles to play during the negotiation and when the agreement arising from it is to be used in court. The court may reject the negotiated plea partially or absolutely if it believes that it does not serve the end of justice. Nothing in law or in fact compels the court to accept the plea bargain agreement. This acts as checks on the major players- the prosecution and the defendant. It is strongly submitted that if anything goes wrong, the court that allows it should be held responsible as the regulator of the concept of plea bargain. What is more, once the court rejects the negotiated plea, the defendant has to enter his plea, or a plea of guilty entered for him by the court, followed by a full trial where the prosecution has the duty to prove the guilt of the defendant beyond reasonable doubt. Again, where the judge's desire to impose a heavier punishment than the one agreed by the parties is rejected by the defendant, the trial ends abruptly before that judge but starts *de novo* before another judge. No reference is made to the abandoned plea bargain nor the parties allowed to enter into another plea bargain agreement in respect of the same offence(s). Admissions in the abandoned plea bargain agreement are not used against the defendant in the fresh trial. The implication is that the likelihood of forum shopping is absolutely shut out. It is a one-off application to one judge, which may fail or succeed.

[74] United States Sentencing Commission, Federal Rules of Criminal Procedure of the United States of America, which provides for Plea Agreement Procedure, Sentencing Reform Act, Comprehensive Crime Control Act 1984, etc.
[75] [2016] All FWLR (Pt. 841) 1510.

In *F.R.N. v Lucky Igbinedion*[76], the Court of Appeal of Nigeria lists advantages of plea bargain to include that: the accused can avoid the time and cost of defending himself at trial, the risk of harsher punishment, and the publicity the trial will involve; the prosecution saves time and expense of a lengthy trial; both sides are spared the uncertainty of going to trial, and the court system is saved the burden of conducting a trial on every crime charged. From the above enumerated gains of plea bargain, it is favourable to both the prosecution and the defence. To the defendant, one of the most important gains of a negotiated plea is the predictability of the judicial outcome as against the psychological torture arising from the uncertainty of a full trial. In Nigeria, criminal trials in courts take years to conclude.[77] The distinction between summary trials in Magistrates' Courts and Federal High Court, and trials on indictment or information in State and Federal Capital Territory Abuja High Courts is blurred with respect to duration of trials. Criminal charges hanging on the necks of defendants pain so much whether the defendants are on bail or in custody. Criminal appeals arising from the decisions of trial courts also take long time. On the part of the State, judicial time and resources are spent conducting trials. Plea bargain takes care of these problems. The trial is brief and certain. Appeals are rare in decisions based on negotiated pleas.

CONCLUSION AND RECOMMENDATIONS

Recently, Justice Okon Abang of the Federal High Court Warri Judicial Division, declared as follows, "I weep for this nation" on discovering that crude oil thieves caught with N200m product got away with measly N2,000 fine. Before the plea bargain, they defendants were charged under the section 1 (17) of the Miscellaneous Offences Act, which prescribes punishment of life imprisonment upon conviction. Later, they were charged under section 13 (2), (b), (iv) of the Petroleum Act Cap 10 Laws of the Federation 2004, which prescribes a fine of not exceeding N2,000. This is a pure abuse of prosecutorial powers but it would not have stood if the trial judge had rejected the plea bargain agreement. That was notwithstanding that he took over the case from his brother judge, Emeka Nwite, J. The Court has the final say on whether or not a plea bargain agreement will be admitted either in whole or in part or totally rejected. The victim of the offence, the investigating police officer, the parties to criminal proceedings, and the court are given roles to play in the plea bargain process. The consent of the victim is obtained. The prosecution has to consult the investigating police officer as well as the victim or his representative before entering into a plea bargain agreement. The defendant enters an agreement to make restitution, which is quite different from the punishment the court would impose on him upon conviction based on the plea bargain agreement.[78] The discretion of the trial judge to accept or reject the negotiated agreement is not contestible.[79]

Plea bargain agreement is written and signed by the parties to it, that is, the prosecutor and the defendant and their legal representatives. Aside admission of guilt, agreements on charges and

[76] (2014) LPELR-22760 (CA).
[77] *Anyanwu v State* [2002] All FWLR (Pt. 117) 1020, *Ejeka v State* (2003) All FWLR (162) 1896, murder cases which started in 1984 ended in the Supreme Court in 2002 and 2003 respectively after 18 years.
[78] ACJA, s 270 (2), (a),(b); *F.R.N. v Ran-Yaks Nigeria Ltd*, Charge No: FHC/MKD/CR/33/2010.
[79] ACJA, s 270 (6),(b), (11); *F.R.N. v Michael Ogun*, Charge No: FHC/HC/CR/15/14. See generally, MT Ladan (ed), *Training Manual on the Implementation of the Administration of Criminal Justice Act 2015 for Lawyers* (NIALS 2020) 50-54.

sentences, it contains facts that the defendant is informed about his right not to say anything**,** and that he voluntarily elects to make the plea bargain agreement; that before the conclusion of the agreement, the defendant is informed that he has the right to remain silent and the consequences of not remaining silent, and that he is not obliged to make any confessions or admissions; full statement of the terms of the agreement and any admissions made.[80] A copy of the negotiated plea has to be sent to the Attorney-General of the Federation as the Chief Law Officer of Nigeria.[81] He has to ensure that it is made according to law before sanctioning its use in a trial. It is after the court is satisfied about the voluntariness of the plea bargain agreement that it could act on it. Voluntariness of the negotiated plea seems to be the most critical part of the bargain. Once it is discovered that the defendant was coerced into making the plea bargain, it becomes useless, not good for use in the trial.[82] This alone acts as a check on the likelihood of abuse of the process by the prosecution. This is fundamentally different from the plea bargain founded on common law without clear cut provisions on the concept. The Nigerian model of plea bargain is a matter of strict statutory provision, which allows for double-check on compliance and voluntariness which allays the fear of abuse.

The main purpose of criminal trial is to ensure that a defendant who has breached any aspect of the criminal law is punished, after the prosecution has proved the guilt of the defendant beyond reasonable doubt. The concept of plea bargain has in no way derogated from the purpose or objective of criminal prosecution because before a defendant can benefit from plea bargain, he has to personally plead guilty to some form of offence, and be convicted of the offence he has pleaded guilty to. Plea bargain operates in personam, not by privy or proxy. In joint trial, each of the defendants must enter into plea bargain with the prosecutor to benefit from the arrangement.[83] Punishment is meted out to the defendant in accordance with the negotiated plea, and this is notwithstanding his promise to make restitution or return the stolen or fraudulently obtained properties.[84] It must be expressly negotiated, written, and executed by the parties for a court to act on it.[85]

Recommendations

Research communicates ideas, either novel or existing. What research does to existing idea or concept is usually to correct wrong impression about the idea, expand and expound it. The present paper aims at supporting the practice of plea bargain in Nigeria by clearing the fear and misconception about its possible abuse, and use of it to favour corrupt individuals and corporations. From the foregoing examination of the law regulating plea bargaining in Nigeria, the author believes that it has been made abundantly clear that plea bargain as a prosecutorial strategy can hardly be abused without the active connivance of a trial judge or magistrate and

[80] See ACJL Lagos, s 77 (7) (a), (b); (c) ACJA, s 270 (7), (a), (b) ACJA.
[81] ACJA, s 270 (6), (d).
[82] See ACJL Lagos, ss 77 (9), (10), 213; ACJA, s 270 (9), (10); Evidence Act 2011, s 29 (2).
[83] *PML (Securities) Co. Ltd. v F.R.N.* (n 73); E Odum, *Plea Bargain and Its Implication: An Appraisal of the Administration of Criminal Justice Act (ACJA) 2015* (Abuja: NIALS 2020) 5-11, 17-20, A Adekunle, *Digest of Cases on the Administration of Criminal Justice Act 2015*(Lagos: NIALS 2019) 77-81, MT Ladan (ed), *Digest of Cases on States Administration of Criminal Justice Laws in Nigeria* (Lagos: NIALS 2020) 90-99.
[84] *Friday David v F.R.N.* (2018) LPELR-43677 (CA), *Ojukwu v F.R.N.* (2019) LPELR-46494 (CA).
[85] *Ogboka v State* (2015) LPELR-41177 (CA).

the investigating police officers.[86] The bulk stops at the table of the trial judge or magistrate, and in the event of possible collusion with the prosecution to undo the defendant in a plea bargain arrangement, the appellate courts are there to correct the wrong.[87]

Agreement is to be obeyed. A critical assessment of the relevant laws governing plea bargaining in Nigeria reveals that a defendant is only allowed to withdraw his plea of guilty in a criminal trial where the trial judicial officer desires to impose a heavier punishment than the one contained in the plea bargain agreement executed by the parties.[88] In that instance, the judge or the magistrate must inform the defendant about his decision to inflict a harsher sentence than the one agreed to by the parties. This is to enable the defendant elect whether to continue with the trial or to withdraw his guilty plea, and face the charge before another judge.[89] The reason for this is obvious. A lot of precious time and resources go into making a plea bargain agreement. Many meetings are held; victims, their representatives, and witnesses are invited to contribute towards reaching a plea bargain agreement acceptable to the parties at law. It is usually drawn up, executed by the parties to it, and attached to the Charge or Information for trial of a defendant. It should be noted that under section 77 (12), (b), (i) of ACJL Lagos, the prosecutor is at liberty to withdraw his offer of plea bargain if a judicial officer intends to impose a lesser sentence than that agreed by the parties. The Law does not provide for the consequences of such withdrawal of the plea bargain. The present author submits that it has same consequences as a defendant's withdrawal of guilty plea. In other words, once the prosecutor withdraws his offer of plea bargain, the trial will start *de novo* before another magistrate or judge. No reference will be made to the withdrawn negotiated plea in the fresh trial nor another plea bargain made in respect of the same offence(s).

Suppose the prosecution or the defendant comes to the court on the next date of adjournment, and decides to abandon the plea bargain agreement without any reason or with reasons not acceptable by the trial court? What would the court do in that circumstance? This aspect is not covered by our law. Plea bargain is a contract in criminal trial between the prosecution and the defence.[90] It has to be obeyed so as to not erode public confidence in the application of the concept to criminal trials. Abandoning a plea bargain agreement without genuine reasons acceptable to the *judex* is bad for both the parties and the general public. It defeats the very essence of the concept, which is a speedy dispensation of criminal justice. After all, the prosecution and the defence have equal bargaining powers in the process because no one is ordinarily coerced into making a negotiated plea. It is, therefore, recommended that the law be amended to expressly empower judicial officers to reject any withdrawal by either the prosecution or the defence from written voluntary plea bargain agreements. This is to obviate the unnecessary waste of time and judicial resources in determining the existence of the contract between the prosecutor and the defendant or his representative and a breach of the contract. In the alternative, judicial officers should be empowered by law to impose heavy fines on any party who withdraws from plea bargain agreements as a matter of a mere change of the mind.

[86] ACJL Lagos, s 77 (1), (2), (5), (9-12), ACJA, s 270 (5).
[87] *Kelly v F.R.N* (n 71)., *Agbi v F.R.N.*(n 72), *Bando v F.R.N.* (n 75) *supra.*
[88] ACJL Lagos, s 77 (12), ACJA, ss 270 (11) (c), 15 (b); *Nwude v F.R.N.* (2015) LPELR-25858 (CA).
[89] ACJL Lagos, s 77 (13) ACJA, s 270 (16).
[90] *F.R.N. v Lucky Igbinedion* [2014] All FWLR (Pt. 734) C.A. 101 at 144.