ACCELERATED CRIMINAL JUSTICE SYSTEM IN NIGERIA THROUGH PLEA BARGAIN*

Abstract
The phenomenon of delay associated with Nigerian Criminal Justice System has punctured the concept of justice in Nigeria. The Nigerian Criminal Justice System drags longer than necessary, falling victim to the axiom: justice delayed is justice denied. To tackle this hectic and age long challenge with the Nigerian Criminal Justice System, the concept of plea bargain became a necessity. Plea bargain aids criminal justice systems attain expeditious dispensation of justice to all parties concerned. In this concept, both the consent and cooperation of the victim, the prosecution, the court and the accused must be obtained and then a resolve will be reached for the overall good of all. Thus, this work argues that plea bargain is a theory that can ensure durable, effective, efficient and accelerated justice to all and thus should be made a mandatory procedure in criminal cases. This research adopted doctrinal research design, based on primary and secondary sources of data. As a result of the sceptical approach of law enforcement agencies and lawyers, we recommend a review of the constitution and practice direction with a view to introducing provision for application of plea bargain and the timeline. The article further recommend that government should conduct advocacy and sensitization of the public on the principle of plea bargain and the need for periodic review of the Administration of Criminal Justice Act\Law in tandem with this development.

Keywords: Plea Bargain, Nigeria, Justice, Criminal, Mediation, Negotiation

1. Introduction

The axiom 'Justice delayed is justice denied'is brought to bear on the fact that from time immemorial man has been in search for unalloyed justice, yet, to no avail as efforts towards the achievement of unbridled justice has remained illusory. [1] Plea bargain portends elimination of protracted criminal procedure which has crippled the wheel of justice and expeditious dispensation of justice in Nigerian criminal justice system. One of the things that has hampered accelerated criminal justice system in Nigeria is the inability to prefer charge against a suspect in order to arraign him to court of competent jurisdiction without delay. Thus, we have more of awaiting trial inmates than those on

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[1] *Brady v. United State* (1970)397 U. S. 752.

trials. Besides, long adjournment of cases or incessant grant of adjournment applications, congestion of the dockets of the courts and corruption in the system are contributory agents of delay in justice delivery. Plea bargain hopefully can substantially salvage the nation's criminal justice system. The essence of plea bargain is to attempt to foster justice and bridge the gap between what is applicable and what is desired. An embrace of the concept of plea bargain as an applicable principle will go a long way to enhance efficient and effective justice delivery in Nigeria. The coming into force of the Administration of Criminal Justice Act 2015 (ACJA) has without doubt enclosed the concept of plea bargain with enormous judicial cloak to ease its smooth and unhampered application in Nigeria. For the Nigeria legal criminal system to progress to an enviable level in the face of the wake of technological advancement and to attain accelerated speed in every matter before the court, an embrace of the concept of plea bargain is *sine qua non*resolving the teething problems of delay in criminal proceedings.

Plea bargaining enhances court proceedings and guarantees a conviction without expending public resources, time and money, despite the contrary belief of some scholars. Plea bargain involves negotiation and often times results in leniency or reduction in sentence that would have followed ordinarily. There are three major types of plea bargain, to wit: charge bargaining, count bargaining and sentence bargaining, and it is trite to note at this point that negotiation is at the foundation of all plea bargain. Plea bargain really has numerous benefits that cannot undermined. There is need to leverage on the concept to have a better and viable legal criminal justice system in Nigeria. Plea bargaining emanates from 'the mutuality of advantage' to defendants and prosecutors, each with his own reasons for wanting to avoid trial and get the case done with as expeditiously as possible.[2]

2. Development of Plea Bargain

The evolution of plea bargain could be traced to the United States, and some of the earliest plea bargains took place in the US colonial era during the 1692 Salem witch trials, when accused witches were promised that they would be pardoned if they confessed but would be executed if they did not.[3] The aim was to elicit confessional statements from alleged offenders and avoid going through full trials that will result to expending of limited resources, money and time.

Plea bargains were not normal practice in early American history. Judges are usually surprised, perplexed and do not really appreciate it when defendants offer to plead guilty with a view to making compromises with the prosecution. Thus, the American judges

[2] *Ibid*.
[3] A.W. Alschuler, 'Plea Bargaining and Its History,' *Columbia Law Review,* (1979) Volume 79 Issue 1, pp. 1-43, also available at <https://www.google.com/search?q=history+of+the+plea+bargain&client>, accessed 11th September 2023.

often times try to dissuade defendants from avoiding full trials in the open court. Irrespective of the above situation as early as 1832, plea bargains continued to gain traction and continued to spread wide in Boston because of its popularity. Public ordinance violators look forward to more lenient sentences if they pleaded guilty to the offence committed during negotiation.

By 1850 the practice of plea bargain had extended to felony courts and more serious offences.It increasingly became a conventional procedure for defendants to plead guilty in exchange for the dismissal of some charges where there is multiple charges or other negotiated agreements among the victim, the prosecutor, the court and the accused. It is noteworthy that initially the procedural use of plea bargain in Boston was especially for offenses where there are no victims, so the concerns and feeling of the victim was not being considered or bordered about by the prosecutor.

It was only during the American Civil War that plea-bargained cases began to appear in the courts of record. The appellate courts did not react otherwise than the way trial court judges had expressed their bewilderment when they first encountered plea bargaining, and they in some occasions discountenancedconvictions that were based on plea bargains. However, plea bargaining began to gain wide spread in the early 20th century. In later years, the growing percentage of reduction of charges in return for guilty pleas indicates that prosecutors have considered it apposite to offer greater concessions in exchange for guilty pleas.[4]

It is argued that the increase in expenditure and intricacies of the procedure of trial has led to circumvention of the system through plea bargaining. In addition, factors such as dynamism in the society, uprising of crime, expansion of substantive criminal law, pecuniary interest and insistence on unnecessary procedure or due process by police and prosecutors have also led to the growth in plea bargaining. In Cook County, Illinois, for example, 96 percent of felony prosecutions in 1926 resulted in guilty pleas.[5]

In the 1960s, plea bargain was seen and treated as unprofessional, unserious and illegal. Thus, defendants who had accepted plea bargains were instructed not to make reference to the negotiations in court, because doing so would negate the voluntarism of their pleas. In other words, the plea bargain was without prejudice. In 1969 however, the U.S. Supreme Court reversed the conviction of a man who had received five death sentences after pleading guilty to five counts of robbery because the trial judge was not convinced

[4] A.W. Alschuler (footnote 2).
[5]A. Marion, 'An Assessment of Plea Bargaining in the Reduction of Prison Congestion in Uganda', available at <https://www.coursehero.com/file/194045811/Edited-Copy-Atuhwere-Marion-Firm-F1pdf/> accessed on 11th September 2023.

that the guilty pleas were voluntary in the case of *Boykin* v. *Alabama.*[6] Judges currently has a technique of ensuring that guilty pleas are voluntary through interrogating defendants in the open court. Later on, the Supreme Court was of the opinion that it is acceptable to reward those defendants who plead guilty with more lenient punishment, and that defendants may plead guilty without admitting culpability, meaning that they can plea bargain even when they feel they are factually innocent.[7]

Furthermore, in *Santo Bello* v. *New York*[8], the Supreme Court here ruled that defendants are entitled to go to court and obtain a redress if prosecutors breach the conditions and terms contained in plea bargain negotiations, because the negotiation is without prejudice. The Court went further to opine that plea bargaining is 'not only an essential part of the process but a highly desirable part for many reasons.' Plea bargains thus became an established, known and protected practice. In *Bordenkircher* v. *Hayes,*[9] the defendant's refusal to plea bargain led to his life sentence for forging an $88 cheque and the court further held that prosecutors may threaten to bring additional charges against defendants who refuse to bargain as long as those charges are valid. Altogether, the above cases illustrate the Court's perspective that plea bargains are acceptable and deserve to be recognized and accepted as valid agreements and consequently a decision of the court.

In the Nigerian criminal legal system, the Former Chief Justice of Nigeria, Hon. Justice Dahiru Mustapher opined clearly that plea bargain has never been part of the Nigerian criminal legal system.[10] However, in 2004 plea bargaining was introduced into the Nigerian criminal justice system, for the purpose of reduction of the backlog of criminal cases in Courts. Though plea bargain has enabled the reduction of the number of cases pending in Nigerian Courts, nevertheless, it has been frowned at and arguments against plea bargain abound bothering on allegation of lack of transparency and accountability.[11] Although the concept has been bedevilled by multiplicity of controversies however, plea bargain allows both parties to avoid a lengthy criminal trial and may avail the accused the opportunity to avoid the risk of conviction at trial on a more serious charge. It is to ensure quick dispensation of justice in all criminal matters that come before the court, in order to save time, resources and also ensure that the correctional

[6] (1969) 3995 U.S. 238.
[7] *Brady* v. *United States* (1970) 397 U.S. 742; *Carolina* v. *Alford(1969) 394 U.S. 956.*
[8] 404 U.S. 257 1971
[9] (1978) 434 U.S. 357, cited as evidence of the undesirability of the present situation.
[10] T.C. Eze and A.G. Eze,'A Critical Appraisal of the Concept of Plea Bargaining in Criminal Justice Delivery in Nigeria', *Global Journal of Politics and Law Research,* August 2015Vol.3, No.4,.31-43.
[11] R. Uviovo, An Appraisal of Plea Bargaining under Nigeria Criminal Justice System, available at <https://www.google.com/search?client=firefox-b-e&q=history+of+plea+bargaining+in+nigeria>, accessed on 12th September, 2023.

centres are not congested.[12]It was the Economic and Financial Crimes Commission (Establishment) Act[13] that first established the procedure of plea bargain as a possibility in Nigerian criminal justice system to recover looted and embezzled public funds by government officials and other individuals.

2.1 The Import of Plea Bargain

According to Black's Law Dictionary,[14]'plea bargain is a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of the multiple charges in exchange for some concession by the prosecutor, usually a more lenient sentence or a dismissal of the other charges.

Plea bargain can also be called plea agreement or negotiated plea or sentence plea. This concept is known and practised in many countries like England, Wales, India, United States of America (USA) as discussed above. It is argued that easy practice of plea bargain in USA is as a result of her type of criminal justice system, which is inquisitorial unlike Nigerian's that is accusatorial. Despite all the benefits of the ideology of plea bargain just like any other concept, it has been frowned at by a lot of scholars and legal luminaries in Nigeria.

In Nigeria there are statutory provisions that are apt and profound as it concerns plea bargain and those we will consequently x-ray. Section 14(2)[15]states:

> Subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria 1999, (which relates to the power of the Attorney General to institute, continue, takeover or discontinue any criminal proceedings against any person in any court of law) the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, exceeding the amount to which that person would have been liable if he had been convicted of that offence.

However, section 75[16]provides:

> Notwithstanding anything in this law or any other law, the AG of the state shall have power to consider and accept a plea bargain from a person charged with any offence where the AG is of the view that the acceptance of such plea bargain is in the public interest, the interest of justice and the need to prevent the abuse of legal process.

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[12] H.A. Salihu, 'Plea Bargaining in Nigerian Criminal Justice System: A Procedural Tool for Loot Recovery or Justice Administration',*Crime, Law and Social Change* 78, 145-164, 2022, available at <https://link.springer.com/article/10.1007/s10611-022-10022-5> accessed on 12thSeptember 2023.
[13]No. 1 of 2004.
[14] B.A. Garner, (ed.) *Black's Law Dictionary*, 9thEdn., (USA: West Publishing 2009), 1270.
[15] The Economic and Financial Crimes Commission Act 2004, (EFCC Act).
[16] Administration of Criminal Justice Law of Lagos State, 2007.

Flowing from the above it is agreeable that the concept of plea bargain has faced and is still facing a lot of controversies in Nigeria, some of which include the following statements: it is unconstitutional; it extends further the already huge powers granted to the AG by the constitution which may lead to abuse; it encourages corruption, aids criminals escape punishment associated with crimes committed, and also eliminates punitive measures put in place to deter criminals. Irrespective of all these controversies the advantages of plea bargain were enumerated by the court in the case of *FRN v. Lucky Igbinedion,*[17] to include:

> (1) Accused can avoid the time and cost of defending himself at trial, the risk of harsher punishment and the publicity the trial will involve. (2) The prosecution saves time and expense of a lengthy trial. (3) Both parties are spared the uncertainty of going to trial. (4) The court system is saved the burden of conducting a trial on every crime charged.

On the other hand, section 494[18] distinctly defined 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 complaints 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.

It is worth mentioning that plea bargain is yet to become a generally acceptable concept in Nigeria criminal justice system and a case management strategy.[19] Agaba[20]further postulated that for a plea bargain to be said to have taken place, the following must be available:

(i) A prosecutor and accused person, who must show interest in the arrangement;
(ii) A negotiation between a prosecutor and the accused person will take place;
(iii) A negotiation which must have ended in an agreement with concession and compromises from the prosecutor and the accused;
(iv) A plea, that is, a plea of guilty to the charge or to a lesser charge;
(v) The involvement of the court is a *sine qua non*; and
(vi) An acceptance of the plea.

[17] FHC\EN\6C\2008, [2004]LPELR 22760 (CA) Per Ogunwumiju, JCA, 75-76.
[18]Administration of Criminal Justice Act 2015.

[19] J.A. Agaba, Practical Approach to Criminal Litigation in Nigeria, 1stEdn. (Abuja: Panaf Press) 2011, 589.
[20]*Ibid,* 559-560.

Afolayan,[21]plea bargain is being solely utilized in economic and financial crimes, and as well statutorily allowed in section 75 and 76 of the Administration of Criminal Justice Law Lagos State 2007. Plea bargain arises where the accused person opts to plead guilty to the charge or part of the charge or to a lesser offence than the one charged and has made his intention known to the prosecutor or the AG who supports the view, where it is in public interest and will ensure justice to all concerned in the instant case. In implementing plea bargain the court must ascertain whether or not the negotiated agreement was entered into voluntarily and without infringing on any of the constitutional rights of the defendant or accused person, if discovered that the plea bargain process was unfettered, the court then convicts the defendant based on his plea and will make its order accordingly.[22]

The ideology of plea bargain was at first instance practised by the Economic and Financial Crime Commission (EFCC) in 2005 to settle the case of corruption against former Inspector-General of Police, Tafa Balogun. Also, in the same year the commission applied same in the case of the former Governor of Bayelsa State, D.S.P. Alamieyesagha for embezzlement and Emmanuel Nwude and Nzeribe Okoli who defrauded a Brazilian Bank.[23]Other cases where plea bargain was leveraged on by the EFCC include: the trial of erstwhile Governor of Edo State, Lucky Igbinedion in 2008 for embezzlement, former Managing Director of defunct Oceanic Bank, Mrs Cecilia Ibru in 2010 for abuse of office and mismanagement of funds.[24]

In spite of the plethora of controversies bedeviling the concept of plea bargain, it has been found very vital in handling criminal matters hence, the Administration of Criminal Justice Act (ACJA) made elaborate provisions for plea bargain. Section 270(1)[25] provides:

> Notwithstanding anything in the Act or in any other law, the prosecutor may: (a) receive and consider a plea bargain from a defendant charged with an offence either directly from that defendant or on his behalf; (b) offer a plea bargain to a defendant charged with an offence.

In *addendum*, the time appropriate for entering a plea bargain can be during or after the presentation of the evidence of the prosecution, but must be before the evidence of the defence in order words, before the defence opens its case and that must be under the following conditions:

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[21] A.F. Afolanyan, Criminal Litigation in Nigeria (Enugu: Chenglo Limited), 2010, 25.
[22]*Uguru v. The State* [2002] 9 NWLR (Pt. 771) 90 at 108-109.
[23]*FRN v Emmanuel Nwude*&anor [2006] 2 EFCCSLR 145.
[24]F.O. Ukwueze, 'Fostering the Rule of law in Nigeria through Efficient Administration of Criminal Justice', in *Fighting on the Side of Law and Justice, a Legal Essay in Honour of Prof. G.O.S. Amadi,*. 49-51 (Enugu:Snaap Press Nig. Ltd) 2016.
[25]Administration of Criminal Justice Act (ACJA) 2015.

(a) the victim or his representative must consent to the plea bargain;
(b) the evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt;
(c) the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative; or
(d) the defendant in the case of conspiracy has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders.[26]

All of the above conditions must be present for a plea bargain to be validly entered by the prosecutor and the essence of this is to ensure justice is done to all and sundry. Thus, plea bargain will only be allowed when it is in the interest of justice, public interest, and public policy and prevention of abuse of the legal process.[27]

Public interest entails the defendant's willingness to co-operate in the criminal investigation and prosecution of others involved in the crime or other major crimes, the history of the accused-his antecedent, the likelihood of obtaining a conviction at trial and prompt disposal of the case.[28]The Act requires also that before entering plea bargain the prosecutor must get in touch with the investigating police officer, and the victim or his representative.[29] The compensation payable by the defendant is to the victim in order to compensate for the victim's loss and damages suffered as a result of the crime and it ensured fast track criminal trials for the benefit of all. Plea bargain in essence ensures that inadequate court facilities and under staffing of the courts needed to undertake criminal trials are taken care of.[30]

Plea bargain as against its demonization and public controversy is of mutual benefit to all stakeholders in the criminal justice system. In other words, it takes care of all involved in any particular criminal case- the prosecutor, the accused person(s), the judge, the victim and the public. This concept connotes the defendant and the prosecutor working out a mutually satisfactory disposition of the cases subject to court approval.[31] The process of plea bargain is synonymous to the pre-trial settlement in civil cases, in the sense that it limits the risk in full blown criminal litigation. This is owing to the fact that none of the parties to a criminal suit is certain on what the decision of the court will turn out to be at

[26]*Ibid*, S. 270 (2).
[27]*Ibid*, S. 270 (5).
[28]*Ibid*
[29]*Ibid*, S. 270 (3) & (4)
[30]*Santo Bello v. New York*, 404 US 257 (1971)
[31]G.C. Nwakoby and U.B. Odoh 'Rule of Law, Governance Dispute Resolution and Contemporary Legal Issues in Nigeria,'in E.K. Igwe and U.B. Odoh'Understanding the Imperative of Plea Bargain in the Administration of Criminal Justice Act, 2015, 152.

the tail end of the trial, because criminal suit is always uncertain for no two cases are same on all fours and the court also has the right to overrule itself in subsequent cases with similar circumstances.

2.2 The Merits of Plea Bargain

Plea bargain is of numerous benefits to all: the state, the accused, the prosecutor, the court and the victim. It saves the resources the court would have expended in going into full trial of a particular matter before it and invest the limited resources to more delicate and sensitive matters. It also affords a willing accused person privilege to show remorse and shoulder responsibility for his conduct and help serve as a witness or link to unveil other criminals and their activities. Plea bargain create the possibility for the victim of a crime to be compensated where necessary and proper; in other words, the accused makes restitution for his wrong. This concept as well aids to shorten the imprisonment period of the defendant or at times avoid the trauma and stigma of imprisonment as it were. Thus, plea bargain expands the ideology of restorative justice, and this means justice to the state, to the accused, to the victim and to the community by taking care of their interests.[32]

The intricacies involved and required by law in establishing economic or financial crimes which has been on the increase in Nigeria in recent times makes plea bargain desirable and indispensable. Plea bargain is as well an ideology that enables the unravelling of the mystery of congestion of correction centres in Nigeria by giving shorter imprisonment sentence or none as the case may be. It also reduces court case dockets; plea bargain eliminates frustration and uncertainty inherent to full plenary trials. The concept also avails prosecutors ample times to invest in getting witnesses whose evidence are material to prove more complex crimes.[33]

Plea bargain circumvents public as well as full trial and protects the victim from the trauma of giving evidence in an open court especially in sensitive and dicey matters.[34] Plea bargain saves public fund and resources spent during full and prolonged trials. The ideology ensures the quick dispensation of more criminal cases than by full trials. Plea bargain aids the defendant to avoid the risk of possible guilty verdict at court on a more severe charge. Plea bargain aids the defendant to get a concession that rates higher than his constitutional surrendered rights. The concept could be advantageous as well in the following ways: It reduces criminal charges for instance plea of guilty to a misdemeanour instead of a felony i.e. for a lesser offence and in extension brings about accelerated

[32]Administration of Criminal Justice Law of Lagos State, 2011, section 76 (2)(b).
[33]The trial of Major Al-Mustapha & others come to mind here Barnabas Jabilla (Alias Rogers) was used as a prosecution witness.
[34]Like Rape

procedure and processes of criminal justice system. It also presents option with penalties embellished with leniency rather than a conviction at full trials. Plea bargain further tidies up and deals with the trial process at a goal, thus, no involvement of the intricacies of full trials and no follow-up court appearances. Moreover, it aids the defendant to secure peace of mind and his future without his future plans truncated.[35]

Plea bargain is a negotiating tool that enables securing of witnesses, conserves the limited available resources for the society, which will be redirected to other major cases and also used to put into other needed infrastructure to serve the charter of people's needs. This concept in turn brings about decongestion of correctional centres and court's cause list, and give room for other serious and more complex matters. In addition, it quickens trial processes and saves time as a scarce resources. Meanwhile, plea bargain forestalls a case from getting messier than it is already, but targets on getting it resolved expeditiously so as to redirects energy to more severe cases. It shrinks count charges drastically in the event of charge bargain, on the other hand, there is reduction in sentencing where there is sentence bargain. More so, it eliminates stigmatization that accompanies sentencing in the public eyes.[36]

It is worth mentioning that plea bargain makes resolution private and eliminates publicity i.e. protecting the parties from public glare and consequent stigmatization as the case may be. It also avoids hassles and troubles that accompanies a trial like time, money, energy and exposure and finally, it shields and avoids deportation of defendant or an accused outside Nigeria as the case may be.[37]

2.3 Plea Bargain:an Alternative Dispute Resolution (ADR) Mechanism?

It will be apposite to describe what ADR means, its origin and what it entails before attempting the poser above. Alternative Dispute Resolution as a term and principle is traceable to the United States of America, in a drive to find better alternatives to the traditional and usual legal system of litigation applicable and prevalent in the country. The concept of ADR encompasses a wide range of alternative to customary legal system. Its attention and focus are on developing effective communication and interpersonal skills, patience, tolerance, accommodation, concession and finding a mutually benefiting ground for the parties concerned. It enhances dialogue, openness, understanding, friendship, favourable future dealings and trust which enable disputants focus on reaching a zone of possible agreement in all forms of disputes. Alternative Dispute Resolution (ADR) is a scheme and method of resolving disputes between parties in a fast and quick

[35]Constitution of the Federal Republic of Nigeria 1999 (as amended), section 36: dealing on right to fair hearing.
[36]Replacing rape for assault or aggravated assault.
[37]*Padilla v. Kentucky* US Supreme Court 2010.

way instead of going through a formal court proceeding. It is worth mentioning that ADR is an ideology that is not alien to Nigerian culture and African tradition at large, but which has gradually disappeared into the thin air by the invasion of colonial masters, military aberrations, modern reasoning, embrace of trend of civilization and new normal that are foreign to African and in particular Nigerian rich cultural heritage of dialogue, accommodation, concession and tolerance.[38]

ADR refers to, 'any method that parties to a dispute might use to reach an agreement, short of formal adjudication through the courts.' [39]On the other hand, plea bargain as seen earlier is defined thus: 'a negotiated agreement between a prosecutor and a criminal defendant, whereby the defendant pleads guilty to a lesser offence or to one of the multiple charges in exchange for some concession by the prosecutor and the court, usually a more lenient sentence or a dismissal of other charges.'[40]

Plea bargain is negotiation which is an integral part of ADR. Negotiation has peculiar circumstances or conditions where it can take place, to wit:

(i) Where there is an identification or understanding by the disputing parties on the issues that is in dispute;

(ii) Where there is compatibility among the interests, goals and needs of the disputing parties:

(iii) Where the parties agree to co-operate in order to meet their needs:

(iv) Where external constraints such as reputation, cost and the uncertainty of an imposed decision by the court encourage participation in a private and co-operative process where you determine the outcome of the negotiation with the other party involved and fifthly;

(v) Where parties can influence each other to act in ways that provide mutual benefit or avoid harm both presently and in future.

(vi) Where time is of essence to parties and

(vii) Where disputing parties have the understanding that alternative procedures are not as advantageous as negotiation which allows them to determine the outcome of the dispute by themselves interfacing.[41]

In the same vein, there are conditions that must be present for plea bargain to take place namely: The consent of victim or his representative must be obtained. It can also take place where the prosecution is of the opinion that the evidence he has gathered over time is not sufficient to prove that the offence was committed by the accused beyond

[38]ICMC Nig., 'Mediation Skills', *Accreditation and Certification Training Manual*, .57

[39]D. Kovick and J.H. Young, 'Alternative Dispute Resolution Mechanisms',in C. Vickery (ed.), *International Foundation for Electoral System, Guidelines for Understanding Adjudication & Resolving Disputes Elections (GUARDE),* (USA: IFES) 2011, 229.

[40] B.A; Garner (ed.), *Black's Law Dictionary*, 9thEdn., (USA: West Publishing) 2009, 1270.

[41] ICMC Nig., Mediation Skills Accreditation and Certification Training Manual, p. 144.

reasonable doubt. Again, where the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative; or the defendant in a case of conspiracy has fully co-operated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders. Considering the conditions precedent, before the two concepts of negotiation and plea bargain can be implemented, there is no gainsaying that just like negotiation is an ADR mechanism so also is plea bargain. This is as a result of the fact that plea bargain presents the opportunity to persons who admit responsibility for their crimes to receive consideration for their remorse, act of restitution and forfeiture of proceeds of crime, in the form of a lighter sentence. Meanwhile, it conserves the expenses involved in litigation, saves judicial funds that are scarce and would have been wasted on investigation and litigation procedures. In addition, the intricacies in proving complex cases are taken care of via plea bargain.It also enables accelerated dispensation of cases and easement of case dockets and helps judges and court clerks have few cases they put in their man power to resolve. In addition, plea bargainensures fairness and justice as all concerned partake in deciding the outcome of the matter and are voluntarily bound by the outcome of the bargain. With plea bargain, lenient sentence is given to a defendant as a compensation for him or her to consent to tender material evidence in favour of the prosecution in a more severe offence and it provides the opportunity for the prosecution to pay more attention on other serious matters.[42]

On the other hand, plea bargain is private and protects victims of crime from trauma of giving evidence in public and societal stigmatization in sensitive cases like rape. It saves public expenditure that could have been expended in protracted trials.[43] It also, plea bargain is cost effective, which is an integral and crucial merit of Alternative Dispute Resolution (ADR) over litigation. It further eliminates time wastage which is also synonymous to features of ADR. Similarly, it prevents the situation of the winner takes it all invariably making all the parties to be in a win-win position i.e. the beauty of ADR. Plea bargain promotes privacy owing to the fact that it is conducted in private not in the open court that is also a characteristic of ADR. Moreover, it accelerates speed as the incidents of criminal trials are curtailed by the applicability of plea bargain. Furthermore, it aids to solve the problem of congestion of the correctional service centres because offenders are either committed to a lesser period of imprisonment or given an option of fine or discharged from multiplicity of charges which could have culminated into long term of imprisonment. Plea bargain ensures that justice is served to all the parties to a

[42]Administration of Criminal Justice Act (ACJA) 2015, S. 270 (2).
[43]The Report of the working group on the reform of criminal justice of the AG and Commissioner of Justice, Lagos State 2005 cited in J.A. Agaba,*Practical Approach to Criminal Litigation in Nigeria*, 1959,p.592.

criminal trial as restitution is rendered monetarily, if it is an economic crime and damages caused to the victim will be assuaged by payment from the offender. To cap it all, plea bargain serves to avoid conviction of an innocent person who though innocent, all evidence both circumstantial and otherwise points to him as a result of a lacuna existing on the part of the legal representation or the judge. It will be apposite at this point to consider ADR features which are synonymous to the characteristics of plea bargain.

Alternative Dispute Resolution is voluntary i.e. freewill, it is engaged in without coercion, parties come to the table without compulsion and have the option of walking away at any time before the agreement is sealed. The agreement is enforceable as contract, it means once it is agreed upon and signed, it becomes binding on the parties. ADR is also informal: the arrangement is a friendly one and parties are free to dialogue and reach a compromise. It also affords parties the freedom to choose how and when to present evidence and arguments often focused on the past and future. ADR procedure takes place at the convenience of the disputing parties, they choose the time and place to have the settlement take place. The parties make compromises by themselves therefore the outcome is mutually accepted agreement. Similarly, ADR is also not held at public glare rather thus, it is private. More interestingly, cases are trashed quickly and easily out of court, so it decongests the court. ADR is timeous i.e. it avoids delay, this is paramount especially in cases where time is of essence for instance a commercial dispute. It is cost effective and reserves more money and eliminates frustration and rigors associated with protracted trials. It bears mentioning at this juncture that ADR makes available numerous options for parties to make their choice and it brings about satisfaction and peace of mind with the agreement mutually reached, parties consequently keep their own part of the bargain, without compulsion.

At the foundation of ADR is the preservation of future relationship and more profitable business deals for commercial disputes. Thus, ADR ensures that all concerned have access to justice in order to assuage the aggrieved and therefore reduces caseloads of Judges it ensures quick and speedy resolution of disputes. On the other hand, ADR helps to save parties from extravagant expenses and time, it actually ensures harmonious co-existence between the parties, it also aids parties to accommodate and tolerate one another. It makes the public comfortable and satisfied with the justice system, in order words it gives human face to the judicial system. ADR as well give room to create resolutions suited to parties' needs and interest and it enables parties to voluntarily comply with resolutions reached effortlessly. It is wholly flexible not rigid like the case of litigation and finally it has prospects of providing more timely resolutions for

disputants.[44]These features of ADR and plea bargain are one and the same, thus, it is maintained that plea bargain is an ADR mechanism.

3. The Constitutionality of Plea Bargain In Nigeria

The Constitution of the Federal Republic of Nigeria 1999 (as amended) is the grundnorm of Nigerian legal framework, hence, it is supreme and binding on all citizens of Nigeria. Thus, it is imperative to consider plea bargain in the light of the constitutional provision of Nigeria. This is also vital owing to the fact that the concept of plea bargain is, hitherto, alien to Nigeria, because none of our penal laws, substantive or adjectival laws, recognised the concept until in the recent times.[45]The constitutionality or otherwise of plea bargain has been in issue even in other jurisdiction like the United States. Thus, Lynch stated:

> There is no doubt that government officials deliberately use their position and powers to pressure people who have been accused of crime, and who are presumed innocent, to confess their guilt and to waive their right to a formal trial.[46]

However, despite the controversies confronting plea bargain, in the American case of *Burdenkircher v. Hayes*,[47] the defendant on appeal argued that the prosecutor by threatening to punish him for simply exercising his right to trial had violated his constitutional right. The United States' Supreme Court held that the prosecutor did not violate the right of the defendant in any way because plea bargain is a practice recognised by law.

In Nigeria, the poser is whether plea bargain violates the fundamental rights particularly the right to fair hearing as enshrined under the constitution of Nigeria thereby making it unconstitutional.[48]It is crucial and paramount to consider what was opined in the case of *Ariori v. Elemo*,[49]where the Supreme Court made a distinction between two types of rights, to wit: the right that is for the sole benefit of the citizen concerned. This right can be jettisoned or waved by the person involved without consequence. The second is the right that is for the benefit of everyone (the citizen and the general public). This category of rights cannot be breached or waived without consequence. From the lens of the above

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[44] O.D,Amucheazi, 'The 'Place of Mediation in the Resolution of Election Disputes: The 2019 General Elections in Perspective', a Paper Presented at the 2019 Annual Lecture and Reception of Newly Inducted members of the Enugu State Chapter of the ICMC, April 17th 2019.

[45]Administration of Criminal Justice Law (ACJL) of Lagos State published as Lagos State of Nigeria official gazette No 21 Vol 41& it came into force on 28th May 2007.

[46]T. Lynch "The case Against plea bargaining" available at <http://www.cato.org/pabs/regulation/regn26n3/v26n37> pdf, accessed on 6th August, 2022.

[47] 434 U.S. 35 357 [1978]; *Santo Bello v. New York* 404 U.S 257 [1971].

[48]Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended), section 1(3).

[49] [2001] 36 WRN 94.

distinction and explanation by the Supreme Court, the fundamental right to fair trial[50] falls within the ambit of the first type of right and the provision that an accused is innocent until proven otherwise[51] is also in the first category of right and thus can be waived. It therefore connotes that plea bargain in criminal trials makes open two options for the accused to choose from, viz: (a) to undergo full-fledged criminal trial and if convicted, he or she will be sentenced and serve the jail term as proscribe by the court, or (b) the defendant can opt to waive this right and then go for a lesser charge or sentence and do away with full trial and its possible consequences.

The prosecutor on his path has two options available for him to choose from, to wit: (a) to expend time, energy and money in proving the guilt of the accused and possibly obtain a conviction and consequent jail term against the accused or (b) having a confession of guilt and thus conviction on a lesser charge with more lenient sentence for the accused and as a result save the energy and other resources he needed for full prosecution proceeding. It is worthy of note that the court in exercising her enormous discretionary power could reject a plea bargain and dish out a higher sentence following the normal trial procedure.[52]

It is pertinent to state that some of the fundamental rights of the citizen like the right to fair hearing,[53] can be recklessly abused if plea bargaining is not validly practised with decent approach and the sense of responsibility. Needless to state that in practice, mostly in economic crimes, the loot is not totally forfeited by the defendant in Nigeria and this, calls for a grave concern as no tangible explanation is given for this seemingly notorious act.

Flowing from the above discourse it will be apposite to state categorically that plea bargain is constitutional; in support of the above opinion the National Assembly towed the right path by enacting a legislation[54] in order to accommodate the ideology of plea bargain. It is also pertinent to note that the interest of justice is the core objective of the concept of plea bargain. This is owing to the fact that justice is a four way traffic concept i.e. justice to the state, to the victim, to the accused and to the general public.[55] To

[50]Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended), section 36 (6).
[51]Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended), section 36 (5).
[52]Administration of Criminal Justice Law *(*ACJL) Lagos State 2011, section 76; *Pepple v. Ferguson* 361 NE. 2d 333(111 cf. App. 1977); *United States v. Adams* 634 F. 2d 830 (5th Cir, 1981).
[53]Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended), section 36 (4) (5) (6)(d)& (11); Administration of Criminal Justice Act (ACJL)2015, section 270 (10)(b).
[54] ACJA 2015, section 270-277.
[55]B.N. Iwuagwu, 'Imperative of Correctional Justice in Nigeria', available at <http://m.guardian.ng/features/imperative-of-correctional-justice-inNigeria>accessed on 6th August, 2022; Justice is a 3-way traffic-Court (May 26, 2015) available at <www.dailytrust.com .ng/adgh.htmp.>, accessed 6th August 2022.

illustrate the above in a hypothetical economic crime where the accused opt for plea bargain; if welcomed by all stakeholders concerned the following applies: (1) The loot is returned to the state i.e. justice to the state (2) The accused is given a lighter sentence or jail term i.e. justice to the accused (3) The society i.e. the general public that would have suffered from say infrastructural deficit will revert to *status quo ante* i.e. the funds for development of the society is returned to the public purse and thereafter utilised as supposed i.e. justice to the victim. The article thus maintains that plea bargain is constitutional and serves the best interest of justice.

4. The Concept of Plea Bargain Viz-a-viz the Nigerian Criminal Justice System

Criminal Justice System is the collective institution through which an accused goes through until the accusations leveled against him have been disposed of or the court has given its judgment. There are five constituent of criminal justice system in Nigeria and they are: the law, the community, law enforcement agencies, the court system and correctional centres (prison), they are all vital, interwoven and indispensable; thus, for efficient and effective criminal justice systems in Nigeria there is a great need to create synergy and reinforce the structures of the above enumerated components. It is trite to re-echo that the concept of plea bargain has been alien to Nigeria legal system until the advent of Economic and Financial Crimes Commission Act,[56] followed by Administration of Criminal Justice Law of Lagos State (ACJL) 2007 and then the Administration of Criminal Justice Act (ACJA) 2015.[57] The nature of plea bargain under the ACJA 2015 involves the following key actors namely: the prosecutor,[58] the accused,[59] the victim,[60] and the court. The features of plea bargain under the ACJA 2015 include:

(a) Openness and clarity in negotiation- the Act[61] states that the prosecutor can enter into plea bargain only after getting in touch and consultation with the investigating police officer (IPO) and also where possible and needful he is to also consult with the victim of the offence as the case may be. The interest and benefit of the community and the defendant, the nature or circumstances of the offence must be of paramount consideration.[62]

(b) The Act provides that any agreement to embark on plea bargain must be written and signed by the parties.[63] The victim or his representative is entitled to be given an

[56]Economic and Financial Crimes Commission Act, Laws of the Federation of Nigeria 2004, section 14.
[57]Administration of Criminal Justice Act (ACJL)2015, sections 270-277.
[58]A.W. Alaschula,'*The Prosecutors Role in Plea Bargaining,' U.Chi.I. Rev*.50.51 1968.
[59]*Ibid*, 'The Defence Attorney's Role in Plea Bargain' 84 *Yale L.J.*1179 (1975).
[60] S. Welling,'Victim Participation in Plea Bargain'65*Wash U.L.Q* (1987) 301.
[61]ACJA 2015, section 270(5).
[62]*Ibid*, section 270 (5)(b).
[63]Administration of Criminal Justice Act (ACJL)2015, section 270 (7).

opportunity to make an input as regards the content of the agreement and the plea bargain agreement is to contain a compensation or restitution order as it were.[64]

c) The presiding Judge or Magistrate must be involved fully in the process of plea bargain to enable him or her ascertain that no one was coerced, the content of the agreement is correct and that there was no duress in trying to convince any of the parties to agree, even though the judge or magistrate is not a party to the agreement.[65]

d) The Defendant's discretion and voluntarism to embrace plea bargain must remain unfettered from the beginning of the process to the point of sentence in other words the defendant has the right to pull out from plea bargain arrangement at any time,[66] in this case trials proceeds *de novo* without prejudice to the plea bargain agreement.[67]

On the other hand, the criminal justice system of Nigeria insists on proof of every alleged crime beyond any iota of doubt before conviction, this applies to all crimes or offences.[68] Note the standard of proof in criminal cases in Nigeria is beyond reasonable doubt[69]. An accused is to be brought to court unfettered and the charge read to him in the language he or she understands or interpreted understandably and he shall be asked to plead thereto.[70] This plea is to be taken in the public glare in court, it could be a guilty plea or otherwise which is different from a guilty plea pursuant to a plea bargain which is usually in private. On arraignment the defendant interfaces with the prosecutor who may be a police officer but certainly a different person from the investigating police officer (IPO).Plea of guilty or not guilty must be personally pleaded in the open court not by proxy.[71]

When we consider the Constitution of the Federal Republic of Nigeria, the penal and procedural statutes governing criminal justice in Nigeria, it could be said confidently that the ground is not hostile so as not to accommodate plea bargain, more so, as our legislatures have introduced the concept once more through the ACJA and all the state legislative houses have adopted same in their states with Niger State which assented to the ACJL of the state on the 27th of May 2023.[72]

It will be proper at this point to consider the provision of section 174 (1)[73] and juxtapose it with the concept of plea bargain, the subsection provides:

[64]*Ibid*, section 270 (6)(a)&(b).
[65]*Ibid*, section 270 (8) &(10).
[66]*Ibid*, S. 270 (11) and(15).
[67]*Ibid*, S. 270 (16) and (17).
[68]Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended), section 36(5).
[69]Evidence Act 2011, section 135(1).
[70]*Adio v. The State* 6 SC 19.211 &212 ACJL Lagos State.
[71]*R v. Pepple*(1949) 72 WACA 441.
[72]ACJL Abia 2017, Adamawa 2018, Anambra 2010, Bauchi 2022, Bayelsa 2019, Enugu 2017, Ebonyi State 2019, Kastina 2020, Nasarawa 2019 etc.
[73]Constitution of the Federal Republic of Nigeria 1999 (as amended).

> the Attorney General of the federation shall have power – (a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court martial, in respect of any offence created by or under any Act of the National Assembly; (b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or persons and (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority of person.

The power to enter *nolle prosequi,* which is the power to discontinue any criminal proceedings by the AG is unquestionable and cannot be denied him as the constitution made it sacrosanct and he is answerable to no authority, not even the court. Even though there must be prior negotiation before plea bargain will be applied that is between the prosecutor and the accused with the acceptance of the court, this procedure is absent when it comes to entering of a *nolle prosequi* by the Attorney General. As illustrated above, it could be rightly opined that some form of plea bargain is conceivable under our present state of the law.[74]

The Administration of Criminal Justice Act (ACJA) and the Administration of Criminal Justice Laws (ACJLs) for instance, the Lagos State ACJL re-emphasise the constitutional provision when it stated thus:

> The AG of the State shall have the power to consider and accept a plea bargain from a person charged with any offence where the AG is of the view that the acceptance of such plea bargain is in the public interest, the interest of justice and the need to prevent abuse of legal process.[75]

This provision is in tandem with the provision of section 211(3)[76] because the condition precedent for the Attorney General to oblige plea bargain is in all fours with the conditions required for entering of the constitutional power of *nolle prosequi* by the Attorney General. Thus, under the above section, the Attorney General of the State shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process. Thus, the above provisions of the ACJL and the constitution are same in meaning and intendment.

It is important to state unequivocally that unlike plea bargain that has been codified into our laws, there are legal practices, procedures and parlance that have become predominant and are consistently practiced in Nigeria criminal justice system, notwithstanding that they are not yet codified in our statute books. Instances of such

[74]*State v. Illori* (1983)1 SCNLR 94.
[75]S. 75 ACJL Lagos State.
[76]Constitution of the Federal Republic of Nigeria 1999(as Amended).

practices are: no case submission, plea of *allocutus*, trial-within-trial, consent judgment, resting defence case on the prosecution's etc. It cannot be over emphasised in this discourse that plea bargain has become part of Nigerian criminal justice system and must be implemented effectively to ensure that all parties to criminal litigation access justice and that justice delivery will be expedited which will in turn bring about decongestion of correctional centres. This is to ensure a holistic tripartite effect i.e. access to justice by all, quick dispensation of justice and decongestion of correctional facilities.

5. Conclusion

The delay and sluggishness of Nigerian criminal justice administration has remained a clog in the wheel of progress of justice delivery in Nigeria. Plea bargain is the only remedy visibly available now to curb this age-long challenge and there is need for it to be embraced holistically to ensure that justice is not dragged unnecessarily anymore in Nigeria. This in turn will enable decongestion of correctional centres and ensure reduction of case dockets of the court drastically to the barest minimum. In order to reduce the opprobrium with which plea bargain is viewed in Nigeria, it is apposite to recommend that the Constitution should be reviewed to expressly provide for the concept of plea bargain. This will lay to rest all the controversies shredding the much-needed concept. Again, there is need for procedural guidelines to forestall abuse of the concept of plea bargain. This procedural guideline should be made accessible to Nigerians and relevant prosecuting authorities so as to eliminate abuse of the criminal process and the concept itself. Also, timeline should be introduced to know when the life span of plea bargain begins and its expiration date. This is to ensure that the objective of plea bargain, which is quick dispensation of justice is not hamstrung.

Moreover, the civil society organisations and human rights groups are to fully engage in sensitizing the populace on the rights of suspects or accused persons under the law and available remedies in view of the provisions of the Administration of Criminal Justice Act 2015, via the media and other platforms. To ensure easy and full protection of the rights of citizens and residents in all the states of the Federation of Nigeria, there is need for periodic review of the Administration of Criminal Justice Act and the Administration of Criminal Justice Laws of a state. This will bring these laws in conformity with the dynamism of our growing society and a revisit to other statutes that are vital in the administration of criminal justice system to accommodate the principle and concept of plea bargain and harness its overall and overwhelming benefits.