# PLEA BARGAIN AND ANTI-GRAFT WAR IN NIGERIA*

**Abstract**
*It is no longer in doubt that Nigeria is corrupt. Corruption is a cankerworm that has eaten deep into the fabric of all spheres of live in Nigeria. If corruption is allowed to thrive, it will ultimately consume Nigeria. Successive governments in Nigeria harp on the menace of corruption in the society and made concerted efforts towards curbing it or at least reducing it to the barest minimum. In a bid to archive this onerous task, crime fighting agencies where established such as, Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices and other Related Offences (ICPC). These agencies are working hard to eradicate corruption using different approaches. One of which is Plea Bargaining. The concept of Plea Bargaining is not known in the Nigerian Legal System until 2004 when EFCC Act came into effect. Plea Bargain is a concept employed by the state in high profile cases to facilitate a negotiated soft landing platform for accused persons who are willing to save the time and hung expense for the system through a guilty plea and payment of compensation for forfeiture of proceeds of crime to avoid publicity and attendant image crises. EFCC adopted this approach with a view to fighting corruption in Nigeria. The issue is will the introduction of Plea Bargain in the Nigeria Criminal Justice Administration attain justice for all in Nigeria. This paper examined the propriety of employing this crime fighting system to fight corruption and other related offences in Nigeria. It proffers solution and concludes that Plea Bargain in the Nigerian Legal System is anathema to anti-graft campaign in Nigeria. It's sustenance in the Nigerian Legal System would only be a scratch on the surface in the fight against corruption in Nigeria and never the solution*.

**Keywords:** Plea bargain, Nigerian Legal System, Anti-graft war, Corruption

## 1. Introduction

Plea Bargain is a new phenomenon in the Nigerian Criminal Justice Administration. Plea Bargain is a process in which the accused on plea of guilty returns to the state, some of the loots in cash or assets while retaining the remnant of the loots. The concept was introduced into the Nigerian Legal System by virtue of section 14 (2) of the Economic and Financial Crimes Commission (Establishment) Act, 2004. Nigeria copied the concept of Plea Bargain from the United States of American Jurisprudence. Since its introduction into the Nigerian Legal System, the personnel of EFCC which one of the functions is to investigate offences relating to financial malpractices successfully employed it against some public officials who looted public treasury. These are former Inspector General of Police, late Tafa Balogun, former Governor of Bayelsa State, late Diepreye Alamieyeseiha, former Managing Director of Oceanic Bank Plc, Mrs. Cecilia Ibru amongst others. The concept is gradually gaining ground since its introduction into the Nigeria Criminal Justice System but with mixed feelings from well-meaning Nigerians on the workability of the system in Nigeria with regard to encouraging or eradicating corruption in Nigeria.

## 2. Evolution of Plea Bargain

The concept of plea bargain has been traced to the early 19th century when the adversarial system of adjudication began to rapidly evolve legal technicalities that accompanied the adversarial system of jurisprudence complicated the simple criminal justice system leading to delays in the dispensation of criminal justice. Plea bargain originated from American Legal System. It actually started by convention but with time, having been accepted by the courts, it became entrenched in their federal and state criminal procedure rules.[1] As a matter of fact, before the introduction of plea bargain in the United State of America, the right to a trial by jury was considered a central part of the justice system. The 7th Amendment of Bill of Rights codified it as an essential part of America's civil liberties. But as from 1750s, a trend towards plea bargaining began. The most prominent and recorded plea bargaining case dates back to 1749 in Massachusetts when a prosecutor reduced an initial charge of burglary to a simple theft in return for guilty pleas by three defendants.[2] To secure a conviction for an otherwise guilty defendant became an uphill task for many prosecutors. The end product was that most criminals that would have been convicted usually escaped the hangman's noose. In some cases, people remained under detention unnecessarily as a result of legal technicalities occasioning delays in the conclusion of criminal cases. Plea Bargain emerged as a compromise to ensure that

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[1] Following the case of *Bardly v U.S* 397 U.SS (1970), it became more entrenched in the American legal system to the extent that as at 2001, about 94% of criminal cases were settled by plea bargaining.

[2]Sumurugan, Importing the Concept of Plea Bargaining into the Xriminal Procedure Code in Malasia, (2001), 5, *Current Law Journal. CLJ.P*. xxix

criminals were appropriately punished. It is also founded in the policy of the law to ensure that such punishment not only serves as deterrent to would be offenders, but would be in the best interest of the society. The idea is that where a person who has stolen property, accepts to negotiate what he has stolen back, society would be better off receiving back what it has lost in terms of property. The criminal on his part for accepting to remedy the loss he has caused the society, should be mildly punished. It remains to be seen whether the act of treasury looting inflicts only property damage to society. This is so because the very act of looting the public treasury flows from a debased mind and inflicts not only physical and financial injuries to the social psyche but also does moral and spiritual harm to the social fabric of which society is made of.

The practice of plea bargain received a greater prominence in the United States of America when in 1970, the United States of American Supreme Court, made a very sensational pronouncement on it in the case of *Bradly v United States*[3], wherein the accused was charged with kidnapping and faced a maximum penalty of death. He later voluntarily changed his plea to 'guilty' and was sentenced to fifty years imprisonment. This case serves as a turning point in the history of plea bargaining, not only in the United States of America, but world over.

**3. The Endemic Nature of Corruption in Nigeria**

Corruption as defined by the Black Law Dictionary is the act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others; a fiduciary's or officials use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others or 'A negotiated agreement between a prosecutor and criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for some concession by the prosecutor, usually more lenient sentence or a dismissal of the other charge.[4]'Corruption in Nigeria is endemic and cuts across all spheres of live in Nigeria, the civil servants, public servants, contractors, businessmen, institutions of learning etc. It is as old as Nigeria and as President Muhammadu Buhari said, 'If Nigeria did not kill corruption, corruption will kill Nigeria'. The first Republic collapsed through military coup d'état on allegation of corrupt practices by the then Leaders of Nigeria. The successive military regimes deepened corruption in their 34 years they held sway. The second Republic also failed through military coup d'état on the basis of corrupt practices by the Leaders. In fact successive governments in Nigeria accused each other of corruption and each promised to end it but each emerged in the end as the worst in terms of involvement in corrupt practices. The result is colossal as progress and development in Nigeria became completed retarded and will soon collapse if urgent step is not taken to curb corruption in Nigeria.

Every successive government in Nigeria in an attempt to fight corruption introduced measures to tackle it head on. For instance, Nigeria under the watch of former President Olusegun Obasanjo who ruled Nigeria from 1999 – 2007 established Economic and Financial Crimes Commission (EFCC) amongst others to fight corruption and possibly eradicate it. The Economic and Financial Crimes Commission (EFCC) Establishment Act, 2004 is charged with the responsibility of fighting financial crimes and other related offences.

In section 14 (2) of the Act, was introduced the concept of Plea Bargain which hitherto was alien to the Administration of Criminal Justice System in Nigeria. That Plea Bargain concept is before now unknown to Nigeria Legal System was emphasized by the former Chief Justice of Nigeria, Hon. Justice Dahiru Mustapha thus, the concept is not only dubious but has never been part of our judicial system-at least until it was sumptuously smuggled into our statutory laws by the Economic and Financial Crimes Commission (EFCC)[5]. It is an obstacle to our fight against corruption and it is a threat to the Criminal Justice System in Nigeria. In another event, Hon. Justice Dahiru Mustapha (CJN rtd.) reiterated his earlier statement thus; plea bargain is a novel concept of dubious origin.it has no place in our law, substantive or procedural. It was invented to provide soft landing for high profile criminals who loot the treasury entrusted to them… it should never again be mentioned in our jurisprudence[6]He also stated: allow me still reiterate my position on the concept of plea bargain. I still stand on my buckles to state that the concept is not only dubious but was never part of the history into our statutory laws with the creation of EFCC…[7]Also Bola

[3] (1970) 397 U.SS

[4]B Garner, *Black's Law Dictionary*, (9 ed.) at p. 1268

[5]JW Vanover, Utilitarian Analysis of the Objectives of Criminal plea Negotiation and Negotiation Strategy Choice, 1998, J. Disp. Resol., p. 183 archived from the original on 2017-10-19

[6]Dahiru Mustapha (CJN rtd.)In a speech made at the 5th Annual General Conference of the Section on Legal Justice of the Nigerian Bar Association at Abuja on November 14, 2011.

[7]Dahiru Mustapha (CJN rtd.) In a keynote address delivered by the then CJN on November 15, 20123 at the Annual Alternative Dispute Resolution Summit, organized by the Negotiation and Conflict Management Group and the National Judicial

Ajibola (SAN) in condemning the introduction of Plea Bargain said: Plea Bargain will make a mockery of the entire process of dealing with corruption. The rule of law is clear. Those who are found guilty of any crime committed within Nigeria should be duly and adequately punished[8]. According to Eso, JSC of the blessed memory, they bargain with the judge, bargain with accused person, he returns half of the money, and then they give some hairy-fairy punishment-go and serve three months in prison and the three, will of course be in the hospital. This is an encouragement for other governors to steal when they come into office. There is no plea bargain into law of Nigeria. look at the issue of Igbinedion of Edo State, who was alleged to have stolen billions and billions of naira … they asked him to plea bargain, there and then he was fined three million naira which he picked out of his purse and paid … it sent a notion that it has been pre-arranged that it will not be more than three million. Now after that they started to gloat and shed crocodile tears and said the punishment was not adequate … of course, the punishment can never be adequate when they import this issue of plea bargain … Plea bargain is actually not our law … And they came around and say it is done in other countries. Nigeria is not any other countries, it may be right for them to have plea bargain. We never had plea bargain …[9]

Some others do not agree totally that plea bargain is not in our legal system. For instance, a formal Chief Justice of Nigeria, Justice Muhammadu Lawal Uwais, stated thus, the practice of plea bargain is not new in Nigeria. Hence, it will not be out of the point which may shape the discussion along the line of law and judicial reform. The point is that in theory, and I believe this is safe; plea bargain is designed to maximize scarce resources theory enhancing the fair administration of justice…[10]Mr. James Agaba also said: it is important to state at the outset that until 2007, when the Administration of Criminal Justice Law of Lagos State (ACJA) came into force, plea bargaining as concept has been unknown in Nigeria. This is because, none of our penal laws substantive or adjectival, recognize the concept…[11] Again Mr. Rotimi Jacobs states that: Admittedly, plea bargaining is not expressly provided for in either the CPA or CPC. However, the concept cannot be said to be totally alien to our criminal jurisprudence. Prior to the establishment of the Economic and Financial Crimes Commission (E.F.C.C0 there were instances where the accused persons approached the prosecutor offering a plea to a lesser charge so as to get a lighter sentence and to elicit a concession from that has common law origin. This is because the criminal justice system gives much responsibility to the Attorney-General and the prosecutor and it allows for the taking of plea, and amendment of changes.[12]However, the former Chairman of the Economic and Financial Crimes Commission (E.F.C.C), Mr. Ibrahim Lamored, in an interview said that:

> The problem we (EFCC) are facing is that many (legal) practitioners and members of the public do not understand the concept of plea bargain… people continue to argue that it is not in the Constitution, and it is therefore unconstitutional… but we are using the medium to appeal to the National Assembly to include plea bargain in the Constitution.[13]

Also Ibrahim Lamorde speaking on the necessity of plea bargaining said: we are all witnesses to the fact that cases commenced as far back as 2007 against former Governors such as Uzor Kalu, Chimaroke Nnamani and Joshua Dariye have hardly made any meaningful progress in their trial because of regular exploitation of the inherent problems in the justice sector to truncate trials.[14]Be this as it may, no matter the gains or benefits of plea bargain in our legal system which includes but not limited to the following:

- It helps the court and the State to manage case loads.
- It reduces the work load of the prosecutors enabling them to prepare for gravest case by leaving the effortless and petty offences to settle through plea bargaining.
- It is also a factor in reforming offender by accepting the plea bargain.
- No Uncertainty: Plea bargain take away the stress and questions that surround a trial by jury. The anxiety that is involved without knowing if you will be found guilty or not is completely removed.

[8] See section 494 of the ACJA 2015
[9] See the full interview in *Vanguard Newspaper* of November 18, 2012
[10] Comment made on November 15, 2012 at he Annual Alternative Dispute Resolution summit, Organized by t Negotiation and Conflict Management Group and the National Judicial Institute in Abuja.
[11]JA Agaba, *Practical Approach too Criminal Litigation in Nigeria*, (2011) Abuja Law Lords Publications, p.594.
[12]J Rotimi, 'Procedural Issues in Plea Bargaining', being a paper presented at the West African Regional Workshop on Plea Bargaining held at Meridien Hotel, Abuja Between 2nd and 3rd May 2007.
[13] Excerpt in an address to the 5th Annual General Conference of the Section on Legal Practice of the NBA in Abuja, 2011 and report in *Punch Newspaper* of 16th Nov. 2011 or Daily Newspaper of October 30, 2013
[14]Ibid

- Court Congestion: Cases are closed much quickly where pleas are involved. This is great for society because it de-clogs the court systems for more serious cases.
- Leniency: The person who has taken the plea, often plead guilty to a lesser charge than what he would have normally been tried for. This ultimately translates into a lesser sentence or punishment.
- Guaranteed Win: From a prosecutor's point of view, plea bargains are God sent. They allow them to have an open and shut case that will always result in a prosecution.
- It can't get worse: When a person takes a plea bargain, they can no longer have to go through trial. This means that other crimes that have been committed and any damaging evidence will not be discovered.
- No Maximum Sentence: The biggest reason that many people take plea bargain is the fact that you cannot receive the maximum sentencing for their crimes.

The major essence of plea bargaining is to work as a tool in curbing corruption amongst public officers who might have trait of corruption running in their veins. It serves as deterrent to others to keep away from corruption and also bring sanity to the system. A cardinal objective of the justice system is the satisfaction by contending parties that justice is done. Plea bargain forms a framework wherein the accused and the prosecutor can reach an agreement which settles the matter in what appears to be in the spirit of fairness to all parties concerned.[15] Most times, the prosecutor is never certain securing a conviction on some complex offences in spite of the overwhelming evidence that may be at his disposal. So also, the accused may not be certain about the outcome of the trial, particularly for a first timed accused who may not be conversant with criminal trial procedure and/or who may not afford the services of a counsel. However, by the use of plea bargaining, the prosecutor is sure of securing conviction irrespective of the quality of evidence available for trial and the accused is afforded the opportunity of having certain outcome without much anxiety.[16]

The disadvantages of plea bargaining in our legal system far more outweighs it's advantages or benefits and should be condemned in all ramifications by well-meaning Nigerians and never allowed to thrive in our society. Plea bargaining simply encourages corruption, looting, fraud and all forms of criminality. Plea bargain can be linked to a man who stole fowl, property of another person and when caught by the owner, he gives him the leg of the fowl as compensation for the stolen fowl. The same man will steal cow knowing fully well that when caught he will give part of the cow to the owner and goes scot free. It's worse when plea bargain does not apply to all crimes in Nigeria. When a man steals fowl and he is convicted upon trial and goes to three months imprisonment for the offence, and a public officer who looted public fund of one billion naira (N1b) and gives back one hundred million to government (N100,000,000m) and becomes free, which of the two offences is greater. It will encourage others to loot even more.

Despite the lofty benefits of the concept of plea bargain as outlined above, the practice of plea bargain by the EFCC in its fight against corruption in Nigeria came under heavy criticism by jurists and other eminent Nigerians. The way and manner most of the high profile matter were treated and settled in our various Federal High Courts leaves much to be desired and makes nonsense of the beneficial effects of this concept. It also made settlement of some of those cases a laughing stock. This concept is already gaining ground in our clime so to say. Our democracy is nascent the introduction of plea bargain in our legal system will surely encourage looting of government treasury and retard development in our country. If it has to be allowed, the application should not be discriminatory but be made to apply in all crimes and criminality in Nigeria and not selective.

**4. The Application of Plea Bargain in Nigeria**

Despite wide spread condemnation of plea bargain being introduced into the Nigerian Legal System, the concept still finds its way into the Nigerian law. As earlier noted, plea bargain has never been part of the Nigeria Legal System. It was the Economic and Financial Crimes Commission (EFCC) (Establishment) Act, 2004 that first established the procedure as a possibility in Nigeria.

The EFCC Act provides:

> Subject to the provision of section 174 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which relates to the power of the Attorney-General of the Federation to institute, continue, take over or discontinue 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

[15]Agaba, op cit at p.626

[16]B Osamor, *Criminal Procedure Laws And Litigation Practices*, (2nded) Dee-Sage (Books + Prints) 2012, Manchester UK pp 367-369

> money as it thinks fit, not exceeding the amount of the maximum fine to which the person would have been liable if he had been convicted of that offence.[17]

In sectin14 (2) of the Act, the EFCC is empowered to compound any offence punishable under this Act by accepting such sum of money as it thinks fit, not exceeding the maximum amount to which that person would have been liable to pay if he had been convicted. The offences listed under this Act include offences relating to financial malpractices, offences such as Terrorism, Advanced fee fraud and offences that generally relate to economic and financial crimes. The word 'compounding' of offences as used in the Act refers to the power of the Commission to drop some of the charges if the defendant is prepared to give up such sum of money as the Commission may deem fit in accordance with the Act.

Some states of the federation have adopted plea bargain into their state laws. Example, Lagos State is the first to adopt the concept of plea bargain into their laws in Administration of Criminal Justice Law, Lagos State, 2007.[18]Anambra State became the second State to adopt plea bargain into Anambra State Law in the Administration of Criminal Justice Law, Anambra State, 2010[19]. It became a Federal Act in 2015 when the National Assembly enacted the Act in section 270 of the Administration of Criminal Justice Act, 2015.[20] Soon, the remaining states of the federation will follow suit and adopt plea bargain as an accepted procedure in criminal proceedings. These laws requires that the Attorney – General and Prosecutors working on his behalf shall, in negotiating and accepting any plea or sentence bargain agreement with the defendant 'consider the public interest, the interest of Justice and the need to prevent the abuse of legal process'[21]. These statutory provisions are in line with the constitutional prescription for the Attorney – General's exercise of prosecution powers under section 174 and 211 of the 1999 Constitution (as amended). In authenticating the above provisions of law, the Supreme Court held in, *The State vsIlori*[22], that:

> Any decision or agreement entered into by the Attorney – General under the plea bargain provisions of Administration of Criminal Justice Law (ACJL) or Administration of Criminal Justice Act (ACJA) cannot be questioned or judicially reviewed merely on the ground that the process of negotiating or the content of the agreement does not meet the requirements of 'public Interest, the interest of justice and the need to prevent the abuse of legal process.

The Economic and Financial Crimes Commission (EFCC) has applied this procedure in very many high profiles cases. For instance, the EFCC adopted this procedure in the case of former Inspector General of Police, Mr. Tafa Balogun in 2005 and was jailed for only six months for corrupt practices of embezzlement of police funds in return of some of the funds stolen and forfeiture of some personal properties. In *FRN v Chief Lucky Igbinedion*[23], the Commission arraigned the accused person in 2008 on a 191 counts charge of Corruption, Money Laundering and Embezzlement of the sum of N2.9 billion. In a plea bargain arrangement, the 191 count charges were substituted with a one count charge. It was agreed that in return for dropping of 190 counts, the accused will plead guilty of the one count charge and will also return the sum of Five Hundred Million Naira and three landed properties. On the 18th of December, 2008, in accordance with the plea agreement, the court convicted the accused on the one count charge and sentenced him to six months imprisonment with an option of fine of N3.6 million and further ordered that the accused should forfeit the sum of N500 million and 3 landed properties as agreed. The EFCC also extended the practice to the case of Chief D.S.P. Alamieyesgha who was docked on corruption charges. He got lenient sentences for pleading guilty and making restitution.[24]In the same vain, in the case of Mrs. Cecelia Ibru, a Former Managing Director of Oceanic Bank, she accepted to forfeit the assets worth over N150 Billion which she fraudulently acquired while in the office. As a result of a plea bargain agreement, she received a light punishment of six months imprisonment.

[17] Section 14 (2) of EFCC Act, 2004
[18]Section 75 of Administration of Criminal Justice Law Lagos State 2007.
[19]Section 167 of Administration of Criminal Justice Law Anambra State, 2010.
[20]Section 270 of Administration of Criminal Justice Act 2015.
[21]CE Obiagwu, *The New Criminal Law & Procedure of Lagos State*, LEAD Publishers Lagos 2016 p.175.
[22] (1983) 2SC. 155
[23] (Unreported) in charge No FHC/EN/6C/2008
[24] A.U Kalu, 'The Role of Plea Bargaining in Modern Criminal Law', (paper presented at a round table on plea bargaining organized by NIALS, 9th April, 2012 at NIALS, Supreme Court Complex, Abuja)

The most ridiculous case in the application of this concept is the case of F.R.N v John Yusuf Yakubu[25], the famous pension fund case, he was an Assistant Director of the Police Pension Board, and was alleged to have stolen about Thirty-Two Billion Naira Police Fund. He was initially charged on a 10 count charge of corruption and embezzlement which he pleaded not guilty to. Under a plea bargain arrangement, the charge was substituted with a three count charge. In return, he agreed to, and indeed pleaded guilty to the new 3 count charge and was sentenced to 2 years imprisonment on each count with an option of two hundred and fifty thousand naira each which he instantly paid even before leaving the court. He was in addition, ordered to forfeit thirty-two landed assets to the Federal Government.

Flowing from the above cases, it is obvious that the concept plea bargain in our legal system would act as a boost to corruption and corrupt leaders in our country Nigeria where all manner of people are into politics. People with questionable characters: fraudsters, 419[ners,] internet fraudsters/hackers and cybercrime offenders who found there trade no longer lucrative went into politics with the sole purpose of looting government treasury. When they loot public money and allowed to part away little of their loot to government and go with the substantial sum of same is worrisome as such practice cannot eradicate corruption in Nigeria and it is totally anathema to President Muhammadu Buhari's avowed resolve to fight corruption in Nigeria. Nigeria should emulate other nations of the world especially the western world that total abhor corruption and corrupt practices. Those found guilty of any crime should be adequately punished.

**5. Conclusion and Recommendations**

Nigeria is a developing country where adoption of plea bargain into her legal system is ultimately not the answer to the fight against corruption. If the Present regime is serious about fighting corruption the application of plea bargain concept in the Nigeria legal system should be de-emphasised. Drastic measure should rather be employed in the fight against corruption by ensuring that whoever commits crime no matter his rank in society should be adequately punished and if the offender is a public officer, he should not be allowed to hold any public office thereafter. Under the principle of rule of law, no man is above the law. If plea bargain concept is to be adopted into the Nigeria Legal System, it should apply to all crimes and criminality in Nigeria. It was the Economic and Financial Crimes Commission (Establishment) Act No. 1 of 2004 that first introduced the procedure in Nigeria. The EFCC Act Provides as follows:

> Subject to the provision of section 174 of the Constitution of the Federal Republic of Nigeria, 1999 (which relates to the power of the Attorney General of the Federation to institute, continue, take over or discontinue criminal proceedings against any person or in any court of law, the Commission may compound any offence punishable under the Act by accepting such sum of money as it thinks fit, not exceeding the maximum amount to which such person may be liable if he had been convicted of that offence.

The offences referred to under these provisions are those punishable under the EFCC Act and the section does not therefore apply to the general criminal trials in Nigeria. The offences listed under the Act include offences relating to financial malpractices, offences in relation to terrorism, offences relating to public officers retention of abuse of office as well as offences that relate generally to economic and financial crimes. If the concept of plea bargain is allowed to stand, it will create an impression that some people in Nigeria are above the law contrary to the concept of rule of law and constitutionalism. It will be out of place for somebody who stole a wrist watch, for example and upon trial and conviction goes into three months imprisonment as provided by the law. While a public officer who stole public fund amounting to billions of naira and under a plea bargain arrangement he returns paltry sum of the money and go home free. Thus, the practice of plea bargain in Nigeria will simply encourage public fund looters instead of discouraging them and the concept is not in tandem with the present regime's anti – graft campaign and should be expunged from our laws.

[25] (Unreported) in charge No FCT/HC/CR/6/2012