PLEA BARGAINING AND THE TWIN PILLARS OF NATURAL JUSTICE IN NIGERIA*

Abstract
One of the objectives of the Administration of Criminal Justice Act 2015 (ACJA) is to improve the operations of the criminal justice system in Nigeria and plea bargaining is one of the modern concepts introduced into the ACJA for this purpose. At present, plea bargaining has been perceived as focusing on corruption and financial crimes cases to the detriment of other cases and issues of pressing importance to the criminal justice system, the defendant and the twin pillars of natural justice. The twin pillars are recognized as fundamental to a fair and just criminal justice system. This paper evaluates the concept of plea bargaining and its effects on the twin pillars of natural justice in Nigeria, viz; nemo judex in causa sua and audi alterem partem which relate to fair hearing and the rule against bias. This paper found that the fate of the defendant as contained in the principles of natural justice is compromised in diverse areas based on the practice of the concept of plea bargaining in Nigeria. It revealed the extent to which the provisions of the various extant laws are practiced by the criminal justice system, most especially the courts, prosecutors and defence counsels vis-a-vis the defendant's constitutional right to fair hearing. It also found, amongst others that the right of appeal of a defendant is taken away the moment he assents to a plea agreement, and the defendant's plea of guilt is often times not subjected to a thorough check to establish its voluntariness. It is recommended that the ACJA 2015 should be amended to reflect the right of a defendant and his representative to make an offer for a plea agreement. Also, court procedural rules could be amended to make provision for ascertaining the voluntariness of a defendant's plea agreement in order to mitigate the negative effect of plea bargaining on the principles of natural justice.

Keywords: Plea bargaining, natural justice, fair hearing, criminal justice

1. Introduction

The introduction of plea bargaining into the Nigerian Criminal Justice system has garnered both negative and positive reactions. The criminal justice system sees it as a means of ensuring that justice is achieved, no matter how minimal, particularly in ensuring that offenders who would normally have evaded justice on technical grounds, are punished. It is also seen as a means of reducing the load of criminal trial on the courts. Prior to the enactment of the ACJA, plea bargaining was applied informally in the Nigerian Criminal Justice System. The need to ensure speedy and timely justice led to the informal and unstructured use of plea bargaining procedures to address financial crimes in 2004 and the subsequent inclusion of plea bargaining into the ACJA in 2015.[1] Plea bargaining is regarded as having originated from America, where it has become a prominent feature of the criminal justice administration as up to 90% of criminal cases are resolved through plea bargaining.[2] The concept of plea bargaining is recognized as having existed for a long time, albeit informally, where prosecutors offered lenient charges to defendants who cooperated with them while judges offered lesser sentences to defendants who pleaded guilty. Plea bargain emerged as a compromise to ensure that criminals were appropriately punished.[3] This alone accounts for the sentiments expressed by some dissenters of the concept to the effect that defendants may dictate to criminal justice officials what sentences they will accept. The thought of compromising with a criminal, especially on their terms is repugnant to the citizenry. It inflames the public and shakes its confidence in the court system.[4]The word 'bargain' is indeed controversial.

In a plethora of definitions of plea bargaining, there is a deliberate lack of specificity as to either the nature of the consideration given or the official status of the state representatives making the offer.[5]The considerations usually offered are: count, charge or sentence related modifications. But, there is virtually no limit to the kinds of considerations that might be devised.[6]Similarly, the representative of the state in plea negotiation is usually the prosecutor, but other officials may become involved in the negotiation process. For example, a court clerk may agree to assign a case to a particular judge known for his leniency if the defendant agrees to plead guilty.[7]

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[1]Buchanan, K. 2020. Plea Bargaining. The Law Library of Congress, Global Legal Research Directorate. Retrieved February 20, 2020 from https://www.loc.gov/law/help/plea-bargaining/plea-bargaining.pdf; See also Rosie, A. J. Plea Bargaining: A Means to an End? Retrieved Feb. 24, 2020 from http://www.manupatra.com/roundup/326/Articles/Plea%20bargaining.pdf

[2] Larry J. Seigel and John L. Worrall, 2018. *Introduction to Criminal Justice,* USA: Cengage Learning p.15

[3] Eze, T.C & Eze, A. G. 2015. A Critical Appraisal of the Concept Plea Bargaining in Criminal Justice Delivery in Nigeria. *Global Journal of Politics and Law Research.* 3.4: 31-43

[4] Ibid.

[5] Ibid at 7

[6] Ibid.

[7] Ibid.

This paper focuses on plea bargaining as a non-trial mode of courtroom transaction that consists of an exchange between the prosecution and the defence in criminal matters.[8]Consequent upon this the defendant receives dispositional concessions from the State.[9]The state in turn gets cases processed expeditiously with minimal expenditure of legal trial.[10]It serves as alternative to trial mode of adjudication of criminal matters with its concomitant benefits.

2. Legal Framework of Plea Bargaining in Nigeria

There are two regimes with respect to the application of plea bargaining. They are- general and the restrictive approach. The general approach portends the applicability of plea bargaining to all criminal offences while the restrictive approach circumscribes the application of plea bargain by expressly excluding certain offences from the practice of plea bargain. Section 494 (1) of 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 than that charged in the complaint or information and in conformity with other conditions imposed by the prosecution, in return for a lighter charge subject to the Court's approval

Under the ACJA, plea bargaining is applicable to all offences created by an Act of the National Assembly except offences triable by court martial. This is equally the case in Lagos and Ekiti states where the local statutes provide no exception to the application of plea bargaining. However, this is not the case in Anambra state, where the Administration of Criminal Justice Law, 2010 expressly circumscribes the application of plea bargain. Subsection 4 of Section 167 provides:

> The provision of this section shall not apply to persons-
> (a) Charged with capital offences[11] or any offence requiring the use of violence.
> (b) Persons who had in the last ten years have been convicted and sentenced for any such similar offence or any offence involving grievous or sexual assault.

From the above, it can be concluded that while the ACJA adopts a loose general approach to plea bargaining, some states like Lagos and Ekiti states laws adopt the ACJA approach with respect to the application of plea bargaining, while Anambra state adopts a different approach. It is necessary to query the rationale behind the circumscription of the application of plea bargaining under the Anambra state law in order to ascertain why there appears to be a the double standard in terms of practice and procedure for different kinds of offences? The practice of plea bargain in the United States of America where more than 90% of criminal cases are disposed of through plea bargaining has shown that plea bargaining can be harnessed in capital offences to the satisfaction of all stakeholders involved. Anambra state law also restricts the use of plea bargaining with respect to any offence involving the use of violence. Invariably, the defendant in the charge of forcible entry[12], for instance cannot plea bargain. So also, a defendant in a charge of assault occasioning bodily harm cannot plea bargain. Paragraph (b) of Section 167(4) is vague. A purview of this provision will show that there remain only a handful of offences where the defendant can plea bargain. This negates the benefits and rational for plea bargaining. In light of the above, it is submitted that the provision of the approach under the Administration of the Criminal Justice Act, 2015 and the Administration of the Criminal Justice Law of Ekiti State, 2014 is to be preferred since a general application of plea bargaining will aid quick disposal of cases, decongestion of the court's list among them.

3. Who can make the offer?

This is clearly provided for in the Act.[13] Subsection (1) of Section 270 provides:

> Notwithstanding anything in this Act or in any other law, the Prosecutor may:
> (a) Receive and consider a plea bargain from a defendant charged with an offence either from that defendant or on his behalf,[14]
> (b) Offer a plea bargain to a defendant charged with an offence.[15]

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[8] See Alschuler, A.1976 'The Trial Judge's role in Plea Bargaining' *Columbia Law Review*.76.7:1059-1154.

[9] It must be noted that 'State' could mean different things in different contexts. The Nigerian Supreme Court recognized this fact in the case of *Olafisoye v FRN*(2004) 4 NWLR(Pt. 864) 580 at 669, paras 9-14 where per Niki Tobi held to the fact that: 'The word 'state' conveys different meanings in different circumstances. In International Law, it means a nation with full status of statehood, as a sovereign entity. In this context, it is regarded as a person in international law with power to sue and be sued in a state name. It must go beyond status *nascendi*. In Municipal law, our focus, it also conveys the above meaning. That apart, in municipal law, it could also mean component parts of the nation.' In our context, 'state' represents both the federal government and the state government.

[10] Feely, M. 1999. Perspectives on Plea Bargaining. *Law Society Review.* 13: 199-209

[11] Such as murder, terrorism, rape, armed robbery, mutiny, treasonable felony, etc.

[12] Section 81 of the Criminal Code Law, Cap C38, LFN 2004

[13] Section 270(1) Administration of the Criminal Justice Act, 2015

[14] Section 270(1) (a) Administration of the Criminal Justice Act, 2015

[15] Section 270 (1) (b) Administration of the Criminal Justice Act, 2015

From the foregoing, it is manifest that an offer for plea bargaining can be made by the defendant himself or where he is represented, by a legal practitioner. On the other hand, offer for plea bargaining can be made by the prosecutor.[16] What is the implication of the word 'may' as used by the draftsmen of the Administration of the Criminal Justice Act, 2015 in Subsection 1 of Section 270? The word 'may' used in its primary legal sense connotes 'permissive' and 'discretionary'.[17] The Nigerian courts have variously interpreted the word in a legion of cases.[18] For instance, in the case of *Edewor v. Uwegba and Ors*[19] the Supreme Court went to town while espousing the word 'may'. For a better appreciation of their Lordships' judgment it is relevant to quote in *extenso* the judgment of the Supreme Court in that case, Per Nnamani JSC enthused that 'Generally, the word 'may' always means 'may'. It has long been settled that 'may' is a permissive or an enabling expression.' In the more recent case of *Iyoho v. P.E Effiong Esq.*[20], the Supreme Court, Per Aloma Muktar JSC held to the effect that, 'In dozens of cases, the courts have held 'may' to be synonymous with 'shall' or 'must', usually in an effect to effectuate a legislative interest.*'* From the above cited case law, it is clear that 'may' as used in statutes confers a mandatory or discretionary duty depending on the circumstances or the context in which it is used. Thus, with respect to the word 'may' under subsection 1 of Section 270 of the Act, it is submitted that in order to construe same we must look at the context in which the word appears, we must have recourse to the entire Section 270 of Administration of Criminal Justice Act, 2015 holistically.

4. Plea Bargaining and its Constitutional Implication on the Rights of the Defendant to Fair Hearing/Natural Justice

The rights of the defendant standing trial or alleged to have committed an offence is adequately provided for in the CFRN, 1999 (as amended).[21] Such rights include but are not limited to the presumption of innocence[22], right to not be tried for an offence unknown to law[23], right against double jeopardy[24], right to silence[25]. These rights and many others provided for in the constitution are so sacred that the courts guard them jealously. In *Ransome-Kuti v. Attorney-General of the Federation*[26], Kayode Eso, JSC (as he then was) enthused on the importance of these rights in the following words:

> It is a right which stands above the ordinary laws of the land which in fact is antecedent to the political society itself. It is a primary condition to a civilized existence, and what has been done by our Constitution since Independence…is to have these rights enshrined in our constitution so that the rights could be immutable to the extent of the non-immutability of the constitution itself.[27]

These are rights are designed to adequately protect the defendant who has been alleged to have committed any criminal offence. However, the practice of plea bargain is antithetical to the enjoyment of these rights that the principles of natural justice seek to protect. We shall undertake a panoramic view of some of these rights with a view to show how the practice of plea bargaining is antithetical with the rights of the defendant sought to be protected by the principles of natural justice and fair hearing.

Presumption of Innocence

Whenever a criminal charge is brought up against a citizen of Nigeria, he is presumed innocent until otherwise proven before a competent court.[28] The presumption of innocence of a defendant is arguably the hallmark of a citizen's fundamental right. Section 36(5) of the CFRN provides as follows:

> Every person who is charged with a criminal offence shall be presumed to be innocent until he is proven guilty;
> Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

The presumption of innocence will still be operative notwithstanding the circumstance of the commission of the alleged act. The rationale here is that the charge against the defendant is nothing more than an allegation of

[16] Ibid
[17] Garner, B. op cit.
[18] See *Awuse v Odili & Ors* (2003) LPELR-10795; *Mokelu v Federal Commissioner for Works and Housing*(1976) 3 Supreme Court 35; *Auchi Polytechnic v Okuoghae* (2005) LPELR-11221; *Ohikhuare v Malami & Ors* (2013) LPELR-22348 (CA); *Ataye Farms Ltd v Nigerian Agricultural Bank Ltd*(2003) FWLR (Pt 172) 1864; *Ezebri v Enekorogha & Ors*(2008) LPELR-4135(CA)
[19] (1987) NWLR (Pt. 50) 313; (1987) LPELR-1009 (SC)
[20] (2007) LPELR-1580 (SC)
[21] See generally Chapter IV of the CFRN, 1999 (as amended)
[22] See Section 36 (5) of the CFRN, 1999 (as amended)
[23] See Section 36 (12) of the CFRN, 1999 (as amended)
[24] See Section 36 (9) of the CFRN, 1999 (as amended)
[25] Section 36 (11) CFRN, 1999
[26] (1985) 2 NWLR (Pt. 6) 211
[27] Ibid at pages 33-34, paras A-C
[28] Section 36 (5) of the CFRN, 1999 (as amended)

misconduct, the proof of which the prosecution is tasked to establish. The understanding here is that except in some limited instances where it may become imperative for the defendant to proffer some evidence in his defence[29], the prosecution who charges a person for an offence, has the duty, the responsibility or what we call in legal circles, the *onus* and burden of establishing the crime. This is in consonance with the time-honoured principle that he who alleges must prove. Where the prosecution is unable to lead evidence in order to discharge this burden placed on it, the defendant will be discharged.[30] The presumption of innocence breeds the duty of the prosecution to prove the guilt of the defendant beyond reasonable doubt. The rights of a defendant notwithstanding, the constitutional protection is still a subject of procedural jeopardy by the practice of plea bargaining. The process of plea bargaining can be initiated when prosecutor induces the defendant to confess guilt and waive his right to trial. Thus, the defendant by confessing his guilt without being tried relieves the prosecution of the need to prove the defendant guilt and the court is spared having to adjudicate it. The court condemns the defendant on the basis of his confession without independent adjudication. Therefore, the plea bargain procedure negates the right of presumption of innocence. When a defendant consents to a plea agreement, the presumption of innocence in his favour is displaced. The prosecution no longer has to discharge the burden of proof beyond reasonable doubt that the defendant has committed the offence.

Right to not be tried for an offence unknown to law

It is a citizen's fundamental right to not be subjected to a criminal for an alleged offence that is not defined by a written law and the punishment for such offence stated.[31] The constitutional provision successfully sealed the fate of the common law criminal offences which are largely not contained in a written law. This right is explicitly stated in Section 36 (12) of the CFRN, 1999 (as amended) as follows:

> Subject as otherwise provided by this constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

The rationale here is that a crime to be properly so called is any act or omission which breaches or is contrary to the provisions of a law. It is that act or refusal which renders one liable for punishment as prescribed by law. Therefore, where the law does not make criminal prescriptions for an action, no criminal trial is expected to flow therefrom.[32] In the case of *Udoku v. Onigha*[33], the appellant was convicted for an alleged offence of 'invoking and binding juju' on a person. It is needless to say that the entire trial and the conviction thereon were quashed because the said offence was not contained in any written law. In *Attorney-General of the Federation v. Clement Isong*[34], the Supreme Court of Nigeria opined that the respondent could not be convicted of unlawful possession of firearms and ammunition contrary to Section 3 and Section 9 of the Firearms Act, 1966 because neither of the sections prescribed any penalty for the alleged offence.[35] The defendant in a plea bargain would not know that the alleged offence against him is not cognizable under the law if he does not take the prosecution through the rigours of trial. Some of the offences in the charge may not be cognizable under the law, which was the case in *Olabode George v. F.R.N*[36]wherein the appellant was charged for 'contract splitting' which was not an offence under the law.

Right to Silence

A central part of a citizen's right is that when he is charged for a crime, he has the privilege against self-incrimination. The defendant cannot be required or compelled to supply evidence of his or her guilt. He is not also obliged to give any evidence in his own defence. This is the whole essence of Section 36 (11) of CFRN, 1999 (as amended) which states as follows: *'No person who is tried for a criminal offence shall be compelled to give evidence at the trial.'* This is to prevent a situation where a defendant may be forced to lead self-indicting evidence. The defendant may elect to not say anything both at the stage of arraignment[37] or in his defence or indeed in the course of the entire trial. And although the prosecution as well as the court may comment on the silence of the

[29] The instances are limited to such special defences such as insanity as well as exception, exemption, proviso, excuse, qualification, special circumstances, etc which may avail the defendant. See generally, Sections 140 and 141 of the Evidence Act, 2011. It has been argued however, that the burden of proof in spite of the above instances rests upon the prosecution throughout the trial.

[30] See the case of Adebayo v The State (1991) 3 NWLR (Pt. 195) 1 SC

[31] Section 36 (12) of the CFRN, 1999 (as amended)

[32] This is the rationale of the case of *Aoko v Fagbemi*

[33] (1963) 2 All NLR 107

[34] (1986) 1 Q.L.R.N. 75

[35] This right however does not extend to the unwritten law of contempt of court whereby the inherent powers of the court may be invoked to enforce discipline as well as compliance with its lawful orders.

[36] (2013) LPELR-21895 (SC)

[37] *Yesufu v The State* (1972) 12 S.C . 60; *R v Ogor* (1961) 1 All NLR. 70

defendant, it is not permissible for any inference of guilt to be drawn from the silence of the defendant.[38] Akeem[39], avers that a plea agreement is an act of self-incrimination. When a plea agreement is entered, the court proceeds to conviction and then sentencing without the need for any public trial and public examination of the witness for the prosecution. This is because, in the process of plea bargain, the defendant is compelled to admit his guilt as well as proffer evidence in support of the case of the prosecution. In so doing, the defendant's right to silence is discountenanced and this is against both constitutional and statutory safeguards, because he is made a compellable witness for the prosecution. A violation of this right to silence contrast sharply with the ugly situation which the law seeks to avoid- self-indictment, upon which the court cannot anchor a conviction of guilt.

The Right to Examine Witnesses in Person or by his Legal Practitioner

A defendant has the right to examine in person or by his legal practitioners the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or the tribunal on the same conditions as those applying to the witnesses called by the prosecution.[40] The noble art of cross-examination constitutes a lethal weapon in the hands of the adversary to enable him effect the demolition of the case of the opposing party[41]. Added to his right to cross-examine the witnesses for the prosecution, the defendant also has the right to call persons as witnesses who will testify on his behalf. He also has the right to apply for the recall of any or indeed all of the witnesses of the prosecution pursuant to the provision of Section 241 and 256 of ACJA, 2015.[42] The right thus forms major bedrock to the right to fair hearing, a violation of which will no doubt occasion a grave miscarriage of justice and an Appeal Court will certainly quash such a trial and any conviction reached thereon. It is obvious that in the practice of plea bargaining, this constitutional right is short-circuited, circumvented and wantonly violated. There is no provision or opportunity available to the defendant to cross-examine the evidence and witnesses (if any) presented by the prosecution. Since the prosecution is one that is in a hurry to proclaim the guilt of the defendant, this constitutional right is sacrificed on the altar of a mitigated sentence. Hence, there is no plenary trial and the defendant is virtually helpless, admitting without any resistance, the charge and evidence (if any) of the prosecution. What is more, that the defendant in a plea bargaining, since he has admitted the guilt is made to dispense with his right to call witnesses in his defence thereby successfully completing the cycle of the deprivation of this right.

Right to fair hearing in Public within a Reasonable Time

Section 36 (4) CFRN provides that the defendant standing trial for any offence is entitled to fair hearing in public, and within a reasonable time, unless the charge is withdrawn. In other words, all criminal cases must be adjudicated upon in an open court and within a reasonable time, unless the prosecution withdraws the charge against the defendant.[43] Despite the significance of this right, it appears it is observed only in breach in the process of plea bargaining. By its very nature, plea bargaining is an arrangement made between the prosecution, the defendant (and sometimes, the victim, if any) without the active involvement of the court. The entire procedure is one shrouded in secrecy and it is not conducted in the open court. Because of the absence of plenary trial, people never get to know the terms upon which the bargain is hinged or the intricacies involved in securing a deal for the state as well as the defendant.

Can these Rights be waived?

It has been argued that these rights which have been conferred to the defendant by the constitution can be waived. It has equally been argued that since the defendant can waive his right, then the practice of plea bargaining is not in conflict with the enjoyment of these rights. Thus, the defendant, has elected to waive his right by submitting to plea bargaining. It is conceded that where a statute confers right or privilege on a person, that person can elect to waive the enjoyment of the right. This principle encapsulated in the above case law notwithstanding, can the defendant waive his rights, particularly those rights analyzed above? We shall call in aid decided cases on whether a defendant's constitutional rights can be waived. The right of a person to fair hearing is fundamental to the Nigerian concept of justice that it can neither be waived nor taken away by a statute, whether expressly or by implication. In the case of *Peter Ziideeh v. River State Civil Service Commission*[44]this position was upheld. According to Okwori[45]:

[38]Section 181 of the Evidence Act, 2011

[39] Akeem, B.O. 2006. 'Plea Bargaining and Criminal Justice in Nigeria: Issues, Problems and Prospects.' *Current Law Series. 54*

[40] Section 36 (6)(d) of the CFRN, 1999 (as amended)

[41] *Olaolu v. FRN* (2015) LPELR-24778

[42] *Raphael Onwuka v Lukman Owolewa* (2001) 7 NWLR (Pt. 713)

[43] See the cases of *Opene v. N.I.C & Ors* (2011) LPELR; *Ezena v. State* (2014) LPELR; *Chidolue v EFCC* (2011); *Osayomi & Ors v. State* (2007) 1 NWLR (Pt. 1015) 352

[44] (2007) LPELR-3544 (SC)

[45] Okwori, N.A. (2013). Plea Bargaining: A Trial Procedure that Negates the Fundamental Rights of an Accused Person. Retrieved Feb. 23, 2020 from www.papers.ssrn.com/sol3/papers.cfm?abstract_id=1629255

> The ideal and correct point of law on the preponderance of judicial opinion is that, in the first place, the right to fair hearing is a fundamental as well as a constitutional right. Again, every person who is a party to a dispute (civil or criminal cause) is to be accorded an opportunity to present his case to the adjudicating authority without restraint whatsoever, and this right cannot be waived by implication or the consensual participation of the accused in the faulted process.[46]

It is instructive to note that all the rights discussed above falls within the ambit of Section 36 of the CFRN, 1999 (as amended) which is the fair hearing provision. Nigerian courts have been consistent in holding that the fair hearing provision of the constitution cannot be waived.[47]Thus, it has been submitted, that participation in a trial by the defendant cannot constitute a waiver of the right to fair hearing. More importantly, fair hearing being a right guaranteed under Section 36 of CFRN, 1999 (as amended), it cannot be waived or acquiesced. Plea bargaining therefore is a derogation of the rule.[48] As a panacea, it is recommended that the constitution should be amended with a view to qualifying these rights so as to accommodate the practice of plea bargaining.

5. Offences for the Purpose of Plea Bargaining

The definition of offence in Section 494 ACJA, did not sufficiently distinguish between offences for the purpose of a plea agreement, Section 494 defined felonies, indictable offence and a misdemeanor, no reference were made to those distinctions when referring to plea bargain. Though Section 274(3) ACJA, states that a person charged with capital punishment cannot plea bargain, this provision in our opinion is still too restrictive. There is need to expand the purview of offences exempted from a plea agreement. On the question of what offences ought to be susceptible to plea bargain, some scholars tie it to the nature of the complaint, the prosecutor and the party principally aggrieved.[49] The ACJA 2015 should expand the classes of offences exempted from a plea. For instance, the model in the Administration of Criminal Justice Law of Anambra State, made a distinction when it provided that plea bargaining shall not apply to any offence involving grievous violence or sexual assault, or to persons charged with capital offences, or any offence involving the use of violence, or persons who had in the last ten years been convicted and sentenced for any such similar offence.[50]

6. Rights of the Victim

Section 270 ACJA 2015 recognised the rights of a victim in a plea bargain process. However, the victims' rights provided under this section must be further developed. The ACJA did not sufficiently lay down procedures for the enforcement and protection of these rights. The ACJA should precisely state and expand the right of victims and create a procedure for enforcement of such rights in situations where such rights are disregarded by either the prosecutor or the judge. The language of the ACJA is also unclear on the issue of objection of a victim at the sentencing hearing against the plea agreement. Should it be made expressly or in writing? Nonetheless, such right must impliedly exist if the prosecutor has a duty to inform the victim of the plea bargain agreement. As to the consent of the victim, it appears to be limited to when a plea bargain agreement was negotiated during or after the presentation of the evidence of the prosecution in court but not before the presentation of the evidence of the defence. Also, Section 270 ACJA allows victims to take part in plea bargain agreements via guaranteed access through either the judiciary or prosecutor. However, the Act did not provide for remedies when such right is disregarded by the judge or prosecutor. For instance, Section 270(6) ACJA state that the 'prosecutor shall afford the victim or his representative the opportunity to make representations to the prosecutor', what happens if the prosecutor denies the victim from making representations? The Act is silent on this.

7. Sentencing Guideline

Section 270 (4)(a) ACJA, states that the term of the plea bargain may 'include the sentence recommended within the appropriate range of punishment stipulated.' The phrase '*appropriate range of punishment stipulated*' is not clear, it tends to suggest the existence of a scale of sentence, very much like a sentencing guideline. In Nigeria there are no sentencing guidelines because many offences simply have a term of sentence. What we have are 'statutory prescribed penalties', where a law is passed prohibiting certain conduct, such law will contain within itself the prescribed punishment for violation. Consequently, judges determine guilt and make reference to the statute for the prescribed punishment. Although, there are certain statutes that allow the judge's discretion in sentencing, however, specific ranges are provided and the ranges are short. Therefore, some measures of sentencing guidelines must be made available to the judges to prevent abuse in the practice of plea bargaining and limit the extent of sentence disparity in Nigeria. There should be a benchmark that will serve as a guide to the judge's in sentencing defendants who have pleaded guilty as a result of a plea bargain. Section 270 ACJA can

[46] Ibid at 3
[47] *Odessa v. FRN* (2006) 27 WRN 31
[48] Okwori, N.A. op cit. at page 4
[49] Ibid.
[50] Administration of Criminal Justice Law of Anambra State 2010, s 167(2)(3)(4).

emulate the Federal Sentencing Guideline or Federal Sentencing Commission used in the U.S.A.[51]The Guideline stipulates that judges must examine the pre-sentence report before rejecting or accepting a plea bargain. The judges are also placed under a duty to examine whether the charges are compatible with what actually happened during the commission of the offence and whether or not a plea agreement sufficiently reflects the gravity of the offence. In the event that such scrutiny reveals that a more serious offence has occurred than that which is reflected in the plea bargain agreement, at that juncture, the trial judge must apply the sentencing guideline that is applicable to the more serious offence. Also, in situations where judges depart from the guidelines, judges have the duty to explain such a departure from the 'normal' sentencing range. It leaves a narrow margin for judicial discretion within the prescribed sentence range.[52]

8. Definition of Victim

The word 'victim' was not defined in the interpretation section under the ACJA and this leaves open the meaning of victim or his representative. Taking account of African Society we have very close family ties, it leads to questions like; should such definition include family members?

9. Definition of Fraud

Section 270(18) ACJA states that the judgment of the court convicting a defendant is final and no appeal shall lie in any court except where fraud is alleged. The precise nature of what will constitute fraud was not clearly defined. But the court can be guided by the well-known definition in *Perry v Derry*[53] 'fraud is proved when it is shown that false representation has been made recklessly, knowingly, or without belief in its truth, without caring whether it is true or false.'[54] The ACJA 2015 should clearly define what could constitute fraud that would make such judgment be subject to appeal.

10. Conclusion

Plea bargaining where properly harnessed, can lead to speedy dispensation of justice because the criminal justice system is saved from expenses and time associated with trials and their attendant technicalities. This also allows for effectual allocation of scarce resources because, by obtaining a plea of guilty, the prosecutor avoids the time and expenses of trial and thereby reduces the workload and overload occasioned by full criminal trial. Irrespective of this advantage, the rights of the defendant as regards fair hearing ensured by two principles of natural justice; *audi alteram partem* and the doctrine against bias are not safeguarded in the practice of plea bargaining. The legal framework for the practice and procedure of plea bargain in Nigeria is embodied in Administration of Criminal Justice Act, 2015 and though laudable, negates constitutional provisions on the rights of the defendant and some extant laws on the duties incumbent on the prosecution in a criminal trial.

[51] United State Sentencing Commission Manual 2016, http://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2016/GLMFull.pdf, Accessed February 14 2017.

[52] United State Sentencing omission Manual Guideline, 2018, https://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2018/GLMFull.pdf, Accessed February 22, 2020

[53] (1899) 14 AC 337.

[54] Samuel Idhiarhi, A Synoptic Appraisal of the Practice and Procedure for Plea Bargaining under the Administration of the Criminal Justice Act 2015.