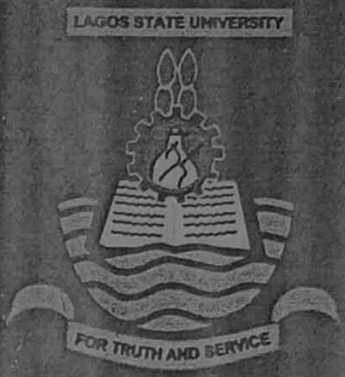
LASU Law Journal



Vol. VIII, Nos. 2 &3 Dec. 2011/Jan. 2012 LASU LJ 1-213 ISSN 1115-8387

Articles

Published by the Faculty of Law, Lagos State University

III.

The Relevance of Plea Bargaining in the Administration of Justice System in Nigeria

Oluseyi Olayanju[1]

Abstract

The introduction of plea bargaining into the Nigerian criminal justice system by the combination of the Economic and Financial Crimes Commission[2] *(EFCC) and the Administration of Criminal Justice Law of Lagos state (ACJL) has generated and continues to be the subject of great controversy. This paper looks at some of the questions that the introduction of plea bargain in Nigeria has raised and attempts to highlight plausible reasons for its introduction, the inherent demerits in its modus operandi, and concludes with the need to regulate its use.*

1.0 Introduction

THE PROCESS OF ADJUDICATING CRIMINAL CASES generally begins with a formal criminal charge and ends with the conviction or acquittal of the accused person. In Nigeria, there are several ways by which prosecution of a criminal case is commenced. At the Magistrates Court, it may be by a complaint,[3] charge,[4] or first information report.[5] At the state High Courts it is by information,[6] while at the federal High Court it is by a charge.[7] Persons who may undertake commencement of criminal proceedings are the

1 O. Olayanju: LL.B., LL.M., Lecturer, Department of Public Law, Lagos State University.

2 Economic and Financial Crimes Commission (Establishment, Etc)Act 2004.

3 S.77(a) Criminal Procedure Act Cap C41 Laws of Federation 2004, S. 143(d) Criminal Procedure Code.

4 S.78(b) Criminal Procedure Act.

5 S.143(b) Criminal Procedure Code(CPC).

6 S.34(2) Criminal Procedure Act (CPA).

7 S.32 (2) Federal High Court Act Cap F12 LFN 2004.

Attorney General[8] at the state and federal levels, police,[9] special prosecutors,[10] and private persons.[11] In practice, however, private persons usually lay complaints with the police.[12]

2.0 Meaning or Nature of Plea Bargain

In a criminal case, a plea is the response that a person accused of a crime gives to the court when the offence with which he is charged and which is contained in the charge sheet or information is read to him by the court.[13] He could enter a plea of "guilty" or not "guilty." When an accused pleads guilty, the court records the plea as nearly as possible in the words of the accused. Conviction will follow if the judge is satisfied that the accused truly intends a confession to the commission of the offence,[14] if the facts put forward by the prosecution supports the charge to which the accused pled guilty, and if there is no inconsistency in the statement made by the accused to either the police or the court and his plea of guilty. A plea of "not guilty"[15] will lead to a trial, wherein the prosecution will have to prove the guilt of the accused beyond reasonable doubt.[16]

A plea bargain, on the other hand, is a negotiation in which a defendant agrees to plead guilty to a criminal charge in exchange for concessions by the prosecutor.[17] It is also described as a deal offered by the prosecutor as an incentive for an accused to plead guilty.[18] Consequently, the defendant waives the right to trial and loses any chance for acquittal, while the State is also relieved of the burden of proving the guilt of the defendant. According to the *Black's Law Dictionary*,[19]

> A plea bargain is the process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case, subject to court approval. It usually involves the defendant pleading guilty to a lesser offence or to only one or some of the counts of a multi-count indictment, in return for a lighter sentence than that possible for the graver charge.

3.0 Types of Plea Bargain

The definition above shows that plea bargaining could take a number of forms. While the two most common are the charge bargain and the sentence bargain,[20] there is also fact bargain.

8 Ss.174 and 211 of the 1999 Constitution.

9 Ss.4 and 19 Police Act Cap P19, LFN 2004.

10 Sometimes statutes which create offenses give the power of prosecution to special persons. For instance, s.8(3) of the EFCC Act gives it the power to engage private persons to assist in the performance of its duties.

11 S.59(1) CPA, s.143(d) CPC.

12 See Doherty Oluwatoyin, *Criminal Procedure in Nigeria*, Blackstone Press, 1990, 55.

13 S.215 CPA, Ss. 161(1), 187(1) CPC.

14 See s.218, CPA, Section 187 and s.161(3), CPC. Also *Ahmed v. C.O.P.* (1971) NMLR 409

15 S.217, CPA.

16 S.240 CPA. See also S. 135(1) Evidence Act. See also Ukwunnenyi v. State (1989)4 NWLR Pt. 114,131 at 156.

17 The Columbia Encyclopedia, 6th edition, Columbia University Press, New York, 2009.

18 http://www.expertlaw.com/library/criminal/plea-bargain.html#Q1, last accessed April 19, 2012.

19 6th edition, St. Paul, Minnesota: West Publishing Co., 1152.

20 They are the only ones recognized under the Lagos ACJL 2011.

3.1 Charge bargain

This involves a negotiation of the specific charges (counts) or crimes that the defendant will face at trial. Usually in return for a plea of guilty to a lesser charge, the prosecutor will dismiss the higher or other charge(s) or counts.[21] For example, a defendant charged with burglary may be offered the opportunity to plead guilty to "attempted burglary."

3.2 Sentence bargain

Sentence bargain involves the agreement to a plea of guilty (for the stated charge rather than a reduced charge), in return for a lighter sentence.[22] For instance, where the prosecutor is not able to reduce the charges against the defendant in a case in which the public is highly interested, for fear of negative public reaction, the sentence bargain may be adopted. Thus a sentence bargain may allow the prosecutor to obtain a conviction to the most serious charge, while assuring the defendant of an acceptable sentence.[23]

3.3 Fact bargain

The least used is fact bargain.[24] This negotiation involves an admission to certain facts (which are necessary to be proved to establish guilt of the accused) in return for an agreement by the prosecutor not to introduce certain other facts into evidence.

4.0 The Process

The validity of a plea bargain is dependent upon the defendant's knowing and voluntary waiver of rights guaranteed to an accused,[25] and the presence of facts available to the prosecution to support the charges to which the defendant is pleading guilty. This is interpreted to mean that he must make an informed choice based on the existence of facts which if proved could lead to his conviction. Plea bargaining usually takes place between the defendant or his counsel and the prosecutor. Judges are not involved except in very rare circumstances.[26] However, while both the prosecutor and the defendant can bargain on the charges, they do not have the power to decide what the appropriate penalty would be. This is the prerogative of the judge, who confirms the particulars of the agreement from the defendant.

In the same vein, a prosecuting counsel has no authority to force a court to accept a plea agreement entered into by the parties. Prosecutors may only recommend to the court the acceptance of a plea arrangement and a sentence.[27] The court will usually take measures to ensure that the above components are satisfied and will then generally accept the recommendation of the prosecution. Even after entering a plea, the defendant can sometimes make a motion to withdraw the plea and go on with the trial.[28] However,

21 http://www.enotes.com/criminal-law-reference/plea-bargaining.

22 *Ibid.*

23 http://www.expertlaw.com.

24 http://www.enotes.com.

25 Especially right to trial, right to presumption of innocence till proved guilty beyond reasonable doubt, right to confront and cross-examine accusers, right not to testify against oneself—s.36(4),(5),(6), (11) of the Constitution.

26 See s.76(5) of the ACJL.

27 See s.76(8) *ibid.*

28 See s.76(9) *ibid.*

statements or confessions made by the accused during the negotiation are inadmissible against the defendant during trial.[29]

In effectively negotiating a criminal plea arrangement, the attorney must have the technical knowledge of every "element" of the crime or charge, an understanding of the actual or potential evidence that exists or could be developed, a technical knowledge of "lesser included offenses" versus separate counts or crimes, and a reasonable understanding of sentencing guidelines.[30]

5.0 History of Plea Bargaining [31]

Though plea bargaining was reportedly used episodically before early or mid-19th Century,[32] its history is generally traced to its appearance in American courts around that period. By this time, plea bargaining began to appear, and despite the disapproval of appellate judges, became institutionalized as a standard feature of American urban courts in the last third of that century. It is difficult to trace its history to America's English common law root, for though in common law countries the guilty plea has always been sufficient ground to convict even for a felony,[33] it is reported that scholars who have studied felony convictions of the Old Bailey in London found records that judges at that time usually urged accused persons who pled guilty to reconsider and stand trial.[34] Minor non-trial bargains in the form of a no-contest plea (*nolo contendere*), which allowed a defendant to submit to conviction and pay a fine without admitting guilt, were allowed by judges in cases that were not serious. During the 20th century, there were renewed periods of growth of the practice of plea bargaining. The factors that may have contributed to the growth of plea bargaining include the corrupt police practice of compounding felonies, the increasing complexity of the trial process, the expenses involved, increasing crime rates resulting in larger case loads for state attorneys, and the increasing statutory and discretionary powers of prosecutors.[35]

6.0 Distinguishing Plea Bargaining from a Guilty Plea

A guilty plea is the typical admission by a defendant in the face of the court that he accepts responsibility for the offence with which he is charged.[36] By so doing he relieves the prosecution of the burden of proving his guilt, but the plea was not made in exchange for any concessions of any sort by the prosecution. Also true is the fact that a guilty plea may have the effect of reducing the prosecutor's "animosity" or even induce the judge to give a lighter sentence, yet the defendant will receive none of it as of right as would have been in a plea bargain. Thus, his guilty plea, if it was made with the above

29 See s.76(10) *ibid.*

30 www.enotes.com.

31 See generally http://law.jrank.org/pages/1284/Guilty-Plea-Plea-Bargaining-development-plea-bargaining.html.

32 For example, See Dirk Olin, "Plea Bargain," *The New York Times*, September 29, 2002 at http://truthinjustice.org/bargaining.htm, last accessed June 19, 2012.

33 Offenses are traditionally divided into three: simple offences, misdemeanors and felonies.

34 Under s.187(2) of the CPC, the judges must record "not guilty," even when the accused pleads guilty to a capital offense. The CPA has no equivalent provision but in practice it is so observed.

35 http://law.jrank.org.

36 This leads to a summary trial.

mentioned expectations in mind, was also a sort of gamble, unlike a plea bargain, which is conducted by established rules.[37]

7.0 Advantages and Disadvantages of Plea Bargaining

7.1 Advantages

Plea bargaining offers benefits to the defendant, the prosecutor, the victim and the criminal justice system in general. The defendant, who would have been convicted of multiple charges, has some of the charges against him dropped. The significance of this is best felt by a defendant for whom a particular charge, which would have laid him open to some future conviction, was dropped.[38] Consequent to the above, or in case of a sentence bargain, the defendant would have a reduced sentence, spend less time in prison or pay less fine, etcetera. He is also saved the enormous cost of a trial.[39] The defendant is spared the delay in time, which would have been the case had the matter gone on trial.

The prosecutor is enabled to secure a conviction, especially when the case against the defendant is "weak" and there is the possibility that the prosecutor will be unable to prove guilt beyond reasonable doubt at the trial.[40] In jurisdictions where a prosecutor's advancement depends on the number of convictions he secures, he is able to list this as another achievement. It also helps the prosecutor dispense with the case quickly, thereby reducing his workload.

The victim's psychological need to be avenged is assuaged by the certainty of a conviction, whose terms the victim may also have been opportune to decide.[41] In some way a conviction—no matter how light the sentence—is still a kind of punishment.[42] In cases such as rape, plea bargaining makes it possible to protect the victim from the humiliation and trauma associated with testifying at a public trial.

The criminal justice system is faster and more just, as justice delayed is justice denied.[43] Judges can dispose of cases at a greater speed, thus accused persons' right to a speedy trial is guaranteed. Prisons are also less congested because of the reduced number of awaiting-trial inmates and those who manage to evade jail terms as part of the plea-bargain terms. Plea bargain acts in the best interests of society by facilitating convictions and taking serious offenders off the streets.[44] In the United States, unlike trial convictions which are frequently appealed, convictions resulting from plea bargains automatically relinquish the right to appeal.[45] This makes for finality in the disposition

37 In *Santobello v. New York* 404 U.S. 257(1971), a sentence order was vacated because a prosecutor broke his plea-bargain agreement.

38 For example, to prove a charge of being a rogue and vagabond under s.250 (1) of the Code, there must be proof of a previous conviction for being an idle and disorderly person. See also s.405(2) of the Penal Code.

39 Though the counsel who negotiates the plea bargain (if one is used) gets paid.

40 Gerald D. Robin, *Introduction to the Criminal Justice System*, 2nd Ed., Harper & Row Publishers, New York, 1984, 279.

41 S.76(2)(a) ACJL Lagos.

42 Under the 1999 Constitution, anyone with a criminal conviction cannot contest an elective position for a period of 10 years following that conviction. See ss.66, 137, 182. In the U.S., if one pleads guilty to a felony, he will lose his right to vote, access to federal student aid and, if a foreigner, may be deported.

43 *Ariori v. Elemo* (1983) 1 SCNLR, 1.

44 Gerald D. Robin.

45 *Ibid.* See J. Ogunye, The Imperative of Plea Bargaining: Lawyers' League for Human Rights, 2005, 191.

of criminal cases and thereby increases deterrence. Plea bargaining allows for individualization of punishments and make them less severe.[46]

7.2 Disadvantages

Significant disadvantages trail the practice, however. The most notable is thought to be the denial of the right to trial to an accused person. This is postulated against the backdrop of the adversarial criminal justice system and presumption of innocence guaranteed by common law countries. This criticism is very important; to a guilty defendant, there is the possibility that an offender who goes through a trial may escape conviction though actually he is guilty.[47] According to Robin,[48] other arguments against plea bargaining are: defendants who should be confined longer are not. Offenders are disposed off undeterred, untreated and with minimal regard for public safety. A plea bargain undermines the basic premise of crime and punishment, which is the foundation of the criminal law and the criminal justice system. Plea bargaining is an infringement of the court's responsibility and discretion in sentencing. It is dominated entirely by practical considerations that should be irrelevant to the disposition of criminal cases. Such factors neglect justice, penological considerations, the plight of the victim, and the needs of the society. Unscrupulous prosecutors could also resort to overcharging clients with multiple counts that are virtually indistinguishable from one another and that would probably be dismissed or result in multiple sentencing. This is done with the aim of pushing the defendant into plea bargaining. Plea bargaining allows criminals to defeat justice, thus diminishing the public's respect for the criminal-justice process. On the frequency of its use, Robin opines that there is something disturbing about a criminal justice process where its lawyers avoid due process like the plague, in which the outcome of cases depend on the administrative convenience of the practitioners and in which sentences are unrelated to crimes committed nor to the defendants' genuine correctional needs.

8.0 Advent of Plea Bargaining in Nigeria

As earlier mentioned, plea bargaining was made a feature of Nigeria criminal justice system by the EFCC Act and the ACJL. The EFCC was created to enforce the provisions of laws or regulations relating to economic and financial crimes,[49] and its powers extend to prosecution of such offenders. In pursuance of the fulfillment of its duty to prosecute offenders, S.13 (2) of the EFCC Act is instructive as the authority by which the EFCC resorted to plea bargaining. It provides—

> 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 or discontinue criminal proceedings against

46 This works to prevent a situation where co-defendants of unequal culpability get the same sentence.

47 It would be odd to think that the critics who cite this demerit encourage the escape of a truly guilty person from justice. The better view is that they are concerned that an innocent person, who may be acquitted if he goes through trial may, because of the overwhelming evidence against him, decide to plead guilty to escape greater hardship.

48 See note 39 above.

49 See s.6(2) EFCC Act 2004.

> any persons 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, not exceeding the maximum amount of fine to which that person would have been liable if he had been convicted of that offence.

Unlike the controversially interpreted provision of the EFCC Act, The Lagos State Administration of Criminal Justice Law is explicit and provides for plea bargaining in sections 75 and 76. Reproduced below are relevant portions of the sections.

S.75—

> Notwithstanding anything in this law or in any other law, the Attorney General of the State shall have power to consider and accept a plea bargain from a person charged with any offence where the Attorney General 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.

Section 76 lays down for the procedural guidelines for the plea bargain. Subsection 1 identifies charge and sentence bargaining. Subsection 2 lays down conditions for the plea bargain to take place, which includes due regard to the nature of the offence and the interests of the community, and consultations with the police officer responsible for investigating the case, and where possible the victim. Subsection 3 grants the complainant or his representative the right to make representations concerning the contents of the agreement, which may be in respect of compensation or restitution. Subsection 4 stipulates that the agreement be in writing and signed. Subsections 5 and 6 restrict the judge's involvement in the plea bargaining to responding to general questions from counsel about the possible advantages of the plea bargain, sentencing options or the acceptability of the proposed agreement. After the court has been informed that the parties have reached an agreement, it behooves on the judge to confirm the correctness of the agreement from the defendant.

Section 7–10 provides, *inter alia*, for the powers of the judge to ascertain the voluntariness of the agreement, to decide ultimately the sentence to be imposed and the line of action to be embarked upon if the defendant decides to withdraw from the agreement.

8.1 S.180 of the CPA

It is contended in some quarters that by virtue of the provisions of S.180 of the Criminal Procedure Act, plea bargaining is not entirely alien to the Nigerian criminal justice system. It is arguable, however, that plea bargaining is the intention of that provision. It provides—

> When more charges than one are made against a person and a conviction has been had on more than one of them, the prosecutor may, with the consent of the court, withdraw the remaining charge or charges, or the court on its own motion may stay the trial of such charge or charges.

This, the writer submits, is not plea bargaining. One, the withdrawal of charges or stay of trial as the case may be is done after a conviction has been had and not before, as in a plea bargain. Two, the conviction may also have been had through a trial, unlike a plea bargain which effectively stops even the trial that leads to the conviction to be had. Thirdly, it is not the result of any bargaining on the accused's part, it is also not an option open as of right to the accused, but is at the discretion of the prosecutor. It can also be done *suo motu* by the judge, unlike a plea bargain which is merely brought to the judge's notice and to which he gives his approval.

9.0 The Case for Plea Bargain in Nigeria

This section discusses what problems plea bargain may solve for Nigeria, bearing in mind the general advantages earlier discussed. One of the most mentioned areas in need of reformation is the criminal justice system and the problems are evident right from the police up to the prison. The inordinately slow and badly monitored justice system is preyed upon by the police, who capitalize on the citizenry's fear of unending and timeless incarceration. Corrupt police officers, for pecuniary gain, compound offenses and water them down; they even remove from or deliberately omit to put into case files incriminating evidence which would establish the commission of crimes by defendants. Thus if plea bargaining were open to all, the defendants would prefer to use it as soon as possible, instead of serving as accomplices to policemen in their corrupt acts.

It may also serve as a means to flesh out and make more effective the provision of Section 180 of the Criminal Procedure Act. The discretionary power bestowed on prosecutors or judges to compound offenses should be changed to the power to accept plea bargains and solve the arguments on whether or not it's a form of plea bargain.

Even when cases are straightforward and investigations duly completed, cases are inordinately delayed in the law courts when they are sent in for trial. According to Odinkalu, it takes about eight years to prosecute a case to completion.[50] By plea bargain such delays may be taken out of the way for persons who would want their cases to be settled as soon as possible and allowed to begin to serve their terms as quickly too.

Some defendants from the beginning are willing to confess to crimes they are charged with and they do so when they eventually go on trial, with little or no reward for not wasting the court's time and resources. A plea bargaining system will help such defendants get rewarded.

It is useful for resolving syndicate crimes such as money laundering, drug related offenses, terrorism, etcetera, which have been on the rise in Nigeria. Defendants may wish to plea-bargain in exchange for giving information about ring leaders, which would help society address the stamping out of those crimes more effectively.

The undue suffering that innocent defendants, but who may be convicted nonetheless, may be avoided and as such may prefer to plea-bargain and serve some short

50 Odinkalu Chidi, "Plea Bargaining and Administration of Justice in Nigeria," Sunday Trust, April 22 2012, http://www.sundattrust.com.ng/index.php?option=com_content&view=article&id=9906:plea-bargaining-and-the-administration-of-justice-in-nigeria-&catid=41:latest-news&Itemid=26; last visited on June 22, 2012.

sentence rather than wait several years, which may not bring about proof of their innocence.[51]

The prisons which are being constantly declared to be in need of decongestion may also benefit from plea bargaining as "awaiting trial" inmates who have been alleged to constitute nearly 80 percent of the prison population[52] will reduce, because some convicts may be let off with fines and some who would have received longer sentences may leave earlier.

Also bearing in mind the corruption prevalent in the country even within the judiciary, it may be better to ensure that an accused is at least punished a little than not at all. This is against the backdrop of the fact that a trial may not guarantee justice. An example is the case of James Ibori, former governor of Delta State, who was supposedly tried by Marcel Awokulehin, J., on a 170-count charge, including money laundering, but was acquitted, only to be jailed for the same crime in the United Kingdom.[53] Though the criminals return only a portion of their ill-gotten loot, it is better than the nothing that would be retrieved if a trial holds and is decided in their favor.

A conviction in Nigeria is still a kind of punishment, as anyone convicted cannot hold political office for 10 years following the conviction.[54] Besides the legal or political implication, socially such a person suffers ostracization and this begins even before conviction as arrest, arraignment or awaiting trial in prison will all earn a Nigerian a large fall in the social strata.

10.0 Arguments against the Practice of Plea Bargain

Despite all the ways in which it will be beneficial to Nigeria, there are problems associated with its use which may affect the acceptance of the practice as a viable means of resolving criminal cases. The first is the most pertinent of the problems facing Nigeria's public service and especially the police—corruption. As with every other issue, the corruption endemic in the society will lead to abuse of the process of plea bargaining. It will encourage illegal exchange of money and the process will be far from fair. As a result, two people with the same offense, both plea-bargained, will get very different sentences. Even the prosecutors and judges (in whom the power to determine sentences reside) will not be left out of the resultant opportunity to misuse their powers.

Secondly, it will be largely misunderstood by the Nigerian society, who presently do not even understand the workings of the law and thus lead to a further reduction of the confidence of the populace in the judicial system. The EFCC, which is the law-enforcement agency—which at the federal level introduced the use of plea bargaining—has used it to resolve high-profile criminal cases which involved the stealing of large sums of public money, a fraction of which the defendants were made to return.[55] This

51 See Jiti Ogunye, *op. cit.*, for various real cases of injustice meted on citizens by delays and other defects of the Nigerian criminal Justice system.

52 *Ibid.*

53 On April 17, 2012, he was found guilty of money laundering and conspiracy to make instruments, contrary to s.1(1) (a) of the Criminal Act of 1977 of the U.K. and given a 13-year sentence.

54 Also under the Companies and Allied Matters Act, anyone convicted of an offense that is financial cannot form a company or be a director in a company. See ss.20 and 408 CAMA.

55 For instance, Diepricye Alamiesieigha, former governor of Bayelsa State, was convicted of stealing public assets worth over $100 million and got away with imprisonment for two years and an order of asset forfeiture

gives the impression that it is a means by which the rich who stole the lifeblood of the poor are made to return part of it and are then let off the hook.[56] One must admit that it is grossly unfair for a populace to hear of a goat thief being given five years' imprisonment while those who steal millions of naira belonging to the public get six months' imprisonments on luxury hospital beds. This has even led some to postulate that with the acceptance of plea bargaining into our justice system, stealing of public funds may even increase.[57]

If conviction is to be effective as a punishment, there should be means of getting records of such conviction to come to play where they would be effective to deny the ex-convict relevant benefits. Adequate judicial record keeping and effective policing is very difficult to come by in Nigeria, and where one manages to bring up such (as in the case of James Ibori, who before his gubernatorial victory was alleged to be an ex-convict), it is brushed aside, and this with the connivance of the authorities, including judges.

For a plea bargain to be valid, the defendant has to know his rights (especially to a trial) and choose to waive such rights. Illiteracy is rife in Nigeria and is a factor to consider when talking about the knowledge of rights. Even the educated cannot claim to be knowledgeable about legal matters. And the engagement of counsel cannot be depended upon as few can afford the services of legal practitioners. Illiteracy may even promote abuse by corrupt police officers and prosecutors, who may in a bid to ease their workload force accused persons to plead guilty and make them feel that they will be punished in some way if they do not do so.

All of these and many more arguments have been advanced as reasons why plea bargaining must not be allowed a place in Nigeria's criminal justice system.

11.0 Conclusion

It is pertinent to state, however, that in advanced countries where plea bargaining has been a useful tool, they have not been without challenges, but the expediency of its incorporation in their governance has informed efforts that have been expended to make it workable. For Nigeria, one may have to bring to the consideration of well-meaning skeptics—the number of case files that get lost and forgotten in the judicial maze, the number of people who become forgotten while awaiting trial for decades, or and the likes of James Ibori who though guilty escaped conviction locally—to convince them that plea bargaining must be given a chance.

One must admit that there exists in Nigeria the challenge of how to prevent the abuse of the concept in a country where corruption is endemic and pervasive, threatening indeed the very foundations of the State. The unscrupulous, unpatriotic and con-

for only those assets that were traced. Lucky Igbinedion, former governor of Edo State, was given a fine of less than $20,000 on conviction also for theft of public assets and breach of public trust. Tafa Balogun, former Inspector-General of Police, a lawyer, stole assets worth over $130 million and was sentenced, on conviction, to imprisonment for a mere six months. And Mrs. Cecilia Ibru, CEO of Oceanic Bank, was convicted of stealing assets worth over $2 billion and sentenced to six months, a term that was mostly served in one of the best hospitals in the country.

56 According to Justice Kayode Eso, "They bargain with the judges; they bargain with the accused person; then, they tell him, refund half of the money, go and serve three months in prison and the three months will, of course, be in the hospital" (*Sunday Vanguard*, October 23, 2011, 5).

57 Odunayo Joseph "Why encourage plea bargaining in Nigeria"? http://tribune.com.ng/index.php/letters/16714-why-encourage-plea-bargaining-in-nigeria, last visited on 11th May, 2012.

scienceless political class the country is subject to also aggravates the problem. Therefore, refining the use of plea bargaining as a useful tool, without selling the nation's soul to the devil, as obtains in more advanced countries, has become extremely imperative.[58]

Speaking of Lagos, the federal criminal-justice system may have some lessons to learn from the state. A law to regulate the practice should be drawn up.[59] It is submitted that though the AJCL provisions on plea bargaining may not be perfect, it was evidently drawn up by persons well-versed in the practice, and who have contemplated the challenges witnessed in other jurisdictions where the practice is used and sought to eliminate their occurrence here. The plea bargain provision in the criminal law of Lagos places the power to accept a plea bargain in the hands of none other than the chief law officer of the state—the Attorney General[60]—and it is for use in all offenses, most likely bearing in mind the discontent that a victim may feel if excluded from a plea bargain agreement allows for the participation of the victim or complainant.[61] A supervisory power is also placed in the hands of the judges, who ensure the arrangement was voluntarily entered into, that the defendant's rights have not in any way been infringed upon,[62] and have the final say in the sentencing.[63] The drawback may however be the unfettered discretionary powers given the Attorney General to accept a plea bargain, the words "in the public interest," "the interest of justice," and "the need to prevent abuse of legal process" have such nebulous meanings that one daresay it will lead to a repetition of the problems of interpretation that the powers of the Attorney General to enter a *nolle prosequi* in respect of an instituted criminal proceeding[64] generated.[65] Another problem may also be that of documentation in the manner of law reports, so that the proceedings will be accessible, for instance, to lawyers who may want to learn from such when making bargains on behalf of their clients. Sentencing guidelines would also serve the latter purpose.

Finally, despite the surreptitious way alleged by some writers[66] that plea bargaining has been smuggled into Nigeria, in light of the beneficial effect it potentially has for the country, it should be safe to say it is long overdue. To still ask that it be thrown out will mean asking that the former status quo with all the problems and injustice it metes on citizens be preserved. And if in acknowledgment of the injustice of the present system revamping[67] is being suggested, it is the humble submission of the writer that the reforms should include the introduction of plea bargaining.

58 *National Mirror*, "The furor over plea bargaining," http://nationalmirroronline.net/editorial/33990.html, last visited June 22, 2012.

59 It has been reported that in an effort to legalize plea bargaining, the EFCC has sent a bill to the National Assembly. It is submitted that the appropriate thing to do is to introduce plea bargain into the criminal justice system so that it can apply to more criminal cases, and not only financial crimes.

60 S.75 AJCL.

61 See s.76(2) (a), s.76(3).

62 If he discovers the above to be in the negative, he shall record a plea of not guilty in respect of such charge and order that the trial proceed. See s.76(7)(b).

63 See s.76(8),(9).

64 See s.174(1)(c) and (3) of the Constitution.

65 See for instance State v. S. O. Ilori (1983)1 SCNLR 94.

66 I. O. Olatunbosun, Z. O. Alayinde, "Plea Bargaining—A mockery of Nigerian Criminal Justice System," *Lead City University Law Journal*, 1/2, July 2008–June 2009, 227–236.

67 See Jiti Ogunye.