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APPLICATION OF PLEA BARGAINS IN CRIMINAL TRIAL NIGERIA: THE GOOD, THE BAD AND THE UGLY

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Abstract
Plea bargain, also known as plea agreement or plea deal, is an agreement in criminal law proceedings, whereby the prosecutor provides a concession to the defendant in exchange for a plea of guilt. In this procedure, the defendant pleads guilty to a less serious charge in return for the dismissal of other charges or for a more lenient sentence. Despite the positive aspects of plea-bargaining, there are numerous problems that are associated with its implementation. This paper examines the impact of plea bargaining on the criminal justice system in Nigeria. It begins by exploring the concept of plea bargaining, followed by an analysis of the history and implementation of plea bargaining in Nigeria. It then moves to an assessment of the positive and negative aspects of plea-bargaining in Nigeria, to provide an insight into its effects. The paper adopts a doctrinal research approach using primary sources of information gathering to discuss the concept of Plea Bargaining and its effects on the administration of criminal justice in Nigeria. The paper concludes with a discussion of the implications of the practice and the need for further research into the effects of plea bargaining in Nigeria.

Keywords: Criminal Justice, Plea-bargain, Prosecution, Defendant, Sentence.

Introduction

Plea bargaining has long been an integral part of the criminal justice system in Nigeria. It is a mechanism whereby a defendant admits guilt and receives a lesser sentence than they would if they had been convicted at full trial. Plea bargains can also be used to expedite the process of criminal proceedings and reduce the costs associated with a trial. However, this form of negotiation can also have significant negative consequences.

One of the primary concerns of plea bargaining is the potential for false confessions and wrongful convictions. This is because plea bargains are often made with little or no evidence that the defendant is guilty, leading to confessions that may not be reliable. Moreover, plea bargains can lead to sentences that are disproportionately harsh compared to what the defendant would have received at a full trial. This can lead to violations of the defendant's human rights, including the right to a fair trial.
Also, plea bargains can lead to corruption and injustice in the criminal justice system. This is because it has been alleged that in some cases police officers were the ones pressurizing the defendants to plead guilty to crimes that they may not have committed. In some instances, prosecutors are alleged to be demanding large sums of money to reduce or eliminate a sentence. Additionally, plea bargains can be used to facilitate corruption and nepotism within the criminal justice system.

Definition and Meaning of Plea Bargaining.

'Plea' means when a defendant gives a formal answer to a criminal charge, which may be a plea of guilty or not guilty. Plea is regarded as the commencement of criminal proceedings. It is so fundamental that without it, there is no trial.

Plea bargaining is an agreement in a criminal trial in which the prosecutor and the accused person arrange to settle the case against the accused in exchange for concessions. It is seen as a negotiated agreement between the prosecutor and the defendant whereby the defendant pleads guilty to a lesser offense or to one of the multiple charges to get a lenient sentence or a dismissal of the other charge. Plea is personal and no one can plead on behalf of another. It is an agreement between the parties for the exchange of promises or performances.

Supporters of plea bargain claim that it speeds court proceedings and guarantees a conviction, whereas opponents believe that it prevents justice from being served. Plea-bargain provides a win-win situation for both the state and the accused. It is a win for the state in such a way that the conviction upon a plea bargain adds in number to the successful conviction by the state and on the other hand, a win for the suspect because he receives a reduced charge and sentence. Although some have argued that the practice of plea bargain violates the fundamental human rights of the accused by the inducement of confession of guilt and a trial waiver for the promise of a reduced sentence

Brief Historical Background of Plea Bargain

Plea bargain has a very long history. In modern times, plea bargaining has become the primary procedure through which we dispose of the vast proportion of cases of serious crime. Plea bargaining became a dominant method of resolving criminal cases at the end of the nineteenth century and beginning of the twentieth century- at a time when the bondsman, the ward politician, the newspaper reporter, the jailer, and the fixer exerted an everyday influence on the administration of criminal justice.

Various crime commissions in the United States in the 1920s demonstrated that plea bargaining had become common and that the use of this route to conviction had increased in the immediately preceding decades.

The United States Supreme Court first upheld a guilty-plea conviction in Hallinger v. Davis, decided in 1892. In that case, the court observed as follows:

> "The [trial] court refrained from at once accepting [the defendant's] plea of guilty, assigned him counsel, and twice adjourned, for several days, so that he might be fully advised of the truth, force, and effect of his plea of guilty." Similarly, in its decision in Brady v. United States in 1970, the Court concluded that plea bargaining was "inherent in the criminal law and its administration."

Types of Plea Bargains

There are three main types of plea bargains. Each type involves sentence reductions, but those reductions are achieved in very different ways.

In charge bargaining, the defendant agrees to plead guilty to reduced charges (e.g., aggravated assault rather than attempted murder).

Sentence bargaining involves assurances of lighter or alternative sentences in return for a defendant's pleading guilty. One of the most visible forms of sentence bargaining occurs when defendants plead guilty to murder to avoid the death penalty. Sentence bargains also occur in less-serious cases, such as pleading guilty to a charge in exchange for a sentence of "time served," which generally means that the defendant will be immediately released.

The third type of plea negotiation is count bargaining, in which defendants who face multiple charges may be allowed to plead guilty to fewer counts. The charges need not be identical: the prosecutor may drop any charge or charges in exchange for a guilty plea on the remaining charges. Because count bargaining applies only to defendants who face multiple charges, it is the least common form of bargaining.

Plea Bargaining and Administration of Justice in Nigeria.

In Nigeria, under the Constitution, an accused person is presumed innocent until proven guilty. This presumption of innocence can only be rebutted by the prosecution and this is achieved when the prosecution can satisfactorily discharge the legal burden on it to prove its case against the accused person beyond reasonable doubt under Section 135(1),(2) and (3) of the Evidence Act, 2011. Section 1(1) of the Constitution declares its supremacy over all authorities and persons throughout the Federal Republic of Nigeria. Equally, Section 1(3) provides that: "If any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void."

The Criminal Procedure Code (CPC) and the Criminal Procedure Act (CPA) applicable in the Northern and Southern parts of Nigeria respectively regulates the conduct of criminal trials in Nigeria. Lagos state is the first state to adopt the principle of plea bargaining in its criminal procedure law by localizing the provisions of the ACJA, 2015 into its ACJL in 2021. The provisions that bother on plea bargain are contained in Sc. 75 of ACJL, Lagos state.

The Osun ACJL, 2018 provides for Plea Bargaining in Sec 265. It will not be out of place to reproduce a few relevant sections.

(1) Notwithstanding anything in this Law or any other Law, the Prosecutor may:
   (a) receive and consider a plea bargain from a defendant charged with an offense either directly from that defendant or on his behalf; or
   (b) offer a plea bargain to a defendant charged with an offense.

(2) The prosecution may enter into plea bargaining with the defendant, with the representation of the evidence of the presentation of the evidence of the defense, provided that all of the following conditions are present:
   (a) the evidence of the prosecution is insufficient to prove the offense charged beyond a reasonable doubt;
   (b) where the defendant has agreed to return the proceeds of the crime or make the restitution to the victim or his representative; or
   (c) where the defendant, in a case of conspiracy has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders.

Implementation of Plea Bargaining in Nigeria

The prosecution must prove all the ingredients of alleged offenses beyond a reasonable doubt before it can secure a conviction against the defendant, except in instances where an accused person voluntarily confesses to the commission of an offense. Most often than not, the issue of voluntariness of the confessional statement comes to play at trial and where the defendant raises an issue regarding involuntariness of the confessional statement, the court must conduct trial within trial to ascertain the veracity of the defendant's claims. When a defendant and the prosecution enter into a plea bargain, the issue of voluntariness is also a fundamental one.

Another important and germane issue in the concept of plea bargain practice is the tendency for abuse of the process by the authorities especially the Attorney-General who already wields enormous powers in criminal administration. This is because the ACJL of many states vests so much power in the AG as far as Plea Bargain is concerned. Already, there are several calls for the powers of the Attorney-General to be reduced possibly by the splitting of the office and functions into two, viz - the Attorney-General (being an officer of the state) on one hand, and the Minister for Justice (being an appointee of the executive) on the other. This is to reduce the influence and interference by the executive with the discharge of the functions of the office of the Attorney-General both at the federal and state levels.

The following are a few instances where Plea Bargaining procedure has been adopted in criminal trials in Nigeria.

1. Yusuf John Yakubu was a former Assistant Director of the Police Pension Board. He was accused of embezzling about N23 billion from the Police Pension funds that he was meant to oversee. In the process of his trial, a plea bargain arrangement was adopted. The accused later entered a guilty plea on the three-count charge and was sentenced to payment of a fine of N750, 000.00 (N250, 000.00) for each count and forfeiture of his assets acquired with the embezzled funds.
2. The case of former Governor Lucky Igbinedion went through a similar process. Lucky Igbinedion, the former Governor of Edo State was accused of looting about N4.4 billion. He also entered a plea bargain and at the end of the day, he was fined the sum of N3.5 million while he forfeited three landed properties to the Federal Government. In a plea bargain arrangement, The EFCC, the prosecuting agency, reduced the 191-count charge to one - a count charge that reads as follows:

> "That you, Lucky Igbinedion (former Governor of Edo State) on or about January 21, 2008, within the Jurisdiction of this honorable court neglected to make a declaration of your interest in account No. 41240113983110 with GTB in the declaration of assets form of the EFCC and you thereby committed an offense punishable under section 27 (3) of the EFCC Act 2004"

The terms of the plea bargain were that the prosecution would reduce the 191-count charge to a one-count charge and in return, Lucky Igbinedion will refund N500m, three properties, and plead guilty to the one-count charge.
In line with the plea bargain, on the 18th December 2008, the court presided over by Justice A. Abdul Kafarati convicted Lucky Igbinedion on the one-count charge and ordered him to refund N500m, forfeit 3 houses, and sentenced him to 6 months imprisonment or pay N3.6m as an option of fine.
3. In the case of The Federal Republic of Nigeria v. Dr (Mrs) Cecilia Ibru, Justice Dan Abutu of the Federal High Court sitting in Lagos, convicted Cecilia Ibru, the former managing director of Oceanic Bank plc, of a three-count charge of authorizing loans beyond her credit limit, rendering false accounts and approving loans without adequate collateral. The court sentenced the accused to six months imprisonment for each count, which ran concurrently and ordered the forfeiture of related assets worth N191.4 billion. In adjudicating this case, the prosecution and accused agreed on a plea bargain by relying on section 17 of the Federal High Court Act which encourages reconciliation among parties to facilitate amicable settlements in civil and criminal cases.
4. Similarly, the former Governor of Bayelsa State, Governor Alamieyeseigha was charged with financial crimes and sentenced to 12 years in prison on a six-count charge. He was sentenced to two years on each count but all sentences ran concurrently and the sentences ran from the day he was arrested and detained in 2005. The above was a result of a plea bargain and because he has almost concluded two years in jail before brokering the bargain, he was released a few days after the judgment.
5. Another case where plea bargaining was adopted in the case of Salisu Buhari who got only one Thousand Naira fine when one of the three offences leveled against him has a prescribed punishment of 14 years and a fine.

Good Sides of Plea Bargaining

There is no doubt that the concept of plea bargain is becoming one of the fastest ways of disposition of criminal matters in Nigeria. In the case of F.R.N V. LUCKY IGBINEDION, the Court of Appeal enumerated some of the advantages of the application of plea-bargaining as follows:
Accused can avoid the time and cost of defending himself at the trial, the risk of harsher punishment, and the publicity the trial will involve. The prosecution saves the time and expense of a lengthy trial, both sides are spared the uncertainty of going to trial, and the court system is saved the burden of conducting trials on every crime charged.
When parties to a criminal matter enter into plea bargain, the practice saves both the accused and the prosecution the cost of prosecuting and defending the case in court. Supreme Court of the USA held that Plea Bargaining should be encouraged if it can properly be administered because if every criminal charge was to be subjected to full trial, the resources of the states and federal Government will be overburdened.

Duration of Trial

The issue of time is a fundamental one in criminal trials in that enormous time is usually consumed especially where so many issues have to be considered in a bid to ensure that there is fair trial. Trials in Nigeria usually take a considerable length of time. This is because parties have the opportunity to appeal rulings and judgments of the courts of first instance. When the outcome of a matter is appealed against at the Supreme Court, it could last as long as 15 to 20 years or even more. In some instances, the accused may still be in prison custody. With the application of plea bargaining, this hardship can be avoided.

Uncertainty in the Outcome of Trial

Only God knows the mind of a judge. It is usually difficult to predict to certainty the outcome of a trial. The prosecutor and the defence are spared of the uncertainty that is associated with trials when plea bargain is adopted. The plea bargain practice also has the advantage of avoiding a situation where an innocent man is convicted of a crime he may not have committed. It is not therefore outside the realm of possibilities that an innocent person is convicted of a crime for any reason, maybe due to the ineptitude of its counsel or the failure of the judge to have a full and perfect grasp of the case.

Reduction in the frequency of conducting trials on every crime charged

Where the state decides to prosecute every offence as alleged, the courts will be greatly overburdened. This may in turn hamper the efficiency of the judiciary in the discharge of its constitutional duties.

Procedure or Guidelines for Plea Bargain

There are no special or hard and fast rules in adopting the plea bargain system. The guidelines are as stipulated by the legal framework of a particular jurisdiction. Even though there are similarities at both the Federal and state levels, there are slight variations in the provisions establishing plea bargains across various states in Nigeria. Moreover, the law of each State determines the commencement and the process or procedure of plea bargain. The agreement on plea bargain in any given criminal case specifically revolves around the "guilty plea" by the Defendant. This is provided for in section 265 (I) (a) & (b) ACJL, Osun State.

Another important factor to consider is that of public interest and public policy. Where the prosecutor is of the view that the offer or acceptance of a plea bargain is in the interest of justice, the public interest, public policy, and the need to prevent abuse of the legal process, he may offer or accept the plea bargain. See section 265 (3) ACJL, Osun State.

It must however be noted that both the prosecutor, the defendant, and his legal practitioner are fully aware and they all execute the agreement together as stipulated under section **265 (4) ACJL, Osun State.** The presiding judge or magistrate shall not participate in discussions about the plea bargain. It is also important to note that where the prosecution and defence reach a plea agreement, the prosecutor shall inform the court that the parties have reached an agreement and the presiding judge or magistrate shall then inquire from the defendant to confirm the terms of the agreement. See 265 (9) ACJL, Osun State.

The presiding judge or magistrate shall ascertain whether the defendant admits the allegation in the charge to which he has pleaded guilty, that the agreement is voluntary, and that it is without undue influence. Where he is satisfied that the defendant is guilty of the offence to which he has pleaded guilty, convict the defendant on his plea of guilty to that offence, and shall award the compensation to the victim in accordance with section 300 of this Law. See section 265 (10) ACJL, Osun State.

However, where the defendant has been convicted under subsection (9) (a), the presiding judge or magistrate shall consider the sentence as agreed upon and where he is satisfied that such sentence is an appropriate sentence, impose the sentence. If the judge or magistrate is of the view that he would have imposed a lesser sentence than the sentence agreed, he would go ahead and impose the lesser sentence, but if the judge or magistrate is of the view that the offence requires a heavier sentence than the sentence agreed upon, he shall inform the defendant of such heavier sentence he considers to appropriate. See section 265 (11) & (12) ACJL, Osun State.

Other Merits of Plea-Bargain

Plea bargain is to take full advantage of a criminal proceeding mechanism that will achieve the best within a short time and at a bearable cost to the authority and the defence. Plea bargain is a method that benefits both the Prosecution and the Defence in that there is no risk of total loss on both sides in any criminal trial where it is employed.

It allows a mutually acceptable result even in cases where the evidence against a given Defendant or the evidence such a defendant will rely on for his/her defence is dicey. Plea bargain allows the Prosecution to increase their rate of convictions and within a reasonable time. It assists the Prosecution, in most cases, to secure conviction where a given Defendant would have been acquitted or discharged on technical grounds. It can be used in favour of a given Defendant in order to secure his cooperation to give more information or testify against another Defendant in the same case or in another criminal proceeding.

It reduces the number of cases that will go on appeal and minimizes the risk of having Rulings or Judgements of a Trial Court being overturned on Appeal It allows the Court, the Leaned Counsel for the Prosecution and Defence to share the responsibility of sentencing. Plea bargain removes the frightening and upsetting fear of testifying in Court for the Defendants and would-be witnesses of both sides.

Shortcomings Associated with Plea Bargaining

Despite these obvious merits of the plea bargain, it is not devoid of shortcomings. A very fundamental defect of the process is that though the state has the power to prosecute, where there is a crime against a person (the victim), such a victim may not feel that justice has been done in his case where the court accepts the plea bargain of the defendant. Plea bargaining is increasingly becoming the norm in Nigeria in criminal cases involving the influential class. Adoption of Plea bargaining allows them to buy their way through any lesser penalty levied against them unlike the poor who are left to their fate to languish in the prison. Society feels plea bargain procedure allows offenders to escape appropriate sanctions they deserve for the crime committed and that it may result in injustice at times when an innocent Defendant will plea bargain for whatever reasons such as overwhelming fear or as a result of long detention or likelihood of prolonged trial. Critical scrutiny of Plea bargaining suggests that it brings the criminal justice delivery system into ridicule at times when society feels that the outcome of a given plea-bargained case is unacceptable for being outrageously lenient. It looks like the offenders of plea-bargained cases were given veritable leeway to defeat justice which feeling in no smaller measure, over the years has eroded and is still eroding the public confidence in our criminal justice system.

Recent Instances of Abuse of Plea Bargaining

Recently, MT Heroic Idun, a ship was released by the Federal Government of Nigeria on a purported agreement of a Plea bargain. The tanker was released after the owners fulfilled the conditions of the plea bargain entered between them and the Nigerian government.

The tanker which had 26 foreign crew members on board had earlier resisted arrests by the Nigerian Navy Ship (NNS) Gongola, near the Akpo oilfield offshore Nigeria and was later arrested in Equatorial Guinea in August 2022 and brought back to Nigeria for prosecution in November 2022 on three count charges, including attempted oil theft.

The vessel and her 26 foreign crew in January 2023 pleaded guilty and elected voluntarily to enter into a plea bargain agreement with the Federal Republic of Nigeria as well as to make restitution to the federal government, in the interest of justice, the public, and for public policy interest in line with Section 270 (5) (a) of the Administration of Criminal Justice Act 2015.

The agreement on that bargain was that the convicted vessel, the owners of MT Heroic Idun were to pay conviction fines and restitution to the federal government and make an apology to the Federal Republic of Nigeria in print and electronic media as well as Llyod's List, while the federal government agreed not to further criminally prosecute and/or investigate the vessel, her owners, charterers or her crew in the matter of her crime against the state.

Another recent case of misapplication of plea bargaining is where a Federal High Court judge in Delta State, Nigeria, presided over by Honourable Justice Abang expressed dismay over a plea bargain agreement that led to the release of oil thieves who had stolen crude oil worth N200 million.

The trial judge while delivering the judgment on November 24, 2021, described the plea bargain agreement as "sordid, and morbid, very unpleasant and dirty." He also expressed frustration of being bound by law to accept the plea bargain which he said inhibited him from imposing a heavy punishment on the defendants to emphasize the contribution of oil theft to the nation's economic adversity.

The plea bargain was filed by the federal prosecutor, who reduced the charges initially brought against the thieves. The judge criticized the agreement for allowing criminals to escape with a paltry N2,000 fine each, instead of facing appropriate punishment for their crimes. Additionally, the judge questioned the sale of the recovered crude oil, valued at N200 million, which was sold at a mere N17 million. He expressed frustration at being bound by law to accept the plea bargain, urging the National Assembly to revisit the plea bargain arrangement to curb abuse.

Initially, another judge, Mr. Emeka Nwite, had ordered the crude oil to be sold, and the proceeds kept in an interest-yielding account until the trial's conclusion. However, the oil was sold at a significantly lower price, and the full amount wasn't remitted to the government's account.

Justice Abang questioned the legitimacy of the sale, suggesting it might have been done through a private arrangement, and criticized the lack of transparency in the bidding process. He was also worried about the vessel involved in the theft being released to the defendants upon payment of a fine, instead of being forfeited to the federal government as per the proper law.
He also expressed the frustration of being bound by law to accept the plea bargain which he said inhibited him from imposing a heavy punishment on the defendants to emphasize the contribution of oil theft to the nation's economic adversity

Conclusion

According to Sir Winston Churchill, the quality of a nation's civilization can be measured by the methods it uses in the enforcement of its criminal law. This paper has highlighted that if not properly used, the concept of plea bargaining in the administration of criminal justice in Nigeria can be subjected to various degrees of abuse. It is very important to state that plea-bargaining can be likened to providing a soft landing to the affluent facing criminal charges most especially corruption and financial-related offenses. If not properly applied, plea-bargaining can harden the hearts of perpetrators, because the perpetrator/s especially the highly placed officials and influential class may just think that as long as they are ready to forgo some part of their ill-gotten 'booties' it is business as usual. This is a case of a big thief receiving light punishment while a petty thief receives the maximum punishment for his minor offense.
Plea-bargaining in Nigeria is like promulgating a law meant to shield the 'powerful' elites from the wrath of the law. This work suggests that Plea bargains at the federal and state levels should be properly reviewed and amended to stipulate the monetary limit for the procedure.
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