Analyzing the Provision for Plea Bargaining under the Administration of Criminal Justice Act, 2015 and its likely impact on the trial of Corruption and other Cases

A Paper Presented by Christopher Olayiwola Ogundare, Esq., at the Annual General Conference of the Nigerian Bar Association, at the International Conference Centre, Abuja on 24 August 2015
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By
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PROTOCOL

I would like to thank the Nigerian Bar Association for the honour and rare privilege to be called upon to deliver a paper at this propitious event. Indeed, there is scarcely greater pride for any Legal Practitioner than to exchange ideas with one’s own brethren of the Nigerian Bar Association at the Annual General Conference of the NBA.

Before I launch into the main business of the paper, I would like to extend my profound gratitude to the National Executive Committee of the Nigeria Bar Association (NBA), under the able leadership of our President, Mr. Augustine Oyarheku Alegeh SAN. I would also like to appreciate Mr. Dele Oye, the conference organising committee, for the kind invitation to grace this occasion. I must also commend the Anti-Corruption Commission of the Nigerian Bar Association, which was recently established for the purposes of providing intellectual, professional and legal research and development of policies that will support the effort of government in fighting corruption in Nigeria.

I wish to commend our President and the executive for transforming the traditional format of the conference into a multi stream group session, which doubtless will provide a more vibrant format, with a new generation of speakers and a wider reach of topic areas. As we all know, the law is a broad church, taking in many points of view, submissions and arguments. Indeed I am sure that this session will be one of those that will elicit strong opinions, more so because it deals with offences which concern the commonwealth of the nation. It is also popularly posited that it is only the man who wears the shoe that knows where it pinches him. No doubt the lawyer is a unique person to discuss the issue of corruption with- he is the defender of the accused, prosecutor of offender and victim of the collective fraud that has been meted upon us all by past, so-called, corrupt leaders.

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It is no longer news that Corruption is the elephant in the room in Nigeria. It is more often than not condemned, yet its proceeds cause us to hypocritically admire its perpetrators in equal measure. It has almost become an unfortunate part of the DNA of Nigeria. Indeed, it has been described as being part of our cultural contribution to the world- so much so that the term “419” though a reference to a part of the criminal code is now defined by the urban dictionary as follows: the name "419" actually said as "four one nine" derives from the section of Nigerian law that contains artistry and fraud comes under, Hence the association with Nigerians.

HOW DOES CORRUPTION AFFECT NIGERIA’S INTERNATIONAL IMAGE?

Corruption can take many forms that can include graft, bribery, embezzlement and extortion. In the private sector for instance, its existence reduces business credibility and profits when professionals misuse their positions for personal gain. An example of this would be a Managing Director of a Bank. It is the factor behind the slow movement of files marked for approval in Government offices, it is the theme behind the N20 obligatory “fine” paid to the police manned checkpoints on the highways, it is price paid to jump the queues at passport offices, it is the originator of the term “ghost worker” who is paid and actually also pays tax!, it is the prime motivator and lubricant of election violence and insurgency, but to name a few. Corruption is the deliberate and conscious attempt to acquire wealth or power through illegal means at public expense; it may also be described as a misuse of public power for private benefit.

Even though political, bureaucratic and electoral corruption has been a factor in our polity for decades, the recent development in Nigeria where public funds running into billions of US Dollars and trillions of Naira, have been misappropriated or looted, leaves us in a quandary. On the one hand, it is now clear that corruption has become a fast track to wealth in Nigeria, and in many cases has become a veritable, albeit illegal, source of revenue, for government officialdom. On the other hand, the various incarnations of corruption have contributed immensely to the impoverishment and economic desolation of a large segment of the Nigerian population.

Dike identifies some causes as the inequality found in distribution of wealth, political office as the primary means of gaining access to wealth, weakness of social and governmental enforcement mechanisms; and the absence of a strong sense of national community, among others.

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2 Dike, Victor E., The philosophy of Transforming Nigeria into a Corruption-free Society: Are the probes the Solution? Online Publication: Nigeriaworld.com/feature/article/corruption.html, October 6, 1999
Macro economically, when resources are tampered with and used improperly, the efficiency of a country suffers. Despite the potential of that economy, insufficient resources will be available to effectively run the country and maintain its levels of governance and operations. This is more so when the critical institutions of state that drive the oil based economy are still largely held by the Federal Government as is the case with NNPC in Nigeria. We all know that the oil sector, despite providing most of our foreign currency reserves, is arguably the most corrupt, opaque, and inefficient sector of the wider economy. In a country where such institutions act as a law unto themselves, it also means that other countries and potential investors may lose confidence in the sector as they see the State Oil Company as a partner, competitor, regulator and judge in the industry. Hence, by extension, corruption is used to mollify and influence the thinking and policy direction of the sector and country, a fact which sees us continually flare gas which, if properly used, could have easily propelled us to the same strata of development as Indonesia, Brazil, South Africa or even Singapore. If the numbers don’t lie, then we are told that NNPC utilized a significant part of what it earned for Nigeria since 2012, simply in order to run itself; a fact which would have crippled it if it had been a private company as it would be economically uncompetitive.

Corruption also impacts the roles of crime-fighting government agencies, police departments and internal investigators. The trickledown effect of corruption usually leads to black market scenarios in all sectors such as we have recently seen with the fuel queues. It also supports the efforts of organized crime such as the illegal bunkering activities in the Niger Delta. Unfortunately, the moral decadence of our modern society and the desire for flamboyant affluence and conspicuous consumption, the lack of ethical standards throughout the agencies of government and business organizations in Nigeria is a serious drawback. Inevitably, foreign investors have become more sceptical of doing business with us simply because of the uncertainty that corruption engenders.

According to Transparency International corruption perception index (CPI) of 1998, out of 85 countries, Nigeria was 81st. By 2001, the same corruption perception index (CPI), had ranked Nigeria 90th, out of 91 countries. In 2014 we were 144th out of 175 Countries. In Africa, Nigeria ranked 36 out of 50 countries surveyed in 2013, improving slightly to 33rd out of 48 countries in 2014, ranking behind trouble spots like Algeria, Cameroon, Central African Republic, Ivory Coast, Niger, Mauritania, Mali, and Sierra Leone.

The damage that this perception does to the country can only be imagined. Nevertheless, we can assert assuredly that the high perception and incidence of corruption has inevitably resulted in a diminished business climate and the erosion of public trust in the institutions of state in Nigeria. The problem is not further helped by what a commentator aptly described thus—“Problems of delays in the adjudication system/process, Congestion of cases in courts, Long adjournment of

3 Please see: http://www.transparency.org/research/cpi/overview
cases, Indiscipline on the bench and the bar, undue reliance on technicalities in the adjudication process, corruption among officials of the judiciary, deliberate subversion of justice, lack of due process, inadequate funding of the judiciary, breaches of fundamental rights and ethics of professionalism, lack of accountability, lack of transparency and travesty of good governance, incompetent and unqualified judicial officers, general indiscipline as well as decline in the quality of justice delivery system... there is lack of confidence in the judicial system by the general public, adoption of sharp practices outside the framework of the Legal system and absence of political will to apply and enforce the law”.

With such daunting challenges, previous Governments had seen the necessity to enact some relevant legislation, particularly the Independent Corrupt Practices Commission Act 2001 and the Economic and Financial Crimes Commission Act, 2002. In spite of these Acts and the subsequent spate of high profile cases such as those preferred against Professor Fabian Osuji by the ICPC, or the famous cases against Governors Alamieyeseigha, Dariye and Igbinedion, as well as cases against CEOs of Failed banks such as Cecilia Ibru.

Sadly, it would appear that the law of diminishing returns prematurely struck the principal anti corruption agencies as fewer convictions have been recorded recently. This has also coincided with the rise in corrupt cases at such an unprecedented rate that we now talk about corruption in the order of twelve Zeros. It is from this nadir that one must consider the motivations for considering another, faster way of case disposition and recovery of stolen assets. In the midst of this is the tragedy of extended and often pointless detention of many persons in our prisons on the basis of offences which are ordinarily bailable and quite possibly even result in acquittal given the quality of evidence and the prosecution’s diligence to put such accused on trial.

To put the foregoing statement into its proper context, the administration of justice cannot be said to be complete without the provision of quick and proper disposition of cases. The prison population bears witness to the fact that of the 56,785 inmates in Nigerian prisons only 17,775 had been convicted with the rest awaiting trial. It is in the light of similar issues that Plea Bargaining was introduced into other common law jurisdictions as England and Wales and Australia.

I must point out that the object of this paper is not to critique or even to examine the issue of corruption simpliciter as that topic has been flogged over the years without great paradigms being shifted. I simply want to narrow the search light, as it were, to the idea of Plea Bargaining as a

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potential solution that has been provided by the Administration of Criminal Justice Act 2015, to meet the delays in the administration of criminal justice, prosecutorial discretion, and access to justice.

WHAT IS PLEA BARGAINING?

Black's Law Dictionary defines Plea Bargaining as “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 accused’s pleading guilty to a lesser offense 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.”

Plea bargains, simply defined, are agreements between accused persons and prosecutors in which accused persons agree to plead guilty to some or all of the charges against them in exchange for concessions from the prosecutors, as we have seen in the cases cited above. These agreements in theory allow prosecutors to focus their time and resources on other cases, and reduce the number of trials that judges need to oversee.

In plea bargains, prosecutors usually agree to reduce accused persons’ punishment. They often accomplish this by reducing the number or severity of the charges against such accused. They might also agree to recommend reduced sentences though a Court is not bound to accept this. Some plea bargains require accused persons to do more than simply plead guilty. For example, prosecutors often offer favorable plea bargains to accused persons who agree to testify in cases against other accused persons.

5 B A. Garner, Black’s Law Dictionary (8 Edition West, a Thomson business 2004) 1190
Plea Bargaining consists of two elements or types— the “charge bargain” which takes place when a prosecutor agrees that a defendant should plead guilty to a lesser charge, or alternatively to only some of the charges that have been filed against him (as in the Igbinedion and Alameye seigha cases), while conversely, a “sentence bargain” occurs when a defendant is informed of his possible sentence if he pleads guilty to the charge before him. As we shall see, this latter type of plea bargaining is very much restricted under the AJCA because while both the prosecutor and the Accused can bargain on the charges, they do not have the power to decide what the appropriate penalty would be. That is the purview of a Judge or Magistrate.

It is important to note that a guilty plea entered by such accused would result in him relinquishing three of his fundamental rights— the rights to trial, confront and cross examine the accusers and be free from self incrimination including exculpatory or impeachment evidence that tends to establish the factual innocence of the accused. In this situation, the law is clear in that the Court must be sure that the accused person has consciously and voluntarily pleaded guilty to the charges.

**HISTORY OF PLEA BARGAINING**

Prior to this, academics such as Alschuler point to its origins in nineteenth century Europe and post civil war America, where it can be traced to criminal trials in urban North Eastern States during the 1880s. Although not exclusive to the US, it developed earlier and more broadly here than most places. Academic evidence from Federal Courts dating from 1908 also shows that at that date, half of all convictions were by guilty plea. By 1925, the percentage of convictions by guilty plea had

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6 Section 36 (6)
reached almost 90%. This system has been tried and is largely used by other common law jurisdictions such as England and Wales and Australia.

In contrast, plea bargaining in Nigeria is a relatively new concept. Before its inclusion in the Administration of Criminal Justice Act, 2015, it had known incarnations in two pieces of legislation-

**Economic and Financial Crimes Commission (Establishment) Act (EFCC Act)**: The provision of Section 14 (2) of the EFCC Act indicates that when a defendant agrees to give up money stolen by him, the Commission may compound any offence for which such a person is charged under the Act. This provision has no universal application to all criminal trials in Nigeria as negotiations there under are expressly limited to offences punishable under the EFCC Act.

**Administration of Criminal Justice Law 2011, Laws of Lagos State (ACJA 2011)**, which institutionalized the concept of plea bargaining in Lagos State via the provisions of Section 76 of that Law. The provisions of this law form the inspiration for the ACJA 2015.

It is interesting to note that before the ACJA 2015, plea bargaining had been applied to corruption cases under the fore mentioned EFCC Act.

On October 8, 2010, the former Chief Executive Officer of Oceanic Bank International Nigeria PLC, Mrs. Cecilia Ibru was sentenced to eighteen months imprisonment by the Federal High Court Lagos, Nigeria for committing various economic and financial crimes. The Economic and financial Crimes Commission (EFCC) had charged her with a twenty-five count criminal information bothering on financial crimes before the Court. However, she entered into a plea bargain with the prosecution and pleaded guilty to a lesser three-count charge. The Court thereafter, convicted Ibru on the three-count charge and ordered the forfeiture of her assets amounting to about N191 billion. She was

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8 American Law Institute, *A STUDY OF THE BUSINESS OF THE FEDERAL COURTS, PT 1* at page 58 (1934)
9 Economic and Financial Crimes Commission (Establishment) Act 2004
sentenced to six months on each of the three counts which are to run concurrently. In effect, Mrs. Ibru would only spend six months in jail.

Governor Alamieyeseigha of Bayelsa State was sentenced to 2 years in prison each on a six-count charge that bordered on corruption and other economic crimes. These all sentences ran concurrently and of course ran from the day he was arrested and detained in 2005. In order to receive a lighter sentence, the former Governor had entered into a plea bargain with the Economic and Financial Crimes Commission (EFCC), opted out of his constitutional right to trial and pleaded guilty as charged. Having almost completed two years in jail before accepting the bargain, he was released few days after his conviction by the Court.

A SNAPSHOT OF PLEA BARGAINING UNDER THE ADMINISTRATION OF CRIMINAL JUSTICE ACT

The main purposes of the ACJA 2015 are set out in section 1; these include promoting efficient management of criminal justice institutions and speedy dispensation of justice, protecting the society from crime, and protecting the rights and the interest of both the defendant and victim. The Act also pivots the criminal justice system from punishment as its main object to restorative justice which pays attention to the needs of the victim, defendant, other vulnerable persons and society.

These objects are what underpin the provision of plea bargaining under Section 270 of the Act. Under that provision, 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 legal process, he may offer or accept the plea bargain. This is a wide provision which leaves the discretion to the Attorney General or any officer appointed by a fiat to act in his stead.

Charge bargaining is represented by the provisions of subsection 3 which states that The prosecutor and the defendant or his legal practitioner may before the plea to the charge, enter into an agreement in respect of the term of the plea bargain which may include the sentence recommended within the appropriate range of punishment stipulated for the offence or a plea of guilty by the defendant to the offence(s) charged or a lesser offence of which he may be convicted on the charge; and an appropriate sentence to be imposed by the court where the defendant is convicted of the offence to which he intends to plead guilty. This can only take place following a consultation with the victim or their representative as well as the Investigating Police Officer responsible for that case. The Prosecutor must also act with due regard to the nature of and

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10 Section 270 (2)
circumstances relating to the offence, the defendant’s willingness to plead and cooperate as well as public interest\textsuperscript{11}.

The Plea Agreement must state fully, the terms of the agreement and any admission made, and is signed by the prosecutor, the defendant, the legal practitioner and the interpreter, as the case may be. Crucially, the Act provides that in reaching an agreement, the Victim or their representative can make representations as to payment of restitution etc. A copy of the agreement signed by the parties in paragraph (c) of subsection (6) of this section shall be forwarded to the Attorney-General of the Federation\textsuperscript{12}.

Prevention of abuse is guaranteed but also protected under the Act. Where a plea agreement is reached by the prosecution and the defence, 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 correctness of the agreement. The Court must ascertain whether the defendant admits the allegation in the charge to which he has pleaded guilty and whether he entered into the agreement voluntarily and without undue influence and may where–

(a) 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, or

(b) he is for any reason of the opinion that the defendant cannot be convicted of the offence in respect of which the agreement was reached and to which the defendant has pleaded guilty or that the agreement is in conflict with the defendant’s right referred to in subsection (6) of this section, he shall record a plea of not guilty in respect of such charge and order that the trial proceed\textsuperscript{13}.

The discretion offered to Judicial Officers is seen in subsections 10 to 11, which permits them to look at the sentence recommended under the Plea Agreement and decide whether or not to impose same. Indeed they can impose stiffer sentences where it is felt that the agreed sentence is insufficient.

Similarly, where the defendant has been informed of the heavier sentence as contemplated above, the defendant may –

(a) abide by his plea of guilty as agreed upon and agree that, subject to the defendant’s right to lead evidence and to present argument relevant to sentencing, the presiding judge or magistrate proceed with the sentencing, or

\textsuperscript{11} Section 270(4)
\textsuperscript{12} Section 270 (6)(a)-(d)
\textsuperscript{13} Section 270 (8) and (9)
(b) withdraw from his plea agreement, in which event the trial shall proceed de novo before another presiding judge or magistrate, as the case may be\textsuperscript{14}.

The victim may get restitution if the Prosecution applies to have forfeited property vested in the victim of the crime committed. This will allow the proper agencies of state who are the victims of corruption to receive the stolen funds, as opposed to routinely sending same into a general account, notwithstanding the Sheriff and Civil Process Act.

The prosecution may enter into plea bargaining with the defendant, with the consent of the victim or his representative during or after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defence, provided that all of the following conditions are present:

(a) the evidence of the prosecution is insufficient to meet the requisite standard of proof;

(b) where the defendant has agreed to make restitution of the proceeds of the crime to the victim or his representative, and

(c) where the defendant in a case of the crime of conspiracy has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other conspirators\textsuperscript{15}.

Lastly, the Defendant is protected because a person convicted and sentenced under the provisions of Section 270, shall not be charged or tried again on the same facts for the greater offence earlier charged to which he had pleaded to a lesser offence. This means that double jeopardy is guarded against and the defendant, having been tried and convicted shall upon be freedom be deemed fully exculpated.

Having presented a précis of Plea Bargaining provisions under the ACJA 2015, one might be tempted to conclude with certain finality that plea bargaining has the potential to speed up the administration of justice and if utilized efficiently, could reduce the time spent on trying offenders who opt for its use. This assumption would be affirmative on paper but as we all know, our bane as a nation has always been in the transformation of sound ideas into achievable and realistic goals based on the establishment of those institutional ideals that will enhance the criminal justice system. Indeed I make bold to say that the Administration of Justice Committee envisaged by the present Act is in fact a reincarnation of the earlier Administration of Justice Commission, which though lofty in its aims, never quite materialized beyond the pages of the promulgation Decree that birthed it. If

\textsuperscript{14} Section 270 (14)
\textsuperscript{15} Section 270 (17)
we are to view plea bargaining with the vista of its advocates, then a lot of work needs to be done to ensure its use for low and high value corruption cases.

I crave your indulgence to look at what I think will be the impact of plea bargaining on certain core elements of any criminal justice system, especially in its application to corruption cases.

**PLEA BARGAIN AND ADMINISTRATION OF JUSTICE**

On 10 August 2015, a Presidential Advisory Committee, comprised almost entirely of lawyers, was inaugurated by the Vice President, Professor Yemi Osinbajo, GCON. This appears to be the first salvo in the government’s attempt to curb the menace of corruption and I am sure that this committee will have to confront multifaceted and increasingly sophisticated corruption, which hopefully should give a fillip to a hitherto underfunded criminal justice system that includes all stakeholders in the administration of justice.

It is my belief, and research has borne this out in other countries where Plea Bargaining is utilized, that it could afford the system a chance to increase the pace and speed of trials for offences of corruption and other related offences. Its effect in reducing the number of persons awaiting trial can only be imagined as there are no statistics available at present. However, a survey carried out by the Bureau of Justice Assistance in the United States in 2003 indicated that 75,573 cases were disposed of by federal district courts via a jury trial or plea in that year. Of these, about 95 percent were disposed of by a guilty plea. In respect of the use of plea bargaining, estimates show that about 90 to 95 percent of both federal and state court cases were resolved through this process.

On the flip side, one must wonder how many persons under the circumstances of extended detention and the hope of early release, would not also jump at the chance to “plead and go” as it were. If we take the typical example of a defendant that has been in detention for two years on a charge that would carry an average of a 4 year sentence, then a guilty plea may be offered to such a person in the hope of an early release within months. In the event that such a person was innocent, how does the court truly know this? The provisions allow a Court to reject the said plea Agreement but duress cannot be clearly evinced if the Defendant voluntarily signs it. As such, the quandary for the court would be to reject such a plea deal or procedurally play the Pharisee and look the other way. These are all the uncertainties that I think the Bar and the Criminal Justice System must note. Courts should take the time to question each defendant in order to ascertain whether his demeanour, mental state and motive are in line with the purposes of the Act. What if the Defendant has signed a Plea Agreement as to the recovery of significantly reduced loot from that which he has been charged with having stolen? We must all indeed guard against clearing the backlog at the

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16 Downloadable from https://www.bja.gov/Publications/PleaBargainingResearchSummary.pdf

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expense of doing justice. The right to elect for a full and fair trial must not be swept off the track at any cost as this would be a breach of the Constitution.

**PLEA BARGAIN AND ACCESS TO JUSTICE IN CORRUPTION CASES**

If one is to achieve a system where justice is neither delayed nor denied, then advocates of plea bargaining would posit that one of the major advantages of plea bargaining is that it helps prosecutors and the Courts in the effective administration of justice. In criminal prosecution of corruption, plea bargain affords the accused a chance to enjoy the right to a speedy trial because *justice delayed is justice denied*. We would all commonly agree that the right to speedy trial cannot be compromised or negotiated away. Speedy trial is indeed a constitutional and common law right, as affirmed by the Court in *Uwafor Okegbu Vs the State*\(^\text{17}\). The constitutional guarantee of speedy trial is intended to ensure that accused persons are not subjected to unreasonably lengthy confinement before trial and is a corollary of the right of every accused in a criminal case to a speedy trial.

Furthermore, Even though, the right that is being protected is the defendant's right not to be subject to prolonged detention between arrest or indictment and the trial, the right to a speedy trial is also in the best interest the prosecutor and the general public as it reduces the cost of prosecution and detention. This is a principal motivation behind the provision for plea bargaining.

Advocates of Plea Bargaining would also argue that other Jurisdictions have institutionalised the right to speedy trial as opposed to our vague constitutional provision which does not clearly define what delay is or not, thus opening the way for extended prosecution of cases. They also point to laws such as the *Speedy Trial Act, 18 U.S.C. § 3161(h)(1)(F), (USA) 1974* as evidence of the fact that the United States, despite a relatively efficient system, still had to legislate to provide for speedy trial. While true that this law has assisted the administration of justice in some immeasurable way, it is clear that over 90% of criminal cases in the United States never make it to a full contested trial otherwise the bill for a jury trial may have rendered the traditional system unworkable and financially unwieldy.

That said, it may conversely be argued there is really no clear or absolute time limit that may be considered too long of a delay, especially where such delay is occasioned by the interest of justice. Though it is safe to presume that a defendant is denied a speedy trial if there is a delay of 2 years or more from the date of arrest, the government may yet overcome this presumption by giving showing a good cause for the delay as long as the prosecutor has not been negligent in the

\(^{17}\) (1979), 11 SC 1; Please see also: Goke Olaolu v Federal Republic of Nigeria (Case Number SC/163/2011) delivered by the SCN on 22 May 2015.
prosecution of the case. An example would be a vast money laundering trial which has complex evidential challenges.

As such plea bargaining is not a “catch-all” solution. It is crucial to juxtapose the right of the accused person to a fair, speedy trial, with the need for a proper trial of the issues, as seen in the case of Olaolu v FRN. Where speed is the sole object, then we run the risk of having an “expedience-based” system rather than an “evidence-based” system, especially where the beneficiaries of the plea bargain are likely to mostly be rich, powerful individuals or persons connected with the state apparatus of power. It must be carefully considered and in my view, considerably skewed in favour of those poor souls who are languishing in prison awaiting the chance of their day in court. Where culpable, surely such accused could be summarily sentenced using the range of sentencing options provided by the Act, thus reducing the population of inmates awaiting trial in Nigeria.

PLEA BARGAIN AND PROSECUTION OF OFFENCES/ DISCRETION TO PROSECUTE

Plea Bargain is an expedient, cost saving measure, but is infinitely subject to abuse. This is more so when the prosecutor is selected by a political appointee, who may not have the political will to act decisively and clearly. A corollary to this is the attractiveness that corrupt enrichment of such Prosecutors might present to a defendant with means and ability to influence the Plea Agreement. This latter point is most aptly demonstrated by the unfortunate trial of Mr. John Yakubu Yusuf. Mr. Yakubu was a former Director in the Police Pension office. He was accused of conspiracy, alongside 8 other civil servants, to illegally divert N40 billion from the Nigeria Police Pension Funds. Following a plea bargain, he confessed to have connived with the others to illegally divert the Police Pension Fund’s N23 billion. Sentencing him, Hon. Justice Talba of the High Court noted that “the court has a duty to do justice for not just the convict, but for the society at large. Today Nigeria is bedeviled with the cankerworm of white-collar crime which has subjected the citizens to abject poverty. It is not in doubt that the standard of living of an average Nigerian is declining day by day”. Surprisingly, his lordship then chose to exercise his discretion by sentencing the accused for 2 years concurrently on each of the three count charge he pleaded guilty to with the option of a N250, 000.00, fine for each count. In other words, his lordship slapped Mr. Yusuf on the wrist because outside the seizure of his property, he only had to pay N750, 000.00 to regain his freedom after admitting that he stole N23 billion. Spare a thought therefore for the goat

See more at: http://www.vanguardngr.com/2013/02/police-pension-fruad-a-chronology-of-plea-bargain-compromises/#sthash.2FRLieDy.dpuf
thief who was sentenced to two years imprisonment by a court for stealing a goat worth N5000 last year. I believe that plea bargaining will need to be properly policed by the Bar and other stakeholders if it is not to be abused by the powers that be.

CONCLUSION

It was the late American President John F. Kennedy that stated that “Change is the law of life. And those who look only to the past or present are certain to miss the future.” Despite its brief history in Nigeria, plea bargaining appears to be a reality that is both feared and loved in equal, yet opposite, measures.

Tracing the historical evolution of plea bargaining, the Executive Director, Lawyers League for Human Rights, Mr. Jiti Ogunye, in a publication titled, “Criminal Justice System in Nigeria: The Imperative of Plea Bargaining stated “Plea Bargaining is a feature of the criminal justice system of common law countries where there is a concept of plea. In civil law systems, where there is no concept of plea, plea bargaining is regarded as inapplicable. “United States of America, Britain and Canada are leading common law countries that have plea bargain systems, albeit in different stages of development. The system, which was once forbidden in most of Europe, has gained inroads into many European countries’criminal justice systems. Italy actually passed a federal legislation formally introducing it. Scandinavian countries however largely disallow the practice. France, a civil law jurisdiction, recently passed a law allowing the
operation of plea bargaining, a clear indication that civil law countries are warming up to the adoption of the system.”19

Conversely, the Executive Secretary of Anti-Corruption Network (ACN), Senator Dino Melaye had caustically opined after the Yakubu case that “We once again call for eradication of plea bargain. It is evil, nonsensical, archaic and detrimental to our avowed fight against corruption. We advocate the China option of capital punishment for corruption, in which the family of the convicted and executed persons, pay the bill for execution”. No doubt, the results of an improper application of the Plea Bargain principles are clear that it does more harm indeed than good and fosters an overwhelmingly negative perception of Plea Bargaining itself and the Judiciary in general.

On the other hand, advocates of the use of plea bargaining in corruption cases would allege that the object of corruption or any other crime involving the illegal conversion of any corporeal property is and should be the recovery of that property. There is therefore no point in expensive, fruitless trial or even trials resulting in stiff draconian punishment, when there is no recovery of the property converted. In that sense, they argue that plea bargaining would greatly allow defendants to be more willing to accept a guilty plea and forfeit their loot if they get sanctions that are more lenient than normally applicable.

That said, I believe that the overriding intent of Section 270 of the ACJA 2015 is to aid the administration and dispensation of justice. However, the recent instance of the use of plea bargaining in high profile corruption cases, hardly encourage the public or dissuades potential corruption. They have tended to be more lenient than society would otherwise feel is deserved and this may be because of the paucity of the evidence presented or as some have posited, the lack of seriousness in being decisive where corruption is concerned.

There needs to be a greater use of plea bargains for the average “yahoo-yahoo” cases which form the bulk of the prosecutions that the EFCC embarks upon. Indeed plea bargaining ought to be used to ensure that justice is done in the overwhelming cases of those poor souls in prisons and other detention centres otherwise there is likely to be continued scepticism and downright public hostility to its use. This is because of its potential for abuse and the potential for its use to exculpate persons who have unjustly enriched themselves in positions that called for high standards of fidelity.

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While our romance with this latest foreign import has seemingly just begun, it is important that the stakeholders in the administration of justice ensure its use to meet the constitutional right to fair trial within a reasonable time. Recovery must be prioritised as opposed to punishment and there must be a greater emphasis on a more scientific approach to investigating and collecting the evidence which will allow it to enter into strong negotiations and advantageous plea agreements.

At the end of the day, we all want our Nation to be tough on crime and the causes of same. We also wish to be seen by foreign investors as providing an attractive, certain, micro economic and political stability. For this to be evident, we must be perceived as a country that has an efficient, just and speedy criminal justice system that ensures that justice is neither delayed nor denied. If plea bargaining will aid this process fairly and justly, then so be it. Whatever the case, the actuality of its inclusion in the statute books puts an end to the academic debate as to its propriety. Now we have to work to ensure that it is fair.

It is therefore my view that our nation’s image on corruption would be better served by being seen to be in control of the justice system and providing an environment where we can rightly say “Ubi Jus Ibi Remedium”.

Thank you