

Combating the Cankerworm of Corruption through Plea Bargaining in Nigeria

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Abstract

This paper examines the indices of corruption and the use of plea bargain by the Economic and Financial Crimes Commission (EFCC) as a means of combating the canker worm of corruption. Plea bargain has not been well received by Nigerians as the concept is seen to favour those who are highly placed in society. The reliance of section 14 of the EFCC Act on the use of plea bargain by the EFCC has been criticised as inappropriate. However, the introduction of the Administration of Criminal Justice Act 2015(ACJA) has elaborate provisions that provide for a transparent dispensation of the use of plea bargain and is seen as a welcome development. The paper also examines cases where plea bargain has been utilised and discovers that its use is often in high profile cases where culprits are given a leeway to escape by being given lighter sentences which makes a mockery of the concept of plea bargaining. The paper found out that despite the use of plea bargain, corruption is on the increase and recommends that a supervisory mechanism be put in place to ensure that the concept of plea bargain be strictly followed and applied to all individuals irrespective of class so that justice can be seen to be manifestly done as this will help in combating the cankerworm of corruption in Nigeria.

Key Words: Corruption, Plea bargain, Economic and Financial Crimes Commission (EFCC), Government, Law, Administration of Criminal Justice System

1.0 Introduction

Corruption in Nigeria has assumed the status of a pandemic that has affected every strata of the society. It has been stated to be the root cause of the country's stunted growth in terms of socio-political and economic development.³Nigeria has over the years maintained a high index in terms of being rated as a corrupt nation. For instance Transparency International has ranked Nigeria 146th out of 180 countries in its 2019 corruption perception.⁴As a result of the negative impact of corruption on the state and society, corruption has remained a pandemic despite several initiatives and the establishment of structures and several institutions by successive governments to combat the crime of corruption.⁵ Despite the presence of these legislations and anti-corruption agencies, they have not been able to curb the geometric rise of corruption in the country.⁶

Plea bargain has been deployed by several nations as a tool in handling criminal issues. Reasons have been adduced for its use as it serves to save the time of the judicial process in prosecuting offences and saves cost of undertaking lengthy trials as well as helping to decongest prisons.

In Nigeria, the Economic and Financial Crimes Commission have adopted the use of plea bargain to effectively resolve the issue of corruption. How effective this has been will be examined in this work.

This article shall examine the concept of corruption alongside plea bargain, analyse the causes and effects of corruption as well as proffer recommendations that would enhance the effective implementation of plea bargain in Nigeria.

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⁴Transparency International, Nigeria Corruption Rank, [https://www.transparency.org/en/countries/nigeria\(20/9/2020\)](https://www.transparency.org/en/countries/nigeria(20/9/2020))

⁵Mudasiru, S.O., "Democracy, Plea bargaining and the Politics of Anti- Corruption in Nigeria(1999-2008), <<https://www.academicjournals.org/journal/AJPSIR/article-full-text/F9DCA3854830>>(accessed 27/7/2020)

⁶Aborishade, Richard, A and Adeleke, Oladele, A., "One Rule for the Goose, One for the Gander? The Use of Plea Bargaining for High Profile Corruption cases in Nigeria", African Research Review, Vol.12(2) S/N 50,(2018), p.2

1.1 The Concept of Corruption

Corruption is an issue which is not peculiar to Nigeria but is common to all governments and countries of the world.⁷Corruption is defined as the unlawful use of official power or influence by an official of the government either to enrich himself or further his course and any other person at the expense of the public, in contravention of his oath and contrary to conventions and laws that are in force.⁸ According to Osoba, corruption is an anti-social behavior conferring improper benefits contrary to legal and moral norms and which undermine the authorities to improve the living conditions of the people.⁹ Corruption covers a wide spectrum of areas and can be found in the award of contracts, promotion of staff, dispensation of justice, misuse of public offices, position and privileges, embezzlement of public funds, etc.¹⁰Sagay stated at a conference that “Nigeria is at cross-roads and overwhelmed by corruption. It is so pervasive in the different sectors and levels of society”.¹¹

This state of affairs has caused the Nigeria state havoc and embarrassment as several trillions of naira that could have been spent on construction of good roads, schools, provision of quality healthcare, among other essential services have been diverted by some private individuals for their private use and benefits.¹²

Corruption undermines a country’s capacity to provide basic life necessities for its citizens as well as widens inequality, aggravates mass poverty, militates against efficient resource planning and allocation, undermines economic growth by discouraging investment, compromises economic efficiency; results in high governmental expenditures as a result of inflation of contracts and cost supplies. There is no doubt that corruption is poisonous to long term development and democracy.¹³ In a nutshell, corruption undermines the security and wellbeing of a nation

1.2 Types of Corruption

There are several types of corruption in Nigeria and these can be found in both the public and private sectors. This include political corruption,¹⁴bureaucratic corruption, electoral corruption, embezzlement is a common occurrence in Nigeria which involves outright theft of entrusted funds and misappropriation of properties. The case of embezzlement in Nigeria can be traced from 1960 when Nigeria became independent and research has shown that public funds of between US\$300 AND US\$400 billion have been lost to corruption¹⁵. A case study is that of the Late General Abacha, former president of Nigeria, who alone allegedly embezzled billions of dollars from the Central Bank of Nigeria between 1993 and 1998 which till date is being recovered by the present Buhari’s regime.¹⁶

⁷Olakulehin, Y.A., “The Practice of Plea Bargaining and its Effect on the Anti-Corruption Crusade in Nigeria”, <<http://www.ssrn.com/abstract=1279003>>(accessed 28/7/2020)

⁸Adeleke, L.A., “The Practice of Plea bargaining in Nigeria: Antithesis of the Broken Windows Theory of Corruption”, <http://www.researchgate.net/publication/335524123_THE_PRACTICE_OF_PLEA_BARGAINING_IN_NIGERIA_> (accessed 22/4/2020)

⁹Osoba,O., “Corruption in Nigeria: Historical Perspectives”, Review of African Political Economy, 1996 cited by Mulinge, M.M and Lesetedi, G.N., ”Corruption in Sub-Saharan Africa: Towards a More Holistic Approach, <<http://www.africaneconomicanalysis.org/articles/gen/corruptiondikehtm.html> > (accessed 12/01/2020)

¹⁰Ambali, *supra n* 3.

¹¹Jibueze, J., “Nigeria Overwhelmed by Corruption, Says Sagay”, The Nation, Monday, January 11, 2021August 17,2020,p.7

¹² Adebayo, A., “A Review of Plea Bargain Concept in the Anti-Corruption War in Nigeria, *Brawijaya Law Journal*, Vol. 5 No. 1(2018) p.2

¹³ Mohammed Usman, “Corruption in Nigeria: A Challenge to Sustainable Development in the Fourth Republic, <<http://www.eujournal.org/index.php/esj/article/view/770804>>(accessed7/2/2020)

¹⁴Aluko, Yetunde, A., “Corruption in Nigeria: Concept and Dimensions”, <https://www.researchgate.net/publication/327020420_corruption_in_Nigeria>(7/2/2020)

¹⁵ Martini, M., “Transparency International” <http://www.transparency.org/files/content/corruptionqas/Nigeria_overview_of_corruption_and_influence_of_social_norms_2014.pdf>(accessed 2/1/2020).

¹⁶ The United States Government and the Island of Jersey has entered into agreement with the federal government to repatriate the sum of \$318,460,329 looted by General Abacha during his military regime in the 1990s, the funds according to Ferdinand Nwoye, Ministry of Foreign Affairs spokesman, would be used to fund the construction of the Lagos-Ibadan Express way, Abuja-Kano Expressway and the second Niger Bridge under the supervision of the Nigeria Sovereign Investment Authority(NSIA), Channels Television, “New Abacha Loot To Fund Three Infrastructure Projects” <<http://www.channelstv.com/2020/02/04/new-abacha-loot-to-fund-three-infrastructure-projects>>,(accessed)5/02/2020).Another case is the case of former governor of Delta State, James Ibori, who was found guilty of laundering money from state coffers and was convicted by a United Kingdom court. See Martini, *supra*n14

According to the Nigerian Minister of Information and Culture, Mr. Lai Mohammed, over N 1.34 trillion naira have been stolen from the nation's treasury by 55 Nigerians from 2006 to 2013,¹⁵ of these Nigerians were State governors.¹⁷ It is further alleged that these former governors stole N146.84 billion, 4 former ministers stole N7 billion, more than N14 billion have been stolen by 12 former public servants at federal and state levels. He also stated that from the private sector, 8 persons from the banking sector have stolen N524 billion and 11 businessmen are linked with the theft of N553 billion.

1.3. Causes and Effects of Corruption

At this stage, it is imperative to examine the causes of corruption especially as corruption in Nigeria has refused to abate rather it is growing at an alarming stage. Some factors identified are cultural and moral decadence¹⁸, poor maladministration¹⁹, weak implementation of laws by government institutions and greed²⁰

The effects of corruption are numerous and involve the perpetuation of social and political inequality as it leads to the retardation of economic growth of the country. The misappropriation and mismanagement of public funds by successive regimes have rendered majority of Nigerians poor, uneducated and unemployed. This has led to low inflow of foreign investment as investors are very hesitant in investing where corruption is seen as normal and this has the effect of discouraging and hindering direct investment.

Another major effect is seen in the heightened measure of insecurity in Nigeria as the hope of becoming a developed nation appears dim. Daily reports of incessant armed robberies, kidnappings and killings by militants can be linked to corruption and is traceable to the desperation of unemployed youths who have resorted to these vices.

Lack of development is another resultant major effect and is two pronged namely; political development and economic development. Political development refers to the growth in the capacity of a society's governmental structures and processes to maintain their legitimacy overtime while economic development is seen as packaging and harnessing resources towards improving all sectors of government and human existence in the society.²¹ However development is stagnated where corruption thrives as it implies not only a state of underdevelopment but an absence of an attitude or mental willingness to develop. This is seen in Nigeria where public officials collude with contractors and suppliers to inflate contracts. This results in the rapid depletion of public treasury which in turn leads to shortage of foreign exchange and economic depression. It also leads to inflation, unemployment which drastically reduces gross national product and per capital income. It is stated that the outright misappropriation, conversion, diversion and theft of public funds and resources has left Nigeria with a damaged reputation and a negative perception of being a mismanaged country.²² The menace of corruption does not help the nation rather it services the exclusive benefit of certain individual(s) or group(s) in society. It is noted that every regime provides programmes for combating corruption with a view of reducing the level of poverty in society. Despite these programmes, there is no administration past and present that has not been accused of corruption²³.

As a result of the crippling effects of corruption in Nigeria, various governments have over the years made attempts at enacting legislations and creating regulatory bodies to combat corrupt practices. These Acts were promulgated while agencies were specifically established to combat corrupt practices.

¹⁷Sani, Tukur, "55 Nigerians stole over #1.34 Trillion in 8 yrs, Premium Time Newspapers (Nigeria, 18 Jan, 2016) <<http://www.premiumtimesng.com>>(18/7/2020)

¹⁸Aluko, A. Yetunde, *supran*14

¹⁹Ibid, Linus Akor, "Corruption in Nigeria: Causes, Consequences and the Way Forward", <http://www.pdfsemanticscholar.org/73ac/2da69cb3863585a3169738710of66c25463c.pdf> (accessed 27/7/2020)

²⁰Aligba, A, "A Critical Appraisal of the fight against Corruption in Nigeria" ,A paper presented at the Annual Conference of Nigerian Association of Law Teachers held at the University of Ilorin, Kwara State on the 22nd-27th April, 2013, p.136

²¹Chukwumaeze, U.U., Okorie, C.K., Chinweze, C.E., "A Critique of the Fight Against Corruption in Nigeria", in Corruption and National Development, Proceedings of the 46th Annual Conference of the Nigerian Association of Law Teachers held on the 22-26 April, 2013 at the University of Ilorin, Nigeria, p. 219

²²Olu, Ibidolapo "The Anti-Corruption Legal Framework And its Effect On Nigeria's Development" <<http://www.mondaq.com/Nigeria/Criminal-Law/490434/The-Anti-Corruption-Legal-Framework-And-Its-Effect-On-Nigerias-Development>> (accessed 7/2/2020).

²³Adebimpe, I.A, Adeleke, G.O. and Yusuff, M.I.(2010), "State Character Corruption and Poverty: Implications for National Development", *Development Perspective in Arts and Social Sciences Education*, p.1

Though some of these laws through their agencies have been able to record remarkable achievements, overtime their exposition, recovery and sentencing rate have failed to catch up with the geometric rise of corruption in the country.²⁴

Some of these laws and agencies include the Economic and Financial Crime Commission Act and its agency and the Administration of the Criminal Justice Act 2015 which shall be examined.

2.0 The Economic and Financial Crimes Commission Act 2004

The Economic and Financial Crimes Commission Act was enacted in 2002 but later amended in 2004²⁵. Section 1 creates a body to be known as the Economic and Financial Crimes Commission. Section 6 provides for the functions of the Commission which gives it power to undertake the enforcement and the due administration of the provisions of the Act. The Act also outlines from section 6(1)(b)-(o) other powers given to it in terms of investigating offences relating to financial malpractices, money laundering, embezzlement, bribery, looting, terrorism, retention of proceeds of a criminal conduct, economic and financial crimes, seizure and forfeiture of property, passport and foreign assets.²⁶

It is interesting to note that the Commission is also charged with the responsibility of enforcing the Money Laundering Act 1995, Advanced Fee Fraud and other Related Offences Act 1995, Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994 as amended, Banks and other Financial Institutions Act 1991 as amended, Miscellaneous Offences Act and any other law or regulations relating to economic and financial crimes.²⁷ Part IV of the Act creates various offences which pertain to financial malpractices.

Of particular interest is section 14 (2) which allows the Commission without prejudice to section 174 of the 1999 Constitution as amended²⁸ which relates to the power of the Attorney General to prosecute cases, to compound any offence punishable under the Act by accepting such sums of money as it thinks fit, not exceeding the amount of the maximum fine to which that person would have been liable if he had been convicted.

The EFCC has relied on the above provision to utilize the doctrine of plea bargain. However, the utilization of section 14(2) has not been without criticisms. It has been stated that reliance by the EFCC on this provision for plea bargain has rather been fraudulent. This is because critics state that the section does not provide for the plea of guilt to be made by the accused before the compounding of offences and so cannot be said to be the same as plea bargain²⁹. It is further distinguished in the sense that compounding an offence cannot be interpreted to mean plea bargain as the essence of compounding offences is to encourage amicable disposition of matters which does not involve conviction or sentencing and will lead to the court striking out the matter and discharging the accused unlike in plea bargain, where the accused pleads guilty and is accordingly, convicted with a lesser sentence.³⁰ These gaps have been addressed in The Administration of Criminal Justice Act which was enacted in 2015 and now includes provisions which has further given directions to the applicability of plea bargain and this shall be discussed subsequently.

3.0 Analysis of Plea Bargain

Plea bargain is a term which refers to the practice of negotiating an agreement between the prosecution and the defence whereby the defendant pleads guilty to a lesser offence or in the case of multiple offences to or more of the offences charged in exchange for more lenient sentencing, recommendations, a specific or a dismissal of other charges³¹

Black's Law Dictionary³² defines plea bargain as A negotiated agreement between the prosecutor and criminal defendant whereby the defendant pleads guilty or no contest to a lesser offense or to one of multiple charges in exchange for some concession by the prosecutor usually, a more lenient sentence or a dismissal of other charges.

²⁴Aborisade, R.S., Adeleke, O.A., "One Rule for the Goose, One for the Gander? The Use of Plea Bargaining for High Profile Corruption Cases in Nigeria", *AFFREN*, Vol.12(2)S/No April 2018, p.2

²⁵ Economic and Financial Crimes Commission Act 2004, CAPE1LFN2004

²⁶See Sections 14, 15, 16, 17, 18, 19, 20, 21 and 22.

²⁷ See Section 7 (2).

²⁸ 1999 Constitution of the Federal Republic of Nigeria (As Amended) CAPC38 LFN2004

²⁹Adeleke, L.A., *supra* n8

³⁰*Ibid.*

³¹ Meyer, J.F., "Law Bargaining" <<http://www.brittanica.com>> (accessed 16/10/19).

³² Garner, B.A., *Black's Law Dictionary*, 10th ed (USA: Thomas Reuters: 2014) p.1338.

Plea bargain, according to Fernandes is seen as a situation where the accused trades the long, expensive and tortuous process of undergoing trial in court where he may be convicted for a lesser sentence, less incriminating presentation of facts or dropping of charges.³³

Section 494(1) of the Administration of Criminal Justice Act 2015 defines plea bargain as:

The process in criminal proceedings whereby the defendant and the prosecution work out a mutually acceptable disposition of the case; including the plea of the defendant to a lesser offence than that charged in the complaint or information and in conformity with other conditions imposed by the prosecution, in return for a lighter sentence than that for the higher charge subject to the court's approval.

Plea bargain can be categorized into three namely; charge bargaining- this is said to be the most common of the types and occurs where a defendant agrees to plead to a lesser charge. The second type is sentence bargaining and occurs when a defendant agrees to plead guilty to a stated charge in return for a lighter sentence. This can be reviewed by a judge. Fact bargaining which is the third type, is said to occur when a defendant agrees to stipulate certain facts in order to prevent other facts from being introduced into evidence. It is noted that many courts do not allow this and most attorneys do not like the use of fact bargain.³⁴

In summary, the essence of plea bargain is to allow for negotiation where both the prosecution and the accused would get a plea of guilty based on a reduced sentence in the sense that it allows an accused plead guilty to a lesser offence in exchange for a lighter sentence³⁵. This reduces the length of time spent conducting proceedings and saves money for the government. This concept has been used successfully in countries like the United States of America. Prosecutors in plea bargain cases usually agree to reduce a defendant's punishment by either reducing the number of charges, the severity of the charges against the defendant, recommend that the defendants receive reduced sentences or offer favourable terms to defendants who agree to testify for the state against other defendants.³⁶

The constitutionality of plea bargaining and its legal footing was first established in the case of *Brady v U.S.*³⁷, where the U.S. Supreme court refused to hold that large sentencing discounts and threats of the death penalty are sufficient evidence of coercion. In the case of *Santobello v New York*³⁸, The Supreme Court held that:

The disposition of criminal charges by agreement between the prosecutor and the accused, sometimes loosely called 'plea bargaining' is an essential component of the administration of justice. Properly administered, it must be encouraged.

Many successful criminal prosecutions in the United States end up not with jury trials but with plea bargains.³⁹ According to the Department of Justice's Bureau of Justice Assistance, the overwhelming majority (90 to 95 percent) of cases result in plea bargaining.⁴⁰ It is reported that presently, plea bargaining is an accepted norm in the American legal system such that an average criminal case in America is disposed through plea bargaining.⁴¹ It has been a success story for the United State Government in eliciting conviction in criminal cases and this feat is as a result of the kind of criminal justice system that is operational which is inquisitorial in nature as opposed to that of Nigeria which is adversarial thus making it easier to be practiced.⁴²

3.1. Plea Bargain in Nigeria

The adoption of plea bargain in Nigeria is believed to be patterned after that of the United States of America.⁴³

³³Nsirim, E., and Onyige, C.D., "The Use of Plea Bargaining in Reduction of Economic and Financial Crimes in Nigeria" <<http://dx.doi.org/10.24327/ijrsr.2020.1104.5233>> (accessed 28/7/2020).

³⁴Mudashiru, O.S., *supra* n5

³⁵ *Ibid.*

³⁶Umar, A. A., "The Benefits of Plea Bargain" <<http://www.pressreader.com>> (accessed 2/8/2020).

³⁷397 U.S.742 (1970).

³⁸ 404U.S.257,260,1971.

³⁹Umar, A. A, *supra* n36

⁴⁰*Ibid.*

⁴¹Adeleke, L.A, *supra* n29

⁴²Adetomiwa, Bayo "Nigeria :The Concept of Plea Bargaining, in Nigeria"<<http://www.mondaq.com/Nigeria/crime/753394/the-concept-of-plea-bargaining-in-nigeria>> (accessed 30/7/2020).

⁴³Nsirim, E, and Onyige, C.D., *supra* n 33.

It is further alluded that its introduction is linked to the fact that the increasingly growing number of pending trials especially cases pending due to the inadequate evidence to prove culpability beyond reasonable doubt was one of the reason it was used.⁴⁴In addition, there were also the issue of undue delays occasioned by either interlocutory applications or delay tactics which were used by lawyers to the end, that cases lasted for over ten years with the attendant result that witnesses could not be reached because they have died, relocated or have forgotten facts of cases. These difficulties provided the platform for plea bargain in Nigeria.⁴⁵

In Nigeria, plea bargain was introduced at the Federal level by the office of the EFCC through a process which was tagged “dubious and intended to create a soft landing to high- profile criminals who loot the treasury entrusted to them”.⁴⁶This statement was made as it was noted that there really was no formal legislation on plea bargain until the passage of the Administration of Criminal Justice Act of 2015. Meanwhile Lagos state had enacted the Administration of Criminal Justice Law of Lagos State 2007 which could not be relied on by the EFCC, being a state law.⁴⁷

As stated earlier, the EFCC was the first to utilize the concept of Plea Bargain and relied on its Section 14(2) of the EFCC Act to achieve this. However reliance on section 14 as noted earlier brought criticisms in view of the fact that the section did not expressly or impliedly state that the accused is required to plea bargain rather the section provides for compounding which is not the same as plea bargain as expatiated earlier.⁴⁸

Despite this flaw, the EFCC utilized plea bargain in high profile cases by arresting, prosecuting and convicting individuals who have stolen public funds. Some of these individuals were; Chief Lucky Igbinedion who was arraigned in the Federal High Court, Enugu on a 191 count charge of corruption, money laundering and embezzlement of #2.9 billion. A plea bargain was entered into by Chief Lucky Igbinedion with the EFCC where the 191 count charges was reduced to a one count charge and in return to refund a sum of #500million, forfeit 3 houses and was also sentenced to a 6months imprisonment with the option of paying #3.6 m as fine.⁴⁹

Another case in point is that of Yusuf John Yakubu, a former Assistant Director of the Police Pension Board. Mr. Yusuf was accused of embezzling #32.8 billion from the funds he was meant to oversee but the Judge ordered the forfeiture of 32 choice assets acquired by Yusuf and sentenced him to 6 years imprisonment, two years for each of the three counts the accused faced or an option of #250,000.00 fine for each count. It was further reported that Yusuf paid the fine before leaving the courtroom and left as if nothing happened.⁵⁰

A similar instance is seen in the Cecilia Ibru’s case, where MrsIbru entered a plea bargain agreement with the EFCC on October 8, 2010 and paid back assets worth 191 billion naira comprising of 94 choice properties across the world and was given a six months prison sentence.⁵¹

The public were not pleased with the light sentences that were given in contrast with the huge amount of monies stolen and this has raised the question of the effect of the deterrent value of plea bargain in the criminal process.

It is noted that the EFCC use of plea bargain was not well received largely due to the fact that it accorded the Commission wide discretion to use the practice without much guidance as it was mainly used to deal with high- profile corruption cases where sentences that were given to offenders were not commensurate with crimes committed.⁵² In 2010, Nigeria through the office of the Attorney General of the Federation issued regulations to curb the discretion of prosecutors and provided guidance on the implementation of the practice.⁵³

⁴⁴Aborisade, R.S. and Adeleke, O.A., *supra* n24, p.2.

⁴⁵Iwuagwu, O.G., “The Concept of Plea Bargain Under the ACJA 2015 <<http://icpc.gov.ng>> (accessed 8/9/2020)

⁴⁶ Statement credited to former Chief Justice of Nigeria, Hon. Justice Dahiru Musdapher at the 5th general conference of the NBA held in Abuja, 2011 and reported by the Nigeria Tribune of 16th, November 2011.

⁴⁷Section 75.

⁴⁸Adeleke, L.A., *supra* n41.

⁴⁹*F.R.N. v Igbinedion* (2014) All FWLR (Pt. 734), 101.

⁵⁰Nsirim, E, and Onyige, C.D., *supra* n43. The case of the former Inspector General of Police, Tafa Balogun who pleaded guilty to embezzling 17 billion naira in a plea bargain agreement with EFCC on November, 22, 2005 and forfeited properties and part of the stolen funds and was meant to spend six months in prison rather the six months was spent within the confines of a well-equipped hospital based on the claim of ill health

⁵¹Elemuo, C., “The Law is an Ass”, The Nation Newspaper, (Sunday October 17, 2010), See Nsirim, E., and Onyige, C.D., *supra* n50.

⁵²Library of Congress, “Plea Bargaining: Comparative Summary”, <<http://www.law.gov>>. (accessed 28/7/2020).

⁵³*Ibid.*

It is reported that it is unclear as to how effective this adjustment has been in improving the implementation of its use by the EFCC. This perhaps is why the ACJA2015 has provisions that give an express and broad use of plea bargain for all crimes at the Federal level.

3.3. REVIEW OF THE IMPLEMENTATION OF PLEA BARGAIN IN NIGERIA

The introduction of the plea bargain concept in Nigeria by the EFCC was to enable the Commission successfully convict many high-profile cases, recover looted funds and decongest the courts.⁵⁴ This is as a result of the fact that the criminal justice system is bedeviled with long periods of trials and congestion of the prisons. Plea bargaining is expected to enhance speedy dispensation of justice. This was buttressed by a statement credited Femi Babafemi, spokesman for EFCC when he argued that plea bargaining saves a lot of cost as most of Nigerian criminal Acts don't stipulate capital punishment for their offenders and cites an instance of the Money Laundering Act which provides for a fine of not more than N250,000.00 and jail term of two to three years for anybody convicted of violating the law.⁵⁵

Babafemi further expatiates this by giving an instance of an individual who is convicted of embezzling N10 billion and he is allowed to pay N250,000.00 and serve the term of not more than 3 years which occurs after a long trial where the government may have spent N10 million to get the said justice. This scenario has informed the EFCC officials to sometimes agree to plea bargain so as not to let the Nigerian government and people lose out completely, the accused people are allowed to forfeit a substantial part of the loot.⁵⁶ However critics have stated that the above reasons stated is far from the truth as the use of plea bargaining by EFCC is a tool to enable wealthy individuals to escape the wrath of the law. Adeleke notes that plea bargain tends to encourage people to steal beyond insanity.⁵⁷

Adesomoju in buttressing the above statement has alluded to the fact that plea bargain has only helped to encourage more corrupt practices as it is observed that there are no aftermath deterrent effects relating to fraudulent practices and points to the list of 103 high profile cases containing names of presiding judges and retired judges, ministers and ex governors released by EFCC to the Attorney General of the Federation and further states that this shows the level of corruption still in play despite the EFCC's use of plea bargain as a fight against fraudulent and corrupt practices.⁵⁸

According to a source, majority of Nigerians are vehemently opposed to the practice of plea bargain because it sharply contradicts what they perceive to be fair and just and this is with respect to the fact that plea agreements that have received a great deal of public attention were only about high profile defendants and had to do with large sums of money.⁵⁹ It was also seen as creating a leeway of escape for corrupt public officials. This is how the Nigerian populace view the issue of plea bargaining as a lack of consensus among the elite on the damaging effects of corruption makes it more difficult to tackle the menace.⁶⁰

However in assessing the strides made by EFCC, Vanguard Newspaper reported that the former Acting Chairman of EFCC, Ibrahim Magu stated that the Commission had recorded 103 convictions in 2015, 189 convictions in 2016, 190 in 2017, 314 in 2018 and over 1,281 convictions in 2019.⁶¹ It is reported that though the reason for the introduction of the practice of plea bargain may have been noble however, the practice has done little to rectify the undue delay in the administration of justice and the decongestion of the prisons and it is not certain how many of the above convictions were obtained through the mechanism of plea bargain agreements.⁶²

⁵⁴Nsirim, E, and Onyige, C.D., *supra* n51.

⁵⁵Adebimpe, I.A., et al, *supra* n23.

⁵⁶*Ibid.*

⁵⁷*Ibid.*

⁵⁸Nsirim, E, & Onyige, C.D., *supra* n54.

⁵⁹Bazuaye, B & Oriakhogba, "Combating Corruption and the Role of the Judiciary in Nigeria: Beyond Rhetoric and Crassness, 42(1) *Commonwealth L. Bull.* 136, 137, 140 (2016).

⁶⁰Jibueze, J., *supra* n11, p.7

⁶¹Johnbosco, Agbakwuru, "Corruption Worse than Ebola- EFCC's Magu" <<https://www.vanguardngr.com/2020/02/corruption-worse-than-ebola-coronavirus-efcc>> (accessed 23/3/2020), See EFCC Secures 890 Convictions in 10 Months- Magu" <<https://www.vanguardngr.com/2019/11/efcc-secures-890-convictions-in-10-months-magu>>, (accessed 23/3/2020).

⁶²Hannibal, Goitom, "Nigeria", Library of Congress, <<http://www.law.gov>> (accessed 28/7/2020).

Despite the strides made by the EFCC, corruption is still a cankerworm and is on the increase with various reports on electronic and print media of fraudulent and corrupt practices being discovered daily⁶³. The question here is why is this so? According to Adeleke, the reason for the persistence of corruption in Nigeria is not the absence of anti-corruption laws and agencies but a lack of political will to ensure that the agencies genuinely succeed in the fight against corruption.⁶⁴This is more so as some of the government officials placed to fight corruption are found to be entangled also in the web of corruption. This has led one to conclude that a lack of consensus among the elite on the damaging effects of corruption makes it more difficult to tackle the menace.⁶⁵Examples of former heads of EFCC like Lamorde, Farida Waziri and the recently suspended Magu⁶⁶ who is currently being investigated on corrupt charges are worthy of note.

In addition, the concept of plea bargain has also been criticized in the sense that while plea bargain may work in advanced climes where there is integrity and people are shamed for criminal acts, this does not work in a society like Nigeria where the culture of impunity and lack of integrity reigns particularly where it appears to defeat the fight against corruption since it allows soft landing and gives less punishment for defendants who are alleged of corruption.⁶⁷

3.4. EXAMINATION OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015 WITH RESPECT TO PLEABARGAIN IN NIGERIA

In Nigeria, the enactment of the ACJA 2015 was a welcome development that has elaborate provisions for plea bargain which has introduced some stringent measures to ensure an efficient and effective application of the concept of plea bargain.⁶⁸With the repeal of the Criminal Procedure Act and Criminal Procedure Code, the ACJA 2015 becomes the main legislation for the entire national criminal justice system to be applied uniformly in all federal courts.⁶⁹ The ACJA has provided clear guidelines to govern the use of plea bargain by prosecuting agencies and its purpose is intended to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of rights and interests of the suspect, defendant and victim hence it makes comprehensive provisions for plea bargain in criminal trials in order to further enhance its aim.⁷⁰

Section 270(1) ACJA provides for a prosecutor to receive plea bargain offer from the defendant or offer same to the defendant and plea bargain can only be entered into at any time prior to the defendant entering his defence with the consent of the victim, subject to conditions stated in sections 270(2) (a)(b)(c).

it states that 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 namely: the evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt, where the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative or 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.

Section 270(3) places an obligation on the prosecutor to ensure that the offer or acceptance of plea bargain should be in the interest of justice, the public interest, public policy and the need to prevent abuse of legal process.

The issue of public interest is one that has no acceptable standard or measure to go by however the ACJA provides certain factors as a guide to prosecutors to be considered. Section 270(6) states the factors which include the defendant's willingness to cooperate in the investigation or prosecution of others, defendant's history with respect to criminal activity, defendant's remorse or contrition and his willingness to assume responsibility for his conduct, desirability of prompt and certain disposition of the case, the likelihood of obtaining a conviction at trial and probable effect on witnesses,

⁶³Issue of Investigation of House of Representatives into Niger Delta Development Commission's alleged illegal expenditure and mismanagement. See [youtube.com/watch?v=Vts165u9dxo](https://www.youtube.com/watch?v=Vts165u9dxo) Streamed live on July 20,2020(accessed 26/8/2020)

⁶⁴Adebimpe, I.A., et al., *supra* n55.

⁶⁵Jibueze, J., *supra* n.60

⁶⁶Anjorin, O., "When The Hunter Becomes the Hunted" <<https://www.naijanews.com>> Omolaoye, S. "MaguProbe:NYCN backs Buhari, says Anti-corruption War on Track" <<http://www.guardian.ng>> (accessed 30/7/2020).

⁶⁷Adebayo, A., *supra* n12, p.9.

⁶⁸*Ibid*, p.12.

⁶⁹ Adam, M.N., "Plea Bargain", <<https://www.countryhillattorneys.com.ng/Plea-bargain/>> (accessed 8/9/2020).

⁷⁰ *Ibid*.

The probable sentence or other consequences if the defendant is convicted, the need to avoid delay in the disposition of other pending cases and the expenses of trial and appeal and the defendant's willingness to make restitution or pay compensation to the victim where appropriate.

The above factors support the position of ensuring justice, public interest and the need to prevent abuse of legal process which is paramount in criminal prosecution.⁷¹ It is expected that the use of plea bargain is subject to the overall interest of public and is expected to be utilized judiciously in the interest of the public but in Nigeria, however it does not appear to be so as it is used for the benefit of the rich for instance, looking at the high profile cases where this concept has been utilised.

An area of relevance is the place of the victim which has been recognized, where the victim's consent must be got before a plea bargain can be concluded as the prosecution must allow the victim or his representative make representations relating to the content of the plea bargain agreement and also the inclusion of compensation or restitution order⁷². This is seen as a welcome development as in the past, most victims were not compensated as only punishment was meted to the accused if found guilty. This ought to build confidence in the populace as to the administration of criminal justice system unfortunately this has not been the case as plea bargain is perceived as immoral and anti utilist in nature as it tends to favour the upper class of the society and not for the benefit of the greatest number of the people.⁷³

This provision with respect to the cases concluded through plea bargain raises questions to the fact whether justice has been well served where monies recovered and punishment given is not commensurate with the billions that are looted and whether the very act of plea bargain as practiced in Nigeria actually deters intending criminals from stealing or those already embezzling public funds? Another question relates to the fact that does plea bargain serve to protect public interest or individual interest in Nigeria? The above questions resonate in the negative and call into question the need to reevaluate the mode of implementing plea bargain in Nigeria by ensuring that the perpetrators are adequately punished with commensurate prison terms that would act as deterrence to those intending to engage in such crimes.

The prosecutor and the defendant or his legal practitioner may before the plea to a charge enter into an agreement outlined in section 270(4) and (5). The agreement shall be in writing and the presiding judge shall not participate in the agreement that is brought before the court.⁷⁴ The non-involvement of a judge is intended to uphold the impartiality of the proceedings as well as ensure transparency and fairness to all parties involved.

Upon receipt of the plea bargain, the court shall ascertain the admittance of the defendant to the charge against him and if he voluntarily made the agreement without undue influence. The presiding judge if satisfied shall convict on the plea of the defendant and award compensation to the victim in accordance with the terms of the agreement.⁷⁵ However Section 270(10) provides for the judge to exercise his discretion where the defendant cannot be convicted of the offence in respect of the agreed terms which has been pleaded guilty to by the defendant or where the agreement is in conflict with the defendant's right, to record a plea of not guilty and proceed with trial. Where a person obstructs or impedes the vesting or transfer of money, asset or property, such person shall be liable to imprisonment for 7 years without option of fine. Judgement that is given after due process shall be final and no appeal against the judgement shall be entertained except where fraud is alleged⁷⁶

This elaborate procedure outlined in the ACJA is intended to ensure that plea bargain is fair and just to all parties involved however it is doubtful if this has been the situation judging from the previous cases that has been handled by the EFCC. This is so as the "victim" in earlier cases cited here has been "Government" and the ACJA envisages that victims should include aggrieved individuals. However, the use of plea bargaining in Nigeria leads to unfairness, inequity and is a travesty of justice as it is seen as not being fair to the poor and less privileged.⁷⁷ This is because those that visited people with underdevelopment through corruption are being given lighter sentences as actual amounts that have been corruptly stolen are not returned rather minimal amounts are paid back with light sentences such as six months which makes mockery of the entire process.

⁷¹*Ibid.*

⁷²See S.270(6).

⁷³Adebimpe, I.A., *supra* n64, p.68.

⁷⁴See Sections 270(7) (8).

⁷⁵See Section 270(10)(a),(11-17).

⁷⁶ See Section 270(16).

⁷⁷Adeleke, G.O., "Prosecuting Corruption and the Application of Plea Bargaining in Nigeria: A Critique", *International Journal of Advanced Legal Studies and Governance*, Vol.3No.1 April, 2012.

In summary, though the provisions of the ACJA are laudable and a welcome development, laws on their own cannot work effectively without the political will by government to actually follow it through. The ACJA has provided clear guidelines if adhered, to can change the perception of Nigerians to its use if properly implemented. This is because the provisions provide a system of transparency in negotiating plea bargains. It is thus suggested that a supervisory mechanism be put in place under the Attorney General of the Federation to ensure strict compliance with the provisions of Section 270 of the ACJA.

4.0 Conclusion

A study of the effect of plea bargain on corruption in Nigeria still leaves a lot to be desired as it has had no deterrent effect on intending criminals rather everyday newspapers are awash with news of fraud and corrupt practices in the public sector for instance the recent scandal of the Niger Delta Development Commission saga over corrupt enrichment of officials and legislators leaves a lot to be desired. The provisions of the ACJA as examined above are seen to be quite robust if it is transparently utilized by ensuring that all conditions are strictly followed. It is thus recommended that a supervisory mechanism be put in place to ensure that conditions for plea bargain are strictly followed as this would help the purpose and intent of plea bargain in Nigeria.