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AN APPRAISAL OF THE USE OF PLEA BARGAINING IN THE NIGERIAN JUSTICE SYSTEM

Olugbile David Olaleye

Department of Political Science, Faculty of Social Sciences, University of Lagos, Nigeria

109084073@live.unilag.edu.ng

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ABSTRACT: *Plea bargaining as an instrument of justice dispensing has been vilified by many judicial actors and political commentators. This is due to the popular opinion that it favors corrupt high-ranking public and private officials when they are made to face the law. This opinion is anchored on the Marxist school of thought that emphasizes the economic power of the political actors above other societal elements, including the justice system. However, this study reveals that plea bargaining principles also have its merits. Among the identified merits is the fact that plea bargaining helps to reduce the cost of ligation and other associated costs that the State needs to bear in the course of prosecuting corrupt suspects. Also, by deciding cases summarily and speedily through plea bargaining, the court can have time for other cases that need speedy attention thereby ensuring that those concerns receive timely justice. Plea bargaining as an instrument of justice dispensing needs to be encouraged albeit with modifications. The modification should include an element of sufficient deterrence, despite the cooperation of the accused. The essay suggests how to balance the gains of plea bargaining with thorough and truthful dispensing of justice. I submit that plea bargaining is not unjust but there must be a legal framework within the Nigerian justice system that will be a template that will prescribe when, how and for which case the principle can be applied.*

KEYWORDS: Plea bargaining; Justice system.

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INTRODUCTION

Plea bargaining is a prosecution instrument in several judicial systems across the world. More than sixty percent of cases in England, Russia and Australia are determined with plea bargaining[1]. The procedure has also been adopted in Nigeria in the prosecution of cases. Its usage in the Nigerian justice system has been popularized due to its adoption in the prosecution of high-profile corruption cases. Notable corruption cases that plea bargaining was used to prosecute include: Federal Republic of Nigeria v. Lucky Nosakhare Igbinedion & Ors[2], Federal Republic of Nigeria v. Mr Diepreye Alamieyeseigha[3] and Federal Republic of Nigeria v. Dr.(Mrs) Cecilia Ibru[4].

Plea bargaining is a judicial arrangement that involves an accused pleading guilty to reduced charges out of charges that are brought against him in the court of law in exchange for a lighter sentencing. Usually, in cases that involve fraud and criminal enrichment, the defendant usually forfeits the loot or a portion of the loot he appropriated in exchange for lighter sentencing. Judicial personalities like Honourable Justice Musdapha, the former Chief Justice of Nigeria[5] and Femi Falana criticized the use of the procedure for corruption cases in the Nigerian justice system. They believed that the procedure encourages high-level corruption because the accused, in most cases, still keep a substantial portion of their loot and escape appropriate sentencing. Likewise, plea bargaining is seen as a tool of the rich[6]. This is because plea bargaining is majorly deployed to decide corruption cases in Nigeria that involve rich individuals in Nigeria, such as politicians, senior bureaucrats, heads of big corporations, and government agencies.

However, plea bargaining emerged as a significant practice only after the American Civil War[7], but it only began to be used significantly in common law jurisprudence in the nineteenth century. In the case of Brady v. United States[8], the U.S. Supreme Court officially recognized plea bargaining as a formal procedure for the resolution of criminal cases[9]. Also, in 1971, in the case of Santobello v. New York[10], Chief Justice Burger stated that plea bargaining 'is to be encouraged' because 'if every criminal charge were subjected to a full-scale trial, the States and the Federal Government would need to multiply by many times the number of judges and court facilities[11].

[1] The Economist, The troubling spread of plea-bargaining from America to the, Retrieved from: worldhttps://www.economist.com/international/2017/11/09/the-troubling-spread-of-plea-bargaining-from-america-to-the-world
[2] Federal Republic of Nigeria v. Lucky Nosakhare Igbinedion & Ors FHC/EN/6C/2008
[3] Federal Republic of Nigeria v. Mr Diepreye Alamieyeseigha FHC/ABJ/CS/157/14
[4] Federal Republic of Nigeria v. Dr.(Mrs) Cecilia Ibru FHC/L/297C/2009
[5] Falana Femi, The Rot in The Judiciary, Premium Times, May 27, 2013, Retrieved from : https://www.premiumtimesng.com/opinion/136274-by-femi-falana.html
[6] Op.cit
[7] Alschuler A. W, Plea Bargaining And Its History, Columbia Law Review Volume: 79 Issue: 1. Pages: 1-43, 1979
[8] Brady v. United States, 397 U.S 742,1970-
[9] Alschuler A. W, Plea Bargaining And Its History, Columbia Law Review Volume: 79 Issue: 1. Pages: 1-43, 1979
[10] Santobello v. New York, 404 U.S. 257, 1971
[11] Langbein H. John, Understanding the Short History of Plea Bargaining. Law and Society Review 261, 1979

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Unlike the United States of America, Britain did not have any legal protocols for plea bargaining until 2009. The protocol was used to decide the popular fraud case that involved Mabey & Johnson, a construction firm that was accused of winning business by bribing politicians and top officials in six countries. The countries are Ghana, Bangladesh, Mozambique, Madagascar, Jamaica and Angola. The company pleaded guilty to corruption and agreed to pay more than £6.5m in exchange for avoiding jail terms for its executives.[12]

Plea bargaining was first used in Nigeria in the case of Federal Republic of Nigeria v Nwude and Others[13]. Chief Emmanuel Onwude, a former Director of Union Bank, and six others were arraigned before the High Court of Lagos State on 23rd July, 2004 for conspiracy, obtaining money by pretense, laundering of funds, forgery and altering of forged documents. The convicts posed as the officials of the Federal Ministry of Aviation and defrauded a Brazilian businessman of more than $190m as part of the contract fee for the construction of Abuja Airport[14]. After Chief Unwude's case, the Nigerian judicial system witnessed a plethora of high-profile cases that were decided with the instrument of plea bargaining.

There are some provisions in the Nigerian laws that legitimize the plea bargaining principle. For instance, Section 29(2) of the 2011 Evidence Act[15] ensures that confessions gotten through inducements and promises by an authorized person are relevant in a court of law. This is contrary to the Section 28 of 2004[16] Evidence Act that made such evidence irrelevant. However, plea bargaining was formally introduced in Nigeria through the Administration of Criminal Justice Law of Lagos State 2011 (ACJL), and the Administration of Criminal Justice Act (ACJA) 2015.

However, despite the above legal backing for the principle of plea bargaining in the Nigerian justice system, this paper believes that the criticism of the principle is principally because there is no precise template on which the principle is based. This essay suggests that for plea bargaining to gain more acceptability in Nigeria, there must be a precise template for it in the Nigerian justice system.

Once there is a precise template for plea bargaining, the court should be encouraged to use plea bargaining to decide cases that are adaptable to the principle. At the minimum, the State will be able to get some of the loot back into the coffers of the State and save resources for

[12] Leigh David and Evans Rob, British firm Mabey and Johnson convicted of bribing foreign politicians. The Guardian, 2009, Retrieved from: https://www.theguardian.com/ business/2009/sep/25/mabey-johnson-foreign-bribery

[13] Chief Emmanuel Nwude & 6 Ors, Id/92c/2004, 2004

[14] UNODC, Chief Emmanuel Nwude & 6 Ors, Id/92c/2004, 2004

[15] Section 29(2) of the Evidence Act 2011 states that, "If, in any proceeding where the prosecution proposes to give in evidence a confession made by a defendant, it is represented to the court that the confession was or may have been obtained, (a) by oppression of the person who made it; or (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in such consequence; the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained in a manner contrary to the provisions of this section"

[16] Section 28 of the 2004 Evidence Act states that "A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority, and sufficient, in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature".

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prosecution, unlike what is obtainable when the corrupt convicts are granted state pardons, a phenomenon that is now increasingly popular in Nigeria.

Plea bargaining is a major solution to the unsavory incident of court congestion in Nigeria. Court congestion has led to situations where several cases have lingered in court for a long time without judgments or decisions. Among several merits, using plea bargaining to adjudicate high-profile corruption cases will help in decongesting the court by allowing other cases to use the slots. Therefore, because of its relevance to the Nigerian justice system and the solutions it can provide, there is a need to analyze the concept of plea bargaining as it is currently being used in Nigeria and come out with suggestions on how it can be more effective and impactful in the Nigerian judicial system. This paper is limited to the use of plea bargaining as an instrument of adjudication of high-profile financial corruption cases in the Nigerian judicial system. Specifically, it analyzes selected cases with a view to determine the impact of plea bargaining on those cases and also suggests a more effective template for plea bargaining procedures.

RELATED LITERATURE

There are various texts on the subject of plea bargaining. On the history of plea bargaining, Ortman[17] noted that plea bargaining made its way into the American Justice System in the 1920s, but it was not accepted as a normal judicial process until four decades later and the number of countries practicing plea bargaining increased from 19 in 1990 to 66 in 1990[18]. However, Heuman[19] believes there is a plethora of 'evidence that pleading guilty for considerations has a longer history than it is commonly known and that Legal historians believe that flexibility has been part of the legal process for many years'.

Plea bargaining does not have any universally accepted definition, but several scholars and judicial personalities have attempted to define it and scholars like Brook[20] believes that its definition is specific to each country where it is being practiced. For instance, Hon. Justice Fiannaca defines "plea bargaining" in Australia as the "informal process by which a prosecuting authority and defense counsel negotiate the charge(s) on which the prosecution will proceed, and/or concessions that may be made by the prosecution in relation to sentencing, including the facts on which sentencing should proceed, with a view to arriving at a mutually acceptable agreement according to which the defendant will plead guilty"[21] He noted that the court has no formal role in the process in Australia. In Nigeria, Hon Justice Oyinloye defined plea bargaining as “an arrangement or agreement, as it were, between the prosecution and the Defendant (and the victim in some instances) whereby the Defendant is allowed to elect to

[17] Ortman William, When Plea Bargaining Became Normal, Boston University Law Review, Vol. 100:1435.
[18] Beenstock Michael, Guetzkow Josh and Kamenetsky-Yadan Shir, Journal of Quantitative Criminology, Vol 37:35–72, 2021
[19] Heumann, Milton "A Note On Plea Bargaining And Case Pressure," 9 Law & Society Review 515, 1975
[20] Brook A. Carol, Fiannaca Bruno Justice, Harvey David, Marcus Paul, A Comparative Look At Plea Bargaining In Australia, Canada, England, New Zealand, And The United States, William & Mary Law Review , Vol. 57:1147
[21] Brook A. Carol, Fiannaca Bruno Justice, Harvey David, Marcus Paul, A Comparative Look At Plea Bargaining In Australia, Canada, England, New Zealand, And The United States, William & Mary Law Review , Vol. 57:1147

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plead guilty for a lesser offense or in exchange for a more lenient sentence or in order to have other charges dropped."[22]

The term plea bargaining has different nomenclatures across jurisdictions. According to Brook et al., the term "plea negotiations" (leading to "plea agreements") is preferred in some jurisdictions, including Western Australia, because of the "deal-making" connotations associated with "bargaining" and in New Zealand, the term that is equivalent to plea bargaining is sentence indication[23]. Sentence indication involves three stages: The first stage is generally described as administration, the second stage is a case review hearing and the last stage is the trial.

Even though Adetomiwa[24] believes that plea bargaining is one of the most controversial tools used in the disposition of criminal trials in Nigeria, and its popularity continues to rise across the world. The rising popularity of plea bargaining can be attributed to a variety of reasons: one such reason is the theory of rising caseloads. This was highlighted by Heuman. According to him, the approach has both naïve and sophisticated versions. The naive version states "that as the number of criminal cases grows, plea bargaining emerged to lessen the pressure on courts"[25]. The sophisticated version was developed by Fisher[26], who posits that when the prosecutors acquired the required legal tools that involve indeterminate sentencing and the plea withdrawal rule, the plea bargaining process exploded and the industrial revolution led to a boom in civil cases in the United States of America. Apart from caseload theory, there is also the "trial complexity" theory that talks about the complexity of trials in the eighteenth and nineteenth centuries[27]. Another explanation put the rise of plea bargaining on the contemporaneous professionalization of police and prosecutors from the nineteenth century[28].

Various merits have been attributed to the plea bargaining process. For the defendants, one of the advantages is that they avoid extended pretrial incarceration and the anxieties and uncertainties[29] and in exchange, he foregoes his fundamental rights, such as the right to trial by jury, the presumption of innocence, the right to confront adverse witnesses, and the right to be convicted by proof beyond a reasonable doubt[30]. In Town of Newton v. Rumery[31], the main merit of plea bargaining is that it offers substantial advantages to the government and at a much lesser cost as the government "receives immediate and tangible benefits," and importantly "promptly imposed punishment without the expenditure of prosecutorial resources. In the Nigerian judicial system, Oguche believes that plea bargaining is helping EFCC in prosecution because trials take time, cost and resources[32]. Also, some scholars believe that plea bargaining is appropriate because statutory penalties are often too harsh and plea bargaining trials usually

[22] Oyinloye A.S, Diversion And Plea Bargain: Practice And Procedure, National Judicial Institute, March, 2022
[23] ibid
[24] Adetomiwa Bayo, Nigeria: The Concept Of Plea Bargaining In Nigeria, Matrix Solicitor, 2018
[25] Heumann Milton, A Note On Plea Bargaining And Case Pressure, 9 Law & Society Rev. 515, 516, 1975.
[26] George Fisher, Plea Bargaining's Triumph: A History of Plea Bargaining in America 6, 2003.
[27] Alschuler A. W, Plea Bargaining And Its History, Columbia Law Review Volume: 79 Issue: 1. Pages: 1-43, 1979
[28] Ortman William, When Plea Bargaining Became Normal, Boston University Law Review. 2020
[29] Blackledge v. Allison, 431 U.S. 63, 71, 1977.
[30] See State v. Soto, 158 Ohio St.3d 44, 2019-Ohio-4430, 139 N.E.3d 889, 50 , Donnelly
[31] Town of Newton v. Rumery, 480 U.S. 386, 393 n.3, 1987
[32] Oguche, S, Development Of Plea Bargain In The Administration Of Justice In Nigeria: A Revolution, Vaccination Against Punishment Or Mere Expediency. In Azinge, E. & Laura, A. (eds.) Plea Bargain In Nigeria: Law And Practice. Abuja: Nigerian Institute of Advanced Legal Studies' Press, 97-119, 2016

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present tailor-made punishment to different charges instead of the generic punishment for similar offenses despite variations[33]. Onyeoziri[34] believes that plea bargain is helping greatly in reducing economic and financial crimes in Nigeria because not all criminal justice systems can dispose of all crimes committed within its purviews. Also, plea bargaining is seen as a useful tool in fighting complex crimes like frauds and others that are difficult to investigate and prosecute[35]

Looking at the major demerits of plea bargaining, some scholars believe that the defendants are disadvantaged by the process as against going through a real trial. Rhodes[36] believes that defendants would have benefited more in court trials instead of plea bargaining. His stand is based on the analysis he did on the disposition patterns for four types of offenses in the District of Columbia in the United States of America. He estimated that several cases would have been determined in favor of the defendants if they had exercised their rights to trial. According to him, it appears that defendants who enter guilty pleas "frequently forego a reasonably good chance of acquittal at the trial but they do not always receive demonstrable sentence concessions from the prosecutor or the judge". However, despite the scientific method adopted by Rhode, it is difficult to generalize his conclusion because his samples were taken in just a State in America. Also, according to Tijah, victims in plea bargaining trials are not usually carried along sometimes in plea bargaining proceedings that concern them and this undermines victims' rights and interests and also erodes public confidence in the judicial system[37].

Plea bargaining has several critics. One of them is Garrett Brandon[38]. According to him, plea bargaining is not the same as a confession because it does not involve detailed admission of guilt as it should and the defendant generally admits to acts satisfying elements of the crime - a legally sufficient admission to be sure, but often not under oath, and often not supported by any extensive factual record and they usually have no effect on future cases. Another critic of plea bargaining is Schulhofer. For him, contrary to the popular opinion of law experts on the desirability of plea bargaining, he believes that plea bargaining is neither necessary nor inevitable[39]. He believes that the advocates of plea bargaining believe that it is unavoidable for two reasons: Firstly, they believe that without plea bargaining, the cost of prosecution will be very high and secondly, the prohibition of plea bargaining will be undermined by other stakeholders in the plea bargaining process. According to Sandefur[40], some commentators believe that plea bargaining creates an incentive system that is designed to discourage the exercise of constitution-protected rights and commentators like Lynch[41] claim plea bargaining breeds disparate sentences of the same offense, which is considered insensible. Likewise,

[33] Ehrhard Susan, Plea Bargaining And The Death Penalty: An Exploratory Study, The Justice System Journal, n.d

[34] Onyeoziri, F, The Citizen and the State. Ibadan:Ibadan University Press, 2005

[35] Adeniji, G, Plea Bargaining And The State Of The Nation, The Punch, Thursday, October 2010.

[36] Rhodes W, Plea Bargaining: Who Gains, Who Loses. PROMIS Research Project, Institute of Law and Research, 1978

[37] Tijah M. Alfred, An Examination of the Rights of Crime Victims in Plea Bargain Agreements in Nigeria, Benue State University Law Journal. 2019/2020

[38] Garrett L. Brandon, Why Plea Bargains Are Not Confessions, William & Mary Law Review. Vol. 57:1415

[39] Schulhofer J. Stephen, Is Plea bargaining Inevitable? Harvard Law Review. Volume 97, Number 5, 1984

[40] Sandefur Timothy, The Practice is Flaw but not Unconstitutional: In defense of Plea Bargaining. Pacific Legal Foundation

[41] Lynch Timothy, Rethinking the Petty Offence Doctrine, Kansas Journal of Law and Public Policy. Volume 4, 1994

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Kenneth Kipnis, another strong opponent of plea bargaining, argued that any accommodation of plea bargaining practice destroys a coherent and rational theory of criminal punishment and as such violates a fundamental norm of justice[42].

Aborisade wrote about the selective use of plea bargaining in the Nigerian judicial system. According to him, the selective use of plea bargaining in the country is counterproductive and inimical to the country's quest for social justice. He also believes the use of plea bargaining shows that security agents are lacking in conducting a thorough investigation.[43] According to Elemuo, plea bargaining is just a means of escaping justice from the punishment of a crime committed. He therefore termed the procedure 'a celebrity justice for the rich not necessary for the poor'[44] and similarly, Adelagan[45] also believes that plea bargaining is a tool to further the agenda of those in authority. Aidonojie[46] et al. also noted that the adoption of plea bargain in the Nigerian criminal justice system tends to aid the ruling class in looting from the public treasury and escaping justice and Mordi[47] believes that plea bargaining is a cleverly devised means to get high-profile blue-collar offenders off from under the wrath of the law. Adeleke[48] also posits that plea bargaining is 'an instrument of the wealthy societal individuals to escape the wrath of law', and it is a machine that aids the perpetrators of corrupt practices in Nigeria.

According to Osamor, plea-bargaining, as it is being practiced in Nigeria has failed to resolve economic crimes effectively, rather, the process has provided a soft landing for defendants, especially in political corruption cases[49]. Also, Ani stated that the way plea bargaining is being operated in Nigeria appears to show that it only favors the politically and economically powerful rather than the benefit of the underprivileged and common offenders, she cautions that it should not be applied in a way that it will be perceived as a mockery to the criminal justice system[50]. Another critic of plea bargaining is Chukwu[51]. He believes that the procedure is mostly welcomed by the offenders who are guilty of the offense they are charged with; he believes that if the defense of the accused person is strong he would not opt for a plea bargain.

Some scholars also believe that convicts who were tried through plea bargaining usually receive lighter sentencing compared to those who were tried through the full trial. One of the

[42] Feeley. M Malcolm, Perspectives On Plea Bargaining, 13 Law & Society Review. 199 1978-1979
[43] Aborisade, A. Richard, 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/NO 50, April 2018
[44] Elemuo, C, The Law Is An Ass, The Nation, October 17, 2010.
[45] Adelegan F), Government: an insider's reflections on the Nigerian polity. Terrafic publishers Ibadan, Nigeria, 2008
[46] Aidonojie Paul Atagamen, Odojor Anne Oyenmwosa and Agbaleb Omohoste Patience, The Legal Impact of Plea Bargain in Settlement of High Profile Financial Criminal Cases in Nigeria, Sriwijaya Law Review Vol. 5 Issue 2, July 2021
[47] Mordi A. Chinwe, The Use of Plea Bargain in Nigerian Criminal Law, Beijing Law Review > Vol.9 No.2, June 2018
[48] Adeleke, G. Prosecuting corruption and the application of plea bargaining in Nigeria: A critique, International Journal of Advanced Legal Studies and Governance,3(1), 53–70, 2012
[49]Osamor Robert, Plea-Bargaining In Nigeria: When Crime Pays, Law and Social Justice Review (LASJURE), Volume 3 (1), January 2022
[50] Ani Comfort Chinyere, Plea Bargain: Immunity From Punishment? Legalpedia n.d, Retrieved from: https://bit.ly/3cv6UY2
[51] Chukwu, E. A., Plea Bargaining and Victim Offender, in the Nigeria Legal System, Prime publisher Lagos,2015.

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scholars that share this thought is Salihu[52]. According to Smith[53], there is evidence from numerous studies that show that defendants who plead guilty are sentenced less severely than defendants convicted at full trial. Scholars like Nardulli also believe that because of the softer sentencing, plea bargaining is made attractive to the accused because the sentence is made known and explicit and he has the opportunity to weigh his options carefully unlike the convicts in a normal trial that we wait in suspense to have his sentence read to him[54]. This dual approach to justice dispensing was criticized by Halberstam[55], when he noted that the court on the one hand ruled that 'an admission of guilt induced by threats and promises is involuntary and may not be used to convict a defendant at trial' but on the other hand, in plea bargaining cases, 'the court ruled that an admission of guilt induced by threats and promises is voluntary and may be used to convict a defendant without trial'. He also noted that "the Court has ruled that waiver of a right to appeal induced by fear of the death penalty is not a 'knowing and intelligent' waiver", but on the other hand, for plea bargaining, the Court decided that a waiver of the right to trial induced by fear of the death penalty by an accused is a 'knowing and intelligent' waiver. However, Ehrhard[56] noted that there are defendants when faced with the possibility of the death penalty will still prefer to pursue a trial. This stand is most commonly taken by defendants who are overly optimistic about their chances at trial, but it may also result from their psychological problems. Also, some defendants do not view life without parole as much of an alternative and would rather die than spend the rest of their lives in prison.

A major concern with the principle of plea bargaining is the issue of coercion of the accused to plead guilty. Plea bargaining is supposed to be based on the defendant's voluntary submission to the process, but many scholars have written on the issue of coercion in the plea bargaining process. According to Hall[57], coercion in plea bargaining encourages false confession and it undermines the criminal justice system and everything it stands for. According to Cardwell[58], 'the vast discrepancy between the offered disposition and the potential punishment for a conviction at trial can often lead to coerced pleas and those vulnerable to coerced pleas include the innocent and the guilty'. This was the case in the United States v. Jackson case where the court declared unequivocally that "due process forbids convicting a defendant based on a coerced guilty plea and that a plea which has been induced by threats is deprived of its requisite voluntariness.[59]

However, negative perceptions of plea bargaining are majorly due to the lack of concise statutory regulations of the process in some jurisdictions and the belief that the process is devoid of transparency and the lack of scrutiny of the prosecutors that supposed to act in public

[52] Salihu Abdulrauf Habeeb, Crime, Law and Social Change volume 78, pages 145–164, 2022.
[53] Smith A. Douglas, Plea Bargaining Controversy, Journal of Criminal Law and Criminology, Volume 77, Issue 3, Article 17.
[54] Nardulli F Peter, Plea bargaining: An organizational perspective, Journal of Criminal Justice, Volume 6, Issue 3, 1978, Pages 217-231
[55] Halberstam. M, Towards Neutral Principles in the Administration of Criminal Justice - A Critique of Supreme Court Decisions Sanctioning the Plea Bargaining Process, Journal of Criminal Law and Criminology Volume: 73 Issue, Pages: 1-49, 1982
[56] See Ehrhard Susan, Supra
[57] Hall John Wesley, What is coercive plea bargaining? Little Hall Criminal Defense, Feb 15, 2021
[58] Caldwell H. Mitchell, Coercive Plea Bargaining: The Unrecognized Scourge of the Justice System, Catholic University Law Review, Volume 61, Article 2,2011
[59] Klein Richard, Due Process Denied: Judicial Coercion in the Plea Bargaining Process, Catholic University Law Review, Volume 32, Issue 4, Article 14, 2004

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interest[60]. This is similar to the stand of Chief Justice Warren Burger in the popular Santobello v. New York case. He noted that "If every criminal charges were subjected to a full-scale trial, the States and the Federal Government would need to multiply by many times the number of judges and court facilities"[61]. Feeley et al. believe that although critics of plea bargaining represents the triumph of administrative and organizational interests over justice, they believe that critics overlooked the fact that many charge reductions were made "in the interests of justice."[62]

For plea bargaining to be more effective, Mwuese M. Mnyim and Aboho Bem suggested that there must be deadlines for plea bargaining procedures[63] and According to Eze and Eze[64], the usage of plea bargaining in criminal trials in Nigeria should be restricted to property-related offenses and its major aim should be the restoration or restitution of the stolen property and that 'defendant who has been convicted but discharged should be shamed by taken him to a town hall meeting in his town or village where his shameful conduct shall be publicly declared to his kith and kin by the EFCC and the public informed about the compassionate grounds upon which the convict was discharged'. To make plea bargaining work in Nigeria, Oyinloye suggested that Judges should apply the principle with the fear of God by sticking to the dictates of the law relating to it and they should adhere strictly to the judicial oaths they took and being conscious of the public perception of the Judiciary[65]. Nsirim and Eke recommended a standardization of guidelines for the implementation of plea bargaining and a transparent accounting of fines imposed through a single treasury account[66].

THEORETICAL FRAMEWORK

This essay adopts Rational Choice theory and Marxism as the theoretical frameworks on which the research is anchored. Rational choice explains why corrupt accused go for the option of plea bargaining and Marxism and its theme of 'economic determinism' explains why plea bargaining in the corruption cases in the Nigerian justice system is predominantly used for the rich.

This paper utilizes the theory of Economic Determinism, from the Marxist political economy approach. Economic determinism is the centerpiece of the Marxist political economy approach. According to Parce[67], "Economic determinism" first came to the limelight in 1848 as one of four phrases that are used interchangeably by modern writers in referring to a sociological law

[60] Brook A. Carol, Fiannaca Bruno Justice, Harvey David, Marcus Paul, A Comparative Look At Plea Bargaining In Australia, Canada, England, New Zealand, And The United States, William & Mary Law Review , Vol. 57:1147
[61] Santobello v. New York, 404 U.S. 257, 260, 1971.
[62] Feeley M. Malcolm, Perspectives On Plea Bargaining, 13 Law & Society Review. 208 1978-1979
[63] Aboho Bem, Plea Bargain as an Instrument of Fast-Tracking
Criminal Justice Delivery under the State Administration
of Criminal Justice Law of Benue State, 2019
[64] Eze C. Ted and Eze G. Amaka, A Critical Appraisal Of The Concept Of Plea Bargaining In Criminal Justice Delivery In Nigeria, Global Journal of Politics and Law Research, Vol.3, No.4, pp.31-43, August 2015
[65] Oyinloye A.S, Diversion And Plea Bargain: Practice And Procedure, National Judicial Institute, March, 2022
[66] Nsirim Elizabeth & Ekeh Paul, Challenges of Plea Bargaining and EFCC'S Performance in Nigeria. International Journal of Innovative Social Sciences & Humanities Research 9(1):107-116, 2021
[67] Parce Lida, Economic Determinism or The Economic Interpretation Of History. Chicago: Charles H. Kerr & Company, 1913.

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which is the joint discovery of Karl Marx and Frederick Engels. "The Materialistic Conception of History," "Historical Materialism," and "The Economic Interpretation of History" are the other phrases used for the idea. According to Ellewood[68], the writings of Marx, Engels, and the older Marxians showed that these thinkers had a uniform view of what may properly be called a theory of "economic determinism" in social evolution. Espousing the principle of economic determinism, Frederick Engels stated that in every historical epoch, the prevailing mode of economic production and exchange, and the social organization necessarily following from it, form the basis upon which is built up, and from which alone can be explained, the political and intellectual history of that epoch[69].

Marx believed that "the method of production of the material life determines the social, political, and spiritual life processing general"[70] and that the society comprises two elements, the substructure otherwise known as 'the base' and the superstructure. Societies are formed and influenced by their respective economies, which is the base and the base determines the superstructures that are social elements in the society like religion, justice, morals, legal, and culture. Critics of plea bargaining in Nigeria believe that the economic power of the defendants of high-profile corruption cases in Nigeria triumphs over other elements in the country such as legal and moral. Corrupt individuals in Nigeria prefer to use their economic power to wriggle out of appropriate sentencing in the Nigerian legal system. In Nigeria, there are judicial personalities like Honourable Justice Mudapha, the former Chief Justice of Nigeria, and Femi Falana who are against the use of plea bargaining for the prosecution of corruption cases in the Nigerian justice system. They believe that the procedure is encouraging high-level corruption.

While the Marxist Economic Determinism explains how the defendants in corruption cases in Nigeria were able to get 'lighter' sentencing, Rational Choice theory explains why the prosecutors and the defendants came about the decision to use plea bargaining instead of the normal court trial.

Elster[71] expounded the idea behind rational choice theory. According to him, “when faced with several courses of action, people usually do what they believe is likely to have the best overall outcome”. Rational choice theory holds that whatever people do, their behavior is largely the result of conscious (or even unconscious) deliberate choice among alternatives. According to Owolabi[72], Rational choice theory is based on the following assumptions:

[68] Ellwood A. Charles, Marx's "Economic Determinism" In The Light Of Modern Psychology. The American Journal of Sociology. University of Chicago Press. Retrieved from https://www.journals.uchicago.edu/doi/pdfplus /10.1086/ 211943, 1911

[69] Parce Lida, Economic Determinism or The Economic Interpretation Of History. Chicago: Charles H. Kerr & Company, 1913

[70] Ellwood A. Charles, Marx's "Economic Determinism" In The Light Of Modern Psychology. The American Journal of Sociology. University of Chicago Press. Retrieved from https://www.journals.uchicago.edu/doi/pdfplus /10.1086/ 211943, 1911.

[71] Elster, J, Social Norms and Economic Theory, Journal of Economic Perspectives, American Economic Association, vol. 3(4), pages 99-117, 1989.

[72] Owolabi Jide, Policymaking And Educational Policy Analysis, West Africa Edition. Makerere University Printery,2005

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1. Human beings have a preference that is fixed at least for some time so the analyst knows what decision-makers want before they interact with others.

2. Individuals act to advance their welfare often through an optimization process whereby individuals maximize their income or balance out several preferences such as between current and future benefits.

3. Individuals have information on how to make their choices such as the policy platforms of political parties and the effects of government decisions on the economy.

4. When individuals examine the information available to them, they can select the course of action that satisfies their preferences and can modify their courses of action when the benefits and costs of these choices change.

The above assumptions are true for the process for the elements of true bargaining which are confession, concession of an object and comparable reduced sentencing. The provisions in s. 270 of ACJA 2015[73] require that the presiding judge or magistrate shall 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. Plea bargaining is seen as an agreement. Just like an agreement plea bargaining is negotiated and the parties engage in risks and rights that include evaluating vulnerabilities to have an agreement[74].

ANALYSIS OF SELECTED HIGH-PROFILE CORRUPTION CASES IN NIGERIA

Several corruption cases have been prosecuted with plea bargaining in the Nigerian justice system. A few of them are analyzed below:

Tafa Balogun v The Federal Republic of Nigeria FHC/ABJ/CR/14/2005[75]

Tafa Balogun was named 21st Inspector General of Police on March 6, 2002. In 2004, a Nigerian weekly newspaper, The News, accused him of diverting huge sums of money from the Police budget into his private accounts. The newspaper also published pictures of posh buildings in different parts of the country which the newspaper claimed Balogun had allegedly acquired with illicit funds[76]. He abruptly resigned from his position in January 2005. He was later arrested on March 28, 2005, by EFCC for stealing.

A huge chunk of the money he allegedly stole was meant for logistics for the Nigerian Police for the 2003 General Election in Nigeria. "The Police got N2 billion for logistics in the two tiers of elections in April 2003, Lagos State Police Command, which is the largest in the country, with 18,000 policemen, got N6 million; Ogun and other states got N5 million each. Each of the 12 zonal commands got N1 million. In all, the amount disbursed to all the

[73] Administration of Criminal Justice Act and Laws, Section 270
[74] Mabry v. Johnson, 467 U.S. 504, 508, 1984.
[75] Tafa Balogun v the Federal Republic of Nigeria Suit No. FHC/ABJ/CR/14/2005 (unreported delivered on 22/11/2005 by Nyako, J.).
[76] The News Newspaper cited in The New Humanitarian, Police chief suspected of corruption resigns. January 19, 2005. Retri https://www.thenewhumanitarian.org/report/52735/nigeria-police-chief-suspected-corruption-resignsved from: https://www.thenewhumanitarian.org/report/52735/nigeria-police-chief-suspected-corruption-resigns

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commands amounted to a little over N200 million, leaving him with a net profit of over N1.7 billion."[77]

After he was arrested, Tafa Balogun and others were arraigned and originally charged with 70 counts of offenses related to corruption[78]. Tafa Balogun, who was the principal accused person, entered into plea bargaining with the prosecutors and agreed to forfeit assets and properties that are valued at more than seventy billion naira. In exchange, he was only sentenced to six months imprisonment, with the term of imprisonment running concurrently and he was charged N500,000 on each of the 8 counts he pleaded guilty to[79].

Being the first publicized high-profile corruption case that was decided through plea bargaining, the ruling was met with public uproar. Many believed that the punishment given was not commensurate with the offenses he committed. However, despite the uproar, the importance of the dividend of that conviction, which included voluntary surrendering of choice assets by the convict, cannot be underestimated. Retrieving those assets could have been cumbersome if it was done through a full trial.

Federal Republic of Nigeria v. Lucky Nosakhare Igbinedion & Ors FHC/EN/6C/2008[80]

Lucky Nosakhare Igbinedion was a Governor of Edo State. He was first elected Governor of the state in 1999 and in 2003 he was re-elected for a new four-year term. After he left office, he was declared wanted by the Nigerian anti-corruption agency, Economic and Financial Crimes Commission (EFCC) and he was charged with stealing more than $24m (£12m) through three front companies. On Monday 21, 2008, he submitted himself to EFCC[81] and he was later arraigned by the Economic and Financial Crimes Commission (EFCC) before the Federal High Court, Enugu in charge No: FHC/EN/6C/2008, on a 191-count charge of corruption, money laundering and embezzlement of N2.9b[82].

However, the charges were later reduced to one count after he entered into plea bargaining with the government through the EFCC counsel, Mr. Rotimi Jacob. The single charge read as thus: “That you, Lucky Igbinedion (former Governor of Edo State) on or about January 21st, 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"[83].

In the judgment delivered by the presiding Judge A. Abdu-Kafaratafter after plea bargaining, the accused was sentenced to just six months in jail with an option of a fine of a paltry N3,500,000. In exchange, the accused surrender surrendered N500,000,000 and forfeited three

[77] Ajayi Femi, Tafa Balogun A Different Super 'Special' Cop, Nigeria World, 2005
[78] See Tafa Balogun vs FRN, Supra, footnote 1
[79] Onadeko Olanrewaju, Criminal Legislations And The Prosecution Of Corruption Cases In Nigeria: Prospects And Pitfalls, Nigerian Law School, n.d
[80] Federal Republic of Nigeria v. Lucky Nosakhare Igbinedion & Ors FHC/EN/6C/2008
[81] BBC, Wanted Nigeria Hands Himself In, January 21, 2008. Retrieved from: http://news.bbc.co.uk/2/hi/africa/7201026.stm
[82] Agbude Godwyns, Elegbeleye Ayotunde and Nchekwube Excellence-Oluye, The Psychological Imperative in Political Processes in Nigeria, Open Journal of Social Sciences, January 2014
[83] ibid

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properties, including one in the capital Abuja[84]. Reacting to the backlash that trailed the judgment by Nigerians, EFCC decided to appeal the judgment. The body believed that the jail term should have stood without the option of a fine. The EFCC spokesman, Femi Babafemi said that EFCC "are quarreling (with) the option of a fine. Such options would not serve as a deterrent to others who might want to commit such crimes".[85] However, one can see that from the EFCC statements, the body has no issue with the paltry fine of N3, 500,000 which looked so meager compared to the amount the convict was charged initially which was N2.9 billion. The body later filed fresh charges of 66 counts against the former Governor, but Justice Adamu Hosbon struck out the case. The judge held that it would amount to double jeopardy and abuse of the court process to try him again considering his plea bargain agreement in the previous case[86].

The plea bargaining case of Lucky Igbinedion remains one of the cases that attracted the attention of the Nigerian public to plea bargaining. The publicity generated by the case was majorly negative. There was almost a consensus that the judgment was not adequate as the convict escaped without a non-optional jail term and he only paid a ridiculous N3.5m fine.

Federal Republic of Nigeria v. Dr.(Mrs) Cecilia Ibru FHC/L/297C/2009

Cecilia Ibru was the Managing Director of the defunct Oceanic Bank Plc. On August 13, 2009, the Central Bank of Nigeria under the leadership of Mallam Lamido Sanusi sacked the Chief Executive of five commercial banks. Cecelia Ibru was one of them. The Apex bank said they were sacked due to issues relating to excessively high level of non-performing loans, significant capital impairment due to huge provisioning and over-reliance on interbank and CBN borrowing[87]. Mrs Ibru was later declared wanted by EFCC and she surrendered to the anti-corruption body on September 14, 2009. She was subsequently remanded in prison custody until she was granted bail on September 14, 2009. During his trial, EFCC secured an order to freeze her accounts and an interim injunction to seize her properties anywhere in the world[88].

On October 8, 2010, she was "convicted and sentenced to 18 months imprisonment on a three count charge of negligence, reckless grant of credit facilities running into billions of dollars and mismanagement of depositors' funds by a Federal High Court sitting in Lagos"[89]. Twenty-five charges were initially brought against her, but after she entered into plea bargaining with the Federal Government, the charges were reduced to three. She was sentenced to just six months imprisonment on each of the charges, which ran concurrently. The plea bargaining ensures the convict was put to trial based on Section 16(1)(a) of the Economic and Financial Crimes Commission (EFCC) Act, which specifies a jail term not exceeding four years without an option of fine

[84] Ahemba Tume, Convicted Nigeria ex-governor to pay $25,750 fine, Reuters, December 19, 2008
[85] ibid
[86] Jibueze Joseph, Is Plea Bargaining Still Fashionable, The Nation, February 27, 2018. Retrieved from: https://thenationonlineng.net/plea-bargaining-still-fashionable/
[87] Vanguard Newspaper, CBN sacks 5 banks' CEOs, Appoints Acting MD/CEOs, August 14, 2009. Retrieved from: https://www.vanguardngr.com/2009/08/cbn-sacks-5-banks-directors/
[88] Encomium Weekly, Cecilia Ibru May Not Smell Prison, October 12, 2010
[89] Anaba Innocent, Cecelia Ibru goes to Jail, Vanguard Newspaper, October 9, 2010

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In the plea bargaining deal, she entered with the prosecutors, she was ordered to forfeit to the federal government, N191 billion worth of assets located in Nigeria, the US, and Dubai[90]. She gave up properties in River State, Lagos State, Delta State and Abuja. She also surrendered properties in the United Arab Emirates and the United States of America. Apart from choice properties she surrendered, she also forfeited shares of 298 blue chips companies, such as Nigerian Bottling Company Plc. Africa Petroleum, First Bank of Nigeria Plc, Zenith Bank Plc, Guinness Nigeria, United Bank for Africa, Oando Plc, Diamond Bank Plc and PZ Industries Plc.

Just like all the other high-profile corruption cases that were determined through plea bargaining, Cecelia Ibru's case also led to a resounding public uproar. The uproar became louder when it was discovered that the majority of the six-month jail term was spent at the Reddington, a posh private hospital in Victoria Island, Lagos. The defense lawyer of the convict, Taiwo Pitan (SAN) explained that Mrs Ibru was on admission at the Reddington Hospital to receive treatment for chronic cardiac disease, congestive heart failure, chronic hypertension and lower extremities.[91]

Federal Republic of Nigeria v John Yakubu Yusuf: (Unreported) Charge No. FHC/L/297C/2009

John Yakubu Yusuf is one of the six Federal Civil servants who were prosecuted for stealing the N32.8 billion Police Pension Fund. In a plea-bargain arrangement, a Federal Capital Territory High Court presided over by Justice Abubakar Talba court convicted and sentenced him to two years imprisonment with an option of a fine of N750,000 (Seven Hundred Thousand Naira only). The conviction led to an uproar within and outside Nigeria because it was considered too lenient compared to the offense committed by the convict.

Following the public uproar that followed the judgment, the EFCC appealed the judgment of the trial court. In 2018 the Court of Appeal, Abuja Division, sentenced him to six years imprisonment and a fine of N22.9 billion. However, following the appeal court judgment, EFCC reported that the convict escaped from serving the sentence and subsequently declared him wanted. He was re-arrested in June 2022 and Justice Baba Yusuf of the FCT High Court on Monday, June 22, 2020, issued a remand order that will enable him to serve his six-year jail term in Kuje Correctional Service, Abuja.

Yusuf later appealed to the Supreme Court to set aside the judgment of the Appeal Court. In his appeal to the Supreme Court, Yusuf prayed to the apex court to set aside his conviction and the order to refund N22.9b on the ground that the Court of Appeal judgment was a miscarriage of justice[92]. In his judgment, Justice Tijjani Abubakar of the Supreme Court, while reading the judgment, upheld the decision of the court of appeal. He held that the appeal was frivolous,

[90] Asadu Chinedu, Report: $4.5m Missing From Confiscation Of Properties Traced To Cecilia Ibru, The Cable, May 4, 2018. Retrieved from: https://www.thecable.ng/report-4-5m-missing-confiscation-properties-traced-cecilia-ibru-2010

[91] See Encomium Weekly, Supra.

[92] PM News, Pension Thief John Yusuf's Six-Year Jail Term Affirmed By Supreme Court, April 13, 2022. https://pmnewsnigeria.com/2022/04/13/pension-thief-john-yusufs-six-year-jail-term-affirmed-by-supreme-court

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vexatious and devoid of merit. He also held that victims of the deed of Yusuf deserved restitution which only justice can make possible.[93]

Federal Republic of Nigeria v. Mr Diepreye Alamieyeseigha FHC/ABJ/CS/157/14:

Diepreye Alamieyeseigha was elected the Governor of oil-rich Bayelsa State in May 1999 and got re-elected for an additional four-year term in 2003. He was arrested at Heathrow Airport in September 2005 and his passport was confiscated. The police charged him with three money-laundering charges after police found £1m in cash at his London address and property in his name worth £10m. He escaped to Nigeria with a fake passport by allegedly disguising himself as a woman, forfeiting a £1.25m bail bond in the process[94].

Premium Times[95] reported that "the U.K. authorities seized $1.5 million (N225 million) cash stashed in his London home as well as $2.7 million (N405 million) held in bank accounts at Royal Bank of Scotland PLC and Santolina Investment Corporation. His London real estate valued at $15 million (N2.25 billion) was also seized by U.K. authorities". On December 9, 2005, he was impeached by the Bayelsa State Assembly and subsequently arrested by the officials of the EFCC and was made to face trial for charges bordering on money laundering and corrupt enrichment.

A day before he clocked 2 years in jail, the Federal High Court Abuja[96] sentenced him to two years imprisonment on each of the six counts charges that were brought against him and the sentences were to run concurrently, meaning, the convict only spent one day in jail post-conviction. This arrangement was made possible by the plea bargaining arrangement he entered with EFCC. It was later reported in the media that Alamieyeseigha said he pleaded guilty because he could not stand the rigor of a normal trial because of his age[97]. However, in exchange for the lenient jail term, he forfeited many assets to the Bayelsa State Government in the process. He also forfeited assets abroad. For instance, he forfeited more than $400,000 in Corruption Proceeds in the United States of America. As reported by the United States Department of Justice[98]:

On June 13, 2012, U.S. District Court Judge Rya W. Zobel of the District of Massachusetts granted a motion for a default judgment and forfeiture order filed by the Criminal Division's Asset Forfeiture and Money Laundering Section. This forfeiture order was executed today and allows the United States to dispose of the forfeited funds under federal law.

[93] Ejike Sunday, Pension fraud: S/Court affirms six-year jail term for ex-pension director, Nigerian Tribune. Retrieved from: https://tribuneonlineng.com/pension-fraud-s-court-affirms-six-year-jail-term-for-ex-pension-director-yusuf/

[94] Carroll Rory, Nigerian State Governor Dresses Up To Escape £1.8m Charges In UK, The Guardian, Retrieved from: https://www.theguardian.com/world/2005/nov/23/hearafrica05.development

[95] Ibekwe Nicholas, The Many Crimes Of Alamieyeisegha And Those Of His Fellow Ex-Convicts, Premium Times. Retrieved from: https://www.premiumtimesng.com/news/124417-the-many-crimes-of-alamieyeisegha-and-those-of-his-fellow-ex-convicts.html

[96] Federal Republic of Nigeria v. Mr Diepreye Alamieyeseigha FHC/ABJ/CS/157/14

[97] Aiyekoti Adesina, Daily Sun, Corruption: Alamieyeseigha Pleads Guilty, Bags 12 Years Jail Term, Daily Sun, July 27

[98] The United States Department of Justice, Department of Justice Forfeits More Than $400,000 in Corruption Proceeds Linked to Former Nigerian Governor. June 28, 2012. Retrieved from: https://www.justice.gov/opa/pr/department-justice-forfeits-more-400000-corruption-proceeds-linked-former-nigerian-governor

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On March 12, 2013, he was granted a State pardon by his former deputy, President Goodluck Jonathan[99]. His pardon was greeted with outrage from the public. It was seen as a betrayal of the fight against corruption and in bad taste[100]. After his State's pardon, lawyers in Nigeria debated the status of the properties he forfeited earlier. On one, hand some lawyers believed that since he had been pardoned by the State, his property should be returned to him, while on the other hand, some lawyers and activists believe that the properties he forfeited could not be returned to him despite the State's pardon. A prominent voice among the former group is Femi Falana, Activist Lawyer and Senior Advocate of Nigeria. According to Falana, Alamieyeseigha can ask for his assets to be returned and get them as that was the implication of a full pardon. Citing the appeal court judgment on Falana vs. Obasanjo[101], where a Pardon was defined as:

an act of grace by the appropriate authority which mitigates or obliterates the punishment the law demands for the offence, and restores the rights and the privileges forfeited on account of the offence. The effect of a pardon is to make the offender, a new man (novus homo), to acquit him of all corporal penalties and forfeiture annexed to the offense pardoned.

Femi Falana's position was also supported by another renowned lawyer, Jiti Ogunye. According to him, based on the appeal court judgment that was cited by Femi Falana that has not been upturned by the superior court, Alamieyeseigha has the right to demand that his properties that were forfeited be returned to him as the said ruling of the court suggests that he can claim his property back[102].

On the other hand, we have lawyers who were against the positions of Femi Falana and Jiti Ogunye on the implications of the State's pardon on properties already forfeited to the government. One of such lawyers was the Late Bamidele Aturu. According to him,

"*Those goods have been forfeited to the Federal Government; there is no way this act of pardon can release that. So I don't know by what legal abracadabra that anybody will say that the forfeited goods should be handed over to him unless they want to perpetrate serious fraud on Nigerian people. Those properties have been forfeited and forfeited for life".*[103].

He also queried what would happen if the property's concerns have been sold to a third party. Similarly, another lawyer Charles Musa also believed that forfeited assets cannot be retrieved but Alamieyeseigha can approach the court to seek clarification[104].

Additional Plea Bargaining Cases

Apart from the above five notable cases analyzed above there are a few other corruption cases that were decided with the principle of plea bargaining. One of such cases was that of the Late

[99] Fabiyi Olusola and Adetayo Olalekan, Outrage over presidential pardon for VIP ex-convicts, Punch Newspaper. Retrieved from: http://www.punchng.com/news/outrage-over-presidential-pardon-for-vip-ex-convicts/

[100] Vanguard Newspaper, No Apologies Over Pardon For Alamieyeseigha, Others – Presidency, March 14, 2013. Retrieved from: https://www.vanguardngr.com/2013/03/no-apologies-over-pardon-for-alamieyeseigha-others-presidency/

[101] Olu Falae Vs Obasanjo CA/A/EPPR/12/99.

[102] Ibid

[103] Ibekwe Nicholas, Alamieyeseigha Could Be Paid Billions By Nigeria Based On Court Ruling, Lawyers Say, March 21, 2013. Retrieved from: https://www.vanguardngr.com/2013/03/no-apologies-over-pardon-for-alamieyeseigha-others-presidency/

[104] ibid

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Ex-Chief of Defence Staff, Alex Badeh[105]. Alex Badeh was arraigned on a 14-count amended charge bordering on money laundering, criminal breach of trust and corruption. According to a report by Transparency[106], the defendant, among other allegations, allegedly abused his office between January and December 2013. He used the dollar equivalent of the sum of N 1.4 billion (One billion, one hundred million naira) from the accounts of the Nigerian Air Force to purchase a mansion situated at No. 6, Ogun River Street, Off Danube Street, Maitama, Abuja. The defendant also, whilst being the Chief of Air Staff of Nigerian Air Force, between 28th March and 5th December 2013 in Abuja did use an aggregate sum of N878,362,732.94 (Eight Hundred and Seventy-Eight Million, Three Hundred and Sixty-Two Thousand, Seven Hundred and Thirty-Two Naira, Ninety-Four kobo) removed from the accounts of the Nigerian Air Force and paid into the account of Rytebuilders Technologies Limited with Zenith Bank Plc for the construction of a shopping mall situated at Plot 1386, Oda Crescent Cadastral Zone A07, Wuse II, Abuja for himself.

The individual case against Alex Badeh was terminated after the defendant was killed by unknown gunmen in Nasarawa State while returning from his farm. However the case against the second defendant, Iyalikam Nigeria Limited, which was Alex Badeh's company went on and it was eventually decided on plea bargaining, based on the arrangement that Alex Badeh had with the prosecutors before his death. All properties belonging to the convict, Iyalikam Nigeria Limited were ordered to be forfeited to the Nigerian government. In his ruling, the Presiding Judge Hon. Justice Okon E. Abang, Federal High Court, Maitama, Abuja stated that:

Having regard to the plea bargain and plea duly taken, I hereby find the defendant Iyalikam Nigeria Limited guilty...The defendant is hereby wound up and this judgment shall be served on the Corporate Affairs Commission (CAC) for necessary action…All properties in line with the 10-count charge are hereby forfeited to the Federal Republic of Nigeria through the Economic and Financial Crimes Commission (EFCC)...Because the first defendant in the original charge is reported dead, all charges against the first defendant are hereby terminated.

In another plea bargaining case, Yisa Adedoyin, an official of the Independent Electoral Commission was convicted on an amended four-count charge after he pleaded guilty through the process of plea bargaining he entered into with EFCC for accepting N70m from Allison Diezani to influence 2015 general election results. In the plea bargaining, Adedoyin forfeited a parcel of land measuring 100ft by 100ft at Taoheed Road, Budo-Osho Village, Ilorin South Local Government Area in Kwara State and a fine of N10m was also imposed on him. The court noted that even though the defendant only converted N28m, through plea bargaining the government was able to retrieve from him a property worth N25m and N10m in cash[107].

[105] Federal Republic of Nigeria vs Alex Badeh (Ex-Chief of Defence Staff) & 1 other
[106] TransparencIT Corruption Cases Database, FRN vs Alex Badeh (Ex-Chief of Defence Staff) & 1 other, Retrieved from: https://corruptioncases.ng/cases/frn-vs-alex-badeh-ex-chief-of-defence-s
[107] See Jubueze Joseph Supra

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MERITS AND DEMERITS OF PLEA BARGAINING IN THE NIGERIAN JUSTICE SYSTEM

The use of plea bargaining in the Nigerian judicial system has some merits and demerits. Some of them are analyzed here:

MERITS OF PLEA BARGAINING IN THE NIGERIAN JUSTICE SYSTEM

1. Plea Bargaining Helps In Court Decongestion

A major merit of plea bargaining is that it helps to decongest the court. By deciding some cases through plea bargaining, the court will be decongested and give room for other cases to be heard through full trial. Court congestion is a crucial issue in the Nigerian judicial system. Congestion connotes an instance where cases are filed at a rate far more than what judges in the court's jurisdiction can dispose of within a reasonable time[108]. Matters are in court for several years while parties are waiting for judgment. The negative impact of court congestion on Nigerian judiciary cannot be overemphasized. There are several reasons for court congestion. Some of the reasons are unnecessary adjournment of otherwise simple matters, antics of lawyers to delay justice, and ill-preparedness of both the defense and the prosecution's lawyers.

There is also the problem of an inadequate number of Judges. In September 2019, the then Acting Chief Judge of the Federal High Court, Justice John Tsoho, stated that the Federal High Courts across its divisions nationwide were burdened with 116,623 cases, with only about 80 judges on its bench[109]. Also, as of 2019, only the Chief Justice of Nigeria and 14 other justices are on the bench of the Supreme Court, contrary to Section 230 of the 1999 constitution[110] that provides for a maximum of 21 justices, including the Chief Justice of Nigeria, to be in the Supreme Court at any point in time, which means the court was running on a six-man deficit[111] .

There are several suggestions by judicial officials on how to arrest the issue of court congestion in Nigeria. For instance, Festus Keyamo (SAN) said that only constitutional and political matters should be attended to by the Supreme Court in Abuja and that each region should have its Supreme Court to attend to other matters[112].

However, apart from other solutions highlighted above, plea bargaining is a potent solution in addressing court congestion in Nigeria. Many cases that are plea bargaining compliant can be decided through the instrument thereby freeing up spaces for other cases.

[108] Nafiu Akeem, Rage Over Congestion in Courts, New Telegraph, February 27, 2017
[109] Adesomoju Ade, 2019/20 Legal Year: Court congestion, independence top judiciary's concern. Punch Newspaper, September 19, 2019, Retrieved from: https://punchng.com/2019-20-legal-year-court-congestion-independence-top-judiciarys-concern/
[110] Section 230 of the Nigerian 1999 Constitution states that the Supreme Court of Nigeria shall consist of the Chief Justice of Nigeria; and such number of Justices of the Supreme Court, not exceeding twenty-one.
[111] Busari Funke, SPECIAL REPORT: Case congestion in Lagos courts hinder access to justice, Premium Times, August 25, 2019. Retrieved from: https://www.premiumtimesng.com/news/headlines/348468-special-report-case-congestion-in-lagos-courts-hinder-access-to-justice.html
[112] ibid

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2. Plea Bargaining Promotes Timely Decision

Flowing from the first point above, the plea bargaining procedure promotes timely decisions. A look at the trials that were decided through the instrument of plea bargaining shows the trial periods were far shorter than the trials without plea bargaining. For instance, the corruption trial of Joshua Dariye, the former Governor of Plateau State lasted for more than ten years before it was finally decided in the Supreme Court. The trial started on July 13, 2007. Likewise, the trial of former Governor of Taraba State, Jolly Nyame took more than 10 years from the time it started on July 13, 2007, until it was finally decided at the Supreme Court. Also, the trial of the former Governor of Adamawa, Murtala Nyako which commenced in July 2015 is still ongoing as I write this essay.

In comparison to the above cases, cases that were handled through the instrumentality of plea bargaining were decided within a shorter period. The case of Cecelia Ibru, the former Managing Director of the defunct Oceanic Bank was decided within 387 days from the date of first arraignment because it was prosecuted through the instrumentality of plea bargaining. Similarly, the case of the former Inspector General of Police, which was also handled through a plea bargaining approach, was decided between 2002 and 2004. The case of the former Governor of Bayelsa State, Dipreye Alamieyeseigha, which was prosecuted through plea bargaining was decided under Two Years.

3. Plea Bargaining Reduces Cost of Prosecution For The Prosecution And Defence Cost For The Accused

Another important merit of plea bargaining is its ability to reduce the defendant's expenditure in defending his case. It also helps to reduce public expenditure in the prosecution of cases, thereby allowing the public fund to be used for other items such as the welfare of the judiciary. Many judicial officials believe that the sector is underfunded. For instance, Mr. Adeniji Kazeem (SAN) said the judiciary is underfunded and this is because "the judiciary is constantly being treated as the "poorer" junior brother of the three arms of government"[113]. Similarly in June 2020, the former Chief Justice of Nigeria (CJN), Walter Onnoghen said that the Supreme Court was not adequately funded and that if the trend continues it might end up as a glorified high court. He lamented the fact that the last time the salaries and emoluments of justices of the Supreme Court were reviewed was in 2008[114]. The former Attorney-General and Minister of Justice, Abubakar Malami (SAN), also alluded to the fact that the Nigerian judiciary is not sufficiently funded. He stated this in November 2021, when he appeared before the Senate Committee on Judiciary, Human Rights, and Legal Matters, for the 2022 budget defense[115].

One of the ways through which judiciary finance can be bolstered is to reduce judiciary expenditure. By using plea bargaining, the cost of providing logistics and utilities for unending trials will be reduced and beyond that, the government stands a better chance to be able to recover the cash and assets from the accused with his co-operation. This is usually difficult

[113] Onyekwere Joseph, Judiciary Is Underfunded, Maligned, Says Kazeem, The Guardian, June 16, 2020. Retrieved from: https://guardian.ng/features/judiciary-is-underfunded-maligned-says-kazeem/

[114] Ochojila Ameh and Ojo Ayobami Yetunde, Onnoghen Canvasses Adequate Funding To Save Judiciary, The Guardian, June 17, 2022. Retrieved from: https://guardian.ng/news/onnoghen-canvasses-adequate-funding-to-save-judiciary/

[115] Offor Emmanuel, Nigerian Judiciary Underfunded – Malami Tells Senate, Olisa TV, November 8, 202. Retrieved from: https://olisa.tv/39116-2

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when a matter goes on full trial. Diepreye Alamieyeseigha once said he would have preferred to go on trial instead of releasing his assets to the government voluntarily through plea bargaining, but he went for plea bargaining because of his age. The fact is that the chance of retrieving stolen assets from corrupt accused is easier through the instrumentality of plea bargaining than through full trial.

4. Plea Bargaining Ensures Restorative Justice.

Plea bargaining is about restorative justice. Restorative justice is a "response to criminal behavior that focuses on lawbreaker's restitution and the resolution of the issues arising from a crime in which victims, offenders, and the community are brought together to restore the harmony between the parties"[116]. The major elements of distributive justice are: encounter, repair, and transform[117].

(i) Encounter: This is the starting point. This involves bringing the parties to the negotiation table so that they can discuss how to repair the harm caused. This is a voluntary venture. Offenders have to take responsibility for harm caused and the victim and the offender are free to state their choices.

(ii) Repairs: There is a need for offenders to make amends directly to the victims or the entities that are affected by their actions so that they can be assimilated back into society.

(iii) Restorative justice ensures that both offenders and victims are transformed. The root cause of the crime is identified and dealt with to ensure a more just and safer society.

Plea bargaining ensures that the offender makes restitution for the offense committed and at the same time, it ensures that the prosecution can achieve conviction of the offender. Restitution in criminal cases is full or partial compensation for loss paid by a criminal to a victim that is ordered as part of a criminal sentence or as a condition of probation[118]. Plea bargaining ensures that victims are partially or fully restored to their position before the loss and it ensures that the defendant partially or fully returns what he appropriated illegally. In Nigeria through plea bargaining several corruption cases have been decided and the convicts surrendered or forfeited assets to the entity concerned. For instance, Diepreye Alamieyeseigha's loot was returned to the people of Bayelsa after he was convicted through bargaining. Cecelia Ibru loot was taken over by Asset Management Company of Nigeria (AMCON), a Federal Government entity that bought the bad debts of the defunct Oceanic Bank. Tafa Balogun's loot was also forfeited to the Federal Government.

[116] Debra Heath-Thornton, Definition of Restorative Justice, Britannica, Retrieved from: https://www.britannica.com/topic/restorative-justice
[117] Restorative Justice Exchange, Three Core Elements of Restorative Justice
[118] Cornell Law School, Restitution, n.d, Retrieved from: https://www.law.cornell.edu/wex/restitution

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DEMERITS OF PLEA BARGAINING IN THE NIGERIAN JUSTICE SYSTEM

The following are the major shortcomings of plea bargaining in the Nigerian judicial system:

1. Absence Of Deterrence

It is popularly believed that one of the functions of law is to guide against wrongdoing as well as prescribe punishment for crimes committed. Punishment is seen as "some pain or penalty warranted by law, inflicted on a person, for the commission of a crime or misdemeanor, or the omission of the performance of an act required by law, by the judgment and command of some lawful court"[119]. The major purposes of punishment are deterrence, rehabilitation, incapacitation, restitution, and retribution. Deterrence helps to prevent a recurrence of the crime by frightening the defendant or the public; incapacitation removes the defendant from society; rehabilitation prevents future crime by altering the behavior of a defendant; retribution prevents future crime by removing the desire for personal advancement and restitution prevents future crime by punishing the defendant financially[120]

While plea bargaining comes with restitution and sometimes rehabilitation, it is very weak in deterrence, retribution, and incapacitation. The public is usually more impressed when a corrupt defendant is sentenced to jail than when he seems to 'buy' off his incarceration through money and other assets. This is why after the end of many judgments that came through plea bargaining, there is always uproar and condemnation in the public.

2. Incidences Of Re-Looting

The fact that there are instances of re-looting of assets that were submitted by accused of cases that were resolved through plea bargaining in Nigeria also affects the 'gains' of plea bargaining. While several assets have been recovered from corruption convicts, some of the assets are being re-looted. For instance, in 2017, the Senate Ad-hoc Committee investigating Abdulrasheed Maina's reinstatement said it discovered a re-looting by some EFCC officials of 222 recovered properties, including hotels and houses, by the Pension Reforms Task Team[121].

3. Plea Bargaining May Be Forced On Defendants

It is believed that plea bargaining may be forced on some defendants who may want to exercise their constitutionally guaranteed right to full trial. This may be due to torture or threats that they may be subjected to in detention. Nigerian detention is known for its inhuman treatment of persons who are awaiting trials. There are several reports of torture of detainees in the Nigerian Police cells and the cells of other law enforcement agencies like the State Security Service across Nigeria. So, the propensity for an accused to be forced to accept plea bargaining instead of exercising his constitutional right to full trial is very high in Nigeria. Despite the passage of the Anti-Torture Act (ATA) of 2017, a lot of detainees in Nigeria are still passing through the inhuman approach of obtaining confession by force. That is why some accused

[119] UpCounsel, Legal Definition of Punishment, n.d, Retrieved from: https://www.upcounsel.com/legal-def-punishment
[120] University of Minnesota, Criminal Law: The Purposes of Punishment, 2012, Retrieved from: https://open.lib.umn.edu/criminallaw/chapter/1-5-the-purposes-of-punishment/
[121] TVC News, Maina: Senate discovers re-looting of 222 recovered Assets, November 2017, Retrieved from : https://www.tvcnews.tv/2017/11/maina-senate-discovers-re-looting-of-222-recovered-assets/

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may be forced to accept plea bargaining to escape further torture and extra-judicial punishments.

Take the case of Dimipreye Alameisegha for instance, after he finished his short prison term, he claimed he did no wrong, but he had to accept plea bargaining because of his age and probably ill health as he reckoned he may not be able to survive the long process of the court trial. He died a few years later.

4. It Is Susceptible To Abuse

Plea bargaining is susceptible to abuse by those who are in charge of prosecuting offenders. Corruption level is high in Nigeria and there is also a high level of judicial corruption in Nigeria. There is a propensity that prosecuting officers may be using plea bargaining to take bribes from the defendants in exchange for zero or reduced jail terms or punishments. In the 2021 Corruption Perceptions Index (CPI) ranking released by Transparency International (TI), Nigeria ranked 154 out of 180 countries surveyed, falling back five places from the rank of 149 in 2020, placing as the second most corrupt country in West Africa[122]. The Nigerian judiciary is considered to be the most corrupt sector in Nigeria. The Independent Corrupt Practices and Other Related Offences Commission (ICPC) stated that the judicial sector was on top of the Nigeria Corruption Index between 2018 and 2020. The body claimed that an estimated N9.4bn bribes exchanged hands as bribes in the judicial sector between 2018 and 2020. In the survey conducted by ICPC, about 78 of the 901 justice sector respondents reported experiencing offers or payment of bribes to influence the judicial process[123]. Similarly, a retired Supreme Court justice, Ejembii Eko, also believes that there is a high level of corruption in the Nigerian judiciary. He wanted the Auditor-General of the Federation and ICPC to investigate the sector's financial record to expose what he called corruption in the management of their budgetary resources, irrespective of the much-touted judiciary freedom[124].

Above is the current state of the Nigerian judiciary in terms of the corruption index. Therefore it will be difficult to trust a corrupt sector like the Nigerian judicial system with plea bargaining, a procedure that is built and exercises the integrity and objectivity of judicial officers. Plea bargaining, in the Nigerian judicial system, is therefore subject to abuse just like other judicial procedures in Nigeria today.

5. It Is A Lazy Approach To Prosecution

Plea bargaining may also encourage the laziness of judicial officers in carrying out their responsibilities. Apart from the sedentary negotiation process that is majorly involved in plea bargaining, the judicial fireworks that make trials exciting and robust will be jeopardized once a case is resolved with a plea bargaining process. Apart from its sedentary mode of trial, there is also the issue of secrecy in arriving at the term of settlement. Unlike the normal court trial where every procedure is done in the open, the plea bargaining process is not done in the public

[122] Sanni Kunle, Again, Nigeria drops in latest corruption ranking, Premium Times. January 25, 2022. Retrieved from: https://www.premiumtimesng.com/news/top-news/507715-again-nigeria-drops-in-tis-latest-corruption-ranking.html

[123] Adepegba Adelani, Lawyers gave N9.4bn bribes to judges in three years –ICPC, Punch Newspaper, Retrieved from: https://punchng.com/lawyers-gave-n9-4bn-bribes-to-judges-in-three-years-icpc/

[124] Ejekwonyilo Ameh, Supreme Court Justice laments corruption, inequity in Nigeria's judiciary, Premium Times, May 23, 2022. Retrieved from: https://www.premiumtimesng.com/news/headlines/531981-supreme-court-justice-laments-corruption-inequity-in-nigerias-judiciary.html

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or the courtroom, they are done between the prosecutors and the accused, and they are shrouded in secrecy. The parties only present the outcome of the negotiation in the courtroom.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

Despite all the demerits highlighted in this essay, this essay suggests that plea bargaining is important and useful for resolving cases in the Nigerian judiciary, just like in several countries around the world. Nigerians should be more concerned about state pardons for corruption convicts and how to remove the immunity clause that protects sitting Governors and their Deputies, as well as the sitting Presidents and Vice Presidents from prosecution.

What makes state pardon critical is that with state pardon, a convict is cleansed from his conviction and it is as if he never committed the offense he was convicted for. State's pardon for corruption convicts is now common in Nigeria. Under the administration of President Goodluck Jonathan, he granted a state pardon to his former boss and political mentor, Diepreye Alamieyeseigha, who was the former Governor of oil-rich Bayelsa State[125]. Alamieyeseigha was convicted for stealing from Bayelsa State and forfeited several properties and cash to the State Government. He was also sentenced to a meager two years on a six-count charge which was to run concurrently. On March 12, 2013, he was granted a State pardon by President Goodluck Jonathan in a decision that was heavily criticized by the Nigerian public.

A similar scenario played out under President Muhammadu Buhari's administration. On April 14, 2022, President Muhammadu Buhari granted a State pardon to Joshua Dariye, a former Governor of Plateau State, and Jolly Nyame, a former Governor of Taraba State. Many believed the Governors were released because of the 2023 general elections. The two Governors were not pardoned because there was a new finding, they were pardoned on supposed health grounds. Before their pardon, Dariye, 64, who was a two-term Governor of Plateau State was serving a jail sentence for stealing N2b of public funds from the purse of the Plateau Government between 1999 and 2007. Dariye was serving a 10-year jail term. He did not make any restitution of the amount stolen. Similarly, Jolly Nyame a two-term Governor of Taraba State, was serving a 12-year jail term for misappropriation of funds when he was in office between 1990 to 2007[126].

While plea bargaining ensures restitution and is passed through judicial process, State pardon does not. The sitting President has enormous influence in granting the prerogative of mercy, and the Nigerian Council of State is the organ of the Nigerian Government as stipulated by Third Schedule Part 1B of the 1999 Constitution (as amended) to merely advise him.

[125] Fabiyi Olusola and Adetayo Olalekan, Outrage over presidential pardon for VIP ex-convicts, Punch Newspaper. Retrieved from: http://www.punchng.com/news/outrage-over-presidential-pardon-for-vip-ex-convicts/

[126] Abidoye Bisi, Buhari pardons ex-Governors Dariye, Nyame serving jail terms for corruption; 157 others, Premium Timers, April 14, 2022. Retrieved from: https://www.premiumtimesng.com/news/headlines/523946-buhari-pardons-ex-governors-dariye-nyame-serving-jail-terms-for-corruption-157-others.html

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Immunity clause[127] is another issue that should also be confronted in fighting corruption among the elites in Nigeria. For instance in the case of the Attorney General of Rivers State v. EFCC & Ors, the Attorney General of Rivers State[128] sought an injunction to restrain EFCC from investigating Dr. Peter Odili, the then Governor of Rivers State, because the State was being negatively affected by EFCC's investigation. "The presiding judge granted all the reliefs sought, including a declaration that the EFCC investigation was invalid, unlawful, unconstitutional, null and void. The court also granted an injunction to restrain the EFCC and other respondents from publishing the reports of their investigation on Dr. Peter Odili and also gave an order restraining the EFCC from taking any further action about the economic crimes the EFCC was investigating[129]".

Similarly on October 14, 2022, a Federal High Court in Abuja dismissed the suit by the Economic and Financial Crimes Commission (EFCC) seeking to confiscate six choice properties in Abuja linked to Governor Bello Matawale. Governor Bello Matawale is the sitting Governor of Zamfara State. Justice Inyang Ekwo held that the application could not be brought against the governor due to the provision of section 308 of the Nigerian 1999 Constitution. The EFCC alleged that the governor moved about N2.1 billion and laundered the fund by purchasing choice properties in Abuja[130].

Therefore, despite the inherent demerits in plea bargaining, the concept can be of help to the Nigerian judicial system with its major associated issues of court congestion and finance if it is well packaged and institutionalized. The prerogative of mercy and immunity clause are double-headed instruments that are more destructive and should be of concern to the Nigerian public.

RECOMMENDATIONS

Plea bargaining is a judicial process that is gaining ground around the world and it is even more relevant in Nigeria where court congestion is serious and cases take a long period to decide. However, there is a need to institutionalize the concept of plea bargaining into all the appropriate Nigerian laws and statutes. Among other things, the cases it can be used and when it can be used should be codified. The procedure should be unambiguous. The decision from plea bargaining must be commensurate with the offense committed.

Also, plea bargaining must be in the overall public interest. The arrangement should be such that it will be very clear that it is in the overall public interest. A situation whereby corruption accused only forfeit a tiny portion of the amount they stole is not in the public interest. If it is not in the interest of the State, the court should reject it and insist on a full trial.

[127] Section 308 of the Nigerian Constitution, 1999
[128] of Attorney General of Rivers State v. EFCC & Ors, Suit No. FHC/PHC/CS178/2007.
[129] Onadeko Olanrewaju, Criminal Legislations And The Prosecution Of Corruption Cases In Nigeria: Prospects And Pitfalls. Nigerian Law School,n.d.
[130] Azu Chuks John, Court dismisses EFCC's move to seize Gov Matawalle's properties, Daily Trust https://dailytrust.com/court-dismisses-efccs-move-to-seize-gov-matawalles-properties, October 15, 2022

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The popular belief that plea bargaining is only for the rich and that it is used by the rich to avoid justice should be laid to rest. Plea bargaining should also be used in criminal cases that involve poor people. This will be possible once the process is institutionalized.

Also, there must be a system that will check that a defendant who believes he has a good case is not forced to agree to plea bargaining. Every accused should be allowed to exercise their fundamental and legal rights to choose a full trial.

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