



Legal effects of plea bargain on correctional centres in Nigeria

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Abstract

The search for justice is as old as human civilization. Man has, at various times of his development designed multiple methods at different times for attaining a full proof of criminal justice system. These various methods hitherto designed and applied in the face of increasing industrialization, urbanization, population explosion, unemployment, increased high-tech crimes (committed at the snap of the finger) in the face of limited resources at the disposal of the state to effectively detect, prevent or combat crime on the one hand, and to quickly and effectively dispense with trials of offenders, manage the prison system flawlessly, has proven ineffective, hence the need for a newer model - plea bargain- in our criminal justice system in Nigeria. A plea bargain is a non-trial transaction where there is an exchange of guilty plea by the defense for the prosecution's dispositional concession. An economical, restorative and expeditious alternative to a trial mode procedure that permits restorative justice and non-custodial sentence aimed principally at reducing prison reception. In July 2019, the Nigerian Correctional Services Act (NCSA) 2019 was enacted. One of the key objectives of the NCSA is to facilitate the speedy disposal of cases of persons awaiting trial. The law addresses primarily, issues that were not covered under the repealed Nigerian Prisons ACT 2004. The Act provides and sets out clear cut rules and obligations for the Nigerian Correctional Service vis-à-vis the rights of inmates in line with the internationally accepted standard and best practices. This study aims at reviewing the Criminal Justice System in Nigeria, with particular emphasis on the endemic challenges of congestion in the Nigerian correctional centres and how plea bargain can be effectively deployed to decongest it.

Keywords: Plea bargain, criminal justice system, NCSA 2019, restorative justice, inmates' right, awaiting trial

Introduction

One of the most debated concepts in the Administration of Criminal Justice in Nigeria in recent times is "Plea Bargaining". Two words make up the concept: "plea" and "bargain". The term 'plea' means no more than a defendant's formal answer to a criminal charge, which signifies the beginning or commencement of a criminal trial. A plea must be done personally and not by proxy. The response to a request may be a "plea of guilty" or "not guilty". It is a fundamental requirement that confers jurisdiction on the court (Failure to record a plea in a criminal trial will attract an order of retrial on Appeal. "Bargain" on the other hand, is a negotiation process. It means an agreement between the parties for the exchange of promises or performance. Put together, plea bargain simply implies an exchange of vows or return for a plea of guilty.

Legal practitioners and academic scholars are not in consensus on the most appropriate definition for a plea bargain. It is probably because they view plea bargain from different perception, coupled with fact that its scope and the extent of its application varies from one jurisdiction to the other.

The Black's Law Dictionary (2004) defines bargain thus:

A negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offense or one of the multiple charges in exchange for some concession by the prosecutor usually, a more lenient sentence or a dismissal of the other charges.

A similar but expanded definition is found on Wikipedia, the free Encyclopedia^{as} follows:

A plea bargain "also pleas agreement, plea deal or copping a plea" is an agreement in a criminal case between the prosecutor and the Defendant agrees to plead guilty to a particular charge in return for some concession from the

prosecutor. This may mean that the Defendant will plead guilty to a less serious charge; or to one of the several charges, in return for the dismissal of other charges; or it may mean that the Defendant will plead guilty to the original criminal charge in return for a more lenient sentence

A plea bargain allows both parties to avoid a lengthy criminal trial and may allow criminal defendants to avoid the risk of conviction at a trial and a more serious charge. For Example, a criminal defendant charged with a felony theft charge, the conviction which may require imprisonment in state prison, may be offered the opportunity to plead guilty to a misdemeanor theft charge which may not carry full time."

John Langbein (2014), an American writer, defines and describe plea bargain thus,

Plea bargain occurs when the prosecutor induces a criminal accused to confess guilt and waive his right to a trial in exchange for a few more lenient sanctions that would be imposed if the accused were adjudicated guilty following a trial. The prosecutor offers leniency either directly, in the form of a charge reduction, or directly, through the connivance of the judge, in the form of a recommendation for are reduced sentence that the judge will follow. In exchange for procuring this leniency for the accused, the prosecution is relieved it. The court condemns the accused based on his confession without independent adjudication.

The Law Reform Commission of Canada in 1975, defined plea bargain as: "Any agreement by the accused to plead guilty in return for the promise of some benefit".

Nchi (2000) defines plea bargain as, "An informal arrangement whereby the accused person agrees to plead guilty to one or more charges in return for the prosecution agreeing to drop other charges or a summary trial." Alubo

(2002) defines plea bargain thus; “The defendant’s agreement to plead guilty to a criminal charge, based on negotiation with the reasonable expectation of receiving some consideration from the state.” The Administration of Criminal Justice Act, 2015 defines plea bargain to mean:

The process in criminal proceedings whereby the defendant and the prosecution work out 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 condition imposed by the prosecution, in return for a lighter sentence than for the higher charge subject to the court’s approval.

By this definition, the court is an integral part of a plea bargain in Nigeria as distinct from that of the Law Reform Commission of Canada and that offered by Alubo (2002), who remarked thus,

The implicit plea bargain, by definition, is never officially subject to court approval. Involves situations where defendants (sic) do not negotiate for a certain concession but instead are presented with the facts that if they go to trial, they will be punished more severely. Despite the lack of formal agreement for this bargain, this type of plea bargaining is often made quite explicit to the defendant but not subject to court approval, in addition, prosecutors can independently drop charges against the defendant in exchange for a guilty plea. Moreover, judges seldom reject plea bargaining agreements involving sentencing recommendations by the prosecutor. In our view, therefore, the phrase “subject to court approval” obscures the reality of plea bargain and inappropriately limits the definition of a plea bargain.”

The position of the learned Professor may not be unconnected with the sacred doctrine of the impartiality of the temple of justice- the court and the judge, who must descent to the arena where he is perceived to be assisting the prosecution in conducting his case.

Flowing from the above definition, depending on the Jurisdiction and the context in which plea bargain is used, there must be a:

- a. A prosecution/prosecutor and a defendant
- b. A negotiation between the prosecution and the defendant
- c. The negotiation must have ended in an agreement with concession and compromise
- d. There must be a plea of guilty to the charge or a lesser charge and
- e. Acceptance of the legality to the request by the court

Although Academic Scholars, Jurist, and Legal Practitioners are not in consensus on the most appropriate definition of a plea bargain, opinions are, however, not divergent, that it is a form of contract or has semblance with a Contract. This is because the essential elements of a valid contract, which includes an offer, acceptance, consideration, and intention to enter into a legal relation, are present in a plea bargain. In terms of the offer, the form of proposals for a plea bargain presented to the Defendant to substitute offence with a lesser one or not to move for maximum punishment if the defendants plead guilty qualifies for an offer.

Where the proposal of the prosecution to the defendant is agreed upon or the counteroffer by the Defendant is consented to at the trial, it will amount to acceptance in the eyes of the law (Amana suits Hotel Ltd (2007) 6 NWLR Pt

1031.453/ (2006) LPELR-11675 CA) It is, therefore, safe to conclude that a plea bargain will be impossible if there is no acceptance. It is the bedrock of a successful plea bargain. Acceptance here simply means approval to the terms of the agreement/deal.

In *Currie v Misa* (1875) LR Exch. 153, *Oyewale V Oyewale* (2008) LPELR-4118(CA); *Oyebanji V Fowowe* (2008) Consideration *Currie v Misa* (1875) LR Exch. 153, *Oyewale V Oyewale* (2008) LPELR-4118(CA); *Oyebanji V Fowowe* (2008) ALL FWLR (Pt4100)786 (CA), in the context of a plea bargain is the plea of guilty emanating from the accused person in favour of prosecution. It saves the prosecution’s pain and time of proving the guilt of the defendant since the onus is on him to prove the guilt of the accused person (Section 138(1) of the Evidence Act, CAP E 14 LEN, 2011).

Since every valid contract must pass the legality test, for the law will not enforce an illegal contract (no action arises from a wrong contract), in the context of a plea bargain, it is legal for a defendant to make the offer, for the prosecution to consider it, and enter a plea bargain with the Defendant in the interest of justice, public interest, public policy and the need to prevent abuse of court processes (ACJA, 2015). It is also within the discretionary power of Court, and it is legal where the statute creating the offence allows a minimal punishment to be imposed as against the maximum sentence.

Every valid contract must pass the legality test, for the law will not enforce an illegal contract “*ex turpi contractu non oritureactio* (ACJA, 2015). In the context of a plea bargain, it is legal for a defendant to make the offer, for the prosecution to consider it, and enter a plea bargain with the Defendant in the interest of justice, public interest, public policy and the need to prevent abuse of court processes. Agada advocates that “it is also within the discretionary powers of Court, and it is legal where the statute creating the offence allows a minimal sentence to be imposed as against the maximum sentence”.

Types of Plea Bargain

There are primarily three types of plea bargain to wit; Charge Bargain, Count Bargain, and Sentence Bargain.

1. **Charge Bargain:** This is where the prosecution agrees with the Defendant to press a lesser charge than that originally filed or where it is arranged in a way that the prosecutor takes out a less serious offence charge which carries a consequent less punishment than that would have been obtained if the original charge were preferred and the Defendant successfully prosecuted. For instance, in return for dismissing an indictment for murder, a prosecutor may accept a guilty plea for manslaughter. Charge discussion may include the following to wit;
 - a. The reduction of a charge to a lesser or included offence
 - b. The withdrawal or stay of other charges
 - c. An agreement by the prosecutor not to proceed on a charge
 - d. An agreement to reduce multiple charges to one all-inclusive charge
 - e. The agreement to drop certain counts and proceeds on others, and to rely on the material facts that supported the dropped counts as aggravating factors for sentencing purpose.

2. **Count Bargain:** This arises where the defendant agrees to plead to one or a few numbers of charges.
3. **Sentence Bargain:** A sentence bargain occurs where a defendant is aware in advance what his sentence will be where he pleads guilty. The charge or counts need not be more than one in this case. The defendant agrees to plead guilty to the charge in exchange for the prosecution agreeing to a minimal punishment. Under sentence bargain, the offence in question must carry an alternate and a mandatory sentence. In sentence bargain, although the charge may correctly reflect the conduct for which the accused is charged, the prosecutor recommends a lenient sentence (James, 1972). Under the law, the Judge has a discretionary power to give a sentence lower than the punishment prescribed by law unless she has no discretion.
 - a. A recommendation by a prosecutor for a certain range of punishment or a specific sentence.
 - b. A joint proposal by a prosecutor and defense counsel for a variety of punishment or a particular sentence.
 - c. An agreement by a prosecutor not to oppose a sentence recommendation by defence Counsel.
 - d. A deal by a prosecutor not to seek additional sanctions, such as prohibition and forfeiture orders.
 - e. An agreement by a prosecutor not to oppose the imposition of an intermittent sentence rather than a consecutive punishment and
 - f. The type of conditions to be imposed on a conditional sentence.

Pradeep in his *Plea Bargaining: New Horizon in Criminal Jurisprudence* (nd.), recognizes fact bargaining as a fourth type of negotiation, where a prosecutor agrees not to reveal aggravating factual circumstances to the court. This form of mediation is likely to occur when proof of an aggravating circumstance would lead to a mandatory minimum sentence or more severe punishment under sentencing guidelines.

Classification of Plea Bargain

Plea bargaining, as endorsed in International jurisprudence, can be classified into two, namely, Express and Implicit plea bargaining.

1. Express agreement occurs when a defendant or his lawyer negotiates directly with a prosecutor or trial judge concerning the benefits that follow the entry of the plea of guilty.
2. Implicit bargaining, on the other hand, occurs without face to face negotiation. In the inherent negotiations, the trial judge mainly establishes a pattern of treating defendant who pleads guilty more leniently than those who exercise the right to a trial, and the defendant, therefore, come to expect that the entry of guilty plea will be rewarded.

Academic scholars are of the view that there appears to be no strict dichotomy between these types of bargains. The reason is that whichever of them is adopted, the result is that the defendant is likely to get a lighter sentence for the offence he has committed in exchange for pleadings guilty (Akeem, O.B, 2007) [3].

Origin and Historical Development and Plea Bargain

Historically, the United States of America, Britain, and Canada lead the common law countries that has a plea bargain system, albeit in different staged of development. This system and practice were prohibited in Europe, until recently (Alubo, 2002). Italy, France and other countries, recently passed legislation allowing the operation of a plea bargain. In other countries in Western Europe, such as Germany, it is a genre of a plea bargain that is practiced. The Practice is known as penal order, which allows for settlement outside courtrooms between prosecutors of minor offenses known as *vergehen* but insists that all felonies known as *verbrechen* must compulsorily be prosecuted. The prosecutor writes to the accused informing him of the offense and his proposal to convict if he is not heard from within a week (Alubo, 2002).

In countries like India, plea bargain was introduced through the Criminal Law (Amendment) Act, (2005). S 4 of the Amendment Act added Chapter XXIA to the Code having Section 265 A to 265 L. In Xavier, Ferguson & Roberts (1974), the Supreme Court of India was against the practice for a long time on the ground that a mere plea should not make the court reduce the punishment. The concept applies to offenses where the penalty does not exceed seven years imprisonment, and it does not apply to offenses against the socio-economic condition of the country, offenses against a woman or a child below the age of 14 years. It is the accused person that initiates plea bargain by making an application to the Court, who, in turn, examines the accused in person to determine whether or not it was entered voluntarily. The judgement delivered by the court concerning plea bargaining is final, and no appeal shall lie against the decision.

In Malaysia, the concept of plea bargaining was birthed by Section 172^c of the Malaysian Criminal Procedure Code. The concept applies to all types of offenses, where the accused will get 50% reduction from the maximum sentence to prescribe by law for the offense he agreed to plead guilty. It is accused person that initiate plea bargain, and the courts will Examine the accused to determine whether the application for plea bargaining was voluntarily made or otherwise and the victim of the offence is given an audience to express his or her grievances and what kind of compensation he wants from the accused.

Of all the countries that currently practice plea bargaining, the United States of America is the most developed. The Supreme Court of the United States of America was frank in explaining why it is obliged to treat Plea Bargaining as an essential component of the administration of criminal justice when she remarked thus;

If every criminal charge were subjected to a full-scale trial, the states and the Federal Government would need to multiply by man times the number of the judges and court facilities.

Where a defendant pleads guilty in the United States of America to the charge(s) for which he stands trial in consequence of a plea bargain, he receives leniency in terms of a sentence than he who insists on trial. The favour received by such a criminal defendant is as a result of the fact that by pleading guilty, the Defendant has saved the time of the Court and also spared the Court the energy that would have been dissipated in going into full trial.

A defendant can withdraw from plea bargain even if he has

been sentenced on his guilty plea as a result of an agreement, but stands or risk more severe punishment if he is found guilty of the charge in full trial. In the case of *Alabama v Smith* (Supreme Court of the United States (1989), the defendant, Smith, in 1985, was indicted by an Alabama grand jury for burglary, rape, and Sodomy. All the charges related to a single assault, Smith agreed to plead guilty to the burglary and rape charges in exchange for the State's agreement to dismiss the sodomy charge. The trial court granted the states motion to dismiss the sodomy, accepted the respondent's guilty pleas, and sentenced him to a concurrent term of thirty years imprisonment on each conviction. Later, the respondents withdrew his guilty pleas, claiming that he had not entered them knowingly and voluntarily. The trial court denied the motion, but the Alabama Court of Appeal reversed the finding that the respondent had not been adequately informed of the penalties associated with the crimes to which he had pleaded guilty. The case was reassigned to the same trial Judge. The State moved to reinstate the charge for the first-degree sodomy; the trial court granted that motion, and the respondent went to trial on all the three original charges. In the course of trial, it was the testimony of the victim that the respondent had broken into her home in the middle of the night, clad only on his underwear and a ski mask and wielding a kitchen knife. Holding the knife to her chest, he had raped and sodomized her repeatedly and forced her to engage in oral sex with him. The attack which lasted for more than an hour took place in the victim's bedroom, just across the hall from the room in which her three young children were sleeping. Respondent took a stand repudiated his post-arrest statement, testifying instead that he had been in bed with his girlfriend at the time the attack took place. The jury returned a verdict of guilty on all three charges. This time, the trial judge imposed a term of life imprisonment for the burglary conviction plus a concurrent term of life imprisonment and a consecutive term of 150 years imprisonment on the rape conviction.

The court explained the rationale behind this more severe imprisonment, that, because the evidence presented at the trial, of which it had been unaware at the time it imposed the sentence on the guilty pleas, it already had only the respondent's side of the story. In contrast, now, it has had a trial and heard all of the evidence, including the testimony that the respondent had raped the victim at least five times, forced her to engage in oral sex with him and threatened her life with a knife. This decision was affirmed both by the Alabama Court of Criminal Appeals and the United States Supreme Court. In particular, the Supreme Court was of the view that when a more significant penalty is imposed after a prior guilty plea, the increase in the sentence is not more likely than not attributable to the vindictiveness on the part of the sentencing information available to the judge after the plea will usually be considerably less than that available at trial. The Supreme Court finally stated that after trial, the factors that may have indicated leniency as consideration for the guilty plea were no longer present.

The American Criminal Justice System views a guilty plea as an act of repentance and the first step towards rehabilitation because the abbreviated trial is less offensive compared to the untold evidence of the prosecutor that may unfold in the cause of trial. In 1969 to avoid execution, James Earl pleaded guilty to the assassination of Martin

Luther King Jr. and got 99 years in prison against a death penalty.

Two prominent exponents of the plea bargain in the United States of America are Professor Langbein of the Yale University and Professor George Fisher of the Standard University and former prosecutor who in his work, *Plea Bargain's Trump History of Plea Bargain in America* (Fisher, 2003) showed how caseload pressure on judges increased through the late 19th Century, not from Criminal adjudication but the burgeoning civil case law of newly invented Tort remedies from industrial accidents. McCoy (2003) who reviewed Fisher's *Plea Bargain's Triumph: A History of plea Bargain in America* contends that the seed of plea bargaining in America was sown in the criminal Court of Middlesex Country, Massachusetts, in 1780-1900.

The first plea bargains occurred in the prosecution of victimless crime (Liquor selling Violations) and grew on. In *Brandy v U.S*, the Defendant Brady attempted to change his plea after agreeing to plead guilty to kidnapping for a lighter sentence. The Supreme Court held that his plea was valid after he argued he only pleaded guilty to avoid the death penalty because he could have refused the prosecutor's offer.

In 1971, there was yet another challenge in *Santobello v New York* case. In this case, the Defendant accused the prosecutor of breaching their agreement by recommending a more severe punishment than agree. The Supreme Court agreed with the Defendant, ruling that for a plea bargain to be legally valid, both the prosecutor and the defendant must comply with the terms of the agreement. As a result, all plea-bargaining cases were to be approved by a judge for them to be binding.

With these decisions, the U.S Supreme Court paved the way for the displacement of the already small percent of cases heard in the open Court. The Federal Rules of Criminal Procedure has codified the concept of a plea agreement and further permission by the United States Attorney Manual which provides that plea bargain should be "honestly reflect the totality and seriousness of the Defendant's conduct and any departure must be consistent with the sentencing guidelines provisions. These action or steps renders nugatory the 1973 report of the National Advisory Commission on Criminal Justice Standards and goals which recommended the abolition of all forms of plea bargaining.

Plea bargaining can, therefore, be said to be a creation of the American Criminal Justice System with wide acceptability as a way of disposing of criminal cases expeditiously as held by the U.S Supreme Court in *Santobello v. New York* thus;

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 is to be encouraged.

According to Kayode Oladele (2018)

While plea bargaining is a new trend in Nigeria, the practice is considered a common phenomenon in the U.S legal system and it can be argued that the American criminal justice system would simply cease to function without plea bargaining.

Plea Bargaining in Nigeria

Previously, there was a shortage of works on the concept of plea bargain among Nigerian authors and scholars. Oluwatoyin (1999) in her book did not mention the concept of a plea bargain neither did Nwadialo (1976) in his book 'Criminal Procedure in Southern Nigeria even though both scholars are the foremost Nigerian authors on Criminal Procedure Law in Nigeria, most Legal Practitioners and Judges became aware of plea bargain in scholarly work done abroad and in different pieces of literature or films. Plea bargain as a concept was unknown to our penal, substantive, or adjectival laws before the Administration of Criminal Justice Law 2007 of Lagos State. The rationale for this may not be unconnected with the express provision of the constitution, the express provision/requirement of the Evidence Act and the Criminal Procedure Act.

Rotimi (2005) has strenuously argued that plea bargain as concept in our criminal jurisprudence in Nigeria is as old as the Criminal Procedure Act, the Criminal Procedure Code, the Constitution, and the Economic and Financial Crimes Act 2004 itself. These academic scholars were emphatic that plea bargain is provided for in section 180(1) of the Criminal Procedure Act and S. 14(2) of the Economic and Financial Crimes Act 2004.

Section 180 (1) of the CPA provides thus

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

Section 14(2) of the EFCC Act provides thus

Subject to the provision of section 174 of the Constitution of the Federal Republic of Nigeria, 1999 (which relates to the power of the Attorney-General of the Federation to institute, continue or discontinue criminal proceedings against any persons in any court of law), the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, not exceeding the amount of the maximum fine to which that person have been liable if he had been convicted of that offence.

Having taken a cursory look at the provisions of S.180(1) of the CPA, the writer can conclude without much ado that the above rule lacks the required essential (Contractual) elements of a plea bargain to wit: Offer, Acceptance, Consideration, and Intention to enter into a legal relationship. It is the writer's firm view that S.180 (1) of the CPA does not in any way provide for a plea bargain for the following reasons;

- a. The accused/ defendant is not involved in any way. He is neither making an offer or accepting one or any.
- b. The accused/ defendant must have been convicted for one or more of the offences (s) before the prosecution considers or apply for the withdrawal of the other charges i.e. "sentence bargain" is considered only after a conviction. There is a total lack of consideration by the accused/ defendant
- c. The plea bargain is an option only where there is more than a single charge against the accused/ defendant and
- d. The involvement of the Court is passive or non-existence.

The remarks of the former Chief Justice of Nigeria, Justice Dahiru Musdapher that The concept is not only dubious but was never part of the history of our legal system at least until it was surreptitiously smuggled into our statutory laws with the creation of the Economic and Financial Crime Commission Puts to rest Rotimi's conclusion on S.180 (1) of the Criminal Procedure Act.

It is without a doubt that the provisions of S.14 (2) of the Economic and Financial Crimes Act 2004 is the closest in support of the scholars' position that the concept of a plea bargain is not new to our Criminal Jurisprudence. This is because all but one of the key contractual elements of a plea bargain is absent i.e., there is the absence of intention to enter into a legal relation to make it legal.

That the EFCC Act enables the Commission to compound any offence punishable under the Act by accepting such 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 of that offence is to mean that the commission may let go of the offence or put more succinctly may agree to drop the charges if the accused/ defendant is prepared to give up such of money as the commission may deem fit following the Act as was done in Igbinedion's, Cecilia Ibru's, John Yakubu's and Chidolu's cases to mention but a few.

In Chidolue v E.F.C.C the Court held that before an offence can be compounded, three-element(s) must be present

1. There must be an agreement not to prosecute
2. The accused must know about the actual crime committed and
3. There must be receipt of some consideration

Flowing from the Chidolue case there is a clear absence of the role of the Attorney General and the Court in the EFCC Act to warrant the conclusion of the learned scholars that by S.14 (2) of the Economic and Financial Crimes Act 2004, Plea Bargain has always been a part of our Criminal Law.

It must be emphasized that the term compound used in the EFCC Act, 2015 do not have the same meaning and implication when putting side by side with the word compound in the Criminal Procedure Act. The Criminal Procedure Code permits/ allows certain offences to be compounded without the leave of the court at any time before the accused person is convicted by the court or committed for trial at the High Court and allow others to be compounded with the consent of the judge, who has jurisdiction to try such offences.

Under the Criminal Procedure Act, the word compound has the same meaning as to conceal, which is an offence. S.127 CPA provides thus;

Any person, who asks, receives or obtains or agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person upon any agreement or delay a prosecution for a felony, or withholds any evidence thereof, is guilty of an offence.

If the felony is such that a person convicted of it is liable to be sentenced to death or imprisonment for life, the offender is guilty of a felony and is liable to imprisonment for seven years. In any other case, the offender is liable to imprisonment for three years.

Flowing from above to compound under the Criminal Procedure Code is to frustrate the prosecution and cannot be said to mean the same thing as a plea bargain.

It is also incorrect to assert that the unquestionable powers exercised by the Attorney General in State V.S.O ILori (1983)1 SCNLR 94, under the Constitution of the Federal republic of Nigeria 1999 (as amended) to enter a nolle prosequi that can arguably be abused and/ or exploited by the prosecution in favour of an accused/ defendant by entering into a form of negotiation or arrangement with him without necessarily informing the Court amounts to plea bargain.

Section 174 of the CFRN 1999 (as amended) provides thus,

1. The Attorney General of the Federation shall have powers
 - a. To institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court-martial, in respect of any of the offences created by or under any Act of the National Assembly.
 - b. To undertake and continue any such criminal proceedings that may have been instituted by any other authority or person; and
 - c. To discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.
2. The powers conferred upon the Attorney General of the Federation under subsection (1) of this section may be exercised by him in person or through officers of his department.
3. In exercising his powers under this section, the Attorney General of the federation shall have regards to the public interest, the interest of Justice and the need to prevent abuse of legal process

There is nothing in the provisions that S.174 or S.211 of the 1999 Constitution (As amended) that equates the exercise of the discretionary power of the Attorney General with, to mean or accommodate plea bargain strictly speaking.

The first legislation that specifically mentioned plea bargain is the Lagos State Administration of Criminal Justice Law, 2007. The law provides explicitly thus;

Notwithstanding anything in this law or any other law, the Attorney-General of the State shall have power to consider and accept a plea bargain from a person charged with any offence where the Attorney-General is of the view that the acceptance of such plea bargain is in the public interest, the interest of justice and the need to prevent abuse of legal process.”

It is instructive to note that by the wordings of S.75 of the Administration of Criminal Justice Law, 2007. The powers of the Attorney-General extend to all criminal offences without any limitation.

It is this state of law arguably that birthed the Administration of Criminal Justice Act, 2015 applicable in the Federal Capital Territory (FCT) and other Federal Crimes in Nigeria. This Federal Law made copious provisions for the framework of criminal justice system and the scope of a plea bargain in Nigeria. This Act been domesticated by some states of the federation, including Edo State. The Administration of Criminal Justice Act (ACJA) (2015) defines plea bargain to mean:

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 of the higher charge subject to the Courts approval. Agaba enumerated the ingredients of plea bargain as defined by the Administration of Criminal Justice Act 2015 thus;

- a. That there must be a prosecutor and an accused person/defendant;
- b. That there must be a negotiation between the prosecutor and the accused person/defendant.
- c. That the talks which must have ended in an agreement with concessions and compromises from the prosecutor and the accused/defendant;
- d. That there is a plea, that is, a plea guilty to the charge or lesser charge;
- e. That there is the involvement of the court; and
- f. That there is an acceptance of the request by the court.

Put in another form, plea bargain so defined by the Act must involve four (4) key “players” to wit; The Prosecutor, the Defendant, the Victim, and the Court.

Criticism of Plea Bargain

Plea bargain has come under intense and severe criticism from one jurisdiction to the other based on the perception of the citizenry and the modus operandi of the concept. In the United States of America, critics argue that the government uses its official powers to pressure or coerce accused/defendant to plead guilty to a crime, (especially where there is little or no exculpatory factors) for a lesser punishment thereby waiving his constitutional rights to a fair trial or face a greater penalty if the prosecution is concluded. This presupposes that the American sentencing differential is by threat. Langbein (1978) in his article remarked thus;

Because our constitution guarantees adjudication, we threaten the criminal defendant with a markedly greater sanction if he insisted on adjudication and is convicted. This sentencing differential, directed towards the defendant to waive his right trial, makes plea bargaining to work. It also makes plea bargaining intrinsically coercive.

In the American case of State V Williams, a defendant who “negotiated” his plea with the judge in Chambers best describes how coercion or undue influence robs an accused person of his rights while attempting to withdraw his plea, recant;

...I had no intention of pleading guilty. But...you invited me into [your] chambers, you influenced me and pressured me into giving a guilty plea. Your Honour, since I initially turned down a plea bargain in the hallway. I can honestly say if you wouldn't have taken me in your chambers, I wouldn't have ever pled guilty. Myself being in a powerful judge's chamber, you eroded my ability to make a decision on my own.

In Nigeria, before the Administration of Criminal Justice act, 2015 made copious provisions for the framework and guidelines for the application of the plea bargain in criminal trials, it was one of the most debated and sternly criticized concepts in the Administration of our Criminal Justice system because of the initial misconception about its modus Operandi particularly among jurist (Kayode 2012), academic scholar, and legal practitioners. This controversy is not unconnected with the fact that there was initially a shortage of works on the concept of plea bargain among

Nigerian authors and academic scholars (Oluwatoyin, 1999 and Nwadialo, 1976).

Today most of the jurists, academic scholars, and legal practitioners work or comments made before the Administration of the Criminal Justice Act, 2015 are now indexed for academic references only. The plea bargain is now part and parcel of our corpus juris as a quick way of resolving criminal issues/ matters.

Plea bargain as an integral part of our Criminal Justice system is now copiously provided for in the Administration of Criminal Justice Act 2015. Under the Act, the prosecutor may receive and consider a plea bargain from the defendant charged with an offence either directly from the defendant or on his behalf or may offer a plea bargain to a defendant charged with an offence. The prosecutor may also enter into a plea bargaining with the defendant, with the consent of the Victim or his representatives during or after the presentation of the evidence of the prosecution but before the presentation of the evidence of the defence in S.270(2) ACJA (2015) subject to three conditions to wit:

- a. That the evidence of the prosecution is insufficient to prove the offence charged beyond a reasonable doubt;
- b. That the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative, or
- c. That the Defendant, in a case of conspiracy, has fully cooperated with the investigation and prosecution of other offenders.

The prosecutor is only obliged to accept or make an offer for a plea bargain if it is in the interest of justice, the public interest, public policy, and the need to prevent abuse of legal process.

The prosecutor and the defendant or his authorized representative may before the plea, agree on the term of sentence, a plea of guilty, lesser offence and or appropriate conviction.

The prosecutor has a responsibility to accept in line with S.3 of the Administration of Criminal Justice Act, 2015 only, after consultation with the investigating police office and the victim or his representative and with due regards to the nature of and circumstances relating to the offence, the defendant and public interest.

In determining whether it is in the public interest to enter into a plea bargain, the prosecution shall weigh the followings:

1. The defendant willingness to cooperate in the investigation or prosecution of others.
2. The defendant's history concerning criminal activity
3. The defendants' remorse or regrets and his desire to assume responsibility for his conduct
4. The desirability of prompt and certain disposition of the case
5. The likelihood of obtaining a conviction at trial and the probable effect on witnesses
6. The likely sentence or other consequences if the defendant is convicted
7. The need to avoid delay in the disposition of other pending cases
8. The expenses or trial and appeal; and
9. The defendant's willingness to make restitution or pay compensation to the victim

According to S.270 (7) ACJA (2015) the agreement between the parties (the prosecution and the Defendant must be evidenced or reduced into writing and shall state therein that before the conclusion of the agreement, the defendant has certain rights to wit;

- a. The right of remaining silent;
- b. Of the consequences of not remaining silent and
- c. That he is not obliged to make any confession or admission that could be used in evidence against him.
- d. State fully the terms of the agreement and any submission made, be signed by the prosecutor, the defendant, the legal practitioner, and the interpreter, as the case may be; and a copy of the agreement is to be forwarded to the Attorney General of the Federation.

The presiding Judge or magistrate before whom the criminal proceeding is pending shall not participate in the discussion contemplated in the plea bargain (S.270 (8) ACJA 2015) but shall, in turn, inquire from the defendant to confirm the terms of the agreement. The presiding Judge or the 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.

When the presiding Judge or the Magistrate is satisfied that the defendant is guilty of the offence to which he had pleaded guilty, he shall convict the defendant on his plea of guilty to that offence, and shall be delivered by the court in writing containing point or points for determination, the decision and the reason for the decision and shall be dated and signed by the Judge or Magistrate at the time of pronouncing it. (S.308 (1)b ACJA 2015)

Where the presiding Judge or the Magistrate is of the opinion that the defendant cannot be convicted of the offence in respect of which the agreement was reached and to which the defendant has pleaded guilty or that the agreement is in conflict with the defendant's right, he shall record a plea of not guilty in respect of such charge and ordered that the trial proceed. (S.270 (10)b ACJA 2015)

According to S.270 of the ACJA 2015, where a defendant has been convicted based on the terms agreed with the prosecution, the presiding Judge or the Magistrate shall consider the sentence as agreed upon in three ways:

- a. Where the presiding Judge or the Magistrate is satisfied that such a sentence is an appropriate sentence, he will impose the penalty.
- b. Where the presiding Judge or Magistrate is of the view that he would have imposed a lesser sentence than the sentence agreed upon, he will impose a lesser one.
- c. Where the presiding Judge or the Magistrate is of the view that the offence requires a more substantial punishment than that sentence agreed upon, he shall inform the defendant of such a more significant sentence he considers to be appropriate.

Where the defendant has been notified of the heavier sentence, the defendant may abide by his plea of guilty as agreed upon and agree that subject to his right to lead evidence and to present argument relevant to sentencing, the presiding Judge or Magistrate will proceed with the sentencing (S.270 (15)a ACJA 2015), where the defendant withdraws from his plea bargain agreement, the trial shall start de novo before another judge or magistrate as the case may be.

In a plea bargain, it is the responsibility of the presiding Judge or Magistrate to make an order that any money, asset or property agreed to be forfeited under the plea bargain shall be transferred to and vest in the victim or his

representative or any other person as may be appropriate or reasonable feasible. At the same time, the prosecutor shall take reasonable steps to ensure that any money, asset or property agreed to be forfeited or returned by the offender under plea bargain are transferred to or vested in the victim, his representative or the person lawfully entitled to it notwithstanding the provision of Sheriffs and Civil processes Act.

Any person who willfully and without just cause obstructs or impedes the vesting or transfer of any money, asset or property under his law shall be guilty of an offence and liable to imprisonment for seven years without an option of fine.

A person who has been convicted and sentenced in a particular matter by a plea bargain shall not be charged or tried again on the same fact for a greater offence earlier charged to which he had pleaded to a lesser offence.

An appeal shall not lie against the judgement of the court in a plea bargain to any other court, for the trial court is the court of finality except where fraud is alleged.

In Edo state cases where a plea bargain is entered into between the prosecution and the defendant, the prior consent of the Attorney General shall be sought and obtained. The attorney General shall give a directive either of a general or specific nature on the procedure for obtaining his consent. Such a guideline shall be published in a gazette. (S.270 (17)a-b ACJA 2015).

Flowing from the above framework, the writer can safely conclude as follows;

1. A plea bargain is not a part of the back of the defendant by the Court that the defendant “can go home and sin no more” as erroneously misconceived.
2. That plea bargain under our law reflects the four cardinal contractual terms of a valid contract to wit, offer acceptance, consideration, and intention to enter into a legal relationship.
3. That plea bargain is not imposed, but voluntarily made and negotiated to the satisfaction of all parties (the prosecutor, the defendant, the victim, and the Court) involved.
4. A plea bargain is subject to the interest of justice, public interest, public policy upon specific established guidelines.
5. A plea bargain is meant to restore a victim to his original position as much as possible. It embraces restorative Justice.
6. It leaves the Court at the center stage as an unbiased umpire who, though does not play any role in the negotiation between the prosecution and the Defendant, ensures justice prevails in sentencing the defendant, hence maintaining its status of an impartial judge and the last hope of the common man.
7. It embraces the twin pillar of Justice Wholly – Audi alteram partem and Nemo iudex in causa sua
8. It follows against the background of our Criminal Jurisprudence in Nigeria, that once an accused/defendant accedes to the use of plea bargaining, his right to presumption of innocence and the corresponding duty of the prosecution to prove its case beyond reasonable doubt will abate, a guilty plea will be entered, and the Court will pronounce a pre-negotiated penalty.

The Constitutionality of Plea Bargain

The guaranteed Constitutional rights of a defendant in a criminal case which includes;

- a. The presumption of innocence
- b. The rights to remain silent which embodies the privilege against self-incrimination and
- c. The right to examine the witness called by the prosecution

Are also sufficiently guaranteed under the Administration of the Council Justice Act (ACJA), 2015

The ACJA did not only mandate that the plea bargain agreement between the prosecutor and the Defendant should be in writing. It explicitly spells out the guiding principles, all of which must be contained in the contract before they are signed.

These constitutionally guaranteed rights are rights that the defendant or his legal representative is not unaware of, but have voluntarily given up or waived them in pursuit of a plea bargain.

Apart from the fact that the guidelines for the operation of the plea bargain under the Administration of Criminal Justice Act 2015, takes into cognizance the constitutional rights of the defendants, the ACJA 2015 specifically places the responsibility or burden of ascertaining whether he entered into the agreement voluntarily on the presiding Judge or Magistrate.

Where the presiding Judge or the Magistrate is of the opinion that the defendant cannot be convicted of the offence in respect of which an agreement was reached between the prosecutor and the accused person/defendant to which the defendant has pleaded guilty or that the agreement is in conflict with the defendant’s right, The presiding Judge or Magistrate shall record a plea of not guilty in respect of such charge and order that the trial proceed.

Although the Evidence Act places the burden of proving a wrongful act on the prosecution (Evidence Act, 2011) and the standard proof, is proof beyond reasonable doubt in *Bolanle V The State* (2009), it is the writer’s humble view that where the presumption of innocence guaranteed under the constitution is rebutted by the free and voluntary confessional statement of an accused person himself in *Adebayo V The State* (2015) or by his admission of guilt, chooses to make a formal request in person or through his legal representatives voluntarily, or accept the terms and condition of the offer made by the prosecution without duress or undue influence for a plea bargain, jettisoning his right to cross-examine in part or a whole and chooses the option of pleading guilty to get a lesser punishment, his constitutional and evidential right cannot be said to have been violated as laid down in the case of *Ariori v Elemo* by his waiver.

Benefits of Plea Bargain as enshrined in the Administration of Criminal Justice Act 2015

The benefits that accrue from plea bargain are numerous and include but not limited to the followings:

1. It will allow persons who admit responsibility for their crimes to receive consideration for their remorse in the form of a lighter sentence.
2. It is transparent. It involves the major parties in the administration of criminal justice to wit, the prosecutor,

3. the accused, the victim, the police, the prosecutor, and the impartial arbiter- the Court. This no doubt leads to quick and satisfactory dispensation of justice as cases that need not proceed to trial are quickly dispensed with.
4. It will conserve the funds that would have been expended by the state in an investigation, prosecution, and trial of the Defendant, especially in certain complex cases such as economic crimes.
5. It will prove useful where there is reluctance on the part of the prosecution witness to give evidence in the open Court either because of shame or perceived stigma, especially in sexual offences.
6. It will allow a person who has successfully “bargained” and has received a lighter sentence to be used as a prosecution witness in a more severe or heinous crime.
7. It will help the Court and the prosecutor to manage their caseloads in ensuring that cases that need not to go through plenary trials with its attendant frustration are not allowed to linger.
8. It will moderate the prison population and the attendant pressure on the prison facilities on the one hand and also help reduce the cost of keeping inmates in prison on the other hand.

The Nigerian Correctional Service Act, 2019

As earlier mentioned, The Criminal Justice System (CJS) / Administration refers to the collection of rules, principles, policies, and practices that guides the prescription, management, monitoring, trial, and punishment of crimes. It covers events that occur before, during, and after a criminal Justice System to wit; the Police, the Courts, and the Nigerian Correctional (Prison) Service. The Nigerian Correctional (prison) Services which is the third tier in the criminal justice system, is within the exclusive jurisdiction of the Federal Government. Therefore, no state government has the power to own or control any correctional (prison) center in Nigeria.

A prison is a place delimited and declared as such by the law of the state and created to ensure restraint and custody of individuals, accused or the convicted for violating the criminal law of the state. (Cox *et al.*, 1989). Put in another form, a prison, jail, or correctional facility is a place in which individuals are physically confined or interned and usually deprived of their freedom. A rehabilitation and correctional facility meant to re-integrate the lives of those who have violated the rules of society.

Prison sentencing dates back to so many centuries, and currently, there is no country without a prison system in place. It can either take the form of short-term detention of a person awaiting trial or long-term imprisonment upon finding of conviction, sentencing, execution, or some other type of corporal punishment. Persons convicted by Court and sentenced to jail are kept in the Nigerian prison. (Awe, 1986).

The prison system in Nigeria is before the 1914 amalgamation of the Southern and Northern protectorate. Before colonization, the Criminal Justice System did not have a formal structure; offenders were sanctioned under the applicable customary law of the offender and the philosophy of “no offender goes unpunished” was the order of the day. The accusatorial system operative in the Nigerian Legal System permits the imposition of a sentence under the Nigerian Penal System initially; the prisons were mere

detention camps until the establishment of Native Authority Prison. The abolition of Native Authority Prison in 1968 and the subsequent unification of the person services in Nigeria Prison Services in Nigeria marked the beginning of Nigeria Prisons Service as a composite reality.

The mandate of the Nigerian Prison Services before the enactment and the passing into law of Nigerian Correctional Service Act, 2019 is in three (3) folds to wit;

- a. To take into lawful Custody, all persons so ordered by the Court of competent jurisdiction.
- b. To reproduce them in Court when required in good health. Identifying the causes of their behaviour and
- c. Retraining them to become useful citizens in society. (Nigerian Prison Service, 1981; The Guardian, 1988)

This repealed law was fraught with a lot of criticism from Human Rights activists for its inability to meet the prison objectives and international best practices.

The Nigerian Correctional Services Act, (2019), addresses primarily, issues that were hitherto not covered under the repealed Nigerian Prisons Act, 2004. The law provides and sets out clear out rules and obligations for the Nigerian Correctional Service *viz a viz* the rights of inmates in line with the internationally accepted standard and practices. The primary objective of the law focuses on correction, reformation, rehabilitation, and integration.

The highpoints of the NCSA (2019) are;

- a. The law divides the Correctional Service into two main areas which are, a) The Custodial Service and b) Non-custodial Service.
- b. The law empowers the state Comptroller of Prisons to reject additional inmates where the prison in question is full, and the appropriate authorities, have been duly notified. It is an offence that attracts punishment if the state controller continues to accept inmates after the appropriate authority has been duly notified.
- c. The Custodial Service will, among other things, take control of persons legally interned in safe, secure, and humane conditions and provide support to facilitate the speedy disposal of cases of persons awaiting trial.
- d. The Non-custodial service will be responsible for the administration of non-custodial measures like community service, probation, parole, restorative justice measures, and such other measures as a court of competent jurisdiction may order.
- e. The law states that the Correctional Service must initiate behaviour modification in inmates through the provision of medical, psychological, spiritual, and counselling services for all offenders, including violent extremists.
- f. The law also states that where an inmate sentenced to death has exhausted all legal procedures for appeal and a period of 10 years has elapsed without the execution of the sentence, the Chief Judge may revert the death sentence to life in imprisonment.

Under the Nigerian Correctional Services Act (2019), the ‘Correctional Service’ shall consist of Custodial Service and Non-Custodial Service.

The functions of the Custodial Services are:

- a. Taking into custody, all persons legally interned;
- b. Providing safe, secure and humane custody for inmates;
- c. Conveying remand persons to and from Courts in motorized formations;

- d. Identifying the existence and causes of anti-social behaviour of inmates;
- e. Conducting risk and needs assessment aimed at developing appropriate correctional treatment method for reformation, rehabilitation, and reintegration;
- f. Implementing, reformation and rehabilitation programs to enhance the reintegration of inmates back into the society;
- g. Initiating behaviour modification in inmates through the provision of medical, psychological, spiritual and counselling services for all offenders including violent extremists;
- h. Empowering inmates through the deployment of educational and vocational skills training programs and facilitating incentives and income generation through Custodial Centres and industries;
- i. Administering Borstal and related institutions;
- j. Providing support to facilitate the speedy disposal of cases of a person awaiting trial; and
- k. Performing other functions as may be required to further the general goal of the service.

The Non-Custodial Service is responsible for the administration of non-custodial measures to with:

- a. community services
- b. Probation
- c. Parole
- d. Restorative Justice measures and
- e. Any other non-custodial measure assigned to the Correctional service by a Court of Competent Jurisdiction

Community Service

The Suspended Sentencing/Community Service which is one of the non-custodial sanctions in the NCSA 2019 is wholly embraced by the ACJA 2015. The suspended sentence is limited to non-capital offences i.e. it excludes offences involving the use of arms, offensive weapons, and sexual offences. The foremost considerations in employing suspended sentencing/community service by the Court would be the nature of the crime, the antecedents of the offender, the need to decongest the prison, and the possibility of rehabilitation outside the prison. The Chief Judge of the State is empowered under the ACJA 2019 to establish community service centres in every judicial division of the state. The community service centre shall be supervised by the registrar of a Court in that judicial division, to ensure the execution of a community service order made by any Judge in that State.

The nature of the community service shall be environmental sanitation, assisting in the production of agricultural produce, construction of mining, and any other type of service which in the opinion of the Court, would have a beneficial and reformatory effect on the character of the convict. A defendant sentenced to community service cannot be sentenced to a term of imprisonment for the same offence. However, where there is a default or failure on the part of the defendant to perform his community service to the satisfaction of the Court, the defendant can be sentenced to a term of imprisonment for the remaining portion of his community service, which he is in default of. A community service order of the Court shall not exceed six months of 5 hours daily work. It must be pointed out that the Court has

the power to reduce the length of the community service up to 1/3 of the original sentence but not to increase it.

Probation

Probation is not for high-end capital crimes. An accused on probation is ordered to carry out and fulfill certain conditions set forth prior by the Court under the supervision of a probation officer. A probation officer is generally instructed to refrain from possession of firearms and is ordered to stay employed and concentrated over a directed place and abide by a curfew. Arming of the probation officer is allowed in some jurisdictions. There are at least three (3) types of supervision of persons on probation in the United States of America, to wit:

- a. Intensive GPS Monitored Supervisions: This is the most intrusive form of probation and is meant for violent criminals, blacklisted high ranking gang members, and sex offenders;
- b. Standard/Regular Supervision: Under this type of guidance, the felon/offenders report to an officer, at least twice or quarter in a week; and
- c. Unsupervised Probation: This type of probation does not possess direct supervision by an officer. If the terms and conditions are not fulfilled according to the orders, the officer may file a petition to revoke the probation.

In Nigeria, The Criminal Procedure Act of 1945 was the first statute to provide for probation for both juvenile and adult offenders, followed by the Children and Young Person law enacted in 1946. Although Probation has been part of our lives, it is hardly resorted to in dealing with adults but juvenile offenders. Presently, there are several remand homes available in Nigeria rendering probation services to juvenile offenders.

While the NCSA 2019, recognizes Probation as one of the non-custodial measures, the Administration of Criminal Justice Act 2015, embraces the use of Probation as a non-custodial way of rehabilitating offenders or convicts. S. 453 of the law defined a "probationary order" as an order containing a condition specified in S. 455 of this law.

For a defendant to qualify for probation, The ACJA 2015 provides that the Court will consider the character of the offender, his mental state of health, criminal record(s), age, and any other issue that needs to be considered. The Court may order probation without proceeding to conviction if the Court thinks it would be wasteful to inflict punishment or make an order for a reasonable sentence. An order may, therefore be made by the Court dismissing the charge or discharging the defendant on the condition of him entering into a recognizance, with or without sureties, to be of good behaviour and to appear at any time during such period not exceeding 3 years as may be specified in the order. The Court may also require the defendant to pay damages or compensation to the victim(s) for his criminal activities. Such payment can be made in person or by proxy. The probation order by the Court must not exceed three (3) years and can be altered or varied at the discretion of the Court at any time if the convict fails to observe any of the conditions of his recognizance, the Court may issue a warrant for his arrest or a summons. Where the Court is convinced that the convict has failed to observe the condition of his recognizance, the Court may proceed to convict and sentence the defendant.

Parole

Parole is the release of a prisoner from imprisonment before the full sentence is served by the parolee, on the grounds of good behavior. The parole system as a means of prison decongestion can be traced to the 20th century when indeterminate sentencing dominated the American jurisprudence. In the Parole System, releasing prisoners is not received on a platter of gold. It is usually at the request of the Parole clothed with compelling and valid reasons. There are three types of Parole to wit; (1) Adult Parole (2) Discretionary Parole and (3) Inmate Parole

a. Adult Parole

Adult Parole is a term that is associated with the release of a prisoner based on his behavior and abiding himself to certain criminal restrictions. The offender is always under the viewpoint of the parole authority after the respective release.

b. Discretionary Parole

Discretionary Parole allows the offenders to rejoin the society by serving his or her last part of the sentence under the provision of a probationary officer in comparison to the mandatory parole where the authority is bound to provide regulation based on the offender's good time. An offender has to complete at least one-third of his or her sentence to receive discretionary parole approved by a discretionary Parole Board which is an independent agency and a part of the Department of Corrections. The probation can be for a very short period, or as long as five to ten years, depending on the seriousness of the crime and the offender's attitude and good times, both in the prison and in the society.

c. Inmate Parole

Inmate Parole refers to the opportunity given to a prisoner to spend or complete the jail term elsewhere due to distinct health challenges or other compelling reasons. The 'elsewhere' in question could be a hospital or even the person's home, where he or she will be receiving due treatment while his or her prison sentence still runs. In typical parole for inmates, certain conditions must be fulfilled before it is granted to them. First of all, the reason for the parole must be verified. If the case is on health ground, a medical doctor is usually engaged to audit the health status of the inmates. When the doctor finally carries out the various tests, they come out with the result. If the result says that the health of the inmates is ebbing away, the prison officials will then grant the inmates the parole due to them. If the reverse is the case, the inmates still have to be in the prison serving their jail terms. In the case of sentences of four years or less, a prisoner is required to serve at least half of that period in custody before being eligible to be released on parole. For sentences above four years, a prisoner is likely to be released on parole when they get to within two years of their end date. As a general's rule, a parolee cannot leave the state or the jurisdiction of the Court while on parole without the permission of the parole officer. If the parolees' job requires him to travel outside of the state, he may be permitted to do so but that permission must be granted before leaving the state.

In Nigeria, the facilities, mechanism, and technical know-how for the successful operation of parole are at the embryonal stage compared to that of the United States of America. In Nigeria, it is on the recommendation of the

Controller General of the Nigerian Correctional Centre that the Court can consider a parole order. The Controller General of the Correctional Center also has the additional responsibility of facilitating the reintegration of the parolee into society.

Restorative Justice

The NCSA 2019 makes provision for Restorative Justice Measures as a non-custodial measure at the instance of the Controller General of Prisons who shall provide the platform for, (a) victim-offender mediation; (b) family group conferencing (c) community mediation; and (d) any other mediation activity involving victims, offender and, where applicable, community representative. In achieving this purpose, the Correctional Service shall liaise with the Court and other relevant agencies of government. Restorative justice under the NCSA 2019 may occur (a) at the pre-trial stage (b) at the trial stage (c) during imprisonments, and post-incarceration. The implementation of these restorative justice measures shall be done by a supervisor appointed by the correctional service.

As mentioned earlier, the third arm of the Nigerian Criminal Justice System is the Nigerian Correctional (Prison) Services charged with the three-fold responsibility of reformation, rehabilitation, and reintegration of offenders. As clear as these three-fold mandates is, nine (9) months after the passing into law of the Nigerian Correctional Service Act, 2019, the management of the Nigerian prison has not been able to deliver on its core mandate. The prisons are still in deplorable state and overcrowded with awaiting trial inmates. The physical infrastructure and housing facility could better be described as uncivilized. As it was in the past as reported by Soyinka, Kangiwa, and Obioha, so it is even now. Jailbreak, rebellion, and civil disturbances are now a reoccurring decimal in Nigeria prisons.

Efforts made by the government to improve the facilities in recent times have not cured the problem of overcrowding. The policies that have over time been put in place have not yielded the much-desired result.

It's the writer's humble view, that if the provisions in the Nigerian Correctional Service Act (2019) are effectively implemented by the enabling authority to the letter, it will give opportunities for the more significant application of imprisonment/non-custodial sanctions, compliance to international human rights standards, reduction of prison overcrowding, and increased implementation of rehabilitation and reintegration programs, among others. It will specifically provide the following, to wit;

- a. Correctional officers across the entire states of the federation will be available to supervise those that the courts will sentence to non-custodial measures. This will encourage higher utilization of non-custodial measures. Besides, it will provide a better and alternative disposition measure for offenders that do not require custodial sentences.
- b. It will enable further supervision and facilitation of reintegration in the community by correctional officers, especially regarding the monitoring of those on parole and those coming out of prisons/custodial sentencing which are provided with aftercare services
- c. It will increase the quality of justice dispensed by providing the correctional officers and platforms for the facilitation/provision of restorative justice models, and these will be applicable at the different phases of the

criminal justice process where suitable and agreed by both the victim and the offenders. With this, more victims will be able to have the opportunity of having closure for the offences committed against them. This approach will help facilitate healing, restoration, reconciliation, and transformation both for the victims and the offenders.

- d. The correctional officers will now play more active roles in prison/custodial centres' overcrowding. This the law has done by having them tasked with the activation of early warning signals by requiring them to send a notification to all relevant stakeholders whenever the prison/custodial centres is about to exceed the official capacity and by requiring them to refuse admission after the expiration of the three-month deadline following the earlier notification.
- e. The establishment of Mental health Review Board in all the states of the federation by the Comptroller-general of the Nigerian Correctional Service will further help address the current problems faced by mentally disadvantaged persons with the Nigerian criminal Justice System. E.g. the issue of having the so-called 'civil lunatics' (those who are detained in the prison asylums but have not committed any criminal offence) will be reduced to a great extent.
- f. It will prevent the mixing of young offenders with adult and hardened criminals, to mention but a few.

Plea Bargain and the Nigerian Correctional Service Act, 2019

Even though the Nigerian Correctional Service Act 2019 empowers the prison authority to reject inmate beyond its capacity, provide support to facilitate the speedy disposal of cases of persons awaiting trial and it is authorized to implement the non-custodial sentence, the NCSA 2019 is utterly silent on the use of plea bargain as a model that will moderate the prison population and the attendant pressure on the prison facilities on the one hand and also help reduce the cost of keeping inmates in prison on the other hand.

Similarly, the Administration of Criminal justice Act 2015, which embraced plea bargain that can help moderate prison reception and reduce the cost of maintaining inmates, did not accommodate/assigned to the Nigerian prison Service Act, 2004 (now repealed), before the Administration of Criminal justice Act came into effect, 2015.

There is, however, a window provided by the NCSA, 2019, that allows for collaboration between the judiciary and the Nigerian Correctional Service. S. 43 (2) b NCSA, 2019, provides:

That the Correctional Service shall liaise with the Court and other relevant agencies of government in order to achieve restorative justice at (a) at the pre-trial stage (b) at the trial stage (c) during imprisonment; and post-incarceration/imprisonment.

S.18 91) of NCSA 2019 further provides that,

In its effort in developing an effective mechanism to enhance speedy trial and resolution of cases in compliance with its responsibility of liaising with heads of justice institutions and agencies to review and eradicate the high number of pre-trial detainees.

These relevant sections of the law give ample opportunity to the Nigerian Correctional Services as the custodian of offenders to embrace and facilitate the use of Plea bargain at the pre-trial and the trial stages of the prosecution of

defendants. Since Plea bargain is a transparent process that will involve the other major parties in the administration of criminal justice to wit: the prosecutor, the accused, the victim, the police, and the impartial arbiter – the Court, there is no doubt that this will lead to the quick and satisfactory dispensation of justice at no additional cost. It will also reduce the number of awaiting trial detainees as cases that need not proceed to trial will be quickly dispensed forthwith. It is even more desirable to do so more than ever before now with the reluctance of the Courts to use non-custodial sentence for several reasons, some of which are:

- a. Non-Custodial sentencing is at discretion of the Court.
- b. There are a limited number of correctional homes, community service centre that are established by the government across the states of the federation to implement the non-custodial sanction effectively.
- c. There is no updated identity/ biometric data is place with regards to the population and a proper mapping system showing the various locations within the Country.
- d. There are no monitoring devices available to the probation officer and or the community service sentence officer to monitor the day to day activities of the defendants.
- e. Who will ensure compliance to the order of Court with regards to non-custodial sentencing when the defendant is defaulting? Are the Court rules restricted to only making orders?
- f. There are no protective measures/facilities in place for the probation officer in the course of trying to befriend the defendant, who might be violent.

Conclusions

No doubt, the ACJA, 2015, and the reforms in the NCSA, 2019, will go a long way to improve the criminal Justice System if its provisions are painstakingly implemented and if there is a synergy between the principal actors in the justice delivery system to arrest likely bureaucratic bottlenecks in achieving the set goal.

Recommendations

In encouraging the Court to consider non-custodial sentencing as an alternative to confinement in prison, there is the need to build more confinement homes, more community centres created and the right amenities put in place to accommodate inmates.

There is an urgent need for the establishment of a database where information concerning every citizen is preserved from birth to death. The establishment of a biometric database of convicts will no doubt easily sway the judges into considering the non-custodial sentencing to conferment in prisons.

Finally, the right technology also has to be put in place to facilitate the tracking of any offender on probation or sentenced to community service to strict compliance to the terms of the sentence as no court its order being flouted or disobeyed.

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