A CRITICAL OVERVIEW OF THE JURISPRUDENCE AND THE APPLICABILITY OF THE AMERICAN PLEA BARGAINING SYSTEM IN NIGERIA

BY

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INTRODUCTION

One system of criminal procedure absent from the Nigerian Law and which has been consistently applied in the United States of America despite strong opposition from all quarters[1] is the plea bargaining system. The American law and the adherents of this system, and indeed Nigerian scholars, who advocate the application of this system of criminal procedure in Nigeria, have, as their rationale for its use, the quick dispensation of caseloads, decongestion of prisons, and the saving of cost, inter alia. Already, calls have been going round the quarters, especially among Nigerian scholars, for the importation and application of this system of criminal procedure in Nigeria.[2]

But the jurisprudence of this plea bargaining system, like any other legal or social phenomena, cannot and should not be seen from only one angle of the mirror. For while there may be some merit in the American plea bargaining system, such merits, no matter how heavily weighted, cannot outweigh the demerits attendant thereon, especially when balanced against the whole intent and purport of criminal law, and the objects of criminal trial and punishment. The need for criminalizing certain behaviours as injurious to the society, the further need for criminals to be punished to serve as deterrence to other potential criminals, or to be corrected, or rehabilitated

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1. The system has been widely attacked by both the American Liberals and Conservatives alike. See Frase, R. S: Comparative Criminal Justice (California: California Law Review Inc., vol. 78, n.3, May 1990) p. 626.
2. For instance Okoh A. Alubo of the University of Jos strongly advocates the importation and application of the system in Nigeria. See Infra, note. 14.

so as to become useful to themselves and the society at large; and indeed the need for the prevalence of the highest moral values in the society, i.e. justice, cannot at all be sacrificed on the abominable altar of the so-called 'necessity' or 'expediency'. For while it is true that 'justice delayed, is justice denied', it is even truer that 'too swift arrives as tardy as too slow.'

This paper therefore seeks to discuss the jurisprudence of the application and applicability of the American plea bargaining system in Nigeria. In prosecuting this intellectual exercise, we shall undertake the definition of the terms, 'plea' and 'plea bargain'. We shall also take a synoptic overview of plea taking under the Nigerian law. We shall further look at plea-bargain under the American law, spotlighting its merits and demerits. Thereafter we shall take a critical look at the applicability of the American plea bargaining system in Nigeria in the light of our criminal procedure laws, and fundamentally, our Constitution.

The present writers are of the view that the plea bargaining system is fundamentally inconsistent with the intent and purport of our constitutional presumption of innocence, and our criminal procedural requirements, especially that he who asserts the commission of a crime must prove same, and the onus lies on him, not only so to do, but to do so beyond reasonable doubt.[3] It is therefore not for the accused to prove either his innocence or guilt. In addition, ***the prosecution cannot hide under the cloak of expediency or necessity to trade on justice through the bargain, cooperation or settlement of the accused***. After all, the major cause of prison congestion is not attributable to lengthy trials but to the unprofessionalism of the Nigeria Police, who incidentally are responsible for the prosecution of more than 80% of criminal offences in Nigeria. The present writers assert affirmatively that many inmates in most of Nigerian prisons, accounting for more than 62%, are merely awaiting trial and some have so awaited for well over 7-8years without due trial. (Most of them are simply dumped there by the police without remand warrants or duly signed warrants from any court of law). Neither can the argument that the process save cost be tenable, as such cost cannot buy 'justice' which according to Daniel Webster,[4] 'is the highest interest of man on earth'.

3. See Major Yekini v. Nigerian Army (2006) 3 CLPR 75 at 82-83 per Galadima, JCA.
4. Webster, D. (1782-1852) – Lawyer, Senator and U.S former Secretary of State (1841-1843 & 1850-1852).

Definition of 'Plea' and 'Plea Bargain':
There is no universally accepted definition of the word 'plea' as the word itself eludes precise definition. However, reference to leading texts may be helpful.

According to the Black's Law Dictionary[5] the word 'plea' is defined as:

> *...The defendants' response to a criminal charge (guilty, not guilty, or nolo contendere)...*

This definition is however not exhaustive as the subject matter of plea in a criminal trial goes far beyond a mere response to a charge.

The Nigeria Law Dictionary however defines a plea as:

> *... An answer to a charge, pleading. In criminal proceedings, the accused enters a plea after indictment. He may plead 'guilty' or 'not guilty'. He may plead to the court's lack of jurisdiction or a special plea like* ***autre fois acquit, autre fois convict****, or pardon.*[6]

This definition is not materially different from its Black counterpart. What is however apparent is the fact that plea relates to the answer or response of an accused to the charge(s) for which he is summoned before a Court of Law and indicted. It is disheartening that none of the two procedural Codes in Nigeria, i.e. the Criminal Procedure Act[7] or the Criminal Procedure Code,[8] defines the term 'plea'.

Plea-bargain on the other hand is defined as:

> *The practice of agreeing to admit in a Court that one is guilty of a small crime, in exchange for not being charged with a more serious Crime.*[9]

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5. Black, H.C: Black's Law Dictionary, (6th Ed) (St. Paul, Minn: West Group Publishing Co. Ltd, 1990) 1151.
6. See Nchi, S.I: The Nigerian Law Dictionary, (1st Ed) (Zaria: Tamaza Publishing Co. Ltd. 1996) 250.
7. Cap 80 LFN 1990, applicable to States of Southern Nigeria, hereinafter written as CPA
8. Cap 30 LNN applicable to States of Northern Nigeria, hereinafter written as CPC.
9. Quirk, Lord (Prof) Rudolph, et. al., (Ed): Longman Dictionary of Contemporary. English. (3rd ed) (England: Pearson Education Ltd, 2001) 1079.

Though the foregoing definition appears comprehensive, it is rather restrictive as the bargain is not limited to pleading guilty to small crimes. The bargain may cover a number of crimes even if they are of the same magnitude.

The ***Black's Law Dictionary*** defines plea-bargaining as the practice:

> *In which the defendant (accused) seeks a lesser sentence in return for plea of guilty....*[10]

This definition is again attended by a number of problems. First, it tends to suggest that it is the accused who seeks or makes the offer for the plea contract. What obtains in practice however is a situation in which the prosecutor initiates the bargain, i.e. makes the offer to the accused to plead guilty to certain counts of the charge in return for some 'favour'. This may take the nature of dropping of some charges against the accused, or giving him a lenient sentence. And to say the least, the whole exercise is never voluntary, or carried out independently of the prosecutor: and is thus tainted with coercion, undue influence, and most times threat of stiffer sentences in the event of the accused failing to "cooperate" or "settle" with the prosecutor.

For Richard Frase – the Minnesota Professor of Law – plea-bargaining is *an explicit trading of charge or sentence concessions for the defendant's guilty plea.*[11] This definition is not without criticism, as plea bargain, though a form of trade is quite unlike any other conventional trade in which the parties are of equal footing. In plea bargain, the prosecutor is superior and wields his superiority unduly over the accused who must 'cooperate' in order to be shown some mercy or leniency.

Prof. John Langbein found it more comfortable describing plea bargain as a practice of *"condemnation without adjudication"*, insisting that the practice *"has no foundation in our constitutions and in our legal traditions."*[12]

Perhaps the definition proffered by the Nigeria Law Dictionary May be more helpful in our quest for the meaning of plea bargain. According to this text,

10. Black, H.C. Loc. Cit. (emphasis in bracket supplied).
11. Frase, R. S. Op. Cit., p. 627.
12. Langbein, J. H: Land without Plea Bargaining: How the Germans Do It (Michigan: Michigan Law Review, vol. 78, 1975) p. 204. See also Alshuler, A.W: The Prosecutor's Role in plea Bargaining (Chicago: University of Chicago Law Review, vol.36, 1969) p. 50; and Alshuler, A.W.: The Defence Attorney's Role in Plea Bargaining (Tale: Law Journal, vol.84, 1975) 1179.

plea bargain is:

> *An informal arrangement whereby the accused person agrees to plead guilty to one or some charges in return for the prosecution agreeing to drop other charges or a summary trial.*[13]

This definition more readily captures the subject matter of plea bargaining. It is indeed an informal negotiation between the prosecutor and the accused person that would result in charge or sentence reduction in exchange for the accused person's plea of guilt. It is informal because it is essentially an extra judicial arrangement, which takes place outside the formal precincts of arraignment upon indictment before a Court of Law.

Bye and large it should be noted that plea bargain is a practice by which an accused person is lured by the prosecutor to plead guilty to certain charges in exchange for some counts to be dropped against him, or for some sentence leniency. It is essentially a practice of the American Criminal Justice System which has been hinged majorly on expediency, cost reduction and prison decongestion, arguments which have been widely attached and discredited.

PLEA PRACTICE UNDER THE NIGERIAN LAW

Although plea-bargaining is not a feature of the Nigeria Criminal Justice System, plea taking is an essential and mandatory part of the criminal trial process. According to **Alubo,** the plea process commences with the arraignment of an accused person in a Court of Law after the filing of a charge by the prosecution.[14]The procedure for plea taking upon arraignment is expressly provided for in the two principal codes of criminal procedure in Nigeria, i.e. the Criminal Procedure Act and the Criminal Procedure Code, as well as the Constitution.[15]

Section 215 of the **CPA** Stipulates:

> The person to be tried upon any charge or information shall be placed before the Court unfettered unless the Court shall see cause other wise to order and the charge or information shall be read and explained to him to the reasonable satisfaction

13. Nchi, S.I., Loc. Cit.
14. See Alubo, O. A.: "The American Plea Bargaining System: Prescription for Nigerian Criminal Justice System", in Dakas, C.J. Dakas, (Ed.): New Vistas in Law, Vol. 2, (Jos: St. Stephens Inc., 2002) 258 at 266.
15. See notes 7 & 8, Supra, and S.36 (6) CFRN, 1999, Chapter C23 LFN 2004.

of the Court by the registrar or other officer of the Court, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the Court finds that he has not been duly served therewith.[16]

Provisions in pari materia with the foregoing may be found in the CPC.[17] This process of formal plea taking is called '*arraignment*.'[18]

The fundamental requirements of the foregoing provision, as consistently held by the Supreme Court, are four-fold, and the trial Courts are enjoined to strictly comply with these essential requirements:

(i) The accused must be placed before the Court unfettered (unless the Court shall see cause otherwise to order),
(ii) The charge or information must be read over and explained to the accused to the satisfaction of the Court,
(iii) It must be read to him in the language that he understands, and
(iv) The accused must, after understanding the charge or information, be called upon to plead thereto.[19]

In **TOBBY v STATE**[20], the Supreme Court was unanimous in holding that "***the above stated requirements of the law are mandatory and must be strictly complied with in all criminal trials***", noting further that as the requirements "have been specifically provided to guarantee the fair trial of an accused person and to safeguard his interest at such a trial, failure to satisfy any of them will render the whole trial defective and null and void."

These procedural requirements have been given Constitutional flavour in section **36(6) of the Constitution.**[21] It is considered necessary to look at this fundamental provision before proceeding to carefully look at the requirements outlined above. Section 36 (6) provides:

16. See S. 218 CPA.
17. See SS. 161 & 187 CPC.
18. See Generally, Doherty, O. Criminal Procedure In Nigeria: Law And Practice (London: Blackstone Press Ltd, 1990) pp. 246-257.
19. See Adeniji v. State (2001) 7 SCM 1 at 6; Tobby v. State (2001) 6 SCM 178 at 182; Ogunye & Ors. v. State (1999) 5 NWLR (Pt.604) 548, and Kajubo v. State (1988) 3 SCNJ (Pt.1) 79, (1988) 1 NWLR (Pt.73) 721;
20. Supra, at 182, per Ogwuegbu, JSC.
21. CFRN, 1999.

Every person who is charged with a criminal offence shall be entitled to -

a) be informed promptly in the language that he understands and in detail of the nature of the offence;
b) be given adequate time and facilities for the preparation of his defence;
c) defend himself in person or by legal practitioner of his own choice[22]
d) ...

These provisions were designed to guarantee the fair hearing and trial of an accused person, and must be substantially and fundamentally complied with, failing which may render the whole trial and the consequent conviction and sentence, null and void ab initio.[23]

A careful perusal of the requirements as spelt out in section 215 CPA is apt:

The accused must be brought to Court unfettered i.e. unrestricted and free. He is not to be coerced or bound or forced or hand cuffed into the Court. The jurisprudence of this requirement lies in the fact that the accused is presumed innocent, and is not to be treated as if he were already a convict.[24]

Secondly, *the charge or information is required to be read over and explained to the accused to the satisfaction of the Court.* The importance of such reading over and explanation to the accused cannot be over emphasised; for it is only reasonable that a man who is alleged to have committed an offence be informed of the allegation against him. The Court too must be satisfied that the accused properly understood the charge or allegation against him. In **KAJUBO v. STATE,**[25] the accused who was convicted and sentenced to death, had his conviction and sentence quashed on appeal by the Supreme Court on the ground that the charge was not read over and explained to the accused and that the failure to comply with this requirement rendered the whole trial a nullity.

22. See Awolowo v. Usman Sarki (1962)LLR 177. See also S.211 CPA.
23. See Tobby v. State, and, Adeniji v. State, Supra, Supra.
24. S. 36 (6) (c) CFRN, 1999 and SS. 215 CPA & 161 CPC.
25. Supra. See also IGP. V. Rosek (1958) LLR 73.

Again, *the charge must be read over and explained to the accused in the language that he understands.*[26] This presupposes that if the accused does not understand the language of the Court, which is English Language, the Court must read and explain the charge to him in a language that he understands. If no one understands his language the Court must mandatorily provide the accused with the services of an interpreter free of charge.[27] Thus, in **STATE v. GWONTO**[28], the trial and conviction of the accused, which was conducted in English language, was quashed on appeal on the ground that the accused who understands only Hausa language was not provided with an interpreter to translate the proceedings to him.

Furthermore, after the Court is satisfied that the accused understood the charge as read over and explained to him, it must call on the accused to plead instantly thereto.[29]

The accused must plead to the charge personally, and not through or by a Counsel,[30] nor shall he plead by a proxy or a co-accused.[31] It is salient to point out that where there are several counts in the charge sheet, the accused must plead to each count separately. In the words of ***Doherty***, *'the accused must not enter an omnibus plea.'*[32]

The Court is required to record the plea of the accused in as nearly as possible a language used by the accussed.[33] And it has held to be good practice for the trial Court to specifically record that the charge was read and fully explained to the accused to the satisfaction of the Court before recording his plea to the charge.[34]

Although the accused is required to plead to the charge, he may however fail to plead, by 'standing mute'. Standing mute may be out of malice or visitation of God, i.e. as a result of mental incapacity or insanity.[35]

26. Idemudia v. State (2001) FWLR (Pt.55) 549, at 562. See also SS. 215 CPA & 161, 187 CPC.
27. See S. 36 (6) (e) CFRN, 1999. See also S. 241 CPC.
28. (1983) 1 SCNLR 142. See also Ajayi v. Zaria Native Authority (1964) I NNLR 61
29. See Idemudia v. State, Supra; See also Doherty, Op. Cit., p. 247.
30. See R.v. Pepple (12 WACA 441).
31. See Adamu v. State (1986) 3 NWLR (Pt.32) 865.
32. See Doherty, Loc. Cit. See also Ayinde v. State (1980) 2 NCR 242.
33. See Ede v. State (1986) 5 NWLR (Pt. 42) 530.
34. Per Oputa, JSC (as he then was), in Kajubo's case, Supra, at 90.
35. See Doherty, Op. Cit., at p. 248. See also SS.220 CPA & 188 CPC.

Where the failure of the accused to plead is as a result of visitation of God, the Court is enjoined by the Act to conduct a trial within trial to determine the fitness or otherwise of the accused to stand trial,[36] the procedure for which is provided for in the Act.[37] The case may be adjourned and the accused detained in an asylum for up to one month during which period he shall be observed by a medical doctor, who shall thereafter issue a certificate of soundness or unsoundness of the mind of the accused to the Court.[38] If the Court is satisfied as to the doctor's certificate of unsoundness of the accused, it shall adjourn the case and order the accused to be kept in an asylum. If however the doctor certifies the accused as sane and fit to enter his defence, and the Court is satisfied, it shall proceed with the trial.[39]

On the other hand, where the accused intends to plead to the charge, he may enter any of the following pleas, i.e.:
(i) Not guilty, (ii) guilty, (iii) want of jurisdiction, (iv) defect in the charge, (v) not guilty by reason of insanity, (vi) pardon, (vii) autre fois acquit, or (viii) autre fois convict.

The accused may plead ***'not guilty'***; that is, that he is not liable for the alleged crime, and thereupon the prosecution shall be called upon to prove its case against the accused. This is an onerous task, which must be discharged ***beyond reasonable doubt***.[40]

The accused may plead ***guilty*** to the charge against him, in which case he may be summarily convicted by the Court.[41]Before conviction upon this plea the Court must be satisfied that the accused understood the charge as read out and explained to him and that the plea was unequivocal and so intended by the accused.[42]

36. See Yesufu v. State (1972) 12 SC 143.
37. SS. 223-224 CPA & 320-321 CPC.
38. See Karimu v. State (1989) 1 NWLR (Pt.96) 124.
39. See Ijeweremen v. State (1983) 3 SC 239, at 248- 250.
40. See S.138 Evidence Act, Cap. 112, LFN, 1990. See also Adeniji v. State, Supra, at p. 11.
41. See S. 218 CPA. Note however that if the alleged crime is murder, or a capital offence, the Court shall record a plea of 'not guilty' for the accused even if he pleads otherwise. This has been the convention in the CPA States. See Tobby's case, Supra, at 184. In the CPA State, it is provided for in SS. 161 & 187 CPC.
42. See Osuji v. IGP. (1965) LLR. 143: Ahmed v. COP (1971) NMLR 409 and Aremu v. COP (1980) 2 NCR 315.

The accused may plead ***'want of jurisdiction'*** by the Court; that is, that the Court lacks the jurisdiction to try him. According to Alubo, the issue of jurisdiction is so fundamental that absence of it approximates to a void act in law.[43] Where this objection is upheld by the Court, it shall dismiss the case and have the accused discharged, though the accused may be re-arrested and properly arraigned.

The accused may plead ***defect in the charge***, i.e. that the charge offends any of the four rules of drafting of charges, i.e. the rule against misjoinder of offences, misjoinder of offenders, duplicity and ambiguity.[44] If the plea is sustained, the accused may be discharged, otherwise the Court may simply amend the charge and proceed therewith.[45]

The accused may also plead ***'not guilty by reason of insanity'***, i.e., that he was insane or of unsound mind when the alleged offence was committed. Upon this plea, the Court must go into trial to determine if he is liable for the offence. If he was sane or healthy at the time of the offence he shall be liable; and if he was not, he shall be declared 'not guilty by reason of insanity' and ordered to be detained at the pleasure of the Governor or President.[46]

The accused person may plead ***'State Pardon'***, i.e. that he has been pardoned of the offence by either the President or the Governor of the State in line with their respective Constitutional powers.[47] To succeed, the accused must produce the instrument of pardon to the satisfaction of the Court. If the Court is satisfied he shall be acquitted and the case dismissed, otherwise he shall be asked to plead to the charge and the trial continues.

The accused may also plead **'autre fois acquit'** or **'autre fois convict'**; i.e. that he has been previously tried by a Court of competent jurisdiction for the same offence and either acquitted or convicted thereon.[48] This is essentially ***a rule against double jeopardy***. The rationale for this is that the law forbids double trial for a single offence, and if a case has been

43. See Dakas, Op. Cit. p. 267. See also Josiah Cornelius Ltd. & Ors. v. Ezenwa (1993) 8 NWLR (Pt.312) 382; and Mcfoy v. UAC Ltd. (1961) 3 WLR 1409.
44. See Doherty, Op. Cit., p. 249.
45. See S. 167 CPA.
46. SS. 229-230 CPA & S. 327 CPC. See also Adams v. DPP (1966) 1 ANLR 12.
47. SS. 175 & 212 CFRN, 1999.
48. S. 36(9) CFRN, 1990; SS. 181 & 221 CPA and S. 223 CPC.

conclusively disposed of, then it should be allowed to rest under the general principles of ***res judicata.*** But for the plea to stand the earlier Court must have possessed the requisite jurisdiction to try the offence,[49] and the trial must have proceeded on the same set of facts and ended with an acquittal or a conviction, and not merely a discharge.[50] If the plea is sustained, the case shall be dismissed and the accused discharged.[51]

AMERICAN PLEA BARGAINING SYSTEM

As noted earlier, plea bargain is the explicit trading of charge or sentence concessions for the accused's guilty plea.[52] It is a practice that is central to the American criminal justice system, and has been held by the American Supreme Court to be an essential component of the American criminal justice administration, justifying the practice on the ground, inter alia, that if every criminal charge were subjected to full trial, the Government would need to multiply by many times the number of personnel and facilities necessary for criminal justice administration.[53] Thus, for them the practice is justified on grounds of expediency and cost saving. With all due respect, it is submitted that such a reasoning is rather political than legal.

The most unfortunate thing about this practice is that, rightly or wrongly, it has enjoyed both administrative and judicial approval in the United States for some decades now. Commenting on the state of the judiciary in America, the ***Chief Justice Burger*** once said:

> *The consequences of what may seem prima facie a small percentage charge in the rate of guilty pleas can be tremendous. A reduction from 90 percent to 80 percent in guilty pleas requires the assignment of twice the judicial man power and facilities. .... A reduction to 70 percent triples this demand.*[54]

Plea Bargaining is a practice by which the prosecutor invites the accused to bargain, cooperate and settle with him by admitting or pleading guilty to some offences in return for charge or sentence concessions. It involves the

49. See R. v. Jinadu (12 WACA 368); Police v. Johnson (1955) LLR 55.
50. See S. 185CPA, unless of course if such discharge was on merit.
51. See generally Doherty, Op. Cit., pp. 246-259.
52. See Supra, note 11.
53. See the case of Santobelleo v. New York (1971) 404 US 257 at 260.
54. See 1970 A.B.A. Journal, 929 at 931. Warren Burger was Chief Justice of America from 1969-1986.

accused pleading guilty to a number of charges on the recommendation of the prosecutor, for which gesture the latter rewards the accused by either dropping some of the charges against him or showing him some sentence leniency. Attendant on this is the threat of more severe punishment if the accused refuses to plead guilty as proposed. The exercise is not voluntary and is expressed to be irrevocable,[55] involving unfair coercion, prosecutorial overcharging, imposition of penalties for asserting constitutional trial rights, and is susceptible to convicting the innocent.[56] This indeed goes contrary to the age old legal principle that '**it is better for ninety nine criminals to go unpunished than for one innocent person to be punished**'. The practice robs the accused of the constitutional '**due process**' trial and essential safeguards against unjust prosecution and conviction.

Plea bargain often results in charge bargain or sentence bargain. Upon the accused's plea of guilty, the prosecutor bargains with him either to drop some of the charges (charge bargain) or be given a more lenient sentence (sentence bargain). Charge bargain may take the form of **vertical charge bargain** by which the prosecutor drops some of the more serious charges against the accused in return for the guilty plea; or **horizontal charge bargain** by which the prosecutor drops or declines to file collateral charges against the accused. Both of them are fraught with problems. And the practice has been widely criticized, even among leading scholars and criminal procedure experts. These criticisms have been so constructive and logical that American policy makers and criminal justice administrators are beginning to look out to other jurisdictions with a view to reforming the practice of plea bargain. Already some States in America have abolished plea bargain in their criminal justice systems. It is therefore considered apt to x-ray the merits and demerits of this practice, against the back drop of those who are calling for the importation of the practice to Nigeria.

ADVANTAGES OF PLEA BARGAINING

The proponents of this practice seek to justify the practice of plea bargain on the following grounds:

1. **EXPEDIENCY:** Plea bargain facilities the quick disposal of cases (i.e. it decongests case load) as the bargain is often concluded outside the Court and the Court may only be informed of its out come.

55. See Frase, Op. Cit., p. 631.
56. Frase, Id., pp. 626-627.

2. **COST:** Plea bargain, it is argued, saves time and cost, as government's time and cost of prosecuting a lengthy and costly trial is greatly reduced, even in the wake of meagre resources and facilities.[57]

3. **PRISON DECONGESTION:** Plea bargain helps to decongest the prisons, as most cases would have been disposed of without going into trial which may eventually culminate in conviction and perhaps sentence of imprisonment. One may ask: is it better to think of decongesting the prisons when crime rate is on the increase daily?

4. **PRIVACY:** The practice of plea bargain helps the accused to avoid unnecessary publicity, as the bargain may terminate the criminal proceedings. But is it right for us to first think of the privacy of the accused rather than the interest of justice and the development of the State?

5. **SENTENCE MITIGATION:** Plea bargain mitigates sentences, as the accused is often rewarded with sentence leniency. Again, we are constrained to ask: what is the utility of mitigating a sentence in the wake of high crime rate? And to what extent does it deter the offender or potential offenders from the further commission of the offence, which is a cardinal principle of the Court sentencing policy?

6. **PSYCHOLOGICAL RELIEF:** The accused would be relieved of psychological and emotional trauma associated with prolonged trials and incarceration. Associated with this is the fact that the accused would be spared the agony and social stigma of having been a prisoner (i.e. an ex-convict) if convicted and sentenced to imprisonment.

DISADVANTAGES OF PLEA BARGAIN:

Notwithstanding the foregoing so-called advantages of the system of plea bargain, there has been a myriad of criticism against the practice by eminent scholars and experts of criminal procedure laws. Notable among whom are Langbein, Alshuler, Fraser, Felstiner, etc. Among the many criticisms of the

57. See the views expressed by Burger C.J., Supra, note 54.

practice are the following:

1. According to Professor Langbein,[58] plea bargain in America ***'lacks foundation in our constitutions and in our legal traditions'***. In other words, plea is extra-legal, extra judicial and extra-constitutional. The constitution is the 'grund norm' of the land, against which no other law shall be inconsistent with; and any law inconsistent therewith shall be null and void and of no effect. Plea bargain not deriving its efficacy and application therefrom must therefore be declared null and void; more so as it is inconsistent with the constitutional presumption of innocence.[59]

2. Plea bargain is coercive and involuntary, unduly influenced by the prosecutor, and has been described by Professor Langbein as a practice of ***'condemnation without adjudication.'*** This again, according to Prof. Langbein, is inconsistent with the American constitution which guarantees adjudication.[60]

3. The plea bargaining practice, according Fraser[61] involves unfair coercion, prosecutorial overcharging, ***threat of more severe sanctions*** for insisting on due process trial, unjustified charge and sentence disparities and indeed ***unregulated discretion***;[62] and thus permits ***discriminatory enforcement***.[63]

4. The practice of plea bargain has high probability for, and increases the risk of convicting the innocent,[64] i.e. unjust prosecution.

5. Plea bargaining allows prosecutors to exercise sentencing power directly –an authority properly belonging to the Court.[65] This offends the cardinal principle of criminal trial that 'a prosecutor shall not assume the role of a persecutor', and vice versa.

58. See Langbein, J.H., Op. Cit., p. 205.
59. S. 36(5) CFRN, 1999.
60. See Langbein, J.H., Id., p. 204.
61. See Frase, Loc. Cit.
62. See also Alshuler, Op. Cit., pp. 932-934.
63. Fraser, Id., p. 568.
64. Alshuler, Id. See also Frase, Loc. Cit.
65. Frase, Id., p. 629.

6. Furthermore, charge bargaining tend to understate the true severity or frequency of the defendant's crimes and distorts his criminal history records.[66]

7. Still more, charge bargaining effectively undercuts sentencing and parole reforms linked to specific offences.

8. Evidentiary charge bargaining –dropping of weak charges in return for a guilty plea –is fundamentally dishonest, encourages initial overcharging and produces wide sentencing disparities.[67] If the charges are weak, they should be dropped unconditionally and unilaterally, as in French correctionalisation practices.[68]

9. The irrevocability of guilty plea makes plea bargain undesirable. It should be made revocable or retractable as in 'confessions' and 'admissions'.[69]

10. Since the plea bargain is extra-judicial and private, the accused loses any chance that an examining Magistrate or Judge will help uncover evidence in his favour or may dismiss all charges against him; in other words, the accused loses the due process trial and the high standard required of proofs.

11. As a corollary to the foregoing, the prosecution shifts the onus of proving the crime to the accused who must plead guilty for a 'favour' of not being subjected to rigorous and prolonged trial.

12. Another obvious disadvantage of the American plea bargaining practice is that it is applied to all offences irrespective of its severity or enormity. In other words, it is applicable to both felonies, misdemeanors and simple offences alike.[70] It would have been better had the practice been restricted to simple offences, and certain misdemeanors such as traffic offences for which a sentence of fine only is prescribed.

66. Ibid.
67. Ibid.
68. Ibid.
69. See Obosi v. The State (1965) NMLR 119.
70. See Langbein, Id., p. 97.

13. As if the foregoing are not enough, plea-bargain renders the various procedural codes, i.e. the Criminal Procedure Act, the Criminal Procedure Code and the Evidence Act, as well as the rules immanent on them useless, as they are not resorted to by the prosecutors.

14. Finally, it may be stated that plea bargain will work to render nugatory all the gains of the Good Governance policies and the anti corruption war of the Federal Government of Nigeria, and thus make the activities of such veritable agencies as the Independent Corrupt Practices Commission (ICPC), the Economic and Financial Crimes Commission (EFCC), the Due Process Bureau, and indeed the collaborative efforts of the international community, become a mere laughing stock or at best a 'toothless bull dog'.

The disadvantages are numerous and grossly outweigh any advantage arising therefrom. There is no contradiction in providing an expedited 'administrative' procedure to dispose of non-serious criminal charges, so long as the accused may still insist on a trial under standard criminal rules.[71] After all, we cannot afford to sacrifice the peace and order of the society or the merits of each case or even the sanctity of our laws on the altar of the so-called 'expediency'.

Applicability of the Plea Bargaining System in Nigeria

After carefully analyzing the practice of plea bargain as it is obtainable in America, it behoves on us to x-ray the applicability or otherwise of the practice in Nigeria. Weighing the merits against the demerits of the system leaves us with obvious answers as to whether or not the practice should be imported to Nigeria.

It is the view of the present writers that the practice is fraught with more problems than the anticipated solutions. This accounts for why American experts are now looking out to other jurisdictions, such as France and Germany, for the needed reforms or alternatives thereto. If the owners of the system, with all the facilities at their disposal, conscious of its attendant problems, are running away from it or are simply not satisfied with the workings of the system, why should we then go for it? We cannot always remain in the background waiting to adopt or copy other peoples' initiatives

71. Frase, Id., p. 647.

and systemic innovations, or to be spoon-fed or dictated to by the operative mechanisms of the so-called developed world. This would simply aggregate to neo colonialism. After all, "development starts with 'I'", as Isaac Newton once noted. Therefore, we should be able to overhaul our criminal procedure laws and practices to meet the challenges of contemporary global Good Governance principles, rather than resorting to the so-called shortcuts or cheaper measures (which are in themselves more expensive) merely on the rather vulgar excuse of 'expediency'.

Nigeria has high regard for her Constitution and is inclined to respect all its provisions, and to defend the sanctity of the rule of law. Thus, importing such extra-constitutional, extra-judicial and extra- legal device to Nigeria would manifestly negate the spirit and intent of the Constitution, constitutionalism and the rule of law in general. It will also negate the general principles and policies of our criminal justice system. Our little experience when the practice of plea bargain was surreptitiously and extra-judicially used in the trial of Tafa Balogun, the former Inspector General of Police, accused of embezzlement of public funds, speaks volumes in this regard. Even the funds recovered from the plea bargain process could not be very well accounted for by the prosecuting authority. And come to think of it, what is the wisdom is sharing the loot of an indicted officer in the name of plea bargain; and what signal does that send to the rest of the citizenry, especially the public officers who should naturally have been deterred from misappropriation of public funds by the quality of the deterrent sanctions meted on offenders?

Again, the corruption rate in Nigeria, especially among the Police (who are majorly prosecutors of more than 80% of criminal offences in Nigeria) is too high for now, and the introduction of such plea bargaining system would only help to compound the already unbearable situation. Can we afford to gamble it?

Finally it is to be noted that the professionalism of the Nigerian Police (investigators and prosecutors) is too low (at least for now) to be able to effectively manage the system of plea bargaining, applicable to both simple and high profile cases.

CONCLUSION

This paper x-rayed the plea bargaining system as practiced in the American criminal justice system. The practice, it was observed, is fraught with more problems than solutions, and has been troublesome in a developed society like America and may thus not work any better in a developing society like Nigeria, that is just leaping into constitutionalism and the rule of law, after long years of military rule and dictatorship. Even in America the problems attendant on the practice are enormous, calling for immediate reforms. It would be foolhardy therefore, to import such an unconstitutional and extra-judicial practice to Nigeria. Accordingly, and contrary to views held by some scholars, the present writers do not advocate the importation to and the application of the system of plea bargain in Nigeria, chiefly because it would leave us with more criminals in society than was ever contemplated, as the whole practice approximates to 'cooperating' or 'settling' with the Police. We are not saying that the practice cannot or can never work in Nigeria, but simply that we are not yet ready or matured enough for it; and until our criminal justice system is overhauled and the Nigeria Police become professionalized it is doubtful if much can be achieved from the importation of plea bargaining practice to Nigeria.