PUNISHMENT PARTERNS AND PLEA BARGAINING ASSOCIATED WITH ECONOMIC AND FINANCIAL CRIMES: THE NIGERIAN EXPERIENCE

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Abstract

In terms of natural resources, that is to say, human and material, Nigeria by far exceeds countries like, Britain, France, Germany, Japan and perhaps many other G20 nations of the world. By natural resources in this context, we mean population and minerals. Notwithstanding this, the country still ranks amongst the poorest nations in the world going by the United Nations millennium development goals indices. Most attempts at unraveling the cause of this paradox have ended in postulations that it must be the weakness or absence of the rule of law. That is to say, absence or weakness of some of the essential ingredients of that magic phrase "the rule of law". Surely, there is some measure of democracy that is if that term were narrowly construed to mean the occasional appearance of ballot boxes, the purported casting of votes and the existence of the notion of separation of governmental powers. These certainly exist in Nigeria and that has been so for sometime now, a

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presidency, a bicameral legislature and a judiciary all of which combine to give the notion of separation of powers. The argument therefore appears to be that the only thing that is absent from the Nigerian clime is the rule of law particularly as regards crime deterrence through punishment. This paper exemplifies the impunity with which the rule of law is violated by persons in government as well as fiduciary and privileged positions in both the public and private sectors in Nigeria. These impunities have come to be recognized by law as ''economic crimes''. The paper contrasts the level of detection and punishment for such crimes with their magnitude in terms of amounts involved. This is done against the backdrop of punishment patterns and in particular, the emerging notion of plea bargaining. In the end the paper regrets the results of the practical application of this notion. It concludes that the scope and application of the doctrine of plea bargaining to the jurisprudence of crime detection and prevention in Nigeria has not achieved its desired objective of deterrence and crime reduction.

Introduction

In terms of natural resources, that is to say, human and material, Nigeria by far exceeds countries like U.K, France, Germany, Japan and perhaps many other G20 nations of the world. By natural resources in this context, we mean population[1] and minerals[2]**.**

[1] Nigeria has an estimated population of about 166.2 million (www.tradengeconomices.com/nigeria) people well beyond the populations of each of Britain 63.7 million (www.independent.co.uk/now-we-are 63.7m) France 65.7million in 2012, Germany, 81.89 million in 2012 (Wikipedia eniwikipedia.org/wiki/France, Japan, 127, 960,000 in 2012 (www.worldpopultionreview.com/Japan

Notwithstanding this, the country still ranks amongst the poorest nations in the world going by the United Nations millennium development goals indices[3]**.** Most attempts at unraveling the cause of this paradox have ended in postulations that it must be the weakness or absence of the rule of law[4]. That is to say, the absence or weakness of some of the essential ingredients of that magic phrase "the rule of law"[5]. Surely, there is some measure of democracy that is if that term were narrowly construed to mean the occasional appearance of ballot boxes, the purported casting of votes and the existence of the notion of separation of governmental powers[6]. These certainly exist in Nigeria and that has been so for sometime now, a presidency, a bicameral legislature and a judiciary all of which combine to give the notion of separation of powers. The argument therefore appears to be that the only thing that is absent from the Nigerian clime is the rule of law particularly as regards crime deterrence through punishment. It is arguable that

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[2] Apart from other solid minerals, Nigeria is the 9th largest exporter of petroleum (petra Oleum) in the world after countries like Saudi Arabia, Russia, Iron, UAR, EU, Norway, Iraq and Kuwait (The World Factbook ISSN 1553-8133 by the American Intelligence Agency-CIA).

[3] The goals aimed at eradicating extreme poverty including absence of clean water, health facilities, education etc. (www.un.org/milleniumgoals)

[4] The rule of law, which in this sense, transcends democracy or elections but the actual observance of the internationally recognized principles of natural justice, and the existence Social, economic, educational and cultural conditions for the advancement of individuals legitimate ambitions and pursuits.

[5] Independence or near independence of the three arms of government ie the Executive, the Legislature and the judiciary credited to Jean-Jacques Rousseau born June 28, 1712 in Geneva, Switzerland died July 2 1778 on the Social contract theory. Also Louis Montesquieu.

[6] The Executive in Nigeria is separated from the Legislature and the judiciary. At least legally speaking and in theory. In practice however, the same political that produced the president also produced the majority of the Federal Legislators so one wonders how effective such a separation of powers can be. Also, we find the hand of the executive in judicial appointments and the judiciary playing adjudicatory roles in election petitions that produce the executive and the legislative personal.

nothing encourages the commission of crime more than seeing convicted criminals walking apparently free and in fact committing more crimes repeatedly and often with greater impunity. The increase in frequency of commission of crimes and the magnitude of financial losses arising from the commission of such crimes in Nigeria caused the Nigerian legal system and dictionary to come up with the term "economic crimes" or "economic and financial crimes"[7]. This is so because such crimes have come to cause economic retrogression in the country as well as serious social problems of poverty, want, and disease, leaving an otherwise naturally endowed country poor. This paper seeks to briefly examine such high profile crimes, the existing and possible punishments that could effectively serve as deterrence as well as the role of the new craze for plea bargaining and its desirability.

Economic Crimes

It is not certain exactly how this terminology crept into our jurisprudence but it is certain when it did. It came about when politicians at first and later every businessman with a criminal mind and itching palms that lays them on other peoples' monies started to steal and misappropriate so much of such money that the thefts became real and actual threats to the nation's economy. It is not difficult at all to know that Nigeria is a profoundly corrupt country, although it is argued on grounds of charity, apparently, that it is not the most corrupt in the world. But it does not have to be the most corrupt before the impact of corruption brings it to its knees as it is

[7] In this regard, a number of mainstream statutes have come into existence beyond the common and ordinary criminal code Law which deals with basic crimes and criminality. Such main stream direct statutes include The Economic and Financial Crimes Commission (Establishment) Act, 2004. It was adopted on 4th June 2004 following the repeal of its earlier 2002 version. Others are the Corrupt Practices and other Related Offences Act, 2000, The Money Laundering (Prohibitron) Act 2004, the Advance Fee Fraud and other Fraud Related Offences Act 2006, the Foreign Judgments (Reciprocal Enforcement Act 1961 adopted as an existing legislation under the constitution of the Federal Republic of Nigeria 1999.

almost doing now. As said, the easiest phenomenon to verify in this country is corruption. It stares everybody in the face. It is empirical. One only needs to walk through any high brow, opulent residential and non residential areas of the country and ask who owns the magnificent and mind bungling mansions, bastions, and palaces crafted with all glass, steel and marble in the places. Eighty to ninety percent of them would be revealed as belonging to persons holding public offices or public servants. Ordinarily, this category of workers ought not to be able to own anything more than a thousandth of the bastions in question even if they were to devote all their life salaries to same. The remaining percentage of ten or twenty would equally be revealed to belong to them but cloaked in corporate veils or veils of incorporated companies. This is quite unlike other climes where movie stars, musicians, and private business moguls monopolize such opulence. Worse still, the statutory minimum wage in Nigeria stands at N18, 000.00 (eighteen thousand naira) per month, which is just about USD 110.00 (one hundred and ten dollars for 30 days work).

Against this backdrop, repositories of public offices amass wealth in stupendous proportions through brazenly committed and repeated crimes. Over the years, this syndrome of getting extremely wealthy through theft of funds belonging to members of the public extended from the public sector to the private sector. One area of the private sector that witnessed the resurgence of the syndrome was the banking sector. Naturally, this led to the failure of many banks[8] and the near collapse of the financial market. It even threatened the capital market to a cognizable extent as most of its valued shares were shares of the banks, some of which failed.

The surest proof of the truth of the above assertions relating to the prevalence of corruption in the country can be found in the emergence of certain laws and institutions directly aimed at curbing

[8] From a total of over 70 banks in the early 90ˢ, only 25 survived less than 10years later, due largely to failures and in some cases mergers and acquisitions.

such corruption. A few of the mainstream enactments are found in the emergence of bodies such as the Independent Corrupt Practices and other related Crimes Commission (hereinafter simply referred to as ICPC) and its enabling law.[9] Equally relevant in this regard and coming after the coming into effect of the ICPC and notwithstanding its existence is the Economic and Financial Crimes Commission (hereinafter simply referred to as the EFCC) and it's enabling law[10]. Others such as the Failed Banks Act[11] and its matching Tribunal or special courts equally drive the point home that the country is overburdened by corruption. Admittedly the laws and institutions in question are steps in the right direction but have they proved even palliative in this fight against economic crimes or corruption? That is the question and the immediate answer appears to be that they have not even served as palliatives much less deter the majority of such criminals and criminally minded individuals. The reason for this answer is that the theft of billions of naira remain ongoing with fresh cases everyday and serving political office holders insisting that they should not be prosecuted even after their statutory immunity has elapsed

Practical examples of such economic crimes by both public officers and persons in private business include but are not limited to the popular prosecution and conviction of the following persons, though not arranged in any particular order, the under stated examples are illuminating.

Public Sector

1. **Chief Lucky Igbinedion:** Was arraigned on a 191-count charge of corruption, money laundering and embezzlement of N2.9bn. In a plea bargain arrangement the 191 count charge was reduced to one count charge by EFCC through its counsel Mr. Rotimi Jacob. In line with the plea bargain, on 18th

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9 Corrupt Practices and other related offences Act 200.

10 The Economic and Financial Crimes Commission (Establishment) Act 2004

11 The Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994

December 2008, the court presided over by Justice A. Abdul Kafarati convicted Lucky Igbinedion on the one –count charge and ordered him to refund N500m, forfeilt 3 houses and sentenced him to 6 months imprisonment or pay N3.6m as option of fine. The question is, was it a good bargain for the Commission to compress and reduce 191-count charge to a one-count charge?[12]

2. **Chief Diepreye Alamiesegha:** According to the December 3, 2007 UK High court decision in Nigeria v. Santolina Investment Corp and Ors, Mr. Alamieyeseigha entered guilty Plea in Nigeria's high court to six counts of making false declaration of assets.[13]

   However, he was recently granted a State pardon. In view of the pardon recently granted him, Chief Diepreye Alamieyeseigha has said that the State pardon was part of the plea bargain between him and the Federal Government, then headed by Umaru Yar'Adua.

3. **Chief James Onanefe Ibori:** on December 12, 2007, Ibori was arrested by the EFCC. The charges include theft of public funds, abuse of office and money laundering. On December 17, 2009, a Federal High Court discharged and acquitted Ibori of all 170 charges of corruption brought by EFCC. In April 2010, Ibori fled Nigeria, prompting the EFCC to request the assistance of Interpol. However, on 1st and 2nd June 2010, UK Juries found James Ibori's sister and his mistress guilty on counts of money laundering and on Tuesday, April 17, 2012, Ibori was sentenced to 13 years imprisonment by Southwark Crown Court for his crimes. Among possessions confiscated were: a house in Hampstead, North London for 2.2m pounds, a

[12] www.saharareporters.com (23/6/2011)
[13] (2007) EWHC 437 (Ch) www.swarb.co.uk 9/7/14

fleet of armored Rang Rovers valued at 600,000 pounds amongst others.[14]

4. **Alhaji Abdulrasheed Maina of the Police Pensions Fund theft**:[15] Isa Maina is said to have embezzled N23.3 billion of pension's funds. Nigerians have criticized the presidency for not dealing decisively with the former Chairman; pension Reforms Task Team, Alhaji Abduliasheed Maina, who appeared to have held the government to ransom for a long while. He was however eventually tried, convicted and sentenced to a term of imprisonment with an option of N700, 000.00 (seven hundred thousand naira) fine which he had ready in his car and promptly brought out and paid on the same day of the conviction and thus went home a free man.

Private Sector

1. **Chief (Mrs) Cicelia Ibru**: She was first arraigned on a 25-count charge on August 31, 2009, and remanded in the Economic and Financial Crimes Commission's custody, till September 14, 2009 when she was granted bail by the court. She was docked for criminal manipulation of bank records and depositors' funds.

   Cecilia Ibru entered a plea bargain arrangement with EFCC, which saw the reduction of the charges. She was initially arraigned on a 25-count charge which was reduced to three only; counts 14, 17 and 23 of the earlier charges that were read to her, to which she pleaded guilty. The Trial judge in the matter, Justice Dan Abutu, in his Judgment, after Mrs. Ibru pleaded guilty to the amended 3-count charges, sentenced her to

[14] www.premiumtimesng.com/ibori N22billion loot: UK Court assets confiscation

[15] www.theheraldng.com/No where to Run.Jonathan mores against pension Boss Maine, INTERPOL places him on watchlist.

six months imprisonment on each of the count, which ran concurrently[16].

2. **Chief (Dr) Erastus Akingbola:** Mr. Akingbola was first arrested on August 10, 2010 when he reported himself to the EFCC office after the anti graft agency had declared him wanted. He was subsequently arraigned before Justice Mohammed Idris of the Federal High Court, Lagos on a 22-count charge of fraud, granting of reckless credit facilities, abuse of office, and mismanagement of depositors' funds (called from the Premium Times)[17]

There is no doubt that an analysis of the above exemplified cases can take hundreds if not thousands of pages of literary work. The only point being made with them here is that they are landmark cases showing the dept with which the economy of Nigeria is plundered through crimes, and to enquire into the absence of deterrence in the face of such celebrated cases. This brings us to the next aspect of this brief enquiry. Could it be that it is the nature of the punishments meted out in these celebrated cases under the purport of the rule of law that continues to fuel further impunity on the part of other criminals? Let us find out.

Punishment Patterns

Remarkably all the cases exemplified above except the one prosecuted abroad in the United Kingdom have all the convicts walking the streets of Nigeria and flouting their loot or booties of the crimes before the public. In one of the cases, a State pardon has even been granted. Why should others then be deterred? This is the question on the lips of most citizens in and outside the country.

The modes of punishment for crimes recognized all over the modern world appear to be up to 26 in number but all aimed at two goals of Reformation and Deterrence. Reformation is meant to

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[16] The Nigerian Vanguard. October 9, 2010. www.vanguardng.com

[17] www.premiumtimesng.com supra.

retrieve the good part of the individuals and not as it were, throw away the baby with the useless bath water while Deterrence is aimed at preventing re-occurrence and discourage repetitions. These modes are tabulated below without expatiation as they are not problems in themselves and as their expatiation is not the thrust of this brief piece. The thrust is whether the process of administering them in Nigeria is in tandem with the extant laws in the country and the purposes of the laws. The punishment modes themselves, can be graphically set out generally as follows; i.e from

a) Accumulative
b) Aggregate sentence
c) Concurrent sentence
d) Conditional sentence
e) Consecutive sentence
f) Death sentence
g) Deferred sentence
h) Determinate sentence
i) Fixed sentence
k) Flat sentence
l) General sentence
m) Indeterminate sentence
n) Intermittent sentence
o) Life sentence
p) Mandatory sentence
q) Maximum sentence
r) Minimum sentence
s) Multiple sentence
t) Nominal sentence
u) Noncustodial sentence
v) Presumptive sentence
w) Split sentence
x) Straight sentence
y) Suspended sentence
z) Weekend sentence[18]

[18]. Blacks Law Dictionary supra.

Plea Bargaining and the Rule of Law in Nigeria

According to Blacks Law Dictionary, a plea bargaining is;

> "A negotiated agreement between a prosecutor and a criminal defendant."

Thus the bargain as further explained by the dictionary[19] is either in relation to the charges or in relation to the sentence or sentences or both.

Recently, this notion took centre stage in discussions amongst eminent Nigerian jurists including retired Chief Justices of the Federation.[20] The question was whether or not plea bargaining should be counted as part of our legal system or criminal justice. Naturally this sparked up public debate on the issue. It is therefore appropriate to examine whether the notion is indeed part of our law or a derivative from some adjectival rule of law.

> A functional definition of the rule of law is that it is a dynamic concept for the expansion and fulfillment of which jurists are primarily responsible and which should be employed, not only to safeguard and advance the civil and political rights of the individuals..…… but also to establish social, economic, educational and cultural conditions under which his legitimate aspirations and dignity may be realized.[21]

It is therefore best to always examine this notion of plea bargaining in the light of the above definition in its manifold respects.

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19. Eight Edition by Bryan A. Garner Editor in Chief
20. Justices Muhammah Lawal Uwais and Dahiru Musdapher at a public lecture organized by the Nigerian Judicial Institute in November 2012.
21. Dr. Odje, M. (DFR, SAN) The role of the legal profession in the transition programme 28th Feb. 1997, quoting the Report of the proceedings of the International Congress of Jurists New Delhi Jan. 5-10 1959 p.3.

As a notion, its practical application in Nigeria has been seen in a few celebrated cases such as the popular Lucky Igbinedion and Cecilia Ibru criminal trials above. In both cases the accused persons were charged to court on multiple counts of stealing, fraudulent conversion and misappropriation of public funds. They were chosen because they are illustrations from both the public and private sectors. Lucky Nosakhare Igbinedion was a former Governor of Edo State, South, South Nigeria whilst Cecilia Ibru was the alter ego of one of the frontline banks in Nigeria called Oceanic Bank Plc. Both it would appear, acted based on improper motivation.[22]

The details of how these criminals carried out their respective crimes are not very crucial here. What is significant is that the amounts stolen ran into billions of naira.

There was no question that these were mega thieves or rogues. There was also no question that they deserved to be punished in either of the ways, in which criminals are punished as already set out above i.e. from (a). Accumulative to (z) Weekend sentence[23]

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[22]. Improper motivation is the surest indices of corruption and embezzlement of other people's funds. Devious and dubious persons abound who are easily motivated by either of greed, nepotism, concupiscence, cupidity, covetousness and all other forms of negative tendencies. Often times, they roller-coast and wave – ride into highly sensitive positions of responsibility and execute their nefarious inner objectives before they are detected. In Nigeria for example, names of hitherto great bankers such as Cecilia Ibru of Oceanic Bank, Erastus Akingbola of Intercontinental Bank and many others who were arrested, tried and convicted publicly of embezzlement of billions of customers/investors monies, now leave bile in the mouth. The web is agog with details of some these atrocities including those of Bankers like Cecilia Ibru www.greenlight.com.ng/business (15 /07/2013) with a caption "Steal Billions of Dollars & then become an Evangelist". For the list of assets forfeited by her see www.procurmentmonitor.org (15/07/2013) For Akingbola, see – "Roque Banker Erastus Akingbola" – www.saharareporters.com.(15/07/2013).

[23]. Blacks Law Dictionary supra.

The issue was whether the bargain eventually struck whereby such mega thieves went home smiling at the end of the day was justice to all concerned under the much coveted rule of law.

With billions of the loot or ill-gotten monies left for them and without suffering any imprisonment or at all, the question remains whether the rule of law is served in all its ramifications by the end result of what was done.

As an analogy, what happened in those cases of far as the public is concerned is that the criminals each stole a cow a piece and in the plea bargain, returned a leg each to the owner and went home to celebrate. In the eyes of the public, that certainly amounts to victory for the thieves. Perhaps if they had each stolen a fowl, they would still have gained if they returned only the drumsticks a piece. Whether from the public perspective or from any other one, it is always preferable to examine the question in the light of the said functional definition of the rule of law as;

1. A dynamic concept in the hands of jurists for the fulfillment of the object of law
2. Employed to safeguard and advance the civil and political rights of the individuals
3. Used to establish social, economic, educational and cultural conditions under which the individuals' legitimate aspirations and dignity may be realized.

In a sense, this manifold conception appears to lay emphasis on the individual as against the public at large or the State or State Agencies in the administration of justice partnership. That partnership[24] which is often brought together in the phrase "interest of justice" contemplates much more than the above emphasis of the

[24]. As a corollary of the phrase ie "the rule of law" is usually the notion of "the interest of justice" which ought to ensure a tripartite consideration of the accused person, the victim of the crime or the immediate victim of the crime, and of course, the public at large ie the eventual or ultimate victim of any crime.

rule of law. It is however submitted that insofar as the concept of the rule of law as dissected above entails; (a) the fulfillment of the object of the law which is justice and (b) the establishment of social, economic, educational and cultural conditions for individuals' legitimate aspirations and dignity, then their destinations are co – terminus.
A particular threshold question that must be asked and answered however remains the question of whether or not this entire notion of plea bargaining is provided for in our rule books or written laws or positive legislation or it is merely subsumed.

Our Jurisprudence reveals that in the realm of criminal law, our primary rules of obligation are contained in the criminal code[25] whereas our secondary rules of recognition are as provided for in our Criminal Procedure Code. Does this adjectival law of recognition enable us in this country to resort to plea bargaining as a viable procedure for crime prevention, detection and punishment? Of course it goes without saying that in our dichotomy of criminal procedure, a mention of the Criminal Code necessarily entails its counterpart Penal Code that is in force in the States of the Federation that hitherto formed the Northern Region of Nigeria[26]. The essential provisions of our Criminal Procedure Act above range from arrest of offenders through charging to Court, trial, conviction and sentence.

Perhaps a more microscopic search may produce the relevant sections but thus far. None has been found relating to plea bargaining either as to the charge or as to the sentence. For now, it seems to be an extra judicial or extra legal contraption by prosecutors employed in cases involving highly dignified rogues or extremely wealthy thieves whose conviction will otherwise be more difficult if not impossible to prove. It is almost like

[25] Caps C41 & C42 Laws of the Federation 2004
[26] Section 127 of the Criminal code, LFN 2004

compounding a felony see Section 127 of the Criminal code, LFN 2004 which provides as follows.

> 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 an agreement or understanding that he will compound or conceal a felony or will abstain from, discontinue, or delay a prosecution for a felony, or will withhold any evidence thereof is guilty of an offence.

The law goes further to state that where the offence compounded carries the death penalty or imprisonment for life, then the punishment for the offender is 7years imprisonment[27] or three years imprisonment if the punishment is otherwise[28].

Unfortunately for those undertaking plea bargaining in Nigeria, section 127 of the Criminal Code above, did not exempt situations where the property in consideration of the plea bargain is received for the State or the depositors of failed banks or the citizens of a particular State or Local Government. Until Section 127 of the Criminal Code is repealed or amended as suggested above, it is humbly submitted that PLEA BARGAINING in Nigeria as at today, is a criminal act and a felonious exit for big time rogues to escape the full weight of the law.

It will not be sufficient of course to merely replace or repeal section 127 above in order for the notion to be applied in compliance with the Rule of Law as dissected above. More must be done. After all precedence exists that

> "A Plea to three out of the five Counts of a charge is not a plea to the charge"[29]

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[27]. section 127 Supra

[28]. Attah v. State 12 WACA 220

[29]. See Oren Bar Gill & Oren Gazal Ayal, Plea Bargains only for the guilty; journal of Law & Economics Vol. 49, No 1 (April 2006), P.P. 353 -364 Also

It is imperative that more must be done to give prosecutors, the opportunity that accords with some other jurisdictions like the United States of America, to establish guilt and punish for otherwise very difficult cases[30]

> It is a known fact that in the United States, questions of sentencing are not left to the absolute and whimsical discretions of prosecutors, criminals, convicts and judges alone. Full fledged institutional frame works exist to ensure uniformity and standardization[31] (see the United States Sentencing Commission Laws and Guidelines which set out in a tabular and clear form various offences and their sentencing schedules reviewed from time to time. The last being the 2011 guidelines and the 2012 table or grid)

In 2015, the Federal Government of Nigeria enacted the new Administration of Criminal Justice Act. Part 28 of the Act makes provision for "Plea Bargain and Plea Generally". By its section 270 under the part 28, it provides for what it calls "Plea bargain guidelines". Unfortunately, it did not repeal section 127 of the Criminal Code or the Criminal Code itself as it did with the Criminal Procedure Act[32] Cap. C41 LFN 2004 and the Criminal Procedure (Northern States) Act[33] Cap. C42 LFN 2004. The guidelines so called are as follows[34]:-

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http;//www.jitor.org/stable/10.1086/501084 (27/11/12): For Further reading on plea bargaining see John Baldwin, Michael McConvill; Plea Bargaining and Plea Negotiation in England Law & Society Review, Vol. 13, No2, Special issue on Plea Bargaining (winter, 1979) pp. 207 – 307. 2.

30. Stephen J Schulhofer, Harvand Law Review, Vol. 97, No 5 (Mar. 1984) pp. 1037 – 1107

31. Mike McConvill; Plea Bargaining: Ethics and Politics; Journal of Law & Society Vol. 25, No 4 Dec. 1998) pp 562 – 587.

32 Cap. C41 Laws of the Federation of Nigeria 2004.

33 Cap. C42 LFN 2004.

34 ACJA 2015

1. Notwithstanding anything in this Act or in any other law, the Prosecutor may:
   a) Receive and consider a plea bargain from a defendant charged with an offence either directly from that defendant or on his behalf; or
   b) Offer a plea bargain to a defendant charged with an offence.

2. The prosecutor may enter into plea bargaining with the defendant, with the consent of the victim or his representative during or after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defence, provided that all the following conditions are present:
   a) The evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt;
   b) Where the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative; or
   c) Where the defendant, in a case of conspiracy, has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders[35].

3. Where the prosecutor is of the view that the offer or acceptance of a plea bargain is in the interest of justice, the public interest, public policy and the need to prevent abuse of legal process, he may offer or accept the plea bargain[36].

4. The prosecutor and the defendant or his legal practitioner may before the plea to the charge, enter into an agreement in respect of:
   a) the term of the plea bargain which may include the sentence recommended within the appropriate range of punishment stipulated for the offence or a plea of guilty

[35] Section 270 (2) ACJA 2015.
[36] Section 270 (3) ACJA

by the defendant to the offence(s) charged or a lesser offence of which he may be convicted on the charge; and

b) An appropriate sentence to be imposed by the court where the defendant is convicted of the offence to which he intend to plead guilty[37].

5. The prosecutor may only enter into an agreement contemplated in subsection (3) of this section:
   a) After consultation with the police responsible for the investigation of the case and the victim or his representative, and
   b) With due regard to the nature of and circumstances relating to the offence, the defendant and public interest.

Provided that in determining whether it is in the public interest to enter into a plea bargain, the prosecution shall weigh all relevant factors, including:

a) The defendant's willingness to cooperate in the investigation prosecution of others;
b) The defendant's history with respect to criminal activity;
c) The defendant's remorse or contrition and his willingness to assume responsibility for his conduct;
d) The desirability of prompt and certain disposition of the case;
e) The likelihood of obtaining a conviction at trial, the probable effect on witnesses;
f) The probable sentence or other consequences if the defendant is convicted;
g) The need to avoid delay in the disposition of other pending cases; and
h) The expense of trial and appeal.
i) The defendant's willingness to make restitution or pay compensation to the victim where appropriate[38].

[37] Ibid. Section 270 (4)
[38] Ibid. Section 270 (5)

6. The prosecution shall afford the victim or his representations to the prosecutor regarding:
   a) The content of the agreement; and
   b) The inclusion in the agreement of a compensation or restitution order[39].

7. An agreement between the parties contemplated in subsection (3)[40] shall be reduced to writing and shall:
   a) State that, before conclusion of the agreement, the defendant has been informed:
      i) That he has a right to remain silent;
      ii) Of the consequences of not remaining silent;
      iii) That he is not obliged to make any confession or admission that could be used in evidence against him.
   b) State fully, the terms of the agreement and any admission made, and
   c) Be signed by prosecutor, the defendant, the legal practitioner and the interpreter, as the case may be.
   d) copy of the agreement signed by the parties in paragraph (c) of subsection (6) of this section shall be forwarded to the Attorney-General of the Federation[41].

8. The presiding judge or magistrate before whom the criminal proceedings are pending shall not participate in the discussion contemplated in subsection (3) of this section[42].

9. Where a plea agreement is reached by the prosecution and the defence, the prosecutor shall inform the court that the parties have reacted an agreement and the presiding judge or magistrate shall then inquire from the defendant to confirm the correctness of the agreement[43].

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[39] Ibid. Section 270 (6)
[40] Ibid Section 270 (7)
[41] Ibid section 270 (8) ACJA 2015
[42] Ibid section 270 (9)
[43] Ibid section 270 (10)

10. The presiding judge or magistrate shall ascertain whether the defendant admits the allegation in the charge to which he has pleaded guilty and whether he entered into the agreement voluntarily and without undue influence and may where:
    a) He is satisfy that the defendant is guilty of the offence to which he has pleaded guilty, convict the defendant on his plea of guilty to that offence, and shall award the compensation to the victim in accordance with the term of the agreement which shall be delivered by the court in accordance with section 308 of this Act; or
    b) He is for any reason of the opinion that the defendant cannot be convicted of the offence in respect of which the agreement was reached and to which the defended has pleaded guilty or that the agreement is in conflict with the defendant's right referred to in subsection (6) of this section, he shall record a plea of not guilty in respect of such charge and order that the trial proceed[44].

11. Where a defendant has been convicted in terms of subsection (9) (a)[45], the presiding judge or magistrate shall consider the sentence as agreed upon and where he is:
    a) Satisfied that such sentence is an appropriate sentence, impose the sentence; or
    b) Of the view that he would have imposed a lesser sentence than the sentence agreed, impose the lesser sentence; or
    c) Of the view that the offence requires a heavier sentence than the sentence agreed upon, he shall inform the defendant of such heavier sentence he considers to be appropriate[46].

12. The presiding Judge or Magistrate shall make an order that any money, asset or property agreed to be forfeited under the plea

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[44] ACJA section 270 (11)

[45] Supra ACJA

[46] ACJA section 270 subsection 11. The question here is what then happens to the plea bargain upon which the conviction was secured.

bargain shall be transferred to and vest in the victim or his representative or any other person as may be appropriate or reasonably feasible[47].

13. Notwithstanding the provision of the Sheriffs and Civil Process Act, the prosecutor shall take reasonable steps to ensure that any money, asset or property agreed to be forfeited or returned by the offender under a plea bargain are transferred to or vested in the victim, his representative or other person lawfully entitled to it[48].

14. Any person who willfully and without just cause obstructs or impedes the vesting or transfer of any money, asset or property under this Act shall be guilty of an offence and liable to imprisonment for 7 years without an option of fine[49].

15. Contemplated in subsection (10) (c) above, the defendant may:
    a) Abide by his plea of guilty as agreed upon and agree that, subject to the defendant's right to lead evidence and to present argument relevant to sentencing, the presiding judge or magistrate proceed with the sentencing, or
    b) Withdraw from his plea agreement, in which event the trial shall proceed de novo before another presiding judge or magistrate, as the case may be[50].

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[47] ACJA section 270 (12). But what if the amount is too small.

[48] Ibid section 270 (13). The Sheriffs and Civil Process Act Cap S6 LFN 2004 which regulates enforcement of Court Judgments across the Country.

[49] Section 270 (14) ACJA. 2015. What if the obstruction was by means of a law suit which eventually failed. Would the offence have been committed?

[50] Section 270 (15) ACJA 2015. The problem posed by footnote 46 Supra is answered by subsection 15 hereof but it again opens another vista enabling a prosecution that has gone up to sentencing to be frustrated in respect of a crime already clearly admitted by the accused person under the earlier plea bargain pending only sentencing. This is why the use of standardized sentencing is herein advocated through a settled matrix or table knon before the bargain was entered into..

16. Where a trial proceeds as contemplated under subsection (14)(a) or de novo before another presiding judge, or magistrate, as contemplated in subsection (14)(b):
    a) No references shall be made to the agreement;
    b) No admission contained therein or statements relating thereto shall be admissible against the defendant; and
    c) The prosecutor and the defendant may not enter into a seminar plea and sentence agreement[51].
17. Where a person is convicted and sentenced under the provisions of subsection (1) of this section, he shall not be charged or tried again on the same facts for the greater offence earlier charged to which he had pleaded to a lesser offence[52].
18. The judgment of the court contemplated in subsection 10(a) of this section shall be final and no appeal shall lie in any court against such judgment, except where fraud is alleged[53].

Although in United States v. Booker[54], it would appear that the Supreme Court reduced the sentencing Guidelines' status from binding to advisory, yet they exist in that country as templates unlike the situation in Nigeria where goats are traded in for elephants in purported plea bargains. If properly articulated and synthesised, plea bargain can serve as a controversially useful tool for convicting and punishing criminals.

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[51] Section 270 (16) ACJA. But does this mean they can enter a different one and when will such bargains end?

[52] Section 270 (17) ACJA. This is the usual autrofois or what else is imagined here?

[53] Section 270 (18) ACJA. Questions may however arise as to the constitutionality or otherwise of this subsection which eliminates or limits the rights of appeal.Of course parties can always raise fraud just to have a right to appeal the Judgment.

[54]. *Robert E Scott, William J. Stunt3. Plea Bargaining as a Contract, the Yale Law Journal, Vol. 101, No 8: symposium: Punishment (June, 1992), pp. 1909 – 1968. Discussed by Oren and Oren supra*

> About 95% percent of all convictions in the United States are secured with a guilty plea, most of them through plea bargaining …. Yet their prevalence, or perhaps owning to it, plea bargains remain one of the most controversial practices in the criminal justice system

In the case of Nigeria, it is humbly submitted that a national debate amongst jurists on the issue remains pertinent. Our country is not ripe for Plea Bargaining. This is particularly so because no legal or institutional frame works exists in our jurisprudence for an articulate, uniform, purposeful and just administration of the concept. Indeed, its application in Nigeria so far is a woeful disappointment and a disgrace to the Rule of Law. This is because **it has so far witnessed the trading-in of rats for elephants. It is a sin and a shame.**

Conclusion

The short conclusion to be drawn here is that although laws exist in Nigeria for crime detection and prevention, the laws appear prostrate. This appearance is brought about by the seer magnitude of the amounts of money involved in theft cases in the country and the impunity with which such amounts are stolen. They therefore go beyond ordinary crimes to be described in statutes as economic crimes. Unfortunately, the scope and application of the doctrine of plea bargaining to the jurisprudence of crime detection and prevention in Nigeria has not achieved its desired objective of deterrence and crime reduction.