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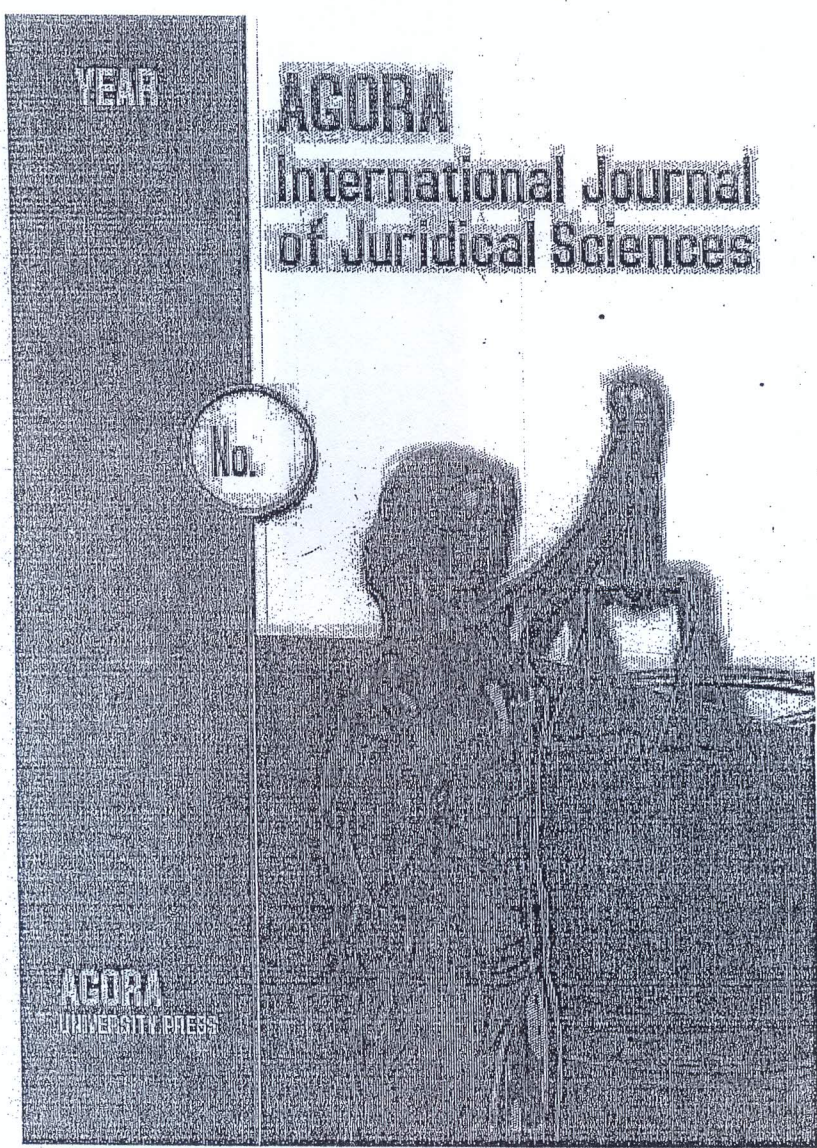
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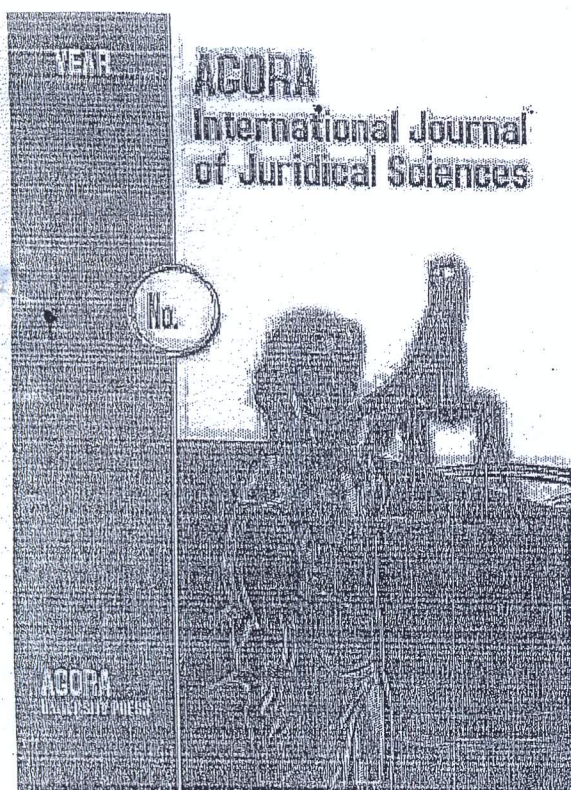
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## PLEA BARGAINING: A PANACEA TOWARDS PRISON DECONGESTION IN NIGERIA

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### Abstract

*Against the panoramic view of the criminal justice reform agenda in Nigeria, the plea bargaining procedure is yet to be fully recognized as a major intervention strategy to deal with the problems in the Nigerian criminal justice administration. This paper therefore conceptualized the concept of plea bargaining. The legal basis for plea, the justifications for plea as well as the merits and demerits of the plea are discussed. The paper also highlights the major problems afflicting criminal justice administration and examines the steps being taken to deal with the problems. The emphasis is on strengthening arguments for a mutual acceptance of plea bargaining as a credible exist strategy by both the state and an alleged offender. The way forward in form of recommendations for the expansion and institutionalization of the practice is also discussed.*

**Keywords:** Plea Bargaining, A Panacea, Prison Decongestion

### Introduction

The Nigerian criminal justice administration system is no doubt characterized, among other features, by delay in the administration of cases; either due to lack of facilities for the speedy discharge of judicial functions, lack of research lawyers to assist judicial officers in the determination of cases and specifically in the preparation of judgments and rulings, long adjournment of cases owing to congestion of court diaries, non specialization in the legal profession leading to difficulty to swiftly acquire quality expertise that a litigation lawyer needs to superbly handle cases and provide guidance to the court, stalling criminal prosecution by investigating police officer who fail to produce witnesses to the Director of Public Prosecution for testimonies during trials.<sup>1</sup>

The excruciating torment and hopelessness that an accused person standing trial, and who thereby is incarcerated, is subjected to is better imagined than experienced. Worrisome is the constitutional provision that an accused person is still presumed innocent until proved otherwise regardless of the seriousness or graveness of the offence alleged against him, which in most cases lacks factual or legal basis notwithstanding the upholding of any conviction and sentence.<sup>2</sup> The view generally adopted by the prosecution, which is the judicial view is that all the prosecution needs to allege is the commission of an offence and call witnesses in support of the commission of the offence. The onus is on the accused to prove that he had not committed the

<sup>1</sup> Ogunye, J *The Imperative of Plea Bargaining* (Lagos; Lawyers' League for Human Rights, 2005) p. iv

<sup>2</sup> Ibid.

offence alleged. Undoubtedly, this provision negates the constitutional presumption of innocence and the requirement that the prosecution establishes the guilt of the accused beyond reasonable doubt. It is conceded that all the accused needs do is to lead evidence to establish his innocence.<sup>3</sup>

It is the contention of the Writers that, the detention of an accused person, albeit pursuant to an order of remand of a trial court in prison, for a long time without a quick determination of the charge against him or her is a breach of the right of the accused person to liberty, and other plenitude of rights.<sup>4</sup> Sometimes, when an accused person standing trial dies in prison, due to adverse health conditions, the right of the person to life is grossly violated.<sup>5</sup>

It is the observation of the Writers that, the Nigerian criminal justice community has been tackling the problem of delay in criminal justice administration through reforms initiatives. The reform debates and actions are observably geared towards ensuring that the institutions that work together in criminal justice administration i. e the Police, the Attorney General, the Judiciary, and the Prison are better placed to perform their duties in order to bring about a faster and more efficient criminal justice dispensation; hence, the motivation for the 'plea bargaining project' which this paper discusses.

### Brief Overview of the Divergent Views on Plea Bargaining

Plea bargaining is a practice whereby the accused forgoes his right to plead not guilty and demand a full trial and instead uses a right to bargain for a benefit<sup>6</sup>. This concept has its pros and cons, merits and demerits. While it is being hailed by some, yet others condemned it<sup>7</sup> and some are pessimistic about its legality in the international criminal tribunal<sup>8</sup>. Those argued in favour of it based their arguments on the benefits both the state and the accused person derive from its operation. One of the benefit is that plea bargaining facilitates speedy determination of cases at a lesser cost for prosecution; faster trial saves prolonged adjudicatory time.<sup>9</sup>

The opponents however argued that plea bargaining amounts to a sacrifice of criminal justice system on the altar of economic management of public prosecution. It lets off criminals offenders with lighter punishment than those, which the crimes they actually commit attract under the law. Plea bargaining is criticized for being solely motivated by case load management concern. It is argued that the plea bargaining system operates to decongest the prison and that it is a response to the pressure posed by the inadequacy of fund to cover public criminal prosecution.

It also contended that, plea bargaining amounts to the breach of the principles of separation of powers, in that it is somewhat a dictation by the executive arm of government to the judiciary. It submitted that it lets off criminal with light punishment which may not serve as a sufficient deterrent in the circumstances. In most cases, the plea bargaining agreement it is being employed for political and economic reasons by the ruling elites in favour of political stalwarts, than for the benefit of the poor and ordinary criminal offenders it was meant to profit.<sup>10</sup>

### Challenges Facing the Nigeria Criminal Justice System.

<sup>3</sup> Gardiner, 'The Purpose of Criminal Punishment' (1958) 21 M.C.R.P. 117.

<sup>4</sup> Cap IV of the 1999 Constitution of the Federal Republic of Nigeria (as amended) on Fundamental Human Rights.

<sup>5</sup> Ibid at p.V.

<sup>6</sup> A.O. Alubo "Plea Bargaining Imperative in Nigeria" *Ife Juris Review*, 2014, p. 501.

<sup>7</sup> Amongst those that have worked on the legal effect of plea bargaining on criminal judicial system in Europe are, Petre Buned "Admission of Guilt in The Criminal Trial" <http://www.juridicaljournal.Univagora.ro/downloadpdf/s=2010-8-ADMISSIONin-of-GUIL.pdf>, accessed 13/1/14, A. Uzlar "Plea Bargaining-A New Criminal Procedure Institution" *AGORA International journal of Juridical Sciences* Vol. 4 (2013)pp.239-247. In their works, both authors examined the new principle, benefit and its essence on the Romania Criminal Judicial System. While Timothy L "The Case Against Plea Bargaining" outlined the anger in allowing plea bargaining in criminal justice.

<sup>8</sup> See Alexandra L "Is the Plea Agreement Practice of the International Criminal Tribunals a Pathway to Negotiated justice with National Jurisdictions" *Law Review* Vol. III issue 2 July-Dec 2013.

<sup>9</sup> Ogunye, J op. cit p. 190.

<sup>10</sup> Ibid.

Criminal procedure is the method laid down by law for bringing a person who is alleged to have committed a crime before a court of law for trial. It encompasses also the methods that are adopted by the court of trial, the powers of the court of trial, the right of appeal of a person convicted of a crime, and the rules of court governing the procedure of criminal appeals in appellate courts.<sup>11</sup> This procedural framework consists chiefly, of the right to fair hearing or trial; a right which in broad terms comprises the common law principle that a man may be punished only in accordance with the law and that he cannot be convicted of an unwritten offence<sup>12</sup>.

This framework was also guaranteed under key international instrument and charters, for instance, Universal Declaration of Human rights, 1945; the African Charter on Human and Peoples' Rights, 2004, International Covenant on Civil and Political Rights, 1966 and a host of others, which generally guarantees the right to fair hearing. There are other criminal procedure principles which extend the right to fair hearing in the constitution. In Nigeria, these principles are contained in two principal penal statutes operating in Nigeria, i. e the Penal Code and the Criminal Code, the Criminal Procedure Code and the Criminal Procedure Act.

There are host of others manuals that deals with pre-trial rights and rights at the trial. These rights are essentially in case of pre-trials: right to liberty; right of person in custody to information; right to legal counsel before trial; rights of a detained person to the outside world; right to challenge the lawfulness of detention; right to trial within a reasonable time or be released from detention; right to adequate time to prepare a defence; right to humane detention and freedom from torture.<sup>13</sup>

Rights at trial includes; right to a fair trial by a competent, independent, and impartial tribunal; right to equality before the law and court; right to a public hearing; presumption of innocence; right not to be compelled to testify or confess guilt; exclusion of evidence elicited as a result of torture or other compulsion; prohibition of retroactive application of criminal laws and of double jeopardy; right to be present at trial and appeal; right to call and examine witnesses; right to an interpreter and translation; right to obtain judgment and appeal; and right to be punished according to the law.<sup>14</sup>

The existence of a fair trial framework within a given criminal justice system does not per se guarantee that the right of those standing trial to fair hearing is in all cases observed and enforced, neither does it signify that the penal system is fair or equitable. In the view of the Writers, a host of other factors undermines a country's penal system that determines whether it is fair to an accused person.

According to Ogunye,<sup>15</sup> the economic relations in and socio-political arrangement of a society determine to a very large extent its law and other profile, particularly the crime rate. The Nigeria socio-economic arrangements and political system, no matter the way it is, may be viewed as largely as unfair to the majority of the people. Economic and political factors that inspire criminal activities are enormous. Majority of the people live in abject poverty; the per capital income is below ₦125.00 (about \$1 US Dollar),<sup>16</sup> unemployment rate is unbelievable high, with well over four million graduates of tertiary institutions not gainfully employed;<sup>17</sup> no social security or welfare programme for the vast majority of Nigerians who are in want; official corruption is high, with a lion portion of the oil wealth of the country stolen by political power

<sup>11</sup> Doherty, O *Criminal Procedure in Nigeria* (London; Blackstone Press Ltd, 1990) p. 2.

<sup>12</sup> As firmly held in the case of *Aoko vs. Fagbemi* (1961) ALL NLR 400.

<sup>13</sup> See Olokooba S.M and Oyedokun W. Alli "An Overview of the Rights of Prisoners Under the Nigerian Law" *Confluence Journal of Jurisprudence and International Law*, 136. For the enforceability of these rights, see Olokooba S.M, Olatoke J.O and NOA Ijaiya "A Diagnostic Appraisal of the Clogs in the enforceability of Prisoners' Rights in Nigeria Under the Nigerian Law" *Journal of the Public Law and Constitutional Procedure* Vol. 4 No 2, 2012, 102-114, see also *ibid*.

<sup>14</sup> "The Right to Fair Trial Manual" Amnesty International 1998.

<sup>15</sup> Ogunye, O. op. cit p. 12

<sup>16</sup> *Ibid*.

<sup>17</sup> *Ibid*.

pirates and hidden overseas. Anyone who has been to all part of the country will readily agreed that 10 million of the estimated 80 million people in Nigerian are living in abject poor conditions and no less than 60 million of them are actively starving<sup>18</sup>.

Furthermore, these problems are complicated by low level of human rights awareness and ignorance of legal rights and wrongs is prevalent. This subsisting situation inevitably breeds criminality. In many instances, therefore, both the perpetrators and victims of crimes are by-products of an unjust and iniquitous social, economic, and political relations in the country. The point being made here is that, the fair trial principle is not fully, faithfully and satisfactorily adhered to by the criminal justice system. The system is dysfunctional, resulting in many unfair trials to the accused, to the state, victims of crimes and the society in general.<sup>19</sup> In nutshell, the whole system is corrupt. Not surprising, the National Judicial Council in 2013 recommended for the compulsory retirement of the judges for an alleged misconduct<sup>20</sup>.

#### Issues and Reasons for Prison Congestion in Nigeria

While prison congestion is an issue that constantly attracts attention in Nigeria's criminal justice discourse, little or no attention is paid to the congestion of police cells and the ways and manner in which the police deal with congestion. Largely, cell congestion is an urban problem.<sup>21</sup> It should be pointed out that one cause of congestion of cells is arbitrary arrests and detention. Due to poor crime intelligence gathering, arrests are not made when investigation is at an advance stage; rather arrests are made at the beginning of investigation. The slow pace of police investigation is yet another cause of congestion in cells. In spite of the 48 hours deadline constitutional provision, it takes the police an average of two weeks to charge a suspect to court after arrest.

While it is equally true that the police are enable by the Constitution, the Police Act and the Criminal Procedure Code/Act, to arrest on the basis of reasonable suspicion that a person is about to commit or has committed a crime, it must stated that pre-arrest intelligence can help in limiting the number of days in which a criminal suspects are kept in police custody, with the attendant congestion of police cells.<sup>22</sup>

In practice, when an investigating police officer has to visit another state for investigation, the suspect who is in detention is compelled to pay for the boarding and accommodation of the police team. Whether money is provided by the state for this type of investigation is not clear. What is clear is that the suspect is made to bear the financial brunt of investigation. There are cases when suspects languish in police custodies simply because they fail to provide the financial means to conduct investigation into an allegation leveled against them.<sup>23</sup>

Another growing ugly incident is the practice by the police whereby creditors use the police as their debt collectors in cases that have no criminal connotation. When debtors are arrested, they are detained and made to enter an undertaking as to schedules of repayment of debt. Commission ranging from 10%-20% of the amount recovered is charged as the recovery fee. Anytime the debtor defaults, he is rearrested and kept in custody; and if he tries to be smart by engaging the services of a legal practitioner, he is charged to court for fraud and obtaining property by false pretences instead. This practice remains rife in spite of the warning by the Court of Appeal in the case of *Afribank Nigeria plc vs. Onyima*<sup>24</sup> that the police force is not a debt recovery agency. And that arrest, detention and release without charge may make the police

<sup>18</sup> Nnamdi Aduba J "Prisoners Rights in Nigeria: A Critique" citing Obafemi A, *A Path to Freedom* (Greatness, Fourth Dimension Publisher, 1981), 77, also available on line at <http://dspace.unijos.edu.ng/bitstream/10485/202/1/37/PRISONER.pdf>, accessed on 26/12/2012

<sup>19</sup> Ogunye, O. *op. cit* p. 12.

<sup>20</sup> The Nation Newspaper, 26/2/2013 pp. 29-30.

<sup>21</sup> *Ibid* at p. 29.

<sup>22</sup> *Ibid*.

<sup>23</sup> *Ibid*.

<sup>24</sup> (2004) 2 NWLR PT. 858 p.654 at 680 PARA. A.

liable to damages for the tort of false imprisonment or for the unlawfulness or unconstitutionality of the act of detention<sup>25</sup>.

The state of prisons and the treatment of prisoners in Nigeria is another critical aspect of the malfunction of the Nigeria criminal justice system. Although, among the many theories of punishment, retribution is regarded as the basic of object of criminal law, however, in recent times, the utilitarian object of punishment which is deterrence is now generally regarded as the main focus of the penal system. Rehabilitation which is also an aim of criminal punishment emphasizes reformation of the accused person.<sup>26</sup>

Based on the utilitarian perspective, the prison system ought to be hinged on a general philosophy of reformation and rehabilitation. Convicts, who are imprisoned are not just expected to serve punishment for the crimes committed, they are in addition supposed to be reformed while serving the terms and be rehabilitated before being sent back to the society. This is mooted on the understanding, that prisons to a large extent are occupied by victims of socio-economic policies, i. e those who have not gained a means of livelihood for themselves, neither a position of earning, employment, security, and social acceptance.<sup>27</sup>

The problem with sentencing policy in Nigeria is that, the law enforcement agents hardly consider the aim, the trial court may have intended to achieve by imposing a particular punishment. The effect is that the convicted accused person is neither taken care of in the sense that he is not considered as being that would return to the society for the purpose of leading a normal life.<sup>28</sup> in order words, the basis for awarding a particular sentence can hardly be discovered from the judgment of the trial judge. The law enforcement agents are thus left to guess what might have been the intention of the court in awarding the sentence.<sup>29</sup>

Furthermore, there is hardly any provision that takes care of a criminal after he must have served his term of imprisonment. Many of them instantly become recidivist. This omission is of great consequences on the lives and security of the citizens.<sup>30</sup> Unfortunately, the facilities in Nigeria prison system cannot perform the task of reformation and rehabilitation. Worst of all, is the dehumanizing nature of the conditions in the prisons that destroys the health of inmates. Their right to dignity of human person is already being breached by the horrible living conditions in our prisons.

Between April 10-14<sup>th</sup> 2004 in Kirikiri Prison in Lagos state, 1,178 out of the 1,361 inmates awaiting trials had spent between six months to seven years in prison.<sup>31</sup> There were two attempts at jailbreak by the 1, 708 inmates of the Kirikiri maximum prison in Lagos. Three prisoners were killed, and many including prison warders, were wounded in the process of arresting the uprising. The uprising was eventually put down by a combined team of prison, navy and police personnel<sup>32</sup>.

Furthermore, the gross inadequacy of available vehicles to convey detainees to court for their trials is another problem confronting the prison system. This has led to long period of incarceration of awaiting trial inmates before the commencement and determination of the charges against them, thereby compounding the already problem of congestion. In the statement of the erstwhile Comptroller General of Nigerian Prisons, Mr. Abraham Akpe, 12 vehicles out 81

<sup>25</sup> As laid down in *Oyakhire vs. Obaseki* (1986) 1 NWLR PT. 19 p. 1735 and *Commissioner of Police Ondo state vs. Obolo* (1989) 5 NWLR PT. 120 p.130. See also section 35(6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

<sup>26</sup> Weihofen, H "Retribution is Obsolence" National Probation and Parole Association News xxxix (1960) p. 14

<sup>27</sup> Okonkwo and Naish *Criminal Law in Nigeria* (London; sweet & Maxwell, 1982) p. 28-37.

<sup>28</sup> Alamika, E, E, "Challenges and Prospect of Reform and Improved services in Nigeria Prisons" paper presented at the Stakeholder Workshop on Prison Reforms Organized by the Provincial office of the Catholic Health Justice Development and Peace Commission on April 22, 2005, p. 4.

<sup>29</sup> Yakubu, Op.,cit at p. 37.

<sup>30</sup> Neubauer, D. W American Court and the Criminal Justice System 4<sup>th</sup> ed. (New York; Pacific Grove, 1992 at p. 79.

<sup>31</sup> The Punch Newspaper Thursday February, 12<sup>th</sup> 2004, p. 9.

<sup>32</sup> *Ibid.*

Black Motorbikes hired from the Nigeria Police were serviceable, and these were the ones being used to convey over 25,000 inmates awaiting trials to court nationwide.<sup>33</sup>

Health services for prisoners are at best dutiful, but in all cases not intensive; thus prisoners die often due to unavailability of appropriate treatment. Diseases in prisons can easily be diagnosed, and are treatable and curable, but usually lead to death if neglected, by not giving adequate treatment due to poor prison condition. This is a violation of the prisoners' right to life.<sup>34</sup> Warder's brutality and intra inmates' violence are yet other factors to be considered as critical manifestation of the malfunction of the prisons system on inmates occasionally leading to death. In a report, on August 23, 2003, one Shedrack Uzigwe an awaiting trial inmate in connection with an armed robbery charges, was stabbed to death by fellow inmates in Enugu Prison.<sup>35</sup> While warders' brutality and inmates, violence, may not be pronounced as a counting for much deaths recorded in prisons, they nonetheless, constitute a disturbing feature of prison system in Nigeria.

#### Efforts in the Direction of Prison Decongestion in Nigeria

One spectacular feature of past military administrations, were drastic steps taken to deal with the problem of prison congestion associated with long period of detention. For instance, in 1989, the Federal Military Government promulgated the 'Minor Offences (Miscellaneous Provisions) Decree',<sup>36</sup> which abolished wandering as an offence and provided that a simple offence shall not attract detention. The Decree in its Section 1 provides that, as from the commencement of the Decree, notwithstanding anything to the contrary in the Criminal Code, the Penal Code, Criminal Procedure Code, Criminal Procedure Act, or any other enactment or law, a person shall not be accused of or charged with: i) the offence of wandering by whatever name called, ii) any other offence by reason only of his being found wandering, and that accordingly, any person accused or being charged with such offence, shall be released from custody or discharged, as the case may be, forthwith, and that a person who is accused of simple offence shall not, by reason only of being accused of being, be detained in police or prison custody.<sup>37</sup>

This Decree was promulgated to deal with the mischief of overcrowding of prisons brought about by unwarranted arrests, detention, and preferment of charges by policemen, who maximally used the law of wandering to extort money from innocent citizens, and railroad them into detentions, if and when their monetary demands were not met.

However, this may appear to be good law, but the fact still remains those fifteen years after the promulgation of this law, the prison system is still grappling with the problem of overcrowding, congestion, and long period of detention without trials; this shows lack of effectiveness of the law.

Due to the inability of this Decree to solve the problem of prison congestion, the Federal Military Government also fourteen years later, revisited the problem of prison congestion by promulgating the 'Prisons Decongestion Decree'.<sup>38</sup> This Decree established a Task Force for the decongestion of prisons in Nigeria with a deadline of 30<sup>th</sup> April, 1993 to carry out of its functions of prison decongestion after which it will be disbanded. Section 2(4) of the empowered the Task Force to

a) visit the prisons existing in Nigeria and carry out on the spot check and release of prisoners awaiting trial involved in cases of: i) stealing, where the accused had spent three months and above in custody; ii) cases of robbery where the accused had spent three months and above in custody; iii) cases of assault where the accused person up to one month and above in custody;

<sup>33</sup> *Ibid.*

<sup>34</sup> The Punch Newspaper of Tuesday, August 12, 2003 p. 6.

<sup>35</sup> The Punch Newspaper of Monday September 8, 2003. P.15.

<sup>36</sup> Decree No. 29 of 1989.

<sup>37</sup> *Ibid.*

<sup>38</sup> Decree Nos. 18 of 1993.

and iv) other category of offenders other than armed robbery, murder and rape.<sup>39</sup> b) to look into all other cases, not mentioned above, and where release was necessary, make recommendations to that effect; and c) make comprehensive reports of its findings and make appropriate recommendations to the Federal Military Government. The Task Force was mandated by the Decree to keep proper inventory and render account of all prisoners released to the President at such intervals as may from time to time direct. The Decree, also created offences relating to interference with the work of the Task Force, and ousted the jurisdiction of the court to entertain any criminal matter or civil proceedings in respect of exercise of its powers.<sup>40</sup> In addition, no criminal or civil proceedings shall lie or be instituted in any court of law for the or on account of or in respect of any act, matter or thing done by the Task Force or any of its members under the Decree, and if any such proceedings have been instituted before or after the making of the Decree, such proceedings shall be abated, discharged, and made void.

By 1998, the Nigeria Law Reform Commission submitted a report on prison reforms to the Federal Military Government; and by 1999 when General Abdulsalam Abubakar (rtd) became the Commander in Chief of the Armed Forces; he acted upon the report by releasing about 7,000 prisoners mainly awaiting trials from the various prisons across the country. General Olusegun Obasanjo's Administration also follow suit by releasing about 1,503 based on the recommendations of the Task Force.<sup>41</sup>

### **The Judiciary and the Criminal Justice System in Nigeria**

Since the judiciary dispenses criminal justice, its performance or lack of performance has implications on the entire criminal justice system. The constitutional obligation of the judiciary is to dispense criminal justice freely and fairly. Adjudication of criminal cases cannot be free if the judiciary is not independent of the executive arm of government which prosecutes alleged criminal offenders, nor can it be free if the judiciary is manipulated by the executive or any person to secure a determination of a criminal trial in favour of the prosecution.<sup>42</sup>

The structure of the Nigeria judiciary contributes to the elongation of the average time for the determination of criminal trials and appeals.<sup>43</sup> This is so because the non-existence of trial by jury system contributes to the delay in the administration of criminal justice. A criminal trial judge sits alone without a jury over a case, thereby discharging the burden of finding of facts and applying the law.

The nature of criminal trials also contributes significantly to delay in the dispensation of criminal justice. Criminal trials are usually, if not always keenly contested. Criminal cases are essentially adversarial. Needless to say that, every intra-trial ruling delivered by the trial judge, especially in cases that carries long term sentence, life imprisonment and capital punishment, which is against the defence may be appealed against while the substantive trial is pending at the appellate court and backed up with application for stay of proceedings of the trial court, pending the determination of the appeal. If a stay of proceedings is granted, then the trial will be truncated. Also, if, at anytime during the trial, the judge is transferred, or retired or removed from office or dies, the case shall start de-novo before a new judge.<sup>44</sup>

Finally, the judgment may be contested on appeal. All these incidences of criminal trial makes it plain that even criminal trials may take sometime to go through the entire gamut of the judiciary of societies like Nigeria; where the structures of justice administration are not very strong leading to long detention of suspects on awaiting trial.<sup>45</sup>

### **The Plea Bargaining Option**

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid* Sections 4 & 5.

<sup>41</sup> Ogunye, *J op. cit* p. 175.

<sup>42</sup> Ogunye, *op. cit* p. 41.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> Alemika, E 'Pre-Trial Detention of Prison Decongestion in Nigeria' Vol. 3 University of Jos Law Journal (1986-1990).

Plea bargaining is a feature of the criminal justice system of common law countries.<sup>46</sup> Essentially, plea bargaining has been an essential part of the criminal justice system in the United States of America, which though is not included under the fair trial principle in the Bill of Rights enshrined in the Sixth Amendment to the Constitution, has been repeatedly held by American courts to be constitutional.<sup>47</sup> The vast majority of felony criminal cases in urban areas of the United States are determined on the plea bargaining rather than by a jury trial<sup>48</sup>.

In Nigeria, due to the fact that, several initiatives and interventions by civil societies and state actors for the reform of the Nigerian criminal justice system administration has not produced any significant result, there was clamor for alternative to imprisonment, or non custodial/institutional treatment of accused persons, hence, the plea bargain option which reared its head in the Nigerian criminal justice administration in 2004. Since then, the concept has been used effectively with astonishing results by the Economic and Financial Crimes Commission relying on section 14(2) of the EFCC Act.

A plea bargaining is an agreement between the state (Prosecution) and an accused person in a criminal case, whereby the accused person accepts to plead guilty and often furnishes allocation to a less severe offence than the one originally charged; or to a smaller number of offences than the one originally charged.<sup>49</sup> It is more or less a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for some forms of concession by the prosecution usually a more lenient sentence or a dismissal of the other charges.<sup>50</sup> According to Blacks' Law Dictionary, it is variously called plea agreement, negotiated plea, sentence bargain and charge bargain in which the prosecutor agrees to drop some of the counts or reduce the charge to a less serious offence in exchange for a plea of either guilty or no contest from the defendant.<sup>51</sup>

By its nature, plea bargaining is an activity undertaken within the context of prosecutorial discretion whereby the prosecutor in order to save time or cost, or avoid the difficulty in certain cases, of having to strive to prove certain facts required to establish certain offences, decides to offer certain concessions to the accused in exchange for specific charges or proposed to be charged.<sup>52</sup> There is polarity of contemporary reactions to this practice. Nevertheless, most participants in the plea bargaining process find the practice as a panacea in the administration of criminal justice.

Among the numerous benefits of incorporating the plea bargaining procedure into the Nigerian criminal procedure law is that, it has the potential of bringing about a downward incidence of delay justice in Nigeria. It will also mark a departure from the old style of capital punishment, to a consequential of life or longer term of imprisonment. On other words, an accused person who enters into a plea agreement with the prosecution to plead guilty to a charge attracting a capital punishment saves the prosecution's time and the rigour of prosecution.<sup>53</sup> Since the globe is gradually departing from death sentence, the adoption of a plea bargain in Nigeria may therefore, serve as a veritable platform for circumventing the death penalty, and indeed

<sup>46</sup> Fisher, G 'Plea Bargaining's Triumph: A History of Plea bargaining in America' (USA; Stanford University Press, 2000).

<sup>47</sup> Andrew, H *Doing Justice: The Choice of Punishment* (New York: Hill and Wing, 1979).

<sup>48</sup> A Clear example was the celebrated case of John Walker Lindh (an American Soldier), who in 2001, fought with the Taliban in Afghanistan against the United States, and was captured. John Walker Lindh pleaded in court on Monday, July 15, 2002 to charges that could keep him in prison for twenty years in fulfillment of terms of an agreement with the United States' attorneys. See also Alschuler, A. 'The Judicial Business of the United States Court' annual Report of the Director of the Justice Department 2000.

<sup>49</sup> Ogunye, J. *op cit* p. 186.

<sup>50</sup> Lamer, L. L *The Criminal Courts: Structures, personnel, and Processes* (New York: McGraw-Hill, 1991) p. 22.

<sup>51</sup> Garner, B *Blacks' Law Dictionary* (USA; West Point Publishers Ltd, 1997) p. 1190. See also Adebayo, O *Nigeria Police Structure, Powers and Function in Nigeria: Essays in Administrative Law in Nigeria* (Ibadan, Pitman press Ltd, 2003).

<sup>52</sup> Azinge, E 'Conviction to Compromise: The Plea Bargain Option' available @<http://www.nials.nigeria.org/roundtable> accessed 3/1/2014.

<sup>53</sup> *Ibid* at p. 238.

create a social consciousness for its abrogation.<sup>54</sup> Luckily, Nigeria has a law reform commission; a federal agency which can utilize the opportunity provided by the democratization process to push for a comprehensive reform of Nigeria's criminal procedure.<sup>55</sup>

### Conclusion

While much is being said about the criminal justice and penal reforms in Nigeria by government, little is being done about it. The incorporation of plea bargaining into our criminal procedure law is the only solution to the problem bedeviling criminal justice system administration in Nigeria. Thus, what is being contemplated by the writers is that the adoption of the plea bargaining procedure though may not be a water compartment of the Nigeria impaired criminal justice system, but as a reform package. It has become imperative for the Nigerian justice administration system to open up itself to new ideas.<sup>56</sup> It is the belief of the Writers that, if plea bargaining procedure is made part of our criminal justice system, and offenders allowed to plea bargain and admit to the commission of crimes in order to obtain a downward departure from punishment, persons standing criminal trials and their attorneys will be less inclined to legal technicalities in order to frustrate the prosecution of trials. This will save time, resources and delays associated with criminal justice system in Nigeria. Most importantly, the issue of congestion in our prisons occasioned by delay in criminal trials and long period of suspects awaiting trial in detention will be greatly reduced; as prisoners/suspects will embrace the plea bargaining procedure and accept lesser charges and lesser punishments for the offence which they know they actually committed, and move on in life. Against the foregoing, this paper recommends:

1) Plea bargaining should be viewed from a holistic angle of both restoration and retributive models of justice to avoid giving the impression of immunity from punishment, freedom from guilt and escape punishment. This will also reduce the chances of making a mockery of the criminal justice system.

2) Prosecutors should have the ability to recognize and predict the outcome of true adjudication at a lower cost when opting for plea bargain. Cost and benefit analysis should be considered in order to save time and avoid unnecessary public trials and protect innocent victims of crime from going through trial process by ordeals which could endangered their privacy and expose them to unnecessary risks.

3) Periodic review of status of prison inmates by judicial officers for accelerated judgment, for parole and recommendation for amnesty and pardon. Similarly, there is the need for the construction of modern day prison centers that will be adequate for an envisage prison population.

4) Existing infrastructure in the prisons and remand homes should be revamped to provide basic facilities and utilities for human living even in confinement. Many of the present prisons were built during the colonial era, and are now in varying states of disrepair. There is need for long term projections

5) Though, plea bargaining was never really part of the history of the Nigeria legal system, but its provisions clustered around specific legislations like Section 14(2) of the Economic and Finance Crime Commission Act, 2004; Section 76 of the repealed Criminal Justice Law of Lagos State, 2007; Section 76 of the Administration of the Criminal Justice Repeal and Re-enactment Law, 2011; and Section 248(2) of the Administration of Criminal Justice Bill, 2005. These sections should be reinforced with the desired vigour and give a constitutional backing.

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<sup>54</sup> *Ibid* at p. 241.

<sup>55</sup> The Punch Newspaper of Thursday November 13<sup>th</sup>, 2003 p. 9.

<sup>56</sup> Reunice, K. O 'Corruption in Nigeria: An Appraisal' Journal of Law Policy and Globalization Vol. 19 2013. available @ <http://www.iiste.org> accessed 3/1/2014.

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