# PROSECUTING CORRUPTION AND THE APPLICATION OF PLEA BARGAINING IN NIGERIA: A CRITIQUE

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## ABSTRACT

*This study focused on the incidence and the prosecution of corruption in the Nigerian society with specific emphasis on plea bargaining which has been applied to prosecute some politicians (Politically Exposed Persons) and other people in the upper echelons of the Nigerian society, and that is gradually becoming widespread in criminal prosecution in Nigeria. The origin and merits of plea bargaining, as its protagonists argued, were analysed. The central focus here is a critique of corruption prosecution through plea bargain based on moral and utilitist principles. The study precisely advocated for outright dropping of the plea bargain in corruption prosecution in Nigeria because of its tendency to deepen and extenuate, rather than making mild and abating corruption in Nigeria. Given the patron-client character of power relation in the Nigerian state, the stipulations of anti-graft laws should be strictly followed in order not to make corruption prosecution constitute another source or facilitator of corruption in Nigeria.*

***Keywords:*** *Prosecution, Corruption, Plea bargaining, Utilitarianism, Critique.*

## INTRODUCTION

Globally, corruption has been recognised as anathema to development because of its capacity to unleash poverty in human community. Equally recognised is the fact that majority of the people living below poverty level are more prevalent in Africa, Nigeria inclusive, than elsewhere. The Human Capital Development Index released by the United Nations for 2006 indicates that 90.8% of Nigerians cannot spend $1.00 a day and are therefore below the poverty line (Radda, 2008), in spite of huge financial resources that accrue to Nigeria from sales of oil. Poor governance is commonly blamed for the increasing poverty in Nigeria (Uga, 2003), and this is caused largely by corruption other than any other factor. As Olopoenia (1998) emphasised, corruption erodes the capacity to develop what has been termed as 'social capital', a collection of positive social attributes such as trust, being one's brother's keeper, and a shared notion of the purpose of the existence of the larger society which are essential for a people-oriented development. Corruption enjoys worldwide condemnation and therefore laws are made to daunt perpetration of corruption in the society.

Nigeria is not an exception in this area, with several Acts on ground to carry out prosecution. The zeal to tame corruption became very high in Nigeria with the establishment of Independent Corrupt Practices and other Related Offences Commission (ICPC) in 2002 and Economic and Financial Crimes Commission (EFCC)

in 2003. Several achievements have been made by these two bodies, particularly the EFCC, in exposing, recovering of loots and sentencing of the people who were guilty of corruption. However, a new dimension, plea bargain, has been introduced in the prosecution of corruption in Nigeria, particularly when it involves high profile people in the society. This new trend has not been seen to be justifiable morally, and does not provide happiness of the greatest number of people in utilitarian terms. Laws and legal principles were developed in the society to service various interests that engage in the centrifugal social forces, either to accommodate or to exclude individuals and groups in the sharing of socio-economic values of the state, legitimately or otherwise. This study regards plea bargaining as one of such and the reason for the development of the various schools of thoughts in law. Here, sociological school, which emphasises the relationship between law and the needs and institutions of the society, is adopted and the point is that for any law to be true law, it must have popular acceptance (Rodee, et al 1983). "The sociological school of jurisprudence states that law should be used as a vehicle for eradicating societal ills and entrenching social goals and needs".

**HIGH PROFILE CORRUPTION CASES IN THE NIGERIAN SOCIETY**

The incidence of corruption in the Nigerian cosmogony, even in the world at large, is no longer attractive news, which can stir the ire of the readers of newspapers or viewers of electronic communication media as television, cinema and others. This is because it has gained prevalence in human community. It affects all segments of the society, vertically and horizontally. No sphere of life is left without corruption imparting on it. It is exhibited by all arms of government, even the judiciary has not been immune from it and therefore it has grown to the point doctrine (Ayoade, 2010). Even at the foreign policy domain, it has been established that the choice of one foreign policy over the other means more than national interest. Rather the egoistic or selfish interests of the ruling elites, the decision makers, influence the choice of a foreign policy over the other (Adebimpe and Adeleke, 2009). There is even sports corruption, both locally and internationally, be it on the pitch or in the sports ruling bodies' houses. As Fasure (2010) notes, 'the tales are endless of corruption in FIFA, CAF and other Football Associations'.

The multi-various ways by which corruption is practised makes a neat, knit and water-compartment classification or typology difficult for scholars. Given its nature, corruption is often difficult to define in a way that is independent of the ethics or the normative values of the observer. This thus creates problem for the scientific investigation of the phenomenon of corruption. The other problem of analysing the problem of corruption is what actually constitutes corrupt behaviour. Literature on corruption distinguishes among political, bureaucratic and economic corruption. In reality, however, these three categories are manifestations of the same phenomenon (Olopoenia, 1998). According to Heidenheimer (1989 cited in Jega, 1993; Olopoenia, 1998), there are three basic categories of corruption: the public-office-centred, the market-centred and the public-interest-centred. The first category emphasises abuse

of power and public trust and official positions and responsibilities for self-serving objectives which are not necessarily for monetary gain. The second category emphasises the conversion of public office into an enterprise for the maximization of income similar to the ways in which an entrepreneur seeks investments. The third category links corruption to the abuse of power and public trust to serve cliental, cleavage, communal and other interest group objectives, which are neither specifically nor necessarily self-serving. According to Olopoenia (1998), this typology is riddled with value attachment. An approach that eliminates value in the definition of corruption is given by Khan (1996, cited in Olopoenia, 1998). To him:

> *Corruption is an act which deviates from formal rules of conduct governing the actions of someone in a position of public authority because of private-regarding motives such as wealth, power or states.*

This definition helps in avoiding the problem of value judgment, and of course facilitates the analysis of corruption within the paradigm of political economy. To this end, corruption takes place when people are motivated by the desire to use the instrumentality of office for private regarding gains for the benefit of the official, his relations, ethnic group or friends at the expense of the general good (Olopoenia, 1998:17) It is reasonable at this end to reason that corruption does not service the common good of the society, but exclusive benefits of certain individual(s) or group(s) in the society. Corruption has done a lot of damage to the society. Generally, corruption is anti-development because majority of factors that elicit societal progress is ruined by corruption (Waziri, 2009, Jega, 1993; Adebimpe and Adeleke, 2009).

Several reasons have been factored into why people engage in corruption. Williams (2007) attributes it to breakdown in the cultural values of the society. He stresses that a country without culture of motivating each component of its society to generate resources, maximize the use of those resources through trust, honesty and hard work based on strong traditional spirituality and philosophy, value, norms and sanctions will be behind. To him, these cultural practices stimulate corruption in the society. Close to this is the foundational argument supplied by Olaniyan (2010) that the state is a conglomeration of people who came or are made to come together to live under an umbrella referred to as the state. He reasoned that drawing from the fact that the state is a collection of people, it then follows that the character of the state, as well as the leadership cannot be detached from the character of the people that make up the state.

People also blame corruption on the huge resources at the disposal of few men. When few men manage large resources of the society, they are tempted and are likely to engage in corrupt handling of the resources. This is why corruption looms large in governmental circle. According to Jega (1993), government accounts for the greatest parts of the manifestation, and devastating aspects of corruption in Nigeria. For the simple reason that a large portion of development capital in developing societies is channelled through political leadership and bureaucracy (Jega, 1993). Jega (1993) extends it by saying that the over developed and convoluted nature and the prebendal

character of the Nigerian state aids corruption in Nigeria. Nevertheless, huge resources at the disposal of few men at the governmental level is no longer tenable as reason for corruption in Nigeria. Everything boils down to the quality of leadership that rules the country, whether corruption is cultural, foundational or huge resource oriented. It is a case of not having transformational leaders. According to Okunade (2008), 'transforming leaders are reputed for their strong values and moral ideals which they do not water down by consensus but elevate people by using conflict to engage followers and help reassert their own values and needs. Transactional leadership is concerned about end values such as liberty, justice, and equality and transforming leaders raise their followers up through stages of morality or need'. Logically therefore, it has become difficult for most African countries, particularly Nigeria to emerge at centre space of development. This is why Dr. M.H. Khalil Tammy remarks that:

> *Generally, leadership in Africa has hardly been inspiring. It has mostly brought hunger and pain in many countries. In several dozen countries, the leadership has been criminally destructive of peoples' livelihoods and their welfare. From the horrendous results of the problems they have presided over, African leaders have never been short of menacing charisma; in actual fact, they seem to possess- as exemplified by Amin, Mengistu, Taylor, and the list is long- nothing but criminally disposed mindsets. Their legacies are nothing to write home about. Of course, there are exemptions, but for all intent and purposes, such cases are few and far between. It would not be far-fetched to argue that the incubus of impoverishment has largely been leader-driven* (quoted in Fasola, 2009).

Olaniyan (2009), a protagonist of state foundation as cause of corruption in the society, himself acknowledges the significance of good leadership in national development:

> *As empirically shown among the fast-developing countries in the contemporary world, no nation ever achieves greatness without the presence of a moral code as a guiding philosophy for its leadership.*

Impliedly, Olaniyan (2009) is placing moral burden on leadership, an indication that leadership is the bedrock of national development. In this sense, leaders are being enjoined to live by example. Leadership is a call to service. Hence, leaders are servants. They are representatives of the people. On the followers, what would they do when the state is being run as the executive committee of the bourgeoisie? Some will live iconoclastic life as Tai Solarin, who dared Genaral Oladipupo Diya that he was not corrupt, when said General Diya remarked in 1993 that all Nigerians are corrupt. But how many, particularly the down-trodden in the society, who find it difficult to have even two square meals per day can do this? So corruption causes poverty and poverty reinforces corruption in the society. As Graham Summer notes, 'if you live in a country run by a committee, be on the committee (Ayoade, 1997). This is the philosophy behind 'maintreamism'1 in Nigerian politics, particularly as it affects South-west Nigeria, which was brought to the central hub of Nigerian politics, by its garrison commander, former President Olusegun Obasanjo beginning from 2003 and its negative

effects, one of which is flagrant corruption instead of progressiveness for which the region is historically noted, in the delivery of people-oriented programmes as free education, free health care, agricultural development and industrialization as initiated by chief Obafemi Awolowo, its first Premier (1954-1959). It also exists at the private sector level, the particularly the banking sector, following perhaps, the capitalization of the Nigerian banking economy. Through banking sector reforms, which expanded the capital base of commercial banks in Nigeria, commercial banks in Nigeria have become a warehouse for colossal financial resources to be managed by their Chief executives or Managing Directors, like Cecilia Ibru of Oceanic Bank, Erastus Akingbola of intercontinental Bank, Bartholomew Ebong (Union Bank) Okey Nwosu (FinBank), Sebastian Adigwe (Afribank). Others include Francis Atuche (Bank PHB), Charles Ojo (Spring Bank) and Ike Oraekwuotu (Equitorial Trust Bank, Atojoko, 2010).

The Central Bank of Nigeria is the regulatory agency that carries out reform or supervises the activities of commercial banks in Nigeria. What came out of the banking reform in Nigeria are greater opportunities in the area of corruption, misappropriation and embezzlement of depositors' monies by the Managing Directors of some commercial banks, some of whom were listed above. Really, there is a link between democracy and development, and the economy must be reformed to build development into democracy. This reform must be able to generate a more open market economy in which it is possible to accumulate wealth through honest effort and initiative in the private sector, with the state playing a limited role (Diamond, 2009). This is not the case with banking sector reform that was carried out in Nigeria.

It only stimulated commercial banks to consolidate their capital base but did not envision the likelihood of the mismanagement of the capital to be generated. Therefore, when the money came, it enlarged the coast of corruption among the management of commercial banks. The banks must run in billions and the management are also stealing in billions, a matter of sight without vision on the part of the Central Bank of Nigeria. It only saw the need for banks to consolidate their capital base, but did not periscope into the behavioural problems associated with the management of large pool of resources that may follow the consolidation, since some Nigerians, because of their corrupt tendencies, have not inculcated the values of business responsibility, transparency and accountability.

These are people who have duped their various banks of multiple billions and now seek for plea bargain to rescue themselves by a way of getting or securing lighter Sentences from the Count of law. This paper accepts both cultural determinism of state character as ingredients of corruption in the society, and adds to it, the need for ethical standards for individuals in public service as envisaged by Okunade (2008) and moves to the height that the trial of corruption in Nigeria needs to put public interest above every other consideration, particularly in an area of plea bargaining based on common law, so that trials of corruption and their outcomes will not constitute another sources of corruption in the society.

**PROSECUTING CONTRIBUTION IN NIGERIAN SOCIETY**

Generally speaking, corruption is not a welcome phenomenon right from antiquities to the contemporary society. It has been seen as a canker worm which must be stifled out of the society, because of its damaging effects. According to Peter Eigen (quoted in Waziri, 2009), corruption is a major cause of poverty as well as a barrier to overcoming it. The two scourges feed each other, locking their populations into a cycle of misery". Similarly, United Nations is of the view that corruption in government increases poverty in many ways. Most directly, it diverts resources to the rich people, who can afford to pay bribes and away from the poor who cannot. Corruption also weakens government and lessens their ability to fight poverty. It reduces tax revenue base and thus, the resources available for public service (Mills, 2001, citing Okesola, 2010). As Adenuga (2001) cited in Okesola (2010) notes, since Nigeria's 1960 independence, no administration has been declared corrupt-free.

Adebimpe, Adeleke and Yusuf (2010) also note that "what we have seen so far in Nigeria is that every successive regime, be it military or civilian has the tendency of promoting National unity. Two, every regime provides programmes of combating corruption with the view to ameliorating poverty, as corruption has been popularly accepted as a causative agent of poverty and vice versa. Yet there is no past administration that has not been accused of corruption". The only difference is the degree of corruption. The rising degree or historical trajectory of the development of corruption in Nigeria can even be calibrated through totemic symbols using varying animals' capacity to devour their prey. The point is it aggravates with each succeeding government, starting with Dove Grade of pre-1960s to Goat Grade of the 1960s to Vulture Grade of the 1970s to Dog Grade of the 1980s to Lion Grade of the 1990s and last being Demon Grade which is the millennial hybrid of the variants (Okeomah 2010). He stressed further that Demons are spirit beings.

They have the capacity to rob you anytime, anywhere and of anything they so desire; without your being able to see them, let alone catch them. The politicians from Obasanjo's era to date fall into this category. Nevertheless, successive governments in Nigeria have put up one anti-corruption mechanism or the other to tackle corruption. The impunity that perpetrators of corruption enjoy in Nigeria explicates the nature of power relation in Nigeria. To this paper, the arrival or the introduction of plea bargain in corruption prosecution in Nigeria marks the consolidation of corruption in Nigeria and this is a clientelist political settlement.

In the clientelist political settlement, the clients determine the allocation of existing rights, the creation and distribution of new ones, the terms of the allocation through corruption, and who can participate in the network and on what terms (Olopoenia, 1998). Law enforcement agents are many and are conspicuously visible in streets ports, on border posts and on the high ways, just like it is not difficult to notice the presence of an elephant in an open space because of its size, but their visibility is not without invincibility. The problem is, as Okesola (2010) notes, the political will to tame the problem has been non-existent. The various government

interventions by the previous regimes prior to 1999 Fourth Republic include, among others: the Corrupt Practices Decree No. 38 of 1975; the Public Officer Investigation of Assets Decree No 5 of 1976; Economic Crime Decree (Draft of 1996) the "Indiscipline, Corrupt Practices and Economic Crime (Prohibition) Decree 1994; Failed Banks Tribunal Decree 1994; Public Property Recovery (Special Military Tribunal) Act Cap 389, apart from Code of Conduct Bureau and Code of Conduct Tribunal as provided in 1979 and 1999 constitution among many numerous ones (James, 2009; Okesola, 2010). All these have been inconsequential.

The contemporary ones are I.C.P.C. and E.F.C.C. The Corrupt Practices and Other Related Act was enacted in June 2000 and the Independent Corrupt Practices and Other Offences Commission (I.C.P.C.) was established and inaugurated in September 2000. Following I.C.P.C. was the Economic and Financial Crimes Act that was enacted in December 2002 and Economic and Financial Crimes Commission (E.F.C.C) was subsequently established (Okesola, 2010). These two anti-graft organizations which evolved with the tenure of President Olusegun Obasanjo have had a record of great land marks in combating corruption in Nigeria, particularly in the area of recovering loots of Nigerians who perpetrated corruption at both governmental and private organizational domains. The successes recorded by these Commission earned them some credits, though with some criticisms such as selective prosecution, particularly under President Olusegun Obasanjo, delay in prosecution etc.

**EMERGING TREND IN PROSECUTING CORRUPTION IN NIGERIA**

Nigerians are usually happy when a corrupt individual in the society receives the reward of their corrupt practices. These rewards vary from offences to offences. Corruption is a criminal offence and Nigerians know that when someone is caught with any criminal act, he/she faces prosecution and if the person is found guilty, the perpetration of the act will earn the culprit negative rewards as imprisonment and death sentences. When the crime is financial, the issue of death does not come up. However, in recent time in the history of criminal prosecution in Nigeria, a new dimension or trend, which Nigerians are not used to, is gradually gaining popularity in criminal justice, and that is plea bargaining.

Plea bargaining occurs when a prosecutor and the defendant may enter into an agreement whereby the defendant pleads guilty and the prosecutor offers either to move for dismissal of a charge or charges, recommend to the court a particular sentence or agree not to oppose the defendant's request for a particular sentence, or agree that a specific sentence is the appropriate disposition of the case (Oladele, 2010:68). Oladele however goes further to cite some authorities who have defined plea bargaining. Some of whom are cited below. Black's Law Dictionary defines plea bargaining "as a process whereby the accused and the prosecutor in a criminal case work out mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offence or to only one or

some of the counts of a multi-count indictment in return for a lighter sentence than that possible for graver charge". One can rightly define plea bargaining as resolution of a criminal case in a consensually and mutually agreed way between the defendant and the prosecutor with the consent of the presiding judge(s), after the defendant might have agreed to his guilt, with the view to receiving lesser punishment after the agreement to reduce the number of crimes of which an individual (defendant) is alleged. Associated with plea bargaining are charge bargaining and sentence bargaining. Oladele (2010) explains that charge bargaining occurs when the prosecutor allows a defendant to "plead guilty to a lesser charge" or to only some of the charges that have been filed against him. While "sentence bargaining" occurs when a defendant is told in advance what is sentence will be if he pleads guilty. However, it is the presiding judge who exclusively determines the penalty, though it is the prosecutors that make sentence recommendation. This implies that the validity of plea bargaining depends on the consent of the three parties involved in the prosecution-the prosecutor, the defendant and the presiding judge.

On the origin of plea bargaining, it has been said to have started in the Western Climes, before it is imported into Nigeria, though recently. According to Dirk Olin (cited in Oladele, 2010) plea bargaining as procedural tool is used only especially before 19th century. In America, Fisher says "it can be traced almost to the very emergence of public prosecution. Although not exclusive to the US, it developed earlier and more broadly here than most places". England and Wales and Australia are some other states where plea bargaining is being practiced.

Why court does this and not any other arm of government? There are four important positions which make the court to be the dispenser of plea bargaining, if reasoned along the power of judicial review which is saddled with the law court and the power of the courts to perform this function emanate from constitution provides that judicial powers shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating therefore, for the determination of any question as to the civil rights and obligations of that person. These four factors, according to Fenemigho (2007) based on the theory of separation of power in which judiciary co-ordinates the other two organs of government, the legislature and the executive, are:

i Of all the three organs of government, the judiciary is the only one not political, in the sense that at least in the Nigerian situation, judges do not need to contest election before they were appointed to the bench, unlike in the United States of America though not under any party ticket.

ii The protagonist of judiciary neutrality are of the view that what gives the judiciary this power is the fact that it is the conscience of the people which should not be susceptible to political vagrancy. It is then believed also that judiciary is a permanent organ, which spans the past, through the present and the future. Furthermore, the role of any government is to meet the needs of the people within the framework of the rule of law, liberty and democracy, an

aspiration which could become a nightmare if there is no institutionalized watchdog and the ideals of the principle of separation of powers, supremacy of the constitution, and the rule of law, can never be realized if there is no independent minded organ to ensure strict compliance with this sacred principles.

iii The specialized training of the personnel of the judiciary branch and their solemn disposition for social engineering gives the judiciary leverage over other organs of government, which inhabit people of all shades of character and professions with divergent views and idiosyncrasies.

iv According to the protagonists of judicial neutrality, the strength of the judiciary is apparently in its political weakness which had necessitated the support of the people of whose place or on whose behalf it acts.

**THE ADVANTAGES OF PLEA BARGAINING**

The protagonists of plea bargaining have said that, it has a lot of benefits in the domain of criminal justice, only that it just started in Nigeria recently particularly with the case of the former Bayelsa State Governor, Delpreiye Alameisigha. According to Oladele (2010), one of the major advantages of plea bargaining is that it helps prosecutors and the courts in the effective administration of justice. To him, in all criminal prosecutions, the accused shall enjoy the right to a speedy trial because justice delayed is justice denied. The right to speedy trial cannot be compromised or negotiated away. Speedy trial is a constitutional and common law right. According to Mirsky and Khan (1997), cited in Oladele (2010), if every case went to jury trial, resources would have to multiply by "many times".

Two, our courts are not equipped to handle cases speedily and if the defendants are to be kept indefinitely in prison, not only would it violate their rights, it would also strain and have an impact on tax payers' money. Moreover, plea bargaining is prevalent for practical reasons, says the Division for Public Education of American Bar Association cited in Oladele (2010). It affords the defendants the opportunity to avoid the time and cost of defending themselves at trial, and the publicity a trial could involve. It is beneficial to all parties says Schmallger (2001) as cited in Oladele (2010). In the word of Schmallger, plea bargain is in the interest of a defence team if they cannot win an acquittal and prosecutors will choose a plea bargain if they feel their evidence is weak. The accused benefits from combined charges, lessened defence defences costs and a lower sentences than might have otherwise been anticipated" to Oladele (2010), the victim also begins to restore their lives to some sort of normalcy.

Plea bargaining is a global and universal approach to getting justice and less cost in the administration criminal justice in Nigeria. Femi Babafemi, spokesperson of Economic and Financial Crimes Commission (EFCC) in Nigeria, argues that plea bargaining saves a lot of cost as most of Nigerian criminal Acts don't stipulate capital punishment for their offenders. He argued that money laundering Act, for instance, provides for a fine of not more than N250,000 and two to three years jail term for

anybody convicted of violating the law. He therefore emphasised that 'if an individual is convicted of embezzling N10 billion, he is allowed to pay N250,000 and serve a jail term of not more than three years. That is after a long trial where the government may have spent #10 million to get justice. He thus stated that 'we sometimes agree to plea bargaining which is a global and universal approach to getting justice. So in order for Nigerian government and the Nigerian people not to lose out completely, we allow these people to forfeit a substantial part of the loot (Adewuyi, 2010). One can then say that it covers some part of the loopholes of Nigerians laws which need to be reviewed but have not been reviewed.

However, they have not gone without pointing out some demerits which they argued are not enough to jettison plea bargain in criminal justice. They have argued that it is analogous to bribery. However, the US Courts have ruled that the Federal Government (Us Attorneys) are not covered by bribery statute with respect to plea bargaining. In addition, the system is too lenient (George Fisher, quoted in Oladele 2010). It has been perceived to be a system in which plea bargaining replaces evidence as the paramount determinant of guilt or innocence (Oxford, cited in Oladele, 2010).

**Corrupt Practices, Plea Bargaining and Public Interest in Nigeria**

What could be more vital to the public interest than the moral character and conduct of the citizenry?" "Something must correspond to the public good or be in the public interest-that certain common goals will benefit the political community as a whole (Magstadt, 2006). Corruption, like every other crime enjoys worldwide condemnation and those who perpetrated it are visited with punishments, which are varied, depending on the nature of the crime, if they are found guilty. Social analysts and observers have said that corruption has permeated all segments of Nigeria, whether political or not.

In contemporary Nigeria, beginning particularly with Olusegun Obasanjo's presidency, the tempo to tame and banish corruption is high. In this drive, the government of President Olusegun Obasanjo (1999-2007) introduced two anti-graft agencies (the ICPC and EFCC). They have seen to the prosecution of various financial misconducts perpetrated at public and private institutions in Nigeria. We have seen Governors, Boards Chairmen and Bank Senior Officers prosecuted. This is a step at positive direction in addressing corruption problem in Nigeria. This has led to a lot of money recovered from them and billions of naira worth property seized from them. There is still need to be sceptical and critical of plea bargaining in prosecuting corruption in Nigeria, since 'without scepticism there can be little room for paradigm articulation and ultimately for paradigm change and without paradigm change articulation there can hardly be progress or room for development and certainly no basis for political virtue', Dudley (1975) and that knowledge is advanced by critical discussion of alternative views. Discussion of alternatives means that the critic is not just engaged in mere refutation for refutation's sake, but also interested in constructive criticism (Adekanye, 1993) and those who deny a place for scepticism in politics seek not to preserve the state; they in fact undermine the state( Dudley, 1975). The

import of this critique is essentially to seek advancement for the Nigerian state for its development in all ramifications. The various anti-graft laws stipulated various punishments for financial crimes. The offenders are expected to be punished according to the gravity of their guilt as laid down by the enabling act or law. However, the recent financial crimes' trials have witnessed the episode of plea bargaining between the defendants and the prosecutors with the knowledge of the presiding judge. This common law approach has been used in the determination of the former Governor of Bayelsa State Diepreiye Alamieyeseigha (Oladele, 2010), the former Governor of Edo State Chief Lucky Igbinedion and the case of Chief Mrs. Cecilia Ibru, former Managing Director of Oceanic Bank Plc (Nigerian Compass, Saturday, October 9, 2010) and currently some ex-bank chiefs who face trial over N749 billion fraud now negotiate for plea bargain (The Nation, Sunday October, 17, 2010:8).

All these arrangements are between the defendants, the prosecutors i.e. the E.F.C.C., who acts on behalf of the Nigerian state and the presiding judges. Though the law provides for fundamental human rights and one of the ways of expressing it in common law countries is plea bargain, but, the question is, is this done in public interest? Did EFCC consult the people of Bayelsa, Edo states before negotiation plea bargain on their behalf, because the money looted by Alameisigha and Igbinedion belonged to the people of the respective states where they committed the crimes. The same for all other public officers in their shoes?

Did EFCC gain the consent of Oceanic Bank depositors whose monies were actually mismanaged by Cecilia Ibru? This raises the moral question of the raison d'état of the state i.e. the state in whose interest? Interest of the few or the majority? The plea bargain done so far in Nigeria is for whose happiness? This grill might of course be answered using social contract thesis, particularly under a democratic system of government, which was put in power through peoples' votes. The contract then as stated by Onyeoziri (2005) is equivalent of the promise by the citizen to consent to be governed by the state, and that promise creates for the citizens the moral obligation to obey the state. This implies that the EFCC which is an agent of the state to which the citizens consented to rule them, is acting on behalf of the people and as such the decision of EFCC binds on them. But does EFCC acts for "General Will", a notion that we do not always desire what is good for us and that what is collectively good for members of the society, which their selfishness or crude selfishly desires may not enable them to see constitutes the society's General Will (Onyeorziri, 2005).

Though monies have been recovered and properties worth multiple billion naira seized from the culprits, do all these tally with the loot. Then what is the utility of an action that punishes the majority for the benefit of the few members? In this case, this paper is sceptical of it having utilitist value in the Nigerian society. Then, there is the need for a critical appraisal of plea bargain in criminal justice in Nigeria, "since decision makers too take a limited time perspective when making decisions it will follow that, inescapably, they will underestimate the future, having as they do, a past as a guide. The errors of the present become distorted exponentially in the future

to produce a distorted future. But unless we can be sceptical about the present, there can hardly be a hopeful future (Dudley, 1975). According to John Stuart Mill in his lecture, utilitarianism means the creed which accepts as the foundation of morals, utility or the greatest happiness principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure, and the absence of pain, by unhappiness pain and the privation of pleasure. Happiness is not egoistic but for the large number of people. Thus J.S. Mills affirms that "the happiness which forms the utilitarian standard of what is right in conduct is not the agent's own happiness, but all concerned. As between his happiness and that of others, utilitarianism requires him to be strictly impartial as a disinterested and benevolent spectator. The happiness with which utilitarian is concerned according J.S. Mill, is not necessarily the happiness of the doer of an action, but the greatest happiness of the greatest number of people (Omoregbe, 1986).

In Nigeria of today, plea bargain lacks social justice content. As it has been noted by Transparency international, the trial of the former Governors who were alleged to have siphoned billions of public funds have been reduced to a playboy affair. A special 'rule of law' has been contrived in their favour which may result in their escaping justice (The Punch, Wednesday, October 27, 2010). This is because those that visited people with underdevelopment through corruption are being made the receivers of lighter punishment for their evil deed. While the majority of the toiling masses suffer agony of poverty, they live in affluence, even still clamouring to lead the Nigerian state making Nigeria appear to be a "lootocratic" state, a state run by financial rogues. The commoners on the street don't enjoy this. In 2001, a man in Sokoto state had his hand chopped off after he was convicted for stealing a goat.

Danyeola Alfred was jailed for two months for absconding with a Nokia handset valued at N48, 000. However, in the case of former Managing Director of Oceanic Bank, Cecilia Ibru, a Federal High Court in Lagos slammed 18 months imprisonment without an option of fine for granting $20m and N2bn credit facilities above the approved limit by the Central Bank of Nigeria (Adeniji, 2010). The eighteen months translates to six months as she was convicted on a three count charge, each offence carrying six months to be run concurrently. The presiding Judge of Federal High Court, Jusctice Dan Abutu convicted Cecilia Ibru to 18 months imprisonment with a forfeiture of her N191bn assets to Assets Management Corporation of Nigeria (Adeniji, 2010). As Arikibe (2010) has submitted, plea bargaining engenders unfairness, inequity and travesty of justice. It is not fair to the poor and the less privileged of the society, as they will never be in position to negotiate for the mitigation of punishment likely to be meted out. As we can see, those who benefited from this "largesse" are members of the upper class of the society.

This judgment is laudable, but the sincerity of the forfeiture of Cecilia Ibru's assets is still doubtable. What if the assets are returned to her in near or far future? For instance, General Ibrahim Babangida in his attempt to win support from politically

powerful individuals for his personal project of extended tenure in power, he issued decrees authorizing the return of seized properties to officials who had been found to own properties far in excess of their legitimate income by some of the previous regimes (Decrees No. 49 of 1991, No. 70 of 1992, No 24 of 1993 and No. 54 of 1993 among others (Okoosi, 1993, cited in Olopoenia 1998). Some properties seized from Tafa Balogun and Diepreiye Alamieyesigha were said to have been sold to those close to the corridor of power at costs lower than the market value of those properties, signifying “a-looter- continua” ( Daily Compass, Saturday, October 9, 2010).

This is due largely to the fact that the basis of the legitimacy of Nigerian political leaders is weak. It is either they get to power through coup d'état as military regime or rig election as a civilian government. Therefore, in order to gain loyalty among the citizens, they produce clientelist political settlement in which "the property nights (allocated) by the state are weakly defined and are contested by well organised social groups who are able to challenge the rights being enforced by the state" (Khan, 1996, quoted in Olopoenia, 1998). This accounts for the high rate of criminality in the Niger-Delta region Nigeria which produces over 80% of Nigeria Gross Domestic Product (GDP) and over 90% of Nigeria's external earnings, and youth restiveness in the region as a response to deprivation and poverty unleashed on them amidst plenty by the Nigeria state. The problem of presidential pardon is still there. Salisu Buhari, the first Speaker of the House of Representatives in the ongoing Fourth Republic, who was removed from office for committing forgery and perjury involving certificate forgery and false declaration of age, was later granted pardon by President Olusegun Obasanjo. Worse still, he was made the Chairman of the Board of Nigerian Educational Research and Development Council (NERDC) (The Punch, Monday, Nov, 23, 2009). What a contradiction of fight against corruption by President Olusegun Obasanjo. Plea bargaining is an aberration of the rule of law and lacks utilitist value in the Nigerian society, where poverty reign in apogee and which must be ameliorated if not totally eliminated in order for Nigeria to board development train just like her former third world members as China, India, Singapore, Malaysia etc.

As Diamond (2009) has observed that calling a political system a democracy does not mean that is a good or desirable system, or that we needn't worry about improving it further. In essence, a good democracy should be able to exhibit the "thick" concept of democracy beyond election and independent judiciary to neutrally and consistently apply the law and protect individual and group rights is one such way. As Justice Oguntunde noted "the court has a duty to enforce the provisions of the laws validiy enacted by National Assembly pursuant to powers derived from the constitution. The Electoral Act, 2006 is one of such laws" (See Amaechi V. INEC & ORS, 2008, quoted in Elemuo, 2010:13). Nigerian jury also needs to apply this when prosecuting corruption cases, particularly when evidences are clear that the defendants actually committed the offence. Mrs. Cecilia Ibru was said to have "committed an offence contrary to section Section 15 (1) of the Failed Bank (Recovery of Debts) and Financial Malpractices in Banks Act Cap F2 Laws of the Federation of Nigeria,

2004 and punishable under Section 16 (1) (a) of the same Act". The law stipulated imprisonment of between 10 and 13 years for her crime, but she was however, based on the leniency of the court, sentenced to six months, having agreed to voluntarily forfeit assets that could substantially cover the sum she is accused of. This is a product of plea bargain and it is against the rule of law as Justice Oguntade has proven and alluded to above. It is an act of removing free will from human conduct and placing the burden of ignorance on law, since the perpetrators knew the implication of what they were doing before going ahead with it. It is when they were caught that they began to plead. The trial and the judgement did not recover all the loots from Mrs. Cecilia Ibru, going by the statement of the Chief Judge of the Federal High Court, Justice Dan Abutu, who tried the case that 'she had agreed to voluntarily forfeit assets that could substantially cover the sum she is accused of '. It is a loss for the Nigerian society in general as she still owes part of the loot since it is the substantial that she forfeited and not all. Then, who knows the enormity of the rest unforfeited amount? There is a logical difference between "scientific facts" and "social facts".

Whereas it could be argued that the former are value-neutral, the latter are rarely so. In saying this, I am not unaware of the fact that in the selection of his data, the scientist is influenced by his value preferences...So that in describing what is a societal fact, we inescapably exhibit our values and it is these that which make a societal fact a fact (Dudley, 1975). Thus values, which are ethical in nature, are integral to social science. According to Lucy Mair as quoted in Owusu (1975) ethical judgement are not external to... (Social science) ...but at the very centre of it...so that they might see more clearly the possibilities and limitations of political action and so frame their policies more intelligently. This confirms the fact that morality 'is embedded in the consciousness of what is just and proper, what is adjudged as right or wrong behaviour. This consciousness imposes a moral obligation and a duty to exercise moral judgment, not necessarily enforced by legal compulsion' (Esiemokha, 2010).

It is a known fact that Nigeria is a member of common law countries, but the socio-economic realities (underdevelopment problems) of Nigeria are not being experienced in those countries as United States and United Kingdom which also practise common law and applies plea bargain in criminal justice. The case of plea bargain, with the calibre of the people involved is like separating law and morality on the one hand, and law and morality and good governance on the other hand. As Esiemokha (2010) emphasised, there is the need for law and morality to be essential factors of governance in Nigeria. As long as there is no complete identity of law, moral righteousness, equity and good conscience as a state's operational strategy, the social force of legal sanctions will weak, 'more so given the larney way embezzlement is covered in Nigeria point to the fact that there is no end to the ingenuity of man'. Plea bargain is one such thing and morality will help a lot in handling this.

Therefore, the practice of common law which supports the introduction of plea bargain which has already been practised in developed societies as US, U.K, Australia and now introduced in Nigeria, needs to be conscious of environment of

operation. While some societies can afford to tolerate corruption because of abundance of wealth in their societies, Nigeria must not, because Nigeria needs a lot of resources to build her economy for development objectives. Some developed countries don't even use plea bargain in criminal justice. Even United Kingdom that utilizes plea gargain operates with meticulousity and morality. The Shouthwark Crown Court in London had already sentenced Chritine Ibori-Ibije, his younger sister and Udoamaka Okoronkwo, his female friend to five years imprisonment (Sawyerr, 2010). When commentators say that, plea bargain is being practised in other climes to adjudicate criminal cases in order to make prosecution speedy; they only mistake knowledge for wisdom. As Williams (2007) would say:

> *Never mistake knowledge for wisdom; knowledge helps you to make living, the other, wisdom helps make a life". Therefore wisdom, which is a combination of knowledge and experience, comes from learning, doing and interaction with peoples and practices and therefore has universal recognition.*

Poverty eradication has been a major challenge facing the country. This is so because more than 70% of the population is estimated to live below poverty line and the United Nations report of Nigeria's Human Poverty Index (HPI) is 41.6 percent, thereby placing Nigeria among the 25 poorest nations in the world. There is serious decaying infrastructure, insecurity, environmental degradation and growing gaps in opportunities. These socio-economic problems exist amidst Nigeria's huge manpower, awesome resources, good climate, a vast arable land, immense tourist opportunities and the high spirit if Nigerians for hard work which make many Nigerians excel in their various endeavours- literature, social sciences, engineering, medicine, foreign affairs, Arts, music and sports, finance, mathematics etc. These underdevelopment symptoms, it is discovered, have been occasioned by human factors, most important among which is corruption. For Nigeria, corruption is a daunting challenge that needs to be constantly tackled if it is not to corrode the entire system.

The country has thus risen to face the challenge through the establishment of various anti-poverty mechanisms, including National Poverty Eradication Programme (NAPEP), whose objective is, inter alia, to eradicate absolute poverty in Nigeria (Ekpu, 2010). Going along plea bargain in corruption prosecution implies derailment from the noble course. Given the clientele character of the Nigerian state, which has dashed the hope of many Nigerians (Ayoade, 1997), Nigeria is not ripe for plea bargain in the prosecution of financial crimes. Rather, provisions of law should be strictly adhered to so as to promote utilitarianism in Nigerian public and private spheres. Can we associate the use of plea bargain in criminal justice in Nigeria to the impact of the influence of state chief executives (Governors) in the appointment of judges? According to Adindu Ugwuuzor, a lawyer, 'we have problem in this country, and that has to do with the appointment of judges. As long as judges are appointed through lobbying, through influence by the state government, so long would we continue to deny ourselves justice' (quoted in Sawyerr, 2010). Could this not have

been the reason for the controversial judgement delivered by Justice Marcel Awokulehin that the prosecution of James Ibori by the EFCC lacks "critical collaborative evidence. Thus, I accordingly hold that the prosecution failed to make a prima facie in any of all the 170 charges, so I quash and dismiss all the 170- count charges"(Sawyerr, 2010), when the Southwark Crown Court in London had already sentenced Christine Ibori-Ibie and Udoamaka Okoronko to five years imprisonment upon the same charge been faced by James Ibori. As Arikibe (2010) opines, we all must agree that in the course of desperation and the pursuit of selfish interest, integrity and other virtues no matter how closely guided, are likely to be compromised, through the instrumentality of persuasion by the accused who is eager to set himself free from the entanglement of his predicament. In the emerging scenario, his Achilles heel could be made possible.

On Friday, October 15, 2010, The Punch newspaper report echoed on the corruption in the Judiciary. The body of Benchers on Thursday October 14, 2010 was quoted as expressing concern over high level of corruption in the Judiciary with a call on legal practitioners to shun graft and other vices which could drag the image of the profession to disrepute and obstruct the administration of justice. We must be weary of the unintended and undesirable consequences of plea bargain like emboldening of the hearts of perpetrators of corruption who can now enjoy what is called "soft landing" against penury of many. It can therefore be submitted that plea bargain is an elitic skill/policy to entrench corruption in the society. This is steal as you like, if you are caught, we take few from you, you retain many. This is the case of Lucky Igbinedion of Edo state. Law thus becomes instrument of class rule and domination. As Esiemokha (2010) notes that law is the most potent instrument of class struggle. And because laws are made by the ruling class in order to solidify their class position in the society, the legislative organs of the state are dominated by powerful dominant groups. These groups promulgate, amend and thinker with fiscal legislation, review in their own interests before the people's interest are addressed, if ever'. He went further to say that 'in "free" enterprise societies, the laws often favours the propertied class, bankers, politicians and people with means. The big thief receives a light sentence, while the common petty thieves receive the full weight of the law'.

## CONCLUSION

This study has focussed on the issues relating to corruption and the efforts at combating it in the Nigerian society, with specific emphasis on plea bargaining. The argument is that plea bargain is immoral and anti-utilitist in nature as it tend to favour the upper class of the society and not for the benefit of the greatest number of people and therefore it is an instrument of the ruling class to escape the wrath of law, and thus a machine that aid the perpetrators of corruption in Nigeria and this is not good for Nigeria as a society in need of financial resources to build her economy, since it has been realized that corruption derails socio-economic development of the society. Only good power of ideas can produce good ideas of power. "The power of ideas

can be interpreted as the ability to influence due to possession of superior knowledge or evidence. Ideas of power refer to assumptions, concepts, values and processes adopted by those who have authority to take decisions" (Soyibo, 2005:606). We need transcendence, which in the Dudleyan sense is the bringing about of change at the level of the person and at the systemic and sub-systemic levels, through the power of ideas in our fight against corruption in Nigeria. Individuals, labour unions and civil society organizations in Nigeria need to mount serious campaign against plea bargain application in financial crimes prosecution and that the government must add valour to its sincerity on the fight against corruption in Nigeria. Nigerian courts needs to drop out rightly, the application of plea bargaining in the prosecution of financial crimes in Nigeria as it is prone to abuse by people, particularly men of means and influence and the stipulations of law be strictly followed, otherwise, the spirit of primitive accumulation of capital and other demerits associated with plea bargain discussed above will be enshrined as a way of life and ultimately become cultural, and development through hard work and creativity which Nigeria so much desire will be a mirage.

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