



A CRITIQUE OF CORRUPTION PLEA BARGAINING IN NIGERIA: A SOCIAL HARM AND DAMAGE PERSPECTIVE*

Abstract

Nigeria is cited among the countries with the highest rates of corruption in the world. As a result, communities in Nigeria suffer from social harm and damages related to corruption most notably poverty, terrorism, human and economic underdevelopment. The article argues that the plight of communities are however not considered in prosecuting corruption cases, which is now predominantly done through plea bargain. The article finds that this problem is caused by the traditional individualistic victim-offender approach adopted by the laws relating to prosecution of corruption including corruption Plea Bargaining. Using a Doctrinal research method, the article concludes by suggesting a shift in the approach of handling prosecution of corruption through plea bargain by adopting a more community centric approach that will safeguard communities from the impact of corruption.

Keywords: Community, Corruption, plea- bargain, Social damage, Social harm

1. Introduction

As the most populous country in Africa, Nigeria is engulfed by corruption which operates as a bane for its growth and development. Despite its wealth in human and natural resources, corruption has stunted the growth and development of Nigeria.¹ The plethora of write-ups about and against corruption in Nigeria demonstrates the extent of its pervasiveness.

The word corruption has been ascribed many metaphoric descriptions such as cankerworm,² hydra head³ and in some instance it has been described as a disease, cancer, systemic, pandemic etc. by Nigerian authors.

There is no single definition of corruption. Corruption has been defined by different writers from various perspectives. However, the most common accepted definition is the one proffered by Transparency International which is that corruption is 'the abuse of entrusted power for a private gain.'⁴ World Bank defines corruption as 'use of public office for private gain'⁵ the United Nations Convention against Corruption (UNCAC) shies away from giving an apt definition of corruption. Instead it lists a number of crimes which should be criminalized by its state parties.⁶ These include bribery, embezzlement, money laundering, concealment and obstruction of justice. According to

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¹ Other offences include those defined by the penal code and criminal code. These are the traditional offences that affect human body and property and in some instances offences bothering on corruption. However in 1997, due to pressure dealt on President Obasanjo by the AFTA, the ICPC Act and later EFCC Act Enacted to deal specifically with corruption and economic and financial crimes.

² Afolayan Michael, 'Corruption a Cankerworm in Nigeria: the Dilemma of the Criminal Code and the ICPC' *Umaru Musa Yar'adua University Law Journal* (2014) 1 58-73.

³ ST Akindele 'A Critical Analysis of Corruption and its Problems in Nigeria' *The Anthropologist International Journal of Contemporary and applied Sciences* (2017)7(1)1.

⁴ Transparency international, 'What is Corruption' <https://www.transparency.org/en/what-is-corruption> accessed 22nd April 2024.

⁵ The World Bank, *Helping Countries Combat Corruption; the Role of World Bank* (PREM 1997) 7 <https://documents1.worldbank.org/curated/en/799831538245192753/pdf/Helping-Countries-Combat-Corruption-The-Role-of-the-World-Bank.pdf> accessed 22nd April 2024.

⁶ Aled Williams 'Corruption definition and their implication for targeting natural Resource corruption' *TNRC Topic Brief* (2021) <https://www.cmi.no/publications/file/7849-corruption-definitions-and-their-implications-for-targeting-natural-resource-corruption.pdf> .



Transparency International Corruption Perception Index, Nigeria ranks as number 145 least corrupt country out of 180 with Denmark being the least corrupt.⁷

There are different forms of corruption. These include;⁸

1. Grand corruption: this type of corruption refers to a situation where corruption exists at the highest levels of government where leaders including heads of state subvert their political offices to secure benefits for themselves, eroding public trust and also draining national treasuries.⁹
2. Petty corruption; petty corruption refers to the everyday abuse of power by low and mid-level public officials in their interactions with the people when seeking to access basic goods or services such as accessing hospital services or school facilities or admissions etc.¹⁰
3. Political corruption; this involves manipulation of policies, institutions and rules of procedure in the allocation of resources and financing, by decision makers who abuse their position to sustain power, status and wealth.¹¹
4. Kleptocracy: this has been described as a system of government where dishonest and unpatriotic leaders (kleptocrats) use political office to illegally cart away public treasuries through embezzlement, privatization and other treacherous methods.¹² Political corruption is closely linked to kleptocracy¹³ as it involves exploitation of political authority for private gain by political leader.

2. Corruption in Nigeria

In Nigeria, grand corruption has become the order of the day. Grand corruption has been described as Kleptocracy or systematic corruption involving high ranking officials¹⁴ using and transforming the entire apparatus of the state, from the highest levels, for private gain. Many if not most of Nigeria's political appointees and public officials are being investigated or prosecuted for looting and overhauling of public Funds converting them to their personal gains and benefits. Today there are at least 31 former state governors facing prosecution by the EFCC but along the way the prosecutions have been stalled.¹⁵ EFCC has vowed to reopen 25 of these cases that were forgotten. According to report by the EFCC, some 772.2 billion Naira and an extra \$2.2 billion which are allegedly missing and lost to corruption through money laundering, fund diversion and

⁷ Trading Economics, 'Nigeria Corruption Rank' <https://tradingeconomics.com/nigeria/corruption-rank> accessed 22nd April 2024.

⁸ Other types include social, economic, cultural, religious and bureaucratic corruption. Other forms in which these types can manifest include bribery, extortion, embezzlement, misappropriation, etc. for the purpose of this paper only grand, petty, political and kleptocratic corruptions are discussed because of their close connection to each other and because of their effect on public funds.

⁹ Anita Ramasastry 'is there a Right to be Free from Corruption' *UC Davis Law Review* (2015) 49(2) 709.

¹⁰ James Lewis, 'Social Impacts of Corruption upon Community Resilience and poverty' *Jamba Journal of Disaster and Risk Studies* (2017)9(1)5.

¹¹ *Ibid* 6.

¹² Bruno Onyinye Umanakwe, Mary Jane Osaren, 'Kleptocracy and Nigerian Politics: A Reflection on the Fourth Republic' *African Social Sciences and Humanities Journal* (2023)4(1) 137-145, 138.

¹³ *Ibid* n 9.

¹⁴ Niomi Roht-Arriaza, 'Empowering Victims of Grand Corruption: An Emerging Trend?' *UC Law SF Scholarship Repository* (2023) 37(25) 7.

¹⁵ Daniel Ayantoye, Ayoola OLasupo, Muhammed Lawal, 'EFCC Chair Resumes, to Battle 25 abandoned cases against Ex-Govs, Others' *Punch Newspaper* 22 October 2023 [EFCC chair resumes, to battle 25 abandoned cases against ex-govs, others - Punch Newspapers \(punchng.com\)](https://punchng.com/efcc-chair-resumes-to-battle-25-abandoned-cases-against-ex-govs-others/) accessed 22nd April 2024



misappropriation will soon be recovered. Among the top politically exposed persons include the table below;

S/NO.	POLITICALLY EXPOSED PERSON	STATE WHERE FUNDS WERE LOOTED	AMOUNT LOOTED
1.	Dr. Kayode Fayemi	Ekiti State	₦4 Billion
2.	Ayo Fayose	Ekiti State	₦6.9 Billion
3.	Bello Matawalle	Zamfara State	₦70 Billion
4.	Chimaroke Nnamani	Enugu State	₦5.3 Billion
5.	Rabiu Musa Kwankwas	Kano State	₦10 Billion
6.	Abdullahi Adamu	Nasarawa State	₦15 billion
7.	Abdullahi Adamu's Son	Nasarawa State	₦92 Million
8.	Thoedore Kalu Orji	Abia State	₦27 billion
9.	Kalu Orji's 3 sons	Abia State	₦561 Billion
10.	Dan Juma Goje	Gombe State	₦5 billion
11.	Aliyu Wammako	Sokoto State	₦15 Billion
12.	Ali Modi Shariff	Borno State	₦300 Billion
13.	Sule Lamido	Jigawa State	₦6.3 Billion
14.	Lamido's 2 sons	Jigawa State	₦1.35 Billion
15.	Murtala Nyako	Adamawa State	₦29 Billion
16.	Jonah Jang	Plateu state	₦6.3 Billion
17.	Babangida Aliyu	Niger State	₦2Billion
18.	Gabriel suswam	Benue State	₦3.1 Billion

3. Impact of Corruption

Corruption has diverse impact on communities ranging from direct costs to individuals and encouraging criminal behaviors to bringing about institutional disrepute.¹⁶ Corruption has been described as pervasive, fueling transnational crime, waste of resources, undermining rule of law and eroding good governance.¹⁷ Corruption has many faces and has the ability to morph and become very elusive to investigate.

The impact of these corruption incidences is negative on the growth and development of the various communities or states it has occurred in. For instance, According to Action Aid report¹⁸ the “poverty levels in some states in Nigeria where Governors were found guilty of misusing public funds into private use is higher than in states where Governors were judicious in the use of public funds. This suggests that if stolen funds were deployed to address the various poverty challenges in these states, the poverty rates could have declined below their present levels.”¹⁹

Several empirical researches have documented direct or remote connection of corruption to poverty.²⁰ For instance in the corruption incidence in Bayelsa State, a state which was just newly created, for its Governor to have looted that much from the State Treasury is unquestionably and undoubtedly crippling.²¹ To buttress this point Action Aid Report states thus “corrupt behaviors

¹⁶ Sustainable Development Goal 16, UN General Assembly, Transforming the World: the 2030 Agenda for sustainable Development A/RES/70/1, 21 October 2015.

¹⁷ Ibid preamble.

¹⁸ Ibid n 5.

¹⁹ Action Aid, *Corruption and Poverty in Nigeria* (Action Aid 2015)10.

²⁰ Ibid.

²¹ Infra p. 12.



have eroded the institutional capacity of governments and ministries to deliver quality public services such as education, health, infrastructure etc. this is why poor people perceive their living standards by both income and non-income measures to be stagnating or worsening.”²² This description captures the image of the damaging link between corruption and public service erosion which leads to poor service delivery, loss of human and material resources due to specialist and experts leaving the country in search of greener pastures, less foreign investments because investors are scared away due to corruption, Terrorism,²³ Human Rights Abuses²⁴ and underdevelopment.²⁵ Nigeria features prominently in such researches.²⁶ Nigerians have lost face abroad, right from being in possession of green passports in international airports. Other issues which people face include nepotism, bribery, extortion by public officials, electoral rigging and violence etc. Each of these crimes connected to corruption offences, is a subject of research by its own right and each has brought untold suffering and hardship to the everyday life of the Nigerians. Collectively as a result of corruption, communities have suffered all kinds of harm.

Corruption has permeated every aspect of state Governance that the communities depend on for a good standard of living. Going by the above, there is no denying or arguing that Nigerian communities have fallen victims to corruption and this victimization ought to legitimize their interest in the anti- corruption crusade. Below is a table showing poverty level in some states in Nigeria where the then governors were accused by EFCC for one or more corruption charges.²⁷

S/N	PUBLIC OFFICIAL	AMOUNT MISUSED/CONVERTED	POVERTY RATE 2004-2010	
1.	Ayo Fayose - Ekiti State	1.2 Billion Naira	40	40
2.	Joshua Dariye - Plateau State	700 Million Naira	49	54
3.	Micheal Botmang - Plateau State	1.5 Billion Naira	49	54
4.	Saminu Turaki - Jigawa State	36 Billion Naira	87	78
5.	Orji Olu kalu - Abia State	5 Billion Naira	26	30
6.	James Ibori - Delta State	9.2 Billion Naira	56	42
7.	Lucky Igbenedium - Edo state	4.3 Billion Naira	38	43
8.	Jolly Nyame - Taraba state	180 Million Naira	44	48
9.	Chimaroke Namani - Enugu state	5.3 Billion naira	32	48

²² Ibid n 19 p.11.

²³ Particularly after 9/11 U.S attacks, the global community put hands on deck to check global financing of terrorism which in most cases was found linked to corruption.

²⁴ Ibid n.19.

²⁵ Ibid n 16, see Mamman Lawan Yusufari ‘Nexus between Underdevelopment, Corruption and legal Disorder’ Javed Rahman Ayesha Shahid, Steve Foster (eds) *The Asian Yearbook of Human Rights and Humanitarian Law*, (Brill Nijhoff, (2022) 6.

²⁶ UNODC ‘*Corruption in Nigeria: Patterns and Trends; second survey on Corruption as experienced by the Population an Executive Summary*’, (UNODC Research 2019).

²⁷ For more details on top Government official on Corruption charges see Olagunji Oluwa Folorunso, ‘Plea Bargain Law and the Fight against Corruption in Nigeria: between Punishment and Protection’ *Wukari International Journal* (2023) 7 (1) 513-514.



4. Corruption, Community and Social Harm/Damage

The word community has been defined in as many perspectives as there are those perspectives. However, for the purpose of this paper the definition proffered by Merriam-Webster will be adopted.²⁸ According to this definition, community could mean among other definitions “a unified body of individuals: such as (a) the people with common interest living in a particular area broadly, the area itself.” Again, in its third definition it says (3) “society at large meaning the interest of the community.” These two definitions or understanding of what a community is, are accommodated by Black’s Law Dictionary which defines community in law to mean a “society of people living in the same place, under the same law and regulations, and who have common rights and privileges.”²⁹ In this article, the community discussed then means the group of people living in an area that constitute the small communities which make up local governments, municipal and the state.

The concepts of community, corruption and social harm are related and profess an interesting interplay that desires attention. As a concept, social harm emerged from the critics of Criminology which is traditional in its approach to study of victim and his or her relationship with the crime committed.³⁰ Critical Criminologist started to challenge the approach of Criminology by trying to broaden its view of link between individual victim, and the crime and offender to look at the impact of crime on the community suggesting that the community could be a victim of crime as well.³¹ Communities just like individuals can be and in fact do get harmed socially. Communities fall victims to harmful actions or events which affect individuals collectively as a whole. This is as has been argued by Simon Pemberton.³² A popular example cited by Pemberton is the ‘cold winter death’ occasioned due to omission on part of policy makers to elect to provide central heating in winter haven chosen other priorities. Over a span of time, remarkable number of death particularly among the aged was recorded. The death was not as a result of death itself but as a result of illness associated with the extreme cold they have gone through without a good heating system³³ What Pemberton is arguing here is that the omission by the policy makers is not a crime within the criminal definition of what a crime is, but yet, has caused a lot of harm as he cites Engels thus;

When one individual inflicts bodily injury upon another, such injury that death results, we call the deed manslaughter; when the assailant knew in advance that the injury would be fatal, we call this deed murder. But when society places hundreds of proletarians in such a position that they inevitably meet a too early and an unnatural death ...when it deprives thousands of the necessities of life, places them under conditions in which they cannot live ... forces them, through the strong arm of the law, to remain in such conditions until that death ensues which is the inevitable consequence – knows that these thousands of victims must perish, to remain in such conditions, its deed is murder just as surely as the deed of the single

²⁸ Merriam- Webster ‘Merriam-Webster’s Collegiate Dictionary’ (11th Edition Merriam- Webster. Inc. 1999).

²⁹ Brian A. Garner, ‘Reuters’ (8th Edition, Thompson West Publishing Co. 2004).

³⁰ Paddy Hillyard, Steve Tombs, ‘From Crime to Social Harm?’ *Crime Law and Social Change* (2007) 48 (1) 9-15, 1. See also Steve Tombs, ‘for Pragmatism and Politics: Crime, Social Harm and Zemiology in Boukli, Avi (Parskevi) and Kotze, Justin (eds), *Zemiology Reconnecting Crime and Social Harm* (Palgrave Macmillan 2018) 11-31, 13.

³¹ Simon Pemberton, ‘Harmful Societies: Understanding Social Harm’ (policy Publisher 2018) 37.

³² Ibid.

³³ Steve Tombs, ‘Social harm’ in Corteen, Kare, Morley, Sharon Tylor, Paul, Turner and Joanne (eds) *A Companion to Crime, Harm and Victimization* (Policy Press 2016).



individual ... which seem what it is, because no man sees the murderer, because the death of the victim seems a natural one, since the offence is more one of omission than of commission.³⁴

Other instance includes, actions such as terrorism, environmental pollution, corruption undoubtedly cause social harm to the community.

Scholars have wrestled academically to find a definition of social harm which till date remains elusive. Despite this academic exercise, the idea of social harm is centered around avoiding harm or injustice that have severe consequences though do not fall within the ambit of crime as defined by the criminal laws.³⁵ Social harm challenges the mainstream criminology by querying who a crime victim is, who is responsible for harm in the society and what can be done to prevent the harm from occurring.³⁶ This view is relevant because certain harms are not defined as crimes under various Penal Laws but still have the potential and even the force of causing harm to a lot of people as opposed to just one individual. And that even where such are defined in penal Laws the definition is oblivious of the hurt it causes to people collectively. An example is of course corruption that is defined under various laws of the States but does not define it in terms of harm or hurt it causes to volumes of people.

Social harm is understood as the impact of such harmful actions or event on the community as a whole, causing social damages. Social damage seems to identify the direct and quantifiable effects of these harmful actions. For example, economic losses caused by corruption or fraud as a social harm,³⁷ industrial activities which cause environmental hazards resulting in oil spillage on land and water destroying farm land, lakes and rivers which provide a source of drinking water and livelihood for the communities around; the loss of lives occasioned by war or terrorism are all quantifiable as damages caused by harmful activities or events.

Social harm and social damage are similar in perspective though social harm is broader discussing harm in a more generalized and broader perspective, while social damage like in the case of corruption, as one of the many harms envisaged by social harm, limits its boundaries to the quantifiable consequence of corruption.³⁸

Social damage viewed from environmental damage caused by corruption has been defined³⁹ as

the impairment, impact, detriment or the loss of social welfare (within the context of the right to live under a healthy environment), caused by an act of corruption and suffered by a plurality of individuals without any justification whereby their material or immaterial, diffuse or collective interests are affected and so giving rise to an obligation to repair.

Social damage is defined as damage suffered by the society as a whole because of corruption and use of public money or wrongdoing. The social damage includes the stolen assets,

³⁴ Simon Pemberton, 'Harmful Societies: The importance of the Social Harm Approach' *Discover society* (2016) 37.

³⁵ Studocu, "Social harm- Definitions and theories" York University second year lecture module (2021) <http://www.studocu.com>.

³⁶ Ibid.

³⁷ Juanita Olaya, Kodjo Attisso, Anja Roth, 'Repairing Social Damage out of Corruption cases: Opportunities and Challenges as Illustrated in the Alcatel Case in Costa Rica' *SSRN Electronic Journal* (2011).

³⁸ Because of the more definitiveness of social damage to corruption to which the article is more attuned, this paper adopts the definition of social damage rather than social harm in its discussions because it is more apt to corruption henceforth.

³⁹ The Conference of Ministers of Justice of the Ibero-American countries held in Real Madrid in 2011 accepted the draft proposal definition by Costa Rica as a working definition.



wasted money that could be alternatively spent by the society⁴⁰. This could mean other dimensions like moral damages or erosion of trust in public values.⁴¹ Social damages are described as

The loss experienced in aspects and dimensions of the collective or the community relevant to the law (those legally protected)...it is a type of damage that falls upon individuals, as members of a community but not on an individual in particular. This include therefore the environment, social trust, the trust and credibility of institutions, collective fundamental rights like health, security, peace, education and good governance and good public financial management among others...⁴² This is directly related to the public interest and occurs when these public interests are affected, not requiring the existence of a specific individual or collective rights to it. The damage here is enough to serve as cause for action.⁴³

Going by the above, an example of the growing sophistication in Money Laundering in Nigeria can be cited. For instance, transactions happen every day within seconds but it is not easy to forensically, during investigation trace and separate black money from clean money.⁴⁴ This makes proving it difficult or near impossible. What however remains a fact though, is that the Nigerian economy has been violently raped with money set aside for development being carted away overseas and stashed into Swiss accounts to sustain the ostentatious lifestyle of a few.⁴⁵ This plunges the Nigerian people into abject poverty.⁴⁶ It has been reported that the average Nigerian lives on less than a dollar a day which is below the poverty line⁴⁷. Many Nigerian communities if not all can be cited as examples of victims of the scourge of corruption without exaggeration, having no power supply, good health care facilities, primary education etc. These lack happen over time in a gradual process without being noticed, but that doesn't mean it is not happening and that action needs to be taken to stop it despite the fact that the victims are sporadic and the damages could be very extensive.

From the above definitions and example of the Nigerian situation, corruption is not a victimless offence. For every act of corruption, there are real life human victims who are hit by the offence directly or remotely. These are real people who have suffered from financial loss, psychological trauma or emotional distress due to corruption and other financial offences. What remains hazy however, is how communities can criminally and legally be regarded as victims. This is because despite jurisprudential analysis by profound scholars on issues of law and society, criminal laws seem to be reluctant in including communities in the definition of victims nor considering reparative initiatives for them.⁴⁸ The individualistic approach of criminal laws in

⁴⁰ Juanita Olaya, 'Repairing Social Damage social damage out of corruption cases: Opportunities and Challenges as illustrated in the Alcatel Case in Costa Rica' SSRN Electronic Journal (2011).

⁴¹ Ibid, n 18.

⁴² Juanita Olaya, 'Dealing with the Consequences: Repairing Social Damage caused by corruption' *Impactools* (2016) <http://ssrn.com/abstract=1779834> Accessed 21st April 2024.

⁴³ Ibid p.3.

⁴⁴ James Chen "Money Laundering: what it is and how to prevent it" investiphobia (April, 2024) <https://www.investopedia.com/terms/m/moneylaundering.asp> accessed 6/8/2023.

⁴⁵ Most cited case about this is the case of dollars carted away by Abacha popularly known as the Abacha Loot. See Ekweremadu David 'Nigeria's Quest to Recover Looted Asset: The Abacha Affair' (2013) 48 (2) 51-70.

⁴⁶ An example can be seen in the Niger Delta Region which is endowed with petroleum but the people remain in abject poverty.

⁴⁷ USAID, 'Nigeria; Country Overview' <https://www.usaid.gov/nigeria> last accessed 21st April 2024.

⁴⁸ Stephan Marette, 'Social Damage', in Backhaus. J (ed) *Encyclopedia of Law and Economics*. (Springer, 2014)



general which adopt an individualistic victim-offender scenario alienates the community from having a role in the criminal justice process let alone having a redress.⁴⁹ Same can be said about the Anti-Corruption Laws. Even if there are, these definitions tend to be regarding “the state” in its abstraction as a victim and ‘persons’ entitled to compensation and or reparations.⁵⁰ Even though the crime of corruption may be perceived as a victimless crime, or put in another word the victim of grand corruption is ‘everyone but no one’⁵¹ this assertion can be less than true because of the impact of corruption from which communities suffer from as a result of corruption⁵².

5. Plea Bargain in Nigeria

In 2004, the idea of plea bargain was introduced formally to Nigeria by the Economic and Financial Crimes Commission (EFCC) Act.⁵³ Thus S.14(3) provides that the agency can compound any offence under the Act by accepting such sums of money as it thinks fit not exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence.”⁵⁴

It was a welcomed practice to circumvent protracted trials involving high profile corruption cases⁵⁵. Antecedent to the formal and legal adoption of plea bargain as a corruption prosecutorial tool, the Independent Corrupt Practices Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC)⁵⁶ were scorned by public ratings of their poor performance for the undesired and explained protracted prosecution of Political Exposed Persons. Reportedly, the two organizations whose mandate was to investigate and prosecute corruption, economic and financial crimes among other things, were able to secure convictions on only a few of the investigated cases.⁵⁷ This stirred public resentment and hurled accusations that the two organizations, particularly EFCC, were political watch Dogs for the executives.⁵⁸ From then on, plea bargain became a popular tool for securing convictions by the EFCC and ICPC in corruption cases, saving the protracted prosecution.

The use of plea bargain as a tool for prosecuting corruption cases, despite its being clothed with the gamut of law and its ability to secure conviction without protracted trial, has had its morality questioned by all and sundry. The people (who collectively form the communities) remain

⁴⁹ Paddy Hillyard and Steve Tombs, “Beyond Criminology: Taking Social Harm Seriously’ in Paddy Hillyard, Christina Pantazis, Steve Tombs and Dave Gordon (eds) *Beyond Criminology; Taking Social Harm Seriously* (Pluto press 2004). See also Steve Tombs, ‘social Harm’ in Corteen, Karen, Morley, Sharon, Taylor, Paul and Turner, Joane (eds.) *A companion to Crime, Harm and Victimization*, (Bristol Policy Press, 2016) 218-219. Also Chris Livesey “A Social Harm Approach (Center for Crime and Justice Studies, nd) http://www.sociology.org.uk/cc_pdf/cc_concrim2_1148.pdf Last visited, 1/2/2024.

⁵⁰ See Article 35 United Nations Convention Against Corruption UN General Assembly, United Nations Convention against Corruption A/58/422

⁵¹ Naomi Roht- Arriazza, “Empowering Victims of grand Corruption: An Emerging Trend” UC Law SF (2023) 37(1) 25 see also articles 35 and 57 UNCAC

⁵² Many countries in America resort to the use of Human Rights platform to indirectly sue kleptocrats in the guise of human rights abuses.

⁵³ In 2007 Lagos State adopted Plea Bargain and by 2015, plea bargain found its way to the Administration of Criminal Justice Act (ACJA).

⁵⁴ Economic and Financial Crime Act No.1 2004.

⁵⁵ See the Corruption and Financial Crimes Cases Trial Monitoring committee set up for exploring reasons for delayed trials in corruption charges set up by the Former CJN, Justice Walter Onnoghen in the 2017/2018 legal year in response to president Buhari’s lamentation about the poor corruption prosecution record since his assumption to office as the President of Nigeria.

⁵⁶ These were established by the Obasanjo Regime as Anti-Corruption Agencies with mandates among other things to investigate and prosecute corruption in Nigeria. Other Integrity systems in Nigeria include the Code of Conduct Bureau, Office of the Auditor General, Public Complaints Commission etc.

⁵⁷ Osita Nnamani Ogbo “ Combatting Corruption in Nigeria: a Critical Appraisal: A critical Appraisal of the Laws, Intuitions, and the Political will’ *Annual Survey of International and Comparative Law* (2008) 14(1)

⁵⁸ Ibid.



skeptical about its genuineness and doubtful of the integrity of the process⁵⁹. This is evidenced by the saturation of write-ups on Plea Bargain particularly as it concerns its application in the prosecution of high profile corruption cases involving highly placed Politically Exposed Persons. Interestingly, most of the cases upon which plea bargain was adopted are rather high profile corruption cases involving billions of Naira and other foreign currencies siphoned by those in lucrative government positions in Nigeria⁶⁰ and not offences contained in the criminal codes,⁶¹ which spell out the paradox that has been argued by the proponents of social harm.⁶² This consequence is not surprising because the provision of s.14 (3) EFCC Act was not couched efficiently to settle cases on corruption without ado and it was worst still, without guidelines.

Although plea bargain was introduced to the Nigerian criminal justice system to cure the many defects it has, such as prolonged prosecution especially in high profile corruption cases and importantly prison decongestion, these problems still remain as issues hindering the system.⁶³ Added to this, its usage as a tool for avoiding delayed prosecution in corruption cases has jurisprudentially failed to deter corruption and provide adequate punishment of politically Exposed Persons.⁶⁴ For instance in a lot of the corruption cases where plea bargain was applied, the agreement failed to recover adequate amount of the loot after slashing down charges and sentencing the defendant to ridiculous prison terms with outraging option of fine⁶⁵. It is seen as an easy way out for the politically exposed persons which gives them soft landing. For example, the case of James Ibori of Delta State, Jolly Nyame of Taraba State etc. In the case of Igbenidium⁶⁶, former Governor of Edo State, the EFCC arraigned him on 191 charges of corruption, embezzlement and money laundering to the tune of N4 Billion. After negotiating a plea agreement, counts were despicably reduced to just one charge of failure to declare his asset to EFCC thereby committing an offence under s. 27 of the EFCC Act. In return for the reduced charges to a one count charge, Igbinidiun was to return N500million and three properties, six month imprisonment with an option of fine of 3.6 Million. Another embarrassing case is the case of the former Governor of Bayelsa Alamiyeseigha⁶⁷ who dressed as a woman to escape arrest in London airport with the sum of 1.8 Million pounds. He was charged with 23 counts of criminal charges for stealing over \$55 Billion. The charges were reduced to 6 charges and 2 years imprisonment after a plea bargain.

As a result of poor satisfaction in corruption plea bargain under the EFCC Act, in 2015, the Administration of Criminal Justice Act was enacted in Nigeria.⁶⁸ (ACJA) was enacted to curb out this deficiency and apparently more issues that affect the administration of criminal justice in Nigeria. S.494 Of the ACJA defines plea bargain as a negotiated agreement between the prosecutor and the defendant usually through his counsel where the defendant pleads guilty in return for a

⁵⁹ Adebisi Adedapo, 'Nigeria: Justice Mustapher Declares Plea Bargain Illegal, Dubious' allAfrica 16 November 2011 <https://allafrica.com/stories/201111160644.html> accessed 23rd April 2024.

⁶⁰ Bob Osamor, 'Failure of Plea Bargain in Nigeria' *international journal of Law and International Clinical Legal Education* (2022) 65.

⁶¹ Ogunbare Bisola, 'the current Legal Framework on Plea Bargain in Nigeria' *SSRN* August 8 2019 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3429822.

⁶² *Ibid* (note.)

⁶³ Robert Osamor, 'Administration of Criminal Justice in Nigeria and Plea Bargaining: Motions without Movement' *African Journal of Human Rights* (2006) 6(2) 120-129 1.

⁶⁴ Habeeb Abdulrauf Salihu, 'Plea bargaining in the Nigerian criminal justice system: A procedural tool for loot recovery or justice administration?', *Crime Law and social Change* (2022)78(2)145 145.

⁶⁵ *Ibid*.

⁶⁶ Charge No FHC/EN/6C/2008.

⁶⁷ Charge No. FHC/L/328c/05.

⁶⁸ Administration of Criminal Justice Act Cap Laws of the federation 2015



concession like having more charges dropped or a lesser sentence or some other facts⁶⁹. S. 270 of the Act encapsulates the procedure for plea bargain within 18 sub sections. According to S.1 of the ACJA, the essence of the ACJA, is to protect the interest of the state, the defendant and the victim as well.

Plea bargain as encapsulated in S.270 of the ACJA with its 18 sub-sections, spell out the procedure for initiating plea bargain, the conditions for consideration before the initiation of plea bargain by the prosecution and the conditions to consider before accepting a plea bargain offer from the defendant, the involvement and participation of the victim, the content and format of the plea agreement, the role of the court, and the procedure open to the defendant to arm himself against imposition by the court of higher sentence as agreed in the plea bargain are all set out in this section. Most of the high profile corruption cases were plea bargained under the EFCC Act. With the coming onboard of the ACJA, in 2015, the first high profile corruption case to be prosecuted is the case of the former Governor of Ogun State Air Marshal Adesola Amosun and three other of his colleagues. Charges were brought against them by the EFCC for alleged diversion of N21.4bn budgeted for security operation to 8 of their companies. The matter was brought to court but at the instance of the defense counsel, the matter was adjourned two times to plea bargain. Till date there has not been any plea bargain agreement reached by the EFCC and the Defense Counsel and finally, the court released the defendants based on a preliminary objection challenging the jurisdiction of the court since the defendants were serving military personnel at the time of committing the alleged offence.⁷⁰ This comes at a critical time when the issue of Boko Haram and kidnapping have plagued the country, and the decision reached by the court on the matter declared their arrest and charge by the EFCC null and void.⁷¹ See also the case of Dasuki and the fire arms procurement saga, who is also exploring the possibility of a plea bargain.⁷²

6. A Critique of Corruption Plea Bargaining in Nigeria: A Social Damage Perspective

Despite this milestone in plea bargain which allows victim participation and compensation, the provision of the section is apt for crimes where there is a victim that is identifiable or his representative and not for situations where communities are the victims. For instance, while the provision of s.270 may be suitable for fraud cases or cyber-crimes, it may not be applied successfully in cases of money laundering, misappropriation and embezzlement by politically exposed persons. This is because in the former, a victim can be identified while in the latter case, the entire populace making up the communities is the victim. The manner in which the wordings are couched suggest the use of plea bargain in traditional victim- offender offences contained in the penal code. The wordings do not imply the application of plea bargain to offences where victims are communities or where damage is construed as social damages or diffuse. So it may not be rewarding to plea bargain in cases of corruption where the community interest at large is at stake. This is because unlike in cases where traditional victim-offender offences where the victim can be seen and or his representative, in corruption offences, the community will be absent and as such there is neither participation nor compensation for the community. It is only where the community is recognized as a victim, that participation and compensation will be possible for it.

⁶⁹ S.494 Administration of Criminal Justice Act.

⁷⁰ Shola Soyele, ' Court Strikes out N22.8 B Fraud Charge against Ex-Chief of Air Staff' *Channels* (February 6:2024) <https://www.channelstv.com/2024/02/06/court-strikes-out-n22-8bn-fraud-charge-against-ex-chief-of-air-staff/>

⁷¹ Ibid.

⁷² Nigeria's Dasuki Arrested over \$2b Arm Fraud, *BBC*, (December 2015) <https://www.bbc.com/news/world-africa-34973872> accessed 21st April, 2024.



Plea bargain has been cited as an aberration of justice⁷³ with almost no utility in Nigeria at least in corruption cases⁷⁴. It cannot be said with vindictiveness that community interest was a cause for concern in these cases cited during the plea bargain⁷⁵. Plea bargain thus strips the community of its relevance as victim of corruption while ascribing the victim status to the state. Plea bargain also strips the community of its relevance in conflict resolution having denied it a victim status. For example, in corruption cases, the defendant after entering a plea of guilt will have charges of corruption slashed to the barest minimum, small prison term with an option of fine which is like a slap on the face of a rational thinking man. To cap it all, the defendant as well goes home with most of the loot but what about the community from whose coffers the loot was carted from? All these leave the community whose highly placed government officials have stolen from the state's coffers indigent and underdeveloped without basic amenities such as roads, hospitals, electricity, water supply and basic primary education. While it is true that in all the above cases, after applying Plea Bargain, the problem of protracted litigation has been done away with, including the cost of lengthy trial which usually outlast the trial itself, one more conviction is added to the long list of convictions secured by the prosecutor, the defendant gets a lesser sentence, the question now is at what cost? How has the Law protected the community as a victim of corruption in plea bargain? How has the process and outcome of plea bargain done justice to the people or the community as victims who have been looted and deprived of basic amenity? Does the community even have a victim status within the ambit of plea bargain? Even where the community participates in the plea bargain process with the prosecutor and the defense counsel, in what capacity is the community participating, how much of the process is the community able to influence with its outcome and even the realization of the outcome?⁷⁶

7. Conclusion

Plea bargaining in corruption charges scarcely protects the community from the impact of corruption. It is best suited for offences where there is an identifiable victim and offender and not cases where the community using the lenses of social harm and damages is considered as a victim and not the state abstraction. But because of the utility of plea bargain in avoiding protracted trials, it will be wrong to discard it in corruption cases. What however should be done in order to cushion the effect of corruption on communities during plea bargain is to shift mindsets and understanding of social harm and damages towards in calculating them during the negotiation process of the plea bargain. This will allow communities to be seen in a way that has not been considered. This can turn the table around regarding the interest of the communities that have been victimized by corruption.

⁷³ GO Adeleke "Prosecuting corruption in Nigeria and the Application of Plea Bargaining in Nigeria: A Critique" *International Journal of Advanced Legal Studies and Governance* (2012)3 (1) 65.

⁷⁴ *Ibid* n 60 p.7.

⁷⁵ Though the ACJA/L does make reference to involving the victim in plea bargaining, the wordings signify individuals as victims for example fraud, cheating etc. but definitely not victims of grand corruption whose consequence is social damage or collective damage caused to the community at large as a result of grand corruption.

⁷⁶ *Ibid* n. 73, GO Adeleke has raised the question have the people from whose state the loot was taken from being consulted before the EFCC entered plea bargain with the ex-governors accused of corruption? In a rhetoric he answered that the answer will be watered down with the social contract theory. But then are there no other theories that can justify his question?