

Plea bargaining: A blessing or curse to Nigeria's criminal justice system

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It is no exaggeration that the subtle incursion of plea bargaining into Nigeria's criminal justice system during the trial of some influential personalities in the law courts, in recent times has provoked flurry of debates in the polity. Shortly after the former Governor of Bayelsa State, Diepreye Alamiesiegha, 'pleaded guilty' to money laundering charges preferred against him at a Federal High Court in Lagos, two years ago, the 'guilty plea' he made propelled him to freedom.

Some of the businessmen who were tried for corrupt practices and economic crimes in the state High Court had also been released from custody after plea bargaining.

The latest beneficiary of this prosecutorial device imported from the leading common law societies into our criminal justice system is the ex-governor of Edo state, Lucky Igbinedion.

A Federal High Court in Enugu had on December 18, 2008 imposed a fine of N3.5m on Igbinedion, the son of a High Chief of Benin Kingdom, after he was found guilty of committing fraud while he was the governor.

Irked by the court's verdict, the Chairman of the Economic and Financial Crimes Commission, Mrs. Farida Waziri, reportedly said the plea bargaining, which the EFCC duly entered into fell short of the commission's expectation.

She, therefore, expressed the commission's intention to appeal against the court's verdict.

Be that as it may, an information obtained on-line from the ExpertLaw library titled: 'Plea bargaining' describes 'a "plea bargain" as a deal offered by a prosecutor as an incentive for a defendant to plead guilty.'

It contends that if every case in the criminal justice system went to trial, the courts would be so overloaded that they would not be able to cope with the task of justice delivery.

Plea bargaining thus allows the prosecutor to obtain 'guilty pleas' in cases that might otherwise go to trial. By so doing, an accused or a defendant is made to plead to a lesser charge, which then invariably attracts a lighter sentence.

Interestingly, however, advocates of social justice, nay substantial justice will obviously query the rationale behind this practice that allowed an offender to pay a fine instead of going to jail to serve as a deterrent to others.

Indeed, it is illogical that a person adjudged guilty for a criminal offence attracting a jail term is let off the hook with a lighter sentence after entering into a plea bargain with the prosecution.

As it were, it amounts to a sacrifice of criminal justice at the expense of reducing the cost of criminal prosecution.

Meritorious as this argument might seem, proponents of plea bargaining believed that the adoption of this concept facilitates speedy determination of cases and thereby reduces prolonged trial.

Tracing the historical evolution of plea bargaining, the Executive Director, Lawyers League for Human Rights, Mr. Jiti Ogunye, in a publication titled, "Criminal Justice System in Nigeria: The Imperative of Plea Bargaining " stated " Plea Bargaining is a feature of the criminal justice system of common law countries where there is a concept of plea. In civil law systems, where

there is no concept of plea, plea bargaining is regarded as inapplicable.

“United States of America, Britain and Canada are leading common law countries that have plea bargain systems, albeit in different stages of development. The system, which was once forbidden in most of Europe, has gained inroads into many European countries’ criminal justice systems. Italy actually passed a federal legislation formally introducing it. Scandinavian countries however largely disallow the practice. France, a civil law jurisdiction, recently passed a law allowing the operation of plea bargaining, a clear indication that civil law countries are warming up to the adoption of the system.”

Assuming without conceding that Nigeria has surreptitiously introduced plea bargaining into its criminal justice system, is such a step capable of eroding the credibility of the country’s justice system?

A Lagos lawyer and immediate past Chairman, Nigerian Bar Association, Ikorodu branch, Mr. Nurudeen Ogbara, said the concept was a good phenomenon and a blessing for the country if it would address the unwieldy protracted criminal justice system in the country.

According to him, “However, for it to be a blessing for Nigerians, it has to have its own enabling framework as has been done in the Administration of Justice Law in Lagos State which took effect from May 2007. The essence therefore is so as not to subject the concept to abuses as it is being manifested in the Igbinedion’s case.

“In other words, in the Lagos state law, there is a procedure for application of plea bargaining, in the Economic and Financial Crimes Commission Act, there is no procedure. So as it was applied in Igbinedion’s case, it is questionable.”

Another lawyer, Mr. Ayo Olanrewaju, said in jurisdictions where plea bargaining was often applied, the cost of investigation of criminal cases was usually high, hence its adoption to save adjudicatory costs and time.

He argued that in Nigeria, the use of plea bargaining was being bastardised because most of the suspects allowed to make the pleas were paying back a fraction of the money they had stolen.

Olanrewaju said this situation portended two implications for the future wondering how a person who stole so much money could be fined N3.5m.

His words, "It portends two implications, first, a suspect will steal more money knowing fully that he would plea bargain and secure his freedom and secondly, if he intended to steal N5m, he will steal N10m so that he can return half of the stolen funds."

A lawyer and also lecturer, Department of Jurisprudence and International Law, University of Lagos, Mr. Wahab Shittu, also agreed that the device was prone to abuse of the country's criminal justice system. He said if plea bargain would be applied, it should be subjected to certain parameters.

He said "It should not be an escape route for those who have committed grievous offences to get away with light sentences. Rather, it should be structured in a manner that will guarantee its effectiveness in attacking the problem of delay in our judicial system. The outcome of plea bargaining should not be laughable or make a mockery of our justice system."

Ogunye, however, argues that plea bargaining has its advantages and disadvantages.

He regarded as the main merit of the concept the fact that "the accused person (defendant) receives a lighter sentence for a

less serious charge than the sentence he might earn if he were tried and convicted on the original charge.

“It helps an accused person who is being represented by a private counsel to cut down the cost of his defence, and save money that would otherwise have been paid out as attorney fees to cover professional services that would have been rendered in respect of a prolonged trial.”

Besides, he said plea bargaining could help an accused person to get out of detention early, immediately following the adoption of the plea bargain agreement by the court as its judgment.

He stated that “it enables the accused person to maintain” a decent” criminal record and preserves his social status by having less socially stigmatising conviction of an offence on his record.”

The executive director of the Lawyers league, however, lists the disadvantages of the concept among others as ” Plea bargaining is criticised for being solely motivated by case load management concern. A conviction resulting from plea agreement is not subject to appeal.

“A plea agreement may effectively keep other complicit persons out of the case thereby shielding them from justice. Some defendants may hurriedly plea guilty to accept culpability in lieu of another person.

It is contended that plea bargaining amounts to the breach of the principles of separation of powers, in that it is somewhat a dictation by the executive arm of government to the judiciary.”

He added that plea bargaining could also work more in favour of the politically and economically powerful than for the benefit of the poor and ordinary offenders.

Admittedly, the arguments for and against plea bargaining appeared sound in reasoning.

If the maxim, “Justice delayed is justice denied” is to be meaningful, this concept will serve as a major intervention strategy in tackling the delay in the administration of justice.

To an extent that it is yet to be incorporated in the criminal procedure legislations of the states in the country, each time the prosecution adopts the concept, it should be applied in such a way that it will not defeat the attainment of substantial justice.

Besides, it should have a clear cut procedure and must not be subjected to abuse or misapplication against the interest of the state and the society at large.

As rightly pointed out by the retired eminent jurist of Supreme Court, Justice Chukwudifu Oputa, “justice is not a two-way traffic but a three-way traffic.”

In other words, justice is for the state, the accused person and for the society.

Beyond this, there is the need for criminal justice administration database and the establishment of Fast Track Courts that will utilise special rules of procedure in justice delivery system in the country.

Perhaps, due to the imperative of criminal justice reforms, the Federal Government should set up a Criminal Law Reform Committee to embark on holistic review of the criminal justice administration in the country.