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Crime and Punishment: A Traditional Yoruba Jurisprudential Appraisal of Plea-bargain

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Abstract
Punishment is a necessary mechanism for the promotion and sustenance of peace and security in the society. The reason punishments are applied is essentially to maintain social order without which a society may result in a chaotic state. Hence, the Yoruba truism, *Nitori ma d'ese la se da ijiya sile*, (it is because of the acute need to prevent crimes that punishment is instituted) embodies the necessity for punitive mechanisms in the society to combat crimes, promote justice, and sustain social order. However, not all crimes are adequately punished due to plea bargain clauses. Seen through the prism of Yoruba traditional justice system therefore, the paper argues that plea bargain is a perversion of justice for being miserly and not commensurable with crimes committed. It stands in contradiction to the tenets of Yoruba criminal justice and by implication may not serve the intended purpose of punishment particularly for public corruption. The paper concludes that for punishment to be effective and purpose-driven, it should be treated holistically as obtainable in Yoruba traditional justice system.
Key words: Corruption, Crime, Plea bargain, Punishment,
Yoruba traditional justice system.

Introduction

A society that has no laws against crimes or morally wrong actions may be inviting strife, chaos and anarchy. There is no gainsaying the fact that law is indispensable to a society in the pursuance of social order. Aristotle, in *Politics,* attested to this true state of social existence when he asserted that "when man is separated from the coercive restraints of law and justice, he is the worst of animals" (Barker 388).

Undoubtedly, therefore, the importance of law and justice lies in their capacity to regulate human conduct in the society. If this is the

case, it should then not be surprising that many African countries are in bad shape they are today because of little regards for law. Even in cases where laws are established, the penchant for having little regard for law has culminated in the making of laws that are inconsistent with the tenets of justice.

The discerning fact is that 'just laws' have been upturned for 'aberrant laws' such as plea bargain which has further given impetus to the commission of more crimes (in this case, corruption) in many African countries. This disposition to law has continued to undermine the progress and development of many African countries. Africa's well-documented multifarious afflictions of underdevelopment may continue unabated, if Africans do not look inwards to revisit the adoption of foreign jurisprudential systems like plea bargain in our criminal justice system. Plea bargain as a legal mechanism for addressing certain categories of crime is not only an aberration of justice, but also highly unsuitable for our socio-ethical setting because of the problems of foreign cultural underpinnings relative to the concept as well as its distinct applicability. Consequently, the need to critically examine such foreign judicial thought system becomes very crucial. Moreover, our indigenous criminal justice systems are capable of punishing offenders in such a manner that can restore some level of sanity, particularly to the Nigerian amalgam.

Crime is a serious menace to any society. It not only rubs a society of its morals and values needed for nourishing development, but also retards progress in any particularly society. This is the reason crimes in African traditional societies are seriously frowned at and severely sanctioned. In *Things Fall Apart*, Achebe pointed out how one man's crime can ruin the whole clan if not properly dealt with (22). Ibidapo-Obe also portrayed the debilitating effect of unchecked crime in an African setting (95). As such, the penalty for committing any crime is punishment. In most cases, punishment is seen as an unpleasant penalty on the offender but it also serves as deterrence both for the offender and other intending offenders. Punishment in traditional African society is a holistic mechanism meant to serve the interest of all and sundry. An unpunished crime in traditional African society is regarded as a taboo that has deeper and negative implications for the whole society.

With the foregoing in mind, this paper appraises the concepts of crime, punishment and plea bargain and then analyses it through the lens of Yoruba criminal justice system. The main objectives are two-

fold. The first is to determine the extent to which the rules on plea bargain in Nigeria sufficiently align with the traditional Yoruba criminal justice system. The second is to show the inefficacy of plea bargain as a form of punishment in tackling the menace of public corruption. By public corruption, we mean self-enrichment with public funds by public officials, through fraud, embezzlement and money laundering either directly or indirectly through their intermediaries. In the case where there are gaps, the paper shall make appropriate recommendations.

The Concepts of Crime, Punishment and Plea Bargaining

Crime

Although the meaning of the concept of crime varies according to time, place, culture, values, and circumstances, "generally speaking, crimes could be seen as the violation of public rights and duties." Ndubuisi regards crime as "a violation of a given statute, or the commission of a forbidden act" (18). In the article, "On Crimes and Punishments", Beccaria, identified four major types of crimes. The first, termed Crimes of *Leze majesty,* refers to crimes against life and liberty affecting both the society and individual; for instance, armed robbery and assassination. It also includes crimes committed by grandees and magistrates. The other types are crimes of honour; crimes of dueling and lastly, crimes that disturb public tranquility and peace, such as tumults and riots. Leonard Territo and et al (5-8) identify six major types of crimes, namely conventional crimes (like rape, homicide, and aggravated assault); economic crimes, computer crimes, syndicated or organized crimes, political crimes and consensual crimes.

Broadly speaking, in African traditional societies, there are two main types of crimes. These are social and spiritual crimes. Social crimes are directed against individuals who ultimately upset the societal harmony. Notable among such crimes are: manslaughter, stealing, adultery, fighting and lying (Ndubuisi 65). Spiritual crimes, on the other hand,

> Are not directly against the individuals as such, but essentially an invitation to the wrath of both the gods and goddesses with consequences visited upon the community. Such include incest, murder, suicide, killing sacred animals, unmasking the masquerade, speaking evils of elders and so on (69).

In traditional Yoruba society, crime could be regarded as *idaran* or *ese* (sin/crime or offence), which indicates an array of actions including misdemeanor, theft, taboos and murder. The concept of *ese* (translated to mean crime, sin or offense) could be cumbersome. *Ese* may connote mere misdemeanor or it could mean *eewo* (sacrileges or taboos) which repercussions could be quite weighty (Onayemi 86). In all, crimes are those acts which contravene specific laws that a community has identified as so, whether premeditated crimes or crimes committed through carelessness. Crime is, therefore, the breach of a law, a contravention of a given rule or statute that is provided for and recognized as binding on members of a given community. In other words, crime involves actions or activities that entail breaking of the law. It is an illegal act or activity, which is punishable by the law. For an act to be deemed as criminal it must first be in contravention of an accepted code of conduct; and secondly, it must be punishable by law.

Punishment

Punishment, according to Gonsalves, is "anything that is painful as some unpleasant consequence or experience, such as a fine, imprisonment, torture, exile or death that the state imposes on an individual for violation of a legal rule" (30). Where there is commission of a crime, there is bound to be a punitive measure against that crime. It is for this reason that crime and punishment are inseparable. "While a crime is a violation of a given statute, or the commission of a forbidden act, punishment is a penalty meted out to a criminal". (18) Crime is a cause while punishment is the effect. If an act is judged to be a crime then it becomes imperative that it must be punished. Punishment here then is seen as "harm inflicted by the executive power of the state on a person who is judged to have violated a rule or law" (381).

For Garland, "punishment is the legal process whereby violators of criminal laws are condemned and sanctioned in accordance with specified legal categories and procedures" (*Rehabilitating Theories of Punishment*). From these definitions, it could be surmised as pointed out by Anthony Flew that punishment entails five basic elements:

(i) It must involve an unpleasantness to the victim.
(ii) It must be for an offense, actual or supposed.
(iii) It must be of an offender, actual or supposed.

> (iv) It must be the work of personal agencies; in other words, it must not be the natural consequence of an action.
> (v) It must be imposed by an authority or an institution against whose rules the offense has been committed. If this is not the case, then the act is not one of punishment but is simply a hostile act. Similarly, direct action by a person who has no special authority is not properly called punishment, and is more likely to be revenge or an act of hostility (Banks 103-104)

In Western scholarship, there is contention among moral and legal philosophers on the aim of punishment. Many differ on the reason punishment is administered to erring persons. Should it be just to punish because of a wrongdoing? Or should it be to deter the individual and others from repeating the same in the future? Lastly, is punishment meant to correct and reform that individual or perhaps to compensate victims? Some even say that punishment should be healing-oriented. All of these aims are grouped under the utilitarian, retributive, restitutive and humanitarian theories. However, punishment in Yoruba traditional society reconciles the various schools of thought on punishment while serving as a mode of administering justice and the smooth-running machinery of the society (Oduwole 1124-1129).

Plea Bargain

The origin of plea bargain seems to be controversial with regard to its usage in criminal justice. Proponents of plea bargain usually trace its origin to the Biblical story of Cain and Abel (Gen. 4:13). Some others argue that plea bargain is rooted in common law, from the Medieval English Common Law. Antagonists of plea bargain, on the other hand, allude to the post-American Civil War era as the significant starting point for the usage of plea negotiations. Without prejudice to any position, it may be admitted, "plea bargaining emerged as a significant practice only after the American Civil War" (Alschuler 211). When it came on board, it was generally met with strong disapproval from the appellate courts even though that seems to have changed over time, as it has become a dominant feature of American criminal justice system. Several countries like Germany, Guatemala, Brazil, Argentina, Costa Rica, France, Italy and more recently, Nigeria, have since followed suit.

Plea-bargaining has been variously defined. Its definition varies depending on the jurisdiction and context in which it is used. We shall restrict our definition to a few to take in the broad range of practices that can be termed so in legal semantics. According to Alschuler,

> Plea-bargaining consists of the exchange of official concessions for the act of self-conviction. The concessions given a defendant may relate to sentence, the offense charged, or a variety of other circumstances; they may be explicit or implicit; and they may proceed from any of a number of officials. The benefit offered by the defendant, however, is always the same- entry of a plea of guilty. This definition excludes unilateral exercises of prosecutorial or judicial discretion such as unqualified dismissal or reduction of charges. It also excludes the exchange of official concessions for actions other than entry of a guilty plea, such as offering restitution to the victim of a crime, giving information or testimony concerning other alleged offenders, or resigning from public office following allegations of misconduct (212-213).

From the foregoing, it is can be observed that plea bargain "is a non-trial mode of courtroom transaction that consists of an exchange between prosecution and defence in criminal cases." (Maynard 324). Another author defines plea bargain as "a procedure within a criminal justice system whereby prosecutors and defendants negotiate a plea and dispose of a case before trial serving the interest of judicial economy" (Messitte 1). He, however, added a pertinent caveat: "although it is often pursued to secure the cooperation of defendants to serve as witnesses in other criminal cases in exchange for a 'bargain' as to criminal charges themselves" (1). This caveat shades the use of plea bargain somewhat different from the practice in Nigeria. Nchi defines the concept as "an informal arrangement whereby the accused person agrees to plead guilty to one or some charges in return for the prosecution agreeing to drop other charges or a summary trial" (403).

In Nigeria, the concept of plea bargaining is provided for under Economic and Financial Crimes Commission (Establishment) Act 2004, Administration of Criminal Justice (ACJ) Act 2015 and Administration of Criminal Justice Laws of the various States Government in Nigeria. Under the EFCC Act that:

> Subject to the provisions of section 174 of the constitution of the Federal Republic of Nigeria 1999, the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence (EFCC Act section 13 {1}, 2004).

Similarly, Section 270 of the ACJ Act 2015 stipulates that a plea bargain may be initiated either by the prosecutor or the defendant with the following conditions:

a. *i. the defendant's willingness to cooperate in the investigation or prosecution of others;*
b. *ii. the defendant's history with respect to criminal activity;*
c. *iii. the defendant's remorse or contrition and his willingness to assume responsibility for his conduct;*
d. *iv. the desirability of prompt and certain disposition of the case;*
e. *v. the likelihood of obtaining a conviction at trial, the probable effect on witnesses;*
f. *vi. the probable sentence or other consequences if the defendant is convicted;*
g. *vii. the need to avoid delay in the disposition of other pending cases; and*
h. *viii. the expense of trial and appeal.*
i. *ix. The defendant's willingness to make restitution or pay compensation to the victim where appropriate (*ACJ Act Section 270, 2015).
j.

Prior to the enactment of the ACJ Act 2015, various State Governments had enacted their Administration of Criminal Justice Laws to accommodate plea-bargaining. For instance, in 2007, Lagos State enacted its Administration of Criminal Justice Law of 2007. Section 76 of the said Lagos State law states:

> (1) The prosecutor and a defendant or his legal practitioner may before the plea to charge, enter into an agreement in

respect of:

a. (a) a plea of guilty by the defendant to the offence charged or a lesser offence of which he may be convicted on the charge, and
b. (b) an appropriate sentence to be imposed by the court if the defendant is convicted of the offence to which he intends to plead guilty.

(2) The prosecutor may only enter into an agreement contemplated in subsection (1) of this section:

(a) after consultation with the Police Officer responsible for the investigation of the case and if reasonably feasible, the victim, and

(b) with due regard to the nature of and circumstances relating to the offence, the defendant and the interests of the community.

(3) The prosecutor, if reasonably shall afford the complaint or his representative the opportunity to make representations to the prosecutor regarding:

(a) the contents of the agreement; and the inclusion in the agreement of a compensation or restitution order.

In continuation:

(4) An agreement between the parties contemplated in subsection (1) shall be in writing and shall be signed.

(5) The Presiding Judge, or Magistrate before whom criminal proceedings are pending shall not participate in the discussion contemplated in sub-section (1).

Provided that he may be approached by a counsel regarding the contents of the discussions and he may inform them in general terms of the possible advantages of discussions, possible sentencing options or the acceptability of a proposed agreement.

(6) Where a plea agreement is reached by the prosecution and defence, the prosecutor shall inform the court that the parties have reached an agreement and the Presiding Judge or Magistrate shall then inquire from the defendant to confirm the correctness of the agreement.

(7) The Presiding Judge or Magistrate shall ascertain whether the defendant admits the allegations in the charge to which he has pleaded guilty and whether he entered into the agreement voluntarily and without undue influence and may:

(a) if satisfied that the defendant is guilty of the offence to which he has pleaded guilty, convict the defendant on his plea of guilty to that offence, or:
(b) if he is for any reason of the opinion that the defendant cannot be convicted of the offence in respect of which the agreement was reached and to which the defendant has pleaded guilty or that the agreement is in conflict with the defendant's rights referred to in subsection (4) of this Section, he shall record a plea of not guilty in respect of such charge and order that the trial proceed.
(8) Where a defendant has been convicted in terms of subsection (7) (a), the Presiding Judge or Magistrate shall consider the sentence agreed upon in the agreement and if he is:
(a) satisfied that such sentence is an appropriate sentence impose the sentence, or:
(b) of the view that he would have imposed a lesser sentence than the sentence agreed upon in the agreement impose the lesser sentence; or
(c) of the view that the offence requires a heavier sentence than the sentence agreed upon in the agreement, he shall inform the accused of such heavier sentence he considers to be appropriate.
Furthermore:
(9) Where the accused has been informed of the heavier sentence as contemplated in subsection (8) above, the defendant may:
(a) abide by his plea of guilty as agreed upon in the agreement and agree that, subject to the defendant's rights to lead evidence and to present argument relevant to sentencing, the Presiding Judge or Magistrate proceed with the sentencing; or
(b) withdraw from his plea agreement, in which event the trial shall proceed de novo before another Presiding Judge or Magistrate, as the case may be.
(10) where a trial proceeds as contemplated under subsection (9) (a) or de novo before another Presiding Judge, or Magistrate as contemplated in subsection (9) (b):
(a) no reference shall be made to the agreement;
(b) no admissions contained therein or statements relating

> thereto shall be admissible against the defendant and
> (c) the prosecutor and the defendant may not enter into a similar plea and sentence agreement (Administration of Criminal Justice Law, Section 76, 2007).

The combined insights from the above provisions strongly suggest that plea-bargaining is now statutorily acknowledged as a legal instrument for the administration of criminal justice system in Nigeria. While the idea of plea bargaining may be settled, the issue as to whether it is a useful instrument for fighting corruption in Nigeria still remains an open question. A key issue that is interrogated in this paper.

Crime and Punishment in Traditional African Society

Punishment constitutes one of the essential tools used in regulating social behaviours and maintaining law and order thereby preserving social harmony. The Yoruba justice system is not an exception in this regard. Like every aspect of their reality, the philosophical underpinning of punishment in Yoruba culture is embedded in an ontological principle of order. This principle is distilled into a proverb: *Ilu ti o ba si ofin, ko si ese* – which translates to 'any society without laws has no notion of sin or crime.' This proverb embodies the need for punishment in order to reduce or avoid crime in the community. The principle is an admonition against going against the laws, culture and traditions of the community, so that the social harmony of the community can be protected and maintained for the well-being of everyone.

There are different types of punishment in Yoruba culture and their classifications are rendered thus:

> Punishment in Yoruba culture can be categorized into capital, corporal, imprisonment and miscellaneous punishments. Principally, social crimes attract corporal punishment. This kind of offense does not require death. Such punishment may consist of flogging, whipping, tying, putting in the stocks or yoke, lacerating wounds, banishments, castration or emasculation, etc. (Ajisafe 35).

Further,

> Capital punishment is the type of punishment which involves the execution of the convicted criminal under the sentence of a court, constituted

> by legal officials. Spiritual crimes are most liable to capital punishment. For the Yoruba, death is the common modes of punishment for the most serious crimes, such as murder, sacrilege and other magico-religious offences (Oppenheimer 121).

It should be pointed here that there cannot be any genuine claim to ignorance of any particular law in Yoruba culture because everybody in the community is well aware of the precepts that regulate the social norms, behaviours and expectations of the community. This is inculcated into everyone from birth, through the socialization processes amenable in the family, age groups to the general community. For anyone who now deliberately chooses to flout the law(s) even after the *ikilo*- (reading of the riot act or dire warning), the repercussion- punishment is then applied.

Another principle that holds the meting out of punishment in Yoruba society is amplified in the proverb: *ika to ba se lo'ba ma ge* (It is the finger (i.e. person) that commits the crime that the king (i.e. community) will cut or be punished). It is discernible to say that, having known the laws of the land but flouted it; it becomes imperative that the offender must pay the penalty. The repercussions of any crime if left unpunished would manifest two-fold. First, if it is a social crime like theft, adultery, slander, it is bound to generate social disharmony as the offended may want to take laws into his hands and therefore seek for revenge. This can spiral out of control and cause social instability in the community. Second, if it involves such crimes like incest, suicide or murder, the whole community is bound to suffer for it, as the community could be visited with the wrath of the gods and goddesses either in form of calamities like famine, diseases or mysterious deaths. This perhaps shows why the role of punishment in the Yoruba justice administration is essential. Oduwole argues that punishment in Yoruba thought system serves five major functions namely: retribution, reformation, deterrence, compensatory and reconciliatory (1128).

Any crime committed is bound to upset the natural moral order of the community unless there is a cleansing or appeasement to right the balance of the crime. This cleansing or appeasement can come basically in two forms: Firstly, punishing the offender, and secondly,

making the required restitution to the individual offended or offering sacrifices to the gods or goddesses if it is a spiritual crime. Until these requirements are carried out the moral order could not be said to have been righted and justice seen to have been done. The former, i.e. retributive punishment in traditional Yoruba thought system is best exemplified in these sayings: *ika to ba se l'oba ma ge.* (It is the finger (i.e. person) that commits crime that the king (i.e. community) will cut or be punished) and *elese kan o ni lo lai jiya.* (No sinner will go unpunished). Ajisafe argues that retributive punishment in Yoruba thought system is reckoned as payment to satisfy the injured party (27). In a further elucidation, retributive justice is seen as a principle of justice which requires penance from the culprit for the harm they have caused others. In the same vein, "it is also assumed that it will balance the equilibrium of injustice and will send a signal to the society to consider fair treatment on all and respect for the other party" (27).

In its reformative and deterrence sense, punishment in Yoruba traditional justice system is meted out with the aim of correcting and nudging the culprits towards the path of goodness and to offer them another chance of being better majorly for utilitarian considerations. This shows that the Yoruba does not wholly believe or advocate retributive justice in order to uphold social harmony. This is exemplified in some proverbs given by Laleye (American Research Institute for Policy Development):

'Bi a ba niki a be igi ni gbo, a o be eniyan mo' (If you should demand for the full swing of the sword of justice, it would wreck unimaginable damage).

'Ti a ba ni ki a da ina ejo bi o ti gun to, a o sun ile' (You don't make fire so as to commensurate with the length of a snake, if not it would wreck unimaginable damage).

'Ti a ba ni ki a wo duudun ifon, a o ho ara de eegun' (A reaction that is commensurate to the bite of the bedbug would produce a disastrous effect) (174).

It is established here that there is room for repentance, rehabilitation and acceptance into the communal fold once the required justice has been done, and it is this method that panders to the utilitarian consideration of punishment. This is captured aptly in

the words of Balogun:

> In its reformative essence, when a culprit is punished, such is done with the view to fine-tuning the character of the said offender in line with the communalistic ethos of the Yoruba culture. Given this communalistic nature of the traditional Yoruba, emphasis is placed on communion of souls than an aggregate of individuals. Thus, punishment within such social set-up is machinery for maintaining a crime reduced society; protecting lives and properties; ensuring social order and enhancing the sanctity of human dignity. All these are made possible with the deterrence function of punishment, which serves to justify the institution within the legal culture (52).

As for the latter, the justification for punishment lies in deterrence; hence "punishment is meted out to offenders among traditional Yoruba in other to deter others. The pain and shame on the family and individuals are expected to deter others" (1128).

Aside the foregoing, restitution, reconciliation and compensation are the other aims of punishment in traditional Yoruba society. Put together, this set of punishment thrives on the belief that one must make up for the damage caused as a result of the crime committed. For this to happen, series of sanctions may be applied either in form of forfeiture of some rights and making appeasements to the offended in the case of social crimes like theft or adultery. In the case of spiritual crimes, like incest, the offenders are banished temporarily from their homes, scorned by the community and finally made to offer sacrifices to the gods to ward off evil spirits or calamities from the community as a result of their crime.

Therefore, '*ijiya*' (punishment) becomes not only necessary but essential in the ordering and reordering of the Yoruba's communal life. This implies that anyone who has flouted the laws must be punished to serve the cause of justice by paying penance for crimes committed so as to right the balance of the moral order and to cleanse the individual (if possible) and the community from the repercussions of the crime committed. However, as a corollary of both theories, punishment is also meant to reform the offender. As such, punishment in traditional

Yoruba society is holistic. It takes into cognizance the different ends of these theories with a view to finding the correct balance through which a proper synthesis of punishment is carried out for the benefit of the community and the individual. The holistic treatment of crime in Yoruba thought system perhaps is what made crimes manageable in times past thereby instituting discipline and strengthening the moral and social order of the Yoruba traditional society.

Sadly, the above cannot be said of the present situation in many African countries due to the particular experience of colonialism which supplanted the customary ways of life of the indigenous people. As such, the modern social control system, instituted through colonialism and its apparatuses, has brought in systems and laws that have not only been ineffectual in curbing crimes, but has encouraged the perversion of justice with damning consequences for the African society.

Plea Bargain (PB) and Yoruba Traditional Justice System

Plea bargain is one of the more recent criminal judicial processes that its usage is widespread across criminal jurisprudences though with different and distinct cultural underpinnings. Advocates of PB argue that it is more of a blessing than curse in the dispensation of justice in Nigeria. Among arguments put forward is that it facilitates effective administration of justice as justice delayed is justice denied (Shittu 1.9).

Studies have shown that the rationale for the introduction of PB into Nigeria criminal justice system is to among other things to decongest the court system, promote efficiency in criminal justice administration, save time and cost of prosecution and decongest the already limited Nigeria prisons (Oguche 49). Nevertheless, it is the contention of this paper that in the particular context of Yoruba traditional criminal justice system, PB amounts to indulging a distasteful attitude which in both short and long term may lead to disastrous consequences for the whole society.

Plea Bargain, Moral Values and Social Order

Punishment in Yoruba society is fundamental to the attainment of social harmony. Its central utility is to reduce the rate of crimes in the community. It is in doing this that moral values are promoted and strengthened in a manner that positively impacts on the lives of the people. PB does not reduce crime nor prevent it given the empirical

evidence against it. This is evidenced by the low standard of living among the masses juxtaposed with the opulence of many past and current public office holders.

PB negates the aim of punishment in Yoruba criminal justice system because it does not serve the interest of the society. Notwithstanding the canvassed benefits of PB, it pales into an insignificant benefit given the havoc it is perceived to wreak on the society. One of the central aims of punishment in Yoruba (African) society is to reduce crime by deterring people from committing crimes so as to engender peace, tranquility and social order. PB, however, is antithetical to these values. It perverts justice and constitutes a stumbling block to the advancement of social harmony, and thereby frustrates the development of the Nigerian society since it is injurious to public interest. PB, therefore, does not encourage good moral values and cannot fight nor deter the commission of crimes like corruption which constitutes a menace to the Nigerian society.

Plea Bargaining and Public Corruption

What role does PB play in the reduction of crimes? Is PB introduced in order to reduce particularly the crime of corruption? In fact, "the machineries or structures put in place (like PB) in the fight against corruption are either faulty and or defective thereby making the whole exercise a mere jamboree…" (Uji 1) The rules of PB portray clearly that it is an alien system introduced essentially for judicial economy. If we follow this line of thought, it becomes clearer that PB was not introduced to fight crime but essentially to aid judicial administration processes. Thus we find ourselves in a situation where public morality is sacrificed on the altar of administrative expediency. The implication of this is that criminals get away on the altar of judicial economy thereby doing more harm to the public interest. Beyond this, the Yoruba traditional judicial system does not treat the commission of crimes with kid gloves. According to Ajisafe, stealing or theft, which is the most related crime to corruption, (as the concept of corruption was alien to Yoruba traditional system) is punishable by death or deportation (27). In its most lenient treatment, a thief is punished by being stripped, whipped and paraded in public to humiliate the culprit and his family.

However, in modern times, the punishment of a corrupt criminal in the context of PB pales into insignificance given that it

cheaply lets off many of those implicated in recent times in Nigeria This development has therefore shown that PB cannot deter nor reduce the rate of crimes or corruption in Nigeria. Examples abound of public officers, who, through the plea bargain device, are still enjoying the proceeds of their filthy lucre at the expense of the public. Mr. Lucky Igbinedion, the former Governor of Edo State, Mr. Diepreye Alamieyeseigha (now late), former Governor of Bayelsa, Mr. Tafa Balogun, former Inspector General of Police, Mrs. Cecilia Ibru, former Chief Executive Officer of Oceanic Bank Plc and many others have enjoyed the luxury of PB.

Recommendation and Conclusion

Punishment is a legal and social reaction to crime. It is primarily meant to punish and deter criminals and would-be criminals to desist from lives of crime as it portends no good for the society. It is in no small measure destructive and a menace to the harmony needed to have a peaceful and prosperous society craved by all. This paper advocates a stern use of punishment in order to combat the escalation of criminal activities. It particularly recommends the retributive strain of punishment (in order to serve as a potent deterrent) for dealing with crimes that has a multiplier effect on the collective wealth of the society. Worthy of mention here are the crimes that give rise to other crimes, for instance, public corruption. This has, in no small measure, given rise to a host of other social crimes in the society like stealing, armed robbery and kidnapping being witnessed in Nigeria and other African countries today. The current fight against crimes like corruption must be total.

In as much as the concept of plea bargaining being used and considered can be subsumed under the utilitarian consideration of punishment, it will amount to just a slap on the wrist if corrupt public officials are only made to forfeit a miniscule part of their looted assets. The implication of this is that it would only encourage and embolden them and other would-be looters to amass more. More stringent forms of punishment need to be applied in order not only to ensure restitution of their crimes but to serve as real deterrent to them and potential looters. It is hoped that this approach to such crimes can quell the rate of corruption and lead to justice and create opportunities for development. Failure to do this would only exacerbate public corruption, which will in turn spell doom for the generality of all.

In a nutshell, the paper has done an exposition on the concepts

of crime and punishment. It has also given an insight into the Yoruba concept of punishment as embedded in their socio-judicial system. The paper acknowledges that the utilitarian and humanitarian approaches could be viable in some cases to the treatment of crime. It would, however, be a wrong prescription to recommend in the particular context of public corruption due to the overwhelming fact that corruption is arguably the single most potent malaise plaguing our society. As such, the paper recommends more stringent punishment to be adopted to wage a successful war on corruption. Making penance for corruption crimes must be total. Plea bargain is, therefore, a perversion of justice in corruption cases, and it must be jettisoned to prevent corruption from asphyxiating the remaining life out of the country. If we do not kill corruption, corruption will kill us! After all, the essence of punishment is to enable a society that is built and sustained on principles of equity and fairness; an egalitarian ideal necessary to produce maximum happiness for the greater number.

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