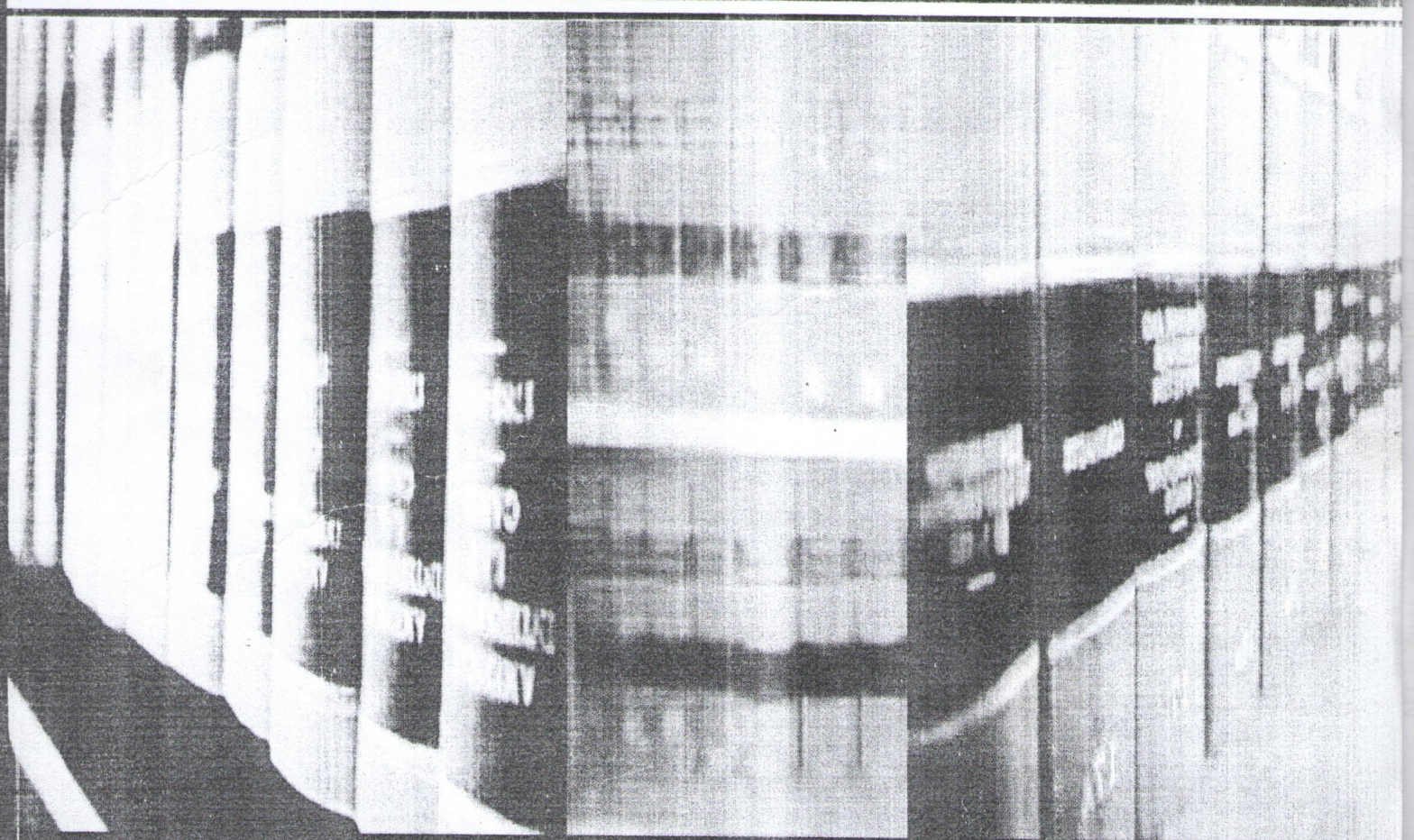
LAW, SOCIAL JUSTICE AND DEVELOPMENT

A FESTSCHRIFT FOR PROFESSOR UBA NNABUE



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CHAPTER 29

PLEA BARGAINING UNDER THE NIGERIAN CRIMINAL JUSTICE SYSTEM: AN OVERVIEW*

INTRODUCTION

The norm - plea bargain- is an old and established procedure in criminal law administration.[1] Although novel to Nigeria judicial environment, plea bargain has its origin in the United States of America as part of their belief that society is dynamic and so law needs to keep with it.[2] The practice came about as a potent weapon in criminal law jurisprudence. It could be described as a child of necessity employed in deserving cases by the state in certain high profile cases to facilitate a negotiated soft-landing platform for accused persons who are willing to save the time and huge expenses for the State, through a guilty plea and payment of compensation/forfeiture of the proceeds of the crime to avoid undue publicity and the attendant image crisis.[3]

Until recently, most Nigerians were not familiar with the term plea bargain. It became known and applied with the establishment of the Economic and Financial Crimes Commission (EFCC), following the increased level of corruption in Nigeria. The judiciary then began to apply the process in justice administration particularly in high profile cases prosecuted by the EFCC.[4] The aim of the concept is to enable the prosecutor secure a faster conviction though the offender ends up getting a milder punishment than what should have obtained if he/she went through normal trial.[5] Plea bargaining emphasizes the need to dispense with criminal caseloads, decongest the prisons, save cost and yet be expedient in doing so.

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1 Onwudiwe, O.M., "Plea Bargaining in the Nigeria Criminal Justice System". www.onwudiwemartins. hubpages. com. Accessed 16/04/2013

2 *Ibid.*

3 *Ibid.*

4 Plea Bargain: A mockery of Nigerians Legal Process. www.thestreetjournal.org.Accessed 17/04/2013.

5 *Ibid.*

There are so many issues and criticisms about the application of the concept of plea bargaining in Nigeria. For example, many people see it as a means of circumventing the stiffer penalties that may have been prescribed by the law. Many also argue that plea bargaining is alien to the statutes of criminal justice in Nigeria and so does not have a place in our present criminal law jurisprudence. The concept is also believed to be hidden from judicial scrutiny and other critics believe that over use of plea bargaining breeds disrespect and even contempt of law.[6]

This article seeks to explain that there are some provisions for the application of plea bargaining under the Nigerian law although one is not also persuaded that these provisions are adequate legal provisions. The article discusses the concept of plea bargaining, the historical development, the necessity for the application of the concept followed by the attendant criticisms, and the existing legal provisions for the application of the concept under the Nigerian criminal justice system. It also makes recommendations for effective application of the concept under the Nigerian criminal law.

UNDERSTANDING THE CONCEPT OF PLEA BARGAINING.

Black's Law Dictionary[7] defines plea as *....more particularly, the first pleading on the part of the defendant.* A learned author[8] also defined plea as; an answer to a plaintiff's case in a common law action, a defense, an answer to a charge, pleading. In criminal proceedings, the accused enters a plea after the indictment. He may plead "guilty" or "not guilty". He may plead to the courts lack of jurisdiction or a special plea like *autro fois acquit, autro fois convict* or pardon. An accused person's plea is usually taken after the charge(s) is/are read and explained to the accused. The courts usually record the plea of the accused as nearly as possible, in the words of the accused.[9] A plea taken without the

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6 Onwudiwe, O.M., *op cit.*

7 Black H.C., **Black's Law Dictionary**, 6th ed., St. Paul Minn, West Publishing Co., 1990, p. 1151.

8 Nchi, S.I., **Nigerian Law Dictionary**, 1st ed., Zaria, Tamaza, 1996 p. 250. See also Alubo, A., "The American Plea Bargaining: Prescription for Nigerian Criminal justice System", dspace. unijos. edu.ng. Accessed 15/04/2013. See also Alubo, A., "The American Plea Bargaining: Prescription for Nigerian Criminal justice System", dspace.unijos.edu.ng. Accessed15/04/2013

9 Alubo, A., *ibid.*

preconditions listed above is likely to nullify whatever conclusions were reached at the trial.[10]

To bargain is to "negotiate" or to "agree". The legal combination of these two terms produces the phrase- plea bargain - also known as negotiating settlement, coping plea, plea argument or negotiated plea.[11] A plea bargain is an agreement in a criminal case between the prosecutor and defendant whereby the defendant agrees to plead guilty to a particular charge in return for some concessions from the prosecutor. This may mean that the defendant will plead guilty to a less serious charge or to one of several charges, in return for the dismissal of other charges or it may mean that the defendant will plead guilty to the original criminal charge in return for a more lenient sentence.

According to Encyclopedic dictionary, plea bargaining is defined as the negotiation of an agreement between a prosecutor and a defendant whereby the defendant is permitted to plead guilty to a reduced charge.[12] Plea bargaining is also defined by Blacks Law Dictionary as "a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for some concession by the prosecutor usually a more lenient sentence or a dismissal of other charges.[13] Some authors like H. Langbein[14] call plea bargaining "condemnation without adjudication" while Nchi, S. I.,[15] defines it as an informal arrangement whereby they accused person agrees to plead guilty to one or some charges in return for the prosecution agreeing to drop other charges or for a lenient sentence. In a compendium, plea bargaining is an arrangement informally but legally where the prosecution makes concessions or overtures to an accused person that certain charges or sentences would be eliminated or made lighter if the accused admits guilt.[16]

Plea bargaining therefore is seen as that bushel of practices whereby a prosecutor agrees to charge a crime or crimes less seriously than the facts warrant, and/or reduce a charge or charges already issued and/or not issue additional charges, and/or make a sentence recommendation all in return for a

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10 **IGP v. Rossek** (1958) LL.R 73, **Kajubo v. The State** (1988) 3 SCNJ (Pt. 1) 79 and 90. **R v. Pepple**, 12. WACA 441; **Adamu v. State** (1986) 3 NWLR (Pt. 32) 865

11 Onwudiwe, O.M., *op. cit.*

12 See **Webster's New Encyclopedic Dictionary,** 2006 ed., p. 1402

13 **Blacks Law Dictionary**, *supra.*, p. 1190

14 Langbein, J. H. "Law without plea bargaining: How the Germans do it". 78, *Michigam Law Review* 204 (197) at 204.

15 Nchi, S.I., *op. cit.*

16 Alubo, A., *op. cit.*

guilty or a no contest plea. It includes what has variously been described as "charge bargaining" and "sentence bargaining" as well as "plea bargaining." Importantly, however, whatever form the leniency takes, the leniency is payment to a defendant to induce him not to go to trial. Thus, plea bargaining does not encompass those situations where the facts of a particular case may justify a lenient sentence, a dismissal, or reduction.[17] Obviously, for example, if a case initially charged as 'murder' is discovered to be, in reality, 'manslaughter' it is not plea bargaining but justice is seen done in this instance. By the same token, consideration to a defendant may be warranted, in appropriate cases, to get a help in catching or convicting a bigger accused or avoid the trauma of a trial for a particularly fragile victim.[18] Again this is not plea bargaining but justice for society and for the victim.

HISTORICAL DEVELOPMENT

Plea bargaining is an invention of the American legal process.[19] It started by convention but having been accepted by the courts, it is now entrenched in their Federal and State Criminal Procedure Rules.[20] Scholars began to expand on the concept in the 1960s and the Supreme Court upheld the process in the 1970 case of **Brady v. United States.**[21] In later declarations the court built a number of safe-guards into the bargaining process. It upheld in the case of **Perkins v. Court of Appeal**[22] that the promise of a prosecutor made during plea negotiations must be kept and to be valid, a guilty plea had to be made voluntarily and with full knowledge of its implications.

Up till the midst of 20th Century, most courts and scholars, all over the world, tended to ignore the importance of plea bargaining, and when discussions of the practice occurred, it usually was critical. However, the significance of plea

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17 Raph Adam Fine: "Plea Bargaining: An unnecessary evil", *Marquette Law Review*, Vol. 70, no. 4 (1987), P. 615.

18 *Ibid.*

19 Adebayo, T., "The legality of the use of plea bargain in the Nigerian Criminal Justice System". www.Topeadebay ollp.com. Accessed 17/04/2013.

20 **Rule 11 (c)** Federal Rules of Criminal Procedure (United States of America.)

21 **Brady v. United States**, 394 US 742, 90 S.C.T. 1463, 25 L.Ed, 2d 747 (1970)

22 **Perkins v. Court of Appeals**, 738, S.W. 2nd 276, 282 (Tex Crim. App. 1978)

bargaining has improved to a larger extent and it became integral part of the criminal justice system.[23] Law on plea bargaining has strong variations in

Common Law countries and European continent. Guilty pleas have been regarded as sufficient basis for conviction from the earliest days of the common law. In treating a guilty plea as conclusive, common law nations depart from the law of most nations on the European Continent. In serious cases, these nations do not treat any form of confession as an adequate basis for dispensing issues when an accused does not contest his guilt.[24]

Plea bargaining is common in England, Canada, and most of the other nations of the British Commonwealth. Germany and Italy that initially rejected plea bargaining embraced it as trials became longer and more adversarial, as complex prosecutions for white-collar crime came before the courts in greater numbers, and as caseloads increased. German prosecutors offered concessions to the accused not to contest their guilt. Italy, in fact, formally instituted a system of plea bargaining by statute. Plea bargaining remains less frequent in Continental Europe than in England and America. In Germany, now it is claimed that some kind of bargaining takes place in roughly twenty to thirty percent of all cases.[25]

History narrates that although plea bargaining in felony cases before the nineteenth century was rare, non-trial dispositions in minor misdemeanor cases may have been the subject of express or implicit bargains. Courts could permit a plea, which allowed an accused to submit to conviction and pay a fine without admitting guilt. Judges, however, did not allow such plea in serious cases, and in early nineteenth century in America, guilty pleas typically accounted for a minority of felony convictions. When occasional cases of plea bargaining began to appear in reported decisions in the second half of the century, appellate judges voiced strong disapproval of the practice. Despite this disapproval, plea bargaining became a routine in many places before the end of the century.

Among the historical developments there are many other factors which gave major contributions in the growth of plea bargaining. Some of these factors are the increasing complexity of the trial process, which may have led to the greater use of non-trial procedures both for economic reasons and because officials sought to avoid the technicalities of trial; expansion of the substantive criminal law; increasing crime rates; larger case load; the frequent political corruption of

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23 Pradeep, K.P., Plea Bargaining – New Horizon in Criminal Jurisprudence http://www.lawyersclubindiaCom /articles/plea-Bargaining-new...(Accessed and last visited on 14 June, 2012)

24 *Ibid.*

25 K.P. Pradeep, *op. cit.*

urban criminal courts, and the greater use of professionals in the administration of criminal justice, by police, prosecutors, and defence lawyers; and the increasing statutory powers of state controlled prosecutors.[26]

THE RATIONALE FOR PLEA BARGAINING

Aside from the foregoing, there are many reasons for plea bargaining and they fall into three categories.

Firstly, some jurists maintain that it is appropriate as a matter of sentencing policy to reward defendants who acknowledge their guilt. Several reasons were advanced in support of this position, notably, that a bargained guilty plea may manifest an acceptance of responsibility or a willingness to enter the correctional system in a frame of mind that may afford hope for rehabilitation over a shorter period of time than otherwise would be necessary.[27]

Plea bargaining is also a factor in reforming the offender by accepting the responsibility for their actions and by submitting them voluntarily before the law, without having an expensive and time consuming trial. It reduces the workload of the prosecutors enabling them to prepare for the gravest case by leaving the effortless and petty offences to settle through plea bargaining.

A brilliant prosecutor may agree for a plea bargaining of an insignificant accused to collect evidence against other graver accused. Normally, in cases where aged or women witnesses have the vital role to prove a charge against the accused, their death or non-cooperation, may be a real cause of adverse conclusion of the case. Here the prosecution avoids a chance of acquittal and the accused avoids a chance of conviction for more serious charges with higher punishment. From the angle of victim also, plea bargaining is a better substitute for his ultimate relief, as he can avoid a lengthy court process to see the accused convicted. The system gives a greater relief to a large number of under trials lodged and in various jails of the country and helps reduces the long pendency in the courts.[28] Plea bargain allows both parties to avoid a lengthy criminal trial and may allow criminal defendants to avoid the risk of conviction at trials on a more serious charge. In Nigeria, criminal proceedings may be instituted in Magistrates' courts on a charge by bringing a person arrested without a warrant before the court, the charge sheet specifying the name and occupation of the person charged, the charge against him and the date and place where the offence is alleged to have

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[26] *Ibid.*
[27] *Ibid.*
[28] *Ibid.*

been committed. Also, in the High Court, by information of the Attorney – General of the state in accordance with the provisions of the law[29] and by information filed in the court after the accused has been summarily committed for perjury by a judge or magistrate under the Administration of Criminal Justice Law.[30]

Thus, a criminal defendant charged with a felony theft charge, the conviction of which would require imprisonment in state prison, may be offered the opportunity to plead guilty to a misdemeanor theft charge which may not carry a jail term. Therefore plea bargaining reduces the possibility of detention during extensive trial and retrial processes. The accused can have his case completed more quickly and know what the punishment will be instead of facing uncertainty.[31]

Some advocates of plea bargaining also see it not primarily as a sentencing device but as a form of dispute resolution. These advocates maintain that it is desirable to afford the accused and the state the option of compromising factual and legal disputes. If plea bargaining did not improve the position of both parties, that is, the accused and the state, either party would have insisted on trial.[32] It precludes the possibility of having a serious offender escape justice because of some real or imagined weakness in the case.

Furthermore, plea bargaining has supports on grounds of economy or necessity, thus viewing it as a sentencing device or a form of dispute resolution than as an administrative practice. This is because advocates argue that society cannot afford to provide trials to all the accused who would demand them if guilty pleas were unrewarded. It reduces the overall financing cost of criminal prosecution and enables the prosecution to devote more time and resources to other cases and earn their fee quickly.[33]

CRITICISMS OF THE CONCEPT

Arguments against plea bargaining is that criminal law protects the society in three major ways: deterrence, isolation, and rehabilitation. Law attempts to deter persons from committing crimes with the threat of punishment, and

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29 See **section 77(b)(i),** the Administration of Criminal Justice Law, Lagos State, No. 10, 2007 Repealed and Re-enacted in 2011.

30 **Section 303**, *ibid.*

31 Onwudiwe, O.M., *op. cit.*

32 Pradeep, K.P., *op. cit.*

33 Onwudiwe, O.M., *op. cit.*

rehabilitate those, who for one reason or another, have not been deterred. If deterrence and rehabilitation both fail, there is no alternative but to isolate the offender from the rest of society through long-term incarceration.[34]

Plea bargaining weakens deterrence. The very essence of deterrence is credibility. If deterrence is to work, there must be the risk of discovery and punishments outweigh the temptation to commit crime.[35] Therefore plea bargaining can be of two kinds, one is of bargaining as to the charge and the other is as to the punishment.

In plea bargaining the prosecution has the power to present accused with unconscionable pressures. Though, in procedure pleas is voluntary, there are many chances of being practically coerced. The prosecution has the incentive to maximize the benefit of pleading guilty in the weakest cases. The more likely an acquittal at trial, the more attractive a guilty plea is to the prosecution.

Plea bargaining undercuts the requirement of proof beyond reasonable doubt and the plea negotiation is substantially more likely than trial to result in the conviction of the innocent. Plea bargaining result in unjust sentencing. This practice turns the accused's fate on a single tactical decision, which, they say, is irrelevant to desert, deterrence, or any other proper objective of criminal proceedings. Many critics maintain that plea bargaining results in unwarranted leniency for offenders and that it promotes a cynical view of the legal process.[36]

Furthermore, critics believe that plea bargaining depreciates human liberty and the purposes of the criminal sanction by reducing amount spent on justice as instrument of economic goods. Critics object to the shift of power to prosecutors that plea bargaining has effected, noting that sentencing judges often do little more than ratify prosecutorial plea bargaining decisions. Plea bargaining makes figureheads of the probation officials who prepare reports after the effective determination of sentence through prosecutorial negotiations. Plea negotiation results in the imposition of sentences on the basis of incomplete information. In the light of the conflict of interests, prosecutors, defence lawyers and judges subordinates both the public's interest and the accused's to the interests of criminal justice administrators.

The controversy trailing the concept of plea-bargaining in Nigeria's criminal justice system is not likely to end soon. Those who are kicking against it claim that it is unknown to our legal system. However, those in support of it insist that

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[34] Raph Adam Fine; *op. cit.*

[35] Johannes Andenaes, 'Punishment and deterrence' 1974. See also Raph Adam Fine, *ibid.*

[36] *Op. cit.*

it has always been with us. For instance, eminent Nigeria jurists like Kayode Eso, JSC (late) and the former Chief Justice of Nigeria, Dahiru Mudaspher have criticized the resort to plea bargaining by the anti corruption agencies.[37] In an interview,[38] Justice Eso said of plea bargaining in Nigeria *....there is no plea bargain in Nigeria. The importation is wrong.... to me it is corruption to bring plea bargain into the law of Nigeria....in other countries it may be right for them to have plea bargain. We never had plea bargain.* At a Press Conference[39] in Abuja, Dahiru Mudaspher former Acting CJN said: *Plea bargain is a novel concept of dubious origin. It has no place in our law-substantive or procedural. It was invented to provide soft landing for high profile criminals who loot the treasury entrusted to them. It should never again be mentioned in our jurisprudence.* At the same event, Uwais former CJN argued that *the practice of plea bargain is not new in Nigeria. The point is that in theory, and I believe this is safe, plea bargain is designed to maximize scarce judicial resources thereby enhancing the fair administration of justice. The debate should therefore in my view, focus more on how best the judiciary can adopt the use of plea bargain in a manner that does not compromise fair administration of justice.*

PLEA BARGAINING UNDER THE NIGERIAN CRIMINAL JUSTICE SYSTEM

To argue that plea bargaining is totally foreign to the Nigerian criminal justice system is not true. Generally, the Nigerian Criminal Procedure Act[40] is the procedural law applicable in all the Southern States including Lagos State whereas the Criminal Procedure Code[41] applies to all the states in the Northern part of the country. This is aside from the Criminal Code Law applicable to every state of the Federation.[42] However, the Lagos State House of Assembly enacted in 2007 the Administration of Criminal Justice Law as the procedural law for administration of Criminal Justice Law in both the High Court and Magistrate Courts in Lagos State with effect from 2008. This is the first law in Nigeria that

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[37] See Ogunye J., "In defense of Plea Bargaining", *Premium Times*, Feb. 21, 2013.

[38] See *Vanguard Newspaper* of November 18, 2012 .

[39] The Press Conference, themed "Legal Practice in Nigeria, Venturing beyond usual Border", organized in Abuja by the Nigerian Bar Association on November, 14, 2011.

[40] See Criminal Procedure Act, Cap. 80, LFN, 1990

[41] See Criminal Procedure Code, Cap 81, LFN, 1990

[42] Southern States of Nigeria have Criminal Code applicable to each State whereas the Penal Code applies to all Northern States of Nigeria. See Criminal Code Law of Osun State, Cap 34, Law of Osun State, 2002 and Penal Code Law, Cap 19, LFN, 2004.

makes express provisions for the concept of plea bargaining and its administration.[43]

Having introduced the Administration of Criminal Justice Law as the procedural law for administration of criminal justice in Lagos state, it will be erroneous to still maintain that there is no legislative backing for plea bargaining in Nigeria as it has been earlier held.[44] The Administration of Criminal Justice Law did not only recognize and gave approval for the practice, it went on to state the functions of the prosecutor, the defence lawyer and the judge. **Section 75** of this law states that *Notwithstanding anything in this law or any other law, the Attorney-General of the state shall have power to consider and accept a plea bargain from a person charged with any offence, where the Attorney-General is of the view that the acceptance of such plea bargain is in the public interest, the interest of justice and the need to prevent the abuse of legal process.*[45]

Under this law, the procedure is very straight forward. It provides for a plea of guilty by the defendant to the offence charged or lesser offence of which he may be convicted on. There is a plea as to the sentence to be imposed by the court if the defendant is convicted of the offence to which he intends to plead guilty.[46] The first stage is that the prosecutor and the defendant (the accused) must have entered into an agreement and such agreement must be in writing.[47] The prosecutor has a duty to consult with the police conducting the investigations of crime and the victim of the offence where that is feasible.[48]

The prosecutor cannot do it alone. The law requires him to have due regard to the nature and circumstances of the offence, the defendant, and the interests of the community at large.[49] The prosecution is expected to carry the victim or his

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43 See **sections 75 and 76** of the Administration of Criminal Justice Law 2011 which repealed and re-enacted the 2007 Law.

44 See Ikechukwu Nnochiri, "Criminal Justice System: Is Plea Bargaining Desirable", *Vanguard* 18th March, 2012. The Chief Justice of Nigeria, CJN, Justice Dahiru Musdapher, who had on November 14, last year, described plea bargain as "a novel concept of dubious origin." See <http://www.vanguardng.com/.../criminal-justice-system-is-plea-bar...>(Accessed on 14 June, 2012). Notwithstanding that plea bargaining is not expressly recognized in our criminal justice system, however, what was hitherto practiced by the Economic and Financial Crime Commission, EFCC, is a process wherein the accused person changes his plea of 'not guilty' to 'guilty' after which the prosecution offers such person some concession by way of amending his charge.

45 See **section 75**, the Administration of Criminal Justice Law, Lagos State.

46 See **section 76(1)(a),(b)**, *ibid.*

47 **Section 76(2)**, *ibid.*

48 **Section 76(3)**, *ibid.*

49 **Section 76(2), (b)**, *ibid.*

relatives along in the process. He should give the defendant an opportunity to make representation with respect to the agreement and to possibly make inputs as to compensation in the agreement. The agreement must be signed by all the parties to it.[50]

The judge has a neutral but pivotal role to play in the whole proceeding. This is important in order not to be prejudiced and for his discretions not to be fettered at the end of the day. However, he may advise them generally on possible advantages, sentencing options and the acceptability of the proposed agreement.[51] The prosecutor has the onerous responsibility of intimating the court of the agreement reached. The court will thereafter inquire from the defendant the correctness of the content of the agreement.[52]

As natural under the criminal procedure laws, when an accused upon arraignment pleads guilty, the judge is expected to ascertain that the accused intends to admit of the allegations in the charge and he understands the consequence and entered into it voluntarily and without undue influence in any way.[53] If the judge is satisfied that the defendant is guilty of the offence to which he has pleaded guilty, he may convict the defendant on his plea of guilty to that offence, or 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 section 76, he shall record a plea of not guilty in respect of such charge and order that the trial proceed.[54]

Where, however, the defendant is convicted based on the agreement, then the judge shall consider the sentence agreed. Where the judge feels that the sentence agreed by the parties is inappropriate or that the defendant deserves a higher punishment, he may impose a higher punishment. Aside from this, the following options are also available to the judge or magistrate:

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[50] **Section 76(3), (b)**, *ibid*.

[51] **Section 76(5),** *ibid.* It means also that the pivotal nature of the Magistrate or Judge role is very paramount in plea bargaining.

[52] **Section 76(6),** the Administration of Criminal Justice Law, Lagos State. Ibid

[53] **Section 76(7)**, *ibid*.

[54] **Section 76(7), (b)**, *ibid*.

i. The judge or magistrate may go ahead to impose the agreed sentence agreed by the parties and;

ii. The judge or magistrates may impose a lesser sentence than the sentence agreed upon in the agreement.[55]

If the accused is faced with higher sentence than what was agreed with the prosecution, the accused may stand by his plea and the judge or magistrate may go ahead with the sentence. He may also withdraw his plea and a new trial will be conducted *de novo* before another judge or magistrate. However, where a new trial is commenced, all the correspondences by way of agreement reached at the initial proceedings shall be inadmissible against the accused person. The parties therein are then barred from entering into any further plea bargaining.[56]

Furthermore, **section 14(2)** of the EFCC Act, 2004 empowered the prosecution to enter into plea bargaining in financial corruption cases. It reads:

> Subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria, 1999 (which relates to the power of the Attorney-General of the Federation to institute, continue, takeover or discontinue criminal proceedings against any person in any court of law), 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.

The EFCC has employed this provision to secure certain convictions in several high profile economic crimes cases. For example, the case of the retired Inspector General of Police, Tafa Balogun, and some former governors who were involved in financial and economic crimes. They included, DSP Alamieyesiegha and Lucky Igbinedon. Other cases include that of Cecilia Ibru former Chief Executive Officer of Oceanic Bank International Plc, and the recent case of John Yusuf a former Police Pension Chief.[57]

Apart from the above mentioned laws, there is also a draft plea bargaining provision of the Nigerian Administration of Criminal Justice Bill at the national Assembly submitted by the EFCC to legalize the controversial concept of plea bargaining.

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55 **Section 76(8),** *ibid.*

56 **Section 76(10),** *ibid.*

57 See 'Plea Bargaining – A mockery of Nigerians Legal Process. http.//www.thestreetjournal.org/2013/02/6653. Accessed05/04/2013

RECOMMENDATIONS

Based on the various benefits derivable from the application of plea bargaining, it is recommended that the concept should be made part of the Nigeria criminal justice system. It has been asserted that most Police cells in the country are over congested. Suspects are sometimes arrested without justification and held for several months without formal charges made against them. This high degree of congestion undoubtedly stretches prisoners and the few remaining obsolete prison facilities to breaking point.[58] Prison congestion still persists till date and hence the need for plea bargains to enable quick dispensation of cases.

From the analysis so far, most of the problems/ criticisms associated with the application of plea bargaining in Nigeria today can be attributed to lack of uniform regulatory frame-work on the concept. It is therefore suggested that a federal law applicable to all the States of the Federation should be enacted. Providing specifically for the concept of plea bargaining. This legislation is expected to provide in clear terms for the roles of the key players in the plea deal for example, the prosecutor, the accused person, the judiciary and the executive arms of government.

The legislation is also expected to provide for the sentencing guidelines for the prosecutors and the courts. There should be transparency of the rules used to determine the fines payable, which should be reasonable when compared to the actual amount involved especially in cases of corruption and embezzlement of public funds by government officials. Plea bargaining should not be used as a mechanism for defeating the essence/important nature of criminal justice in Nigeria.

CONCLUSION

Despite the current imperfections and criticism of plea bargaining, it is better to recover our common – wealth from those who have pilfered it through plea bargaining than to continue to waste scarce resources of the state on interminable prosecution of corrupt officials. Plea bargaining saves time, cost and aids recovery of loots. This is a realistic choice to make.[59]

The entire criminal law and procedure will be better off with plea bargaining than without it, criticisms not withstanding. Once the application is adequately provided for under the Nigerian Law, all the limitations of the concept will be eliminated.

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58 See Gahia, C. 'Human Rights in Retreat: A report on the Human Right Violations of the Military Regime of General Babangida; CLO, 1993 at 114.

59 Ojo, J., "Fighting Corruption with Plea Bargain", www.punch.com/opinion/fighting-corruption-with-plea-bargain/
Accessed 14/04/2013