AN APPRAISAL OF THE APPLICATION OF PLEA BARGAINING PROCEDURE IN NIGERIAN CRIMINAL JUSTICE SYSTEM

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Declaration

I hereby declare, that this project has been written by me and that it is a record of my own research work. It has never been presented in any previous research work for the award of Masters of Arts, Law (M.A.L).

All quotations and reference are indicated with specific acknowledgements

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CERTIFICATION

This project entitled "An Appraisal of the Application of Plea Barging Procedure Nigerian Criminal Justice System" meets the regulations governing the award of Masters of Art, Law Degree of Ahmadu Bello University, Zaria and is approved for its contribution legal knowledge and literary presentation.

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DEDICATION

With utmost gratitude to the Almighty God, the creator of the heaven, the earth and the world beneath who has always been the reason for my living, I dedicate this project to my grandfather, Pa Denis Oshie Imodey and my late father Oshie Cyril. May God remain with them where ever they are. May their mortal souls rest in perfect peace.

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First of all I must give Almighty the glory for making said through this rough sea of studies and research.

Secondly, I got into this school through the assistance of one counsel I met in the courtroom while I was doing my case in Abuja. We talked and he promised to assist in securing the admission since I complained to him that I have been applying to the school, A.BU. Zaria since 2009 but to no avail that man today happened to be my friend and my lecturer. I am talking of no one else than Barr. Augustine Agom.

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ACJL	-	Administration of Criminal Justice Law
CAP	-	Chapter
CPA	-	Criminal Procedure Act
CPC	-	Criminal Procedure Code
CRFN	-	Constitution of the Federation Republic of Nigeria
EFCC	-	Economic and Financial Crimes Commission
FWLR	-	Federation Weekly Law Reports
ICPC	-	Independent Corruption and other Related Practices Commission
LFN	-	Law of the Federation of Nigeria
NWLR	-	Nigeria Weekly Law Reports
US	-	United States

ABSTRACT

This project titled"An Appraisal of the Application of Plea Bargaining Procedure in Nigerian Criminal Justice System" is aimed at ascertaining the applicability of the concept of plea bargain in the penal system being that it is a novel phenomenon in the general Criminal Justice System despite the fact it is holding sway in some developed criminal justice jurisdictions like the United States of America for example. The visible application of the concept into the Nigeria Criminal Justice System by the Economic and Financial Crimes Commission with the provision of S. 14(2) of the EFCC Act, 2004 which is to the effect that the commission may compound any offences punishable under the 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. It is against this backdrop that the objective of this research is built on analyzing the concept and practice, of plea bargain in Nigeria with a view to clearing the controversy surrounding its legality and by so doing an examination of the practice of the concept in other jurisdictions are mentioned. It is noteworthy to be mentioned that the penal code and the criminal code as applicable in the northern and southern Nigeria respectively do not cover the subject mater of plea bargain whatsoever. The objective of this research therefore, is to identify the mode of practice of plea bargaining in Nigeria and the inadequacies of the law regulating the subject mater accounting for the controversy and to finally proffer measure. Measure needed for the proactiveness of the law where necessary so as to meet up with the unchallenged practices in other jurisdictions. It is provoking intellectual debates for and against it being that there is no clear federal legislation on the subject matter other than the administration of Criminal Justice Law of Lagos state. It is against this backdrop that the objective of this research is built on analysing the concept and its practice in Nigeria with a view to clearing the controversy surrounding its legality in Nigeria. The writer also took time to look into the Practice if plea bargain in other jurisdictions. The writer also had a look into the penal code and the criminal code as applicable in the northern and southern Nigeria respectively to with a view to seeing if there are traces of plea bargain whatsoever. It is on this note that the research was concluded by recommending (among others) that there be a clear Federal Legislation on plea bargain that will apply to the Nigerian criminal justice following the example of Lagos state. The sources of information relied upon here are the combination of primary sources like statutes, case laws and secondary sources ranging from journals, workshop materials, internet materials, textbooks, contributions to edited books, to accomplish this work

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 BACKGROUND TO THE RESEARCH

There are certain key decisions that people who are being prosecuted have to make: one of the most important decisions is to plead guilty. It is 'plea bargain' when the accused pleads guilty in return for an offer by the prosecution or when the sitting judge has informally made it known that he will minimize the sentence if the accused pleads guilty with plea bargaining the process shifts the focus from the judge leaving the negotiation to prosecutor and the accused or the accused's counsel. Practically, it may prevent a public finding of the facts and substitute it with a behind-the scenes cut short. In this case a deal is usually made between the prosecutor and the accused, whereby the prosecution may offer to drop more serious charge(s) against the accused in exchange for guilty plea of a lesser charge(s) and the prosecution and the accused come to an agreement to solve the case.

At the resolve of the case both parties, the prosecutor and the accused tend to achieve one thing, saving of time and reduction of costs.

There is need to begin and conclude trials expeditiously, decongest the prisons, reduce the time and financial cost of criminal investigations and trials still

maintain and observe fundamental human rights principle without much ado; laying credence to the above, the concept of plea bargaining apparently seems to be one of the procedures that would assist the Nigerian criminal justice system to achieve these laudable objectives.

However, the concept "plea Bargaining" has generated a lot of arguments amongst members of the bench, bar, law enforcements agencies, the academic community and the public at large in Nigeria and it is this event of argument at various levels that generated the interest of the researcher to delve into this controversial area of study so as to make an attempt in ascertaining the proper position of the law.

These arguments today arose from the seemingly increasing use of plea bargaining by the Economic and Financial Crimes Commission of Nigeria (EFCC) which the enabling Economic and Financial Crimes Commission Act[1] Controversially Supports.

Many people have argued in Nigeria that the practice of plea bargaining by the Economic and Financial Crimes Commission allows offenders to receive insignificant punishment that will undermine deterrent aspect of criminal sanctions. Some also believe that offenders can evade the law, provided they are

[1] Cap E1, laws of the Federation of Nigeria, 2014

willing to bargain. Equally, some have argued that the practice circumvent the rigorous standards of "proof beyond reasonable doubt" imposed on the prosecution during criminal trials. Some people also believe that the application of plea bargaining comprises the fundamental principles enshrined in the constitution of the Federal Republic of Nigeria 1999[2].

Against the above backdrops, therefore, the objectives of this research therefore is to identify the mode of practices of plea bargain in Nigeria and the inadequacies in the subject matter accounting for the controversy and to finally proffer measures needed for the pro activeness of the law where necessary so as to meet up with the unchallenged practice in other jurisdictions.

1.2 STATEMENT OF THE PROBLEM

The following problems are identified in the research:

i. The legal justification of section 14 (2) of the economic and Financial Crimes Act, Cap El, Laws of the Federation of Nigeria, 2004 which the economic and Financial Crimes commission (hereinafter referred to as the commission) uses as a framework for their use of plea bargaining in the prosecution of their landmark cases of corruption and financial crimes

[2] The Constitution of Federal Republic of Nigeria 1999

being that there is no express provision for a plea bargaining in any of the Federal Criminal Legislations in Nigeria.

1.3 AIM AND OBJECTIVES OF THE RESEARCH

This research aims at ascertaining the applicability of the concept of plea bargain in the penal system, through and examination of the legal and institutional frameworks on the subject matter in Nigeria. In view of this therefore, the objectives of this paper are as follows.

i. An examination of the practice and mode of plea bargain in Nigeria vis-à-vis the adequacy or otherwise the inadequacies of the laws regulating plea bargain in Nigeria.

ii. An examination of the factors militating against the practice of plea bargain in Nigeria

iii. Finally, to profer measures for addressing the problems identified in the course of the study so as to have a smooth operation of plea bargain in Nigeria like other jurisdictions.

1.4 SIGNIFICANCE OF THE RESEARCH

This research will be of immense help to students, academics, policy makers, the bench and particularly litigation lawyers to ascertain the proper law on the subject matter. It will also be of great importance to graft agencies in Nigeria particularly the economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practice and other Related Offences Commission (ICPC) and the general public by giving them certainty on the mode of application and practice of plea bargain as the relevant institution on the subject matter in Nigeria.

1.5 JUSTIFICATION FOR THE RESEARCH

Justification for this research is to make an attempt to put an end to the controversy surrounding the uncertain of the operation of plea bargain in Nigeria amongst the stakeholders ranging from the students, legal practitioner legal scholars, EFCC, ICPC and relevant stakeholders.

1.6 SCOPE OF THE RESEARCH

The area of coverage for this research as earlier stated is to appraise the legality of the practice of plea bargain in the criminal procedures in criminal cases in Nigeria. Though, the research will be majorly in the Nigerian context, but a

short reference may also be made to other jurisdictions where plea bargain holds sway.

1.7 RESEARCH METHODOLOGY

The writer shall mainly adopt the doctrinal method of research by using the primary sources which shall include statutes and judicial authorities in the form of decided cases. The writer shall also make use of secondary sources of materials which include textbooks, journals, encyclopedia, workshop material, internet materials.

1.8 LITERATURE REVIEW

Although, there are different definitions given to the, phenomenon called "plea bargain, this is so because legal practitioners and scholars are not commonly in terms on the exact meaning of plea bargaining. The definition of plea bargaining seems to vary depending on the jurisdiction and on the context of its use.

Notable amongst the various definitions is that one reads thus:

> *The process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to courts approval. It usually involves the defendants pleading guilty to a lesser offence or to only one or some of the courts of the multi-count*

indictment in return for a lighter sentenced than that possible for the graver change[3].

The writer sees the inadequacies in this definition being that the first of part of the definition suggests that plea bargains are "mutually satisfactory dispositions". While it is very true that the bargain struck must be agreed upon by both parties to the bargain and guilty plea made intelligently and voluntarily, this does not actually guarantees a mutually satisfactory result. This is more so as the prosecutor may be forced to present a highly favourable offer to a defendant as a result of errors in procedure that may cause evidentiary problems at trial. On the other hand, the strength of the prosecutors that bargain power they present the defendant with almost equally unfavorable choices.

Nchi, S.1.[4] defines plea bargaining 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 the charges or a summary trial".

The above definition only shows that it is the accused that agrees to one or some charges in return if the prosecution dropping other charges. The writer is of the view that the definition should have added "……. Prosecution agreeing to

[3] Alubo, A.O "Plea Bargaining: History and Origin" in Plea Bargaining in Nigeria: Law and Practice (Eds) Azinge, E and Ani, L, NIALS, 2012, Abuja

[4] Nchi, S.1.: The Nigerian Law Dictionary, 2nd (Ed) Jos, Green World Pub Coy Ltd 2000 Page 203

two other charges or for a lenient sentence". It is pertaining to sentence bargain and in such regards sentences can also be bargained.

In another event, Ekpo, N. Esq. Chairman of the Independent Practices and other Related Offences Commission on his paper presentation[5] described plea bargaining as:

> *The process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of cases subject to court's approval. It usually involves the defendant's pleading guilty to a lesser offence or to only one some of the counts of a multi-count indictment in return for a lighter sentenced than that possible for a graver charge.*

The writer sees another inadequacy in the above definition of plea bargain in this sense that the writer would criticize the involvement of the court in plea bargain negotiations being that the court is not suppose to be a party to any issues before it.

Plea bargain in much developed criminal jurisdictions have no provision for interference of the court as the practice is basically defendants or offenders in the cases.

In another definition[6] plea bargaining has been seen as "the process of negotiation between the parties in a criminal case involving the defendant's

[5] Ekpo NTA, "Should Plea Bargaining Apply to all Offences in Nigeria" Being a Discussion Paper the :On the Practice Perspectives of Plea Bargaining in Nigeria, 7th May, 2013.

agreement top plead guilty in return for the prosecutors concession reducing either the sentence or the seriousness of the charge". The writer sees the inadequacies in this definition being that it s unsatisfactory as it seems to suggest hat of accused person stands to face only one charge. In the actual sense, an accused person may face multiple charges during criminal trials.

Another writer, Agaba J.A[7] said that plea bargain involved the prosecutor, the accused the victim and the court.

The writer is of the opinion that the court is non-existent in the negotiation process between parties to a case. This is so because the court is not made to be interfering in any negotiation process holding to the common principle of unbiased and fair adjudication of justice.

1.9 ORGANIZATIONAL LAYOUT

Chapter one of the research work bothers on the preliminaries of the research whereby the write looks on some other works to the subject matter, particularly the several definitions by scholar from different jurisdictions and the context on which the concept of plea bargain is used in these jurisdiction. The chapter also bothers on the statement of the problem of the research.

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[6] US History Encyclopedia: http://www.answers.com/topic/plea bargain cas=biz% 20fin, accused on 14/9/2014
[7] Agaba, j.A Practical Approach to Criminal Litigation in Nigeria, 1st ed. Pan of Press, Abuja 2012, Page 590

Chapter two of the research focuses on the conceptual clarification and the development of plea bargain in Nigeria being a novel concept in the Nigeria Criminal Justice System.

Chapter three of the research focuses on the application of plea bargain under the various Penal Laws in Nigeria and the resultant controversies it is causing amongst scholar and practitioners in the Nigeria Legal System. The writer looks at the various Penal Laws as they apply and the Southern and Northern Nigeria respectively and the Economic and Financial Crimes Commission Act which seemed to be importing the concept of plea bargain.

Further on, chapter four of the research looks at the various occasions of practice, if any where plea bargains can not apply. This chapter tends to lay credence to the saying that "in every general rule there are exceptions". This chapter picks out the exceptions to the application of plea bargain.

Finally, chapter five gives summary to the work of the research. In this quest the writer gives his findings to viz-a-viz the controversies of the application of the concept of plea bargain in Nigeria and finally gives his recommendations and conclusion.

CHAPTER TWO

CONCEPTUAL CLARIFICATION AND THE DEVELOPMENT OF PLEA BARGAINING IN THE NIGERIAN CRIMINAL JUSTICE SYSTEM

There is no concept in law that does not have its origin, strength, system of operations and rancour. Plea bargain as a nascent concept in the in the Nigeria Criminal Justice System has its traces, its operational mode.

Loosely defined in it is viewed as a deal between the prosecutor and the accused wherein the defendant pleads guilty to a charge less than the original or receives sentencing and consideration for pleading guilty to the criminal charge[8]

The practice of plea bargaining is very new in Nigeria. It was never part of the Nigerian Criminal Justice System until 2004 when the Economic and Financial Crimes Commission was established. It is the EFCC Act[9] that is the first Federal enactment that is seen introducing the concept into the Nigeria Criminal Justice System.

This chapter will unfold the development of plea bargain in Nigeria.

2.2 MEANING OF PLEA BARGAINING

[8] Mohr. A. "The Necessity of Plea Bargaining"
[9] Actno.1, 2014

It is pertinent to note here that the definition of plea bargain have not been commonly agreed upon. It is so because practitioners and legal scholars have had different definitions to the concept of plea bargaining. There is gainsaying that these variations owe their causes too the different jurisdictions and on the context of its use[10].

Notwithstanding the fact that there is no standard definition of plea bargaining, it is necessary that, one settles on some working definitions that encompasses the broad range of practices that can come within the legal regime.

It has been defined as a negotiated agreement between the prosecutor and in criminal defendant where by the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for concession by the prosecutor, usually a more lenient sentence or a dismissal of the other charges[11].

There are other definitions given by several authors. One of such definitions is the one by Langbein, J.H[12] who calls plea bargaining "condemnation without adjudication".

Plea bargaining has also been seen as the process of negotiation between the parties in a criminal case involving that defendants agreement to plead guilty in

[10] Miler, H.S, et al, "plea bargaining in the United States" pages 1-15
[11] Garner B. Black Law Dictionary, 7th ed (St. Paul Mints, West Publishing Company Ltd, 1999, Page 1173
[12] Langbein, J.H; "Law without Plea Bargaining: How the Germans do it" 78 Michigan Law Review 204 (197) Page 204

return for the prosecutors concession reducing either the sentence or the seriousness of the charge[13].

Another author[14] defines plea bargaining as a non trial mode of courtroom transaction that consists of an exchange between prosecution and defence in criminal cases.

Nigerian authors are not left out in the quest to get definition for plea bargaining. Notable among them is the definition that plea bargain is 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[15]. This definition by Nchi, S.I, has been given a not by several scholars for it is apt even though it is also observed that the definition should have also added that "…..prosecution agreeing to drop other charges or for a lenient sentence"[16].

2.2.1 TYPES OF PLEA BARGAINING

There are basically two types of plea bargain. The can emanate from the likely concessions that may accrue to an accused person in exchange for his guilty plea. The concessions can either be in the form of reduction in the charge against the accused or reduction in the form of sentence on the accused.

In other words there are charge bargain and sentence bargain.

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[13] http://www.answerS.com/topic/plea bargain

[14] Alschuler, A. The Trial Judges Role in Plea Bargain, Columbia Law Review, 1976, At Page

[15] Nchi, S.I, The Nigerian Law Dictionary 2nd ed, Green World Publishing Company Ltd, 2000 Page 403

[16] Oguche, S. Development of Plea Bargaining in the Administration of Criminal in Nigeria: A Evolution, Vaccination again Punishment or Mere Expediency In: Azinge, E and Ani, L (Eds) Plea Bargain in Nigeria: Law and Practice, NIALS, Abuja (2012) page 90

2.2.2 CHARGE BARGAIN

A charge bargain occurs in a situation where an accused person is allowed to plead guilty to a lesser charge or to only some of the charges that have been filed against him. In other words, charge bargain involves offering a reduction of the charges, the dismissal of one or more of the charges in exchange for the guilty plea. It may be agreed that the accused pleads guilty to two in exchange for withdrawal of the remaining three in a five-court charge.

2.2.3 SENTENCE BARGAIN

A sentence bargain occurs where when an accused is told in advance hat his sentence will be if he pleads guilty.

This can help a prosecutor obtain a conviction if for example an accused is facing serious charges and the accused is afraid of being hit with the maximum sentence. Ideally sentence bargains can only be granted if they are approval by the trial judge. Sentence bargain sometimes occur profile cases, where the prosecutor does not want to reduce the charges against the accused person usually for fear of how the media and public will react. The concept may allow the prosecutor to

obtain a conviction for the most serous charge while assuring the accused person of lesser sentence[17].

2.3 MEANING OF CRIMINAL JUSTICE

A criminal justice has been defined as the group of practices, policies, and courts designed to uphold social responsibility, deterring and mitigating crimes and enforcing penalties against those who are found guilty of committing crimes. The Criminal Justice System is comprised of three major components that work together to see the Criminal Justice process through from beginning to end[18]. The Criminal Justice System is a vital part of every society as it does justice to the people who violate the laws passed to protect the society as a whole, ensuring in principle that the punishment fits the crimes.

The Criminal Justice System worldwide has three (3) major components: which are the law enforcement agencies, the courts and the correction agencies.

The Law Enforcement Agencies is the first component of the Criminal Justice System in the Nigerian context the can enforcement agencies includes the Policies Force, Armed Forces, the Immigration Service, Custom Service, Nigerian Drug Law Enforcement Agency, the Nigerian Security and Civil Defence Corps e.t.c

[17] In January 2013, John Yakubu Yusuf was Sentenced to a Fine of ₦750,000 or Two Years Imprisonment for Corruption Involving A Sum Of ₦23billion: www.vanguarding.com/2013/police--pension-fraud-a-chronology of-plea-bargain-compromised 2/09/2014

[18] www.ehow/cp,. 11/09/2014

These agencies head the Criminal Justice System because they are the ones responsible for finding and capturing individual who break the law set-forth by the Local, State and Federal Governments. The also enforcement personnel are also responsible for bringing for the charges against perpetrators and ensuring the faces are strong enough to stand in courts[19].

The court is the second component of the Criminal System. The court system includes the prosecution, defence lawyers and the judges. These Individuals make sure that the offenders or suspects are given fair trials.

The judges are charged with the responsibility of hearing the cases and preside over cases to make sure that the laws are followed on trail of cases. The judge is the person finally convicts and sentences the offenders with punishments[20].

The third and the final component of the Criminal Justice System is the correction agencies. The correction agencies is basically the prison services. The role of the prison is to uphold and administer sentences handed down by the judges. The correction system, is tightly intertwined with the previous two components, and is very important and quite large. The correction component includes jails, prisons, rehabilitation officers, probation offices and parole officers.

[19] Ibid
[20] Ibid

These individual ensure that sentenced person carries out the punishment and all of the stipulation are carried out.

The Nigerian Criminal Justice has its legal foundation through the constitution[21] mostly especially the parts that related to the power of the court, or jurisdictional mandate of the courts. Some Section[22] of the constitution such as fundamental human rights particularly the provisions on right to liberty, right to fair hearing which deals with criminal justice. The state, in using its power to convict a person who has committed a crime most at the same time comply or respect the constitutional provision on human rights.

It is worthy of note that apart from the constitutional provisions, the Nigeria Legal System is divided into sub-systems which comprise various laws in force both at the federal and states levels.

So far there is no uniform law governing criminal law and procedures in the county[23], although the Criminal Justice System in all the states of the federation are similar with some difference in the law applicable in the northern and the southern parts of Nigeria. In respect to substantive law the Criminal Code Act applies in the Southern States and the Penal Code Act applies in the Northern State. In procedural matters the law applicable in the Southern States in the Criminal Procedure Act, whilst the criminal procedure code applies in the northern states.

[21] The Constitution of Federal Republic of Nigeria 1999
[22] Chapter four of the Constitution of Federal Republic of Nigeria 1999
[23] Although the Nigerian Law Reform Commission is Proposing the Unification of the Criminal and Penal Codes

2.4 PLEA BARGAIN IN OTHER JURISDICTIONS

The concept of plea bargaining has been in practice in several other jurisdictions from which it got spread to some other jurisdictions like Nigeria. There are prevailing arguments that the practice of plea bargain is rooted in Common Law, from the Medical English Common Law Court of Guilty Pardons to accomplices in felony cases and in modern terms. However the significance it has acquired and the popularity it has gained can be traced to the United States of America[24]. The writer looks at how plea bargain is practiced in some of these other jurisdictions.

2.4.1 PLEA BARGAIN IN THE UNITED STATE OF AMERICA[25]

Plea bargain is playing an important role in the Criminal Justice System in the United States of America, majority of cases are by plea bargaining rather than by a jury trial. Generally, plea bargaining are subject to the approval of the court though each state has its own rules regulating for example the judicial council of California published an optional seven page form to guide prosecutors and Defence Attorneys on how to reduce plea bargains into written plea agreements.

The federal sentencing guidelines are followed in federal cases and have been created to ensure a standard of uniformity in all cases decided in Federal Courts. A two-or-three offence level reduction is usually available for those who

[24] http://www.truthinjustice org, 9/9/2014

[25] National Workshop on the, Practice and Perspectives of Plea Bargaining in Nigeria: Nigerian Law Reform Commission, May, 2013, Page 14

accept responsibility by not holding the prosecution to the burden of proving its cases. This most times amount to about a 35 percent sentence reduction.

The American Criminal Justice System thrives on plea bargain. Notable among the cases is the case of North Carolina V. Alford[26]. In this case, the Supreme Court of the United States affirmed that there are no constitutional barriers to prevent a judge from accepting a guilty plea from a defendant who wants to plead guilty while still protesting his innocence. This type of plea has become known as an Alford plea, differing slightly from the Nolo contendere plea[27]

Basically, the system operates in America in the form of negotiation between the state and an accused person. This is achieved by the prosecutor handling a particular case making offers to an accused person mostly through his lawyers or vice versa. That offer comes in the form of concessions to the accused that a lesser charge will be substituted for the one he is currently charged with or that some of the charges brought against him are dropped or still if he pleads guilty, the prosecution will not more for maximum punishment. It therefore, means that the prosecutor has the authority for example, to reduce the charge in return for a concession of guilt.

[26] http://en.wikipedia.org/wiki/north-carolina v.alford, (1970)
[27] The Plea which the Defendant Agrees to Big Sentenced for the Crime, but does not Admit Guilty

The United States of America plea bargaining is simply as Alubo, O.A[28] puts it:

> *The America sentencing differential works by threat. It is briefly summarized thus: concede guilty and accept **X** penalty or go to trial and risk **X-plus**. In the form of plea bargaining style "explicit", the prosecutor delivers the threat negotiations with the accused or his counsel. In so called "implicit" plea bargaining, the differential is non-negotiated. It either case, system depends upon the widespread understanding of the existence of the differential. The deal or tariff must be communicated to the accused counsel, at the minimum by the defence counsel and sometimes by the prosecutor or judge as well. The American defendant waives his right to trial not in exchange for lesser sanction (but which often results) but to save the time the notoriety and occasional defence cost involved in waging a hopeless contest.*
> *But sometimes, the state may make an offer of a lesser charge and the defendant may accept it for a lesser sanction.*

It therefore, goes to show that accused in the United States of America receive favour as a result of the fact that by pleading guilty, they have saved the term of the court and also spread the court energy that would have been dissipated in going into full trial. Besides that, the accused have saved the state expense of a trial, because their plea is accepted as an Act of repentance and a step towards rehabilitation because the abbreviated version of the case history may be les offensive than the story that unfolds at a full trial and because the judge may

[28] Alubo, O.A Plea Bargaining: History and Origin in: Plea Bargain in Nigeria. Law and Practice, Azinge, E.and Ani, L (Eds) NIALS ABUJA 2012

believe that the defendant who has pleaded not guilty has committed perjury in his defence[29].

2.4.2 PLEA BARGAIN IN CANADA[30]

The Canadians Criminal Justice System has its own practice. The courts always have the final say with regards to sentencing. Although, plea bargain practice is an accepted part of the Criminal Justice System, but judges and the crown attorneys are reluctant to refer to it as such. The crown has the ability to recommend a lighter sentence than it would seek following a guilty verdict in exchange for a guilty plea. The crown can also agree to withdraw some charges against the defendant in exchange for a guilty plea.

This has become the standard procedure for certain offences such as impaired driving. But in hybrid offences, the crown must make a binding decision as to whether to proceed summarily or but indictment prior to the defendant making his plea. If the crown decides to proceed summarily and the accused then plead, not guilty, the crown cannot change its decision. It therefore means that the crown is not in position to offer to proceed summarily in exchange for a guilty plea.

[29] Yale Law Journal; Comment: The Influence of the Defendant's Plea on Judicial Determination of Sentence (1956) Page 209

[30] National Workshop on the Practice and Perspectives of Plea Bargaining in Nigeria: Nigerian Law Reform Commission May, 2013 Page 22-23

It is also note worthy that the Canadian judges are not bound by the crowns sentencing recommendations and could impose harsher penalties. Therefore, the crown and defence will often make a joint submission where they will both recommend the same sentence, or (much more commonly) a relatively narrow range (with the crown arguing for a sentence at the upper end of the range and the defence arguing for a sentence at the lower end) so as to maintain the visibility of the judges ability to exercise discretion.

Judges are not bound to impose a sentence within the range of a joint submission, and a judges disregard for a joint submission is not in itself grounds for the sentence to be altered on appeal. However, if a judge were to routinely disregard joint submissions then he or she would compromise the ability of the crown to offer meaningful incentive for defendants to plead guilty. Defence counsel would become reluctant to enter into joint submission if they were though to be of little value with particular judge, thereby resulting in otherwise avoidable trials.

For these particular reasons, Canadian judges will normally impose a sentence within the range of any joint submission.

2.4.3 PLEA BARGAIN IN INDIA[31]

[31] Ibid Page 23

The practice of plea bargain was introduced to the India criminal Justice System by the criminal procedure (amendment) Act, 2005. The same Act introduced a new chapter[32] which deals with plea bargaining. In the Indian system plea bargaining applies to offences punishable with maximum of term of imprisonment for seven years. It does not apply to offences against women or children below the age of fourteen years and to offences affecting the socio-economic condition of the India government.

2.4.4 PLEA BARGAINING IN SOUTH AFRICA

South Africa is one of the commonwealth countries that have fully adopted the plea bargain practice.

In the application of plea bargain in the South Africa Criminal Justice System, the prosecutor can reach an agreement with the defence on the sentence to be imposed[33]. Certain formalities, such as the whole agreement must be in writing. The time for entering to an agreement(s) is before the commencement of the trial that is before the accused has to enter a plea. It is also a one-off situation and a new plea agreement and not be reached if the court has ruled for a trial to start fresh. Only a prosecutor and a legally represented accused may negotiate an agreement on plea and sentence. The judicial officer is not to participate in the negotiations.

[32] Chapter xxi(A).Criminal Procedure (Amendment) Act2005
[33] Unrepresented Accused are Excluded from the Provision

But in court the judicial officer must question the accused on the content agreement to satisfy himself whether he is infact admitting all the allegations in the charge. If the court is satisfied, it proceeds to the sentencing phase without, for the moment, recoding a [33]conviction[34].

When considering the sentence agreement, the court must be satisfied that the sentence is just, and if so, the court convicts the accused and sentence that accused to the sentence agreed upon. If the court is not so satisfied, it informs the parties of the sentence which the court considers just. In the later event, the parties (or one of them) may decide to withdraw from the agreement. This will mean that the trial must start afresh before another judicial officer and the agreement falls away. That is to say, no regard may be had, or reference made, to any proceeding negotiations on the agreement itself, although the accused may consent to all or certain of the admissions made by him, either in the agreement or in the proceeding[35].

2.5 THE DEVELOPMENT OF PLEA BARGAIN IN THE NIGERIA CRIMINAL JUSTICE SYSTEM

The historical rise and spread of plea bargaining got to the Nigeria criminal justice system though with criticisms following suits. From all indications plea bargain was never part of any Nigerian Law until 2004 when the Economic and

[34] Section 105A, Criminal Procedure Act
[35] Http: Law24com South Africa

Financial Crimes Commission was established. The Act[36] establishing the Economic and Financial Rimes Commission by virtue of S. 14(2) is the first federal enactment to experiment with a form of plea bargaining. The section provides as thus:

> *Subject to the provision of S. 174[37] of the constitution of the federal republic of Nigeria 1999, the commission may compound any offence punishable under the Act by accepting such sums of money as tit thinks fit, exceeding the maximum amount to which that person would have been liable if he and been convicted of the offence.*

This provision is the stronghold that the economic and financial crimes commission has held on to prosecute public office holders. From the establishment the commission is charged with the responsibility of enforcing the provision of:

a. The Money Laundering Act 2004;

b. The Advance Fee Fraud and other Related Offences Act, 1995

c. The Failed Banks (Recovering of Debts) and Financial Malpractices in Bank Act 1994

d. The Banks and other Financial Institution Act 1991

e. Miscellaneous Act;

f. Any other law or regulation relating to economic and financial crimes including the Criminal Code or Penal Code[38].

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[36] Cap E.1, Law of the Federation of Nigerian, 2004

[37] Relating to the Power of the Attorney-General of the Federation Institute, Continue take or Discontinue Criminal Proceedings against any Person in any Court of Law

[38] S.7(2) of the EFCC Act, Cap E.1, L.F.N 2004

For those arguing for the provision they argue that the provision is the effect when accused agrees to give up money stolen by him, the commission may compound any offence for which such a person is charged under the Act.

Notable in the manifestation of plea bargain practice by the Economic and Financial Crimes Commission is the case against Cecilia Ibru[39] where the former Chief Executive Officer and Managing Director of the Oceanic Bank was arraigned by the Economic and Financial Crimes Commission, in court on the 31st day of August, 2009 on a 25- court charge, all bothering on corrupt practices in office the charge was subsequently reduced to 3 – court charge wherein the accused pleaded guilty to the amended charge bothering on abuse of office and mismanagement of depositors fund, she was sentenced to six (6) months imprisonment on all counts to run concurrently she was also ordered to return about ₦191 billion worth of assets and cash.

In another case, the formers governor of Edo State Lucky Igbinedion was in initially arraigned for 191 court charge of corruption, money laundering, and embezzlement. The charges were reduced to a-court charge which was failure or refusal to declare his assts as required under S. 27 of the EFCC Act, 2004 he pleaded guilty to it and was convicted. The court ordered him to forfeit three (3)

[39] Akeem N. and Tuned O.; "Cecilia Ibru Jailed, to Lose 191 Billion", Saturday Tribune, 9th October, 2010

houses, ₦500 million and sentenced him to a fine of ₦3.5milin in lieu of imprisonment.

Another case where the plea bargain system holds sway was in the case **Emmanuel Nwude and Nzeribe Okoli**[40]. The accused's were charged with defrauding one **Nelon Sakaguchi** who was at the time material to scam the Managing Director of Noroetse Bank S.A, a Brazilian bank of the sum $242 million dollars, they were initially charged with offences under the advance fee fraud and other related Act, 1995[41] which provided for a term of imprisonment, upon conviction of ten(10)years without option of fine.

The trial began in February, 2004 after several antics by the convicts and their various counsel to weary the prosecution and frustrate the case, the accused has to opt for a plea bargain.

The charges were consequently amended and brought under S. 419 of the Criminal Code which provides for a term of seven (7) years imprisonment thus giving the court discretion in sentencing.

They pleaded guilty to the amended charge on the 18th November, 2005. The first convict was sentenced to a total of 25 years imprisonment on the various counts were to run concurrently. In effect the first accused had to serve a term of 5 years imprisonment with effect from the date of arrest. In addition he was to pay

[40] Kotefe, K, "242 M Scam Nwude, Okoli Bay 22 Years Respectively "Punch Newspaper, 19 November, 2005 Page 1

[41] The Acthad Been Repealed by the Advance Fee Fraud and other Fraud Related Offences Act, 2006

the sum of ₦110 million to the said **Nelson Sakaguchi** the court also ordered that forfeiture of his choice assets in major cities in Nigeria and United Kingdom including his equity holdings in Union Bank Plc and the Nigeria Bottling Company Plc.

The other accused also bagged some various terms of imprisonment and forfeited choice properties both in Nigeria and abroad.

There are also other cases like the **D.S.P Alameyeseigha's case**[42] where the Economic and Financial Crimes Commission applied the plea a bargain system.

Arguing for the Economic and Financial Crimes Commission notable writers like **Alubo O.A**[43] said thus:

> *Compounding here means the commission may let go of the offence or put more succinctly may agree to drop the charges if the accused is prepared to give up such sums of money as the commission may deem fit in accordance with the Act. It emphasizes by accepting such sums of money. It is obvious that this provision has no universal application to all criminal trials in Nigeria as negotiations there under are expressly limited to offences punishable under the Act Section 14-18 of the provides for crimes for which the commission can exercise jurisdiction. These includes offences relating to financial malpractices, offences in relating to terrorism, offences relating to public officers retention of proceeds of criminal conduct and offences in relation to economic and financial crimes. In practice however, EFCC plea bargain on other offence.*

[42] Adeslima, A; "EFCC Breached Pactwith Bayelsa – Abayomi" Punch Newspaper, 19 December, 2005 Page 5
[43] Alubo O.A

It is also worthy of note that there are other arguments that counter these arguments for plea bargaining by the Economic and Financial Crimes Commission but these arguments against will be expedient in the subsequent chapters.

CHAPTER THREE

THE APPLICATION OF PLEA BARGAINING PROCEDURES IN THE NIGERIAN CRIMINAL JUSTICE SYSTEM

3.1 INTRODUCTION

The Nigerian Legal System is divided basically into sub-systems making by laws in force of both federal and state levels; these is no uniformity actually governing criminal laws and procedure in the Nigerian with respect tot eh substantive law, the criminal code Act is applicable in the southern party Nigeria. While in the northern part of Nigeria and Abuja the Penal Code law applies. In procedural matters the criminal procedural is applicable in the southern part of Nigeria while the Criminal Procedural Code apples in the North.

While in Lagos sate the administration of Criminal Justice Law, 2007, Laws of Lagos state applies in Lagos states.

All these various laws have their procedural methods in the application of plea bargain, if any.

3.2 THE APPLICATION OF PLEA BEGINNING PROCEDURE IN THE NIGERIAN CRIMINAL JUSTICE SYSTEM

The various Criminal Laws above have their procedural systems application to criminal matters although have their slight differences, they also have their similarities as well. But what remains an issue is the use of the “compounding”

which runs through the Economic and Financial Crimes Commission in S. 14(2), to the Criminal Procedure Code[44] which is applicable in the Northern part of Nigeria and Abuja and the Criminal Procedure Act which is applicable in the Southern part of Nigeria.

The research shall have a discerning look on all the Criminal Procedures Laws as they relate to plea bargain.

3.2.1 THE APPLICATION OF PLEA BARGAINING UNDER THE CRIMINAL PROCEDURE ACT

The criminal procedure Act by virtue of the S.180 (1) provides as thus:

> *When more charges than one are made against a person and a conviction has been had on one or more of them the prosecutor may, with the consent of the court, withdraw the remaining charge or charges or the court, of its own motion, may stay the trial of such charge or charges.*

It is an issue to note that this provision has generated a whole lot of argument for and against plea bargain. Some notable scholars[45] have argued that the provision embraced plea bargain and as such a complement to S. 14(2) of the Economic and Financial Crimes Commission Act.

[44] Alubo O.A "Plea Bargain History and Origin" in: Plea Bargain in Nigeria: Law and Practice, Azinge, E, and Ani, L. (Eds) NIALS, ABUJA, Page 46

[45] Oguche, S. "Plea Bargain in Nigeria: Constitutional Question: In Plea Bargain in Nigeria: Law and Practice, Azinge, E, and Ani, L. (Eds) NIALS, ABUJA, Page 46

On the other hand, there are other scholars[46] who also argued that the provision of S. 180(1) of the Criminal Procedure Act should not be interpreted to read plea bargaining. These scholars are of the view that though the section is sometimes importing plea bargaining, but that it is a general provision which enables a prosecutor who has obtained a conviction on one or more charges to withdraw the others with the consent of the court. And the court may of its may of its own motion stay trial of the other charges.

The writer is of the opinion that this providing in the subsection dose not authorize plea bargain. This is because as an example, an accused charged with stealing and receiving of stolen goods, the prosecutor may, with the consent of the court, withdraw the charge of stealing if he had secured conviction on the receiving charge. This in the opinion of the writer a general process applicable to all criminal cases therefore plea bargain should not be interpreted herein.

3.2.2 THE APPLICATION OF PLEA BARGAINING UNDER THE CRIMINAL PROCEDURE CODE LAW[47]

The Criminal Procedure Code by virtue of S. 339 provides for compounding of offences. It also provides for the kind of offences that can be compounded, the person that can compound the offences and the procedure[48].

[46] Okonkwo, C.O, Plea Bargaining and the Criminal Justice System in Africa Nigerian Law Reform, 2013 Vol. 1 Pages 18-19

[47]

[48] Appendix C of the Criminal Procedure Case

The compoundable offences are, nearly all, offences which affect only the victim, are not of very serous nature and the victim is almost in all cases party to the compounding.

By the provision of the section 339 compoundable offences are divided into two groups. The offences in the first group are compoundable, without the level of the court, at any time before the accused is convicted or committed for trial to the High Court. These offences range from, though not limited to, causing hurt, assault or use of criminal force, criminal trespass, house trespass and adultery. They are compoundable by the victims themselves except for adultery which is compoundable by the husband of the accused or parent or guardian for an unmarried and detaining a married woman which is compoundable there husband.

Offences in the second group and compoundable at any time before the accused is convicted by the court or committed for trial, but only with the consent of the court with jurisdiction. These offences include grievous harm on provocation or without provocation, wrongfully restring or confining any person, uttering words or making gestures with the intent to insult the modesty of a woman.

It is note worthy that once and accused has been committed for trial that offence is not compoundable expect with the leave of the court if the trial has not commenced, or with the leave of the court if trial has commenced but not

concluded. It therefore means that an offence is not compoundable except with the leave of the court to which can be appealed against.

Scholars arguing against plea bargaining are of the opinion that though, compounding as set out in the Criminal Procedure Code is not the same as plea bargaining, but it carries of some of its benefits[49]. But the significance difference between plea bargaining and compoundable offence is that the accused in compounded offence does not bear the status or stigma of a convicted person and no sentence is imposed on the accused in compounded offence.

3.2.3 THE APPLICATION OF PLEA BARGAINING UNDER ECONOMIC AND FINANCIAL CRIMES COMMISSION ACT

The Economic and Financial Crimes Commission is the foremost institution of the federal Government of Nigeria to experiment with plea bargaining. The commission through its enabling act[50] provides as follows:

> *Subject to the provision of Section 174[51] 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,*

[49] Okonkwo, O.C, Plea Bargaining and the Criminal Justice System in Africa, Nigeria Law Reform Journal, 2013 Vol.1, Page 17-18
[50] Act No1 of 2004
[51] Relating of the Power of the Attorney – General Federation to Institute Continue, Takeover or Discontinue Criminal Proceedings against any Person in any Court of Law

exceeding the maximum amounting to which that person would have been liable if he had been convicted of that offence[52].

This provision is the legal backing the commission claims to have in the adoption of plea bargaining in prosecuting then accused in courts. This is because the EFCC claims plea bargaining is the concept they used as their recovery system.

The supporters of this section asserts that the section no doubt empowers the commission to enter plea bargain with the accused and this is one by compounding the offence before the case is taken to court, they can agree with the suspect who would be told to return all the loot and the offence compounded[53]. It is on this ground that a supporter of S. 14(2) of the EFCC Act had to say that:

> *Compounding here means the commission may let go of the offence or put more succinctly may agree fit in accordance with the act. It emphasizes by accepting such sums of money.*
> *It is obvious that this provision has no universal application to all trials in Nigeria as negotiations there under are expressly limited to offences punishable under the act. Sections 14-18 of the Act provides for crimes for which can exercise jurisdiction.*
> *These includes offences relating to financial malpractices, offences in relating to terrorism, offences relating to public officers retention of proceeds of criminal conducts and offences in relation to economic and financial crimes.*
> *In practice however, the EFFC plea bargain on other offences*

[52] S. 14(2)D of the Economic and Financial Crimes Commission Act cap C.1 L.F.N 2004
[53] Oguche, S. Plea Bargain in Nigeria, In: Plea Bargain in Nigeria: Law and Practice, Azinge, E and Ani, L. (Eds) NIALS, Abuja , 2012, Page 41

The Economic and Financial Crimes Commission has had dispositions of several cases[54] where plea bargain was obviously used.

However, antagonists of the same provision of the EFCC Act are of the view that the provision is completely inconsistent with the true aim of the criminal justice administration. The antagonists are also of the view that plea bargaining cases must be before the court, that is the case must be changed to court and a conviction or acquitted must be recorded[55]. They further argue that a discerning look at section 14(2) of the EFCC Act would show that there is no requirement of charge and conviction in court. The expression "to which that person would have been liable if he had been convicted of that offence" implies that no conviction is envisaged.

Moreover, scholars antagonizing further pick loopholes ending Section 14(2) of the EFCC Act observing that some offences in the Act have no stipulations of fine. This may mean that such offences are not compoundable since according to the propagation, the important yardstick in the maximum amount of fine to which that person would have been liable of convicted of the offence[56].

[54] These Case Include: FRN V. Emmanuel Nwude&Ors; FRN V/ Tafa Balogun; FRN V. Cecilia Ibru; FRN V. John Yusuf e.t.c

[55] Chinyere, A, "Plea Bargain: Immunity Form Punishment?" In Plea Bargain in Nigeria. Law And Practice (Eds), NIAL, Abuja, 2013 Pages 267

[56] Okonkwo, O.C, Plea Bargain and the Criminal Justice System in Africa, Nigerian Law Reform Journal, 2013 Vol.1. Page 17

3.2.4 THE APPLICATION OF PLEA BARGAINING IN THE ADMINISTRATION OF CRIMINAL JUSTICE LAWS OF LAGOS

It is gain saying that of all the arguments for and against plea bargain application. The most commendable step in giving statutory back up to concept of plea bargain in Nigeria is the enactment of the administration of Criminal Justice Law of Lagos state[57]

By virtue of Section 75 of the law, the Attorney – General of the state have the power to consider accepting a plea bargain from a person charged with an offence if he considers that to accept the plea bargain is in the public interest, the interest of justice and the need to prevent abuse of the legal process.

Section 76 sets out the chunk of the process. It covers both the plea and sentence bargain. And no offences are accepted from plea bargaining. The prosecutor and the dependent or his legal practitioner may enter into a bargain for the dependents plea of guilt to the offence charged or lesser offence of which he may be convicted on the charge and an appropriate sentence which the court may impose[58].

The prosecutor may enter into such agreement only after consultation with the investigating police offer, and if feasible, the victim also, and with due regard

[57] Section 75- 76 of Administration of Criminal Justice Law of Lagos, 2007
[58] Section 76(1) Ibid

to the nature and circumstances of the offence and the interests of the community[59]. If reasonably feasible the prosecutor should afford the complainant or his representative an opportunity to make representations to him about the contents of the agreement and the inclusion of a compensation or restitution order[60]. The agreement should be in writing, signed by the parties[61].

The presiding judge or magistrate shall not participate in the discussion but will be informed by the prosecutor of the agreement so reached. The court will know from the dependent that the agreement is correct that he entered the agreement voluntarily without any undue influence. If the judge is satisfied, the judge will then convict the dependent on his guilty plea. If the judge is of the opinion that the accused can not be convicted of the offence, he shall record a plea of not guilty and the trial will proceed[62].

But if the dependent is convicted on his plea of guilty the judge shall impose the sentence agreed upon by the parties if satisfied that it is appropriate. If he is of the view that the offence deserves a lesser sentence than that agreed upon, it is required that he imposes such lesser sentence. If on the other hand he considers that the offence required a heavier sentence, he shall inform the accused of such heavier sentence a waiting. The accused may abide by his agreement to plead

[59] Section 76(2) Ibid
[60] Section 76(3) Ibid
[61] Section 76(4) Ibid
[62] S. 76(5) (7)

guilty subject to his right to lead evidence and present argument relevant to sentencing.

It is also further provided that if the defendant wishes to withdraw from the peal agreement, the trial will start afresh in another court and no reference should be made to the agreement and neither should admissions or statements relating to it be admissible. Also the prosecutor and the defendant may not enter into a similar plea and sentence agreement.

It is the opinion of the writer that the law of Lagos state has set out a good legal regime for plea bargaining.

CHAPTER FOUR

EXEMPTIONS TO THE APPLICATION OF PLEA BARGAINING IN NIGERIA CRIMINAL JUSTICE SYSTEM

4.1 INTRODUCTION

It is no doubt that plea bargaining phenomenon is having it universal acceptance in the Criminal Justice System, this has laid credence, to the fact that in some countries[63] ninety (90) percent of convictions are the result of plea bargains. This means that the concept is vastly improving, in the Criminal Justice System. It is giving result more importantly in two ways. Viz:

It is saving the prosecutions from exorbitant allocation of resources to each trial. Secondly, eventually the system would become backed up to the point that it simply collapses the trial system. It is praised for preventing a situation of lengthy criminal trial and the risk of conviction at trial on more serious charges.

This chapter looks at the cases where plea bargain, despite it applauds, can not apply.

4.2 EXEMPTIONS OF THE APPLICATION OF PLEA BARGAINING IN NIGERIA CRIMINAL JUSTICE SYSTEM

[63] Ozekhome, M.A; Coercion to Compromise, the Imperative to Plea in Plea Bargain in Nigeria, Law and Practice Azigoe, A and Aui, L (Eds) NIALS, Abuja, 2012 Page 249

It is imperative to note that the adoption and application of plea bargaining in the Nigeria Criminal Justice System is still a subject of debate as some writers and scholars are in support some are also in serious opposition and moreso there is no common understanding as to the legality of the concept, it has made it very difficult to clearly spell out the exemptional cases or offences to the concept of plea bargain.

But a deeper look at the remarks below which sounds in support of the Economic and Financial Crimes Commission Act that reads thus:

> *Compounding here means the commission may let go of the offence or put more succinctly may agree to drop the charges if the accused is prepared to give up such sums of money as the commission may deem fit in accordance with the Act.*
> *It emphasizes by accepting such sums of money. It is obvious that this provision has no universal application to all criminal trials in Nigeria as negotiations there under are expressly limited to offences publishable under the Act.*
> *Sections 14-18 of the Act provides for crimes for which the commission on exercise jurisdiction. These includes offences relating to terrorism, offences relating to public officers retention of criminal conduct and offences in relation to economic and financial crimes in practice however, the EFCC plea bargain on other offences*[64]

The above remarks tends to give the writer hints to the fact that any offence outside Sections 14 – 18 of the Economic and Financial Crimes Commission Act does not come under the plea bargaining application. But the writer is of the opinion that since this remarks above only subjective considering the arguments

[64] Ablubo, O.A, Plea Bargain in Nigeria: Constitutional Questions, Ibid Page 43.

for and against plea bargain in the Nigerian Criminal Justice System the writer will not attach so much weight to it as it is only persuasive.

However, the writer will look at some offences where negotiation between the accused and prosecution is mostly viewed as undermining criminal justice.

4.2.1 CASES PROSECUTED BY INTERNATIONAL CRIMINAL COURTS

They are offences that carry the flavour of International Criminal Justice. These offenses among others are genocide, crimes against humanity, war crimes, crimes committed against International Humanitarian Laws e.t.c.

The adoption of plea bargain in these offences would undermine the purpose of International Criminal Justice. This is because these offences are of high magnitude.

Amongst the purposes of international criminal trails for offences like war crimes are in search for truth and the establishment of important and impeccable historical records "which may forestall denials and end cycles of violence by identifying a particular individuals" culpability, rather than accusing entire group[65]. Such records cannot be obtained without a full scale trial.

At a time the international criminal tribunal for Yugoslavia took the stand that because of the very serious nature of the crimes it had to deal with which

[65] Anna Petrig "Negotiated Justice and the Goals of International Criminal Tribunals" 8chi-Kent U. Int'l& Co Mp Page 11.

includes genocide, torturer, murder, sexual assault e.t.c, no one should be immuned from prosecution for crimes such as these no matter how useful their testimony may other wise be[66].

There have been plethora of cases bothering on International Criminal Justice[67] there have been no trace of the application of reoccurrence of such offences with high magnitude.

4.2.2 CAPITAL OFFENCES

The writer is of another view that plea bargain application be exempted from offences that are capital offences. Though the criminal. Procedure Act applicable in the southern of Nigeria is silent on this position of the law but the criminal procedure code by virtue of section. 187(2) provide for a plea of not guilty" where an accused pleads guilty to a charge. Even a matter of practice when an accused pleads guilty to a capital offence a "not guilty" is usually recorded. This goes to show that there can be no application of plea bargain in cases of such degree like capital offences. In **Olabode V. State**. The appellant was arraigned for murder in that he set the deceased ablaze. He was convicted and sentenced to death by hanging. His appeals to the court of appeal and the supreme were dismissed emphasizing the practice of entering a plea of "not guilty" in capital offences, the Supreme Court stated **per Aderemi JSC:**

[66] Ibid Page 8
[67] Examples are the Cases of Augusto Pinochet, Charles Taylor

Let me even go further to say that in murder cases, the like of the present one, even if the accused had pleaded "guilty" to the charge, of murder, after same should have been read and explained to him, the curt has made a practice of recording for him in such unusual circumstances a plea of "not guilty"

In this same vein the ACJL of Lagos by virtue of section 213(2) state that "where the defendant pleads guilty to a capital offence, a plea of not guilty shall be recorded for him".

The above positions of the laws show that even where that a retraces of plea bargaining in the procedural criminal laws in Nigeria, the application can not be extended to the cases of capital offence.

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 SUMMARY

Accordingly, chapter one (1) of this research work primarily bothered on the preliminaries of there research whereby the writer took a look on some other works on the subject matter, particularly the several definitions and the context on which the concept of plea bargain is used in those other jurisdictions. The chapter also bothered on the statement of the problem of the research which was based basically on the legal justification of section 14(2) of the Economic and Financial Crimes Act, cap E.1, laws of the Federation of Nigeria, 2004 which is to effect that the economic and financial crimes commission may compound any offence punishable under the 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 said provision being the framework which the commission uses as the bases for the application of plea bargaining in the prosecution of cases in the absence of express provisions for plea bargaining, system in any Federal criminal legislation in Nigeria.

Chapter two (2) of the research was focused on the conceptual clarification and the development of plea bargain in Nigeria, being a novel concept in the Nigeria justice system wherein the writer put in some attempted definitions by

several scholars being that there is no common definition on the subject matter owing to difference in jurisdictions and on the contextual usage[68]

The writer also delved into the different that types of plea bargaining[69]

That chapter further informed us of conceptual meaning and component parts of criminal justice viz-a-viz the Nigerian peculiarity as it relates to its legal foundation through the constitution most especially the parts relating to the power of the court, or jurisdictional mandate of the courts[70].

The chapter furthermore looked into the application of plea bargain in other foreign jurisdictions like the United States, Canada, South African India etc.

Chapter three (3) of the research adumbrated on the application of plea bargaining under the various penal laws in Nigeria and the resultant controversies emanating amongst scholars and practitioners, in the Nigeria legal system, the writer further looked at the various penal laws as they apply in the Southern and Northern Nigeria respectively and the Economic and Financial Crimes Commission Act which seemed to be importing the concept of plea bargain without express provision in any Federal legislation.

Chapter four (4) of the research looked on possible occasions of practice where by plea bargaining may not be applicable.

[68] Millers, H.s, et al, "plea bargaining in the united state" page 1-15
[69] Chapter bargain and sentence
[70] Chapter iv of the constitution of the federal republic of Nigerian

That chapter upheld the common principle of law that ”in every general rule that are exceptions”. The writer in that regards pointed out exceptions in the case prosecuted by the international criminal courts e.g war crimes, genocide etc which have rare peculiarities as they mainly identify individuals and not groups[71] and impeccable or another exception in capital offences particularly as it is expressly provided for in s. 187(2) of the Criminal Procedure Code (CPC) to the effect that where an accused pleads guilty for a capital offence a plead if not guilty is usually recorded.

5.2 Findings

In the cause of this research the following findings the made.

i. The research work aimed at ascertaining the applicability of the concept of plea bargaining the Nigeria penal systems through an examination of the legal and institutional frameworks on the subject matter in Nigeria. This is more so as the controversial S.14(2) of the Economic and Financial Crimes[72] Commission Act is propagated by the commission as the possible legal framework for their application of the concept of plea bargain in Nigeria[73].

[71] Anna petrig a negotiated justice and the goal of international criminal tribunals ” 8chi-kent. int’l L& comp page 11
[72] No.1 of 2004
[73] Chapter iv of the Constitution of the Federal Republic or Nigeria

ii. The writer also finds out the possibility or otherwise of the constitutional presumption of fair hearing and innocence in the exercise of plea bargaining system. This is moreso as the issue of prescription of innocence and fair hearing are eminent in the adjudication of justice as it provides that every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty, contrary to the typical plea bargaining system perfectly designed to produce conviction of the innocents whether or not they are guilty by accepting the plea[74].

iii. The writer in this research finds out the statutory procedural framework for the application of plea bargain. The finding leads us further to the chain of uniquely lead down procedure for plea bargain.

iv. In the cause of the research the writer made findings as to the likely instances where the conception of plea bargain may not be applicable. The findings points our some exceptional instances where the application of plea bargain can not possibly hold sway considering the peculiarities surrounding such cases

5.3 Recommendation

In view of the findings made above the following recommendations are proffered:

[74] Alschuter, A.W," Plea Bargain and its History" Law and Society Rev;(1979) page 245

i. with regards to the general concept of plea bargain and the resultants merits the writer recommends that plea barging should not be applied in a way that it will be perceived as mocking the Nigeria criminal justice system considering the peculiar system in Nigeria as it appears that it is only applied in favour of the politically and economically powerful personalities[75] than of the benefit of the under privileged and common offenders. The writer further adds that there be a clear federal legislation and states legislations respectively that will accommodate plea bargaining system. There is no gain saying that the Lagos law[76], even though in the opinion of the writer, may not be as detailed and advanced as laws in other jurisdictions where plea bargain is fully on ground[77] re mains or force to reckon with. While the experimental practice by the EFCC where the judges and EFCC who are not guided by any detailed, extents, local rules resort to all sort of means to achieving plea bargaining.

ii. The writer recommends that the constitutional rights[78] accorded every defendant, particularly that of presumption of innocence and fair

[75] As it was applied in Diepraye Alamieseiyegha, Lucky Igbinedian, Nwnd, Cecilia ibru cases
[76] Administration a Criminal Justice Law of Lagos, 2007
[77] United State of America for example
[78] As provided in Chapter iv of the Constitution of the Federal Republic of Nigeria, 1999

hearing[79] should be maintained effectively like in the conventional courtroom system where the accused is giving ample opportunity of giving his evidence and discrediting the evidence of the prosecution with little or no obstruction. Despite the fact that the adversary procedure and the application of evidence procedures makes trail procedure so expensive and longer, it also guarantees fair hearing to the accused and presumed the accused innocence until he is found guilty of the accusation. Unlike plea bargain which is a perfectly designed system to produce conviction of the innocent regardless of whether or not they are guilty, because it is better off accepting the plea[80].

iii. The writer recommends that the concept of plea bargain should not be applied in cases handled by the international criminal courts this is due to broader objectives of international criminal law in the context of international justice and the gravity of offences that are being prosecuted by an international court. This is more so if truth is seen as an essential foundation of justice as it relates to charge bargaining which can prevent justice for victims and society because that inherent condemnation that is very essential to justice dispensation will be missing considering that certain charges have been dropped. It is the recommendation of the writer

[79] Section 36(5) and s. 36(4) respectively
[80] Alshuler, A.W. "Plea Bargain and its History" Law and Society Rev; (1979) page 245

that since plea bargaining does not establish the complete truth of a crime. This is because the defendant will always give a version of the story that will most times be best known to him and considering the gravity of offences prosecuted in the international courts it will be risky to apply the sue of plea bargain therein.

In conclusion, while it is true that plea bargaining has its negative aspect particularly with regards to over zealot prosecutors and impatient judges who seek and believe in the doctrine of "conviction by all means" coupled with the general perception that the operation of the principles of plea bargain only favours the rich and mighty, its positive aspect with regards to keeping the wheel of our administration of criminal justice running effective cannot be over-emphasized.

Where the principles of plea bargain becomes operational in our society, the issues of the phenomena of awaiting trial inmates and congested prisons will drastically reduce. This is because, the principles of plea bargain includes probation, restitution etc. Also, our courts will be spared the issue of protected trial stretching out forever and make our criminal justice system more effective.

Plea bargain helps in the saving of public fund which otherwise would have been spent on protected trials. It helps the prosecutor gets his conviction, helps the accused person to have a chance at making restitution and helps the society as a whole to feel satisfied that one way or the other, justice will always be done. To

this end, the imperatives of plea bargaining cannot be over-emphasized. But that there should be a clear federal legislation on plea bargaining.