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LEGAL AND ADMINISTRATIVE DEVELOPMENT OF PLEA BARGAIN IN CRIMINAL JUSTICE IN NIGERIA

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ABSTRACT

The issue of delay in the administration of criminal justice has been a deep seated one, premised on the fact that 'justice,' is not a one way traffic, it is not even a two way traffic, it is a three way traffic, justice, for the accused, justice for the victim and justice for the society at large. The search for justice is as old as the existence of man. Society all over the world had at one time or the other, designed models of public justice to attain criminal justice. But a full proof model of criminal justice till date has remained illusory. By no stretch, pragmatic legislators developed the instrument of plea bargain in the attainment of criminal justice. Plea bargain is generally an agreement in a criminal trial in which a prosecutor and an accused person arrange to settle the case against the accused usually in exchange for concession by pleading guilty to the crimes. The paper therefore traced a countervailing consideration behind the articulation by judges, legislators and law reformers in adopting plea bargain in the administration of criminal justice in Nigeria. The doctrinal method of legal research was adopted, which included primary and secondary sources. The research also carried out a comparative analysis of plea bargain in Nigeria and some selected jurisdictions particularly America and proffered suggestions to reinforce and strengthen the legal framework for plea bargain. The author concluded that plea bargain is necessary but there is need to improve its applicability in our criminal justice system particularly in corruption cases as it is applied globally, with particular attention to America. The paper maintained that all states of the federation should adopt plea bargain as provided in the Administration of Criminal Justice Act to strengthen the administration of criminal justice in Nigeria as well as improve administration of criminal justice in order to reduce delay in the administration of criminal justice and to decongest the criminal courts in Nigeria.

Keywords: criminal justice, plea bargain, crime, corruption, court

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1. Introduction

The introduction of plea bargain in the administration of criminal justice in Nigeria was intended as a catalyst to ease the congestion associated with the Nigerian criminal justice system. In other words, it is alien to the traditional criminal justice system. Significantly, the legal history of plea bargain is subject of legislations. It has no customary origin. Consequently, there are instruments which expressly made provisions for plea bargain in Nigeria. In Nigeria, the concept of plea bargain was unknown and scarcely used not until 2004 when the Economic and Financial Crimes Commission was established.

It is not contestable that controversy has swirled around the introduction of plea bargains in Nigeria. The gravamen against the application and sustaining of plea bargain, in certain cases, appear reasonable. The concept of Plea bargain constitutes one of the country's attempts at extending the concept of restorative justice within the criminal justice system. Restorative justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal behaviour. It is best accomplished through cooperative processes that include all stakeholders.¹

Conventional criminal justice is retributive in nature and the most dominant source of the criticism against plea bargaining can be traced to retribution as a penal philosophy. Retributivists condemn bargain justice, plea bargains and immunity deals, as violating a number of conditions of just punishment.² Under retributivism, "punishment is justified because people deserve it."³ In the words of John Rawls:

What we may call the retributive view is that punishment is justified on the grounds that wrongdoing merits punishment. It is morally fitting that a person who does wrong should suffer in proportion to his wrongdoing. That a criminal should be punished follows from his guilt, and the severity of the appropriate punishment depends on the depravity of his act. The state of affairs where a wrongdoer suffers punishment is morally better than the state of affairs where he does not; and it is better irrespective of any of the consequences of punishing him.⁴

There are two classifications of plea bargaining, as endorsed in International jurisprudence, namely, express and implicit plea bargaining. Express bargaining occurs when an accused or his lawyer negotiates directly with a prosecutor or a trial judge concerning the benefits that may follow the entry of a plea of guilty. Implicit bargaining, on the other hand, occurs without face-to-face

¹ <<http://www.restorativejustice.org/university-classroom/OJ-introduction>> (Accessed on 15/14/2012)

² Russell L. Christopher, "The Prosecutor's Dilemma: Bargains and Punishments," *Fordham Law Review*, Vol. 72, Issue 1, p. 93.

³ Kent Greenawalt, *Punishment*, 74 *1. Crim. L. & Criminology* 343, 347 (1981)

⁴ John Rawls, *Two Concepts of Rules*, 64 *Phil. Rev.* 3, 4-5 (1955).

negotiations. In implicit bargaining, trial judges especially, establish a pattern of treating accused who pleaded guilty more leniently than those who exercise the right to trial, and the accused therefore come to expect that the entry of guilty pleas will be rewarded.⁵

2.The nature, scope and development of plea bargain in Nigeria

Plea bargain is an attempt at finding a solution to society's yearning for justice in a world of increasing industrialization and urbanization with attendant challenges; a world where the gap between the haves and the have-nots is expanding rather than narrowing. According to the Black's Law Dictionary,⁶ plea bargain is 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 the other charges.

Plea bargain is a fairly new concept in our criminal justice system. It is also seen as a negotiated agreement between a prosecutor and an accused person whereby the accused pleads guilty to a lesser offence or to one of multiple charges in exchange for some concessions by the prosecutor, usually a more lenient sentence or a dismissal of the other charges.⁷ It is a case management strategy. For instance, 'Plea' means no more than an accused formal answer to a criminal charge. It may be plea of guilty or not guilty and others. Plea taking represents the commencement of criminal proceedings. It is part of arraignment. Criminal trials 'commences with arraignment.'⁸ It is so fundamental that without it, there is no trial.

Bargain, on the other hand, is a negotiation process. It may mean an agreement between the parties for the exchange of promises or performances. To have a plea bargain therefore, there must be:

- a. The prosecution and an accused person in court.
- b. A negotiation between the prosecution and the accused person.
- c. A negotiation which must have ended in an agreement with concessions and compromises by from the prosecution and the accused person.
- d. A plea, that is, a plea of guilty to the charge or to a lesser charge;
- e. Acceptance of the legality of the plea by the court.⁹

Basically there are three types of plea bargain, to wit: Charge bargain, where the prosecution agrees with the defendant to press a lesser charge than that originally filed. Count bargain, where the

⁵ Ibid

⁶ B. A. Garner (ed) Black's Law Dictionary (8th ed.) US, Thompson West (2004) P. 1191

⁷ Ibid.

⁸ Fawehinmi v I. G. P. (2000) F.W.L.R. (Pt. 12) 2015

⁹ J. A. Agaba, *supra*, at Pp. 589-590

accused person agrees to plead to one or fewer number of charges, and Sentence bargain where there is an exchange 'a guilty plea for a promise of leniency. In this type of bargain, the prosecutor need not press for a lesser charge but rather, even though the charge remains as it is, the prosecutor would, based on the agreement, recommends a lighter sentence.¹⁰ In the Nigerian legal system, the Judge has power to give a sentence lower than the sentence prescribed by law unless it is a mandatory sentence or a minimum sentence is prescribed by law.¹¹

In a plea bargain, the prosecutor gives the defendant the opportunity to plead guilty to a lesser charge or to the original charge with less than the maximum sentence. For example, the prosecution and the defence may agree to a misdemeanour charge instead of a felony charge or the parties may agree to a sentence of twelve years instead of twenty years, if the recommended sentence for that crime is ten-twenty years imprisonment.

John Langbein, maintained that, 'plea bargaining occurs when the prosecutor induces a criminal accused to confess guilt and to waive his right to trial in exchange for a more lenient criminal sanction that would be imposed if the accused were adjudicated guilty following trial. The prosecutor offers leniency either directly, in the form of a charge reduction, or indirectly, through the connivance of the judge, in the form of a recommendation for reduced sentence that the judge will follow. In exchange for procuring this leniency for the accused, the prosecutor is relieved of the need to prove the accused's guilt, and the court is spared having to adjudicate it. The court condemns the accused on the basis of his confession without independent adjudication.' It is a non-trial procedure. It is condemnation without adjudication.¹²

There is no doubt that the practice of plea bargain is rooted in common law, from the Medieval English Common Law court of guilty pardons to accomplices in felony cases. In modern times however, the significance it has acquired and the popularity it has gained can be traced to the United States of America.¹³

As a matter of fact, if we are to really consider the core concerns of plea bargaining critics, then the definition of plea bargaining must encompass the broad range of practices that constitute plea bargaining today. A comprehensive and an all-encompassing definition of plea bargaining is all that is necessary. Therefore, a comprehensive definition of plea bargaining is one that is seen as "the defendant's agreement to plead guilty to a criminal charge based on negotiations with the reasonable

¹⁰ F. Parker James-Plea Bargaining (1972) 1 Am. J. Crim L 187 at 188.

¹¹ Slap v. Attorney-General of the Federation (1968) NMLR 326

¹² J. H. Langbein, 'Torture and Plea Bargaining', Heinonline 46 U Chi. L. Rev. 3, 1978-1979.

¹³ See generally D. Olin, "Plea Bargain" available <http://www.truthinjustice.org>. (Accessed on April 19, 2007) and 'Plea Bargaining' available <http://en.wikipedia.org>. (Accessed on April 14, 2007)

expectation of receiving some consideration from the State.¹⁴ This definition encompasses both explicit plea bargaining and implicit plea bargaining. Although some practitioners refuse to acknowledge implicit plea bargaining as part of the practice,¹⁵ its utility as a method of negotiating a guilty plea qualifies it as part of the process of plea bargaining especially in considering whether jurisdictions should ban or severely restrict plea bargaining. It is suggested that the comprehensive definition should be used to avoid confusion.

Furthermore, it becomes obvious from the definition of plea bargaining that the phrase “subject to court approval” is suggestive of the fact that plea bargaining is subject to judicial review by the judge. In contrast to the above inference, plea bargaining is a situation where judicial interference is non-existent. Consequent on the above premise, Alubo remarked that:

Implicit plea bargaining by definition is never officially subject to court approval. It involves situations where defendants do not negotiate for certain concessions but instead are presented with the fact that if they go to trial, they will be punished more severely. Despite the lack of formal agreement for this bargain, this type of plea bargaining is often made quite explicit to the defendant but not subject to court approval. In addition, prosecutors can independently drop charges against the defendant in exchange for a guilty plea. Moreover, judges seldom reject plea bargaining agreement involving sentencing recommendations by the prosecutor. In our view, therefore, the phrase “subject to court approval” obscures the reality of plea bargaining and inappropriately limits the definition of plea bargaining.¹⁶

Theoretically, judges are prohibited from direct participation in plea negotiations. The rationale behind such a prohibition is based on the idea and doctrine of impartiality and that Judges’ actions tend to have an inherently coercive connotation. However, it should be noted that in practice, it is a herculean task for a Judge to stay neutral in plea bargains.

Another area that is worth analysing here is the part of the definition suggesting that plea bargaining ‘usually involves the defendant’s pleading guilty to a lesser offence in return for a lighter sentence.’ The phrase is a radical departure from the true nature and reality of plea bargaining as it ignores the various advantages and benefits that may accrue to an accused person in exchange for his guilty plea. The variety of concessions which the state offers to defendants extends to the limits of the prosecutor’s or judge’s imagination.

¹⁴ A. O. Alubo., ‘Plea bargaining : History and Origin’ in Epiphany A and Ani L (ed.) *Plea Bargain in Nigeria: Law and Practice NIALS (2012) P.7*

¹⁵ Ibid. See also Teresa, W.C. and Kruse, “Alaska’s Ban on Plea Bargaining Re-evaluated” (1992), *75 Judicature* 317.

¹⁶ Ibid, at p.6

These concessions generally can be divided into two categories: charge bargaining concession and sentence bargaining concession.¹⁷ Charge bargaining involves offering a reduction of the charges as the dismissal of one or more of the charges in exchange for the guilty plea. For example, in a trial for five charges (or counts as the case may be), it may be agreed that the accused pleads guilty to two in exchange for withdrawal of the remaining three. On the other hand, sentence bargaining includes a wide range of offers that extends beyond merely an offer for a lighter sentence in return for a guilty plea. It is on this note that we are in agreement with Alubo,¹⁸ that the definition under review is inadequate.

At this juncture, it suffices to say that the most preferred definition is that given by A. W. Alschuler, which perceived plea bargaining as “the defendant’s agreement to plead guilty to a criminal charge with the reasonable expectation of receiving some consideration from the State.”¹⁹ This definition is wide enough to cover both charge bargain and sentence bargain. Basically, plea bargaining is an arrangement, informally but legally, where the prosecutor makes concessions or overtures to an accused person that certain charges or sentences would be eliminated or made lighter if the accused admits guilt.²⁰

Despite the above distinctions, it has been said that there is no strict dichotomy between the two types of bargains. This reasoning was explained by Oba in the following words:

This is due to the fact that whichever is adopted, the end result is that the accused person is likely to get a lighter punishment for the offence he has committed in consideration for pleading guilty. The above categorization of plea bargain depicts the practice in the U.S. where plea bargaining is deeply entrenched in the administration of criminal justice. In England, Wales, Australia and Scotland,²¹ only charge bargain is allowed. In the U.K. two forms of plea bargains similar to charge bargains is practiced. The first is where the prosecution agrees with the accused that if the accused pleads guilty to a lesser offence they will accept the plea. The other is where the prosecution may agree not to proceed on one or more of the counts in the indictment if the accused will plead guilty to the remainder.²²

Plea bargaining is a process of abbreviated treatment of routine cases whereby the defendant charged with the commission of an offence or offences agrees to plead guilty to the charges or any

¹⁷ Miller, *supra*, at 30

¹⁸ Alubo, *supra*

¹⁹ See AW Alschuler, ‘Plea Bargaining and Its History,’ (1979), 79 COLUM. L. Rev. 1, 3.

²⁰ Alubo *supra*, at p. 11

²¹ S. R. Moody, & J. Tomps J. “Plea Negotiations in Scotland” Criminal Law Review, Jan-Dec. (1983) p. 297

²² C. Oba “Plea Bargain in a Developing Nigeria: Merits and Demerits” A. O. Alubo et al, (ed.) *Emerging Issues in Nigerian Law*, Ibadan: Constellation Publishers, (2009) at p. 33. It should be noted that this definition agrees with the position of the Black’s Law Dictionary *op. cit.*

of them in exchange for a lesser punishment without going for trial. Sometimes, it may be for a states' agreement to dismiss other charges. For example, a defendant may face the charges of burglary, rape and sodomy. The defendant may agree to the charges of burglary and rape in exchange of the state's agreement to drop the sodomy charge.²³

Plea bargain has semblance of a contract to a certain extent. It seems to have most, if not all, the ingredients of a valid contract, such as Offer, Acceptance, Consideration, Capacity and Intention to create legal relations. In terms of offer, it is our opinion that this element of contract is also present in plea bargaining. This takes the form of proposals for bargain presented to the other party for the purpose of deliberation and possible adoption. There are also cross offers and counter offers made by parties to plea bargains before conclusions and agreements are finally reached. It has been said that the 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 that if the accused person pleads guilty, the prosecution will not move for maximum sentences or punishments.²⁴

Acceptance is another vital element in the plea bargaining process. The prosecutor presents his offer to the accused which the later has to accept before the said plea bargain becomes effective. It should be noted that the accused is also free to make counter offers or cross offers in the process, which is also subject to acceptance by the prosecutor. On this note, it is significant to say that in the absence of acceptance, plea bargaining is an exercise in futility. Acceptance here simply means approval of the terms of the bargain as presented by the offeror.

Consideration has been said to be a *sine qua non* in every valid contract. It refers to something valuable in the eyes of the law proceeding from the *offeree* to the *offeror* in the performance of the contract. Consideration need not be adequate but has to be valuable. In the context of plea bargain, consideration is the plea of guilty emanating from the accused person in favour of the prosecution. It is valuable since it saves the prosecution the pains of proving the guilt of the accused person during trials since the burden of proof is always on the prosecution,²⁵ which standard of proof is that of proof beyond reasonable doubt.²⁶

²³ Alubo, supra at p. 7

²⁴ Samuel Oguiche, 'Plea bargain in Nigeria: Constitutional Questions,' in Epiphany. A. and La Laura Ani (ed.), *Plea Bargain in Nigeria: Law and Practice*, Op Cit, P. 36.

²⁵ Section 135 of the Evidence Act 2011,

²⁶ Ibid.

In terms of legality, it is also a matter of common knowledge that every valid contract must pass legality test.²⁷ This means that a contract is void which the subject is an illegality; hence no action can arise from such a contract. The implication is that every subject of contract must be legal so as to give life to the contract. In the context of plea bargaining, we submit that it is also legal for the accused to decide what his plea should be. In the same vein, it is legal for the prosecution to choose what charges to prefer against an accused person. It is also legal for the judge to decide whether or not to pronounce maximum sentence on an accused person or show leniency, in view of availability of mitigating or aggravating factors. We submit that guilty plea is enough mitigating factor to justify leniency.²⁸

In respect of intention to create legal relation, parties to a contract must intend that the contract be legally binding and enforceable. This explains why domestic agreements are not enforceable, especially those between spouses. In the same way, parties to a plea bargain also intend that the bargain be binding. However, the level and extent of the binding nature of plea bargain is still doubtful. This is consequent upon the fact the parties to a plea bargain are at liberty to change their position.²⁹

3. Legal and institutional framework on Plea Bargain in Nigeria

These instruments include the following:

3.1 The EFCC Act and plea bargain

Section 14 (2) of the EFCC Act provides that the Commission may compound any offence punishable under this Act by accepting such sums of money as it think fit exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence. In many cases involving several Nigerians, including Diepreye Alamieseigha, Lucky Igbiniedion, Nwude, Cecilia Ibru and etcetera,³⁰ plea bargain practice was used. In addition to the EFCC Act, on the concept of plea bargain, the Administration of Criminal Justice Law of Lagos state,³¹ is another law in Nigeria that made elaborate provisions for plea bargaining.

The EFCC Act provides for the special powers of the Commission in the following spheres of competence:

²⁷ Samuel Oguiche supra P.35

²⁸ Ibid.

²⁹ Alabama v Smith, Supreme Court of the United States (1989) 490 U S 794, 109 S. Ct. 2201, 104 L. Ed. 2d 865

³⁰ Aloba, supra. See also K. Kotafe, Scam: Nwude, Okoye bag 22 years respectively, Punch Newspapers, November 19, 2005 at 1; A. Adeshina, 'EFCC Breached Pact with Bayelsa Abayomi,' Punch Newspapers, December 19, 2005 at p. 5; N. Odebude, & F. Makinde, 'Plea Bargain is Corruption: BolaAjibola,' Punch Newspapers, 5th August, 2007.

³¹ Formally, 2007 now 2011

- A. The Money Laundering Act 2004; 2003 No. 7 1995 No 13.
- B. The Advance Fee Fraud and Other Related Offences Act 1995;
- C. The Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994, as amended;
- D. The Banks and Other Financial Institutions Act 1991, as amended; and
- E. Miscellaneous Offences Act;
- F. Any other law or regulation relating to economic and financial crimes including the criminal code or penal code.³²

It is obvious from these instruments that the only federal statutory provision in Nigeria, specifically containing a form of plea bargaining is the Economic and Financial Crimes Commission (Establishment) Act.³³ S. 14 (2) provides that:

Subject to the provisions of Section 174³⁴ of the Constitution of the Federal Republic of Nigeria 1999, the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence.³⁵

The above section no doubt empowers the EFCC to enter plea bargain with the accused and this is done by compounding the offence before the case is taken to court. The EFCC can agree with the suspect who would be told to return all the loot and the offence compounded.

The provision of section 14 (2) of the EFCC Act indicated that when an 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. On the effect of the above provision of the EFCC Act, Alubo observed that:

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 Sections 14-18 of the Act provides for crimes for which the Commission can exercise jurisdiction. These includes offences relating to financial malpractices, offences in relation 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, the EFCC plea bargain on other offences.³⁶

It is significant to note that what is obtainable under the EFCC Act is a form of charge bargain.

The EFCC is empowered under Section 14 (2) of its Act, to compound any offence punishable under the Act by accepting such sum of money as it thinks fit, not exceeding the maximum amount to

³² Section 7 (2) of the Act

³³ Act No. 1 of 2004.

³⁴ This section 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.

³⁵ See Section 14 (2) of the Act.

³⁶ Alubo supra at p.15

which that person would have been liable if he had been convicted of that offence. The section provides thus:

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.

Furthermore, it should be noted that the statutory blessing given to plea bargaining in Nigeria is not limited to the EFCC Act. In fact, the most commendable step in giving statutory back up to plea bargain in Nigeria is the enactment of the Administration of Criminal Justice Law 2007, Laws of Lagos State, which institutionalized plea bargain in Lagos State.

However, the practice of plea bargain has been criticized by Odebude *et al* in the following words:

The reading of it is that it will make people feel ‘If I can steal the whole money from Nigeria and I can use it to my own advantage left, right and centre, once I can get into this plea bargain, I will be set free.’ It is something that is not just morally right. It is something that will induce corruption. This corruption is endemic. If you have stolen, let it be taken by due process, in accordance with the rule of law. Let those who are found guilty serve their terms. What is the essence of someone arrested, tried, convicted, sentenced and at the end of it you release him on plea bargain?... It is akin to a situation whereby you are caught by a policeman and he says if you give me money I will release you. It is part and parcel of corruption. It is still part of extortion. The way I look at it is that I frown at the whole idea. . . It will make a mockery of the entire process of dealing with corruption. The rule of law is clear. Those who are found guilty of any crime committed within Nigeria should be duly and adequately punished through the due process of law. No one is above the law.³⁷

The need for a consideration of the subsisting legal-history on plea bargain is germane at this stage. This consideration due to space constraint will focus on the legality of plea bargain in Nigeria.

Bearing in mind that the power of the courts to punish is clearly spelt out in law, mindful that the conduct of court proceedings and actions are provided for by law, considering that prosecutorial powers are granted by law, remembering that even the powers of the president and the governors to

³⁷ N. Odebude, & F. Makinde, ‘Plea Bargain is Corruption-Bola Ajibola,’ Punch Newspaper, 5th August 2007. In the Alamieyesagha Case, the accused pleaded guilty consequent upon a plea bargain between him and EFCC. The charges against him were reduced to six and he was convicted for two years. He subsequently forfeited his loot. There are however others who are not opposed to the practice of plea bargain but are of the view that asking those who have corruptly enriched themselves with public funds to return only a part of the loot is wrong. Olu Falae who was a former Secretary to the Federal Government under Gen Ibrahim Babangida is of the opinion that the corrupt leaders must be forced to return all their loots. Dr. Tunji Abayomi shares the view of Olu Falae and has cautioned that plea bargain should not be used to shield some influential people from facing justice.

grant pardons are contained in law, it is therefore unthinkable how the importation and use of such a vexing procedure as plea bargaining criminal matters on corruption can be done without statutory provisions. If punishments are to be based on clear, well founded laws, then, it stands to reason that the mitigation of punishments should also have its basis in the same manner. As stated earlier, the legality of a thing in Nigeria especially as it relates to sensitive subject of our criminal justice is not to be based on or determined by the practice of other countries or on importation of alien conventions but on our own well founded laws, no more, no less.³⁸ This was the view of several writers before the enactment of the administration of the criminal justice act wherein plea bargain became statutory. The question therefore that is begging for answers is whether plea bargain is constitutional.

In the United States of America, Plea bargain is a significant part of the criminal justice system by which a vast majority of criminal cases are settled rather than by a jury trial. Indeed, the United States Supreme Court has recognized plea bargain as both an essential and desirable part of the criminal justice system. But in Nigeria, until the enactment of the Administration of Criminal Justice Law of Lagos State,³⁹ plea bargain as a concept was unknown. This is because none of the Nigerian penal laws, substantive or adjectival recognized the concept. The Nigerian Constitution insists on proof of every allegation constituting a crime before conviction.⁴⁰ In fact, there is no exception to the provisions of section 36 (5) of the constitution which provides that every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty. Also by the provisions of section 135 (1) of the Evidence Act,⁴¹ the standard of proof required to upstage the presumption of innocence is proof beyond reasonable doubt. The Criminal Procedure Act⁴² provides that a person charged with a criminal offence shall be brought to court unfettered and the charge shall be read to him and he shall be asked to plead thereto.⁴³

As an aftermath and having taken an insightful examination of the institutional framework on plea bargain, there is a consequent need to reflect on the constitutionality of plea bargain against the backdrop of the provisos to section 36 of the CFRN, 1999. In fact the meat of the matter is contained in the following legal posers:

³⁸ Inyang U. Keith. 'The legality of plea bargain in Nigerian criminal justice system' a paper presented at the prior to the enactment of the administration of criminal justice Act .

³⁹ 2011[Hereinafter referred to as ACJL] It came into force on 28th day of May 2007 and was repealed and re-enacted as the Administration of criminal justice (Repeal and re-enactment) law 2011.

⁴⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended) [hereinafter referred to as CFRN 1999]

⁴¹ Evidence Act, 2011

⁴² Cap C. 41.Laws of the Federation of Nigeria 2004

⁴³ See Section 187 (1) of the Criminal Procedure Code

- A. The compatibility/validity of plea bargaining and presumption of innocence in favour of the accused.⁴⁴
- B. Burden of proof in criminal cases
- C. Standard of proof in criminal cases
- D. Fair hearing for the accused.⁴⁵

It has been argued in many quarters even in the United States that plea bargaining is unconstitutional. Timothy Lynch⁴⁶ argued that government officials use their position and powers to pressure people who have been accused of crime and who are presumed innocent to confess their guilt and waive their constitutional rights to a fair trial.⁴⁷

In Nigeria, a careful consideration of the various rights that the accused has to fair hearing under the constitution would show that some of the rights stand the risk of being badly affected if plea bargaining is not properly handled.⁴⁸

In answering the question, whether plea bargaining is a violation of constitutional provisions and whether an accused person can waive these rights, Akeem⁴⁹ referred to the case of *Ariori v Elemo*⁵⁰ where the Supreme Court distinguished two types of rights:

- I. Rights which is for the sole benefit of the citizen. It can be waived.
- II. Rights that are for the benefit of the citizen and the public, which cannot be waived.

Akeem concluded that the aforementioned rights are rights that can be rightly classified under the first category of rights which are available. We are in agreement with the above view, premised on the fact that the rights can be waived. Here the citizen (the accused) is faced with two choices: one, to face the charge(s) levelled against him and squarely, face the full weight of the law, if the guilt is proved or; (2) to opt to take a lesser sentence from the beginning and avoid the rigours and possible embarrassment of a plenary trial. In the same vein, the prosecutor has two choices: (1) to take the rigorous trip of proving every ingredient of the alleged offence(s) and get a full sentence for the

⁴⁴ Section 36 (5) CFRN 1999, as amended

⁴⁵ S. 36 (4) CFRN, as amended.

⁴⁶ "The Case Against Plea Bargaining" available online at <http://www.catoorglpabs/reguiation'regv46n3iv26ni.pdf> (last visited on 10th February, 2010)

⁴⁷ The argument against plea bargaining that the prosecution uses it to put pressure on defendants to plead guilty and waive their constitutional right to fair trial is not unfounded. It played urn in the ease of *Borden Kircher v. Hayes* 434 U.S. 35 357 (1978). Here, Hayes was indicted on a charge of altering a forged instrument punishable by ten years all term. The defendant met with the prosecutor along with counsel. The Prosecutor offered to recommend 5 years imprisonment if Hayes pleaded guilty with a threat that if he fails to do so, he may seek an indictment under the Kentucky Habitual Criminal Act which would give Hayes life term. The U.S. Supreme Court held that there was nothing wrong with what the prosecutor did. See also *Santobeilo Vs New York* (Supra).

⁴⁸ The following rights are at risk: the right to fair trial in public — Section 36 (4); the presumption innocence — Section 36(5); the right to remain silent which embodies the privilege against self-incrimination— Section 36 (11) arid the right to examine witnesses called by the prosecution 36 (6) (d).

⁴⁹ Supra at p. 14

⁵⁰ (2001) 36 WRN 94

accused; or (2) avoid the rigours with all the attendant difficulties and getting a conviction on lesser charge with a lighter sentence and using the remaining energy for more complex cases.

For example, unravelling certain crimes such as economic crimes is an arduous task. Economic crimes are usually complex cases and it involved much, in terms of time and cost, so it is easy for a prosecutor to agree with a plea bargain and save all the costs.⁵¹

A clear departure from what has been practiced as plea bargain by the anti-graft agencies is required. What has appeared worrisome has been the situation where a man is alleged, for instance, to have embezzled or swindled someone to the tune of one billion naira and when he returns =N= 99 Million, he is allowed to go with the remaining =N=100 m after conviction and sentencing to some terms of imprisonment which are usually calculated from the date of arrest. It is submitted that in a situation like this, what you have is not a plea bargain, it not a charge bargain and it is not a sentence bargain. Rather, it is a loot bargain. In criminal jurisprudence, the prisoner must return the loot to the state. If anything is bargained, it is the punishment. What we have witnessed is like saying, “accused, we know you have =N=1 b anyway, return N900m and keep the rest, but remember not to sin again.”

3.2 Evidence Act and Plea Bargain

By virtue of the provisions of section 28 of the Evidence Act,⁵² the confessions of a suspect, made as a result of any inducement, threat, or promise by a person in authority, where the suspect has grounds to think that he would gain an advantage or avoid any temporary evil by making it, is irrelevant during criminal proceedings. This means that such will make the confession inadmissible. This provision has been substituted with section 29 (2) of the new 2011 Evidence Act, which provides that:

- (2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by a defendant, it is represented to the court that the confession was or may have been obtained:
 - (a) By oppression of the person who made it; or
 - (b) In consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in such consequence, the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained in a manner contrary to the provisions of this section.

⁵¹ *Federal Republic of Nigeria v. Amadi* (2005)2OCCR 129

⁵² Cap. E 14 Laws of the Federal Republic of Nigeria, 2004 and now repealed by the Evidence Act 2011.

Initially, the former Act makes confessions obtained as a result of inducement, threat, or promise by a person in authority; where the suspect has grounds to think that he would gain an advantage or avoid any temporary evil by making it, irrelevant. Currently, with the new provision in section 29 (2), inducements and promises by a person in authority can no longer make a confession irrelevant. This provision lends support to the plea bargaining process.

It is equally important to state that there has always been provision in our laws for the accused person to plead guilty to a charge or charges levelled against him in a court of law. Where an accused person does so, the trial judge is required to verify the facts admitted by the accused person and ensure that it amounts to an admission of all the essential elements of the offence before proceeding to conviction and sentence.⁵³

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. In Continental legal systems, someone who is accused of a serious crime may confess, but he will nevertheless go to trial. Confession shortens the trial by affecting the quality of the evidence, but confession does not eliminate trial.⁵⁴ It should be noted that the introduction of plea bargain in Nigeria by section 14 (2) of the Economic and Financial Commission (Establishment Act) 2004 provides by extension that, subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria 1999, the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence.

I. Administration of Criminal Justice

The Administration of criminal justice instruments are two fold in nature. There is the Lagos State Law and the Federal Act.

A. Lagos State Administration of Criminal Justice Law

⁵³ Section 218 of the CPA. For more on guilty plea, see Oluwatoyin Doherty, *Criminal Procedure in Nigeria*, (London: Blackstone Press Ltd., 1990), pp. 253-254.

⁵⁴ John Langbein: "Understanding the Short History of Plea Bargaining", 13 Law & Society / Winter 1979, p. 267.

Not until 2007 when the Lagos state enacted the Administration of Criminal Justice Law,⁵⁵ there was no express statutory provision for plea bargaining in Nigeria. Section 76 of the ACJL 2011 makes provision for plea bargain and sentence agreements.⁵⁶ By the provisions of section 75, the Attorney General of Lagos State has the 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 abuse of legal process. Section 76 makes provisions for plea and sentence agreements. The prosecutor and a defendant or his legal practitioner may enter into an agreement in respect of:

- a. A plea of guilty by the defendant to the offence charged or a lesser offence of which he may be convicted on the charge.
- b. An appropriate sentence to be imposed by the court if the defendant is convicted of the offence to which he intends to plead guilty.⁵⁷

The prosecutor can only enter into a plea or sentence agreement after consultation with the investigating police officer, and the victim, with due regard to the nature and circumstances relating to the offence, the defendant and the interests of the community.⁵⁸ The prosecutor where it is reasonably feasible is to afford the complainant or his representative the opportunity to make representations to the prosecutor regarding the contents of the agreement and the inclusion in the agreement of a compensation or restitution order.⁵⁹ Such agreements between the parties must be in writing and signed.

The presiding judge or magistrate is not permitted to be part of the discussions. He may only be approached by counsel regarding the contents of the discussions and may inform them in general terms of the possible advantages of discussions, possible sentencing option or the acceptability of a proposed agreement. After the prosecutor has informed the court of the agreement reached by the parties, it is the duty of the Presiding Judge or Magistrate to inquire from the defendant to confirm the correctness and the voluntariness of the agreement.⁶⁰ After considering the sentence agreed, the presiding Judge or Magistrate may impose the sentence, or impose a lesser sentence⁶¹. Where he is of the view that the offence requires a heavier sentence, than the one agreed, he is to inform the

⁵⁵ 2007, now 2011

⁵⁶ Ibid.

⁵⁷ See also Section 248 of the A CJ Bill 2005, which provides for the possibility of a defendant to plead guilty for a lesser offence than offence charged.

⁵⁸ Section 76 (2) of the ACJL Lagos, 2007

⁵⁹ Section 76 (3). Cf. section 248 of the ACJ Bill 2005

⁶⁰ Section 76 (6)

⁶¹ Section 76 (8)

defendant of his view. The defendant may decide to abide by his plea of guilty and accept the sentence by the Judge or Magistrate, or he may decide to withdraw from his plea agreement. If he does so, the trial precedes *de novo* before another presiding Judge or Magistrate⁶²

The 2005 Administration of Criminal Justice Bill, Lagos State, also provides in section 248 (2) for plea bargain.

Section 248 of the ACJ Bill provides thus:

1. Notwithstanding anything in this Act or in any other Act of the national Assembly, the Attorney-General of the Federation shall have the power to receive and consider a plea bargain from any person charged with any offence either directly from that person charged or on his behalf, by way of an offer to accept to plead guilty to a lesser offence than that charged.
2. Where the Attorney- General is of the view that the acceptance of such plea bargain is in the interest of justice, the public interest and public policy, he may accept such plea and the court seized of the matter shall be so informed and shall proceed to enter a guilty plea to such lesser offence and impose the due punishment accordingly.
3. When a person is convicted and sentenced under the provisions of subsection (1) of this section, he shall not be charged or tried again on the same facts with the greater offence earlier charged to which he had pleaded to a lesser offence.

The provisions of this section shall not apply to persons:

- (a) Charged with capital offences, rape, or defilement or any offence involving the use of violence, or
- (b) persons who had, in the last ten years been convicted and sentenced to any such offence involving grievous violence or sexual assault.

This provision deserves to be backed up with adequate guidelines for the operation of plea bargain with respect to the prosecutor, the defendant, the witness and the victim.⁶³

B. Administration of Criminal Justice Act 2015⁶⁴

⁶² See Ani Comfort Chinyere, "Reforms in the Nigerian Criminal Procedure Laws," NIALS Journal of Criminal Law and Justice, vol. 1 2011, pp. 83-84.

⁶³ See for instance the US National Prosecution Standards, available at:

<<http://www.showme.net/GapeCountv/pa/INE TPL EA BARGAINING>> Accessed on 10/8/2024

⁶⁴ LFN 2015

As stated earlier, plea bargain was not provided in any federal statute until the enactment of the Administration of Criminal Justice Act, 2015. Under this Act, Section 270 specifically provides in sub (1) as follows:

Notwithstanding anything in this Act, or any other law, the prosecutor may:

- A. Receive and consider a plea bargain from a defendant charged with an offence either directly from that defendant or on his behalf,
- B. Offer a plea bargain to a defendant charged with an offence.

(2) The prosecution may enter into plea bargaining with the defendant, with the consent of the victim or his representative during or after the presentation of the evidence of the defence provided that all of the following conditions are present:

- A. The evidence of the prosecution is sufficient to prove the offence charged beyond reasonable doubt;
- B. Where the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative, or
- C. Where the defendant in a case of conspiracy has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders.

Furthermore, it is still provided that:

- (3) Where the prosecutor is of the view that the offer or acceptance of a plea bargain is in the interest of justice, the public interest, public policy and the need to prevent abuse of legal process, he may offer or accept the plea bargain.
- (4) The prosecutor and the defendant or his legal practitioner may before the plea to the charge, enter into an agreement in respect of:
 - A. The term of the plea bargain which may include the sentence recommended within the appropriate range of punishment stipulated for the offence or a plea of guilty by the defendant to the offence (s) charged or a lesser offence of which he may be convicted on the charge and,
 - B. An appropriate sentence to be imposed by the court where the defendant is convicted of the offence to which he intends to plead guilty.
- (5) The prosecutor may only enter into an agreement contemplated in subsection (3) of this section;
 - A. After consultation with the police responsible for the investigation of the case and the victim of his representative, and
 - B. With due regard to the nature of and circumstance relating to the offence, the defendant and public interest:

Provided that in determining whether it is in the public interest to enter into a plea bargain, the prosecution shall weigh all relevant factors, including:

- I. The defendant's willingness to cooperate in the investigation or prosecution of others;
- II. The defendant's history with respect to criminal activity ;
- III. The defendant remorse or contrition and his willingness to assume responsibility for his conduct;
- IV. The desirability of prompt and certain disposition of the case
- V. The likelihood of obtaining a conviction at trial and the probable effect on witnesses;
- VI. The probable sentence or other consequences if the defendant is convicted;
- VII. The need to avoid delay in the disposition of other pending cases ; and
- VIII. The expense of trial and appeal.
- IX. The defendant's willingness to make restitution or pay compensation to the victim where appropriate.

Furthermore sub (6) provides as follows:

The prosecution shall afford the victim or his representative the opportunity to make representation to the prosecutor regarding –

- A. The content of the agreement and,
- B. The inclusion in the agreement of a compensation or restitution order.

Again sub (7) provides as follows:

An agreement between the parties contemplated in subsection (3) shall be reduced to writing and shall:

- A. State that, before conclusion of the agreement, the defendant has been informed;
 - (i) That he has the right to remain silent,
 - (ii) Of the consequences of not remaining silent and,
 - (iii) That he is not obliged to make any confession or admission that could be used in evidence against him.
- B. State fully, the terms of the agreement and any admission made and,
- C. Be signed by the prosecutor, the defendant , the legal practitioner and the interpreter, as the case may be and,
- D. A copy of the agreement forwarded to the Attorney General of the federation.

- (8) The presiding judge or magistrate before whom the criminal proceedings are pending shall not participate in the discussion contemplated in subsection (1) of this section.
- (9) Where a plea agreement is reached by the prosecution and the defence, the prosecution and the defence, the prosecutor shall inform the court that the parties have reached an agreement and the presiding judge or magistrate shall then inquire from the defendant to confirm the terms of the agreement.
- (10) The presiding judge or magistrate shall ascertain whether the defendant admits the allegation in the charge to which pleaded guilty and whether he entered into the agreement voluntarily and without undue influence and may where;
- A. Satisfied that the defendant is guilty of the offence to which he had pleaded guilty, convict the defendant on his plea of guilty to that offence, and shall award the compensation to the victim in accordance with the term of the agreement which shall be delivered by the court in accordance with section 308 of this Act; or
- B. 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 right referred to in section (6) of this section, he shall record a plea of not guilty in respect of such charge and order that the trial proceed.
- (11) Where a defendant has been convicted in terms of subsection (9) (A), the presiding judge or magistrate shall consider the sentence as agreed upon and where he is:
- A. Satisfied that such sentence is an appropriate sentence impose the sentence; or
- B. Of the view that he would have imposed a lesser sentence than the sentence agreed, impose the lesser sentence; or
- C. Of the view that the offence requires a heavier sentence, than the sentence agreed upon, he shall inform the defendant of such heavier sentence he considers to be appropriate.
- (12) The presiding judge or magistrate shall make or order that any money, asset or property agreed to be forfeited under the plea bargain shall be transferred to and vest in the victim or his representative or any other person as may be appropriate or reasonably feasible.

- (13) Notwithstanding the provisions of the Sheriffs and Civil Process Act, the prosecutor shall take reasonable steps to ensure that any money, assets or property agreed to be forfeited or returned by the offender under a plea bargain are transferred to or vested in the victim, his representative or other person lawfully entitled to it.
- (14) Any person who willfully and without just cause obstructs or impeded the vesting or transfer of any money, assets or property under this Act shall be guilty of an offence and liable to imprisonment for 7 years without an option of fine.
15. Where the defendant has be informed of the heavier sentence as contemplated in subsection (10) (C) above, the defendant may;
- A. Abide by his plea of guilty as agreed upon and agreed that, subject to the defendant's right to lead evidence and to present argument relevant to sentencing, the presiding judge or magistrate proceed with the sentencing; or
- B. Withdraw from the plea agreement, in which event the trial shall proceed *de novo* before another judge or magistrate, as the case may be.
16. Where a trial process as contemplated under subsection (14) (A) or *de novo* before another presiding judge or magistrate as contemplated in subsection (15) (B);
- A. No reference shall be made to the agreement,⁶⁵
- B. No admission contained therein or statements relating thereto shall be admissible against the defendant; and
- C. The prosecutor and the defendant may not enter into a similar plea and sentence agreement.
17. Where a person is convicted and sentenced under the provisions of subsection (1) of this section, he shall not be charged or tried again on the same facts for the greater offence earlier charged to which he had pleaded to a lesser offence.
18. The judgment of the court contemplated in subsection 10 (A) of this section shall be final and no appeal shall lie in any court against such judgment, except where fraud is alleged.

3.3 Plea Bargaining and Compounding of Felonies

Section 339 of the Criminal Procedure Code ⁶⁶applicable to the Northern parts of Nigeria, designates some offences as offences that may be compounded, and the persons who may compound such

⁶⁵ It appears that clauses (A) and (B) is aimed at restoring the defendant to the *status quo*.

offences.⁶⁷ The offences mentioned in Part I of Appendix C may be compounded without the leave of court at any time before the accused person has been convicted by the court or committed for trial at the High Court.⁶⁸ The offences under this category includes: causing hurt; assault or use of criminal force; mischief, when the only loss or damage caused is loss or damage to a private person; criminal trespass; criminal breach of contract of service, and so on.⁶⁹

The offences mentioned in Part II of Appendix C may be compounded before the accused person has been convicted by a court or committed for trial only with the consent of the court which has jurisdiction to try the accused person for the offence.⁷⁰ Some of the offences in Part II include: Grievous hurt on provocation, grievous hurt without provocation, wrongfully restraining or confirming any person, unlawful compulsory labour, uttering words or making gestures intending to insult the modesty of a woman, and so on.⁷¹

The Criminal Procedure Act (CPA) applicable to the Southern parts of Nigeria has an entirely different provision on compounding. Section 127 of the CPA provides as follows:

Any person who asks, receives, or obtains, or agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person upon any agreement or understanding that he will compound or conceal a felony, or will abstain from, discontinuance or delay a prosecution for a felony, or will withhold any evidence thereof, is guilty of an offence.

If the felony is such that a person convicted of it is liable to be sentenced to death or imprisonment for life, the offender is guilty of a felony, and is liable to imprisonment for seven years. In any other case the offender is liable to imprisonment for three years.

Section 128 further states that:

Any person who, having brought, or under pretence of bringing an action against another person upon a penal Act, Law or Statute in order to obtain from him a penalty for any offence committed or alleged to have been committed by him, compounds the action without the order or consent of the court in which the action is brought or is to be brought, is guilty of a misdemeanour and is liable to imprisonment for one year.

Section 128 stretches the definition of compounding further to cover situations of compounding offences without the consent of the court.

⁶⁶ Cap 30 Laws of Northern Nigeria, 1963 [hereafter, The CPC]

⁶⁷ See Appendix C for the list of offences that may be compounded.

⁶⁸ Section 339 (4) CPC

⁶⁹ See Part I, Appendix C of the CPC.

⁷⁰ Section 339 (5) CPC.

⁷¹ See Part II of Appendix C of the CPC.

According to the Black's Law Dictionary, compounding crime consists of the receipt of some property or other consideration in return for an agreement not to prosecute or inform on one who has committed a crime.⁷² From this definition, the procedure for plea bargaining is clearly outside the contemplation of the provisions against compounding of offences. The Black's Law Dictionary and section 127 contemplate situations where a person asks or receives a benefit to prevent, stop or in any other way, frustrate the prosecution of an offence. There have always been provisions in our procedural laws on amendment and substitution of charges.⁷³ The difference with that procedure and plea bargain is that under sections 162 and 163 of the CPA, only the prosecutor can do so at his discretion. Furthermore, section 180 (1) of the CPA provides that when more than one charge is 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 on its own motion, may stay trial of such charge or charges.

Where it is as a result of any confession obtained perhaps as a result of promise or threat, it may not be made known to the court as the sections did not state that he has to give reasons for the action. Moreover, the Constitution⁷⁴ which is superior to the CPA expressly authorizes the Attorneys-General in sections 174 and 211 to institute, undertake, take over, continue and to discontinue criminal proceedings against any person. It is worth noting that section 180 (1) did not state whether the prosecutor is one from the Attorney-General's office or from the Police, EFCC and etc. This therefore enables any prosecutor to withdraw any charge against a person after securing a conviction on one or more of the charges.

4. Conclusion

It has been demonstrated that most of the fears and apprehensions that trail plea bargaining has been taken care of in the ACJL. Our hope is reinforced by the following safeguards under the law:

- I. The provision of writing and signing under section 76 of the ACJL is an improvement on the U.S. practice under the Federal Rules of Criminal Procedure Rules (as amend). Rule 11(c) (2) of the U.S. Rules above merely requires that the parties must disclose the plea agreement in open court when the plea is offered, It does not require that it be in writing or signed.⁷⁵

⁷² Henry Campbell, Black's Law Dictionary, Op. cit., p. 286.

⁷³ Sections 162 and 163 of the CPA

⁷⁴ Section 1 (3) of the Constitution declares the Provisions of the Constitution prevails over any law that is inconsistent with it.

⁷⁵ See Federal Rules of Criminal Procedure.

- II. The requirement that the court should inquire from the accused whether he admits the allegations in the charge to which he has pleaded is in accord with the practice under Rule II (H) (3).
- III. Also the additional safeguard in not making use of the evidence obtained during bargain is in accord with Rule 410 of the Federal Rules of Evidence. The Rule declares as inadmissible any statement made in the course of proceedings under Rule 11 of the FRCP and any statement made in the course of plea discussion with an attorney for the prosecuting authority which do not result in a plea of guilty or which resulted in a plea of guilty later withdrawn.
- IV. The role of the court cannot be overemphasized in a plea bargaining. The power given to the court in section 76 of the ACJL to reject a plea bargain and to give a higher sentence is also the practice in the U.S.⁷⁶



⁷⁶ See the cases of Peppie v. Ferguson 361 NE. 2d 333 (Ill cf. App. 1977); United States v. Adams 634 F. 2d 830 (5th Cir. 1981).