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an attempt has been made in this paper to show the nexus between Law and Islamic Law regarding the concept of plea bargaining. It is deducible from the definition of plea bargaining that a person agrees to admit in court that he/she is guilty of one crime, in return for not being charged with a more serious crime, he is said to be in plea bargain.

Plea bargaining is also mentioned to have originated in the United States of America, where it has been in use in the United States of America, when it was introduced into the Nigerian criminal justice system by the Economic and Financial Crimes Commission. Since its introduction, the concept of plea bargaining has been employed in Nigeria, against Emmanuel Nwude; former Inspector-General of Police; Balogun; former Bayelsa State Governor, Diepreye Simon; Cecilia Ibru and former Edo State Governor, Lucky Irukwere, among others.

Many jurists, including Kayode Eso, JSC (Late) and the Justices of Nigeria, Dahiru Musdapher have criticized the practice of plea bargaining by the anti-corruption agencies. The point is that some of the constitutional provisions which are intended to ensure equality of all before the law, also have the effect of engendering undue delays, and consequently, delay in access to justice. Also, regular courts' delay of justice in the process of getting to keep some part of the loot are another reason why plea bargaining is resorted to. If this points to anything, it is that plea bargaining, being a man-made law can never be devoid of human imperfection.

On the other hand, attempt was made to explain the position of the concept of plea bargaining. It was evident that the concept of plea bargaining is not more harm to justice than it seeks to ensure that there is just and proper dispensation without fear or favour. Hence, those self-deceiving and aimed at thwarting the cause of justice, as found under the non-existent under Islamic Law. Various texts of the

Glorious Qur'an and the prophetic traditions are cited to buttress this assertion.

Another fact is salient to be noted. Since the sources and the ideologies that sustain both Common Law and Islamic Law are different, it becomes difficult to find a similarity between the two laws on the enforcement of the concept of plea bargain.

Lastly, it is submitted that while Islamic Law is divine and ensures the general interests and equal treatment of every individual, irrespective of race, tribe, colour, sex or status in the society, Common Law, a man-made law is characterized with irregularities and favouritism, the concept of plea bargaining being a typical example, thereby making the enforcement of justice a mirage.

none is equal in the eyes of Allah and everyone deserves equally. Islamic History is a witness to this fact in many references will definitely hinder the way of achieving law on the contrary, encourages achieving justice as soon as he best of our ability. Neither wealth nor property or taken into consideration when judging people. It rather how righteous one is. Allah says: whoever does righteous deeds, whether male or female, while a believer—those will enter Paradise and will not be wronged in the least.⁵⁸

sacred texts of Islam, and looking at the application of equality before the law, one finds numerous citations of equality and justice for all as enshrined in the above and Prophetic traditions, irrespective of whether one is a Muslim or non-Muslim) of the Islamic State (Caliphate), Province, or even the Khalifah (Head of State or such was the magnanimity and justice of the Prophet of Allah ﷺ, the highest authority in Islam, that he even put disposal of his companions (RA), and was prepared to even against his own household should it be established, as in the following Prophetic tradition.

The people of Quraysh worried about the lady from who had committed theft. They asked, "Who will with Allah's Messenger?" Some said, "No one dares to sama bin Zaid the beloved one to Allah's Messenger". oke about that to Allah's Messenger, he said: "Do you try somebody in a case connected with Allah's Prescribed Then he got up and delivered a sermon saying; t destroyed the nations preceding you, was if a noble amongst them stole, they would

forgive him, and if a poor person amongst them stole, they would inflict Allah's Legal punishment on him. By Allah, if Fatima, the daughter of Muhammad stole, I would cut off her hand.⁵⁹

To further demonstrate this point is the case of Umar [RA] and the Governor of Egypt. During the Khalifah of Umar [RA], Muhammad the son of 'Amr ibn al-'As the Governor of Egypt, whipped an Egyptian. The Egyptian went to Medina and lodged his complaint with the Khalifah who immediately summoned the Governor and his son to Medina. When they appeared before him in Medina, the Khalifah handed a whip to the Egyptian complainant and asked him to whip the son of the Governor in his presence. After taking his revenge when the Egyptian was about to hand over the whip to Umar, he said to the Egyptian: "Give one stroke of the whip to the Honourable Governor as well. His son would certainly not have beaten you were it not for the false bride that he had beaten father's high office. The plaintiff submitted: "The person who had if you me, I have already avenged myself on him." Umar said: "By God, doing had beaten him (the Governor) I would not have checked you from so. You have spared him of your own free will."⁶⁰ The point of the matter is that Islamic law is in tune with human nature and provides the justice and equality all men deserve, whilst common law both its precedents and roots of legislation are intrinsically prone to fallacies and contradictions, and will always remain so.

⁵⁹ See Hadith 681 in Sahih Bukhari, (Volume 4, Book 56, Darul Ma'rifah, Beirut, Lebanon), p. 173

⁶⁰ See 'The Fallacy of Immunity' <http://www.khilafah.com/index.php/concepts/political-concepts/13426-the-fallacy-of-political-immunity>, Accessed on 27/5/2013. See also 'In the Era of the Four Righteous Caliphs, Right After the Death of Our Noble Prophet, Peace and Blessings upon Him' <http://alsiraj.net/english/misc/nonmuslims/html/page28.html> Accessed 9/2/2016

by what Allah revealed, those are they that are unjust.⁵¹

If a person is killed, then your family has a right to seek Qisas from the murderer. Punishment can come in several forms under "Diya."⁵² Islamic judge must look at a higher level of proof and a person committed the crime. A judge can only impose punishment⁵³ when a person confesses to the crime or there are witnesses to the crime. The usual number of witnesses is two, but four witnesses are required. Islamic law has a high standard of proof for the most serious crimes and punishments. Doubt about the guilt of a Hadd crime, the judge must treat it as Ta'zir crime. If there is no confession to a crime or witnesses to the crime, Islamic law requires reduction of the punishment to Ta'zir punishment.

Large, the position of Islamic law concerning the criminal relation to the concept of plea bargaining is very clear. It does not create the room for obstacles to the attainment of the goal of justice as it is obtained under the Common Law system of plea bargain is a clog in the wheel of the principle of equality and attainment of justice.⁵⁴ The

the money paid to the victim's family as part of punishment. form of restitution for the victim or his family. The family may seek a public execution of the offender or the family may seek der.

cases to which Hadd punishments are prescribed are murder, fornication, theft, highway robbery, shurbulkhamru (alcohol consumption) (defamation or accusation of zina) and apostasy from Islam. Crimes attract a specific punishment as prescribed either in the Quran or in the Sunnah.

note that the common law position that plea bargaining is an economical method of criminal justice and provides the opportunity for cases with less expenditure of time and money than full-

Qur'an is very clear on the principle of equality and justice as evident by the following verses:

O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other. Indeed, the most noble of you in the sight of Allah is the most righteous of you. And Allah has full knowledge and is well acquainted with all things.⁵⁵

It also says:

Oh you who believe! Be persistent in standing for justice as witnesses to God; even if it be against yourselves, parents, or other relatives. Whether one is rich or poor, God is more worthy than anyone. So don't follow personal inclination, lest you be unjust.⁵⁶

Prophet Muhammad (peace be upon him) was reported to have said:

God, the Almighty, does not consider how your appearances or how rich you are, rather He looks to your hearts and your deeds.⁵⁷

It can be said after these proofs from the Qur'an and the Sunnah that there is no place in Islam for preference based upon wealth, power, or family. There is no discrimination in Islam based on sex, racism, or

scale trial is an excuse that does not hold water. In Islamic law, there is no problem of justice delay as the machineries for the dispensation of justice fairly and timely are divinely and perfectly incorporated in the criminal justice system. If common law experiences delay in the disposing of cases, that is due to the nature of the legal system which is man-made and allows for many exceptions and amendments and as a result imperfect.

⁵⁵ Q49:13

⁵⁶ Q 4:135

⁵⁷ Reported by Ahmad

term of imprisonment which the perpetrators of would serve.⁴⁴

Perspective of Plea Bargaining

Islamic Law every body is subservient to laws of justice. have any provision for plea bargain⁴⁵. Everybody to laws given by the Sharia and hence no immunity justice form taking place. As for Islamic law, the in and other self-deceiving legal rhetoric as defined principle are non-existent.

Islamic Law are broken down into three major Hadd Crimes (most serious); Ta'zir Crimes (least crimes (revenge crimes restitution). Hadd crimes are under Islamic Law, and Ta'zir crimes are the least

are those which are punishable by pre-established in the Quran and Hadith. These most serious of all in exact reference in the Quran to a specific act and not for that act. There is no plea-bargaining or ment for a Hadd crime. Hadd crimes have no in punishments attached to them⁴⁷.

Justice system is that which is founded based on divine n and sunnah. Muslims are enjoined to adhere strictly to he religion as divinely revealed, and are forbidden from f innovation. Hence, the absence of a concept like Plea believe that the doctrine of the religion is complete and ned in Q5 v. 3

'An Outline of Hudud, Ta'zir & Qisas' om/docstorage. Accessed 13/08/2013.

n is comparable to the determinate sentence imposed by ed States. If you commit a crime, you know what your are is no flexibility in the U.S. determinate model or in crimes of Islamic Law.

Hadd crimes have fixed punishments because they are set by God and are found in the Quran and Hadith.⁴⁸ Hadd crimes are crimes against God's law and Ta'zir crimes are crimes against society⁴⁹, while Qisas crime is one of retaliation. If you commit a Qisas crime, the victim has a right to seek retribution and retaliation. The exact punishments for some Qisas crimes are set forth in the Quran. Examples are:

O you who believe! retaliation is prescribed for you in the matter of the slain, the free for the free, and the slave for the slave, and the female for the female, but if any remission is made to any one by his (aggrieved) brother, then prosecution (for the blood wit) should be made according to usage, and payment should be made to him in a good manner; this is an alleviation from your Lord and a mercy; so whoever exceeds the limit after this he shall have a painful chastisement.⁵⁰

And We prescribed to them in it that life is for life, and eye for eye, and nose for nose, and ear for ear, and tooth for tooth, and (that there is) reprisal in wounds; but he who foregoes it, it shall be an expiation for him; and whoever did not

⁴⁸ Hakeem F.B. et al., *Policing Muslim Communities: Comparative International Context*, (New York: Science+Business Media, 2012)

⁴⁹ In Islamic law of crime and tort, Ta'zir connotes an act of refining a person when he commits offences against the society for which there is no prescribed punishment in the Qur'an and Sunnah.. Further, Ta'zir is a form of punishment considered by the judge or ruler in an Islamic state as befitting in any particular case of human misdeed for which there is no prescribed punishment or Kaffarah (expiation). Examples of Ta'zir offences include theft of an object whose worth (value) is not up to Nisab. i.e ¼ of a dinar; and baseless accusation of a man or woman of virtue for commission of an offence other than zina (adultery or fornication).

⁵⁰ See Q2:178

r governors Uzor Kalu, Chimaroke Nnamani, Saminu Dariye while other high profile cases in which the gain was employed had been disposed of. He listed in gory the cases against Emmanuel Nwude, eneral of Police Tafa Balogun, former Bayelsa State Alamieyeseigha, Cecilia Ibru and former Edo State bination. His contention was that the loopholes in stem were being constantly exploited to frustrate n of the cases.⁴¹

Chief Justice of Nigeria, Justice Dahiru Musdapher, l a vigorous opposition to plea bargain which he s. His words: "I still stand to say that the concept is ut was (also) never part of the history of our legal s surreptitiously smuggled into our statutory laws 'the EFCC'. Justice Musdapher maintained that the ept was the recovery of the stolen money which, he not be subject to negotiation. "What is subject to e the prosecution and punishment for embezzlement. olen money is returned by the offender, he has ice of embezzlement or abuse of office for which he nished." The conclusion of the former chief justice t of plea bargain is a threat to the criminal justice l can only become a promise with the eradication of ght application of the concept.⁴²

e view of the former Chief Justice of Nigeria have ose scrutiny by many interested in the debate on the ness or otherwise of Plea Bargain in Nigeria. The ng Council of the National Human Rights), Dr Chidi Anslem Odinkalu, refuted the contention He stated that:

Controversy', *Nigerian Tribune* (Nigeria 28 November

Section 180(1) of the Criminal Procedure Act provides that when more charges 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 trial of such charge or charges. This clearly provides legal bases for a plea bargain in Nigeria well before the EFCC Act in 2004. The purpose of plea bargain under the EFCC Act is mostly asset recovery. The Criminal Procedure Act and section 13(2) of the EFCC Act are not the only laws in Nigeria that provide for the plea bargain. Section 76 of the Criminal Justice Law of Lagos state, 2007, extensively regulates the use of plea bargain in courts in Lagos.

The above stated words encompass to a large extent the arguments for and against the application of Plea Bargain in most of the world including Nigeria.

However, Nigerians from all walks of life have been quick to condemn this practice. It has been argued for example that such development rather than deter anyone would even serve as a form of encouragement to an unscrupulous individual who will eagerly agree to a small proportion of his ill-gotten wealth in forfeiture of only a small proportion of his ill-gotten wealth in knowledge that he will be out of prison in no time to enjoy the remainder of it. On its part, the Economic and Financial Crimes Commission has been quick to remind anyone who cares to listen of the huge amount of money and assets valued at billions of Naira which it has been able to recover. It has posited that the Nation stands to benefit from the

⁴³ Afe B, 'Legality and effect of plea bargain in criminal prosecution in Nigeria' (Nigeria 2 April 2012), found at <http://tribune.com.ng/index.php/columns/afe-babalola-on-monday>, Accessed 29/5/2013

away with sentences as light as 6 months of a plethora of statutory provisions in Nigeria, it is Economic and Financial Crimes Commission³⁴ is the first federal enactment to experiment with a

ing. The Act provides as follows:
to the provisions of section 174³⁵ of the
tion of the Federal Republic of Nigeria
he Commission may compound any
punishable under this Act by accepting
as of money as it thinks fit, exceeding the
an amount to which that person would
en liable if he had been convicted of that

om our earlier definition of plea bargain that what is
he EFCC Act is a form of charge bargain. The
ven to plea bargaining in Nigeria is not limited to the
the most commendable step in giving statutory back
in Nigeria is the enactment of the Administration of
w 2007, Laws of Lagos State, which institutionalized
s State³⁷.

effect of plea bargain in criminal prosecution in Nigeria',

to the power of the Attorney-General of the Federation to
recover or discontinue criminal proceedings against any
law.

the Act
of the law provides *inter alia* that the prosecutor and a
practitioner may before the plea to the charge, enter into
ect of a plea of guilty by the defendant to the offence
ence of which he may be convicted on the charge, and an
be imposed by the court if the defendant is convicted of
he intends to plead guilty. For the purpose of proper

The EFCC Act earlier cited has been invoked in several cases in Nigeria, especially high profile economic crimes cases in Nigeria. For instance, it was invoked in cases like *Tafa Balogun, Emmanuel Nwude and Nzeribe Okoli* and the rest. Tafa Balogun, a former Inspector-General of Police, approached the court after his arrest and arraignment by the EFCC, challenging the powers of the EFCC to prosecute him. The said lawsuit was later withdrawn and this led to speculations from various quarters that the withdrawal was based on a plea bargain,³⁸ as a result of which he was sentenced to a prison term of (6) months which he already served in detention. The outcome of *Tafa Balogun's* case was clearly a result of plea bargaining.

It was also reported that Emmanuel Nwude and Nzeribe Okoli, who stood trial for defrauding a Brazilian bank of the sum of \$242 million pleaded guilty and were convicted. It seems that charge bargain was embarked upon first in *Nwude and Okoli's* case to reduce the original charges against them from 91 to 16.³⁹ Also recent in the practice of plea bargain under the EFCC Act is the trial of the former Governor of Bayelsa State. Ironically, the officials of the EFCC have consistently denied the existence of any plea bargaining with any of the accused persons.⁴⁰

Since it crept into the Nigerian criminal justice system, the concept of plea bargain has been an issue on which opinions are sharply divided. To the chairman of the Economic and Financial Crimes Commission (EFCC), Mr. Ibrahim Lamorde, "the advantages of plea bargain are incomparable with the alleged disadvantages". He said there had been no meaningful progress in the cases commenced as far back as

understanding and appreciation of the position in Lagos, see section 76 of the Law.

³⁸ Soniy, Balogun Withdraws Suit Against EFCC, *Punch Newspaper*, November 18, 2005 at p. 8.

³⁹ Ketefe, K.: "242m Scam: Nwude, Okoli Bag 22 Years Respectively", *Punch Newspaper*, November 19, 2005 at p. 1.

⁴⁰ See Adeshina, A.: "EFCC Breached Pact with Bayelsa - Abayomi", *Punch Newspaper*, December 19, 2005 at p. 5.

In the 18th century, ordinary jury trial at common law was initiated, lawyer-free procedure conducted so rapidly that it was unnecessary. Thereafter, the rise of adversary trial of evidence injected vast complexity into jury trial as a routine depictive procedure. A variety of fortuitous, inclined caseload into contrail plea are rather than to refine its trial procedure as system was doing. Plea bargaining was unknown story of the common law.²⁷ Only in the nineteenth significant evidence of the practice in either England findings beckon to legal historian for explanation. In bargaining has become the primary procedure through of the vast proportion of cases of serious crimes. How a law procedure function for so many centuries with so prevalent and seemingly so indispensable?

in and Guilty Plea Juxtaposed

It is noted that there are several options open to accused in criminal trials. These options include the following:

jurisdiction of the court²⁸

close relationship between plea bargains and guilty of plea bargains is what we have been discussing so this work. It is also necessary for us to now consider nature of guilty pleas. A guilty plea is a formal by the defendant as to his guilt of having committed

and Courts in Surrey: 1736-1753", in J. S. Cocburn (ed)

so raise special defences like *autrefois convict*, *autrefois*

the criminal act for which he is charged. Not all guilty pleas result from plea bargains, but plea bargains generally result in guilty pleas. Plea bargains come in a variety of forms but generally involve an exchange of concessions from the state for the defendant's guilty plea.²⁹ It is very important to keep in mind that plea bargaining does not include the elimination of all guilty pleas. Guilty plea has been said to be an accused person's formal admission of having committed the charged offense. A guilty plea is usually part of a plea bargain. It must be made voluntarily, and only after the accused has been informed of and understands his or her rights. A guilty plea ordinarily has the same effect as a guilty verdict and conviction after a trial on the merits.³¹

Plea bargaining is not a simple expediency. It may approximate (although it cannot equal) the outcome of the adjudication but at lower cost. The Supreme Court of the United States of America has been mercifully frank in explaining why it feels obliged to treat plea bargaining as "an essential component of the administration of justice ... if every criminal charge were subjected to a full scale trial, the States and the Federal Government would be subjected to multiply by many times the number of judges and court facilities".³²

5.0 The Practice of Plea Bargaining in Nigeria

The Economic and Financial Crimes Commission (EFCC) was arguably the first prosecuting body to introduce plea bargain to Nigeria. This was first noticed in some of the high profile prosecutions in which the accused persons were allowed to enter guilty pleas to lesser charges after they had agreed to forfeit all or all of the assets acquired with the funds they stood accused of misappropriating to the State. Thus several persons who based upon the misappropriations in the initial charges preferred against them could have been sentenced to several years of imprisonment.

²⁹See Alschuler, A.W.: "Plea Bargaining and Its History", (*Supra*)

³⁰Alubo A.O, *op cit.* at p. 7.

³¹Garner B., *op cit.* at p. 1171.

³²272 U.S. 451.

base the determination of whether to negotiate on the liable standard such as race, religion, or some other
ons²¹.

gain may take the form of a charge bargain or a charge bargain, the prosecutor will agree to drop counts of a charge for a less serious offense in of guilty to the lesser charge. An instance of this is decides to substitute a charge of murder which in andatory sentence of death for the lesser charge of upon conviction attracts between imprisonment for imprisonment. In a sentence bargain, the prosecutor a light sentence for the accused person in exchange the Charge. There is also what is known as a Fact prosecutor agrees to leave out certain facts in the use if the accused will not contest some other clearly ed facts²².

cture, it suffices to say that the most preferred en by Alschuler, A.W, which sees plea bargaining

ndant's agreement to plead guilty to a charge with the reasonable expectation of some consideration from the State.²³

le enough to cover both charge bargain and sentence dium, plea bargaining is an arrangement, informally e prosecutor makes concessions or overtures to an

²¹ Bargaining, op. cit effect of plea bargain in criminal prosecution in Nigeria', ewspaper (Nigeria 2 April 2012), found at dex.php/columns/afe-babalola-on-monday/, Accessed

'Plea Bargaining and Its History' (1979), 79 Colum. L.

accused person that certain charges or sentences would be eliminated or made lighter if the accused admits guilt.²⁴

3.0 Historical Development of Plea Bargaining

The origins of plea bargaining are only traced to the early nineteenth century when the adversarial system of adjudication evolved rapidly. The introduction of lawyers and the jury system brought some form of complexity to the criminal justice system which before then had seemed to enjoy a bit of simplicity. This necessitated a need for the development of a system that would bring about a speedy determination of criminal cases, in the form of guilty pleas, in appropriate cases. With the passage of time, Plea bargains became a common place in several jurisdictions. Oren Gazal-Ayal and Limor Rishbeth of the University of Haifa state that about 95% of the convictions in the United States of America are as a result of Plea bargains. In England and Wales, trials in Magistrates Courts only 8% of cases go to trial. The rest are resolved by Plea bargains. In the Crown Courts only 14.3% go to trial while 61.3% are resolved by Plea bargains²⁵.

Plea bargaining was not favored in colonial America. In fact, courts actively discouraged defendants from pleading guilty. Courts gradually accepted guilty pleas in the nineteenth century. As populations increased and court procedural safeguards increased, courts became overcrowded, and trials became lengthier. This made trial in every case an impossibility. By the twentieth century, the vast majority of criminal cases were resolved with guilty pleas. In the early 2000s, plea bargaining was conducted in almost every criminal case, and roughly nine out of ten plea discussions yield plea agreements.²⁶

²⁴ Alubo A.O.: "Plea Bargain and the Anti-Corruption Crusade in Nigeria", *University of Jos Law Journal*, Vol. 8, No 2, September, 2009 at p. 11.

²⁵ Afe B., 'Legality and effect of plea bargain in criminal prosecution in Nigeria', *Nigerian Tribune Newspaper* (Nigeria 2 April 2012), found at <http://tribune.com.ng/index.php/columns/afe-babalola-on-monday/>, Accessed 29/5/2013

²⁶ Plea Bargaining: A shortcut to justice, found at <http://legal-dictionary.thefreedictionary.com/Plea+Bargaining>, Accessed 13/08/13

defined as: criminal arrangement whereby the accused agrees to plead guilty to one or some in return for the prosecution agreeing to lesser charges or a summary trial.¹⁴

It has been defined as: a negotiated agreement between the prosecutor and the defendant whereby the defendant agrees to plead guilty to a lesser offence or to one of several charges in exchange for some concession from the prosecutor, usually a more lenient sentence or the dismissal of other charges.¹⁵ Also termed *plea agreement*; *negotiated plea*.

It is defined as: a case whereby the accused and the prosecutor agree to a mutually satisfactory arrangement whereby the defendant pleads guilty to a lesser offence or to only one or some of the charges in return for a multi-count indictment in return for a sentence less than that possible for the graver offence.¹⁶

It can be seen as the process of negotiation between the prosecutor and the defendant in a case involving the defendant's agreement to plead guilty to a lesser offence or to only one or some of the charges in return for a multi-count indictment in return for a sentence less than that possible for the graver offence.¹⁶

¹⁴ *Black's Law Dictionary* 2nd Ed. (Jos: Greenworld Publishing Co. 1991), p. 403.
¹⁵ *Black's Law Dictionary*, 7th ed. (St. Paul Minn: West Publishing Co. 1999), p. 1173.
¹⁶ *Black's Law Dictionary*, (5th Edition, West Publishing Co., 1979), p. 1173.

guilty in return for the prosecutor's concession reducing either the sentence or the seriousness of the charge.¹⁷

Plea bargaining is a non-trial mode of courtroom transaction that consists of an exchange between prosecution and defense in criminal cases. In exchange for a guilty plea, the defendant receives dispositional concessions from the state. The state, in turn, gets cases processed expeditiously with minimal expenditure of legal trial.¹⁸ As an alternative to a trial mode of procedure, plea bargaining presents itself as an economical method of criminal justice. It provides the means of disposing of cases with less expenditure of time and money than full-scale trial.¹⁹

Generally, a judge will authorize a plea bargain if the defendant makes a knowing and voluntary waiver of his or her right to a trial, the defendant understands the charges, the defendant understands the maximum sentence he or she could receive after pleading guilty, and the defendant makes a voluntary confession, in court, to the alleged crime. Even if a defendant agrees to plead guilty, a judge may decline to accept the guilty plea and plea agreement if the charge or charges have no factual basis.

The judge does not participate in plea bargain discussions.²⁰ Prosecutors have discretion whether to offer a plea bargain. However, a

¹⁷ U.S. History Encyclopaedia: found at <http://www.answers.com/topic/pleabargain>? Accessed 14/8/2010. However, this definition seems unsatisfactory as it seems to suggest that an accused person stands to face only one charge. In actual sense, an accused person may face multiple charges during criminal trials.

¹⁸ Feeley, M. 'Perspectives on Plea Bargaining', *Law and Society Review* (1999) 13: 199-209.

¹⁹ Plea agreements also provide quick relief from the anxiety of criminal prosecution because they shorten the prosecution process.

²⁰ 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, the Judge staying neutral for plea bargains is a herculean task.

from natural law is man-made and allows several the exceptions is the concept of plea bargaining. On *riah* law is a divine law with an immutable legal code. t have tagged anything as equality before the law but ncomparable with the common law concept in its

in the Glorious Quran apply wholly to the Prophet) and his followers alike. This can be seen in the ig the verse of the Quran that nobody including the regarded as a sacred cow. Quran clearly states that: ind! We created you from a single (pair) le and made you unto nations as tribes, may know each other (not that ye may each other) verily the most honorable of in the sight of God is he who fears Him

obtains in Islamic law courts should be taken as a next Abbasid Caliph, Mansour, hired numbers of Hajj. On his return he made a series of excuses as aying them. The camel drivers took the Caliph into ge summoned him and sat him alongside the camel ad heard the evidence he judged against the Caliph, to pay the camel drivers what he owed them before ave the court.¹⁰

tion, Islam as an encompassing religion left no stone man affair-mundane and spiritual. It is a direction from the knowing, All-seeing and All-Hearing. Islam treats every there is no division between the ruled and the ruler.

it of Islam alluded to this verse when he said there is no over non-Arab and vice-versa.

his assertion, Haroun-al-Rasheed, the Abbasid Caliph, had a court before a judge, and his servant Fazl bin Rabee' ur. The judge refused to accept Fazl's testimony. The now why. The judge replied: "Fazl himself says he is your

When litigants are all secure in the knowledge that the laws by which their case will be judged are based on eternal principles revealed by God Himself, and that therefore the powerful cannot swing judgment in their own favour, and when the judge has principles of judgment to go on which enable him with a detached impartiality to seek his guidance from the law of God in total freedom from any emotional bias; the law is observed and respected, injustices are cut out, certainty and security reign in society and bring trust and confidence in their train.¹¹

Islam does not aim to level men down, but to level them up to an equality on the highest level, where true affection and the real love of one's fellowmen call the tune - a unity of heart based On a unity of faith in the one God, Who is Maker of all and Judge of all, and Who makes no distinctions save those of obedience between one of His creatures and another.¹²

2.0 The Concept of Plea Bargaining

No standard definition of plea-bargaining exists among practitioners¹³. The definition of "plea bargaining" varies depending on the jurisdiction and on the context of its use. However, to understand the core problems of plea bargaining, it is quite necessary that we must first settle on some working definitions that encompass the broad range of practices that can adequately come within the legal regime of plea bargaining.

servant. If he is telling the truth, the Islamic court does not accept a servant's testimony to the advantage of his master. If he was lying, his testimony is void on that account." Sayyid M. M. 'Equality Before the Law' <http://alseraj.net/maktaba/kotob/english/Fiqh/IslamicLaw/islam/articles/equality.htm> Accessed 9/2/2016

¹¹ Sayyid M. L, 'Equality before the law', <http://home.swipnet.se/islam/articles/equality.htm>. Accessed 26/5/2013

¹² Ibid

¹³ The controversy surrounding the appropriateness or otherwise of the concept of Plea bargaining is one of the factors that call for different definition and interpretation by lawyers, legal luminaries and scholars.

ing is widely used in the criminal justice system, yet plea agreements are troublesome because they are a victory for all involved. Prosecutors are loath to nals lighter sentences than those authorized by law. inal defendants are less than enthusiastic over the dmitting criminal behaviour without the benefit of a servations of the parties, plea agreements resolve every ten criminal cases¹. The sheer numbers have bservers to question the propriety of rampant plea

argains allow cases to move quickly through the m to be advantageous to all parties involved, their tem is highly contentious. One reason this is a because it allows criminals to face lesser charges or severe crimes. In this way, justice is not really a bargains are also controversial because many say U.S. justice system to the negotiation skills of an and do not allow due process to determine true

plea bargains are controversial is that they ask a eral of his or her rights—namely, the right to not ight to a jury trial and the right to confront and ccuser(s). This is a concern because it is often

over plea bargains, they are widely used in the U.S. % of the felony convictions in the U.S. are from guilty % of felony cases actually go to trial. While this helps n court system and makes the legal process more the best interest of true justice.

ary.thefreedictionary.com/Plea+Bargaining. Accessed

Bargain?' <http://www.criminalinfonetwork.com/plea-ist2013>.

uncertain if suspects know the rights they are waiving and if they are doing so voluntarily⁴.

However, its efficiency in handling heavy caseloads has made American Criminal Courts dependent on plea bargaining as a matter of economic necessity. Many countries are fast following suit and Nigeria, which has no statute permitting or prohibiting same is not left behind as some notable cases have been decided by an agreement reached by the accused and the prosecutor⁵.

Given this administrative dependence, judges are encouraged to use plea bargaining to expedite case processing⁶. However, critics charge that plea bargainer is a triumph of administrative and organizational interests over justice. They argue that plea bargaining deprives the accused of a constitutional right to trial by an impartial jury or judge⁷. Out of prosecutorial and judicial eagerness to dispose of the cases, it penalizes an innocent person who pleads guilty to avoid the risk of severe punishment, while granting 'undue leniency' to a guilty person who pleads guilty.

Common law and *shariah* law seem *ad idem* that there must be equality of persons before the law. However, the two sets of law diverge on the essential fact that the common law concept of equality before the

⁴For example, a suspect that is innocent of a criminal charge may choose to plead guilty to receive a lighter sentence if they are lead to believe they do not have enough evidence to support their innocence. When this happens, it is a gross misuse of the criminal justice system that causes innocent people to pay criminal penalties and secure a criminal record that will follow them for the rest of their lives (see *How Will Pleading Guilty to a Felony affect Your Life*).

⁵ The cases of the former Governor of Bayelsa State, Alamaseigha and Tafa Balogun, the former Inspector General of Police, Former Governor of Enugu State Chimaroke Nnamani are examples.

⁶Heurmann, M. and Loftin, C. (1998): 'Mandatory Sentencing and the Abolition of Plea Bargaining: The Michigan Felony Firearm Statute', *Law and Society Review* 13: 393–430.

⁷ Atkinson, J.M. (1992): 'Displaying Neutrality: Formal Aspects of Informal Court Proceedings' in P. Drew and J. Heritage (eds) *Talk at Work: Interaction in Institutional Settings*, pp. 199–211. Cambridge: Cambridge University Press.

PLEA BARGAINING: THE ISLAMIC LAW PERSPECTIVE

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Abstract

This paper discusses the concept of plea bargaining in the context of the Nigerian legal system. It considers different definitions so as to bring about the proper understanding of the concept. It also considers the historical development of the concept and its inception into the Nigerian legal system. Since its introduction to the Nigerian criminal justice system, there have been divergent views on the application of plea bargaining. Critics are of the opinion that the concept is dubious and would aid corruption, while those in support are of the view that it assists in the disposing of cases with less expenditure of time and money than full-scale trial. This paper goes further to examine the relationship, if any, between Common law and Islamic law on the application of the concept of plea bargaining and argues that the concept is non-existent in Islam as it is meant to do more harm to justice than good. This paper considers in brief the commission and punishment for a crime under Islamic law and posits that Islam seeks to ensure that there is just and proper dispensation of judgement without fear or favour. Islamic law sees the concept of plea bargaining as self-deceiving, biased and aimed at thwarting the cause of justice. This paper therefore concludes by asserting that plea bargaining is an irregularity and favouritism found at common law, and which makes the enforcement of justice a mirage.

Keywords: Plea Bargaining, Islamic Law, Guilty Plea, Nigeria

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