THE CRIMINAL PROCESSES AND PLEA-BARGAINING IN NIGERIA*

Abstract

The plea-bargaining process is a commendable prosecutorial device to resolve political corruption cases, without the rigors of adversarial trials. However, because plea-bargaining operates against the backdrop of the extant laws and socio-political conditions in any given society, the device must be facilitated by a criminal process that overcomes these conditions. The legal and socio-political conditions peculiar to Nigeria include abuse of prosecutorial discretion, political interference, and the overbearing influence of politically exposed persons who have ways and means to thwart criminal prosecutions. Consequently, it is difficult for any of the known models of the criminal process to effectively facilitate a plea-bargaining process which establishes the truth of charges to avert the likelihood of convicting the innocent and determine appropriate and proportional penalties. Hence the need for a new model of criminal process that will facilitate an effective plea-bargaining process in Nigeria, with integrity.

Keywords: Criminal processes; Plea-bargaining; Political interference.

1. Introduction

The effectiveness of any administration of criminal justice system depends considerably on the criminal process that drives it. Ashworth and Redmayne[1] recognised that the criminal process is one of the mechanisms which States use to apply substantive criminal laws on the citizens. It is a fundamental part of the system of administration of criminal justice which also includes, amongst other things, agencies and institutions of the State like the Police, Judiciary, Prisons, Prosecutors and Public Defenders, and Probation Officers, engaged in the application of substantive criminal laws and sentencing systems. It is important for the adjudicatory process of any administration of criminal justice system to be able to establish the truth of charges; to avoid the likelihood of the conviction of innocent defendants, because the consequent penalty will only impose an unjust burden on the convict, while the failure to convict the guilty is also unjust because they escape the just deserts for their criminal conducts. Both instances ought to be avoided because they detract from the deterrence objective of criminal prosecutions and encourage criminal proclivities.[2] Also, a finding of the truth of charges by a charge adjudication process also provides a basis for the determination of the propriety of sentences. The circumstances surrounding a crime and the antecedents of the alleged offender are brought into focus by the charge adjudication process with the effect that over or under punishment of offenders are averted. However, the ability of the plea-bargaining process to establish the truth of charges in Nigeria is limited by the adverse effects that the extant legal, and socio-political conditions have on the existing models of the criminal process. We shall review the operation of all the existing models of the criminal process against the background of these legal and socio-political factors that are peculiar to Nigeria's administration of criminal justice system. Thereafter, we shall determine the model of criminal process that may facilitate a plea-bargaining process in Nigeria that establishes the truth of charges in a manner that has integrity, public support, and confidence, especially in respect of political corruption cases.

2. The Models of Criminal Process

After the publication of the 'Two Models of the Criminal Process'[3] other models of the criminal process have been postulated. As a result, other than the Crime Control and Due Process models advanced by Herbert Packer, there are: The Family Model;[4] The Punitive Model of Victims' Rights and a Non-Punitive Model of Victims' Rights,[5] and The Amnesty Model.[6]

***By Robert OSAMOR,** Formerly Deputy-Director General, and Head of Augustine Nnamani Campus, Nigerian Law School. Email: bobosamor2@yahoo.com.

[1] A Ashworth, M Redmayne, *The Criminal Process* (5th edn, Oxford University Press 2019).

[2] R L Lippke, *The Ethics of Plea-Bargaining* Oxford University Press, 2011, 217.

[3] H Packer, 'Two Models of the Criminal Process' *University of Pennsylvania Law Review*, vol. 113, no. 1, 1964, 1–68. <www.jstor.org/stable/3310562> accessed 13 Sept. 2020.

[4] J Griffiths, 'Ideology in Criminal Procedure or A Third 'Model' of the Criminal Process' *The Yale Law Journal*, vol. 79, no. 3, 1970, 359–417. <www.jstor.org/stable/795141> accessed 13 Sept. 2020.

[5] K Roach, 'Four Models of the Criminal Process' *The Journal of Criminal Law and Criminology* (1973-), vol. 89, no. 2, 1999, 671–716. <www.jstor.org/stable/1144140> accessed 13 Sept. 2020.

[6] Transitional justice as a criminal process is applicable during regime changes from authoritarian to democratic rule, and in post-conflict reconstruction. The mechanisms of transitional justice include truth and reconciliation commissions; trials; vetting processes intended to hold perpetrators accountable; victim-oriented restorative justice processes; reparations; monuments; public memory projects and amnesties. See Tricia D Olsen and others 'Transitional Justice in the World, 1970-2007: Insights from a New Dataset' *Journal of Peace Research*, vol. 47, no. 6, Nov. 2010, 803–809, doi:10.1177/0022343310382205.

The Crime Control and Due Process Models

Herbert Packer,[7]in his seminal work on the criminal process postulated that beyond the ideology of the criminal law such as the nature and purposes of criminal punishment, there is the process of the criminal law, which has a significant impact on matters that border on the propriety and effectiveness of the punishments for crimes. Packer observed that criminals appear to share the prevalent impression that punishment for crimes is an avoidable unpleasantness; and that if they are arrested, they often deny culpability and are uncooperative with the police. When put on trial they would do everything within their means to avoid conviction. That even after conviction they persist, through appeals, to avoid imprisonment. This course through arrest, trial, conviction, and appeal, during which the defendant strives to deny culpability while the prosecutor equally strives to prove his guilt, encompasses all the activities that operate during the State enforcing substantive criminal law and the defendant's efforts to avoid liability, which is called the criminal process.[8] Packer[9] advanced two models of the criminal process; crime control and due process models. The crime control model 'is based on the proposition that the repression of criminal conduct is by far the most important function to be performed by the criminal process'.[10] This model is primarily concerned with efficiency based on the high rate of apprehension, conviction, and severity of penalties, with emphasis on speed and finality. To achieve this, the crime control model relies on swift; precise; and methodical administrative determination of guilt process by the Police and Prosecutors. Any interference with this administrative determination of guilt and penalty process ought to be moderate in order not to inhibit the primary goal of the crime control model, which is the repression of criminal conduct, quickly, accurately, and efficiently.

Conversely, the due process model emphasises an efficient administration of criminal justice system dedicated to the protection of the pre-eminence of the accused persons' right to, access to justice, the presumption of innocence, free and fair public trial, and equality before the law; against the likelihood of the abuse of the coercive powers of the state to prosecute crimes.[11] To achieve this, the due process model relies on trial adjudication, despite its tedious processes, such as the application of the doctrine of legal guilt, which means that a person who is seemingly guilty on the facts of the case is still presumed to be innocent until proven guilty according to law. Accordingly, every accused person is still presumed innocent until he has gone through the regular procedures for proving guilt, within a reasonable time, before a court of competent jurisdiction, where all the safeguards to fair hearing were duly observed, and he is not exposed to double jeopardy or denied any legal immunities. The primacy of the presumption of innocence and the resultant trial adjudication is also aided by the ideal of equality. The quality of Legal Representation is a significant factor in the adjudication process; therefore indigent defendants are often disadvantaged. The ideal of equality makes it obligatory for the State to ensure that poverty does not hinder any person's capacity to defend himself.[12] The two models (Crime Control and Due Process) are not mutually exclusive because both are concerned with the fundamental goal of the criminal justice system, the repression of criminal conduct. However, while the former emphasises swift; precise; and methodical system of repressing criminal conduct, the later requires that only the blameworthy should be punished by setting boundaries that should not be crossed in the pursuit of the goal of crime repression.[13] While none of them is ideal, they are two models that are equally relevant in the administration of the criminal justice system.[14] Between them, criminal procedure, as it is or might be, is a compromise determined by a continuous interplay between the two models. Herbert Packer concludes that the two models are *'*extremes*'* of values represented at the equilibrium, while the values at the equilibrium are determined by the daily application of the criminal process which involves a constant interplay and adjustments, as the models compete.[15] Notably, both models accommodate guilty pleas and plea-

[7] H Packer, 'Two Models of the Criminal Process' *University of Pennsylvania Law Review*, vol. 113, no. 1, 1964,1–68. <www.jstor.org/stable/3310562> accessed 13 Sept. 2020.

[8] H Packer, 'Two Models of the Criminal Process' *University of Pennsylvania Law Review*, vol. 113, no. 1, 1964, 2. <www.jstor.org/stable/3310562> accessed 13 Sept. 2020.

[9] Ibid. 1–68.

[10] Ibid. 1–68.

[11] Ibid. 16-22.

[12] Ibid. 166-170. See also J Griffiths, 'Ideology in Criminal Procedure or A Third 'Model' of the Criminal Process' The Yale Law Journal, vol. 79, no. 3, 1970, 359–417, P. 361, www.jstor.org/stable/795141 accessed 27 Mar. 2021; David Smith, 'Case Construction and The Goals of Criminal Process' *The British Journal of Criminology*, vol. 37, no. 3, 1997, 319–346, at 337. www.jstor.org/stable/23637944 accessed 13 Apr. 2021.

[13] H Packer cited in D Smith, 'Case Construction and The Goals of Criminal Process' *The British Journal of Criminology*, vol. 37, no. 3, 1997, 319–346, at 335. <www.jstor.org/stable/23637944> accessed 13 Apr. 2021.

[14] H Packer cited in Smith, 'Case Construction and The Goals of Criminal Process' *The British Journal of Criminology*, vol. 37, no. 3, 1997, 319–346, at 335. <www.jstor.org/stable/23637944> accessed 13 Apr. 2021.

[15] H Packer, 'Two Models of the Criminal Process' *University of Pennsylvania Law Review*, vol. 113, no. 1, 1964, 153. <www.jstor.org/stable/3310562> accessed 13 Sept. 2020. Also cited in John Griffiths, 'Ideology in Criminal Procedure or A Third 'Model' of the Criminal Process' *The Yale Law Journal*, vol. 79, no. 3, 1970, 359–417, at 361, www.jstor.org/stable/795141 accessed 27 Mar. 2021.

bargaining because of their well-defined social benefits of resolving criminal prosecutions before trial, while saving costs and judicial time. Within their inherent bias, the Crime Control Model accommodates guilty pleas and plea bargain without safeguards to fair hearing while the Due Process Model accommodates plea-bargaining only to the extent that it complies with fair hearing safeguards.[16] Herbert Parker's conception of due process is based on American jurisprudence and circumstances, although it resonates in many other jurisdictions.[17] Due process in this case is an antidote against the often likelihood of the abuse of the coercive powers of the state to prosecute crimes, as such it concerns itself with trial due processes[18] However, the Due process Model of criminal process has not been able to successfully facilitate the process of plea bargaining in Nigeria because of the status of the defendants, political interference in criminal prosecutions and the way and manner that the exercise of prosecutorial discretions is prone to abuse. Plea-bargaining must entail a guilty plea and consequently a conviction.[19] Therefore, defendants who plea-bargain are without the due process safeguards of the presumption of innocence, right to call or cross-examine witnesses etc. because of their guilty plea.

In Nigeria, a lot of due process rights are not only already voluntarily forfeited by the defendant's guilty plea, but whatever is left of due process rights such as right to counsel is compromised by political interference, abuse of prosecutorial discretions, and the undue influence of politically exposed defendants. Furthermore, even the already compromised plea-bargained convictions form the basis of the defence of double jeopardy to subsequent criminal charges against the defendants.[20] As a result, plea-bargaining rather than act as an antidote to excessive state power and discretion in the criminal process exercised against the interests of the defendant, it aids the guilty to escape just deserts in addition to retaining most of their loot. In a celebrated case,[21] which is reminiscent of several others,[22] a former Governor under the People's Democratic Party (PDP) was arraigned on a 42-count charge of laundering 19.2-billion-naira.[23] Soon thereafter, he defected to the All-People's Congress (APC) which eventually won the 2015 presidential elections.[24] The same year all the charges against him were discharged, without plea.[25] Furthermore, the 48 properties that he had forfeited to the government, upon a plea bargain in respect of the earlier 42 count charge of laundering 19.2 billion naira, were returned to him by the EFCC.[26] Not done, the APC led government nominated him as a minister of the Federation.[27] This circumstantial evidence of political interferance is further re-enforced by the fact that yet another former Governor, Godswill Akpabio, who allegedly committed sundry offences of political corruption is also currently a Minister of the federation.[28] In a bizarre twist of faith, the current A-G of the Federation who ordered the prosecution of the former Governor and the Prosecutor who conducted the case against him, are all currently Ministers in the same Cabinet.[29] These politically exposed

[16] J Griffiths, *'*Ideology in Criminal Procedure or A Third 'Model' of the Criminal Process*.' The Yale Law Journal*, vol. 79, no. 3, 1970, 359–417 at 396. JSTOR, www.jstor.org/stable/795141. Accessed 20 July 2021.
[17] Ibid. 360.
[18] H Packer, *'*Two Models of the Criminal Process*.' University of Pennsylvania Law Review*, vol. 113, no. 1, 1964, pp 16-22. JSTOR, www.jstor.org/stable/3310562. Accessed 13 Sept. 2020.
[19] *Ijire v FRN* (2020) LPELR-51242 (CA) 20-25; *PML Nigeria Limited v FRN* (2018) LPELR-47993 (SC).
[20] Constitution of the Federal Republic of Nigeria (1999 as amended s 36(9); *FRN v Igbinedion* (2014) LPELR-22766 (CA); [2014] All F.W.L.R. Pt.734 101; *PML Nigeria Limited v FRN* (2018) LPELR-47993 (SC); *Agbi v. FRN* (2020) LPEMLR-50495 (CA).
[21]Sahara Reporters, 'EFCC Blames Justice Muhammed and Adeniyi Ademola , Ex-Gov Sylva Recovered Properties'(Sahara Reporters 4 Sept 2017) <http://saharareporters.com/2017/09/04/efcc-blames-justice-ar-muhammed-and-adeniyi-ademola-ex-gov-sylva-recovered-properties> accessed 29 July 2020.
[22]*F R N v Esai Dangbar* (2012) LPELR-19732(CA); *FRN v Alamieyeseigha* (2006) 16 NWLR Pt. 1004; *FRN v Lucky Igbinedion,* Charge No FHC/EN/6C/2008; *FRN v Tafa Balogun* (2005) 4 NWLR (Pt. 324) 190; *FRN v Ibru* Charge No. FHC/L/297C/2009.
[23] Sahara Reporters, 'EFCC Blames Justice Muhammed and Adeniyi Ademola , Ex-Gov Sylva Recovered Properties'(Sahara Reporters 4 Sept 2017) <http://saharareporters.com/2017/09/04/efcc-blames-justice-ar-muhammed-and-adeniyi-ademola-ex-gov-sylva-recovered-properties> accessed 29 July 2020.
[24] S Adeyeye, 'Ex-Gov Sylva Denies Dumping APC for PDP' (The Pulse 25 Oct 2018) <www.pulse.ng/news/politics/ex-gov-sylva-denies-dumping-apc-for-pdp/1srcr99> accessed 29 July 2019.
[25] Sahara Reporters, 'EFCC Blames Justice Muhammed and Adeniyi Ademola , Ex-Gov Sylva Recovered Properties' <http://saharareporters.com/2017/09/04/efcc-blames-justice-ar-muhammed-and-adeniyi-ademola-ex-gov-sylva-recovered-properties> accessed 29 July 2020.
[26]EniolaAkinkuotu, 'Why Ex-Gov Sylva Recovered 48 Houses- EFCC' (The Punch 4 Sept 2017) <https://punchng.com/why-ex-gov-sylva-recovered-48-houses-efcc/> accessed 29 July 2020.
[27] Sahara Reporters, 'Ministerial List More Details About Buhari's Nomination' (Sahara Reporters 23 July 2019) <http://saharareporters.com/2019/07/23/ministerial-list-more-details-about-buharis-nomination> accessed 29 July 2020.
[28]A R A Shaban, 'Nigeria's New Cabinet Inaugurated, President Remain Petroleum Minister' (Africa News 21 Aug 2019) <www.africanews.com/2019/08/21/nigeria-s-new-cabinet-inaugurated-president-remain-petroleum-minister//> accessed 22 August 2020.
[29]E Egbejule, 'Nigeria New Cabinet, Old Wine Cracked Bottles'(The Africa Report 22 Aug 2020) <www.theafricareport.com/16460/nigeria-new-cabinet-old-wine-cracked-bottles/> accessed 22 August 2020.

persons, who are the main culprits of political corruption and money laundering crimes and as such financially enamoured, have benefited from plea bargaining to the neglect of other crimes and the detriment of the administration of criminal justice system. This situation renders any plea-bargaining process that is driven by the Due Process Model of criminal process prone to failure in Nigeria because the defendants, whose rights the Due Process Model seeks to protect, are also the main culprits who manipulate due process to their advantage.[30]

On the contrary, the plea-bargaining process finds easy expression in the crime control model. The effectiveness of the Crime Control Model relies on a quick; accurate; and efficient administrative fact-finding role carried out by police and prosecutors, which ordinarily makes it ideal for plea-bargaining. However, because plea-bargaining is driven by an administrative determination of guilt process, all the processes leading to the plea agreement is commenced and completed pre-trial, which means that other than conviction all the other outcomes are determined by the exercise of administrative discretion, which easily distorts the truth of charges. In Nigeria, the plea-bargaining process has been the basis for the resolution of numerous cases of political corruption.[31] However, although these convictions apparently represent effective crime control measures, they lack integrity because they are associated with the abuse of the prosecutorial discretion, political interference, and undue influence by politically exposed defendants, and thus consciously conflict with the declared aims and considerations for plea-bargaining.[32] A fundamental consideration for plea-bargaining is that it is done with due regards to the 'interest of justice, the public interest, public policy, and the need to prevent abuse of legal process'.[33] Meanwhile, the public interest, which is more significant than any other consideration in the exercise of prosecutorial discretion,[34] was evidently not the basis for the decision to plea-bargain in the cases of *FRN v Tafa Balogun*,[35] *F.R.N v Igbinedion*,[36] *F R N v Esai Dangbar,*[37] *FRN v Diepreye Alamieyesegha*,[38]where, in addition to overly lenient sentences, only paltry fractions of the proceeds of crime were recovered. Furthermore, the fact that in Nigeria the exercise of discretion by the Attorneys-General in plea bargaining cannot be challenged in any court of law renders any plea-bargaining process driven by the Crime Control Model prone to abuse.

The Family Model

The proponent of the Family Model of criminal process, John Griffiths,[39] argues quite convincingly that Herbert Packer's two models do not exhaust all the possibilities of a criminal process; that the credibility and approval of their validity relies on the fact that both models aptly depict the different and competing schools of thought within the American basic ideology of criminal procedure. After a review of both models Griffiths concluded that Herbert Packer put forward one model of criminal process with two faces or bias -the Battle Model, that the primary purpose of the criminal process is to ensure that the guilty is convicted and the protagonists (combatants) in this endeavour are the accused person and the State; that Packer's models only reflect bias in favour of these competing interests accordingly; either as the crime control model which is biased in favour of the States effort to prosecute and convict the defendant as quickly as possible or the due process model which upholds the pre-eminence of the accused persons' right to due process safeguards.[40] Consequently, Packer's models are either an *'*assembly line*'* which is largely concerned with efficiency or an *'*obstacle course*'* which places emphasis on fairness and quality

[30] *F R N v Esai Dangbar* (2012) LPELR-19732(CA); *FRN v Alamieyeseigha* (2006) 16 NWLR Pt. 1004; *FRN v Lucky Igbinedion*, Charge No FHC/EN/6C/2008; *FRN v Tafa Balogun* (2005) 4 NWLR (Pt. 324) 190; *FRN v Ibru* Charge No. FHC/L/297C/2009.

[31] *FRN v Tafa Balogun* (2005) 4 NWLR (Pt. 324) 190; *F.R.N v Igbinedion* [2014] All FWLR Pt.734, 101; *F R N v EsaiDangbar* (2012) LPELR-19732 (CA); *FRN v Alamieyesegha* (2006) 16 NWLR Pt. 1004; *F.R.N v Ibru* [Unreported] Charge No. FHC/L/297C/2009.

[32] The aims of plea-bargaining as stated in section 270 ACJA 2015 are that it may be resorted to where the evidence is insufficient to prove the offence beyond reasonable doubt; the defendant has agreed to return the proceeds of the crime or make restitution; or the defendant has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders, and the prosecutor is of the view that a plea bargain is in the interest of justice, the public interest, public policy and the need to prevent abuse of legal process.

[33]CFRN 1999 (as amended) ss 174(3) and 211(3); *State v Ilori* (1983) I S.C.N.L.R. 94.

[34] V Colvin, 'The Riddle of Prosecutorial Discretion' 140, *The Evolving Role of The Public Prosecutor- Challenges and Innovations,* Routledge 2020*;* Kumaralingam Amirthalingam, *'*Prosecutorial Discretion and Prosecution Guidelines.*'* *Singapore Journal of Legal Studies*, National University of Singapore (Faculty of Law), 2013, 50–75, 58, http://www.jstor.org/stable/24872179.

[35] [2005] 4 NWLR (Pt. 324) 190.

[36] [2014] All FWLR (Pt.734) 101.

[37] (2012) LPELR-19732 (CA).

[38] [2006] 16 NWLR (Pt. 1004).

[39] J Griffiths, 'Ideology in Criminal Procedure or A Third 'Model' of the Criminal Process' the Yale Law Journal, vol. 79, no. 3, 1970, 359–417. <www.jstor.org/stable/795141> accessed 13 Sept. 2020.

[40] H Packer, 'Two Models of the Criminal Process' *University of Pennsylvania Law Review*, vol. 113, no. 1, 1964, 16-22. <www.jstor.org/stable/3310562> accessed 13 Sept. 2020.

assurance; both with the common purpose of putting a defendant in jail. He concludes that the two models are two sides of the same coin; a 'Battle Model' that may incline to one bias or the other. That whether Packer proffers the models as two or one, the important thing that is liable to change is 'the balance of advantage'.[41]

However, based on 'an assumption of reconcilable-even mutually supportive-interests, a state of love'[42] Griffiths proposed the family model of criminal process. For him, family is a societal unit made up of members who are bound by a common interest and love for one another, despite which offending members may be subjected to occasional punishments. The proposed Family Model, which is concrete and reconciliatory, will require a change in the perception/conception of Crime and of the Criminal. With the assumption that just as offending family members are eventually reconciled with other family members, the State will also eventually be reconciled with the accused/ convicted. The family model will not treat offences or suspects without regards to other factors, which is the common practice in the criminal process. Accused or convicted persons will only be people who because they are deemed to have offended are exposed to the criminal process rather than a unique set of individuals who have by their offence activated a special relationship with the State, after all everybody has a potential to offend. The Family Model will also engender a change in attitudes towards the parties to criminal proceedings. The perceived conflict between the prosecutor and the defendant in Herbert Packers models easily leads to the assumption that any discretion or responsibility, beyond the Judges role as an umpire, will necessarily be exercised either in favour of the State or the defendant. After all any man who wields power is likely to abuse it. Therefore, for the proposed Family Model to work there must be an assumed basic faith in public officials that if given roles and responsibilities, society can look forward to diligent and judicious performance of those roles, contrary to the proposition that legal procedures are formulated because advertently or inadvertently public officials will misuse them. While it is already established that the A-G and officers in his department to whom he may delegate the exercise his prosecutorial authority[43] cannot be trusted to exercise prosecutorial discretion and perform their other duties without bias, it is even worse with other public officials in Nigeria. A study by the UNODC in Nigeria[44] found that public officers not only request/take bribes to perform their official duties, but they also offered/agreed to some form of bribery to secure employment. In this regard, the study found that more than 15% of public servants covered by the survey admitted to resort to bribery to secure employment in the public service. It is also remarkable that the study found that law enforcement and the judiciary are areas of particular concern because the prevalence/risk of bribery was 46.4% for Polce Officers, 33% for Prosecutors, and 31.5% for Judges.[45] Against this background it is difficult for the family model of criminal process, which relies on an assumed faith in the integrity of public officials, to successfully facilitate a plea-bargaining process that relies on the administrative determination of guilt process, and still determine the truth of charges within such a venal bureaucracy.

The Punitive and Non-Punitive Models

Another learned writer, Kent Roach,[46] also advanced the boundaries of Packer's models to include a bi-focal model of victims' rights, which are the punitive model of victims' rights based on criminal sanctions and punishment, and a non-punitive model of victims' rights with emphasis on crime prevention and restorative justice. Roach argues that although models make it easy to understand the convolutions of criminal justice, because they simplify details and highlight customary issues and tendencies; however, models of criminal process are not like models in the sciences which are empirical and precise. That it is not feasible or advisable to reduce the exercise of discretions by human beings in the criminal justice system, which is a hypothetical but coherent scheme, to only one possible outcome. Therefore, various models are necessary to accommodate manifold types of ideologies and discourses of criminal justice. That while Packer's models advocate that litigation usually ends with a guilty plea or discontinuance, based on the interest of the society in security and order (crime control); or proceed to trial or appeal, regulated by fair trial safeguards (due process), Packer's models did not provide a prescriptive guide to the principles that should determine the criminal law. Furthermore, that Packer's models did not accommodate current ideals and debates about the administration of criminal justice, such as rights of the victims of a crime, class rights, rehabilitation of victims of crime, and restorative justice. Consequently, Roach advocated a new model that is based on different conceptions of victims' rights which will 'offer positive

[41] J Griffiths, 'Ideology in Criminal Procedure or A Third 'Model' of the Criminal Process' *The Yale Law Journal*, vol. 79, no. 3, 1970, 359–417, at 371, <www.jstor.org/stable/795141> accessed 27 March 2021.
[42] Ibid. 371.
[43] Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 174(2); 211(2).
[44] United Nations Office on Drugs and Crime (UNODC), 'Corruption in Nigeria Bribery: public experience and response', July 2017, https://www.unodc.org/documents/data-and-analysis/Crime-statistics/Nigeria/Corruption_Nigeria_2017_07_31_web.pdf Accessed 08 March, 2021.
[45] Ibid.
[46] K Roach, 'Four Models of the Criminal Process' *The Journal of Criminal Law and Criminology* (1973-), vol. 89, no. 2, 1999, 671–716. <www.jstor.org/stable/1144140> accessed 13 September 2020.

descriptions of the operation of the criminal justice system, normative statements about values that should guide criminal justice, and descriptions of the discourses which surround criminal justice'. Such a model will accommodate current ideologies and discourse about cases where the accused and his victims or any class of persons associated with the crime confront each other or cases where the need for rehabilitation or restorative justice brings the accused person and the victims of his crime together. In this regard Roach conceived of two models: the punitive model of victims' rights based on retributive justice that is mindful of the rights of the victims, and the non-punitive model of victims' rights based on prevention and restorative justice rather than victimisation and punishment. The two models are intended to control crime and respect victims' rights. However, while the punitive model of victims' rights relies on criminal sanctions, the non-punitive model of victims' rights focuses on rehabilitation and restorative justice. However, Roach noted that although the two models of victims' rights accommodate current ideologies and discourses about criminal justice, like Packer's models, they too will need to be reviewed against the background of current knowledge, practices, and politics, a process which may well lead to other new models of the criminal process in future.[47] However, Roach's models of criminal process cannot adequately drive the process of plea bargaining, especially in respect of political corruption in Nigeria. The thrust of the non-punitive model of victims' rights is to minimize the pain of both victimization and punishment by stressing crime prevention and restorative justice. Restorative justice seeks to achieve social harmony and peaceful co-existence by reconciling the members of the society who are victims of crimes and the offenders. This healing process is inapplicable to economic and financial crimes in Nigeria where the usual victims are the State or its institutions. In such cases, the imperatives are the recovery of the proceeds of crime as much as possible, with a view to restore the State or its Institutions to their position before the crime; adequate punishment, sufficient to deter other criminals; and the additional incidents of convictions which precludes the convict from future opportunities to re- offend, all which restorative justice cannot achieve.

The Amnesty Model

The response of several countries to intervals of dictatorship or state repression, and armed conflicts and totalitarian rule has been to pursue different processes as mechanisms to resolve past crimes, especially violations of human rights that were committed within the periods in question. The array of processes available to countries in this venture is what makes up the content and purpose of transitional justice. Transitional justice as a criminal process often arises during periods of transitions from authoritarian rule to democracy, or during a post conflict period. The main goal of transitional justice is to facilitate societal closure about, deter re-occurrence, and heal the wounds of the victims of the horrors of the past.[48] The processes of transitional justice include Truth and Reconciliation Commissions; Trials; Vetting; Restorative Justice; Reparations; Monuments; Public Memory Projects; and Amnesties, all of which are intended to make perpetrators admit responsibility for their actions.[49] The grant of amnesty as a model of criminal process may be found in the truth commissions of South Africa,[50] Grenada,[51] Timor Leste,[52] Kenya,[53] and Liberia.[54] The Commissions only had authority to recommend amnesties for certain crimes that were committed during a particular period. Also, amnesty model of criminal process was resorted to several times in Nigeria: immediately after the Nigeria civil war,[55] in the aftermath of the late General Sanni Abacha's dictatorship,[56] and to resolve the subversive activities of the Niger Delta Militants, where amnesty was used to resolve a conflict over resource control.[57] Amnesties are predominantly granted, during or after internal armed conflicts and to dissidents, but not to State Agents. Trials are usually reserved for rebels and former authoritarian actors. The grant of amnesty to perpetrators of human rights abuses and other crimes, without trials, does not contravene the provisions of Constitutions which safeguard human rights or laws that criminalise certain acts or omissions.[58] When a country declares an amnesty, it is a formal acknowledgement

[47] K Roach, 'Four Models of the Criminal Process' *The Journal of Criminal Law and Criminology* (1973-), vol. 89, no. 2, 1999, 671–716, at 676. <www.jstor.org/stable/1144140> accessed 4 April 2021.

[48] T D Olsen et al. 'Transitional Justice in the World, 1970-2007: Insights from a New Dataset' *Journal of Peace Research*, vol. 47, no. 6, Nov. 2010, 803–809, doi:10.1177/0022343310382205.

[49] T D Olsen et al. 'Transitional Justice in the World, 1970-2007: Insights from a New Dataset' *Journal of Peace Research*, vol. 47, no. 6, Nov. 2010, 803–809, doi:10.1177/0022343310382205.

[50] Promotion of National Unity and Reconciliation Act 1995 (South Africa).

[51]The Commissions of Inquiry Act 1990, s 2. The amnesty process is detailed in Truth and Reconciliation Commission, Report on certain political events which occurred in *Grenada 1976-1991*, Volume 1, Part 7 (2001).

[52] United Nations Transitional Administration in East Timor, s 32, Regulation No. 2001/10 on the Establishment of a Commission for Truth, Reception and Reconciliation in East Timor (2001); Terms of Reference for the Commission on Truth and Friendship between Indonesia and Timor Leste (2006) s 14(1)(c).

[53] Truth, Justice and Reconciliation Act 2008 (Kenya) Part 3.

[54] Truth and Reconciliation Commission Act 2005 (Liberia) s 26(g).

[55]The Nigeria/ Biafra civil war started on the 6th of July 1967 and ended on the 15th of January 1970.The war was caused by ethno-religious violence and anti-Igbo pogroms in Northern Nigeria following a military coup and a countercoup. Control over the lucrative oil fields in the Niger Delta also played a strategic role.

[56]The Human Rights Violations Investigation Commission of Nigeria (the Oputa Panel) was created in 1999, with the mandate to investigate human rights violations during the period of military rule from 1984 to 1999 and to work towards unifying communities that were previously in conflict. The commission submitted its final report in 2002, but the report has not been released and no action has been taken by any government to date.

[57] V Ushie, 'Nigeria's Amnesty Programme as a Peacebuilding Infrastructure: A Silver Bullet?' *Journal of Peacebuilding & Development*, vol. 8, no. 1, 2013, 30–44. <www.jstor.org/stable/48603439> accessed 19 March 2021.

[58] In *Brecknell v UK*, (2007) All ER(D) 416 (Nov), para 66, the European Court of Human Rights emphasised that there is no absolute right for the victims of a crime to obtain a prosecution or conviction. While in *Tarbuk v Croatia* (2012) Application no. 31360/10, para 50, the Court acknowledged the fact that a State is justified in enacting any laws that grant amnesty that it might consider necessary, provided that a balance is maintained between the legitimate interests of the State

of the crimes committed by the beneficiaries of the amnesty. The usual expectation is that the public acknowledgement of the crimes may encourage an understanding of the past crimes, affirm the claims of the victims against the perpetrators and engender national reconciliation.[59]

However, the grant of amnesty does not amount to a denial of the fact that the crimes had occurred, therefore future accounts or references to the crimes remain historically true and valid.[60] While I acknowledge the effectiveness of the Amnesty model of criminal process as a device for transitional justice, it does not have traction in the plea-bargaining of political corruption cases because transitional justice as a criminal process applies only during regime changes from authoritarian to democratic rule, and in post-conflict reconstruction. The objective of transitional justice is to prevent reoccurrence, re-enacting, or reliving previous atrocities; discourage subsequent human rights violations; and restore the dignity of citizens victimized by atrocity,[61]as such it is not suitable for systemic and endemic crimes such as political corruption. In all the instances that the amnesty model was used in Nigeria[62] the need for national healing and reconciliation was imperative, unlike the present state of political corruption crimes, which is not after a period of state repression, armed conflict, or totalitarian rule, which may be resolved by a healing process. Also, the amnesty model of criminal process will not be a viable process to facilitate the plea-bargaining process in Nigeria because the criminal offences committed during periods of state repression, armed conflict and totalitarian rule usually involve human rights abuses and sundry offences perpetrated in a bid to prosecute or perpetuate the state repression, armed conflict, or totalitarian rule. On the other hand, political corruption crimes are 'illegal acts committed by an individual or a group of individuals to obtain a financial or professional advantage, the principal motive being economic gain'.[63] Political corruption crimes are perpetrated by politically exposed persons who exploit and abuse their positions for personal gains, to the detriment of the State and its Agencies. The amnesty model of criminal process cannot facilitate the plea-bargaining of their brazen, pervasive, and deliberate acts of criminality. Moreover, the criminal offences addressed by Amnesties are usually violent crimes and human rights abuses which cause loss of liberty, limbs, lives, or damage to property, which are mostly irreversible; unlike economic and financial crimes which are a broad range of non-violent crimes that cause financial loss to the victims and society, which may be reversible in whole or substantially,[64] by criminal trials or plea-bargaining. The duration and application of an amnesty model of criminal process is specific as to time frame and offences while political corruption and money laundering are economic and financial crimes, which are continuous and exist in perpetuity. Consequently, a plea-bargaining process which establishes the truth of charges, and maximises conviction-based recovery of the proceeds of crime with the additional deterrent effects, such as the fact that convicts are rendered ineligible for public office either by election or appointment,[65] cannot be facilitated by the Amnesty model of criminal process.

3. Conclusion

After a review of the various models of criminal processes, it is evident that every model of the criminal process needs to be reviewed against the background of current knowledge, practices, and politics,[66] to discover a workable model, that will be introduced with patient skill, followed through with firmness, courage, and tact,[67]to successfully establish the truth of charges, especially in political corruption cases.

and individual members of the public; see also Kieran McEvoy, Louise Mallinder 'Truth, Amnesty and Prosecutions: Models For Dealing With The Past' , Amnesties, Prosecutions and the Public Interest in the Northern Ireland Transition' https://pureadmin.qub.ac.uk/ws/portalfiles/portal/7455652/McEvoy_Mallinder_Models_on_Truth_Amnesty_Prosecution_3_Dec_2013.pdf accessed 27 December 2020.

[59] T D Olsen et al. 'Transitional Justice in the World, 1970-2007: Insights from a New Dataset' Journal of Peace Research, vol. 47, no. 6, Nov. 2010, 803–809, doi:10.1177/0022343310382205.

[60] *Citizen v McBride*, Case CCT 23/10, Judgment of the Constitutional Court of South Africa, [2011] *ZACC* 11.

[61] T D Olsen et al. 'Transitional Justice in the World, 1970-2007: Insights from a New Dataset' Journal of Peace Research, vol. 47, no. 6, Nov. 2010, 803–809, doi:10.1177/0022343310382205.

[62] The amnesty model of criminal process is not strange to Nigeria's jurisprudence. It was resorted to immediately after the Nigeria civil war, in the aftermath of the late General Sanni Abacha's dictatorship, and to resolve the subversive activities of the Niger Delta Militants, where amnesty was used only as a specific response to a resource control driven conflict.

[63] EOROPOL, 'Economic Crime' (European Union Agency for Law Enforcement Cooperation) <www.europol.europa.eu/crime-areas-and-trends/crime-areas/economic-crime> accessed 20 May 2019.

[64] UNODC, 'Economic and Financial Crimes: Challenges to Sustainable Development' <www.unis.unvienna.org/pdf/05-82108_E_5_pr_SFS.pdf> accessed 31 July 2019.

[65] Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 66(1)(c), 107(1)(c), 137(1)(d) and (e), 147(5), 182(d) and (e), 192(4).

[66] K Roach, 'Four Models of the Criminal Process' *The Journal of Criminal Law and Criminology* (1973-), vol. 89, no. 2, 1999, 671–716, at 676. <www.jstor.org/stable/1144140> accessed 4 April 2021.

[67]K N Llewellyn, Jurisprudence: Realism in Theory and Practice. United States, Transaction Publishers, 2011, 481.