FAILURE OF PLEA-BARGAINING IN NIGERIA*

Abstract
Plea-bargaining was initially introduced into Nigeria as a panacea to political corruption and money laundering and although it is now applicable to other crimes; political corruption and money laundering remain its focus. Attempts to resolve political corruption and money laundering them in Nigeria with plea-bargaining have been particularly appalling and deserving of special interrogation because since plea bargain made its entry into Nigerian jurisprudence it has been the basis of seemingly successful prosecutions with obvious disparities between offences and sentences; proceeds of crime and recoveries; and politically exposed persons and other defendants. These judgments were seemingly without regards to any guidelines and appear to have been informed by other considerations, which raises questions as to the integrity of the plea bargain process upon which they were based. This not only weakens the administration of criminal justice system but also rob it of the deterrence effect that successful prosecutions of crimes have on the society. Consequently, in Nigeria it is argued that the practice of plea bargaining is defeating the fight against corruption.

Keywords: Failure of Plea-bargaining; Political Corruption; Money Laundering

1. Introduction

To fully appreciate the impact of plea bargaining in Nigeria it is pertinent to define the process, examine the reasons for its introduction and thereafter review the state of the administration of criminal justice system since it was introduced into Nigerian jurisprudence, especially in relation to political corruption and money laundering offences and assess the impact of the process on the system. There is no concise or prevalent definition of plea-bargaining; therefore, it is often defined in the terms that reflect the features or situations that the process applies to in each jurisdiction. From the United States of America, one of the early cases defined plea-bargain as a consensual relationship which leads to the disposition of criminal charges by agreement between the prosecutor and the accused.[1] While another court in the same jurisdiction, more concerned with the validity of the process, defined it as an appropriate and legally accepted mode of disposing criminal prosecutions.[2] More concerned with the lure of plea-bargaining and the inclusive nature of the process, whether formal, informal, and indeed all behaviour patterns which are equivalent of explicit bargaining, Stephen Schulhofer defined plea-bargaining as 'any process in which inducements are offered in exchange for a defendant's co-operation in not fully contesting the charges against him'.[3] While the *Black's Law Dictionary*, focused on the result of the consensus between the parties, defined plea-bargain as 'a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for some concession by the prosecutor'.[4] In its simplest form, the word 'plea' is a defendant's response to a criminal charge, which may be guilty, not guilty or no contest, while 'bargain' is the art of negotiating a settlement, which makes plea bargain a negotiated plea of guilty in consideration of a lenient penalty.[5]

2. Plea Bargaining in Nigeria

Plea bargaining, which originated in the United States,[6] was unknown to Nigerian jurisprudence until it was surreptitiously introduced into Nigeria's criminal justice system by the wrong interpretation of section 14(2) of the EFCC Act 2004.[7] The rational for the introduction of plea-bargaining in Nigeria is multifaceted.[8] However, the scourge of political corruption and money laundering was its final compelling impetus. In 2001 due to the prevalence of political corruption and money laundering in Nigeria, the Financial Action Task Force (FATF), the inter-governmental group that sets the global anti-money laundering standards, placed Nigeria on its list of 'non-

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[1] *Santobello v. New York* (1971) 404 U.S. 257, 260.

[2] *People v. Orin* (1975) 13 Cal. 3d 937, 942.

[3] Schulhofer, Stephen J. 'Is Plea Bargaining Inevitable?' *Harvard Law Review*, vol. 97, no. 5, 1984, pp. 1037–1107. *JSTOR*, www.jstor.org/stable/1340824. Accessed 27 Mar. 2021.

[4] *B A. Garner's Black's Law Dictionary*, 9th Edition (2009),1110.

[5] Ted. C Eze and Eze Amaka G, 'A Critical Appraisal of The Concept of Plea Bargaining in Criminal Justice Delivery in Nigeria' Global Journal of Politics and Law Research Vol.3, No.4, pp.31-43, August 2015 Published by European Centre for Research Training and Development UK <www.eajournals.org> 31 ISSN 2053-6321(Print), ISSN 2053-6593(Online) accessed 26 October 2020.

[6] *Brady* v. *United States 397U.S 742*.397 (1970); *Santobello v. New York*, 404 U.S. 257 (1971); *Abdulmumin v. FRN* (2020) LPELR-51086 (CA).

[7] *Romrig Nigeria Limited v. FRN* (2014) LPELR-22759(CA).

[8] *FRN v. Lawan* (2018) LPELR-43973 (CA) 18-20, Section 1 Administration of Criminal Justice Act 2015. The administration of criminal justice system in Nigeria is characterised by congestion of the courts and penal institutions, protracted trials, low success rate of prosecutions and ubiquitous organised criminal networks.

cooperative jurisdictions', which is a list of countries whose anti-money laundering regulations were not up to scratch.[9] The list was intended to put political and economic pressure on recalcitrant countries to strengthen the fight against financial crimes.[10] In response to this pressure the Nigerian Government established the Economic and Financial Crimes Commission (EFCC) in 2003, with the sole responsibility of tackling economic and financial crimes, especially political corruption, and money laundering. Soon thereafter, Nigeria was removed from the FATF non-cooperative list in 2006.[11] Significantly, it was section 14(2) of the EFCC Act that first introduced a process that was recognised by the courts[12] as plea-bargaining, into Nigerian law in 2004.[13] Although the section empowered the Commission to compound[14] offences created by the Act, it did not expressly authorise the plea-bargaining process. However, the anti-corruption Agency latched onto it and proceeded to resolve cases of political corruption and money laundering by plea-bargaining.[15] The judiciary was also complicit as both the Court of Appeal and the Supreme Courts of Nigeria gave judicial imprimatur to all the cases that the E.F.C.C had resolved by plea-bargaining pursuant to section 14(2) of the EFCC Act [16]

It is notable that after the veiled introduction of plea-bargaining by the EFCC Act, 2004,[17] plea-bargaining was clearly and unequivocally introduced by section 75 of the Administration of Criminal Justice Law, Lagos State 2011, a law which applied only within the territorial jurisdiction of Lagos State.[18] Subsequently, the Administration of Criminal Justice Act 2015 made plea bargaining an available option[19] in criminal trials at all the federal courts nationwide, except a Court Martial.[20] Nigeria, a federation comprising of a Federal Government, thirty-six States and a Federal Capital Territory, has thirty-seven legal jurisdictions, each of which has its own laws[21] and prosecuting authorities.[22] While the laws made by the States' Houses of Assembly apply only within the territorial jurisdiction of the States, the laws made by the National Assembly apply to the Federal Capital Territory and all the 36 States of the federation.[23] Also, all the 36 States of the federation and the Federal Capital Territory are bound by guiding principles of law elucidated in decided cases by the Courts of Appeal and the Supreme Court; both federal courts.[24]

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[9]Financial Action Task Force (FATF), 'Review to Identify Non-Cooperative Countries or Territories: Increasing the Worldwide Effectiveness of Anti-Money Laundering Measures', 22 June 2001.

[10]*How British Banks Are Complicit In Nigerian Corruption, A Report By Global Witness*, October 2010, file:///C:/Users/chielos%20pc/OneDrive/Documents/%23%23%23%20CIVIL%20RECOVERY%20%20International%20thief%20thief.%20How%20British%20Banks%20are%20complicit%20in%20Nigerian%20corruption_.pdf.

[11]FATF, 'Annual Review of Non-cooperative Countries and Territories, 2005-2006', 23 June 2006.

[12]*Romrig Nigeria Limited v. FRN* (2014) LPELR-22759 (CA).

[13] Section 14 (2) of the Economic and Financial Crimes Commission Act 2004, *Igbinedion v. FRN* (2014) LPELR-22766 (CA); *PML Nigeria Limited v. FRN* (2014) LPELR-22767 (CA); *Federal Republic of Nigeria v. Nwude & Ors.* (Unreported) Suit No. ID/92C/2004; in Pakistan, plea bargaining was also introduced by an anti-corruption law; The National Accountability Ordinance 1999.

[14] This is different from the procedure under Section 320 of the Code of Criminal Procedure (UK) where only the person named in the 3rd column of that section can compound an offence. Under Section 14(2) of A.C.J.A. 2015, only the prosecutor can compound an offence in Nigeria, because the section applied only to political corruption and money laundering; which are victimless crimes.

[15] *FRN v. Tafa Balogun* (2005) 4 NWLR (Pt. 324) 190; *FRN v. Alamieyeseigha* (2006) 16 NWLR Pt. 1004; *FRN v. Nwude & Ors.* (Unreported) Suit No. ID/92C/2004.

[16] *PML Nigeria Limited v. FRN* (2018) LPELR-47993 (SC).

[17] Section 14(2) of the EFCC Act 2004 only gave the Commission the power to compound offences, which was misunderstood to have introduced plea-bargaining.

[18]*PML Nigeria Limited v. FRN* (2018) LPELR-47993 (SC). The initial Administration of Criminal Justice Law No. 10 of 2007 of Lagos was later repealed and replaced by the Administration of Criminal Justice (Repeal and Re-enactment) Law No. 10 of 2011.This law is applicable only to Lagos State. However, other States of the Federation have since adopted either the Lagos or federal model of the Administration of Criminal Justice Law.

[19] Section 270 Administration of Criminal Justice Act 2015.

[20] Section 2 Administration of Criminal Justice Act 2015 makes plea bargain applicable to offences established by any Act of the National Assembly and offences punishable in the Federal Capital Territory, Abuja, *Wagbatsoma v. FRN* (2018) LPELR-43644 (CA) 14; *FRN v. Lawan* (2018) LPELR-43973 (CA) 18-20, *Agbi v. FRN* (2020) LPELR-50495 (CA). However, in *Ogbara v. State* (2019) LPELR-48982 (CA) 13-15, the Court of Appeal held that before the Administration of Criminal Justice Act 2015 can regulate a criminal trial in respect of a matter on the residual list it must be domesticated by the law of the State in question.

[21]To date, except for Bornu, Niger, and Zamfara, all other States of Nigeria have enacted Administration of Criminal Justice Laws that provide for plea bargaining; https://thenigerialawyer.com/nba-urges-three-states-to-implement-acja/ Accessed 30 June 2022.

[22]Section 3(1) Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended).

[23]Sections 47, 45, and 90 CFRN 1999 (as amended).

[24]Sections 230, 232, 233, 273, and 240 CFRN 1999 (as amended).

Therefore, this paper will focus on the plea-bargaining provisions of the Federal legislations and the guiding principles of law elucidated by the federal courts in decided cases, both of which are applicable nationwide.[25] Plea-bargaining has come to stay as part of Nigeria's criminal process and procedure[26] and in the considered opinion of the Supreme Court, the concept does not derogate from the purpose or objective of criminal prosecution, because before a defendant can benefit from the process, he must plead guilty to an offence and be convicted for the offence that he has pleaded guilty to.[27]

3. Immediate Effects of Plea Bargaining

It is notable that the plea-bargaining process was initially introduced into Nigeria as a panacea to political corruption and money laundering cases[28] and even though it is now made applicable to other crimes;[29] political corruption and money laundering remain its focus. Nothing in the A.C.J.A. 2015 restricts the plea-bargaining process to economic and financial crimes; it has only been so restricted in application.[30] While the prosecution of political corruption and money laundering has not met with resounding success globally, probably due to the complex nature of economic and financial crimes which makes investigations and prosecutions time-consuming and burdensome,[31] attempts to resolve them in Nigeria with plea-bargaining have been particularly appalling and deserving of special interrogation, though the available statistics are not accurate[32] However, the impact of plea bargaining in Nigeria can effectively be assessed by the profile of the investigation and prosecution of economic and financial crimes by the primary anti-corruption agency in Nigeria,[33] the Economic and Financial Crimes Commission (EFCC), before and after the introduction of plea bargaining. The EFCC is charged, amongst other things, with the responsibilities to detect; prevent; investigate; and prosecute all cases of economic and financial crimes in Nigeria.[34] In addition the EFCC is the co-ordinating agency for all other laws or regulations relating to economic and financial crimes, including the Criminal Code and the Penal Code.[35] The EFCC is also the first agency in Nigeria that has the authority to compound criminal offences in a manner akin to Plea Bargaining.[36]

4. Before Plea-Bargaining

Between 2010 and 2015 the EFCC investigated a total of 15,124 petitions, representing 41.5% of all the petitions it received in Nigeria. After investigations, the EFCC prosecuted 2,460 of these cases but secured only 568 convictions. This represents 3.75% of investigated cases and a conviction rate of 23.09%.[37] However, most of the convictions were of low-profile individuals for equally low-profile crimes such as: obtaining by false pretences; criminal conspiracy; criminal breach of trust; forgery and uttering; employment scam; impersonation and currency counterfeiting. Convictions were rarely secured for high profile offenders and politically exposed persons (PEPs) for offences such as: embezzlement of public funds; illegally dealing in petroleum products and money laundering.[38]

[25] *Wagbatsoma v. FRN* (2018) LPELR-43644 (CA) 14; *FRN v. Lawan* (2018) LPELR-43973 (CA) 18-20, *Agbi v. FRN* (2020) LPELR-50495 (CA). However, in *Ogbara v. State* (2019) LPELR-48982 (CA) 13-15, the Court of Appeal held that before the Administration of Criminal Justice Act 2015 can regulate a criminal trial in respect of a matter on the residual list it must be domesticated by the law of the State in question. See Schedule 1, for a list of States that have domesticated the ACJA.

[26] *Muhammed v. FRN* (2019) LPELR-48107 (CA).

[27] *PML (Securities) Limited v. FRN* (2018) LPELR-47993 (SC) 10-28.

[28] Section 14(2) Economic and Financial Crimes Commission (Establishment) Act 2003.

[29] Section 270 Administration of Criminal Justice Act 2015.

[30] Peter E. Echewija, 'Plea Bargaining and the Administration of Criminal Justice in Nigeria: A Moral Critic' *IAFOR Journal of Ethics, Religion & Philosophy*, 41, Volume 3 – Issue 2 – Autumn 2017, at 41.

[31] Katalin Ligeti, Vanessa Franssen, *Challenges in the Field of Economic and Financial Crime in Europe and the **US***, (2017 Hart Publishing) 6.

[32] UNODC Country Review Report of the Federal Republic of Nigeria 2010-2015, 4.

[33] The Independent Corrupt Practices Commission (ICPC) was established pursuant to the Corrupt Practices and Related Offences Act 2000 which was repealed and replaced with the Corrupt Practices and Related Offences Act Cap C Laws of the Federation of Nigeria 2004, while the EFCC was established by The Economic and Financial Crimes Commission Act Cap E1 Laws of the Federation of Nigeria 2004. See *Yakubu v F.R.N.* (2009) 14 NWLR (Pt 1160); *Auwalu v F.R.N* (2018) 8NWLR (Pt 1620) 1.

[34] Section 6 Economic and Financial Crimes Commission Act 2004.

[35] Section 7(2) Economic and Financial Crimes Commission Act 2004.

[36] Section 14(2) Economic and Financial Crimes Commission Act 2004.

[37] Emilia Onyema and others, 'The Economic and Financial Crimes Commission and the politics of (in) effective implementation of Nigeria's anti-corruption policy', 2018 Working Paper 007, <https://ace.soas.ac.uk/wp-content/uploads/2018/11/ACE-WorkingPaper007-EFCC-Nigeria.pdf> accessed 27 September 2020.

[38] Ibid.

5. Post Plea-Bargaining (2015 -2019)

After the Administration of Criminal Justice Act 2015 made plea bargaining an available option in Nigeria,[39] the statistics rose dramatically. Within four years, the same EFCC secured 1,900 convictions. The list of convicts included four former state Governors and alleged illegal dealers in petroleum products ('oil bunkering') in the Niger Delta.[40] Again, the convictions were high in number but low on quality.[41] Also the conviction of three of the Governors was upon questionable plea bargaining.[42] Furthermore, the true impact of the convictions was further distorted by political interference in criminal prosecutions, due mainly to the fact that all the Attorneys-General in Nigeria are political appointees.[43] Despite the increase in the number of convictions secured by plea bargaining, they only relate to minor economic and financial crimes. Not much plea bargaining has been applied to other sundry crimes, while high profile criminals are treated with kid gloves.[44] Consequently, the prisons and courts have remained congested with mostly inmates awaiting trials rather than persons convicted of offences.[45]Also, the recovery of the proceeds of crime remained abysmally low relative to the humongous illicit funds involved.[46] Therefore, to the extent that plea-bargaining in Nigeria has failed to achieve the criminal law objectives of retribution, crime reduction or both, they are subject to scrutiny and criticism, even when they were voluntary and informed.[47]

6. Abuse of the Plea Bargain Process in Political Corruption and Money Laundering Cases

Since plea bargain made its entry into Nigerian jurisprudence it has been the basis of seemingly successful prosecutions of political corruption and money laundering cases with obvious disparities between offences and sentences;[48] proceeds of crime and recoveries;[49] and politically exposed persons and other defendants.[50] These judgments were clearly without regards to any guidelines and appear to have been informed by other considerations,[51] which raises questions as to the integrity of the plea bargain process upon which they were based.[52] This not only weakens the administration of criminal justice system but also rob it of the deterrence effect that successful prosecutions of crimes have on the society. Generally, plea-bargaining is usually initiated by the prosecution further to the exercise of prosecutorial discretion. In this regard the prosecutor is expected to charge the defendant for the offense that best reflects the criminality of the defendant's alleged conduct which, as evidenced by the facts of the case, has reasonable prospects of securing a conviction. However, other than the sufficiency of evidence, there are other interests for considerations that may affect a decision to plea-bargain, such as the public interest, the interest of justice and the need to avoid an abuse of the legal process.[53]

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[39] Section 270 Administration of Criminal Justice Act 2015.

[40] Premium Times, 'EFCC recovers N794 billion, secures 1,900 convictions' (Agency Report Dec 09, 2019); See Schedule II for list of some prosecutions/convictions for money laundering at that time. <www.premiumtimesng.com/news/top-news/367452-efcc-recovers-n794-billion-secures-1900-convictions.html> accessed 27 August 2020.

[41]Peter Odia, 'Abuse of Plea Bargain in Nigeria' (Sahara Reporters 23 June 2011) <http://saharareporters.com/2011/06/23/abuse-plea-bargain-nigeria> accessed 27 August 2020.
Federal Republic of Nigeria v. Diepreye Alamieseigha & Ors (2006) 16 NWLR Pt. 1004.

[42] Ikechukwu Nnochiri, '1.126bn fraud - Court Sentences Ex-Governor Dariye, 14 Years Imprisonment' (The Vanguard 12 June 2018) <www.vanguardngr.com/2018/06/n1-126bn-fraud-court-sentences-ex-gov-dariye-14-years-imprisonment/> accessed 25 September 2020; Abdulkareem Haruna, 'Jolly Nyame, Story of a Reverend Turned Governor Turned Prisoner' (Premium Times 1 June 2018) <www.premiumtimesng.com/news/headlines/270625-jolly-nyame-story-of-a-reverend-turned-governor-turned-prisoner.html> accessed 25 August 2020.

[43]Eniola Akinkuotu, '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 27 August 2020.

[44] *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. Esai Dangbar* (2012) LPELR-19732 (CA).

[45] Yomi Kazeem, 'Up to Three-Quarters of Nigeria's Prison Population is Serving Time Without Being Sentenced' (Quartz Africa 24 Jan 2017) <https://qz.com/africa/892498/up-to-three-quarters-of-nigerias-prison-population-is-serving-time-without-being sentenced/#targetText=In%20total%2C%20NBS%20data%20suggests,population%20rate%20per%20100%2C000%20citizens.> accessed 26 August 2020.

[46]*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); *F.R.N v Mrs Cecilia Ibru* [Unreported] Charge No. FHC/L/297C/2009.

[47] Richard L. Lippke, 'The Ethics of Plea Bargaining' Oxford University Press 2011, 170.

[48]*FRN v. Tafa Balogun* (2005) 4 NWLR (Pt. 324) 190; *F R N v. EsaiDangbar* (2012) LPELR-19732 (CA).

[49]*F R N v. EsaiDangbar* (2012) LPELR-19732 (CA); *F.R.N v. Igbinedion* [2014] All FWLR Pt. 734.

[50]*FRN v Cecilia Ibru* Charge nos. FHC/L/297C/2009.

[51]Abuse of prosecutorial discretions, political interference, and undue influence by politically exposed persons, often influenced the plea-bargaining process in these decisions.

[52]Ishaq Bello, 'Criminal Justice Reforms in Nigeria: The Journey so Far' 20<www.academia.edu/37545905/NBA_criminal_justice_reforms_in_Nigeria?auto=download> accessed 08 August 2020.

[53]Sections 174(3) and 211(3) Constitution of the Federal Republic of Nigeria 1999(as amended); Section 270(3) Administration of Criminal Justice Act 2015; Section14(2) EFCC Act 2004.

Also, where the case involves a sole defendant or several defendants, the prosecutor ought to consider the relative strength of the case against a defendant or each of several defendants, their relative culpability and willingness to testify or otherwise assist the prosecutor, before engaging in plea-bargaining.[54] In the determination to plea-bargain, the prosecution should also consider whether a conviction for a lesser offense or lesser number of offenses appropriately takes into account the defendant's culpability and serves the public interest.[55] Public interest, under the A.C.J.A. 2015, is defined to include the defendants willingness to cooperate with the prosecutor, his previous criminal records, remorse and willingness to assume responsibility, the likelihood of securing a conviction through trial, the need for a quick resolution of the case, the probable effect on witnesses, the need to avoid delay in the disposition of other cases, the cost of a trial, the probable sentence upon conviction , and the willingness of the defendant to make restitution or pay compensation to the victim(s) of the crime, where appropriate.[56] Also, when the prosecution makes certain factual and sentencing concessions, which reduces the seriousness of the alleged offense, concede to a particular sentencing option, or agree that the offense falls within a certain level on the scale of seriousness for such offense, the resultant plea-bargain should not be only intended to induce a plea of guilty.[57] In economic and financial crimes, especially in cases of political corruption and money laundering, plea-bargaining ought to be with due emphasis on the defendant's willingness to cooperate with the prosecutor, remorse, and willingness to assume responsibility, the willingness of the defendant to make restitution or pay compensation to the victim(s) of the crime, where appropriate and the likelihood of securing a conviction through trial.[58] These considerations were not reflected in the following case studies.

Case Studies

In January 2008, the EFCC arraigned Lucky Igbinedion,[59] who was Governor of Edo State from 1999- 2007, at the Federal High Court Enugu, on 191 counts of corruption, money laundering and embezzlement of 2.9 billion Naira. Pursuant to a plea bargain, the ex-Governor's charges were reduced by 99.5 percent, to one count of failure to declare his interest in a bank account in the declaration of assets form of the EFCC. He was convicted on that one count and ordered to forfeit three houses, refund 500 million naira, and sentenced to 6 months imprisonment with an option of 3.6 million naira fine, which he promptly paid. It is notable that the EFCC appealed against this judgment, not on the plea bargain process but only in respect of the option of fine.[60] Furthermore, another attempt in 2011 to prosecute the same ex-Governor failed because the court upheld the ex-Governor's objection that it would amount to double jeopardy and an abuse of the court process, having entered a plea bargain in the earlier case in 2008.[61]

In *Tafa Balogun v. The Federal Republic of Nigeria*,[62] the EFCC arraigned the former Inspector General of Police (IGP), on 70 counts of money laundering and theft of about 13 billion naira, from 2002 to 2004. Upon a plea bargain the charges were reduced by 88.6 percent to 8 counts, to which he pleaded guilty. He was convicted and sentenced to 6 months imprisonment on each of the counts, to run concurrently and 1.5 million Naira fine.

In the *Federal Republic of Nigeria v. Cecilia Ibru*,[63] the EFCC arraigned the accused person on 25 counts of money laundering and sundry economic and financial crimes. Pursuant to a plea bargain the offences were reduced by 88 percent, to three counts of lesser offences of authorising loans beyond her credit limit, rendering false accounts and approving loans without adequate collateral. As part of the plea-bargain the court sentenced the defendant to 6 months imprisonment, which she was allowed to serve out in the comfort of a private room of an exclusive hospital, allegedly due to a health challenge.

Similarly, in *Federal Republic of Nigeria v. Diepreye Alamieyeseigha*[64] the former Governor of Bayelsa State was arraigned on 33 counts of political corruption, money laundering, illegal acquisition of property and false declaration of assets. Upon a plea bargain the charges were reduced by 81.8 percent, to 6 counts of lesser offences.

[54] Section 270(2) Administration of Criminal Justice Act 2015.
[55] Section 270(2) Administration of Criminal Justice Act 2015.
[56] Section 270(5) (b)Administration of Criminal Justice Act 2015
[57]Carol A Brook and others, 'A Comparative Look at Plea Bargaining in Australia, Canada, England, New Zealand, and the United States' (2016) 57 *Wm & Mary L Rev* 1147.
[58] Section 270(5) (b)Administration of Criminal Justice Act 2015
[59] *FRN v. Lucky Igbinedion,* Charge No FHC/EN/6C/2008 ; Sahara Reporters, 'Igninedion Gets Easy Plea Bargain, No Jail Time, Keeps Billions Stolen Funds Keeps Vast Properties' <http://saharareporters.com/2008/12/30/igbinedion-gets-easy-plea-bargain-no-jail-time-keeps-billions-stolen-funds-keeps-vast> accessed 08 August 2020.
[60]Peter Odia, 'Abuse of Plea Bargain in Nigeria' (Sahara Reporters 23 June 2011) <http://saharareporters.com/2011/06/23/abuse-plea-bargain-nigeria> accessed 10 August 2020.
[61]*FR N v. Igbinedion* (2014) LCN/7100(CA).
[62]*Tafa Balogun v. Federal Republic of Nigeria* (2005) 4NWLR (Pt. 324) 190.
[63] *Federal Republic of Nigeria v. Cecilia Ibru* FHC/L/297C/2009.
[64] (2006) 16 NWLR Pt. 1004.

He pleaded guilty to the lesser offences and forfeited some properties in exchange for a lesser sentence. He was convicted and sentenced two years on each count, all the sentences ran concurrently from the day he was arrested and detained. Consequently, he only spent a few days in prison because he was first detained about two years before the judgment.

Perhaps the worst case of abuse of the process of plea bargain was the case of John Yakubu Yusuf[65] who was charged with embezzling and money laundering of 27.2-billion-naira, property of the Police Pensions Fund. Upon a successful plea bargain the offences were reduced by 87.5 percent, to 2 counts to which he pleaded guilty, he was sentenced to 2 years imprisonment with an option of 750, 000 naira fine. He promptly paid the fine. Although the Court of appeal later altered the sentence to 6 years imprisonment, it was still just a slap on the wrist.[66]

It has been argued that these decisions based on plea bargains are beneficial to the congested administration of criminal justice system in Nigeria because they: saved time; cost; avoided the necessity of public trials; and protected the innocent victims of crime from the ordeal of giving evidence during trials.[67] However, it is doubtful if these plea-bargained decisions considered the public interest, the interest of justice and the need to avoid an abuse of the legal process. Apart from saving time and cost, the benefits of which is doubtful in these cases, the other alleged benefits are of little or no advantage to the use of plea-bargaining in the resolution of economic and financial crimes, especially political corruption, and money laundering. The victims of the alleged crimes were State Governments, the Nigerian Police, and a Bank, all public institutions. They are not hapless and innocent members of the society who needed protection from the ordeal of giving evidence at all. Also, avoiding the necessity of public[68] trials is not really an advantage that is creditable to the plea-bargaining process in cases of political corruption and money laundering, as comparable to sexual offences, trial of juveniles, matters of public morality or national security. Worse still, these cases did not result to the recovery of the proceeds of crime in whole or sums proximate to the amounts ascertained by investigations or available evidence. Altogether, these 'successful' prosecutions based upon plea bargains have not been punitive or deterrent enough to ultimately result in bringing the offenders to justice; protecting the peace and common good of society and all people and their property.[69]

The questionable nature of these plea bargains has diminished the impact of the plea-bargaining process as a prosecutorial technique in political corruption and money laundering cases in Nigeria. This has been the perception of,[70] and the interpretation and application[71] of plea bargaining in Nigeria so far. For instance, in the case of *Lucky Igbinedion v. FRN*,[72]the prosecutor orally[73] informed the court that the parties had reached a bargain on the terms that the prosecutor would reduce the 191 - count charge to one - count charge and in return, the defendant will refund N500m, 3 properties and plead guilty to the one - count charge. The court relied on his submission and convicted the defendant on the one- count charge and ordered him to refund N500m, forfeit 3 houses and sentenced him to 6 months imprisonment, with an option of N3.6m fine. The case was so deprecated that even the anti-corruption agency (EFCC) appealed against the judgment, albeit only on the option of a fine as

[65] *F R N v. Esai Dangbar* (2012) LPELR-19732(CA).

[66] Eric Ikhilae, 'EFCC Fails to Enforce Appeal Court's Verdict on Police Pension Thief Yusuf' (The Nation 10 June 2019) <https://thenationonlineng.net/efcc-fails-to-enforce-appeal-courts-verdict-on-police-pension-thief-yusuf/> accessed 27 July 2020.

[67]Ehi Esoimeme, 'Has the Concept of Plea Bargain Been Abused in Nigeria's Criminal Justice System' <www.academia.edu/10319340/Has_the_Concept_of_Plea_Bargaining_Been_Abused_in_Nigerias_Criminal_Justice_System?auto=download> accessed 06 August 2020.

[68] Public trials are a rule of natural justice which is necessary to maintain public confidence in the administration of justice as well as deter recurrence of offences. It can only be departed from when it is necessary and justified, such as where the public trial would frustrate or render impractical the administration of justice, See JUDICIAL COLLEGE, Reporting Restrictions in the Criminal Courts April 2015 (Revised May 2016) p. 7 https://www.judiciary.uk/wp-content/uploads/2015/07/reporting-restrictions-guide-may-2016-2.pdf. Accessed 31 May 2021; *AG v Leveller Magazine* [1979] AC 440, per Lord Diplock p.450; *R v Times Newspapers* [2007] WLR 1015.

[69] *Preliminary Paper / Law Commission Wellington* 1997 ISSN 0113–2245 ISBN 1–877187–01–1, cited as: NZLC PP28, <www.nzlii.org/nz/other/nzlc/pp/PP28/PP28.pdf> accessed 20 October 2020.

[70]Peter Odia, 'Abuse of Plea Bargain in Nigeria' (Sahara Reporters 23 June 2011) <http://saharareporters.com/2011/06/23/abuse-plea-bargain-nigeria> accessed 24 October 2020; Tope Adebayo 'Legality of the Use of Plea Bargaining in Nigerian Criminal Justice System' (2012), https://topeadebayollp.wordpress.com/2012/03/27/the-legality-of-the-use-of-plea-bargain-in-the-nigerian-criminal-justicesystem/, accessed 24 October 2020.

[71] *FRN v. Diepreye Alamieseigha* (2006) 16 NWLR Pt. 1004.

[72] Charge No FHC/EN/6C/2008.

[73]In another case of corruption and money laundering against Lucky Igbinedion and others, Charge No FHC/B/HC/2011, the Economic and Financial Crimes Commission denied that there was ever an agreement with Lucky Igbinedion, but the denial did not avail them.

part of the plea bargain.[74] Assuming, without conceding, that there was a plea bargain agreement between the prosecutor and the defendant, a reduction of 191-count charge of political corruption, money laundering and embezzlement of N2.9b to one count charge of non-disclosure of a Bank account creates considerable doubt, especially considering the other weightier charges of political corruption, money laundering and embezzlement and the huge sum of 2.9 billion naira involved as the proceeds of crime. In terms of recovery of the proceeds of crime, the plea-bargaining process, which allowed the defendant to forfeit only the sum of 500 million naira and 3 houses while retaining 2.9 billion naira and several other properties, neither appropriately consider the defendant's culpability nor served the public interest.

Worse still, the same plea-bargaining enabled the defendant to evade a subsequent charge of political corruption and money laundering to the tune of 25-billion-naira brought against him, because the court decided that it amounted to double jeopardy to try the defendant twice for the same offence.[75] In the case of John Yakubu Yusuf[76] who was charged with embezzling and money laundering of 27.2-billion-naira, the plea-bargain resulted to a sentence of 2 years imprisonment with an option of 750, 000 naira fine. The plea bargaining in the case of Governor Alamieyeseigha[77] was not different. After spending almost two years in detention, largely due to his unsuccessful attempts to stall or stop the prosecution of the case against him, he entered a plea bargain on the terms that upon his plea of guilty he will be sentenced to 2 years in prison on each of a six-count charge. That all the sentences were not only to run concurrently but should commence from the day he was arrested and detained in 2005. As a result, he was released from prison just a few days after he was convicted pursuant to the plea bargain. Even though these convictions represent effective crime control measures, they lack integrity because they are associated with the abuse of the prosecutorial discretion, political interference, undue influence by politically exposed defendants, and thus consciously conflict with the declared conditions for plea-bargaining in Nigeria.[78] Clearly, the public interest, the interest of justice and the need to avoid an abuse of the legal process could not have been the consideration upon which these cases were plea-bargained.

7. Conclusion

Generally, because plea-bargaining is quite often negotiated informally and behind closed doors it seemingly lacks transparency, and the public can easily perceive the process as corrupt. This public perception is made worse where it results in little or no jail term, especially in high profile cases. This engenders the believe that powerful people are not bound by the law because they can afford to negotiate their way out of jail time, which in turn buttresses the existing lack of trust in the criminal justice system.[79] Consequently, in Nigeria it is argued that the practice of plea bargaining is defeating the fight against corruption. In this regard reference is made to the several cases decided upon plea-bargaining where politically exposed persons (PEPs) agreed to forfeit small fractions of their loot to the State, while keeping the bulk, in return for lesser penalties.[80] These cases have thus reduced plea bargaining to 'loot' bargaining.[81] Furthermore, although the provisions on plea-bargaining in Nigeria apply to all other crimes, it has been applied mostly to economic and financial crimes,[82] the penalties for which are comparatively lenient, and the politically exposed defendant in plea-bargaining is perceived as exploiting the lenient penalties contained in the laws regulating economic and financial crimes. While stealing and same sex marriage[83] attracts as much as 14 years imprisonment, robbery and conspiracy for armed robbery attracts life imprisonment or the death penalty.[84] Meanwhile, the maximum sentence for misappropriation or embezzlement is two years imprisonment or a fine or both in the Penal Code, five years imprisonment under the EFCC Act 2004, and seven years under the Corrupt Practices and Other Related Offences Act 2000, albeit before plea-bargaining. The process of plea-bargaining naturally entails a reduction of these already comparatively lenient sentences. Also, the penalties for economic and financial crimes in Nigeria are particularly lenient when compared to other jurisdictions like South Africa, where the minimum sentence under the Criminal Law Amendment Act 105 of 1997 is fifteen years imprisonment or life imprisonment under the Prevention and Combating of Corrupt Activities Act of 2004,[85] although this is an issue to do more with sentencing, which is not within my remit, rather than plea-bargaining. However, it has been exploited in the plea-bargaining process by politically exposed defendants in cases of political corruption and money laundering.

[74]Peter Odia, 'Abuse of Plea Bargain in Nigeria' (Sahara Reporters 23 June 2011) <http://saharareporters.com/2011/06/23/abuse-plea-bargain-nigeria> accessed 10 August 2020.
[75]Charge No FHC/B/HC/2011.
[76] *F R N v. Esai Dangbar* (2012) LPELR-19732(CA).
[77] *FRN v. Diepreye Alamieyesegha* (2006) 16 NWLR Pt. 1004.
[78] Section 270 (2) and (3) Administration of Criminal Justice Act 2015.
[79] Cynthia Alkon & Ena Dion, 'Introducing Plea Bargaining into Post-Conflict Legal Systems' International Network to Promote the Rule of Law (2014) 15, Texas A&M University School of Law, calkon@law.tamu.edu.
[80]James Ode Abah, 'Plea Bargain: A Cosmetic Approach to the Fight Against Corruption in Nigeria' (Academia)<www.academia.edu/28221302/PLEA_BARGAINING_A_COSMETIC_APPROACH_TO_THE_FIGHT_AGAINST_CORRUPTION_IN_NIGERIA?email_work_card=view-paper> accessed 23 September 2020.
[81] *F R N v. Esai Dangbar* (2012) LPELR-19732(CA); *Tafa Balogun v. FRN* (2005) 4NWLR (Pt. 324) 190.
[82] Sule Peter Echewija, 'Plea Bargaining and the Administration of Criminal Justice in Nigeria: A Moral Critic' *IAFOR Journal of Ethics, Religion & Philosophy*, 41, Volume 3 – Issue 2 – Autumn 2017.
[83] Same Sex Marriage (Prohibition) Act, 2014.
[84] Section 1, Robbery and Firearm Special Provision Act, 2004.
[85] Sule Peter Echewija, 'Plea Bargaining and the Administration of Criminal Justice in Nigeria: A Moral Critic' *IAFOR Journal of Ethics, Religion & Philosophy*, 42, Volume 3 – Issue 2 – Autumn 2017.