THE IMPERATIVES OF ASSETS RECOVERY: PLEA BARGAINING OR CIVIL RECOVERY?*

Abstract

Civil recovery proceedings are initiated to recover or confiscate assets that are believed to be the proceeds of crime. The process of is a lot easier than conviction-based asset forfeiture because the standard of proof required is the balance of probability rather than proof beyond reasonable doubt. While the civil assets recovery regime in Nigeria has its uses and should be reformed and retained, it is inadequate to resolve political corruption and money laundering cases in Nigeria. Consequently, a workable plea-bargaining process which emphasise and maximise conviction-based recovery of the proceeds of crime with the additional deterrent effects, such as the fact that convictions also render the convict ineligible for public office either by election or appointment, will be more efficacious than civil recovery for Nigeria, especially in the prosecution of economic and financial crimes.

Keywords: Civil Assets Recovery, Plea-bargaining, Nigeria, Imperatives

1. Introduction

Stemming the prevalence and adverse effects of political corruption, which is the typology of economic and financial crimes in Nigeria,[1] is the focus of this paper which, based, as it were, on the thesis that the plea-bargaining process is more appropriate for the resolution of political corruption in ways that civil recovery processes cannot.

2. Civil Assets Recovery

In relation to civil assets recovery, civil recovery proceedings are initiated to recover or confiscate assets that are believed to be the proceeds of crime. Such civil assets recoveries are possible where it can be proved that the assets are the proceeds of crime because civil recovery is all about the property, not the guilt of the person holding it. The process of civil assets recovery is a lot easier than conviction-based asset forfeiture because the standard of proof required is the balance of probability rather than proof beyond reasonable doubt, which is required to secure criminal conviction asset forfeiture. Thus, where the available evidence is insufficient to prove beyond reasonable doubt that the assets are the proceeds of a crime, it may well be adequate to establish on the balance of probability that the assets are the proceeds of an illegality. Also, where the assets are in a foreign jurisdiction, a civil recovery is preferable to conviction-based forfeiture because it avoids the difficulties of conflict of legal systems and the need for mutual legal assistance between countries. In the UK, while other prosecuting agencies can also use civil recovery proceedings, the Serious Fraud Office (SFO), uses the proceedings for global bribery and corruption, transnational crimes and to recover the proceeds of crime held overseas.[2]

Civil recovery has been enhanced in the UK by the Criminal Finance Act (CFA) 2017 which amended the Proceeds of Crime Act 2002. The CFA gives Law enforcement agencies and partner's authority to recover the proceeds of crime, tackle Money laundering, tax evasion, corruption and combat the financing of terrorism.[3] Furthermore, the CFA contains other provisions such as the Unexplained Wealth Orders (UWO), Interim Freezing Orders, External Assistance, among others. The Unexplained Wealth Orders (also known as 'McMafia laws') were powers brought into force in January 2018 targeted at proceeds of crime that were invested in the property market. Persons who own properties that are valued more than their income may be required by the NCA[4] to explain their source of funds. If the NCA is not satisfied with the explanation, they can apply to the courts to confiscate the property.[5] The first UWO was issued against a property owned by Zamira Hajiyeva in Knightsbridge, London, which was purchased for £11.5 million.[6]

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[1] C P Okpala, 'An evaluation of the role of prosecutorial discretion in the anti-money laundering regime of Nigeria' p. 37, PhD, Nottingham Trent University. An evaluation of the role of prosecutorial discretion in the anti-money laundering regime of Nigeria. - IRep - Nottingham Trent University.

[2] Part 5 Proceeds of Crime Act (POCA) 2002.

[3] CFA 2017 <www.legislation.gov.uk/uksi/2020/991/contents/made>. Accessed 4 December 2020.

[4] Other enforcement and investigation bodies – the National Crime Agency, HM Revenue & Customs, the Serious Fraud Office, Financial Conduct Authority and Crown Prosecution Service were all granted special powers to freeze assets and require the super-rich to explain the source of their wealth.

[5] BBC News (8 April 2020), `Kazakh family win Unexplained Wealth Order battle over London homes' <www.bbc.co.uk/news/uk->. Accessed 4 December 2020.

[6] Wife of the former chair of the International Bank of Azerbaijan who was sentenced to 15 years in 2016 for defrauding the bank of £2.2 billion; Zoe Osborne, `UK Court of Appeal Rejects UWO challenge, (5 Feb 2020) <www.steptoe.com/en/news-publications/uk-court-of-appeal-rejects-unexplained-wealth-order-challenge.html.> Accessed 4 December 2020.

In another UWO procedure, Leeds businessman Mansoor Mahmood Hussain forfeited property worth £10M, after he failed to satisfy the court that his wealth was not the proceeds of crime.[7] While few countries like the United States, the United Kingdom and Switzerland allow civil asset recovery, the list is growing because it is producing results faster than conviction-based assets forfeiture. Civil asset recovery is also encouraged by The United Nations Convention Against Corruption 2005, especially where a criminal asset recovery case would be difficult or impossible, for example in cases of death, flight, or other cases.[8] Other multinational treaties also provide for civil recovery of the proceeds of criminal activities.[9]

It is noteworthy that the two main penal codes dealing with crime in Nigeria[10] only provide for terms of imprisonment for economic and financial crimes.[11] Therefore, a conviction must be proved in a court of law before corruptly acquired assets can be recovered. Furthermore, neither the Economic and Financial Crimes Commission (Establishment) Act 2004 nor the Money Laundering (Prevention and Prohibition) Act 2022, both of which deal specifically with economic and financial crimes in Nigeria, made provisions for assets forfeiture in the absence of conviction. However, the Constitution of the Federal Republic of Nigeria 1999 (as amended) created a Code of Conduct for Public Officers which are also contained in the Code of Conduct Bureau and Tribunal Act.[12] Section 18(2)(c) gives the Code of Conduct Tribunal the power of seizure and forfeiture of assets acquired by public officers in abuse or corruption of office, where the Tribunal has established a finding of guilt, such as where the public officer's assets are undeclared upon assumption of office or what is declared after four years in office is more than his earnings, without satisfactory explanation.[13] Also, although the Corrupt Practices and Other Related Offences Act 2004 generally provides for conviction-based forfeiture,[14] it narrowly provides for non-conviction-based asset forfeiture only where, within a period of twelve months from the date of seizure of the corruptly acquired assets there has been no prosecution or conviction. In a case like that the Commission may apply to a judge of the High Court for an order of forfeiture. However, where such an application for forfeiture is not made within twelve months of the date of seizure, the property will be released to the person from whom it was seized.[15] Furthermore, the ICPC Act[16] also vests the Commission with powers like the unexplained wealth order (UWO) in the UK, which the courts in Nigeria have shown a remarkable willingness to enforce when the Supreme Court stated that, because proving the offence of Money Laundering is made more difficult by the requirement that the prosecution must first establish the commission of the predicate offence,[17] statutorily inferring money laundering from not only the conduct of the defendant but his lifestyle is a solution which is like the Proceeds of Crime Act 2002 of the UK. The court further held that the provision of Section 36(5) of the 1999 Constitution to the effect that, 'Every person who is charged with a criminal offence shall be presumed innocent until he is proved guilty provided that nothing in this Section shall invalidate any law by reason only that the law imposes upon any person the burden of proving particular facts' does not invalidate such statutory inference because the proviso allows for shifting the burden of proof on the defendant in respect of particular facts.[18] Consequently, the Supreme Court upheld the legality of Section 44(2) of the ICPC Act under which the ICPC may compel public officials to explain the source of their wealth or properties that appear or are deemed 'excessive' in relation to their salaries.[19] This effectively places the burden of proving unexplained wealth on the accused person. This decision of the Supreme Court of Nigeria is akin to the application of the Unexplained

[7] Nicola Sharp, `Unexplained Wealth Orders: Rightly celebrated or Over-rated' Global Banking and finance Review, 20 0ctober 2020. <www.globalbankingandfinance.com/unexplained-wealth-orders-rightly-celebrated-or-over-rated/>. Accessed 4 December 20, 2020.

[8] Article 54(1)(c) United Nations Convention Against Corruption 2005.

[9] Article 12 United Nations Convention Against Transnational Organised Crime (UNTOC) 2003; Article 16 African Union Convention on Preventing and Combating Corruption and Related Offences (AU Convention) 2006; Article 13 Economic Community of West African States Protocol on the Fight against Corruption (ECOWAS Protocol) 2001.

[10] The Criminal Code applies to the states in Southern Nigeria while the Penal Code applies to states in the Northern Nigeria.

[11] Sections 98, 404 and 494 of the Criminal Code; Sections 115-122 of the Penal Code LFN 2004.

[12] Cap. 15 Laws of the Federation of Nigeria 2004.

[13] Section 11 Code of Conduct for Public Officers Laws of the Federation of Nigeria 2004.

[14] Section 47 Corrupt Practices and other Related Offences Act 2004.

[15] Section 48 Corrupt Practices and other Related Offences Act 2004.

[16] Section 44(2) Corrupt Practices and other Related Offences Act 2004.

[17] Currently section 18(8) of the Money Laundering (Prohibition) Act 2022 makes it unnecessary to establish a specific unlawful act, or that a person was charged or convicted for an unlawful act, for the purpose of proving a money laundering offence.

[18] *Dauda v Federal Republic of Nigeria* (2018) 10 NWLR (Pt.1626) 169.

[19] Section 20(2) of the Money Laundering (Prohibition) Act has a similar provision which allows the Federal High Court to take cognizance of any accused person who 'is in possession of pecuniary resources or property for which he cannot satisfactorily account and which is disproportionate to his known sources of income'.

Wealth Order (UWO) obtained by the UK National Crime Agency (NCA) against Zamira Hajiyeva, which required her to explain how she acquired assets that were by far more than her income over a short time.[20]

Despite the limitations in Nigeria's domestic laws regarding civil recovery of illicit assets, it may seem more practical and easily feasible to seek the enhancement of the recovery of the proceeds of economic and financial crimes through civil assets recovery/forfeiture rather than plea bargaining, especially as Nigeria has ratified the United Nations Convention Against Corruption 2005 and other international treaties that encourage and support civil recoveries.[21] For that matter, in 2007 Nigeria won a series of civil asset recovery cases at the High Courts in the UK that resulted in the recovery of more than GBP 12 million from two former State Governors.[22] Indeed, all that may be required is additional legislation that will strengthen the civil assets recovery regime in Nigeria, such as the recent government effort when on the 5th of July 2018, the President of Nigeria signed Executive Order 6 of 2018 on the preservation of suspicious asset recovered from corrupt officials. This is to enable the anti-corruption agencies to recover proceeds of crime, and particularly assets that are outside jurisdiction.[23]

3. Plea-bargaining

There is no concise or prevalent definition of plea-bargaining. From one jurisdiction to another, plea-bargain is defined in the terms that reflect the features or situations that the process applies to. From its origin in 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.*[24]* 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.*[25]* 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'.[26] 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. Therefore, a plea bargain is a negotiated plea of guilty in consideration of a lenient penalty.[27] In Nigeria, the first legislation that specifically provided for plea bargaining, the Administration of Criminal Justice Law of Lagos State, 2007[28] (which is only applicable to Lagos State) did not define the term.[29] However, in interpreting the use and application of plea-bargaining pursuant to section 14(2) of the EFCC Act 2004, the Court of Appeal in Romrig Nigeria Limited v. FRN[30]adopted with approval the definition of plea bargain in Black's Law Dictionary 9th. Edition 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 of some concession by the prosecutor usually a more lenient sentence or a dismissal of the other charges.' When plea-bargaining was eventually created by the Administration of Criminal Justice Act 2015, an Act of the National Assembly which applies nationwide, it was defined as:

> The process in criminal proceedings whereby the defendant and the prosecution work out a mutually acceptable disposition of the case, including the plea of the defendant to a lesser offence

[20] Wife of the former chair of the International Bank of Azerbaijan who was sentenced to 15 years in 2016 for defrauding the bank of £2.2 billion; Zoe Osborne, `UK Court of Appeal Rejects UWO challenge, (5 Feb 2020) <www.steptoe.com/en/news-publications/uk-court-of-appeal-rejects-unexplained-wealth-order-challenge.html>. Accessed 4 December 2020.

[21] United Nations Convention Against Transnational Organised Crime (UNTOC) 2003; African Union Convention on Preventing and Combating Corruption and Related Offences (AU Convention) 2006; Economic Community of West African States Protocol on the Fight against Corruption (ECOWAS Protocol) 2001.

[22] *FRN vs Santolina Investment Corp* [2007] EWHC 3053 (QB); *FRN vs Joshua Chibi Dariye*.

[23] Okpala, C.P., 'An evaluation of the role of prosecutorial discretion in the anti-money laundering regime of Nigeria' 82, PhD, Nottingham Trent University. An evaluation of the role of prosecutorial discretion in the anti-money laundering regime of Nigeria. - IRep - Nottingham Trent University

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

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

[26] 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.

[27] Ted. C Eze & 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

[28] Section 75 of this Law of the Lagos State House of Assembly, which is only applicable to Lagos State, provided for plea bargaining. That Law has since been repealed and replaced by the Administration of Criminal Justice Law, Lagos State 2011, which retained the provision on plea bargaining.

[29] Section 375 of the Administration of Criminal Justice Law, Lagos State 2007, the interpretation provisions, did not include any definition of the term plea bargain.

[30] (2014) LPELR-22759 (CA)

> than that charged in the complaint or information and in conformity with other conditions imposed by the prosecution, in return for a lighter sentence than that for the higher charge subject to the Court's approval.[31]

Plea-bargaining is a legal process which allows the prosecutor and the defendant to make compromises by trading some risks and privileges in a mutually agreeable bargain in which the defendant repudiates the presumption of innocence and forgoes the right to go to trial, while the prosecutor foregoes the right to pursue the most serious charges possible or demand the highest sentence. Howsoever defined, plea bargaining is a procedure that results in a bargain or deal between the accused person and the prosecutor, with the tacit or active participation of the trial judge. It may occur at any time, either before the trial of the charges brought against a defendant or after a trial has commenced. Plea bargaining has been credited with a great deal of benefits to the administration of criminal justice system. Globally, it is responsible for more than 85% of the convictions today, despite its shortcomings.[32]In the United States of America plea bargaining as a process of charge adjudication is responsible for the resolution of approximately 95 percent of criminal cases,[33] while it has been applied with varied degrees of success in Europe and else-were.[34]

Plea bargaining leads to speedy trials by putting before a judge an agreement between the prosecutor and the defendant only for the consideration of judgement. Plea-bargaining saves time and cost of litigation and leads to the decongestion of the courts and penal institutions.[35] Plea-bargaining 'holds out the prospect of inducing those accused of crimes to openly admit their guilt or implicate others'.[36]It is also believed to be an efficient method of allocating justice system resources because it enables prosecutors to maximise available resources while the defendants minimise their individual costs of criminal trials, prosecutors can then apply the saved cost and time to other cases.[37]

4. Plea-bargaining in Nigeria

In 2001 due to the prevalence of economic and financial crimes 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-cooperative jurisdictions'; which is a list of countries whose anti-money laundering regulations were not up to scratch.[38] The list was intended to put political and economic pressure on recalcitrant countries to strengthen the fight against financial crimes.[39] 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. Soon thereafter, Nigeria was removed from the FATF non-cooperative list in 2006.[40] Significantly, it was section 14(2) of the EFCC Act that first introduced a process that was recognised by the courts[41] as plea-bargaining, into Nigerian law in 2004.[42] Although the section empowered the Commission to compound[43] 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 economic and financial crimes by plea-

[31] Section 494(1) of the Administration of Criminal Justice Act 2015.
[32] Alschuler, 'Plea Bargaining and its History' cited in Douglas A. Smith, *Plea Bargaining Controversy, The*, 77 J. CRIM. L. & CRIMINOLOGY 949 (1986).
[33] Richard L. Lippke, 'The Ethics of Plea Bargaining' Oxford University Press, 2011.
[34] Such as: England and Wales; India; Pakistan; Singapore; Australia; Brazil; China; Denmark etc.
[35]. Bolaji Damilare, 'The Desirability of 'Plea Bargain' in the Nigerian Criminal Justice System' (The Lawyers Chronicle 6 Jan 2019) <www.thelawyerschronicle.com/the-desirability-of-plea-bargain-in-the-nigerian-criminal-justice-system/> accessed 8 September 2020.
[36] Richard L. Lippke, 'The Ethics of Plea Bargaining' Oxford University Press, 2011, p 219
[37]Douglas A. Smith, The Plea-Bargaining Controversy (77 J. Crim. L. & Criminology 949 (1986) p.450 <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6538&context=jclc>accessed 9 September 2020.
[38]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
[39]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
[40]FATF, 'Annual Review of Non-cooperative Countries and Territories, 2005-2006', 23 June 2006
[41]Romrig Nigeria Limited v. FRN (2014) LPELR-22759 (CA)
[42] 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.
[43]

bargaining.[44] 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 Commission had resolved by plea-bargaining.[45] Thus, the plea-bargaining process was initially used to resolve economic and financial crimes nationwide, 11 years before the ACJA 2015 expressly introduced the practice into Nigeria's jurisprudence. After the veiled introduction of plea-bargaining by the EFCC Act, 2004,[46] 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.[47] Subsequently, a Federal legislation, the Administration of Criminal Justice Act 2015, made plea bargaining an available option[48] in criminal trials at all the federal courts nationwide, except a Court Martial.[49] Plea-bargaining has come to stay as part of Nigeria's criminal process and procedure[50] 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.[51]

In Nigeria Plea-bargaining as a prosecutorial device is still an emerging phenomenon as such there are no codified guidelines as it obtains in some other jurisdictions and there is a dearth of authorities of the courts in relation to it.[52] However, because the Administration of Criminal Justice Act 2015 is a Federal legislation which apply to the Federal Capital Territory and all the 36 States of the federation[53] and all of them are bound by guiding principles elucidated by the Court of Appeal and the Supreme Court: both federal courts,[54] this paper will rely on the plea-bargaining provisions of the Federal legislation and the few guiding principles elucidated by the federal courts, which are applicable nationwide.[55] Plea bargaining in Nigeria is activated either by the Prosecutor offering a plea bargain to a defendant charged with an offence or by receiving and considering a plea bargain from a defendant charged with an offence, either directly from that defendant or on his behalf.[56] The prosecutor may offer or accept a plea agreement from a defendant, so long as the Prosecutor is of the view that the offer or acceptance of a plea bargain is in the interest of justice, the public interest, public policy, and the need to prevent abuse of legal process.[57]

The prosecutorial discretion to engage in plea bargaining is further limited to instances where all the following conditions apply: the evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt;[58] the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his

[44] *FRN v. Tafa Balogun* (2005) 4 NWLR (Pt. 324) 190; *FRN v. Alamieyeseigha* (2006) 16 NWLR Pt. 1004 and *FRN v. Nwude & Ors.* (Unreported) Suit No. ID/92C/2004.
[45] PML Nigeria Limited v. FRN (2018) LPELR-47993 (SC).
[46] 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.
[47]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.
[48] Section 270 Administration of Criminal Justice Act 2015
[49] 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) p 14, *FRN v. Lawan* (2018) LPELR-43973 (CA) pp 18-20, *Agbi v. FRN* (2020) LPELR-50495 (CA). However, in *Ogbara v. State* (2019) LPELR-48982 (CA) pp 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.
[50] *Muhammed v. FRN* (2019) LPELR-48107 (CA)
[51] *PML (Securities) Limited v. FRN* (2018) LPELR-47993 (SC) pp. 10-28
[52]*PML (Securities) Limited v. FRN* (2018) LPELR-47993 (SC) pp 10-28.
[53]Section 2 Administration of Criminal Justice Act 2015, *Wagbatsoma v. FRN* (2018) LPELR-43644 (CA) p 14, FRN v. Lawan (2018) LPELR-43973 (CA) pp 18-20, *Agbi v. FRN* (2020) LPELR-50495 (CA). However, in *Ogbara v. State* (2019) LPELR-48982 (CA) pp 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.
[54] Sections 230, 232, 233, 237, and 240 Constitution of the Federal Republic of Nigeria 1999 (as amended)
[55] Sections 233 and 240 Constitution of the Federal Republic of Nigeria 1999 (as amended)
[56] Section 270(1) Administration of Criminal Justice Act 2015, PML Nigeria Limited v. FRN (2018) LPELR-47993 (SC) pp 10-28.
[57] Section 270(3) Ibid.
[58] This provision of the Act is curious. Why would a defendant engage in a plea-bargain wherein he agrees to plead guilty for a lesser penalty, no matter how small, when the prosecutor does not have sufficient evidence to secure a conviction in the first instance.

representative; or the defendant in a case of conspiracy has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders.[59]

Furthermore, before the defendant pleads to the charge(s), the parties may enter into an agreement in respect of: the terms of the plea bargain; which may include the sentence recommended, within the appropriate range of punishment stipulated for the offence or a plea of guilty by the defendant to the offence charged or a lesser offence, of which he may be convicted on the charge; and an appropriate sentence to be imposed by the court where the defendant is convicted of the offence to which he intends to plead guilty.[60] Howsoever activated, plea bargaining may be consummated with the consent of the victim of the alleged offence or his representative during or after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defence.[61] In the absence of any codified guidelines in relation to plea-bargaining in Nigeria, as it obtains in some other jurisdictions,[62] these provisions of section 270 of the Administration of Criminal Justice Act 2015 have been construed by the courts to have created the following features of a plea-bargain agreement and guidelines on how a plea-bargain is to be pursued in Nigeria:

I. The plea-bargain must be negotiated between the prosecution and the defendant.[63]
II. A plea-bargain clearly only operates in *personam* and not by privy or proxy.[64]
III. A plea-bargain must be a deliberate and conscious act taken by the prosecution and defendant wherein the defendant must suffer a conviction.[65]
IV. The court must not be involved in the plea-bargain.[66]
V. The defendant must agree to plead guilty to the offence in exchange for some concession of the prosecution on the sentencing.[67]
VI. The court must give approval of the plea-bargain as it is or otherwise inform the defendant of a higher penalty so that he may agree to it before sentence or opt out of the plea-bargain and proceed to trial afresh. [68]

Any defendant who is convicted and sentenced upon a plea bargain shall not be charged or tried again on the same facts for the offence(s) earlier charged for which he had pleaded to a lesser offence.[69] This consistent with the constitutional provision that any person who has been tried by any court or tribunal of competent jurisdiction for a criminal offence and was either convicted or acquitted shall not be tried again for the same offence or for a criminal offence having the same ingredients as that offence except upon the order of a superior court.[70] However, only a defendant who participated in a plea-bargain can benefit from this forbearance at any subsequent trial on the same offence(s). In PML Nigeria Limited v. FRN,[71] the appellant's name was struck off the list of defendants at the first trial at the Federal High Court, Enugu, after which the other defendants initiated a plea-bargain with the prosecutor. They were convicted and sentenced pursuant to the plea-bargain. Subsequently, the appellant was charged with the same offences at another Federal High Court, Benin. The plea of double jeopardy by the appellant was rejected because a plea-bargain operates *in personam* and must be a deliberate and conscious act of the parties. Furthermore, because the appellant did not take part in the plea-bargaining at the earlier trial in Enugu and did not suffer any conviction, no matter how insignificant or trivial the offence to which the conviction relates, which is a condition sine qua non for a plea-bargain, the appellant cannot claim double jeopardy. Remarkably, the plea-bargaining process in Nigeria empowers the court to order forfeiture in appropriate cases and make an order that any money, asset, or property agreed to be forfeited under the plea bargain shall be transferred to and vest in the victim or his representative or any other person. The prosecutor is enjoined to facilitate the transfer of all forfeited items to the victim, his representative or any other person lawfully entitled to it.[72] It is a criminal offence to wilfully and without just cause, obstructs, or impedes the vesting or transfer of any money, asset, or property pursuant to this provision. Offenders are liable on conviction to imprisonment for 7 years without an option of fine.[73]

[59] Section 270(2) Administration of Criminal Justice Act 2015; this provision will aid the successful prosecution of members of the ubiquitous organised criminal networks.
[60] Section 270(4) A.C.J.A.2015, *PML Nigeria Limited v. FRN* (2018) LPELR-47993 (SC).
[61] Ibid.
[62] *PML (Securities) Company Limited v. FRN* (2018) 13 NWLR (Part 1635) 157 at 175
[63] *PML Nigeria Limited v. FRN* (2018) LPELR-47993 (SC)
[64] *Agbi v. FRN* (2020) LPELR-50495 (CA), PML Nigeria Limited v. FRN (2018) LPELR-47993 (SC)
[65] *PML (Securities) Limited v. FRN* (2018) LPELR-47993 (SC)
[66] *Ijire v. FRN* (2020) LPELR-51242 (CA) pp 20-25, Agbi v. FRN (2020) LPELR-50495 (CA)
[67] *Promise v. FRN* (2020) LPELR-49874 (CA)
[68] *Abdulmumin v. FRN* (2020) LPELR-51086 (CA), PML Nigeria Limited v. FRN (2018) LPELR-47993 (SC), Ijire v. FRN (2020) LPELR-51242 (CA)
[69] *FRN v. Lucky Igbinedion &ors*. (2014) LCN/7100(CA), *Agbi v. FRN* (2020) LPELR-50495 (CA), *PML Nigeria Limited v. FRN* (2018) LPELR-47993 (SC).
[70] Section 36(9) Constitution of the Federal Republic of Nigeria (1999 as amended) No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.
[71] FRN (2018) LPELR-47993 (SC) pp 10-28.
[72] Section 270(12) and(13) A.C.J.A. 2015.
[73] Section 270(14) A.C.J.A. 2015, *Agbi v. FRN* (2020) LPELR-50495 (CA)

5. Why Plea-Bargaining

The civil assets recovery regime in Nigeria still has its uses and should be reformed and retained to compliment the conviction-based recovery of the proceeds of crime.[74] However, the civil recovery of the proceeds of crime alone is not an adequate panacea to the challenge of political corruption and money laundering, which are usually perpetrated in Nigeria by politically exposed persons, by virtue of office. These crimes undermine democratic institutions, slow economic development, and contribute to governmental instability.[75] Consequently, a workable plea-bargaining process which emphasises and maximise conviction-based recovery of the proceeds of crime with the numerous non-criminal collateral consequences that often attach to convictions is commendable.[76] In Nigeria convictions render the convict ineligible for public office either by election or appointment.[77] This is more efficacious than civil recovery, in respect of political corruption and money laundering cases, because it denies the convict of the opportunity to hold public office and the opportunity of re-offending.

Furthermore, plea-bargaining is commendable for political corruption and money laundering cases in Nigeria because in addition to the already demanding requirements of due process at criminal trials, economic and financial crimes are especially difficult to prosecute for a variety of reasons,[78] notable amongst which is the advent and application of information technology to economic and financial crimes, and the resultant concept of a Global Village which enhances the ease of committing economic and financial crimes in a shrinking world, the trans-national nature of economic and financial crimes made possible by information technology, the cost implication of investigation and prosecution of transnational economic and financial crimes, and evidential challenges posed by conflict of jurisdictions. These challenges to the prosecution of political corruption and money laundering make their resolution by plea-bargaining commendable. Furthermore, the prosecution of political corruption and money laundering in Nigeria is particularly difficult due to other factors such as the fact that the Nigerian Police, the main investigative arm of the criminal justice system, are unable to effectively investigate crimes because it has not kept pace with forensic technology.[79] Successful forensic investigation of political corruption and money laundering particularly depends a lot on financial intelligence, usually provided by the Financial Intelligence Units (FIU) of various countries. In Nigeria, the NFIU was established based on the requirement of the FATF recommendation 29[80] and Article 14 of the United Nations Convention Against Corruption (UNCAC)[81] but its operational ability was handicapped by the overbearing control of the EFCC.[82] Attempts to address these challenges to the prosecution of economic and financial crimes through Mutual Legal Assistance Treaties (MLA) have not been very effective because of difficulties in arriving at a congruence of values and priorities across nations.[83] Without doubt, the challenges to the successful prosecution of economic and financial crimes, especially political corruption, and money laundering, in Nigeria are intractable. However, the plea-bargaining process provides a panacea for the successful prosecution of political corruption and money laundering, given its putative values.

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[74] Sections 98, 404 and 494 of the Criminal Code; Sections 115-122 of the Penal Code LFN 2004.

[75] Human Rights Watch, 'Nigeria: Corruption on Trial?
The Record of Nigeria's Economic and Financial Crimes Commission' (Human Rights Watch 25 Aug 2011) <www.hrw.org/report/2011/08/25/corruption-trial/record-nigerias-economic-and-financial-crimes-commission> Accessed 29 June 2019; Paku Utama, 'Gatekeepers' Roles as a Fundamental Key in Money Laundering' *(*20162Indonesia Law Review) 181. In Nigeria, the Military cited pervasive corruption as the reasons for truncating democratic rule in the first republic (1960-1966) and the second republic (1979-1983).

[76] Vincent Chiao, *Criminal Law in the Age of the Administrative State* Oxford University Press 2019, xi and 191 - In New York a misdemeanour conviction gives rise to 354 collateral consequences while a felony conviction may result in as much as 555 collateral consequences.

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

[78] OECD (2019), Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention, 22 <www.oecd.org/corruption/Resolving-Foreign-Bribery-Cases-with-Non-Trial-Resolutions.htm>. Accessed 01 June 2021.

[79] Noel Otu and O Oko Elechi, 'The Nigeria Police Forensic Investigation Failure' Journal of Forensic Sciences and Criminal Investigation (JFSCI), Volume 9, Issue 1, May 2018, <https://juniperpublishers.com/jfsci/pdf/JFSCI.MS.ID.555752.pdf>. Accessed 16 August 2019.

[80] Recommendation 29 requires that Countries should establish a financial intelligence unit (FIU) that serves as a National Centre for the receipt and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis.

[81] UNCAC provides that Countries shall consider the establishment of a financial intelligence unit to serve as a National Centre for the collection, analysis, and dissemination of information regarding potential money-laundering.

[82] Kingley Jeremiah and Mathew Ogune, 'Nigeria is Losing Trillions to Corruption Say Forensic Experts'(The Guardian 16 Aug 2019) <https://guardian.ng/news/nigeria-is-losing-trillions-to-corruption-say-forensic-experts/> accessed 16 August 2019.

[83] Peter Grabosky, 'The Prevention and Control of Economic Crime' Corruption and Anti-Corruption, Edited by Peter Larmour and Nick Wolanin, Anu Press, 2013, 146–158 at 152-153. JSTOR, <www.Jstor.org/stable/J.Ctt2tt19f.12> accessed 16 May 2021.