PLEA-BARGAINING IN NIGERIA: WHEN CRIME PAYS*

Abstract
It is notable that the plea-bargaining process was initially introduced into Nigeria as a panacea to economic and financial crimes cases and even though it is now made applicable to other crimes; economic and financial crimes remain its focus. Economic and financial 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. They are non-violent crimes that cause financial loss to the victims and society. The history and typology of economic crimes in Nigeria is political corruption and the related offences of money laundering by politically exposed persons. However, decided cases reveal that plea-bargaining has failed to resolve economic crimes effectively, rather the process has provided soft landing for defendants, especially in political corruption cases, due to the extant legal and socio-political conditions in Nigeria.

Keywords: Plea-bargaining; Economic crimes; Political Corruption; Legal and Socio-Political Conditions

1. Introduction

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', that is a list of countries with weak anti-money laundering regulations.[1] The purpose of the list was to put these countries under political and economic pressure, sufficient to compel them to enforce stronger anti-money laundering regulations within their jurisdictions.[2] Consequently, in 2004 the Federal Government created the Economic and Financial Crimes Commission (EFCC).[3] Section 14(2) of the EFCC Act 2004 empowered the Commission to 'compound any offence punishable under this Act by accepting such sums of money as it thinks fit, not exceeding the amount of the maximum fine to which that person would have been liable if he had been convicted of that offence'.[4] Although the section did not expressly authorise the plea-bargaining process, the anti-corruption Agency latched onto it and proceeded to resolve economic and financial crimes by plea-bargaining.[5] The judiciary also gave judicial imprimatur to all the cases that the Commission had resolved by plea-bargaining.[6]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, nationwide. After the veiled introduction of plea- bargaining nationwide by the EFCC Act, 2004,[7] 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.[8]
Subsequently, a Federal legislation, the Administration of Criminal Justice Act 2015, made plea bargaining an available option[9] in criminal trials at all the federal courts nationwide, except a Court Martial.[10]

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[1]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

[2]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.

[3]Economic and Financial Crimes Commission (Establishment, Etc) Act, 2004.

[4]Economic and Financial Crimes Commission (Establishment, Etc) Act, 2004, s 14(2).

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

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

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

[8]*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.

[9] Administration of Criminal Justice Act 2015, s 270.

[10] Administration of Criminal Justice Act 2015, s 2 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.

It is notable that the plea-bargaining process was initially introduced into Nigeria as a panacea to economic and financial crimes cases[11] and even though it is now made applicable to other crimes;[12] economic and financial crimes remain its focus.

2. Economic and Financial Crimes

Economic and financial 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'.[13] They are non-violent crimes that cause financial loss to the victims and society.[14] Therefore, they undermine democratic institutions, slow economic development, and contribute to governmental instability.[15] They can stunt any nation's development by diverting funds away from development needs of the polity through corruption, tax evasion, money laundering, illicit financial flows, and similar crimes.[16] The categories of economic and financial crimes which nations are vulnerable to in this millennium are numerous and varied.[17] However, for Nigeria political corruption and money laundering are the prevalent economic and financial crimes, therefore they will be my focus.[18] This was manifested in embezzlement of government funds, fake competitive tenders, financial supports for white elephant projects, giving and receiving kickbacks for government permits or licenses, certificates falsifications, ghost workers, and other economic and financial crimes that undermine the economics and effectiveness of government policies and the Nigeria's development.[19] Thus, the history and typology of corruption in Nigeria is political corruption and the related offences of money laundering by politically exposed persons.[20] Politically exposed persons are individuals who are entrusted with prominent public offices and because of their positions they are present with higher risks of potential involvement in money laundering and other predicate offences such as bribery and corruption as well as engaging in the financing of terrorist activities.[21] Although economic and financial crimes are considered victimless crimes because it is the system that suffers (economic crimes are very damaging to the wellbeing of the State) in Nigeria the 'victims' of economic and financial crimes are the Federal Government, the States, and their Agencies. When these organs of the State are defrauded, the citizens pay the

[11] Economic and Financial Crimes Commission (Establishment) Act 2003, s 14(2).

[12] Administration of Criminal Justice Act 2015, s270.

[13]EOROPOL, 'Economic Crime'(European Union Agency for Law Enforcement Cooperation) <www.europol.europa.eu/crime-areas-and-trends/crime-areas/economic-crime> accessed 28 October 2020.

[14] UNODC, 'Economic and Financial Crimes: Challenges to Sustainable Development' <www.unis.unvienna.org/pdf/05-82108_E_5_pr_SFS.pdf> accessed 28 October 2020.

[15] 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 October 2020; Paku Utama, 'Gatekeepers' Roles as a Fundamental Key in Money Laundering' *(*20162 *Indonesia 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).

[16]U K Ogbodo, E Gabriel Mieseigha, 'The Economic Implications of Money Laundering in Nigeria'(October 2013) *International Journal of Academic Research in Accounting, Finance and Management Sciences* Vol. 3, No. 4, 170–184, 'The Economic Implication of Money**'** <file:///C:/Users/chielos%20pc/Downloads/Article_19>_The_Economic_Implications_of_Money_(1)%20(1).pdf> accessed 29 October 2020; OECD Report, 'Economic and Financial Crime' (OECD)<www.oecd.org/dac/accountable-effective-institutions/efc.htm>accessed 29 October 2020.

[17] P Grabosky, 'The Prevention and Control of Economic Crime' *Corruption and Anti-Corruption*, Edited by Peter Lamour and Nick Wolanin, Anu Press, 2013, 146-158, 151-152. JSTOR, www.Jstor.org/stable/J.Ctt2tt19f.12. Accessed 16 May 2021.

[18] The 'oil boom' in the 60s exposed Nigerians to rent seeking from the proceeds of petroleum resources, while the use of the sudden increase in resources from the oil boom resources by the Nigerian Government introduced political corruption in Nigeria. See M A Salisu, 'Corruption in Nigeria', Department of Economics Working Paper, the Management School, Lancaster University, Working Paper N°006, 2000, cited in Irene Segati, 'Corruption and Growth. A Focus on the Sub-Saharan African Countries' UNIVERSITA DI PISA, Facolta di Scienze Politiche Corso di Laurea Triennale in Scienze Politiche e Internazionali, 60.

[19] C Leite, J Weidmann, 'Does Mother Nature Corrupt? Natural Resources, Corruption, and Economic Growth', IMF Working Paper N° WP/99/85, 1999, cited in Irene Segati, 'Corruption and Growth. A Focus on the Sub-Saharan African Countries' UNIVERSITA DI PISA, Facolta di Scienze Politiche Corso di Laurea Triennale in Scienze Politiche e Internazionali, 60.

[20] 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.

[21] Politically exposed persons include Heads of State or government, senior politicians, senior government officials, judicial or military officials, senior executives of state-owned corporations or important political party officials, it also includes family members and close associates of such individuals, See FATF Guidance: Politically Exposed Persons Recommendations 12 and 22. http://www.fatf-gafi.org/documents/documents/peps-r12-r22.html accessed 15 October 2020,[21] Walter Pazos, `How to assess the risk of politically exposed persons' 20 September 2017. https://www.dnb.co.uk/perspectives/corporate-compliance/politically-exposed-persons-guide.html. accessed 14 October,2020.

price because the funds defrauded would have been deployed to worthwhile government programs, to the benefits of the entire society.[22]
Indeed 'Corruption is the largest single inhibitor of equitable economic development in many countries of the world including Nigeria'[23] yet the prosecution of political corruption is fraught with challenges.[24]

3. Political Corruption Cases
Plea-bargaining was introduced to facilitate the speedy and successful resolution of economic and financial crimes. However, decided cases reveal that the process has failed to achieve these laudable objectives, rather plea-bargaining in Nigeria has provided soft landing for defendants, especially in political corruption cases.

4. Table of Some Convictions upon Plea Bargaining In Nigeria

	Parties	**Number of Charges**	**Proceeds of crime**	**Terms of plea bargaining**	**Sentence**
1	*FRN v. Lucky Igbinedion*, Charge No FHC/EN/6C/2008	191- counts of corruption, money laundering and embezzlement	2.9 billion naira	191- Count charge to 1 count of neglecting to declare a bank account in the asset's declaration form.	Ordered him to refund N500m, forfeit 3 houses and 6 months imprisonment or pay N3.6m as option of fine
2	*FRN v. Tafa Balogun* (2005) 4 NWLR (Pt. 324) 190	56 Counts of money laundering	17 billion naira	Agreed to plead guilty for a lesser sentence.	Sentenced to six months imprisonment.
3	*FRN v. Alamieyeseigha* Charge No. FHC/L/328c/05	6 counts of corruption and other economic crimes.	$ 55 million	2 years imprisonment on each of the six counts; that ran concurrently and from the date he was arrested.	Sentenced to 2 years in imprisonment concurrently on each of the six counts
4	*FRN v. Cecilia Ibru* Charge No. FHC/L/297C/2009.	25 count charges	11 billion naira	25 counts charge reduced to only 3 counts	6 months imprisonment on each count to run concurrently and forfeiture of some assets
5	*FRN v. John Yusuf Yakubu* Charge No: FHC/ABJACR/54/2012	16 count charges	32.8 billion naira	16 charges were reduced to 2 counts	Two years imprisonment with an option of 750,000 naira fine

[22] P Grabosky, 'The Prevention and Control of Economic Crime' *Corruption and Anti-Corruption*, Edited by Peter Lamour and Nick Wolanin, Anu Press, 2013, 146-158, 151-152. JSTOR, www.Jstor.org/stable/J.Ctt2tt19f.12. Accessed 16 May 2021.
[23] K M Kingsley, 'Fraud and Corruption Practices in Public Sector: The Cameroon Experience' *Research Journal of Finance and Accounting* ISSN 2222-1697 (Paper) ISSN 2222-2847 (Online) Vol.6, No.4, 2015 p. 205. file:///C:/Users/44743/Downloads/Fraud_and_Corruption_Practices_in_Public.pdf.
[24] Adewumi, 'The Import of Section 396 of the Administration of Criminal Justice Act (ACJA) 2015: Case Study of Federal Republic of Nigeria v Dr Olubukola Abubakar Saraki'155.

Observations

The parties are all politically exposed persons (PEPs) accused of political corruption. Furthermore, the predicate offences that generated the proceeds of crime were all made possible because of the accused persons' status as politically exposed persons (PEPs). Consequently, it is a logical expectation that the plea-bargaining process in Nigeria be applied to politically exposed persons in all ramifications (such as their associates, friends, and family members) and ensure not only recovery of the proceeds of crime but also the consequences of a criminal conviction, such as a bar from any future public office, which usually gives them the opportunity to commit economic crimes. In all the cases the prosecutor deployed either charge-stacking or over-charging. As a result, all the cases in the table commenced with a high number of counts of allegations of sundry offences (from 191counts to 6 counts) which were eventually reduced to1 to 3 counts, after plea-bargaining. While the drastic reduction of the number charges after plea-bargaining, from as much as 191counts to as low as 1count suggests either gross incompetence or abuse of prosecutorial discretions.

It has been suggested that the excessive charges were used as a prosecutorial device to coerce the defendants into plea bargaining.[25] If that was the case, then their plea of guilty was involuntary and falls short of the legal requirement that a valid plea must be voluntary, clear, and unequivocal.[26] Generally, economic and financial crimes undermine democratic institutions, slow economic development, and contribute to governmental instability.[27] The high volume of the proceeds of crime involved in the five cases is representative of the general trend of money laundering cases in Nigeria and its debilitating effects on the economy and efforts at development. Although civil recovery of the proceeds of crime is easier to prosecute because the standard of proof is on the balance of probability rather than the proof beyond reasonable doubt required in conviction-based recoveries, the recovery of the proceeds of crime regime in Nigeria is predominantly conviction-based.[28] But, assuming without conceding that an enhanced civil recovery regime in Nigeria will lead to increased recoveries of the proceeds of crime, it will still not achieve the important deterrent consequences of; a bar from holding future public offices, shame, and public odium that a conviction-based recovery engenders. Consequently, an effective plea-bargaining process for Nigeria must emphasise and maximise the conviction-based recovery of the proceeds of crime with the additional deterrent effects. This was not the case in the cases in the table above where, despite the billions of naira involved, only a fraction of the proceeds of crime was recovered. While the cases neither exhibited consistency nor conformity with the conditions for plea-bargaining,[29] some even suggest that defendants were coerced into plea bargaining due to extraneous factors. In *F. R. N. v Alamieyeseigha*, the accused person alleged that 'his health was deteriorating, his family had been cared and scattered, he has been in detention for too long and he has no option but to plead guilty';[30]

Finally, all the judgments were clearly without regards to any sentencing guidelines, which raises questions as to the transparency and integrity of the plea bargain process upon which they were based.[31] This is because the sentences were nothing more than a slap on the wrist compared to the gravity and enormity of the alleged offences;[32] and are not based on discernible sentencing guidelines. Consistent adherence to sentencing guidelines

[25] *F.R.N. v. Dieprieye Alamiesiegha*, Charge No. FHC/L/328c/05 (Unreported).

[26] *Aremu* v. *Commissioner of Police* 1980(2) N.C.R. 315; *Onuoha* v. *Inspector-General of Police* 1956 N.R.N.L.R. 96

[27] 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' *(*2016 2 Indonesia 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).

[28] Sections 18(2)(c) of the Code of Conduct Tribunal Act; 20 and 21 of the Economic and Financial Crimes Commission (Establishment) Act of 2004 and 18 of the Money Laundering (Prohibition) Act 2004.

[29] Esoimeme, Ehi. (2014). Has the Concept of Plea Bargaining Been Abused in Nigerian Criminal Justice System?. Legal Aid Journal. 1. 10.2139/ssrn.2462307 and Taiwo Osipitan, Abiodun Odusote, Nigeria: Challenges of Defence Counsel in Corruption Prosecution' Acta Universitatis Danubius. Juridica, Vol. 10, No 3 (2014)

[30] F.R.N. v. Dieprieye Alamiesiegha Charge No. FHC/L/328c/05 (Unreported) and Ibrahim Danjuma and Gan Ching Chuan, 'The Extent of Voluntariness in Plea Bargaining for Economic and Financial Crimes in Nigeria' 23 (3) 2015 IIUM Law Journal, Vol. 23No.3. 2015 (485-498).

[31]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 09/27/2020.

[32] *F. R. N v. John Yakubu Yusufu* Charge No: FHC/ABJACR/54/2012; F. R. N.v. Ibru Charge No. FHC/L/297C/2009; Olugasa, Olubukola Adeyemi, Re-Thinking Evidential Requirements in Prosecution of Embezzlers of Public Fund: The Olabode George and John Yakubu Yusuf Sagas (April 6, 2014). Available at SSRN: https://ssrn.com/abstract=2511619 or http://dx.doi.org/10.2139/ssrn.2511619; *F.R.N v. Dieprieye Alamiesiegha* Charge No. FHC/L/328c/05 (Unreported) and S A Igbinedion, 'A Critical Appraisal of the Mechanism for Prosecuting Grand Corruption Offenders under the United Nations Convention Against Corruption 2003' (2009) 6:1 Manchester Journal of International Economic law 56, 62; and Simeon Igbinedion, 'Workability of the Norms of Transparency and Accountability

is the core of plea bargains because it eliminates disparity in sentences which cloaks the judgement with transparency and integrity.[33] At this juncture it is pertinent to examine the factors that are responsible for the failure of plea-bargaining in these cases.

5. Extant Legal and Socio-Political Conditions in Nigeria

Nigeria has certain legal and socio-political conditions which makes it difficult for the process of plea-bargaining to resolve criminal proceedings with integrity.

Abuse of Prosecutorial Discretions

The Nigerian Constitution is the supreme law of the land,[34]and it vests the prosecutorial discretion[35] in respect of all criminal prosecutions in Nigeria in the office of the Attorneys-General of the Federation and States, respectively.[36] The authority of any other agency or person to institute criminal proceedings in Nigeria is subject to the overarching constitutional powers of the A-G.[37] However, the A-G may delegate his powers, not only to an officer in his department,[38] but also to private legal practitioners[39]and there is no limit as to how far the A-G can go in the delegation of their prosecutorial powers.[40] The prosecutorial discretion of the public prosecutor is unfettered in several common law jurisdictions.[41] Also, in Nigeria the prosecutorial discretion of the A-G cannot be challenged in any court of law.[42] The rational for this ascription of absolute prerogative powers to the A-G is to be found in the lead judgement of the Supreme Court in *State v Ilori*[43] wherein the court declared that:

> The pre-eminent and incontestable position of the Attorney-General, under the common law, as the chief law officer of the State, either generally as a legal adviser or specially in all court proceedings to which the State is a party, has long been recognised by the courts. In regard to these powers, and subject only to ultimate control by public opinion and that of Parliament or the Legislature, the Attorney-General has, at common law, been a master unto himself, law unto himself and under no control whatsoever, judicial or otherwise.[44]

Consequently, the discretion to enter a plea bargain in Nigeria[45] is subject to the overarching and unquestionable prosecutorial authority of the A-G, because every criminal prosecution in Nigeria is either a direct act of the A-G or as delegated by him.[46] Generally, discretionary powers without adequate checks and balances are often deprecated because they are prone to abuses, even to the extent that the beneficiary of the legally unrestrained discretionary powers may even arrogate to themselves more powers than was contemplated by the regulatory

Against Corruption in Nigeria' file:///C:/Users/chielos%20pc/Downloads/122621-Article%20Text-336370-1-10-20150923%20(1).pdf

[33] Bob Osamor, *Criminal Procedure and Litigation Practices in Nigeria*, (2012 Sage Publishers) 372.

[34] *Mohammed v FRN* (2018) LPELR-43908 (SC) pp.27-34, *NASS v President, FRN* (2003) LPELR-10151 (CA) pp.35-38, *James v State of Lagos* (2021) LPELR-52456 (CA)pp.26-47; Section 1 of the Constitution of the Federal Republic of Nigeria provide that the provisions of the Constitution are binding on all persons, that the federation or any part thereof cannot be governed except in accordance with the provisions of the constitution, and that in the event of inconsistency with any other laws the Constitution shall prevail.

[35] Prosecutorial discretion is the authority to decide who and what charges to bring against accused person(s) and where and how to pursue each case; see Landerholm Immigration Law, 'What is Prosecutorial Discretion' (Landerholm Immigration 20 Dec 2017) <www.landerholmimmigration.com/blog/2017/december/what-is-prosecutorial-discretion-/> accessed 29 July 2020.

[36] Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 174 and 211; They have the prosecutorial discretion to institute, take over or discontinue criminal proceedings against any person before any court except a Court Martial; *Mohammed v FRN* (2018) LPELR-43908 (SC) pp.27-34, *NASS v President, FRN* (2003) LPELR-10151 (CA) pp.35-38, James v State of Lagos (2021) LPELR-52456 (CA)pp.26-47

[37] *The State v Okpegboro*1980 (2) N.C.R. 291.

[38] Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 174(2) and 211(2).

[39] *Obijiaku v Obijiaku* (2017) LPELR-43455 (CA) 14-25.

[40] *Ibrahim v The State* (1989) I N.W.L.R. (Pt. 18) 650.

[41] Singapore, Constitution of the Republic of Singapore, (1999 Re. Ed.) [Constitution] art 35(8); United Kingdom Prosecution of offences Act 1985 (U.K.), c. 23, s.3; *United States v Christopher Lee Armstrong* 517 U.S. (1996); Hong Kong, Basic Law of Hong Kong (0rder No. 26 of 1990) Art. 63; *Keung Siu Wah v A.G.* [1990] 2 H.K.L.R. 238 (C.A) .

[42] *State v Ilori* [1983] 1 SCNLR 94.

[43] [1983] 1 SCNLR 94.

[44] *State v. Ilori* [1983] 1 SCNLR 94, 106.

[45] Conferred on the Economic and Financial Crimes Commission by Section 14(2) Economic and Financial Crimes Establishment Act 2004 and the federal Prosecutors by Section 270(3) of the Administration of Criminal Justice Act (ACJA) 2015.

[46] Constitution of the Federal Republic of Nigeria, 1999 (as amended) ss 174(2) and 211(2).

framework.[47] Therefore, it was almost inevitable that the recently introduced plea bargaining process, despite its putative potentials as a panacea for administration of criminal justice, was immediately abused by wrong exercise of prosecutorial discretions, amongst other things, which resulted in decisions that made a mockery of the process.[48] For instance, when a former Governor,[49] was arraigned on 191 counts of corruption, money laundering and embezzlement of 2.9 billion Naira. Pursuant to a plea bargain, the charges were reduced to one count of failure to declare his interest in a bank account in the declaration of assets form of the Economic and Financial Crimes Commission (EFCC). He was convicted on the 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 unsuccessfully appealed against this judgment, in respect of the option of a fine but not on the plea-bargaining process.[50] Furthermore, another attempt in 2011 to prosecute the same ex-Governor for political corruption failed because the court upheld the ex-Governor's objection that the trial would amount to double jeopardy and an abuse of the court process, having entered a plea bargain in the earlier case of 2008.[51] Similarly, in *Tafa Balogun v F R N*,[52] the Economic and Financial Crimes Commission (EFCC) arraigned a 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 to 8 counts of offences, 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.

Perhaps the worst case of abuse of the process of plea bargain was the case of John Yakubu Yusuf[53] who was charged with embezzling 27.2-billion-naira, property of the Police Pensions Fund. The plea-bargain resulted to a sentence of 2 years imprisonment with an option of 750, 000 naira fine. Although the Court of appeal later altered the sentence to 6 years imprisonment, it was still just a slap on the wrist.[54] While these cases may seem to represent effective crime control measures, they are cases of abuse of prosecutorial discretions, because they do not reflect or realise any of the stated goals of the plea-bargaining process, which are that it may only be resorted to where the evidence is not sufficient to establish the elements of the alleged offence beyond reasonable doubt, on the conditions that:

> 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.[55]

The defendants in all the cases discussed above did not significantly forfeit the proceeds of the crime or made equivalent restitution, fully assisted the prosecution during the investigation and prosecution of the crime, or provided evidence upon which other offenders were successfully prosecuted. Consequently, the decisions to plea-bargain in these cases can hardly be said to be in the 'interest of justice, the public interest, public policy, and the need to prevent abuse of legal process'.[56]

Political Interference

Another remarkable aspect of the abuse of the prerogative powers of the A-G is that associated with political interference. In Nigeria the qualification and mode of appointment of the A-G creates a likelihood of bias[57] which

[47] C P Okpala, 'An evaluation of the role of prosecutorial discretion in the anti-money laundering regime of Nigeria.' p.41 PhD, Nottingham Trent University. An evaluation of the role of prosecutorial discretion in the anti-money laundering regime of Nigeria. - IRep - Nottingham Trent University.

[48] *F R N v Esai Dangbar* . (2012) LPELR-19732(CA); NAN, 'Court Quashes Remaining 2 Charges Filed Against Senator Danjuma Goje' (New Mail 5 July 2019) <httpps://newmail-ng.com/court-quashes-remaining-2-charges-filed-against-sen-danjuma-goje/> accessed 27 January 2020; and *Tafa Balogun v. Federal Republic of Nigeria* (2005) 4NWLR (Pt. 324) 190.

[49] *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.

[50] P 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.

[51] *FR N v Igbinedion* (2014) LCN/7100(CA).

[52] *Tafa Balogun v Federal Republic of Nigeria* (2005) 4NWLR (Pt. 324) 190.

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

[54] E 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.

[55] Section 270 (2) and (3) Administration of Criminal Justice Act 2015

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

[57] In *Yabugbe v Commissioner of Police* [1992] 4 N.W.L.R. (PT 234)152 at 174, the Supreme Court held that in trials the likelihood of bias, not actual proof of bias, is sufficient to deprive a judge of authority to adjudicate on any matter.

is sufficient to taint the exercise of prosecutorial discretions by the A-G significantly, especially in the light of the wide and legally unbridled prosecutorial authority vested in the office of the A-G by the Constitution.[58] Even though the A-G is the overarching prosecutorial authority in Nigeria,[59] the only qualifications required for the office is 10 years post call to the Bar,[60] Nigerian citizenship, solvency, and no previous conviction.[61] Nothing in the laws requires the A-G to possess any cognate experience in litigation. While it is conceded that not every wrong exercise of prosecutorial authority is deliberate, it is my submission that many of the ones that are inadvertent are attributable to the incompetence of the A-G in the exercise of his powers, which is traceable to lack of cognate experience. Also, the Constitution leaves the choice of the A-G entirely at the discretion of the President or States' Governors, respectively. Consequently, virtually all the A-Gs are political appointees,[62] who have no security of tenure which makes them vulnerable to the influence of the appointor.[63] These circumstances readily raise the likelihood of bias. Ordinarily the likelihood of bias by a decision maker is suggestive of errors or distortions in the outcome.[64] But in Nigeria, the likelihood of bias in the exercise of prosecutorial discretion by the A-G, is manifest, especially in cases of political corruption usually perpetrated by politically exposed persons.[65] Furthermore, because the President and the Governors in Nigeria have the authority to appoint Ministers and Commissioners for the Federation and States, respectively,[66] and the Constitution demands that the A-G of the Federation and States shall be Cabinet Ministers or States' Commissioners, respectively,[67] the A-G is usually a political appointee who has no security of tenure.[68] The A-G is also made more vulnerable to political pressure where he is a member of the ruling political party, which is usually the case in practice.[69] In Nigeria, the dangers of vesting enormous prosecutorial prerogative powers on seemingly compromised A- G are more real than imagined. For instance, there has been a remarkable pattern of selective prosecution of members of the opposition parties.[70] A former A-G of the federation, exhibited manifest bias in the exercise of prosecutorial discretion in favour of politically exposed persons when he discontinued the criminal proceedings against former Governors and their associates, and declined to prosecute any of the suspects in the Siemens, Willbros, and Halliburton corruption scandals, even though the culprits in these corruption scandals had been convicted on the same offences in other jurisdictions.[71] His actions were excused by his lieutenants based on the decision in *State v Ilori*,[72] which held that the A-G's exercise of prosecutorial discretion is unquestionable. They also noted that even the requirements of the Constitution that in the exercise of prosecutorial discretions the A-G must 'have regard to the public interest, the interest of justice and the need to prevent abuse of legal process'[73] are not justiciable because the requirements are merely declaratory and not mandatory.[74]

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[58] Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 174 and 211.

[59] Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 174 and 211; Adedeji Adekunle, 'Prosecutorial Independence and Effectiveness of the Nigerian Criminal Justice System' 220, *The Evolving Role of The Public Prosecutor- Challenges and Innovations,* Routledge 2020

[60] Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 150 and 195.

[61] Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 66, 150, 107 and195.

[62] Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 147, 150, 192 and 195; Adedeji Adekunle, 'Prosecutorial Independence and Effectiveness of the Nigerian Criminal Justice System' 220, *The Evolving Role of The Public Prosecutor- Challenges and Innovations,* Routledge 2020.

[63] The Attorneys-General of the Federation and States are appointed solely by the President and States' Governors, respectively. The current A-G of the Federation was the personal lawyer to the President and a Governorship candidate of the ruling political party (The All-People's Congress) in 2011; https://en.wikipedia.org/wiki/Abubakar_Malami.

[64] D. J. Galligan, *Due Process and Fair Procedures: A Study of Administrative Procedures*. Clarendon Press Oxford 1996, 73.

[65] *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.

[66] Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 147(2) and 192(2).

[67] Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 150 and 195.

[68] Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 147, 150, 192 and 195; A Adekunle, 'Prosecutorial Independence and Effectiveness of the Nigerian Criminal Justice System' 224-225, *The Evolving Role of The Public Prosecutor- Challenges and Innovations,* Routledge 2020.

[69] The only known exception when an Attorney-General was not a member of the ruling Party was the appointment of the late Chief Bola Ige, member of Alliance for Democracy Party, as Attorney-General in the People's Democratic Party led government of President Olusegun Obasanjo in 200 – 2001.

[70] Global Legal Insights, 'Bribery and Corruption 2019 / 2019' <https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/nigeria> accessed 5 December 2020; LekeBaiyewu, 'Buhari Uses Deodorants to Fight Corruption in Presidency – Shehu Sani' (The Punch 24 Jan 2017) <https://punchng.com/buhari-uses-deodorants-to-fight-corruption-in-presidency-shehu-sani/> Accessed 4 Dec. 2020 and Wikipedia, 'Buhari's Anti-Corruption War' <https://en.wikipedia.org/wiki/Buhari%27s_anti-corruption_war> accessed 11 July 2020.

[71] https://www.justice.gov/opa/pr/kellogg-brown-root-llc-pleads-guilty-foreign-bribery-charges-and-agrees-pay-402-million; https://theconversation.com/lessons-from-the-massive-siemens-corruption-scandal-one-decade-later-108694; https://www.justice.gov/opa/pr/former-consultant-willbros-international-sentenced-connection-foreign-bribery-scheme; Accessed 27 July 2021.

[72] [1983] 1 SCNLR 94,106.

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

[74] O Mba, Judicial Review of the Prosecutorial Powers of the Attorney-General in England and Wales and Nigeria: An Imperative of the Rule of Law (March 1, 2010). Oxford University Comparative Law Forum 2 (2010), Available at SSRN: https://ssrn.com/abstract=2056290 or http://dx.doi.org/10.2139/ssrn.2056290; http://saharareporters.com/2010/03/28/prosecutorial-powers-attorney-general-under-constitution-supreme-court-erred-law- and accessed 27 July 2021.

Political interference was evident in the recent case of Senator Danjuma Goje, where the A-G exercised his prosecutorial discretion[75] and took over the prosecution, only to discontinue it soon thereafter.[76] Remarkably, the discontinuance, after 8 years of trial and expense, closely coincided with the withdrawal of Senator Goje from contesting for the seat of the Senate President in favour the President's and the ruling party's preferred candidate,[77] this can only be seen as a premeditated political reward and an abuse of prosecutorial discretion. This pattern of political interference in criminal prosecutions was also manifested in several other cases.[78]

Status of the Defendants

The peculiar conditions in Nigeria are further compounded by the fact that the history and typology of economic crimes in Nigeria is political corruption and the related offences of money laundering, usually perpetrated by politically exposed persons (PEPs),[79] which is why the plea-bargaining process was initially introduced into Nigeria, as a panacea to political corruption cases.[80] Even though it is now made applicable to other crimes,[81] political corruption, especially perpetrated by politically exposed persons, remains its focus.[82] Initially the law only empowered the Economic and Financial Crimes Commission to compound[83] offences under the Act, but the commission proceeded to plea-bargain political corruption cases,[84] with the approval of the Supreme Court.[85]

Therefore, by the time the Administration of Criminal Justice Act (ACJA) 2015 formally introduced plea-bargaining in respect of all offences nationwide, the process had already been the basis for the resolution of numerous cases of political corruption,[86] which exhibited remarkable disparities between offences and sentences;[87] proceeds of crime and recoveries;[88] and politically exposed persons and other defendants.[89] This is traceable to the fact that politically exposed persons were mostly defendants

[75] Pursuant to the Constitution of the Federal Republic of Nigeria1999 (as amended) s 174.

[76] NAN, 'Court Quashes Remaining 2 Charges Filed Against Senator Danjuma Goje' (New Mail 5 July 2019) <https://newmail-ng.com/court-quashes-remaining-2-charges-filed-against-sen-danjuma-goje/> accessed 7 July 2020.

[77]J Ameh , 'Goje Withdraws Endorses Lawan as Next Senate President' (The Punch 7 June 2019) <https://punchng.com/goje-withdraws-endorses-lawan-as-next-senate-president/> accessed 7 July 2020.

[78] A Salaudeen and I M Machina 'War Against Corruption and the Political Will to Wage it: A Case Study of President Muhammadu Buhari's Two Years in Office' p.370 at 378-379, International Conference on Social Sciences-Africa 11-12 May 2017, Proceeding Book 2017, Nile University of Nigeria. Conferences | Nile University; 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; 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.

[79] 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.

Politically exposed persons are individuals who are entrusted with prominent public offices and because of their positions they are present with higher risks of potential involvement in money laundering and other predicate offences such as bribery and corruption as well as engaging in activity related to terrorist financing. They include Heads of State or government, senior politicians, senior government officials, judicial or military officials, senior executives of state-owned corporations or important political party officials, it also includes family members and close associates of such individuals, See FATF Guidance: Politically Exposed Persons Recommendations 12 and 22. http://www.fatf-gafi.org/documents/documents/peps-r12-r22.html accessed 15 October 2020,[79] Walter Pazos, `How to assess the risk of politically exposed persons' 20 September 2017. https://www.dnb.co.uk/perspectives/corporate-compliance/politically-exposed-persons-guide.html. accessed 14 October,2020.

[80] The practice of plea-bargaining was introduced into Nigeria by section 14(2) of the Economic and Financial Crimes Commission (EFCC) Act 2004 in response to the prevalence of political corruption and money laundering and the listing of Nigeria among the countries with weak anti-money laundering regulatory frame works by the Financial Action Task Force (FATF) See 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

[81] Administration of Criminal Justice Act 2015 s 270.

[82] Nothing in the A.C.J.A. 2015 restricts the plea-bargaining process to economic and financial crimes, it has only been so restricted by practice; P 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, 41.

[83] Economic and Financial Crimes Commission Act 2004, s 14(2) empowers the Commission to compound offences by accepting such sums of money as it thinks fit, not exceeding the amount of the maximum fine to which that person would have been liable if he had been convicted of that offence.

[84] *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.

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

[86] *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 Mrs Cecilia Ibru* [Unreported] Charge No. FHC/L/297C/2009.

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

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

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

in these cases.[90] Politically exposed persons as defendants, by virtue of office, are usually persons with first-hand information on the crimes with which they are charged. This gives them the means and opportunity to distort, destroy or tamper with evidence relevant to the case to the extent that it may no longer be available or useful for criminal prosecutions.[91]

Furthermore, the volume of the proceeds of crime involved in the political corruption crimes for which these politically exposed persons are charged is significant. As a result, they have sufficient financial means not only to buy the best defence that 'stolen money' can buy but also to influence the outcome of plea-bargains. A case in point is that of *F R N v Ibru*,[92] where the EFCC arraigned the defendant on 25 counts of political corruption and money laundering. Pursuant to a plea bargain the offences were reduced 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 defendant was sentenced to imprisonment for 6 months, which she eventually served out in the cosy confines of the luxury wing of a private hospital, allegedly due to ill-health. The result of the plea-bargaining in the case of a former Governor[93] 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. The right to counsel guaranteed by the Constitution[94] is not in contention here; rather it is the difference in the quality of legal representation that these politically exposed persons can muster. The quality of legal representation may well be the determining factor on the outcome of a case in an adversarial system of justice, which often leaves defendants with poor quality legal representation at an undue disadvantage.[95] This is obvious because:

> If one side is much stronger than the other, a correct determination will not come out of the conflict, but only the answer that power can impose. It is fundamentally important to keep the sides in the criminal case equal if the system is to work. Anything that tends to build up one side as opposed to the other, or anything that tends to weaken one side, is detrimental to the adversary system.[96]

In Nigeria, while other defendants find it difficult to afford the high cost of legal fees, politically exposed persons have the best Legal Practitioners on their legal team. Therefore, when these politically exposed persons in Nigeria are defendants in political corruption cases, they unduly influence the plea-bargaining process.
With their influence and affluence, they are not equal to other defendants before the law and 'there can be no equal justice where the kind of trial a man gets depends on the amount of money he has.'[97] Consequently, the plea-bargaining has become the 'Golden Buzzer' that sets those charged with political corruption free, at a minimal cost, to enjoy the proceeds of their crimes.

6. Conclusion

The extant legal and socio-political conditions in Nigeria renders the plea-bargaining process liable to political interference and the overbearing influence of politically exposed defendants. Consequently, plea-bargaining in Nigeria has provided soft landing for defendants, especially in political corruption cases, especially when politically exposed persons in Nigeria are defendants in political corruption cases. As a result, plea-bargaining has become the 'Golden Buzzer' that sets those charged with political corruption free, at a minimal cost, to enjoy the proceeds of their crimes.

[90] The latest Compendium of 100 high profile political corruption cases in Nigeria involved a total Sum of over Two Trillion Naira. The cases involved 41 former States' Governors, 39 other government officials, 12 former Ministers and Special Assistants to the President, 5 Senators, and 2 Judges; see A Compendium of 100 High Profile Corruption Cases in Nigeria 3rd Edition [As at 22nd of November 2019] https://hedang.org/blog/a-compendium-of-100-high-profile-corruption-cases-in-nigeria/.

[91] Adegbie et al. 'Economic and Financial Crime in Nigeria : Forensic Accounting as Antidote' British Journal of Arts and Social Sciences ISSN: 2046-9578, Vol.6 No.1 (2012), <https://d1wqtxts1xzle7.cloudfront.net/48258882/Economic_and_Financial_Crime_in_Nigeria__Forensic_Accounting_as_Antidot.pdf?1471969572=&response-content> accessed 12 January 2021.

[92] *F R N v Ibru* FHC/L/297C/2009.

[93] *FRN v. Alamieyesegha* (2006) 16 NWLR Pt. 1004.

[94] Constitution of the Federal Republic of Nigeria 1999 (as amended) s 36.

[95] D 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 April 2021.

[96] Steinberg, Paulsen, 'A Conversation with Defense Counsel on Problems of Criminal Defense,' 7 Prac. Law 25, 26 (1961) cited in Resnick, D. 'Due Process and Procedural Justice.' *Nomos*, vol. 18, American Society for Political and Legal Philosophy, 1977, 223 http://www.jstor.org/stable/24219206.

[97] *Griffin v Illinois*, 351 U.S. 12, 19 (19, cited in Herbert Packer, 'Two Models of the Criminal Process' *University of Pennsylvania Law Review*, vol. 113, no. 1, 1964, 1–68, at 18. <www.jstor.org/stable/3310562> accessed 4 April 2021.