PLEA BARGAINING IN AN ADMINISTRATIVE STATE*

Abstract

Initially, criminal law was preoccupied with private remedy, but as the question of whether and how to prosecute a crime were taken out of the hands of private parties and consolidated in the hands of public officials, public officials began to assert more systematic control over the criminal process, and it has since transformed to a system of public administration. As a result, States have established institutions that deal with crime as a collective problem. This has led to the concept of the 'Administrative State' where criminal law is enforced through administrative agencies of the State through which public officials set criminal justice policies. It has been urged that apart from just deserts, criminal law in the administrative state should concern itself more with interventions that optimally promote the rights and interests of members of the society and promote the ideal of social equality. Criminal law in Nigeria is in an administrative State. As a special prosecutorial device, how far has the recently introduced plea-bargaining process in Nigeria facilitated the attainment of the purpose and functions of criminal law in the administrative state, in addition to the egalitarian purpose.

Keywords: Administrative State; Plea-bargaining; Legal and Socio-Political Conditions

1. Introduction

The intrinsic subject matter of criminal law is legally proscribed moral wrongdoings for which there are punishments. In respect of these wrongdoings, Criminal law seeks to vindicate pre-politically rights and condemns wrongdoing.[1] In this regard, the criminal justice system pursues the repression of criminal conduct by either retributive justice; punishing the criminally blameworthy or utilitarian justice; the prevention and deterrence of offending acts or omissions. In both cases it is imperative that innocent persons do not get convicted because 'State punishment can be legitimately inflicted only on those found guilty of a crime'[2] Initially, criminal law was preoccupied with private remedy, but as the question of whether and how to prosecute a crime were taken out of the hands of private parties and consolidated in the hands of public officials, public officials began to assert more systematic control over the criminal process, and it has since transformed to a system of public administration.[3] As a result, States have established institutions[4] that deal with crime as a collective problem.[5] This has led to the concept of the 'Administrative State' where criminal law is enforced through administrative agencies of the State through which public officials set criminal justice policies. Public officials now decide which crimes will be taken seriously, who will be charged, how they will be charged, what sort of pleas will be accepted or negotiated, etc.[6] Consequently, criminal law has become 'bureaucratic, largely impersonal, and increasingly centralised'[7]

2. The Administrative State

Vincent Chiao in his book 'criminal law in the administrative state' situated modern criminal law in the administrative state, where crime is a collective problem, and publicly funded institutions determine policing, investigation, prosecution, and punishments.[8] He argues that although in the administrative state, criminal law has become more statist and simply not only about publicly vindicating pre-politically negative rights, but it should also become more egalitarian.[9] In other words, apart from just deserts, criminal law in the administrative state should concern itself more with interventions that optimally promote the rights and interests of members of the society and promote the ideal of social equality.[10] However, he postulates that in addition thereto and more importantly criminal law in the administrative state also needs to be egalitarian. Criminal law in Nigeria is in an administrative State. The Nigerian criminal justice system emphasises adversarial procedures with due process safeguards which are intended to ensure that only the guilty are convicted. While the prosecution and the police

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[1] Vincent Chiao, *Criminal Law in the Age of the Administrative State*, Oxford University Press, 2019, vii
[2] Andrew Sanders, Richard Young and Mandy Burton, *Criminal Justice*, 4th Edition, Oxford University Press, 2010, p.9.
[3] Vincent Chiao, *Criminal Law in the Age of the Administrative State*, Oxford University Press, 2019, 21.
[4] Such as Law enforcement agencies, prosecutors, courts, prisons, parole agencies, sentencing commissions etc.
[5] Vincent Chiao, *Criminal Law in the Age of the Administrative State*, Oxford University Press, 2019, 9-11.
[6] Vincent Chiao, *Criminal Law in the Age of the Administrative State*, Oxford University Press, 2019, 16.
[7] Emsley, The History of Crime and Crime Control Institutions 226; *Garland, Punishment and Welfare*, 225, cited in Vincent Chiao, *Criminal Law in the Age of the Administrative State*, Oxford University Press, 2019, 21.
[8] Vincent Chiao, *Criminal Law in the Age of the Administrative State*, Oxford University Press, 2019, 25.
[9] Vincent Chiao, *Criminal Law in the Age of the Administrative State*, Oxford University Press, 2019, 33-34.
[10] Vincent Chiao, *Criminal Law in the Age of the Administrative State*, Oxford University Press, 2019, 34.

have the powers to investigate,[11] arrest,[12] even without warrant,[13] obtain confessions[14] and plea bargain offences,[15] the defendants have the benefits of the entire gamut of constitutional safeguards to fair hearing guaranteed by section 36 of the Constitution of the Federal Republic of Nigeria 1999(as amended). As a special prosecutorial device, the recently introduced plea-bargaining process ought to facilitate the attainment of the purpose and functions of criminal law in the administrative state, in addition to the egalitarian purpose postulated by Vincent Chiao, in Nigeria. However, these are difficult to attain in Nigeria because extant legal and socio-political conditions such as the qualification and mode of appointment of the A-G, abuse of prosecutorial discretion, political interference, and status of defendants, makes a plea-bargaining process that has integrity difficult to achieve within the context of any of the existing templates of criminal processes.

3. Legal and Socio-Political Conditions in Nigeria

The process of plea-bargaining operates against the backdrop of the extant criminal laws and procedures, sentencing schemes and socio-political factors,[16] which obtains in any given society. In Nigeria, the qualification and mode of appointment of the A-G,[17] abuse of prosecutorial discretion,[18] political interference,[19]and status of defendants, are very strong determining factors in trials. Especially in plea-bargaining which makes the plea-bargaining process ineffectual and skewed in favour of politically exposed persons, who manipulate these circumstances to their advantage.[20]

Qualification and Mode of Appointment of Attorney-General

In Nigeria the qualification and mode of appointment of the A-G creates the likelihood of bias,[21] especially in the light of the wide prosecutorial authority vested in the office of the A-G. The A-Gs (Federation and States) are the overarching prosecutorial authorities,[22] meanwhile the only qualifications required for the office is 10 years post call to the Bar,[23] Nigerian citizenship, solvency, and no previous conviction.[24] Nothing in our laws requires the A-G to possess any cognate experience. Other than 10 years post call and no criminal record, the Constitution leaves the choice of the A-G entirely at the discretion of the President or States' Governors, respectively. Consequently, all the A-Gs are political appointees,[25] who have no security of tenure which makes them vulnerable to the influence of the appointor.[26] For instance, before appointment 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.[27] The same scenario is replicated in all the 36 States of the federation where the respective Governors appoint either their cronies or party loyalists as States' Attorneys-General.[28]

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.[29] But in Nigeria, the likelihood of bias in the exercise of

[11] *Enanuga v. Sampson* (2012) LPELR-8487 (CA) pp.15-16, Sections 4 Police Act, and 3 Administration of Criminal Justice Act 2015.
[12] Section 3 Administration of Criminal Justice Act 2015.
[13] Sections 18 Administration of Criminal Justice Act 2015 and 24 Police Act.
[14] Sections 17 Administration of Criminal Justice Act 2015 and 122 Evidence Act 2011, *Enang v. State* (2019) LPELR-48682(CA).
[15] Section 370 Administration of Criminal Justice Act 2015.
[16] Richard L. Lippke, *The Ethics of Plea Bargaining*, Oxford University Press, 2011, p 219
[17] Sections 147, 150, 192 and 195, Constitution of the Federal Republic of Nigeria 1999 (as amended).
[18] Okpala, C.P., '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
[19] Abdulkadir Salaudeen and Ibrahim 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
[20] *F R N v. Esai Dangbar and 5 ors*. (2012) LPELR-19732(CA); *FRN v. Alamieyeseigha* (2006) 16 NWLR Pt. 1004; *FRN v. Lucky Igbinedion*, Charge No FHC/EN/6C/2008; *FRN v. Tafa Balogun* (2005) 4 NWLR (Pt. 324) 190 and *FRN v. Cecilia Ibru* Charge No. FHC/L/297C/2009.
[21] 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.
[22] Sections 174 and 211 Constitution of the Federal Republic of Nigeria 1999 (as amended).
[23] Sections 150 and 195 Constitution of the Federal Republic of Nigeria 1999 (as amended).
[24] Sections 66 and150, 107 and195 Constitution of the Federal Republic of Nigeria 1999 (as amended).
[25] Sections 147, 150, 192 and 195, Constitution of the Federal Republic of Nigeria 1999 (as amended).
[26] The Attorneys-General of the Federation and States are appointed solely by the President and States' Governors, respectively.
[27] https://en.wikipedia.org/wiki/Abubakar_Malami.
[28] Sections 147, 150, 192 and 195, Constitution of the Federal Republic of Nigeria 1999 (as amended).
[29] D. J. Galligan, *Due Process and Fair Procedures: A Study of Administrative Procedures*. Clarendon Press Oxford 1996, 73.

prosecutorial discretion by the A-G, is manifest, especially in cases of political corruption and money laundering perpetrated by politically exposed persons.[30] A former A-G of the federation, Mr Aondoakaa, flagrantly exercised his prosecutorial discretion in favour of politically exposed persons when he discontinued the criminal proceedings against former Governor Orji Uzor Kalu and Jimoh Lawal, and refused to prosecute the suspects in the Siemens, Willbros and Halliburton corruption scandals, even though the culprits in the corruption scandals had been convicted on the same offences in other jurisdictions.[31] His actions were justified on the bases of the Supreme Coert decision in *State v. Ilori*,[32] which held that the courts cannot question the exercise of prosecutorial discretion by the A-G.[33] Consequently, the A-G of the Federation and States are legally unbridled in the exercise of their prosecutorial discretion because their actions are not subject to judicial review.

Abuse of Prosecutorial Discretion

In Nigeria plea-bargaining is the latest adjustment made to criminal court procedure and it is essential that any adjustments or new processes introduced to the administration of criminal justice must adhere to the principles of 'due process'[34] which is a cardinal feature of the rule of law.[35] This is because it is a valid assumption that the effective application of the rule of law will improve the efficacy of any adjudicatory process.[36] Due process aims at ensuring a criminal justice system based on the protection of the primacy of the individual's right to the presumption of innocence, equality before the law and access to justice; against the often likelihood of the abuse of the coercive powers of the state to prosecute crimes.[37] Briefly, due process is an antidote to excessive state power and discretion in the criminal process exercised against the interests of the defendant.

Due process requirements arise pre-trial, during trials, and post trials (appeals) and at every stage of criminal proceedings, they are intended to avoid errors either by preventing them or correcting them.[38] The purpose of due process is to ensure that justice is not only done but that it is seen to have been manifestly done. The effect and purport of this purpose is to imbue the judicial process with integrity by sustaining the confidence of members of the society in the fairness of judicial processes.[39] In Nigeria, trial and post-trial due process safeguards are enshrined in the Constitution,[40] and are interpreted and enforced strictly by the courts.[41] However pre-trial due processes are at the discretion of the Attorney-General[42] and there is no basis to challenge the Attorney-General's exercise of discretion without pre-trial due process safeguards. Plea-bargaining is driven by an administrative determination of guilt process, as a result all the process leading to the plea agreement is commenced and completed pre-trial, which means that other than conviction all the other outcomes are determined by the exercise

[30] *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. Diepreye Alamieyesegha* (2006) 16 NWLR Pt. 1004; *F.R.N v Mrs Cecilia Ibru* [Unreported] Charge No. FHC/L/297C/2009.

[31] 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.

[32] [1983] 1 SCNLR 94,106.

[33] Osita 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.

[34] D. J. Galligan, (1996), *Due Process and Fair Procedures: A Study of Administrative Procedures* (Clarendon Press 1996) 316 cited in Ward, Jenni. 'Transforming 'Summary Justice' Through Police-Led Prosecution And 'Virtual Courts' Is 'Procedural Due Process' Being Undermined? *'The British Journal of Criminology,* vol. 55, no. 2, 2015, 341–358, at 346. <www.jstor.org/stable/43819280> accessed 6 July 2021.

[35] T. Bingham, (2010), *The Rule of Law* (Penguin Books 2010) cited in Ward, Jenni 'Transforming 'Summary Justice' Through Police-Led Prosecution and 'Virtual Courts' Is 'Procedural Due Process' Being Undermined?' The British Journal of Criminology, vol. 55, no. 2, 2015, 341–358, at 346. <www.jstor.org/stable/43819280> accessed 6 July 2021.

[36] C. P. Okpala, 'An evaluation of the role of prosecutorial discretion in the anti-money laundering regime of Nigeria.' 41 PhD, Nottingham Trent University, 13. An evaluation of the role of prosecutorial discretion in the anti-money laundering regime of Nigeria. - IRep - Nottingham Trent University

[37] Parker, Herbert L. 'Two Models of the Criminal Process.' *University of Pennsylvania Law Review*, vol. 113, no. 1, 1964, pp 16-22. JSTOR, www.jstor.org/stable/3310562. Accessed 13 Sept. 2020.

[38] Resnick, D. 'Due Process and Procedural Justice.' *Nomos*, vol. 18, *American Society for Political and Legal Philosophy*, 1977, 206, at 216 http://www.jstor.org/stable/24219206.

[39] Resnick, D. 'Due Process and Procedural Justice.' *Nomos*, vol. 18, *American Society for Political and Legal Philosophy*, 1977, 206, at 220-221 http://www.jstor.org/stable/24219206.

[40] Sections 35 and 36 Constitution of the Federal Republic of Nigeria 1999 (as amended)

[41] *Effiom v. State* [1995] 1 N.W.L.R. (Pt. 373) 507 at 575, *Okoro v. State* (1988) 12 S.C.N.J. 19; [1988] N.W.L.R. (Pt. 74) 255.

[42] Sections 174 and 211 Constitution of the Federal Republic of Nigeria 1999 (as amended)

of administrative discretion. Meanwhile, the only check on the administrative determination of guilt process in Nigeria is the requirement that in exercising his powers, the Attorney-General shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process.[43] When the exercise of discretion by the Attorney-General was challenged on the ground that he failed to comply with these requirements in the case of State v. Ilori,[44] the Supreme Court held that the requirements were merely declaratory and not mandatory, and as such that the Attorney-General's exercise of prosecutorial discretion cannot be challenged in a court of law.[45] The only sanction that is available against an Attorney-General who abuses his prosecutorial discretion is either public condemnation or removal from office by his appointor (*State v. Ilori*). The decision in State v. Ilori remains the state of the law in Nigeria to date.[46]

Consequently, with the absence of legally enforceable pre-trial procedural due process in criminal prosecutions in Nigeria, there is no basis to contend the exercise of discretion by the Attorney-General, and the plea-bargaining process is without the benefits of the precepts of natural justice, which are necessary 'guidelines intended to preserve the integrity of the judicial process'.[47] Although how best the courts can regulate the powers of administrative agencies in the Administrative State to ensure that they used their powers appropriately remains unclear,[48] the outright refusal by the Nigerian courts to regulate the prosecutorial powers of the Attorney-General undermines the integrity of criminal prosecutions. Ordinarily, 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 framework.[49] This has already been the case in some of the early cases of plea bargaining in Nigeria where the court was just orally informed of the existence and terms of the plea-bargaining agreement which it was urged to uphold as its verdict on the case, even in the absence of a plea-bargain agreement.[50]

Also, because the only sanctions recognised by the Nigerian courts, against an Attorney-General who abused his prosecutorial discretion, is public condemnation or removal from office by his appointor (*State v. Ilori*). While the former is of no legal moment, the latter is unlikely if the abuse of prosecutorial discretion was at the bidding of his appointor. In this regard successive A-Gs have remained in office in Nigeria despite repeated abuses of their prosecutorial powers. However, the influence of the prosecutor in an administrative State on the plea-bargaining process cannot be ignored. Ordinarily the interest of the prosecutor is to secure as many convictions as he can. This ambition is easy to realise with the use of plea-bargaining to administratively determine guilt. Prosecutors can, and often resort to charge-stacking, over-charging, and variable penalty waivers, which are lawful procedures because of the multiplicity and overlapping nature of criminal law, to induce guilty pleas, even from innocent defendants. This seems to be the logical explanation for the remarkable increase in the conviction rate of the anti-corruption Agencies soon after the introduction of plea-bargaining in Nigeria.

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%.[51] **A**fter the Administration of Criminal Justice Act 2015 made plea bargaining an available option in Nigeria,[52] the statistics rose dramatically. Within four years, the same EFCC secured 1,900 convictions. In terms of nominal conviction rates plea-bargaining seems effective in an administrative State although low on quality,[53] while some of the

[43]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.
[44] [1983] 1 SCNLR 94,106.
[45] *State v. Ilori* [1983] 1 SCNLR 94,106.
[46] *Elijah v. State* (2019) LPELR-48946 (SC) 43-45; *Hamman v. State* (2018) LPELR-45392 (CA) 12.
[47] John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971, cited in David Resnick, 'Due Process and Procedural Justice.' *Nomos*, vol. 18, 1977, pp. 206–228. *JSTOR*, www.jstor.org/stable/24219206. Accessed 17 September 2021.
[48] Vincent Chiao, *Criminal Law in the Age of the Administrative State*, Oxford University Press, 2019, 26.
[49] C. P. Okpala, 'An evaluation of the role of prosecutorial discretion in the anti-money laundering regime of Nigeria.' 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
[50] *Igbinedion v. FRN* (2014) LPELR-22766 (CA)
[51] 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.
[52] Section 270 Administration of Criminal Justice Act 2015.
[53]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.

convictions were upon questionable plea-bargains.[54] 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.[55] 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.[56]

Status of Defendants in Nigeria

Against the background of the forgoing discuss, it is noteworthy that the history and typology of economic crimes in Nigeria is political corruption and the related offences of money laundering, often perpetrated by politically exposed persons (PEPs).[57] Consequently, the plea-bargaining process was initially introduced into Nigeria as a panacea to political corruption and money laundering cases by Section 14(2) of the Economic and Financial Crimes Commission (Establishment) Act 2003.[58] Even though it is now made applicable to other crimes;[59] political corruption and money laundering, especially perpetrated by politically exposed persons, remain its focus. Yet nothing in the Administration of Criminal Justice Act (A.C.J.A) 2015 restricts the plea-bargaining process to economic and financial crimes, it has only been so restricted by practice.[60] At inception, the Economic and Financial Crimes Commission Act only empowered the Commission to compound[61] offences under the Act, but the commission proceeded to plea-bargain political corruption and money laundering cases,[62] with the approval of the Supreme Court.[63] Therefore, by the time the Administration of Criminal Justice Act (A.C.J.A) 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 and money laundering,[64] which exhibited remarkable disparities between offences and sentences;[65] proceeds of crime and recoveries;[66] and politically exposed persons and other defendants.[67] 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

[54] 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.

[55]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.

[56] *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).

[57] CP 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,[57] 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.

[58] 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

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

[60] 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.

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

[62] *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.

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

[64] *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. Diepreye Alamieyesegha* (2006) 16 NWLR Pt. 1004; *F.R.N v Mrs Cecilia Ibru* [Unreported] Charge No. FHC/L/297C/2009.

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

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

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

influence by politically exposed defendants, and thus consciously conflict with the declared aims of plea-bargaining. This is traceable to the fact that politically exposed persons were mostly defendants in these cases.[68] 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 in the case to the extent that it may no longer be available or useful for criminal prosecutions.[69]

Furthermore, the volume of the proceeds of crime involved in political corruption and money laundering crimes committed by these politically exposed persons are 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. Often the quality of Legal representation may well be the determining factor on the outcome of a case, which often leaves defendants with poor quality Legal representation at an undue disadvantage.[70] In Nigeria, while other defendants are faced with difficulties in affording legal fees, in the scramble to get on the legal team of politically exposed persons Legal Practitioners often indulge in the unwholesome practice of a Senior Advocate of Nigeria (the equivalent of a Queen's Counsel in the United Kingdom) leading a team of other Senior Advocates, contrary to the Rules of Professional Ethics. Therefore, when these politically exposed persons in Nigeria are defendants in political corruption and money laundering cases, as they often are, 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.'[71]

4. Conclusion

Due to these peculiar legal and socio-political conditions[72] in Nigeria which adversely affect the plea-bargaining process in an administrative State, the process has been unable to exert just deserts, make interventions that optimally promote the rights and interests of members of the society, or promote the ideal of social equality.[73] Consequently, this paper recommends a new model to facilitate plea-bargaining in Nigeria that is fully cognisant of the extant legal and socio-political conditions of Nigeria. The new model that is recommended must be one that is from the outset sensitive to, coloured and fashioned by those conditions. To fashion the new model other templates of criminal process,[74] must be appraised and reviewed against the backdrop of the peculiarities of Nigeria's criminal justice system to finally offer a model that transcends all of them, fuses the best, rejects the worst, but is still coherent and not paradoxical.

[68]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/.

[69]Adegbie and others '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

[70] David Smith, 'Case Construction and The Goals of Criminal Process' *The British Journal of Criminology*, vol. 37, no. 3, 1997, 319–346, at 337. <www.jstor.org/stable/23637944> accessed 13 April 2021.

[71] *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.

[72] Abuse of prosecutorial discretions, political interference, and undue influence of politically exposed defendants.

[73] Vincent Chiao, *Criminal Law in the Age of the Administrative State*, Oxford University Press, 2019, 34.

[74] Such as The Crime control and Due process models, The Amnesty model, The Family model, and The Punitive and Non-Punitive models.