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**Globalisation of Plea Bargaining and its Emergence in Nigeria: A Critical Analysis of Practice, Problems, and Priorities in Criminal Justice Reform.**

Submitted in fulfillment of the degree of Doctor of Philosophy

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2016

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I love you all.

A B Kagu

*'If a man ere to know the end of today's business, ere it comes'* Shakespeare

**Dedication**

This is for my mother. A promise made; a promise kept.

To Daddy, I want to say again that you were my first hero, and still are.



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**Declaration**

I hereby certify that this thesis submitted in partial fulfilment of the requirement for the award of Doctor of Philosophy is wholly my own work unless otherwise referenced or acknowledged. This work has not been submitted for any other qualification anywhere else.

***Abubakar Bukar Kagu***

## **Abstract**

Almost a decade since the first case of plea bargaining received publicity in Nigeria, there is still uncertainty about the nature and impact of this system on criminal justice administration. There is also a lack of clear understanding of how the process is conducted and fulfilled, as most of the activities are done behind the closed doors of the prosecutor's office. What is even more significant is the degree of apprehension about the legality of the system, and the allegation that the process neither serves the purpose which it claims to address nor promotes the justice system's main objectives of retribution and deterrence. These controversies have resulted in enormous criticism and arguments on whether the concept of plea bargaining is a suitable and sincere reform or whether it is a transplant that encourages compromise the kind of compromise that breeds corruption in the legal system.

This study explores the development of plea bargaining in Nigeria as well as the polemics that surrounds its application. It begins by tracing some of the significant institutional changes that have continued to reshape criminal justice policies and practices all over the world, and how these multifactorial elements in social, political and legal parlance have influenced the transition from adversarial and inquisitorial systems to one that promotes consensual justice in form of negotiating with a criminal offender. An understanding of these trajectories has helped to reveal the inherent conflict of ideas as to whether or not to preserve the orthodox values of criminal justice from the compelling incentives that plea bargaining presents or to tolerate a system that offers various alternatives that are pragmatic in nature. Although this debate is filled with strong utilitarian arguments for plea bargaining, it also presents an overwhelming opposition from right based scholarship.

While this research does not reject plea bargaining in its entirety, it was able to demonstrate the importance of maintaining a system of criminal justice that is consistent in promoting the rule of law, as it reveals the dangers of drifting towards practices that potentially threaten the legitimate interest of the various parties in criminal justice. To explore the different arguments on this subject matter, this study draws upon critical analysis of the global transition from a trial based criminal justice to the contingencies that

prompted the rise and expansion of plea bargaining in different parts of the world. The study then evaluates the complexity of this transition as it applies to Nigeria.

The empirical aspect of this thesis takes a deep and critical assessment of these aspects through the eyes of legal practitioners and legal scholars in Nigeria. This leads to an analysis of the long standing polemics on legality, suitability, and the advantages and disadvantages of plea bargaining in Nigeria, through which some of the distinctive characteristics of the Nigerian plea bargaining system was examined in ways not previously done. It also assesses the impact of this acclaimed legal reform as it continues to generate widespread accusations of partiality and inconsistency. In contrast to previous works, this study was also able to explain the practical application of plea bargaining in Nigeria along the line of the different technicalities used to fulfill different priorities. It also observes and explains how these processes conflict with other existing criminal laws and the extent to which it has resulted in the hybridization of the criminal justice system. These findings are in fact the first in-depth empirical analysis of the different procedural imports, legal challenges, divisiveness and the constitutional problems surrounding the application of plea bargaining in Nigeria.

## **Chapter One**

### **General introduction.**

#### **1.0 Background**

Overcrowded courts (Hattlestad, 1997), rising prison populations (Hough and Jacobson, 2003), recidivism (Langan and Levin, 2002), and penal populism are among the major factors placing unsustainable pressure on criminal justice systems in many regimes across the world (Langer, 2004; McConville and Mirsky, 2005; Thaman, 2010). This challenge has made criminal justice administration so cumbersome that legal professionals and legislators across the world have continued to identify and employ new methods to make the system more efficient. This has resulted in a paradigm shift towards different forms of unconventional procedure that appear to offer a remedy to these threats to the effectiveness of criminal justice administration.

Far-reaching legal reforms have continued to emerge to the extent described by Langer (2004) in his essay on 'Legal transplants', that even the parallel adversarial and inquisitorial system are witnessing hybridization. A phenomenal aspect in this legal development is how systems around the world are utilising consensual procedure through plea bargaining to address even the most serious crime allegations. This method of negotiation between legal parties that has its roots in the Anglo-American justice system, and has now spread from its traditional adversarial homelands into even the most unlikely jurisdictions, such as Russia and China.

Within Africa, the Nigerian criminal justice system (the largest in this continent) is one that derives its procedural character from the common law adversarial system (Obilade, 1979). This means that, as with other common law jurisdictions, criminal trials are adversarial contests. This is a tradition that has continued to this day, and has resulted in cases being protracted in courts due to legal technicalities and elongated processes of both trials and appeals. The law also allows for an interlocutory procedure where trials are stalled, to deal with technical questions of law, this being a common method employed by defence attorneys, which often halts the progress of trials. Other challenges include judicial transfers or retirement, which also drags back on-going cases to the very beginning i.e., the principle



of *de-novo* trial (Alemika, 1986; 1990). Such procedural practices, amongst others, have contributed to the slow pace of criminal trials in Nigeria with the result that courts are sometimes forced to terminate cases due to the disappearance of evidence or of witnesses. Most controversial have been those cases involving influential and wealthy defendants who have been difficult to convict due to long periods of litigation where evidence has disappeared and where prosecutors have been accused of corruptly compromising the case (Oko, 2001: 399).

These inefficiencies and improprieties in the system have led to a series of calls for reform (Oko, 2003; Ogundiya, 2009; Achua, 2011). One of the most disconcerting problems has been the inability of the Nigerian criminal justice system to deal effectively with cases that involve white-collar crimes and public corruption. Many high profile offenders have had access to resources and political influence that gives them leverage over a system which is profoundly compromised by officials or witnesses that are willing to distort their testimony (Oko, 2001: 399). This procedural challenge has continued through the decades and was further exacerbated by the nearly two decades of military dictatorship in which the constitution was suspended and the justice system made even more compliant to decrees (Sanda *et al.*, 1987).

With the return of democracy in 1999 (Edozie, 2002: 41), a policy framework was drawn up focusing particularly on how to effectively prosecute offences that involve corruption, which culminated in the establishment of the two most historic anti-graft commissions, i.e. The Independent Corrupt Practices Commission (ICPC) in 2000, and the Economic and Financial Crimes Commission (EFCC) in 2002. Most people saw the establishment of two key anti-graft commissions as the beginning of plea bargaining in the Nigerian criminal justice system (Adeleke, 2012; Adekunle, 2013; Oluwagbohunmi, 2015). Through their powers of investigation and prosecution, they have continued to prosecute some of the most controversial cases of public corruption and fraud seen in Nigeria's history (Adekunle, 2013: 15). But the desire to recover proceeds and crime and secure swift convictions has come at a cost. In particular, the commissions have been obliged to adopt unconventional approaches, largely through the use of plea bargaining as a way to ensure speedy disposal of cases, and because plea bargaining allows for the conviction of major offenders through

deals with minor offenders. What at first appeared to be a simple, liberal and isolated case of plea bargaining suddenly became a national debate prompting unprecedented controversy about its use within criminal trials in Nigeria (Iwuchukwu, 2014; Inyang, 2014; Oluwagbohunmi, 2015)

The challenge and criticism of plea bargaining came swiftly from a population that is used to a legal system that has traditionally been based on adversariality.<sup>1</sup> Legal professionals condemned the process as one that lacked legal justification, as there was no clear statutory provision or procedural guidelines to inform the practice (Adekunle, 2013). Although these criticisms have not stopped the growing application of plea bargaining, the debate has continued on several fronts; from the questions of law and jurisprudence to the suitability of negotiating with selected high profile offenders and its incongruence with the rule of law. The application of plea bargaining has undoubtedly opened a new chapter in Nigeria's criminal justice history, and for a decade, it has raised questions about how the system affects the Nigerian socio-political priorities of fighting corruption and how it affects the legal system more generally.

Commentators, scholars and legal professionals have maintained a continuous debate on the advantages, challenges, and drawbacks of what is, to many in Nigerians, an unfamiliar judicial process (see, e.g., Obayelu, 2007; Egwemi, 2012; Olokooba and Adebayo, 2014; Iwuchukwu, 2014; Oluwagbohunmi, 2015). Beyond these headline debates, there has been a distinct lack of empirical study on the application of the practice, its pervasiveness within the criminal justice system, and the trajectories that define the attitude and choices of practitioners in the course of negotiating with offenders. This is a critical gap in scholarship. Most scholars have tended to focus on the history and utility of plea bargaining while public commentators continue to emphasise other issues surrounding the cause and effect of this new legal transplant. While some see it as a response to a global trend in consensual justice procedure, others think it is an abrupt and phenomenal departure from the orthodox culture of the adversarial trial (Adegbulu, 2010; Adeleke, 2012). Proponents, on the other hand, are of the view that plea bargaining has been part of the Nigeria legal system long

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<sup>1</sup> Sahara reporters, 5 February 2013

before the establishment of the two commissions in the early 2000s (Esoimeme, 2014: 12; Danjuma and Chuan, 2015: 492).

At the crisis of these debates and this controversy, Ayoola, a Justice of the Supreme Court, asserted that there was no law setting out any modality for plea bargaining, and, as such, it is a topic gaining prominence which has no legitimacy in law (Danlami, 2015: 4). This assertion was, however, less far-reaching than the words of the Chief Justice of Nigeria, Justice Dahiru Mustapha who in his paper at the 5<sup>th</sup> Annual Conference of the Nigerian Bar Association in November 2011 struck at the very foundation of plea bargaining in Nigeria, calling it a: “(n)ovel concept of dubious origin invented to provide soft landing to high profile criminals who loot the treasury entrusted to them.” His emphatic statement was supported by the assertion that plea-bargain was introduced through “sneaky motives” and is now “eating away the modest gains that we seem to be making in reforming both the infrastructure and the overall judicial template of the Nigerian Judiciary”. According to Justice Dahiru Mustapha, plea bargaining is, “not only a flagrant subordination of the public’s interest to the interest of ‘criminal justice administration’, but worst of all, the concept generally promotes a cynical view of the entire legal system.” He concluded his criticism by saying that the system has no place in Nigeria’s substantive or procedural laws, “it is an obstacle to our fight against corruption, it should never again be mentioned in our jurisprudence” (cited in Esoimeme, 2014: 10). Again in 2012, a prominent jurist and retired justice of the Supreme Court of Nigeria stated in an interview:

They bargain with the judge, bargain with the accused person...there is no plea bargain in our law... The importation is wrong...To me, it is corruption to bring plea bargain into the law of Nigeria...And they come around and say it is done in other countries, Nigeria is not any other country. Nigeria is not just any other country. In other countries, it may be right for them to have plea bargain. We never had plea bargain...It is corruption for anybody who imports plea bargain into our law (Ogunye, 2013).

Little did the retired Judges suspect that years after making this argument, plea bargaining would be growing in practice and even find its way into legislation.

The fight against corruption is a dominant topic in political conversations in Nigeria. This is mainly because of the strong sentiment that the impunity and recklessness with which

corruption persists is the major factor for the country's economic problems. Hence, in this effort to combat what appears a calamitous situation, legal practitioners are seen as stakeholders and important actors. Like the chief Judge, the president of Nigeria, Muhammad Buhari while addressing the opening of the 2015 Conference of the Nigerian Bar Association in August, called on lawyers across the country to shun anything that would be tantamount to helping corrupt officials escape the law. He described corruption as the major reason why people cannot go to school; why they cannot be gainfully employed.<sup>2</sup> This he said is the state of the nation where "public resources meant for millions were diverted into the private pockets of a greedy few, thereby causing a lot of suffering, deprivation and death." He continued by emphasising, "there can be no greater violation of human rights than corruption, "I think we can all fully appreciate the gravity of this oppressive and destructive evil. This should rouse us to fight it with the same zeal and doggedness as we deploy in the defence of fundamental rights" (Premium Times, 23 August 2015). The constant denunciation of plea bargaining is mainly based on the perception that negotiating with criminals is also corruption. Yet, it is important also to note that there is a widespread lack of understanding of what plea bargaining is and how the process is applied.

As we shall see throughout this thesis, there are many arguments and theories underpinning the widespread application of plea bargaining. I introduce very briefly some of these theories here. Some see plea bargaining from a 'functionalist' perspective and the 'professionalisation' theory, which views plea bargaining as a development that was promoted by the rise of professionalism in investigation and forensics, which makes evidence more accurate and therefore gives little room for denial of criminal culpability (Mather, 1979; McConville *et al.*, 2005). Others base their endorsement of plea bargaining on the 'workload' argument, which as we will see is supported by utilitarian theorists, who suggest that with an overcrowded docket, criminal justice is at risk of total collapse unless reforms are geared towards expediting process through some form of summary procedures, as against the idea of a full trial for every criminal case (Fisher, 2004; Howe, 2005; Kramer *et al.*, 2007). Another school of thought views plea bargaining from a more complex perspective that includes the rise of punitivism where historically simple civil offences were

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<sup>2</sup> Premium Times, 23 August 2015.

redefined as crimes, essentially changing the nature and narratives of substantive laws and penal policies (Maffei, 2004: 1051).

Another debate, closely related to the Nigerian context is the argument of Alkon who maintains that financial crimes have become very complex to prosecute forcing the justice system to subject itself to some form of negotiation, and even the use of cooperating accomplices in order to obtain a conviction (2009: 41). Other scholars have also given insight into how this approach has proved very successful in criminal justice administration (Vogler and Jokhadze, 2011: 7-8). For example, they have shown how countries in Eastern Europe, particularly Georgia, which in the aftermath of the “Rose Revolution” introduced plea bargaining as an urgent response to the growing cases of corruption and organised crime ravaging the countries. The system was successfully used to not only convict offenders but also to recover proceeds of crime (*ibid*).

Depending on a number of socio-political variables, plea bargaining is a system that produces different results in different societies. What may translate into a significant legal of accomplishment in Western democracies may not necessarily represent or promote the aspirations of other countries around the world, including those in Africa. It is, therefore, safe the influence of plea bargaining in the way criminal cases are conducted, has the potential of having different impacts across different legal regimes. Likewise, the fact that it reconfigures the traditional mode of criminal justice administration will always provoke strong sentiment among the public who may see it as a good reform or a compromise of the traditional values of criminal justice.

It is unsurprising that plea bargaining, as a concept, has attracted a great deal of criticism amongst public policy makers and scholars alike (see e.g. Alschuler, 1981; Easterbrook, 1992; Stuntz, 2004). Nonetheless, the introduction of such practices can become unavoidable, indeed as Jung notes the entire development of criminal justice has been a history of “reform and reaction” (2004: 5). If we take a closer look at contemporary developments in criminal justice around the world, we begin to see a broader realignment of systems. The effect of modern-day social and political processes have redefined and reoriented the functions, objectives and practice of criminal justice administration in ways

that depart radically from the trajectories of the past (Garland, 2001: 54). For example, the challenge brought about by the complexity of a 'new generation' of criminal cases, has added to the predicament of an already overstretched criminal justice system (Jung, 1997). Other scholars claim that the changes in the relationship between the state and the citizen are among the major factors that are permitting consensual justice through plea negotiation (Thaman, 2010). What has become apparent in this fluid and multifaceted transition is the decline of a fully adjudicative process (Damaska, 2006: Thaman, 2010).

The advent of plea bargaining as part of a rapidly evolving global criminal practice can be viewed as an almost inevitable response to contemporary challenges to the administration of 21<sup>st</sup>-century criminal justice. Its exponential growth in jurisdictions, including Nigeria, therefore, reflects the need for overarching reforms in the new order of criminal justice administration.

## **1.1 Purpose**

This study is located within the growing scholarly interest in understanding the development and application of plea bargaining and how its expansion is changing the administration of criminal justice across the world. Essentially, the study explains, through literature and empirical work, how plea bargaining works and what it represents in the context of legal reform and institutional priorities. Linking the global rise of plea bargaining to its emergence in Nigeria, it examines the growing debate on what this new method of criminal justice administration has brought into the system and what is was intended to achieve.

As this is the first in-depth empirical examination of plea bargaining in Nigeria, this research involves different categories of participants who have a stake in the application of plea bargaining and in criminal justice policies and reforms. They include prosecutors, defence attorneys, judges, and academics. Participants in the study are among a group of professional who are well acquainted with the Nigerian legal system and who have first-hand knowledge and experience of the institution of plea bargaining in Nigeria.

## 1.2 Research questions

After more than a decade of controversy over the legality and application of plea bargaining in Nigeria, this study is aimed at the following:

- a. The primary aim of this thesis is to provide a critical analysis of the emergence, development and application of plea bargaining in Nigeria.
- b. The second aim is to determine the legal and procedural constraints surrounding the process of plea bargaining in Nigeria. This discussion shall be based on empirical findings.
- c. The third aim is to review recent developments in criminal justice reform in Nigeria and to examine their implication on the practice of plea bargaining.

The above aims shall be pursued with the help of the following mechanics:

- i. By examining the transition in criminal justice across the world and how negotiation with criminal offenders came to replace the idea of adversariality/inquisitoriality.
- ii. By making a comparative analysis of the emergence of plea bargaining in other regimes across the world as well as the challenges the system faced; the opportunities it presented and the way it was structured to achieve different objectives.
- iii. By critically analysing the various advantages, disadvantages and implications of subjecting criminal cases to negotiated settlements.

The purpose of using these mechanisms is because this research is first set to examine the globalization of plea bargaining by looking at its growth and development across the world. This theoretical foundation is significant for understanding why it appeared and was promoted in Nigeria. The second aspect in which these mechanisms become relevant is in developing a framework that gives a robust understanding of the challenges and opportunities that plea bargaining presents in different kinds of legal settings. As will be seen in chapter four of this study, there was an attempt to explain different models of plea bargaining as they operate in different kinds of legal system; from adversarial to civil law

regimes of continental Europe and to regimes with deep communist legal culture such as Russia and China.

Hence, by using these mechanisms, the research lays a strong scholarly foundation on the globalization of plea bargaining and on the comparative perspective of this emerging yet controversial legal reform that is gaining momentum across the world. In the end, these literary explanations are placed alongside empirical evidence in order to be able to build a comprehensive analysis and understanding of the different aspects; challenges, criticisms and opportunities that plea bargaining brings into the administration of criminal justice in Nigeria.

### **1.3 Methodology**

The methodology of this research is a combination of doctrinal and empirical work. The doctrinal part involved mostly secondary text analysis of the various scholarly works on criminal justice and its sub-branch of plea bargaining. This gave an insight into the different variables that define plea bargaining in both its theoretical and practical sense. These arguments and viewpoints are then supported by the collation of primary data that was obtained through elite interviews carried over a period of four months. Respondents for the interviews were chosen mainly from elites/professionals working within the Nigeria criminal justice institutions. The main targets as a source of data were legal practitioners with experience of at least eight years of professional legal practice. This included Judges of higher courts, Magistrates, private lawyers and public attorneys. Prosecutors of the two famous anti-graft Commissions, i.e., the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and Other Related Offences Commission (ICPC) were also interviewed. Furthermore, a few people outside the legal profession but relevant to this study were also interviewed. This included police prosecutors, members of academia and those of civil right groups. Most of these interviews took place face-to-face while the rest were conducted over the telephone. With the exception of one person, all the others were recorded using a digital voice recorder for face-to-face interviews and a mobile phone application for telephone interviews. All the interviews were transcribed and later analysed (see section below).



The better equation of those interviewed were from the legal profession i.e., prosecutors, defence attorneys and judges. And in all, the interviewees were chosen from those that have spent at least eight years or more as practitioners. The reason for this is because it was in the last Ten years that the debate on plea bargaining became much heated in Nigeria and the focus of this study is to have people with good insight and experience of the development of plea bargaining and also the nature of criminal justice process in Nigeria. This crop of professionals and practitioners are in better position to give informed narratives on the various questions of this research, including the controversies surrounded plea bargaining since it first emerged in Nigeria.

The pool in which the interviewees were chosen is big enough to represent those that have a stake in the administration of criminal justice and in understanding the nature and implication of such reforms as plea bargaining in the present economic, legal and political atmosphere in Nigeria. Essentially, the pool includes prosecutors of the EFCC and the ICPC, State counsels from the office of the Attorney generals of State and the federation, Private attorneys, Members of civil society groups, Magistrates and High Court Judges and members of the academia. This includes, 4 police prosecutors, 12 lawyers from the private Bar and the Attorney General's Chambers, 3 prosecutors of the EFCC, 2 prosecutors of the ICPC, 2 academics, 2 civil society group leaders and 6 Judges from both Magistrate and High courts.

The choice of professionals to answer questions relating to institutional routines and policy reforms is often a viable method for social science research, capable of generating reliable data (Jewel, 1982; Reeher, 1996). It is also cost effective when employed for the purpose investigation and research (Dexter, 1970). Another reason for choosing this method was because Elites generally have more knowledge and assume more relevant positions on policy decisions and institutional reform than other members of the society (Odendahl and Shaw, 2002). In this regard, their opinions and views are more significant in determining the nature and practical operation of institutions. Using the 'open interview' method, this research was able to generate in-depth information surrounding the emergence, application, and challenges of plea bargaining in Nigeria.

From the onset, a 'purposive sampling' method was used carefully to select participants with good knowledge and experience of law and its application (Bachman and Schutt, 2007: 124), particularly in aspects of criminal justice administration in Nigeria. A total of 42 people were contacted for an interview. Out of this number, 31 participants responded positively. These individuals were then sent a document containing a general overview of the types of questions that would be asked in order for them to prepare for the interview. This approach allowed the interviewees to spend at least some time considering how plea bargaining is used within the area they practiced while also enabling me to ask a variety of questions during the interview that they might have not contemplated beforehand.

The respondents were selected from all parts of the country, with a special focus on places where there is greater level of legal and political activity and information. This 'Multi-state' selection of interviewees from various regions of the country ensured that the data generated reflected the diversity of legal practice in Nigeria. Attention was also given to ensuring that the interviewees included practitioners from the four of the major cities in Nigeria (Lagos, Kano, Abuja and Port Harcourt). Other regions included Bauchi, Yobe, Borno, Nasarawa, Delta, Gombe, Jigawa, Benue, Niger and Adamawa. Such an approach allowed me to reflect upon both commonalities and differences across states/jurisdictions.

Although challenges arise in reaching out to elites and securing a convenient time to meet, in line with the observation of Hill-Collins (1990), one of the advantages I had was my own internal access capabilities based on the fact that I had worked in the criminal justice administration as a Magistrate for three years. This previous work and experience in the Nigerian judiciary provided me with the leverage of having easy and better access as well as the desired rapport to reach most of my target respondents, who showed a willingness to openly and comfortably discuss the questions of this research. Hence, this study was able to gather adequate data on plea bargaining, criminal justice reform, the general practices of courts and other important issues relevant to this research.

Moreover, being that there are ethical issues especially with the confidentiality in the statements made by judges and staff of the EFCC and the ICPC, the analysis of the data ensures anonymity of the respondents by excluding their names from the main thesis.

Instead, each of the interviewees is identified either by the nature of his job and a number. The transcript of the interviews was also sent to each of the interviewees for approval before including them in the body of this thesis.

### **1.3.1 Data analysis**

Thematic analysis was used to examine the data (Fereday and Muir-Cochrane, 2008). From the data collected, themes emerged that were subsequently categorized (Joffe and Yardley, 2004). This approach informed the various sub-topics of this thesis, especially in part B where the bulk of empirical data was used. Based on their contents, these themes allow for analysing and determining the various questions surrounding this study. They were used to explain aspects relating to the emergence of plea bargaining in Nigeria, the nature, and extent of its application, legal and jurisprudential contingencies, the role of parties as well as the views and opinions of both supporters and opponents. While some of the responses are embedded in the discussion, many were worded quotes of the respondents. This was done mostly to give a better insight into the perspectives through which plea bargaining is appreciated or debunked.

The reason for using this method is to be able to capture the main arguments and issues that are commonly referred to by most people. Essentially, the themes are a reflection of the most important issues that have added enormously to the general debate about the genesis and practice of plea bargaining. This has helped in focusing the research on the areas that are most significant regarding the contention and consensus over plea bargaining. Each of these central themes provided insight into different aspects of plea bargaining in Nigeria. They also give a holistic narrative based mainly on the responses of different respondents who took part in the research as well as what is contained in different texts regarding plea bargaining in Nigeria.

### **1.4 Structure of the thesis**

This research is presented in two parts, Parts A, and B.

Part A is a doctrinal discussion of plea bargaining that explores the sociological, political and legal theories that are relevant to this study. Consisting of chapters two to five, this part of

the thesis is a critique of the literature that highlights the general debate surrounding the changes and reform in criminal justice and its sub branch of plea bargaining. The chapters, which began with a reflection on the effect and influence of complex socio-political and economic elements on the institution of criminal justice, led to discussions on the globalisation of plea bargaining and the theories that explain the transition from other forms of summary procedures in criminal justice to what is today a system that allows for open negotiations with the offender. It also goes further to explore the challenges and controversies that this system of criminal procedure has generated across the world. Although this research is mainly focused on Nigeria, it is also one that takes a legal comparative approach to study both Nigeria and other countries around the world. The reason for exploring other legal regimes is because the subject of plea bargaining is not only a global phenomenon; it has also changed the nature of criminal justice administration in most of the jurisdictions where it is practiced. That being the case, any comprehensive scholarship on plea bargaining cannot ignore these aspects as they relate to the globalization and internationalization of new ideas in criminal justice. It also cannot dismiss the interconnectivity of nations in both the fight against crime and indeed in the sharing of new ideas on criminal justice reform.

Part B of this thesis makes up chapters six to nine and focuses mainly on the empirical data collected as part of this thesis. The study looks primarily at the emergence and the practical application of plea bargaining in Nigeria. While discussing the contentions surrounding the introduction of plea bargaining in Nigeria, it also discusses how legal reform has always proven to be an aspect that slowly but surely finds its way beyond the borders where it first emerged. This led to the discussion and exploration of the polemics of plea bargaining that became widespread in the last decade. The data obtained and analysed in this part allowed me to have a better understanding and to explain plea bargaining in Nigeria.

It is important to state at this point that, even though this research touches on several jurisdictions, it is not mainly intended as a comparative study. Rather, the literature reviewed for this thesis, especially in chapter four, offers an overview of the ways in which plea bargaining has been utilized in different legal regimes around the world. This background analysis is essential because legal reforms have a history of transcending their

traditional places of origin. Hence, the exploration of international perspectives helped to highlight the development of common procedural and substantive changes that are occurring globally. This also allowed for the identification of what challenges these reforms present and what they represent across different socio-legal environments.

## **1.5 Content of chapters**

Chapter Two examines the various trajectories surrounding the many contentious reforms to criminal justice process in recent times. It brings to the fore the broader interrelationship between law, managerialism and other socio-economic factors that are increasingly redefining criminal justice policies. The chapter looks holistically at the various stimulus driving these unprecedented changes in the midst of which the world sees the proliferation of the idea of consensual justice in the form of plea bargaining.

Chapter Three looks at two of the most important theories underpinning the use of plea bargaining. It begins with a critique of the utilitarian theory, which explains the advantage of plea bargaining as a means to remedy the traditionally slow and deliberate criminal justice processes. The chapter then examines the second theory, i.e., the 'decision theory', which explains the factors that define and influence the choices and decisions that parties make during plea negotiations. More generally, this chapter explores the two theories as they support or oppose the use of plea bargaining, as well as the individual trajectories that explain the different drivers of plea bargaining.

Chapter Four provides a discussion on the globalisation of plea bargaining. This chapter looks at different jurisdictions and different legal systems that use plea bargaining across the world. It examines, in the main, the development of plea bargaining in the United States where the practice is used extensively. The chapter also investigates its lesser use in the United Kingdom and Wales. Beyond the two common law regimes, the chapter explores the development and nature of the application of plea bargaining in civil law jurisdictions including, Germany, Italy, as well as those jurisdictions where plea bargaining is least expected such as Russia and China.

Chapter Five delves deeper into the theoretical critiques of plea bargaining that have been developed amongst legal scholars across the world. The chapter looks at the variety of scholarly arguments and empirical evidence that support or resist the practice of plea bargaining. Through this, the study is able to establish an understanding of the various reasons why plea bargaining is supported or opposed among scholars in different jurisdictions.

Chapter Six explores the use of plea bargaining in the Nigerian context. It looks at the historical development of plea bargaining by situating it within the general workings of the Nigerian legal system. Of particular importance is the examination of the establishment of the two prominent Anti-graft agencies, who were the first agencies to use plea bargaining in Nigeria.

Chapter Seven assesses the model of plea bargaining which has been applied in Nigeria and the procedure used to achieve plea bargaining. It also looks at the role played by different parties to a negotiation, i.e., the prosecution, the judge, the defence, and victims. It also looks at the new Administration of Criminal Justice Act of 2015 and the way it has altered issues surrounding plea bargaining. The empirical data for this research is used to explain the practicalities of plea bargaining as well as the contents of different statutes and how they affect the use of plea bargaining in Nigeria.

Chapter Eight analysed the records of prosecution obtained from the two anti-graft commissions, i.e., the EFCC and the ICPC and investigates the dynamics of charging and sentencing as well as the effect of court hierarchies to the application of plea bargaining. The chapter also looks at the model of plea bargaining in Lagos state and discusses its significance.

Chapter Nine is a discussion and analysis on the question of law and the conflict of laws in the application of plea bargaining in Nigeria. The chapter also looks at the critique of plea bargaining from the Nigerian context.

Chapter Ten is a general conclusion of the thesis. This chapter sets out the main argument, bringing together the different strands of the debates and analysis in the earlier chapters of the thesis. It draws a conclusion on the main findings of the research as well areas that need future studies.

### **Part A**

*“Nothing can take the place of rigorous and accurate study of the law as already developed by the wisdom of the past. This is the raw material which we are to mold. Without this, no philosophy will amount to much”.* Cardozo, The Growth of Law (1924).



## Chapter Two

### Transitions and reforms: a global view on criminal justice and the institution of plea bargaining.

#### 2.0 Introduction

The urgent need for a criminal procedure that is efficient in the disposition of cases alongside the demand for resource management in the administration of justice is among the strongest stimuli driving the constant changes in criminal justice. A cursory look at contemporary criminal justice policies and procedures reveals how these demands manifest themselves in the multidirectional changes in the field of justice and penology. As Damaska argues, some of these adjustments and modifications seemed to elude conventional points of reference, causing many of the orthodox concepts that we were accustomed to, coming apart (2004: 1018-1019). Other scholars cautioned that this desperate quest for efficiency and the exaggerated sense of urgency can, in fact, lead to “misunderstanding and superficial analysis, lacking in perspective and context” (Feeley, 1982: 388).

Although there are numerous structural changes going on, especially in the field of criminal justice, one of the most obvious consequence of this complex transition is the fast growing idea of negotiation with criminal offenders. Loosely called plea bargaining, Thaman (2010) presents this as a product of the reconstruction of the relationship between individuals caused by the deepening sentiment of democracy, which he claims has promoted the idea of consensual justice. Other proponents support this notion, arguing that the change in the manner of engagement between the State and the citizen, which is a necessary foundation for democracy is among the key elements inspiring plea bargaining (Schunemann cited in Rauxloh, 2012: 84). The opportunity, to negotiate criminal charges and sentences they claim, should be seen as a phenomenon that has redeemed the interest of parties by altering “the traditional subordination of the defendant under the powerful judge” (*ibid*). But critics have dismissed this stance, arguing that the idea of prosecution and sentencing through any means other than a conventional trial cannot be a phenomenon that would legitimately be placed alongside the concept of democracy (Skolnick, 2011). Although this argument is mainly posed by critics of plea bargaining who see plea bargaining as an affront to what they revere to be a traditional form of trial in open court, the fact that plea

bargaining has some degree of efficiency, finality and a reduction in the cost of criminal litigations is a strong argument that has taken prominence even among critics. It has also the major justification for the expansion of plea bargaining. But with this expansion of practice, theories about the utility and the effect of plea bargaining have also proliferated.

In his famous theory, 'Plea bargaining outside the shadow of trial' Bibas (2004) shows how any discussions on plea bargaining must also consider numerous variables beyond the traditional simplistic claims of efficiency and cost. He then followed by suggesting that all arguments should bring into context the convergence of factors such as punitive legislation, penal populism and the dynamics of econo-legal approach to criminal justice administration and process. Arguably, all these aspects have added to the polemics of plea bargaining. Moreover, numerous questions have been raised about the role each of these factors plays in reshaping the future of criminal justice. Perhaps what has become familiar in contemporary scholarship is the extent to which the orthodox narratives that were traditionally driven by retributivism have been redefined (Baird, and Rosenbaum, 1988). This shift is also seen by some scholar as a reflection of the wider socio-economic and political trajectories that have historically transformed the institution of criminal justice to become a part of a network of governance and social order that includes the legal system, the labour market, and welfare State institutions (Garland, 2001: 5).

Evidently, the history of criminal justice often reveals certain patterns, part of which is the silent but obvious gravitation toward some form of summary procedure used mostly as a means of achieving institutional goals (Garland 2001; McConville and Mirsky, 2005; Thaman, 2010). A good example of this shift is the wide spread application of plea bargaining, often justified as a way to ensure expeditious disposal of criminal cases. This new form of negotiatin instead of trial is slowly becoming a familiar legal practice around the world. Putting the concept of plea bargaining into a morespecific context, some scholars suggested that the motivation to negotiate with an offender outside the courtroom is a response to the inability of criminal justice institutions to deal with the inherent challenge of workload and cost of criminal criminal trials (*ibid*). The primary concern of this study, however, is in relation to the unprecedented spread of plea bargaining into legal regimes like Nigeria,

where there is growing and an unsettled debate on its suitability, effect, and even its legality.

In the field of philosophy of law, these developments have reopened the debate on the classical social theory of the relationship between the state, the individual and the community when considering the reasons for systemic legal transformations (McConville and Mirsky, 2005: v). Evidently, some of these structural reforms have come with certain unfamiliar bureaucratic underpinnings that altered the role, obligation, relevance and interests of the principal participants in criminal justice process i.e. the judge, the prosecution, the defence and the victim. Some scholars even suggest that there is an emerging tendency synonymous with previous kinds of ameliorative procedures found in other criminal justice ideals such as restorative and rehabilitative justice (Braithwaite 1989; Zehr, 1990; Wright 1996).

Other aspects of great interest include the way harsh penal legislations are re-emerging to coexist alongside the growing interest in charge and sentencing discount through plea bargaining. This becomes even more intricate when one concedes that the former is associated with the idea of the severe sentencing, and the latter is attributed to leniency and concession. The U.S criminal justice system is a classic example of this paradox, which raises the critical question in socio-legal scholarship on whether criminal justice has actually become punitive or is it rather a mixed process that encourages punitivism, but still condones other methods that promote leniency? Essentially, the widespread practice of plea negotiation has extended the debate on the shifting trajectories of criminal justice, not only because plea bargaining encourages penal discount, but also because it is often a practice driven by the pursuit of organisational priorities and practitioners' interests (Feeley, 1982: 200).

Understanding the trajectories surrounding these contentious legal re-alignments may require some analysis of the interrelationship between law and other socio-political factors. However, this may seem a narrowed distinction of laws as normative when taking into account the argument of other scholars such as Schiff (1976) that a broader approach to understanding legal constructions will reveal a direct link between legal, social and political

situations (Schiff, 1976: 287). Owing to this, and the fact that plea bargaining is mostly associated with the practical realities of contemporary criminal justice, the primary approach to this chapter is to explore the jurisprudential narratives of crime and penology and how the structure and processes of criminal justice administration have constantly been influenced by numerous internal and external realities. To examine these issues, the chapter explores the literature that explains the different socio-legal realignments seen over the years, *vis à vis* the economics of legal institutions. Essentially, this explanation will involve the organisational priorities of criminal justice institutions, the legitimate demands of the public in criminal justice administration as well as the way in which political objectives of the state lead to the introduction of different reforms in the justice system.

The chapter will further relate these issues to the emergence of plea bargaining in order to lay a foundation for subsequent chapters in which the thesis will contextualise some of the jurisprudential and practical impacts of the growing practice of negotiation in contemporary criminal justice systems. The jurisdictional focus of this chapter is the Common Law, especially the Anglo-American adversarial systems, as this is primarily the prism through which this research study is fashioned. It is also the legal system from which plea bargaining originated. This lays the foundation for subsequent chapters, in which the focus will be to discuss the conceptual and practical models of plea bargaining as well as the effects and critique that this controversial and less understood process has generated.

## **2.1 Criminal justice in transition: a new paradigm of changes and reform**

Changes in social and political aspirations of different societies across the world are becoming largely centred on the quest for efficiency within the limit of resources. This is true of Nigeria as it is with many other countries in the developing and the developed world. This challenging reality is increasingly dominating the debate on governance, on rules and perhaps on criminal justice (Rhodes, 1997: 46). These changes, which encompass every aspect of the polity, have also altered the character of academic discourse on the concept of crime control and the maintenance of social order as a core goal of criminal justice (Garland, 2001: 54). The structure of penal institutions has been altered in ways that essentially redefine the role of policing, prosecution and sentencing practices, ensuring “hierarchies

shifted precariously; settled routines were pulled apart; objectives and priorities were reformulated; standard working practices were altered; and professional expertise was subjected to challenge and viewed with increasing scepticism” (*ibid*: 4). Example of this can be seen in the rise of private prisons and indeed the system of plea bargaining that is taking criminal matters out of the courts on to negotiation tables. In what he termed as ‘left realism’, Cohen states:

What is gained by giving up the romantic and visionary excesses of the 1960s is lost by forgetting the truisms of the new criminology of that decade: that rules are created in ongoing collective struggles; that “crime” is only one of many possible responses to conflict, rule breaking, and trouble; that the criminal law model (police, courts, prisons) has hopelessly failed as a guarantee of protection and social justice for the weak; that crime control bureaucracies and professionals become self-serving and self-fulfilling. These are truths that have not been refuted. Abolitionists might take these truths too literally by trying to translate them into a concrete program of social policy. Realists, however, convert too literally victims’ conceptions of their problems into the language of crime. This is to reify the very label that (still) has to be questioned and to legitimate the very system that needs to be weakened. We gain political realism but we lose visionary edge and theoretical integrity (1988:271).

From the last quarter of the 20th century both theoretically and practically, perspectives on criminal justice in most western democracies have witnessed some significant transformations, especially in the field of crime control and in penal policies (McLachlin, 2000: 313). As will be discussed in the later part of this study, there is for example the rise of punitive legislations in jurisdictions like the US, the upgrading of civil offences to become criminal in jurisdiction like England and an increase use of surveillance across many western democracies. The paradoxical outcome of these alterations has seen an increased restructuring of crime control strategies, the growing sentiment of risk society, over-criminalisation, as well as the widespread application of plea negotiation and other forms of abbreviated procedures (Garland, 2001: 176). Predominantly, the orthodox idea of retribution is steadily given way to a new response that is more organized around the sentiment of risk which is causing penal populism and indeed the quest to expeditiously dispose cases (Garland, 1996: 2), especially that punitivism is an aspect that often causes enormous strain on the criminal justice system. Some of these reforms have altered the foundation of the entire justice system, ushering in new paradigms such as private prisons and private parole officers (Schlosser, 1998; Jones and Newburn, 2005).

Arguing the sentiment of 'risk society' from sociological perspective, Beck claimed that the growing emphasis about the 'risky' and the 'outlaw' is a phenomenon embedded in the conception that "in advanced modernity the social production of wealth is systematically accompanied by the social production of risks" (1992: 19). Accordingly, the "problems of conflict relating to distribution in a society of scarcity overlap with the problems and conflict that arise from the production, definition and distribution of techno-scientifically produced risks" (*ibid*). This theoretical explanation has rekindled a new territory in crime and penology studies prompting some sceptics to argue that emerging practices appear to have created the tendency for profound and unjustified compromise to the principles of process rights, procedural values. In the context of plea bargaining, these sceptics caution about the danger of turning crimes and punishment into commodities that can be simply bargained. Despite these genuine concerns, others were quick to suggest that reforming the criminal justice system is imperative, especially in the face of the urgent need for efficiency and security (Bay, 2001: 218). Bussmann went on to also argue that "law is obviously not in the position- especially not in respect to the groups who are obliged to law-to guarantee stability" (cited in Rauxloh, 2012: 65). Perhaps these assertions represent the argument that the reforms are necessary for the common interest of both the state and the community (Bay, 2001: 218).

Burke views the many changes in criminal justice administration as factors driven mainly by bureaucratic reasoning (2012: 117). Garland, on the other hand, referred to them as the embodiment of a "reworked conception of penal-welfarism" largely influenced by an economic style of decision-making (2001: 3). It is therefore clear that most of these realignments are sturdily rooted in the unresolved struggle between old and new priorities on crime and penology. A paradigm that further reasserts the sectional interest in 'law and order' legislation, which can only be explained by the recurring interests of global capitalism (Burke, 2012: 170). It is, however, important to note that, an emphasis on the relationship between law and economics goes as far back as the 1940s, when attempts were made by the scholars at Chicago University to discuss "the application of economic theory and econometric methods to examine the formation, structure, process and impact of law and legal institutions" (Rowley, 1988: 125). Since then, this debate has developed to include branches of normative and positive law (Humes, 2002: 965).

While the normative branch of law was used in this debate to question the jurisprudential concepts of efficient rules and how they depart from the dictates of economics (Mercurio and Medema, 1997: 7), positive law on the other hand was focused on the attempt to expound legal principles and their outcomes (Posner, 1998: 27). Ellickson, however, argues the connection between law and economics is no longer growing as a scholarly or curricular force (1989: 23-25). Instead, it is simply holding previously won ground (*ibid*). Yet, it is clear the manner in which contemporary objectives of criminal justice have been reconceptualization has suggested that law and economics are becoming more intertwined. Hence, the suggestion by Ellickson that there has been a decline in scholarly interest in law and economics seems quite simplistic, especially when one takes into consideration the widespread practice of plea negotiation, whose main justification is premised on the economics of criminal justice (Thaman, 2007: 2).

It is, however, important to point out that this phenomenon that is driven by economic values which led to the advent of new methods and new players such as private prisons, private parole officers etc., did not dislodge the leading role played by the state; a role deeply rooted in the political philosophy of social contract. Through its organised institutions of criminal justice such crime control, maintenance of social order, penal policies and other pragmatic dispute resolution technics, the state still remains at the centre of legislation and legal reforms (Davies *et al.*, 2009). These aspects that became strongly embedded in the idea of constitutionalism have conserved the state as the manifestation of social cohesion and organisation amongst people, as well as the political body in the formation and legitimacy of systems and institutions (Zedner, 2004: 159). These obligations become even more entrenched as the state continues to be the primary establishment that bears the formal political and customary responsibility for the whole society in accordance with settled constitutional principles (Ashworth, 2002: 4). Commenting on this, Shapiro states that for centuries, systems across the world have augmented the social relation between the state, the individual and the community, and that “we can discover almost no society that fails to employ this strategy that overwhelmingly continues to appeal to common sense and legitimacy (1986: 1). In the context of trial and plea bargaining, the criticism has been on the shift from these settled rules of procedure that emphasis on

transparency and accountability to a system that condones private arrangements in which the public is unlikely to know how or why a deal was struck between the state and the offender.

The argument that that social contract is an important element for the rise of consensual justice is premised on the notion that the sentiment of democracy has created an opportunity for negotiation among disputing parties as against the previously conceived dictates of the all-powerful state (Thaman, 2010). Although the field of criminal justice is going through a new phase debate in areas that relate to the classical theory of social contract itself, scholars such as Zedner (2006) for example, argued that contemporary trends in criminal justice, especially policing signify less a departure from historical practice. She further noted that these emerging developments are a reflection of the historical period when “state responsibility for crime control grew out of individual responsibility, communal self-help and private provision.” Critical legal scholars view most aspects of criminal justice as instruments of coercion and control pitted by the State against the solitary individual (Siegel, 2009: 26). They argue that through the official juxtaposition of guaranteeing justice and fairness, disadvantaged groups are made to “rely on the criminal sanction’s false promise of security and equality” (Roach, 1999: 117). Supporting this criticism, Burke pointed to how often policies on criminal justice and regulations are increasingly directed towards the poor and deprived, who are targeted as risky, irresponsible and unproductive individuals that deserve some degree of control and discipline (2012: 211). The idea of plea bargaining has in many occasions fell in this equation of accusation as a system that allows the strong to escape justice by negotiating with the state. This accusation, as will be seen later in this study is held strongly by some respondents.

Other scholars such as Wacquant (2000) gave empirical evidence of the surge in the incarceration of mostly the poor and underprivileged, where he indicated the rampant rise in punitive legislation and over-criminalisation inherent in contemporary criminal justice, especially in jurisdictions such as the US. Further evidence also shows that in recent times, some regimes have extended and criminalised offences that were previously defined under administrative law, i.e., tax-related crimes and environmental offences (Maffei, 2004: 1051). A typical example of this is current laws of England and Wales, which has more than 8000



offences of strict liability (Rauxloh, 2012: 65). As recent as 2014, the UK government announced that it will introduce new criminal offence for tax evaders under the strict liability laws (Kaye, 2014). Similarly, a report from the US by 'Right On Crime' shows that there are now over 4,000 existing federal crimes.<sup>3</sup> These include thousands of harmless activities that were traditionally not regarded as criminal offences.<sup>4</sup> Among them are business activities such as importing orchids without the proper paperwork, shipping lobster tails in plastic bags, and even failing to return a library book. In addition to these Federal crimes, there are state crimes in which Texas alone has over 1,700.<sup>5</sup> The implication of creating these often unknowable and redundant crimes and the removal of *mens rea* requirements have further overcrowded courts, causing an enormous backlog and, therefore, putting prosecutors and courts under intense pressure to deal with many cases within the limits of scarce resources. This naturally motivates the quest for alternative ways of ensuring efficiency through plea bargaining.

Another explanation to over-criminalisation is the element in contemporary criminal law, which sees not only the commission but also the danger that crime may be committed as a sufficient culpability (Rauxloh, 2012: 64). The broad implication of this is that it created enormous complication in identifying genuine culpability. In the sense that, "to avoid the problems of causation, criminal liability had to be moved forward on the scale of action and culpability is increasingly related to the defendant's awareness of the danger and thus the mental state of the defendant instead of positive action" (*ibid*: 66). Owing to these factors, legal practitioners are drawn more and more to encourage guilty pleas as the most feasible way of obtaining a conviction.

Relating this to other empirical evidence on the widespread application of plea bargaining, there is evidence to suggest that punitivism and over-criminalisation have in many ways been factors prompting criminal justice practitioners, i.e., prosecutors and judges to seek alternative ways of dealing with workload by promising lenient sentence in order to encourage guilty pleas (Turner, 2006: 205). Hence, the growing culture of over-

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<sup>3</sup> Right on Crime Report, November, 2010. Right On Crime is a Texas Public Policy Foundation that researches on criminal justice.

<sup>4</sup> *Ibid*

<sup>5</sup> *Ibid*.

criminalisation is among the relevant factor in understanding the growth of plea bargaining. It is, however, important to note that these explanations also go beyond crime-and-punishment upsurge to include other extra-penological trajectories. Ericson and Haggerty (1997) for example argued that the emergence of the sentiment of 'risk society' of late modernity has encourage penal populism. Norris and Armstrong also pointed that, of late, criminal justice has continued to become 'actuarial' and its interventions based on risk sentiment that emphasises on practices such as mass surveillance, offender profiling and in some cases, preventive detentions, all of which are making the society criminalised and consequently overburdening the criminal system (cited in Burke, 2012:203). This leads to the question on why legislations are increasingly creating new criminal offences in the face of an already overstretched criminal justice institution? In his attempt to explain this paradox, Bottoms (1995) pointed at the increasing politicisation of crime control strategies, which he categorised as 'populist punitiveness' and 'Bifurcation'. The former he argued, represents the rise of the harsh penalty familiar in emerging legislation, and the latter represents how this increase in the degree of sanctions is mostly targeted towards the most serious crimes while minor crimes of lesser public visibility are treated leniently to reconcile monetary and other institutional burdens (*ibid*: 1995: 39-41). This argument is to some degree supported by a number of empirical evidence that shows how lower courts in jurisdictions such as the UK and the US are the ones flooded with cases that often end up in quick disposal through plea negotiation (Alschuler, 1979; McConville, 1998; Mccurdy, 2005; Rauxloh, 2012).

Another point raised by Punch (2002) is in relation to the inherent difficulty in the practical administration of criminal justice, especially the organisational operation of contemporary policing and law enforcement that foster some diverse forms and patterns of deviance that are widespread in many societies (2009: 2). He gave examples of these patterns by categorising them into what he termed as 'official paradigm' and the other he called 'operational code' (*ibid*: 2-3). The official paradigm, he argues, is designed to bolster institutional values and portray to the outside world the 'public façade' of efficiency, whereas, the operational code espouses how the process truly works (*ibid*). In practice he said, these official roles are mostly carried out through negotiated reality of internal institutional practices that often deviate from the paradigm (*ibid*). It is from these kinds of

bureaucratic undertones and the presumed 'mutuality of advantage' enjoyed by the state and the community that even the much-debated fallacies of plea bargaining are kept within constitutional legitimacy (Caldwell, 2011: 68). Other extended variables include the 'professionalism theory' which argues that the possibility to negotiate is a product of the sophistication in criminal investigation that makes evidence clearer at the earliest stage (Mather, 1979: 284). This also includes the argument of improved forensics and ways of obtaining evidence, sometimes with so much accuracy that offenders admit guilt even before trial. But Bar-Gill and Ben-Shahar's in their theory of 'credible coercion,' argue that prosecutors, aware of the strength of their evidence invoke extra-legal practices of threat and coercion to secure guilty pleas (2004: 44). Yet, they maintain that coercion, when credibly backed by strong evidence, is an effective way for the accused to avoid an even worse alternative of going to trial for a harsher sentence (*ibid*).

In relation to other structural adjustment in crime control strategies such as offender profiling and preventive detention, scholars argue that they are a reflection of the compelling evidence that suggests the failure of every known criminal justice strategy to combat crime and recidivism (Garland, 2001: 106-175). This pessimism has eventually resulted in a "reworked pattern of cognitive assumptions, normative commitments and emotional sensibilities" that motivates most of the practices in criminal justice administrators (Burke, 2012: 201-202). It has also resulted in placing greater emphasis on incivility, all in the name of safety and security (*ibid*). Although some may argue that these measures have little to do with plea bargaining, the growing emphasis on surveillance is directly correlated to the question of over criminalisation and an overcrowded docket. Hence, the need for an expeditious way of dealing with workload becomes part of the priority of judges and prosecutors. Explaining other implications of the system of plea bargaining, Cornwell pointed out that the growing populist rhetoric on crime and penology has made liberal approaches such as restorative justice unattractive to policy makers (2007: 16). Similarly, there is, according to Crawford, a noticeable decline in the idea of correctional justice, which was earlier thought to be an alternative to the idea of retribution (1997: 176). As these alternatives concepts decline, a new phenomenon in the form of plea bargaining appears to be rising and becoming widespread.

In the midst of this complex interplay of political, economic and legal trajectories, plea bargaining offers an unparalleled incentive for prosecutors to achieve expedited sentence and deal with any workload. This leads to the argument that the territory of criminal justice now operates in a mixed paradigm that produced some extraordinary contours. Moreover, discussion of plea bargaining in this context raises a great deal of criticism over a system that is seen to promote the idea of negotiation with a criminal offender and rewarding them instead of punishing them, that in the end fails to serve either the objectives of retribution, deterrence or even rehabilitation. But proponents of plea bargaining incessantly reject these accusations, claiming that plea bargaining helps in ensuring efficiency in criminal justice administration (Stitt and Chaires, 1992:72-74). Other scholars claim that the presence of plea bargaining is a reflection of the emergence of a new philosophy in criminal justice that is largely pragmatic in nature (Jung, 1997: 122), and that the convergence of these different elements in contemporary political and social rearrangements explains some of the consequences of the reorientation of the functions, objectives and practice of criminal justice administration in ways that were quite a radical departure from the trajectories of the old (Garland, 2001: 54). As Marsh *et al.*, further argue, the entire history of criminal justice has been one filled with “reform and reaction, and of false and disappointed optimism” (2004: 5) The convergence of these aspects and the widespread practice of plea bargaining around the world is a crucial question in scholarship.

Another important debate around the idea of plea bargaining around the world is the emphasis on the advantages of using consensual negotiation to deal with complex economic and financial crimes. As would be discussed in subsequent parts of this study, evidence has shown that, in a number of jurisdictions including Nigeria, plea bargaining has become a chosen method of obtaining a conviction for these types of crimes that are often hard to prove. Writing about developments in Georgia, Vogler and Jokhadze disclosed how the idea of plea bargaining proved very successful in recovering the appropriated wealth of the state from corrupt officials (2011: 7-8). This however brings to the fore questions about the viability of plea bargaining and how it can translate into a significant and legitimate process that not only supports prosecution, but also adhere to the ethical standards of legal practice such as transparency, procedural rights and the rule of law. These questions are among the primary interest of this research. These questions become relevant because summary

procedures, specially negotiated pleas, lend themselves more to informalities than conventional methods of trials. They also have a wider implication on the concept of transparency, public sentiment and perhaps on the general fabric of procedural justice. These indeed are aspects that put the credibility of the entire legal system at stake. Hence, when legal systems find a reason to introduce or far reaching reforms such as plea bargaining, a prudent assessment of its utility and implications is necessary. This includes the obligation build appropriate foundation of guidelines and regulations that will deter or, at least, minimise illegality as well as low moral and ethical standards in the administration of justice.

Although the motivation and justification for plea negotiation may seem identical across many jurisdictions, the socio-legal effects and problems it presents vary in many ways depending on the problems and priorities of each of the jurisdictions under review. For example, the challenge brought about by the complexity of a 'new generation' of criminal cases such as identity theft, organ trafficking etc., whose definition and characteristic differ from one regime to the other, and also the capacity of courts to effectively try these cases differ among nations.<sup>6</sup> What is perhaps apparent in contemporary politico-legal transition is the decline of full adjudicative process in criminal justice (Damaska, 2006: 1019). A number of legal regimes have now assumed the method of diverting cases from the conventional courtroom or mutating charges to lesser ones in the quest to have expedited disposal. In cases where this is not possible, other measures are put in place that encourages defendants to cooperate with authorities in admitting guilt (*ibid*).

## **2.2 The history of plea bargaining: a global view**

While the practice of plea bargaining continues to expand all over the world, its origin is still widely debated. This lack of clear perspective on how, where and when plea bargaining began, often distorts what could ordinarily have been a simple understanding of procedural reform in criminal justice. The dividing line between different kinds of summary procedures has also contributed to the enormous misconception on the root and nature plea

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<sup>6</sup> For example, crimes rates in Scandinavian countries are quite low compared to Caribbean countries. Therefore, courts in Finland or Norway may still be able to try all cases while those in Jamaica and Barbados may need to resort to some form of summary procedure

bargaining. Some scholars view plea negotiation as an expansion of the guilty plea procedure that existed for centuries (Fisher, 2000; Caldwell, 2011). Others, however, argue that the idea is not simply a guilty plea as known in older discourse and that until recently; criminal justice did not know of or support the kind of negotiation that is common in the contemporary institution of plea bargaining (Alschuler, 1979; McDonald, 1979). One fact that seemed obvious is that from the simple idea of guilty pleas to one that involves a guilty plea with the assurance of concession, the practice of plea bargaining has seen a major transformation in the last four decades. It has developed from a mere arrangement that occurs behind closed doors, known only to the parties involved; to a system that is approved by the statute. In most literature however, (Newman and Remington, 1973; Bond, 1975; Alschuler, 1979; Dubber, 1997; Palmer, 1998; Caldwell, 2011) the historical evolution of plea bargaining is often closely associated with common jurisdictions where the 'guilty plea procedure' is said to have first originated.

Revisiting the different accounts on the origin of plea bargaining, numerous scholars have attempted to show that the idea of confession, which was historically known to criminal justice was the aspect that evolved to what is now a negotiation between the state and the defendant. Different scholars have given account of this transition. In the US, Fisher pointed out that plea bargaining began contemporaneously with the very emergence of public prosecution, although the office of the public prosecutor is not exclusively a characteristic of the US criminal justice, he claims that it developed earlier and more broadly in the US than many other legal regimes around the world (2000: 889-892). This he suggested developed slowly into what looks like plea bargaining, but because judges and not prosecutors control sentencing powers, most plea bargains were first limited to those cases in which prosecutors could unilaterally dictate the process of charging (*ibid*). Bond (1975) traced the origin of plea bargaining to the guilty plea procedure which began in the seventeenth-century courts of England. Although it is difficult to have a valid historical account of exactly when simple guilty plea turned into negotiating with defendants, scholars such as Barbara *et al.*, claim that it is possible some sort of negotiation in criminal justice began as far back as 1226 (1976: 56). Yet, even the history of guilty pleas is one that remains contentious. Caldwell (2011) for instance claims that the first recorded case of a guilty plea in the United

States occurred in Massachusetts in 1804.<sup>7</sup> In this particular case, he claims that the accused pleaded guilty, but the court refused to record his plea, rather he was sent back to remand on the advice of the court that he should reconsider the consequence of his plea. Alschuler, on the other hand, claimed that the first case of a guilty plea to be upheld by the US Supreme Court was in 1892,<sup>8</sup> where the court refrained from accepting the defendants' plea until he was assigned a counsel and advised thoroughly on the implication of such an admission (1979: 10). Other records include documents from the superior courts in New York City indicated the presence of guilty pleas as early as 1846, where about 28 per cent of criminal cases were disposed of through confessions, and by 1919 this figure has reached 88 per cent (Feeley, 1982: 344). There is also evidence to suggest that from the 1800s to the 1900s, a new pattern of the guilty plea emerged in the US, where defendants changed their initial not guilty to a guilty plea in exchange for charge concession (*ibid*: 344-345).

This development continued in a fluid and unclear manner between a guilty plea and plea bargaining, until prosecutors, especially in the US began to engage in open and direct negotiations with offenders in return for lighter charges (Rai, 2007: 62). Although the term 'plea bargaining' appeared much later, it is important to stress that all of these earlier practices that allowed for summary proceedings through guilty pleas had some characteristics of what was later developed to be known as plea bargaining or plea negotiation. Hence, it is safe to argue that this incremental phase of transformation of different kinds of summary procedures were the catalyst for the emergence of today's legally sanctioned plea bargaining. Although, Anglo American justice system is the one known for developing plea bargaining, Thaman points out that the evolution or development of plea bargaining should not be seen as some kind of system that is exclusive to common law (2007: 12). Instead, he argues, it is part of a global reform in criminal justice. He said:

All systems have existed, and continue to exist in all countries in varying degrees as lateral or subsidiary traditions. Plea-bargaining à l'Américain is thus not only a result of the accusatorial-adversarial nature of the American trial ethic, which allows the disponibilité of the charge, but also of more communitarian notions of compromise

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<sup>7</sup> *Commonwealth v Battis*, 1 Mass. (I Will.) 95, 95-96 (1804).

<sup>8</sup> *Hallinger v Davies*, 146 U.S. 314 (1892).

and restoring the judicial peace. More importantly it must be emphasized that plea-bargaining is just as much an offshoot of the Inquisitionsprozess with its stress on inducing admissions of guilt by using pressure, inducements, promises of leniency, if not outright torture. This will become increasingly evident when we discuss the inherent coercive nature of modern day American plea-bargaining (*ibid*).

However, Albert Alschuler, in his well-known opposition to plea bargaining refuted the claims that negotiations in criminal justice have existed for centuries (1979: 2). He argued that the numerous assertions by scholars are misleading as they confuse plea bargaining with the practice of 'Jury nullification' (*ibid*). His assertions was that until the second half of the 19th century, plea bargaining was an unknown practice in the common law (*ibid*). He based this argument on records from legal treaties and case reports that indicate how through most of its history, the Anglo-American legal system discouraged guilty pleas (*ibid*: 4-5). This strong position by Alschuler is however not new among opponents who consistently argue that guilty pleas should not be equated or confused with plea bargaining (McDonald, 1979: 386). Yet, a closer look at the characteristic of present day plea bargaining reveals how closely it is related to the old idea of guilty pleas. What is most different is the nature through which the two are often processed.

In general, only a few scholars seriously contemplate that there was a period in which either some form of guilty plea or summary trial was absent (Pizzi and Montagna, 2003: 432; Thaman, 2007: 12). Referring to records from the Old Bailey for instance,<sup>9</sup> Langbein indicates how, in periods preceding the mid-eighteenth century, most common law trials lack the kind of adversarial element that are often debated (1979: 262). These records exhibit clear patterns of extremely rapid trial processes where between twelve to twenty felony cases were tried daily by a single court (*ibid*). It was not until 1794 that a trial lasted more than a day, with the court seriously contemplating whether it had any powers to adjourn (*ibid*).<sup>10</sup> Similarly, Feeley discovered similar patterns from the transcripts of the mid-nineteenth century trial court proceedings in London that revealed common traits where "defendants were not represented by counsel; they did not confront hostile witnesses in any meaningful way; they rarely challenged evidence or offered defences of any kind",

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<sup>9</sup> Central Criminal Court of England and Wales referred to as the Old Bailey, which is the name of the London Street in which it is located. It is also among the buildings housing the Crown Court.

<sup>10</sup> *R. v. Thomas Hardy*, 24 St. Tr. 19, (1794).



making the whole practice at odds with what genuine adversariality ought to be (1982: 345). Similar hasty patterns were discovered by Friedman and Perceival in their study Florida and California in the period around the turn of the century, where most trials lasted not more than half an hour in a process where a jury was hastily put together, and cases were quickly outlined and the complainant gave his version of the incident (1981: 194). In some cases, “the defendant told his story, with or without witnesses; the lawyers (if any) spoke; the judge charged the jury. The jury retired, voted and returned...then the court went immediately into the next case on its list” (*ibid*). Owing to this history of how trials used to be and what they are today, Feeley states:

When trials were once extensively relied upon, they were perfunctory affairs that bear but scant resemblance to contemporary trials, which while few and far between are often deliberate and painstaking affairs, at least as compared to what they once were. In a very real sense, the very nature of what a trial is has undergone revolutionary changes to such an extent that comparisons across lengthy periods are not even meaningful (1982:346).

Arguably, criminal justice has evolved through different phases to what is today a full pledged plea bargaining, argued by proponents as a system that ensures efficiency in the face of workload and also serves as a convenient way of settling cases for prosecutors and judges (Heumann, 1981; Scott and Stuntz, 1991). Hence, the development of plea bargaining is not one that hinges on a single or simple variable. Instead, it is part of a long history that includes many aspects and contingencies. In contemporary criminal justice administration, plea bargaining appears to be a ready option on the table of those who practice it, irrespective of the pressure of workload. To appreciate the strength of this argument, one may reflect on the surge in plea bargaining across the world alongside the claims of drop in crime rate. For example, data shows the drop in crime across the UK and the US (Blumstein and Wallman, 2006). In the US, for instance, studies claim that crime rates have fallen continuously since the 1990s (Ouimet, 2002: 32). Similarly, the British Crime Survey shows that the total number of crimes dropped by 15.6% between 1993 and 1999 (Povey, 2001). Along with the drop in crime rate, a recent study by Holloway indicates an exponential rise in plea bargaining, revealing how over 99 per cent of cases, in some jurisdictions, end up being negotiated (2014: 15). Although the claim of Holloway cannot be generalised across all jurisdictions, it shows a pattern in the increase in the application of

plea bargaining across many jurisdictions. For example, studies in the UK also revealed how increasingly English courts resort to plea deals instead of trials (Duff, 2000: 85). Besides what other scholars claim, Rauxloh pointed at some of the elements that are contributing to the rise of plea bargaining in England and Wales (2012: 18). She identified the growing emphasis on safeguard of the defendants' rights, which inevitably made evidence easier to weaken as an important factor (*ibid*). This situation she claims, lead prosecutors to lean more towards guilty pleas as a better way of obtaining convictions than facing the nuances of trials (*ibid*). Taking these paradoxes into account, one is bound to agree with Feeley that the exigencies of the pressures on organizations with limited resources as relevant factors in the contemporary practice of plea bargaining do not on their own account for its rise (1986:342). Understanding plea bargaining therefore requires the examination of the practices in the light of different contingencies, including the argument of earlier scholars like Goldstein who view the rise of plea bargaining as part of the characteristics of modern courts, where it has proven practically impossible to subject every criminal case to a full trial (Goldstein, 1960: 1149).

All the factors mentioned such as over criminalisation, modern offences, increased surveillance etc., have, in different ways influenced the rise of plea bargaining, allowing the practice to develop to an unprecedented prominence in many places around the world (O'Hear, 2007: 409). For example, studies have shown that over time, criminal justice procedure has, in both the US and in England and Wales, shifted from a jury dominated system to one in which negotiated guilty pleas are the norm (Duff, 2000; Holloway, 2004; Bar-Gill and Gazal, 2004). Although the extent of these negotiations and particularly the role played by parties differ among jurisdictions, there is a near consensus that plea negotiation has its root in common law adversarial justice system and they grew more rapidly under common law regimes. As early as 1978 for instance, 85 per cent of defendants charged with indictable offences in English courts, mostly in Crown Courts, and a large number of criminal defendants in US courts have their cases settled through some form of plea bargaining (Baldwin and Mcconville, 1979: 287-288; Bar-Gill and Gazal, 2004: 1).

From common law regimes, the system of negotiation has now become a global phenomenon. Legal reforms in continental Europe and even in China have shown how even

traditional civil law regimes, who initially showed scepticism to the idea of plea bargaining, have codified this practice into their criminal justice system (Ma, 2002; Thaman, 2010; Rauxloh, 2012). The most common justification for jurisdictions where the legality principle used to be the norm is that summary procedures are imperative if the criminal justice system is to deal with the impasse and inefficiency brought about by the slow process of trial (Pizzi and Marafioti, 1996: 2). Despite the unlikely adoption of an Anglo-American transplant, Langer observed how the long-standing legal culture of inquisitoriality; the concerns of legal reformers and the different ways in which this practice was contextualised, has produced different methods of application across civil law regimes (2004:3-6). A critical look at theory and practice of plea bargaining reveals a constellation of factors and contingencies that differ from one legal regime to the other, including the origin and the justification for substituting trial with negotiations. This diversity will be addressed in chapter four of this research.

Quite clearly, the practice of plea bargaining has earned a new prominence in criminal justice that is showing no sign of disappearing. Hence, some scholars are revisiting this process in an attempt to identify ways in which the structural and procedural defects should be discussed (Ma, 2002: 43). Particular attention is often paid to issues relating to coercion; prosecutorial self-interest, the growing passivity of judges and the criticisms and apprehension among the public. As will be discussed later in Chapter five, the legitimate concerns about the practice of plea bargaining has become a topic among scholars, many of whom are calling for a robust and critical reform to address these inherent flaws in the system (Frase and Weigend, 1995; Dubber, 1997; Guidorizzi, 1998; Uviller, 1999; Bibas, 2001; Wright and Miller, 2002; Stuntz, 2004; Covey, 2007; Hashimoto, 2008; Moriarty and Main, 2011; Cassidy, 2011). This becomes even more significant because of the way “plea bargaining is increasingly gaining the quality of a routine practice which follows a particular deontological pattern and has given rise to a body of 'soft law'” (Jung, 1997: 114). Although the argument that plea bargaining is an advantageous system appears to be deep-rooted in scholarship (Samaha, 2005; Thaman 2010), some empirical studies have cast doubt on this notion as both simplistic and narrow (Gillespie, 1977; Hann, 1973; Cousineau and Verdun-Jones, 1979). Perhaps certain generalised similarities exist all over the world; the system has

over time evolved to be used as a way of pursuing different objectives across different jurisdictions.

### **2.3 Types of Plea Bargaining**

In a general sense, plea bargaining is simply an arrangement where a criminal case is negotiated between parties outside of full trial with the aim of arriving at some agreed charge or sentence. Yet, the variables that inform and influence each case are not exactly the same. The major distinctions are those to do with the kind of role parties play in the process. This is also true with the definition and terms used to describe plea bargaining. Cousineau and Verdun-Jones, for instance, argue that the whole range of terminology used to describe or define the plea bargaining are inconsistent, as there is hardly a single phrase or nomenclature that is capable of encompassing all the diverse practices that result in concluded negotiations (1979: 295). In theory, these expressions range from terms such as 'plea bargaining', 'plea negotiation', 'plea discussion', etc. (*ibid*). These scholars, however, suggest that the definition by the Law Reform Commission of Canada seemed the most succinct. It states, "any agreement by the accused to plead guilty in return for the promise of some benefit" (*ibid*).

Similarly, Conklin defines plea bargaining as the process where, the defence counsel elicits, or the prosecution offers, to the defendant, certain concession in exchange for a guilty plea and the forfeiture of the right to trial as well as all those constitutional safeguards of trials. He suggested that the prosecution's offer may consist of: (1) a reduction in charge; (2) a promise to recommend a to the sentencing court a lenient sentence; (3) dismissal of some of the charges; or (4) a promise to forego prosecution under statutes that could compound the sentence of can result in a conviction (1979:754). But does plea bargaining always comes with a guarantee or with a genuine commitment for penal concessions for every accused willing to plead guilty? Putting the various definitions into context, scholars were able to categorise plea bargaining into a 'charge bargain', a 'sentence bargain' or a 'fact bargain'.

- a. **Charge bargain:** this is the most common form of plea bargaining in which three scenarios are usually bound to occur. First is where a defendant pleads guilty to a charge or charges in return for a prosecutor's dismissal of other charges. Second is where a defendant pleads guilty to a charge or charges in exchange for a prosecutor's promise not to file other charges (Combs, 2002:10). Third is a situation where a defendant pleads guilty to a lesser offense in return for either a prosecutor's dismissal of the most serious charge or, a prosecutor's promise not to file the most serious charge (Ashworth, 1998: 271; LaFave and Israel, 1985: 766-767). In particular circumstances, this form of plea bargaining may involve some elements of sentence bargain because by pleading guilty to a lesser charge, the defendant technically enjoys the potential of a shorter sentence (Caldwell, 2011:77).
- b. **Sentence bargain:** this is the only type of plea bargain in which the judge is directly involved, the defendant pleads guilty to charges in exchange for a promise of a lenient sentence. In most cases, the sentence to be awarded is specified before the verdict (Welling, 1987:319). According to Combs, in most sentence bargain arrangements, the prosecutor recommends for a "specific sentence which the court will almost certainly impose" (2002:10). Sentence bargaining is mostly common in continental European civil law regimes, largely as a result of the inquisitorial culture of the 'powerful judge'. This is in contrast to the procedure in most common law jurisdictions like England and Wales, and Victoria, Australia where plea bargaining is permitted to the extent that the charges to be dropped can be agreed between the prosecution and defence, but the courts always decide what the appropriate sentence should be (Rai, 2007: 48).
- c. **Fact bargain:** This is evidently the most uncommon process of plea bargaining. In this instance, the defence and the prosecution agree that the later will present certain facts of the matter to the court in a subtle way, avoiding in essence the aggravation of facts and evidence (Rauxloh, 2012:26).

## 2.5 Conclusion

Beyond doubt, the historical account of plea bargaining is suggestive of how the system developed from an informal, opaque process to a formal, codified and widespread affair. Despite fervent and pervasive criticism, there is evidence, especially among legal practitioners to promote plea bargaining. It is also evident that the system grew from what was simply a guilty plea procedure, often common with adversarial systems, to a full pledged negotiation for penal concession. Yet, like all socio-legal changes and reforms, there are still those legitimate grounds to question the utility of plea bargaining as some sort of imperative reform. What is more appealing to scholarship however, is how this process which initially seemed like a simple mechanism for dealing with overcrowded dockets has opened up a new philosophy that is multifaceted and complex, lending itself to concerted debate not only on law and legal reforms but also the economics of law and the changing relationship between the state and the individual. It has also exposed the overarching attitude of how legal frameworks create incentives as well as disincentives that, sometimes, make individual or bureaucratic interests the prevailing factor in decision making.

In many instances, discussion on plea bargaining has led to a wider debate that often involves sociology, politics, and economics. Perhaps, any cogent and comprehensive explanation of the institutions of law must establish the credibility of these elements as integral parts of how legal systems and legal reforms evolve and work (McKaay, 1999: 93). These interwoven yet multifactorial relationships have been discussed in this chapter, especially through the range of evidence that shows how the institution of plea bargaining has evolved from a measure for efficiency to one driven by other variables, including institutional convenience and cost. Perhaps voices still resonate that suggest the decline in the law and economics scholarship, but it is evident that there is a renewed interest in political theories about the interrelationship between the field of law and economics. The obvious consequence of the eroding barrier between law and economics has also led to a gradual but steady retreat from the orthodox ideas of criminal justice such as retribution and desert. What this study further encompasses is how these realignments, rearrangements, and reforms, especially in the idea of negotiating with criminal offenders is significantly restructuring the entire landscape of the criminal justice.

Although evidence has consistently shown that criminal justice has always been susceptible to far-reaching reforms, what plea bargaining brings imposes itself so firmly onto the traditional structure of law and penology, generating an area of scholarship that is ripe for new thinking (*ibid*). Essentially, the expansion of plea bargaining has added a new quality to criminal justice as much as it has raised a new debate on jurisprudence. The polemics reveal the fragility of these developments and prompt complex questions about criminal procedure and indeed the entire institution and theory of penal law. Hence, the polemics on whether the prevalence of this practice merely denotes a transitional phase, or whether it portends a more fundamental change in the definitions of crime and justice (Jung, 1997:122). Whatever plea bargaining brings to the wider spectre of criminal justice institutions; one irrefutable fact is that it is at the top of the many contemporary issues raising questions about the valid objectives of criminal justice.

What also remains significant yet contentious is the traditional claim that the idea was a response to caseload pressure, an argument that is premised on the efficiency theory. As much as it remains legitimate, it is also a narrow view point as it repeatedly ignores other important aspects relating to the procedural convenience and personal interests of parties in a plea bargain, both of which are elements that have less to do with workload or even with justice. Evidently, the incentives and convenience that plea bargaining presents have become so attractive that even the evidence of a decrease in crime rates has not reduced the rate of plea bargaining. Yet, it should be clear that workload, pressure of inefficiency and punitivism are major drivers of plea bargaining, especially in jurisdictions like the US.

Moreover, the way in which plea bargaining is gaining prominence in the realm of 'soft law' has prompted some scholars to caution about the inherent danger of an entrenched and over-exercised culture of negotiated settlements as against the public and transparent adjudication of cases through conventional trials (Ayres and Waldfogel cited in Wright and Miller, 2003:1417). Scholars have pointed to the importance of, at least, some minimum trial rates as a measure of a healthy justice system (*ibid*). Extremely low trial rates they argue, "perhaps in conjunction with low acquittal rates, may indirectly suggest the presence of an excessive trial penalty and the diminution of justice that comes with it" (*ibid*). One of

the issues that will be addressed in the course of the study will be the kind of challenge that plea bargaining presents to other elements and traditional values of criminal justice. The study will also look at how the system has affected both the practice and sentiment of justice.



## **Chapter Three**

### **Theoretical framework.**

#### **3.0 Introduction**

Scholarly analysis of policies and reforms often leads different theoretical arguments on the aspects that define and drive the phenomenon in question. In this respect, this thesis intends to lay a theoretical foundation on theoretical juxtapositions that attempt to explain the practice and application of plea bargaining. It is however important to state that there are many theories on plea bargaining, including those that relate to the issues of human rights; the fundamental values of criminal justice such as the right to be presumed innocent until proven guilty in an open court. However, for the purpose of this study, the main approach will be to narrow the discourse to two main theories, i.e., the utilitarian theory, which explains the reasons for the emergence and spread of plea bargaining, and the decision theory which explains how the system applies in practice. The reason for choosing these theories is because the main questions of this research revolve around the arguments on the advantages that plea bargaining presents to a system marred by inefficiency, the effect that these negotiations have on the individual choices that parties make and the implications of negotiations on the general practice of criminal justice.

The relevance and application of these theories to research, especially in aspects such as plea bargaining is because the whole idea of plea bargaining in Nigeria and elsewhere emanates as a result of the quest for an alternative procedure in criminal justice that is expected to be less costly and more effective than traditional trials. Hence, interrogation into this widespread utilitarian argument require for a utilitarian theory perspective that is capable of looking at the arguments from the point of acclaimed advantage. This is the rationale behind the use of utility theory.

The second theory which is the decision theory has its relevance to this research because it looks at the practice of plea bargaining. Essentially, the application and success of any plea negotiation lies in the willingness of the parties, mostly the prosecution and the defence to agree to the terms of the negotiation before the matter is taken to court for accent. Therefore, understanding and explaining these dynamics are best achieved when one discusses them from the context of the different reasons why people will accept or reject a

particular proposition and perhaps how they weigh their different interest as a result of the outcome of any idea that they accept or reject.

It is important to state that the two theories used in this study are not one and the same. Instead, they are distinct of each other. Yet, understanding the treason for the rise of plea bargaining and going down to the motivation of individual parties requires a discussion on the general utility of plea bargaining and then the particular characteristics of the goals that parties intend or expect to achieve as an outcome when negotiating over a criminal matter. While the utilitarian theory discusses many general aspects that define institutional priorities, the decision theory is often more intricate because it is an effort to explain the variety of reasons that influence individuals to accept or reject a plea bargain. It is also one that involves different priorities driven by different situations. This chapter would explore both theories and polemics in order to lay a foundation for understanding subsequent discussions and analysis in this study.

### **3.1 Utilitarian theory**

The common notion that criminal justice is based on moral precepts has long been a subject of dispute as many scholars attempt to define the logic and objectives of criminal justice institution from different perspectives (Posner, 1975; Bradley, 1993; Cole 1999; Sherman, 2002; Bottoms and Tankebe, 2012). Even though judges and legislators frequently talk about the protection of the society from crimes, the reasoning is often expressed in different terms, including economics and organisational incentives. In the classical juxtaposition of utilitarian philosophers such as Bentham and Mill, utilitarianism is defined by how much an action produce happiness and promotes the interest of not only the performer of the action, but everyone affected by that action (Elster and Grapes, 1982). In this sense, utilitarianism is a concept that places value on the outcome of an action and how it affects the majority. This leads to the discussion on who benefits from plea bargaining and how.

Einstein and Jacob argue that the utility of plea bargaining and the opportunity to negotiate is a product of the quest for incentives for the principal participants in the criminal justice administration (cited in Feeley, 1982: 341). Essentially, this argument suggests that

consensus between defence attorneys, judges and prosecutors is mainly to serve the interest of the parties. A successful plea negotiation is, therefore, one that allows the parties to arrive at a common ground that gives officials the chance to avoid cumbersome trial procedures and also guarantees leniency for the accused. Blake and Ashworth view plea bargaining as a method promoted by legal practitioners for the purpose of convenience and self-interest that often has little to do with the interest of other parties (cited in Rauxloh, 2012: 45). This argument is, however, in contrast with the utilitarian juxtaposition of institutional legal theory, which explains legal reforms such as plea bargaining as ways of alleviating the general inefficiency in criminal justice administration (Blumberg, 1966; Goldstein, 1960; Thomson, 2004 cited Rauxloh, 2012: 37). The main utilitarian argument also suggests that without some form of expedited procedure, especially in jurisdictions where crime rates are high, the entire criminal justice system stands the risk of grinding to a halt (Fine, 1987: 615). Chief Justice Berger commented on this by saying that if every criminal case were to go through a full trial procedure, the states “would need to multiply by many times the number of judges and court facilities.”<sup>11</sup> However, some scholars have contended that it is the length of individual proceedings that often strains the justice system (Riess cited in Rauxloh, 2012: 64).

Taking into context the incentives that plea bargaining presents, it is evident that its widespread cannot be attributed to simply a single phenomenon (Mather, 1978; Miller et al., 1978; Nardulli, 1979; Feeley, 1982: 342). Instead, even the utilitarian theory must be balanced along the line of the entire the structure of the criminal court system as it undergoes constant reform to fulfil different objectives and interests. Cooper for example suggests that plea bargaining is a reflection of the conflicting trajectories that are peculiar to criminal justice, where the need for some procedural adjustment based on the representations of subsisting socio-legal contingencies give rise to changes, and necessitate the introduction of new methods and procedures to relieve the functional aspects of the system (1972: 427-428). These include, for example, the changing nature of penal policies that ushered in the culture of elevating what were traditionally minor civil offences to criminal responsibilities. Thaman also stressed that plea bargaining is, in fact, a reflection of

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<sup>11</sup> *Santobello v New York*, 404 U.S. 257 (1971).

'consensual justice' that has become part of the integral reform in criminal justice across many jurisdictions, aimed at avoiding the exhaustive, cumbersome and costly rigours of a full conventional trial (2007: 1-2). He further states:

Consensual procedural forms are part and parcel of criminal procedure reforms worldwide and are driven by the desire for procedural economy: to either avoid the formal preliminary investigation by investigating magistrate or prosecutor and the preparation of an exhaustive investigative dossier, typical of inquisitorial systems patterned after the continental European "civil law" model of criminal procedure, or the formal, oral, increasingly adversarial trial which has been complicated by the increase in procedural guarantees given to criminal defendants and rendered more unpredictable to the extent that lay judges are given control over the issue of guilt (*ibid*).

Despite these supportive arguments, plea bargaining has attracted equal criticism as a system that turns prosecutors into agents of the state whose role is to secure a plea and turn it in for conviction. Yet, one must also admit that the more a society becomes overwhelmed by overcrowded dockets, slow trials and recidivism, the more it becomes difficult for every case to be subjected to trial. Similarly, the evidence across some jurisdictions that reveal the constant elevation of simple civil offences to criminal liabilities has added value to the idea of subjecting cases to simple procedures as against a long jury trial (Mather, 1978: 283). Although not all societies are going through these, the underlying tensions and interests that brought them into some societies will, over time reoccur in others (Garland, 2001: 7). Plea bargaining has therefore continued to expand in different ways, both as a measure that helps parties sort out their dispute expeditiously and alleviate the stress on the justice system as well as a method used by individuals in ways that have little to do with the interest of the society (Rauxloh, 2012: 64-67). In all of these familiar situations, there is evidence of the utility of plea bargaining as a flexible intervention that condones a great deal of informality than conventional trials. Depending on the circumstance of every case, negotiations between parties can be adjusted to achieve both the demands of the prosecution and those of the defence. Another argument is that plea bargaining provides the flexibility that allows prosecutors to fit the circumstance of individual cases to the abstract rules of a penal code (Mulcahy, 1994: 413-414). Even the most ardent critics of this practice such as Alschuler concede that it is a system that accords a greater and more flexible alternative than conventional trial processes (1968: 71).

However, he was quick to point out that the notion of flexibility is “an advantage that all lawless systems exhibit in comparison with systems of administering justice by rules” (*ibid*). Besides the familiar legal explanations, the utility of plea bargaining had also been defended by some scholars from an economic context (McDonald and Cramer, 1992; Bar-Gill and Gazal, 2006), arguing that it is an essential mechanism that relieves the enormous economic and administrative pressure of full trials. Others also claimed that plea bargaining reinvigorates criminal justice process by avoiding the technicalities and cost of full trial (Combs, 2002; McDonald and Cramer, 1992; Stuntz, 2004; Bowers, 2008). These benefits that include resource management, administrative convenience and expediency are among the factors that help keep all the lapses of plea bargaining overlooked (Caldwell, 2011: 68). Despite the different reasons given by proponents in support for plea bargaining, one thing that is evident is the enormous difference between conventional trials that are done in open transparent courts and plea bargaining which is mostly negotiated in private through a process of bidding, compromise, trade-off and other kinds of private arrangements that will be rejected in open trials.

Other critics of the utilitarian theory of plea bargaining point at the wide-ranging discretion that prosecutors exhibit by adjusting penal provisions and paving the way for sentences that are less than legislatively required sanctions (Thomas, 1985: 505). Although these discretionary elements are seen by proponents as a way of facilitating a successful plea bargain (Ma, 2002: 22), they no doubt lock the individual into a position where no further objective investigation of his case is possible (Barbara *et al.*, 1979: 58). Hence, the argument that the argument that such discretionary conducts “must also be balanced against the utility of pre-ordained rules, which can limit the importance of subjective judgments, promote equality, control corruption, and provide a basis for planning, both before and after controversies arise” (Alschuler, 1968: 71). For any system to be effective in delivering justice argued Wright, it must also aspire to replicate through its guilty pleas the kind of transparent and legitimate outcome that trials would have produced (2005:83).

Arguing on the utilitarian side of plea bargaining, Easterbrook contends that most of the proposals that insist on reverting solely to full trials are illogically calling for a return to a cumbersome route (1992: 176). Trials he says, means more zealous legal arguments, dogged

insistence on every procedural technicality and more persistence on complex rules of evidence (*ibid*). He further observed that waiving any of these demands “is to surrender by degrees, objectionable for the same reasons urged against plea bargaining. If however, the trials are short, how can an observer tell whether counsel tracked down every lead, researched every argument?” (*ibid*). Moreover, Blumberg insists that protracted cases have the potential of creating an irreconcilable conflict “posed in terms of intense pressures to handle large numbers of cases on the one hand, and the stringent ideological and legal requirements of due process of law, on the other hand” (1966: 22). However, opponents of these notions insists that empirical evidence has shown how the emphasis on workload is over amplified by courthouse workgroups, i.e., prosecutors and judges who are the primary beneficiaries of most plea negotiations (Samaha, 2005). But even if the courts have the prerequisite capacity to handle every case argued Easterbrook, disallowing plea bargaining will lead to fewer prosecutions and convictions. (1992: 1975).

There is also a strong criticism of plea bargaining as it affects the legitimate interest of the defendant, the victim, and even the community. Arrigo (2007) maintains that the compromise common with the way pleas are bargained often leaves the community dissatisfied with the outcome. This aspect plea bargaining had long been debated in legal theory, especially among social psychologists who emphasise that compliance with law stem from the community’s sentiment in the transparency and fairness of legal procedure (Tyler, 2006: 161; Alkon, 2009: 20). Where the process is not open they argue, the community becomes reluctant to participate in the successful application of the law (Hough and Roberts, 2005: 2). Although some scholars tend to suggest that, the concept of transparency does not necessarily mean that every procedural step is brought under public scrutiny (Ashworth, 1994: 271), it is important that the public understands the reasons for a plea deal and the objective it was meant to serve.

The utilitarian argument for plea bargaining had also been challenged by scholars who argue that most negotiations impose pressure on the defendant to plead guilty without giving him or her the opportunity for proper adjudication. Langbein, for instance, equated the system to the medieval practice of extracting a confession through torture (1978:13). Along the same line of argument, Kipnis insists that plea bargaining is a method akin to pointing a gun

on the accused and threatening them to accept guilt (1976: 98). Easterbrook, however, rejects these notions, stressing that any attempt to oblige the accused to stand trial, when they actually chose to bargain, means compelling them to take risks they probably do not intend to take (1992: 1971). In fact, for the risk averse defendant, it is legitimate, perhaps even more logical to choose a less costly process and a lighter punishment than take the chance of an extended trial with probably the potential for a more severe penalty (*ibid*). He further tries to strike a balance between the advantages of plea bargaining and those of trials, saying:

Trials come with a variety of rules that exclude probative evidence thought to mislead jurors who may not be perfect Bayesians. During bargaining, the parties can consider all the evidence that will come in at trial, and then some. The persons doing the considering are knowledgeable; prosecutors are more likely than jurors to discount eyewitness accounts, and prosecutors know from experience which details are most likely to separate guilt from innocence. (1992: 1971).

On the rights of the victim, some scholars insist that for most part, plea bargaining excludes the victim from narrating his story in an open trial while allowing the prosecution or the judge to engage in the process of discounting sentence solely for defendant's cooperation (Wright and Miller, 2002: 33). This they argue affects the victims understanding of justice and send a symbolic message to the society that the accused was rewarded instead of punished (*ibid*). It also suggests that the primary goal of criminal justice is processing and that justice is only a secondary (*ibid*).

Essentially, the utilitarian paradigm is one that emphasises on the advantages of engaging parties to negotiate instead of taking the long and onerous route of full trial. What this suggests is that whatever the shortcomings of plea bargaining, it also must be reconciled with the numerous benefits which it offers to the state and to parties. Hence, the system should rather be seen as a liberal approach, which does not necessarily bar defendants from insisting on their rights to trial, but offers them an opportunity to accept their guilt for a lesser penalty.

### 3.2 Decision Theory

Scholars have made attempts to explain the factors that influence the decisions of parties involved in plea bargaining (Scott and Stuntz, 1992). Earlier models include the Economic Model of Landes (1971), and later the theory of 'Plea Bargaining in the shadow of Law' (Mnookin and Kornhauser, 1979; Cooter, 1982). In the model proposed by Landes (1971), he demonstrates that plea bargaining is synonymous with a market transaction in which the prosecutor buys the guilty plea of a defendant in exchange for a promise to pay with sentence leniency. This theory seemed to suggest that prosecutorial objectives are often targeted towards the maximization of expected sentences subject to foreseen resource constraint. Landes went further to claim that the likelihood of the prosecution agreeing to conclude a bargain becomes higher when the expected penalty on trial is smaller (1971: 64). This means that charges against the accused are highly likely to be dismissed once the prosecutor sees little chance of conviction through trial or where he expects a negligible sentence.

Along the same line of argument, the decision theory and equilibrium model of Nagel and Neef (1976) indicate that parties strike a ` plea deal in the shadow of expected trial outcomes, focusing primarily on the probability of acquittal and the proportionality of sentence discount. This argument views the process of plea bargaining as "analogous to a buying/selling transaction in a market that has no fixed prices" (*ibid*: 1). This position portrays the defence as the buyer, seeking concession (discount) in charge or sentence, and the prosecutor as the seller intending to settle for a high price (charge or sentence), within the constraints of existing statute or guideline (*ibid*). In the process, each of the parties has in mind how much he is willing to settle for (*ibid*). Although the proponents of this model did not deny the impact of other factors in determining the outcome of plea bargains, they seem not to give most of these factors much relevance. Instead, their emphasis is mainly on the sentiment of penal concession and the outcome of the negotiations.

Responding to Landes's model, Rhodes contends that, despite the valuable insight provided, it is unclear how the individual decision making described in Landes's theory accounts for certain aggregate, or macro, aspects of criminal justice (1976: 312). In this revised approach,



Rhodes demonstrated that “the ratio of guilty pleas to trials is negatively correlated with the severity of the sentence exchange for guilty pleas, significant at a one per cent level of confidence” (*ibid*). The outcome of his hypothesis suggests further that, the defendants' demand for a trial is inversely related to the concessions gained for accepting a guilty plea offer (*ibid*: 331). Forst and Brosi (1977) also examined another variant of Landes' model, revealing that the length of time it will take the prosecutor to make a decision depends on the strength of the available evidence against the accused and is only slightly dependent on the gravity of crime alleged.

Reinganum also contends that the evidence presented by Landes is weak (1988: 714). He says, the difficulty with Landes's theory is that the conclusions that he tested do not strictly follow from the theory, “since the actual sentence offered in a plea bargain is indeterminate (there exists a range of mutually acceptable sentence offers) if the defendant is risk averse” (*ibid*). He also observed that the model is only centred on negotiated pleas without reference to trials, and is based largely on the presumption that all defendants are guilty (*ibid*). In conclusion, Reinganum presented an argument somewhat similar to that of Grossman and Katz (1983), mainly discussing the extent of prosecutorial discretion and choices in an ordinary plea bargaining. His analysis suggests:

Sufficiently weak cases are dismissed, where this sufficiency does not depend upon the resource cost of trial but upon the social costs and benefits of punishing the innocent and the guilty, respectively; that defendants against whom a sufficiently strong case exists are offered a sentence (in exchange for a plea of guilty) which increases with the likelihood of conviction at trial and the defendant's anticipated disutility of trial and conviction; and finally, the defendants are more likely to reject higher sentence offers, so that the likelihood of trial is an increasing function of the strength of the case (Reinganum, 1988: 723).

Other scholars like Easterbrook (1992) have brought into context other factors that were ignored in the previous theories. Such factors include time discounting, limited funds, risk preference of defendants and agency costs as relevant elements in the cause of decision making during plea bargaining. Many prosecutors, for example, believe they can achieve a strong conviction record through plea bargaining than going to trial. The defence on the other hand also uses plea bargaining as a means of securing lenient sentences for their

clients, while the judge benefits from being relieved of the difficulties of an overcrowded docket (Blumberg, 1970: 264).

Lerner (1999) also added other external aspects to the debate i.e., the availability of information, time constraint, economy and work pressure as factors that affect on individual decisions. Another variable explained by Scott and Stuntz, is the psychology of framing and the weak sense of judgment, especially in respect of poor and unsophisticated defendants poised against experienced and well-informed prosecutors (1992: 1912). Giving a scientific explanation to decision theory model, Hastie (2001) explains how individuals' choices are influenced by different constraints of human socio-psychology relating to their emotions, perceptions, performance and judgment.

Although the question of how rationale any decision could be is subjective, Dhimi maintains that reasonable decisions could best be made by weighting and integrating all the available and relevant information about a case (2013: 296). Yet, it was argued that people rarely perform such compensatory processing of information because of their cognitive limitations and partly because of external decision-task constraints (Dhimi and Thomson, 2012). All of these arguments have in them some common elements of how most plea negotiations are processed in practice. The reality is, individual decisions in plea bargaining could be influenced by a range of factors including the jurisdiction of the case or geography of a specific court (Ulmer and Johnson, 2004: 166), the sex, race or age of a party (Mitchell, 2006: 439).

In an elaborate but more specific analysis of decision-making in plea negotiation, Bibas presented the theory of 'Plea Bargaining Outside the Shadow of Trial' (2004: 2465). He contends that, the classic 'shadow of trial' model which is premised on the argument that "the likelihood of conviction at trial and the likely post-trial sentence largely determine plea bargains" does not seem to incorporate critically other practical variables that play significantly in informing the decisions of parties during negotiation (*ibid*). He first referenced the broader structural impediments that distort plea bargaining, which include "poor lawyering, agency costs, and lawyers' self-interest" as well as rules relating to bail and pre-trial detention (*ibid*). The second point he made was in relation to works on behavioural

law and economics, which suggest that factors such as, “overconfidence, self-serving biases, framing, denial mechanisms, anchoring, discount rates, and risk preferences all skew bargains” (*ibid*: 2467). These multifactorial factors add to the complexity and diversity in understanding or, at least prevent us from holding on to any particular factor as one with the most influence on the decision of parties. What is rather clear is that decision in plea bargaining is often dependent on individual factors that could be distinct across different cases. Yet, one of the most common feature of these decisions is that they are often the outcome of the different objectives that each of the parties aims to achieve.

Functionalist Theorists, on the other hand, maintain that the choices and willingness of the parties, especially defendants to accept plea bargaining has a lot to do with the sophistication of investigation and the strength of evidence (Mather, 1979: 284). Advances in institutional working strategies, they argue, augments the possibilities of extensive pre-trial screening that technically leaves the defendants with little room to contest culpability (*ibid*). This argument is an extension of the proposition based on the ‘Theory of Professionalization’ which suggests that even the early reliance on jury trials was due to the presence of amateur actors, while reliance on guilty pleas increased with the advent of professional policing, investigation and lawyering (McConville *et al.*, 2005: 2). Feeley went further to add to this debate by pointing at other factors elements such as the development of substantive criminal law and access to resources by both the prosecution and the accused as part of what contributes to the culture of parties choosing to negotiate (1969: 340).

Focusing specifically on the prosecutor’s role, (being the most influential party in most plea bargaining), McConville states that the decision, to either negotiate or go to trial may sometimes be exceptional complex even for the prosecution (1988: 577). This is because the prosecution is often left to operate within a broader parameter of discretion, and “in trying to rationalize their conduct, they may be forced to choose between conflicting obligations” (*ibid*). Because of this inherent challenge, there is always the possibility that social objectives and societal preference might not necessarily be reflected in the prosecutor’s decision (*ibid*). Since the chance to negotiate increases the number of cases the prosecutor can dispose of within the limit of his time and resource, the system exacerbates the consequences of this divergence between social objectives and private goals (*ibid*).

Moreover, because of the varying interest and constituencies that prosecutors represent, they are susceptible to making decisions in line with the ensuing priorities of the moment, which may sometimes have little to do with the principles of justice and fair play (Zacharias, 1997: 1181-1182). For example, the terms or reason for negotiation could be to maintain his reputation for securing convictions, to ease workload or even to maintain a good relationship with the private bar for future employment opportunities (*ibid*). Other scholars, however, have emphasised that of all factors, budget constraint is the most significant in compelling prosecutors to make the difficult decision on how to treat each case and even harder choices on which case to pursue to trial and which to negotiate (Bar-Gill and Gazal, 2004: 2).

Another important aspect that reveals some extraordinary intricacies include situations where the prosecutor's decision rests on delicate societal underpinnings. For instance, where the prosecutor is to make decisions in highly publicised cases with widespread social impact. In this kind of situation, the prosecution will most likely prefer trials than negotiations even if that is not a rational choice to make (Alschuler, 1968: 107). This usually happens because the decision to plea bargain will almost certainly come under intense public suspicion and criticism, requiring the prosecutor to explain to the public that a negotiation was the only viable means of achieving a successful conviction (Katz, 1979: 556). In such circumstances, prosecutors are more likely to choose to defend an acquittal at trial than the painstaking task of explaining to the community the reasoning behind a plea deal. In the end, these kinds of choices become largely motivated not by principle but by foreseen pressure, fear of blame and censure (*ibid*).

Debating the factors that often influence defendant's choices in plea bargaining, Bar-Gill and Ben-Shahar (2004) identified such factors as the degree of guilt and the strength of the evidence as the most significant. They argued that when the evidence in the prosecutor's hand is so incontrovertible, an offer of negotiation in return for leniency is most likely to be accepted by the defendant (2004: 44). Paradoxically, an empirical study by Bottoms and McClean suggests that while guilt and evidence prompt defendants to plead guilty, only 49 per cent of the defendants responded that plea bargaining is indeed capable of resulting in some sort of reduced sentence, and only 5 per cent responded by admitting that their

willingness to plead guilty was in anticipation of leniency (1976: 112). Hence, what is clear is that most defendants take a decision in expectation of a quick disposal of their case. Another study conducted by Bordens (1984) made similar discoveries, suggesting that the strength of the prosecutor's case and the defendant's sentiment of being guilty are strong elements that affect willingness to accept an offer for a plea agreement. The study, however, indicates that the extent of promised sentence also plays an important role in encouraging the defendant to plead (*ibid*). Bordens and Bassett argued further that, even innocent defendants are likely to accept a plea offer if there appears to be a high probability of conviction at trial and most importantly where the bargain contains a promise of probation (1985: 94-95).

Although there are claims that defendants exercise some degree of choice and free will in making decisions, evidence has shown that they actually have little choice outside the prosecutor's proposal and the advice and recommendation of their counsel. This has, in many cases raised questions about the right of the defendant and principles of procedural justice. For example, the problem of fairness and coercion arises where defendants who first claim innocence, eventually plead guilty (Mcconville, 1998: 566). Although this kind of dilemma is not common in criminal justice, it is seen to resonate more in negotiated cases, often as a result of a threat that is followed by the assurance of an attractive penal discount. Ordinarily, a defendant facing charges and given the offer of a plea bargain will tend to evaluate the implications and consequences of his or her decision. This is a choice that is expected to be rational and calculated, but often becomes complex, especially where the defendant has no legal representation. Perhaps where a defendant is adequately represented by a competent attorney, these choices are more likely to be well informed as counsel assumes the role of a professional adviser and negotiator (Gentile, 1969: 523).

Although attorneys are presumed as fair representatives of their client, the controversial nature of their decisions in plea bargaining has also come under academic scrutiny. McAllister and Bregman (1986) and Kramer *et al.*, (2007) have studied the manner in which defence attorneys represent and make recommendations to their clients during plea negotiations. These studies revealed three likely scenarios. The first is that when the evidence against the defendant is weak, and the potential sentence is short, the defence

attorney's recommendation is mostly consistent with the wish of the defendant (*ibid*: 581). In the other two scenarios i.e., where there is a strong evidence of the potential for a long sentence, or where there is a weak evidence with the potential of a long sentence, defence attorneys are more likely to recommend for a guilty plea than insist on a trial (*ibid*). The studies further confirm the importance of evidence on the outcome of a plea offer. Considering this from a different angle, studies show that even defence attorneys can be risk-averse, and may resort to negotiations despite the chances of acquittal at trial (*ibid*). Another study by McConville also shows that defence lawyers sometimes make decisions based on standardised case theories and stereotypes of the kind of clients they are representing (McConville, 1998: 572). The image of the client as honest and law-abiding or as feckless and dishonest does often influence the way their cases are treated from the outset (*ibid*).

In relation to the choices and role of judges in plea bargaining, scholars have attempted to identify the most relevant factors that influence their choices (Ferguson, 1972; Gallaghe, 1974; Maynard, 1982; Turner, 2006). Since adjudication and sentence is mostly a nebulous process that depends on the facts, nature and circumstances of each case, judges often choose to play either an active role in plea negotiations or maintain ignorance that any bargain actually took place (Felkenes, 1976: 138). This complex approach to decision-making becomes possible because each of these choices is quite easy to make in a practice that is often disguised in privacy and its procedure seldom forms part of any public record or administrative review (*ibid*). Turner further pointed out that because parties usually present to the court a concluded agreement, even the *post hoc* task of inquiring the voluntariness of such negotiation is “fairly perfunctory and ineffective” (2006: 206). Often, judges desist to inquire deeply into the case due to the concern that they may possibly nullify an already concluded deal (*ibid*). They may often prefer to benefit from a successfully concluded plea bargain, which automatically means that the conviction and sentence they award will not be reversed since plea bargaining shields any procedural errors and even the incompetence of the judge (Fisher, 2000: 1039; Hessick and Saujani, 2009: 226). These incentives, therefore, become appealing for they save the judges’ reputation and in some cases, conceals their incompetence (*ibid*).

Another reason that may inform the decision of judges to avoid tampering with a concluded negotiation is the mounting pressure of caseload alongside the constant demand for efficiency (Hessick and Saujani, 2009: 227). By allowing plea deals to go unscrutinised, time and resource are severely saved. These are some of the major factors that substantially affect the judges' decision and often make them hesitant to engage in an investigation capable of nullifying what is simply a concluded affair (*ibid*). Although all parties have variety of reasons for taking a decision, scholars are particularly concerned about the choices that judges make. This is because it is the final decision that seals the fate of a defendant. Proponents of judicial participation for instance cautioned that in order to determine the rationality or otherwise of any negotiation, it is essential for the judge to make the difficult decision of studying all the documents and evidence of the prosecution (Bar-Gill and Ben-Shahar, 2004: 45). This is important in order to ascertain the strength of such evidence and the sincerity of the plea deal that it was not obtained through some inappropriate means (*ibid*). However, such commitment is often unlikely because judges seldom meddle in the process that ensures that their only role is simply to convict and sentence with finality (Hessick and Saujani, 2009: 226).

### **3.3 Conclusion**

Reflecting on these theories, one of the peculiar characters of plea bargaining is that it encompasses both institutional and individual pursuits. Principally, plea bargaining is often argued from the perspective of utility as much as it is about the concerns on where the idea of procedural justice becomes compromised. Opponents often argue that the fundamental ideals of criminal justice are so significant in ensuring justice and fairness and cannot be simply substituted for reasons of convenience and cost. Yet, any theoretical discussion on plea bargaining should include the utility it presents to the general process of criminal justices, as well as the nature and characteristics of the individual decisions that parties make in order to increase their gains from the outcome of any negotiation. A study by Wright (2005) revealed that both criminal justice institutions and parties often seek to exploit certain benefits in line with their ensuing individual or occupational interests. As will be discussed in later part of this study, plea bargaining when clearly defined within certain

extents and limitations have the potential of bringing legitimate outcomes. Yet, those are boundaries that may sometimes be fluid and less understood.

The incentives that plea bargaining brings has undoubtedly made it quite appealing and whether impliedly or expressly, negotiation always find its way into criminal justice administration. Perhaps several explanations have been given by proponents to justify the utility of plea deals and to establish the rationale behind the diverse choices that parties make during negotiations. Yet, the quest to resolve these questions has proven to be exceptionally difficult as plea bargaining raises many questions in reconciling between the traditional objectives of criminal justice on one hand and the inherent institutional goals of the state and the individual interests of parties on the other. Often, it is the institutional and individual concerns that become the prevailing drivers of most negotiations. Other factors that add to this complexity are the fact that negotiations often occur with relative informality and in private with little information on why and how these agreements were reached. Furthermore, the nature of these engagements varies from one case to another, making any generalised explanation weak and inconclusive.

Theories also suggest that most negotiations are influenced by the variety of factors that are geared towards achieving different objectives. Perhaps, the general argument on utility is easy to comprehend, but understanding the inner motives of individual parties is one aspect that is difficult to measure. This has led scholars to resort to all kinds of juxtaposition and models including scientific and those that revolve around disciplines such as social psychology. This proliferation of ideas from sociological to economic; scientific to behavioural law is evidence of how plea bargaining is one of the most complex and multifaceted phenomenon in modern criminal justice debate.

Due to the complexity of these theoretical juxtapositions, a common but simpler variable was adopted by some scholars, which is to try and explain these factors from a process-tracing approach (Posner, 1975: 757), which involves the observation of the processes through which they are undertaken while exploring the role and motivation of different players involved. Yet, one cannot invalidate the theories that explain plea bargaining from a wider framework of social equilibrium where individuals or institutions identify and pursue



their objectives. In relation to the decision theory, the simple argument is that parties tend to negotiate in the shadow of what each of them regards as the most advantageous alternative in the ensuing circumstance. But in general, evidence suggests that every negotiated plea has its own peculiarities and is driven by its own individual trails.

## **Chapter Four**

### **Practical models of plea bargaining: a comparative perspective.**

#### **4.0 Introduction**

The global spread of plea bargaining not only reveals a trend of systemic convergence in criminal justice reform across different types of legal cultures, but shows how emerging criminal justice procedures are amending the fundamental concepts that traditionally distinguish Anglo-American adversarial system with system that are peculiar to civil law of continental European and beyond. It also reinvigorates the notion that in contemporary criminal justice, there is no single regime or model that operates strictly within the prototype of common law or civil law system (Damaska, 2004; Vogler, 2005, Thaman 2010). Although residual differences remain, what is most obvious is the hybridisation of elements of both systems across the world, with one dominating over the other, depending mostly on the legal tradition of the regime in question (Ogg, 2012: 230). The result of this legal development has further strengthen the argument that plea bargaining is one of the concepts in contemporary criminal justice that is applied and becoming widespread among different kinds of legal traditions. As will be seen in this chapter, even countries with deep rooted socialist political and legal culture have accepted plea bargaining.

The chapter takes a comparative look at plea bargaining across the world and how it imposes itself in both common law, civil law and even in jurisdictions with a strong socialist legal history. The chapter explores the pattern of development, procedural features and the challenges confronting the application of plea bargaining in these regimes. Although this study is primarily geared towards the general practice of plea bargaining and its emergence in Nigeria, a scholarship on a far reaching phenomenon such as plea bargaining often requires a comparative understanding of how the system is modelled across different legal regimes.

There are reasons why each of these jurisdictions was chosen. Starting with Anglo-America, it is relevant to state that Nigeria, being a former British colony, maintains a criminal justice system that is historically developed on the model of the adversarial criminal justice system of England. Moreover, the relationship even after independence has remain politically and economically very close that English system of administration and justice has continued to

be a point of reference for legal reforms in Nigeria. Most statutes i.e., the evidence Act, the Land Use Act, the Criminal Code etc., were mostly inherited from the laws of England. Even as many of these provisions were amended, substantial parts of most of these statutes still retain their English heritage. The research also looked at Germany and Italy in order to understand the nature of plea bargaining in legal regimes with a civil law model of criminal justice. This is to reaffirm the argument that plea bargaining has transcend beyond its traditional Anglo American frontiers to places where the idea of criminal justice is the search for truth through and inquisitorial approach. Lastly, the study looks at Russia and China as part of a wider comparative study of how plea bargaining is finding grounds in regimes with deep communist culture of criminal justice administration. Moreover, it is well known that China is a major player in global politics and economy, with very wide footprint on the African continent. Although its relationship with most African states including Nigeria is mainly on economical, it is a tie that opens the gate for a closer future relationship on many aspects to which the legal system cannot be ruled out.

#### **4.1 The United States of America**

One of the most entrenched laws in the United States is the right to a jury trial as guaranteed by the Sixth amendment to the US Constitution. In practice, however, a jury trial has become an exception, replaced largely by plea bargaining, especially in routine criminal cases (Marcus *et al.*, 2016). The justice system that once considered itself as the epitome of adversariality has in the last four decades seen an increased retreat from trials. About 95 per cent of criminal cases across all the 50 states are now disposed of through negotiations (Ross, 2006: 717).

But it is important to state that courts in the US have for a long time allowed different forms of guilty pleas. Evidence, for instance, suggests that the earliest form of court-sanctioned guilty plea methods were the plea of *nolo contendere* and later the Alford's plea (Bibas, 2002: 1363).<sup>12</sup> While these types of pleas do not wholly qualify as plea bargaining, they have

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<sup>12</sup> Alford's plea originated in the case of *North Carolina v. Alford*, 400 U.S. 25 (1970), where the Supreme Court noted that: "An individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime" See also, Bibas S. (2003:1363) Harmonizing Substantive Criminal-Law Values and

a similar effect as they all lead to a conviction (*ibid*). Since 1967, a number of bodies across the US began a strong advocacy for plea bargaining to be made legal.<sup>13</sup> In subsequent years, beginning with the case of *Brady* in 1970,<sup>14</sup> and *Santobello* in 1971,<sup>15</sup> the Supreme Court ruled on the legality of plea bargaining. Since then, argued Hollander-Blumoff (1997), prosecutors and defence have continued to endorse and expand the application of plea bargaining.

One of the most common feature of the US mode of plea bargaining is the high sentencing discount that guilty pleaders enjoy, which contributes to widespread acceptance of skewed negotiations that lead to innocent defendants pleading guilty (Turner, 2006: 205). But even as large sentence discounts serve as a mitigation of highly punitive sentences, it is, on the other hand, a mechanism used to induce guilty pleas.<sup>16</sup> This has led to a higher rate of guilty pleas and a lesser rate of acquittals (Wright, 2005: 139; Erhdhard, 2008, 316-317).

The US model of plea bargaining also gives judges some residual powers, but these are limited to acceptance or rejection of plea deals.<sup>17</sup> They are not allowed to make any interventions in an on-going or future plea negotiation in ways that would make the court a direct participant in the process.<sup>18</sup> It also ruled that where such plea agreement is based on a non-binding sentence recommendation, the judge must warn the defendant that such recommendations were not binding and that the defendant's sentence would be based on the court's discretion and not the prosecutor's recommendation.<sup>19</sup> What research shows, however, is that most judges do not review or intervene in an already concluded bargain

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Criminal Procedure: The Case of Alford and *Nolo Contendere* Pleas Cornell Law Review, 88, 1361-1411, p1363. Where he noted that the US criminal justice system has long allowed defendants to enter a plea of *nolo contendere*, essentially denying culpability but accepting punishment as if guilty. He further stated that in the last decade the Supreme Court has equally approved a new form of plea called the Alford pleas, in which defendants plead guilty while simultaneously protesting that they are innocent.

<sup>13</sup> . The American Bar Association project on the Standards for Criminal Justice and the Presidential Commission on Law Enforcement and the Standards for Criminal Justice advocated the recognition of plea bargaining as a legitimate process (Maynard, 1984).

<sup>14</sup> *Brady v. United States*, 397 U.S. 742 (1970).

<sup>15</sup> *Santobello v. New York*, 404 U.S. 257, 261 (1971).

<sup>16</sup> *Bordenkircher v. Hayes*, 434 U.S. 357 (1978).

<sup>17</sup> Fed. R. Crim. P. 11(d) (2). See also, *State v. Kivioja*, 592 N.W.2d 220 (Wis. 1999); *United States v. Hyde*, 520 U.S. 670 (1997).

<sup>18</sup> Rule 11 of the Federal Rules of Criminal Procedure, see also *United States v. Kraus*, 137 F.3d 447, 455 (7th Cir. 1998).

<sup>19</sup> *Ibid*. Also in Fed. R. Crim. P. 11(e) (4).

(Turner, 2006; Fisher, 2000; Hessick and Saujani, 2009). Another aspect peculiar to the US criminal justice system is that these rules are general rules based on the provisions of Federal Laws and guidelines; case law in various jurisdictions may sometimes differ.

In principle, therefore, the US model disallows any significant involvement of judges unless new evidence emerges, indicating clearly that where the charges or punishment agreed upon in the negotiation does not reflect the facts of the case or the relative guilt of the defendant, judges must allow defendants to withdraw their plea (Thaman, 2010: 366). The Supreme Court has also stated that where a plea was induced by a prosecutor's promise, without which the defendant would not have pleaded guilty, the prosecutor must fulfil such a promise or the court will order specific performance in fulfilment.<sup>20</sup> Moreover, where judges depart from sentence recommendations, defendants retain their right to appeal their sentences (Ross, 2006: 702). However, other courts are of the opinion that even the right to appeal may be waived by the terms of the plea agreement.<sup>21</sup> The paradox, however, is that, because of the way these negotiations are conducted, defendants seldom withdraw or challenge their pleas.

A systemic appraisal of the US model clearly reveals how the plea bargaining is mainly guided by what the prosecutor and the judge decide to do, which sometimes is in contradiction to laid down guidelines contained in the Federal Rules of Criminal Procedure. This has added to the problems of inconsistency, coercion and other forms of unethical conduct, which in the end may render the negotiation between the defence and the prosecution flawed. Moreover, since the prosecution exploits the existence of numerous overlapping criminal statutes in order to achieve or fulfil their end of the bargain, the system becomes prone to a selective application of the law (Ma, 2002: 26). Despite these flaws, evidence suggests that courts in the US have continuously allowed this practice to increase, which according to Ross is because of the emphasis placed on conviction as the desired outcome of a legal contest (2006: 717). Others claim that the reason for the expansion of plea bargaining is the unease the American system used to have with the kind of rights that the adversarial system grants the defendant (Alschuler cited in Schulhofer,

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<sup>20</sup> *Santobello v. New York*, 404 U.S. 257, 261 (1971).

<sup>21</sup> *United States v. Melancom*, 972 F.2d 566 (5th Cir. 1992). See also Ross (2006:721).

1984: 1104). As research shows, the US criminal justice is one characterised by punitivism and high level of incarceration (Loury et al., 2008). This is suggestive of the fact that the system is prone to convictions which is what punitivism does. Perhaps this is in contrast to the criminal justice system in Nigeria which has no clear evidence of incarceration.

Trying to explain this development, Turner pointed out that the growth in the culture of punitive legislation on the one hand, and the culture of steep penal discounts for guilty pleaders on the other, has continued to make plea bargaining attractive to parties (2006: 205). The implication, however, is that the exponential increase in the rate of guilty pleas has drastically reduced the number of acquittals, dismissals, and convictions by trial (Wright, 2005: 104-106). The prosecutor's powers in these negotiations had also forced many defendants to abandon meritorious trial defences in anticipation of significant discounts through negotiation (*ibid*: 85-86). These enormous powers of prosecutors are among the distinctive characteristic of the US model of plea bargaining, in which the prosecution can go as far as recommending a particular sentence to the judge, which for instance, is contrary to what is obtained in the UK While this form of recommendation remains a practice in the US, the Supreme Court has handed down a series of judgements intended to protect defendants from the coercive nature of negotiation as a result of the powers of the prosecution.<sup>22</sup> Although the relationship between sentence reduction and coercion can be blurred, the fact that a defendant is often given the choice between punitive outcome at trial and a reduced sentence for pleading guilty is to many observers an imposing phenomenon. The various rulings of courts were targeted as ensuring that defendants have the free choice between pleading and trial, but evidence has shown that these measures have not been sufficient in deterring prosecutors from coercing defendants in to pleading guilty (Langer, 2005: 231).

Plea bargaining in the US has also been a subject of debate on grounds of inconsistency, especially in sentencing practices. To deal with this challenge, the US sentencing commission established Federal Sentencing Guidelines that set the mandatory sentencing limit since 1984 (Turner, 2006: 205). These guidelines require that a defendant who pleads guilty is entitled to a discount of up to one-third of the original sentence (*ibid*; Stuntz, 2004:

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<sup>22</sup> *Boykin v. Alabama*, 395 U.S. 238 (1969); *Brady v. United States*, 397 U.S. 742, 748 (1970); *Bradshaw v. Stumpf*, 545 U.S. 175, 183, 183 (2005).

2559). What this means is that sentences are tied to charges thereby limiting the judiciary's discretionary powers over sentencing, and reducing disparities in penalty between similar offences (*ibid*). Yet, the reforms were in many ways ineffective and only added to the already existing prosecutorial powers because sentences have become even more dependent on the charges that the prosecution chose to bring after a deal had been struck outside the court (Standen, 1993: 1506; Kuckes, 2005: 248). Breyer further pointed out that whether one considers these guidelines as generally charged offence' i.e., the charges being presented or 'real offence' i.e., the actual offence committed "is less important than recognizing that the sentencing depends to a greater extent on what the prosecution elects to charge" (cited in Standen, 1993: 1508).

For most part, one of the points of unanimity among scholars of the US criminal justice system is that plea bargaining is a rampant phenomenon. This obsession with plea bargaining is however not out of place especially when one also understands the pressure upon prosecutors working to bring efficiency to a system that has the reputation of punitive legislation and mass incarceration. Workload is therefore a legitimate justification for US prosecutors and plea bargaining has offered an alternative to the traditional burden of a jury trial. It is also by far a convenient way of ensuring swift conviction and adding to the prosecutor's objective to have a strong public record of efficiency in areas of the US where prosecutors are elected to hold office. Plea bargaining is therefore the first option whenever the opportunity presents itself, with punitivism and the assurance of large sentence being the chief mechanisms used to secure guilty pleas.

## **4.2 England and Wales**

Some scholars argue that until the mid-18th century, plea bargaining was alien to English criminal justice system (Rauxloh, 2012: 27-28). Although there are several accounts of how and when plea bargaining (commonly referred to by English practitioners as guilty plea procedure) first emerged, the best evidence relates to the periods when judges began accepting defendant's plea without going through a full jury trial. According to Cockburn,

the decades between 1587 and 1590 saw the process of 'guilty plea' (*cognovit*)<sup>23</sup> becoming a routine exercise in English courts (1978: 264-265). At every assize he argues, "five or six prisoners" confess and were sentenced without further process (*ibid*). This later developed into a practice where guilty pleaders were rewarded with a sentence discount (Rauxloh, 2012: 28).

*Turner's* case in 1970 was the first decision by the Court of Appeal that laid down a judicial foundation for the practice of plea bargaining.<sup>24</sup> Although this judgement acknowledged the practice of plea negotiation, it did not encourage it.<sup>25</sup> The main principles in this case, as expressed by Lord Parker, were that defence counsel may advise his client, even strongly, that a guilty plea, along with a sign of remorse is a mitigating factor capable of attracting a sentence concession (Rauxloh, 2012: 29). Moreover, the accused must make such plea of his volition. The rule prevents judges from engaging in plea bargaining or giving any assurances regarding a sentence discount.

The first sets of guidelines based on the rule in *Turner* were embodied in the Court of Appeal's Practice Direction in 1976. It is, however, important to note that along with the principles in *Turner's* rule came other principles regarding the defendant's right to concession in a guilty plea. In the case of *R v Cain* for instance, Lord Widgery states that defendants are entitled to know that guilty pleas attract lesser sentences and "any accused person who does not know about it should know about it" (Rauxloh, 2012: 30).<sup>26</sup> Also, Slapper and Kelly indicated that a number of those who pleaded guilty did so in expectation of sentence discount (2011: 161).

Evidently, practitioners continued to use this practice even as it continues to come under intense scrutiny. As far back as 1978, the English Court of Appeal pronounced its clear objection to any form of negotiation in criminal cases.<sup>27</sup> The first instinct of the Appeal Court, according to McConville and Wilson was that plea bargaining was contrary to the

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<sup>23</sup> The term *Cognovit* refers to a written confession by a defendant.

<sup>24</sup> *R v Turner*, (1970) 54 Crim. App. R. 352. See also Rauxloh, (2012: 29).

<sup>25</sup> *R v Atkinson*, (1978) 2 ALL ER 460,462. See also, Baldwin and McConville, (1979: 288).

<sup>26</sup> *R v Cain* (1976) QB 496.

<sup>27</sup> *R v Atkinson* (1978) 2 All ER 460.



principles of the adversarial system and must, therefore, be outlawed (2002: 364). Despite this chorus of judicial discouragement and discontentment, the practice continued across the country,<sup>28</sup> and with the development of pre-trial reviews in some Magistrates' Courts, the opportunity for plea bargaining was further enhanced (McConville, 1998: 579).

Like their US counterparts, English legal practitioners, especially in lower courts, apparently do not often heed to the rules laid down by the Court of Appeal, i.e., to advise their clients appropriately on the implication of a guilty plea (Rauxloh, 2012: 30-31). This she argues, is connected to the practical realities of the work, pressure on the courts and indeed the professional relationships between and shared interests of courtroom actors (*ibid*). Similarly, Mulcahy (1994) in his study of two Magistrates' Courts in England revealed that a number of interrelated factors, which include the avoidance of the potential cost as well as the unpredictability of trials, fuel the practice of negotiating pleas. It is, therefore, safe to argue that the advantages of flexibility and convenience that plea bargaining presents have made it increasingly impossible for some of the restrictive rules suggested in *Turner* to be sustained (Rauxloh, 2012: 31). For instance, it allows the parties to simply discuss and agree on what charges to uphold and which to drop before taking the matter to court. On arrival, all that is needed is the defendant's plea of guilty and no further evidence or witness is required before pronouncing sentence.

The English model of plea bargaining has continued to develop, mainly on a charge bargain basis.<sup>29</sup> The Court of Appeal expressly approved this but cautioned that it must be conducted openly.<sup>30</sup> Here again is the clash between theory and practice. Plea bargaining by its very nature is unlikely to be an open process. The earliest rules guiding plea negotiations in England and Wales include section 3(2) and 23(3) of the Prosecution of Offences Act 1985, which allows the Crown Prosecutor to terminate charges or to downgrade the charges to less serious offences (Ashworth 1998: 141). Later provisions include paragraph 6 of schedule 3 of the Criminal Justice Act 2003, which substituted section 20 of the Magistrates' Courts Act 1980, in which the accused is given the right to request an indication on whether

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<sup>28</sup> Russel L.J in *R v Smith* (1990) 1 WLR 1311. See also Rauxloh, (2012: 30).

<sup>29</sup> *R v Winterflood*, (1979) Crim LR 263.

<sup>30</sup> *ibid*.

custodial or non-custodial sentence will be the likely outcome if he or she were tried summarily (*ibid*). Where such a request is made, the court is entitled to respond (*ibid*).

The Runciman Report (Criminal Justice Report, 1993)<sup>31</sup> is a great example of the characteristic of plea bargaining in English courts. It shows for example how defendants plead guilty when they are factually innocent (Rauxloh, 2012: 54). This development was followed by a series of Court of Appeal judgements on the guiding principles for plea bargaining. Lord Auld's Report (2001) also proposed the introduction of a discount on sentencing for criminal defendants who plead guilty at the earliest stage. Unlike its predecessors, this report went further to recommend that such a scheme should be accompanied with an advance indication to a defendant who is considering pleading guilty (*ibid*). It also includes the ruling of courts on limits and exceptions on sentence discounts.<sup>32</sup> Moreover, statutory provisions were also introduced to guide these practices.

In 2002, the Court of Appeal argued in clear terms that, failure by the trial court to reward a guilty plea with a sentence discount contradicts the "settled practice and general grounds of fairness."<sup>33</sup> This stance by the Court of Appeal makes it mandatory for judges to give sentence concession whenever an accused person opts to plead guilty irrespective of the nature and circumstances of the plea. The Criminal Justice Act 2003, for instance, gives authority for a sentence discount for pleading guilty.<sup>34</sup> The extent of sentence reduction for a guilty plea is between one-quarter and one-third of what would have otherwise been the sentence (Slapper and Kelly, 2003: 164). The Crown Prosecution Service under the 'statutory charging' scheme introduced by the Criminal Justice Act 2003 also reaffirms the power to determine whether to charge a defendant and what offence to charge. While these powers have been part of the common law, the presence of plea bargaining in the system makes it possible for the prosecution to use discretion in ways that will induce the defendant to plead guilty (Ashworth, 2000: 28).

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<sup>31</sup> Report of the Royal Commission on Criminal Justice, 6<sup>th</sup> July 1993.

<sup>32</sup> See *R v Holington and Emmens*, (1985) 7 Cr App R (S) 281, 285 and also *R v Costen*, (1989) 11 Cr App R (S) 182.

<sup>33</sup> *R v March*, (2002) 2 Cr App R (S) 98.

<sup>34</sup> s. 144 CJA 2003.

Principally, the English model of plea bargaining emphasises that judges should not be bound restrictively to the contents of any arrangement made between the parties, i.e., defence and prosecution (Slapper and Kelly, 2011: 163). Instead, the judges have retained their complete sentencing discretion (Baldwin and McConville, 1979: 288), and unlike the US model, the prosecution cannot make sentence recommendations to the court. The implication, however, is that it undermines any confidence the prosecution may have in offering the accused promises as to the extent of punishment to be imposed by the court (*ibid*).

Like most other models, the question of transparency is also a serious issue in the English system, largely because the practice of plea bargaining in England and Wales is carried out privately, resulting in a significant amount of plea bargains, but also ones that are often characterised by either threat or the expectation of sentence discount (Mulcahy, 1994: 411-413).

Despite these problems, plea bargaining has become prevalent and attractive to the main actors in criminal justice in England and Wales. In his submission to the Royal Commission on Criminal Procedure, Judge Pickles states:

It is good to have a chat with the lads. How tempting to sit down and sort it all out sensibly, wigs off.... The tension of open court has gone. The shorthand writer is absent. No press or public. Even the accused - around whose fate it all revolves - is not there.... In this easy atmosphere, Turner or any other case can be overlooked in a genuine effort to find a sensible short-cut, off the record (*ibid*).

The development of the English model of plea negotiation is therefore similar to that of the general nature of criminal law system, which uniquely derives its motivation from institutional underpinning that “allows developments of the justice system in a way that is more flexible and likely to happen more quickly than more formal jurisdictions where changes in the penal code need many years to work through” (Lewis, 2006: 179).

### 4.3 Germany

The German criminal justice system is one that is strongly based on civil law principles, with emphasis on the traditional idea of truth seeking under the direction of a powerful judge (Rauxloh, 2012: 61). It also has an entrenched culture of the 'legality principle' that demands the compulsory prosecution of all criminal cases (Frase and Thomas, 1995: 353).<sup>35</sup> But since the early 1970s, a number of provisions have been introduced to grant the prosecutor some powers and discretion especially in minor offences (Ma, 2002: 35).<sup>36</sup> This is seen as one of the first ground-breaking exceptions to the legality principle that heralded the emergence of a model of plea bargaining (*ibid*). Although the provisions were originally meant to deal with minor offences, prosecutors began using it as a means of disposing of even serious crimes (Herrmann, 1991: 758). In retrospect, however, it appears that there is evidence to suggest that earlier developments permitted the development of a system of summary trial that later transformed into plea bargaining. This argument relates back to the reunification of Germany in 1990, which saw a surge in criminal cases, especially white collar crimes and drug offences, prompting practitioners to resort to summary procedure based on negotiated pleas (Swenson, 1995: 375). Until 1982, the German criminal justice system was one extolled as a system that flourishes without any kind of plea bargaining (Langbein, 1979), Rauxloh pointed out that the argument raised in the 70's, especially by Langbein, is more of a suggestion as to why German lawyers should avoid plea negotiations than it was about the actual practice (2012: 63). Even at the time of Langbein's writing, plea bargaining is widespread in the German courts (*ibid*; Swenson, 1995: 375).

The beginning of a major turning point was the time cases of plea negotiations started reaching the appellate courts, and regulatory standards began to emerge, laying the foundation for what is today the German model of plea bargaining (Rauxloh, 2012: 68). The first judicial ruling outlining the legality of negotiation came in 1987 when the first case involving negotiated settlement reached the German Constitutional Court (*Bundesverfassungsgericht*), where the court ruled that it is not a violation of 'basic law' (*Grundgesetz*) (*ibid*). Following this judgement, it laid down the first set of rules on plea

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<sup>35</sup> The 'Legality Principle' has been in the German Code of Criminal Procedure since 1877.

<sup>36</sup> Amendments made to section 153a of the StPO. The amendment made in 1973 authorises the prosecutor to exclude from prosecution an accused found guilty of minor offence on the condition that, the accused agrees to pay certain amount to a charitable organisation or to the state

bargaining where it stated that in any negotiation, the contents must be fully exposed, all parties must be involved, the defendant's confession must be investigated to ascertain voluntariness and such negotiation should not include any *ultra vires* promises (*ibid*: 69).

The Federal Supreme Court (*Bundesgerichtshof*) however did not make any clear pronouncement nor declare any rules on plea negotiations until 1989 when, for the first time, it permitted judges to contact parties outside the courtroom in a ruling that fell short of clarifying whether such contact includes any assurance of penal concession for the defendant (*ibid*). It is, however, important to stress that despite these rulings, the procedural guidelines were not comprehensive, causing a struggle between applicability and procedural laws that continued in a state of inconsistency for years. Commenting on this, Rauxloh argues that the failure to provide clear guideline was understandable as the *Bundesgerichtshof* was caught between the traditional principles of the German criminal process on one hand and the necessity of informal agreements on the other (*ibid*: 70). The solution she says "was believed to lie in a linguistic distinction between illegal accordance (*Absprache*) and legal understanding (*Verständigungen*), but no criteria were provided to distinguish between the two in practice (*ibid*)."

In 1998, the *Bundesgerichtshof* produced a ruling that set out some conditions and limits on plea bargaining that included the necessity that any negotiation has to be made during the main trial and must involve all the parties including the lay judges and co-defendants (*ibid*). Another rule was that which disallowed the trial court from disclosing a sentence limit but permitted it to give an indication of the upper limit of any intended penalty (*ibid*: 71).

Similarly, standards laid down by the Federal Supreme Court caution against judicial coercion (Weider, cited in Turner, 2006: 236). This rule disallows judges from making statements indicating that the evidence against the accused is so strong that conviction is inevitable while at the same time showing that a confession would attract a shorter sentence (*ibid*). Where such remarks are made, the judge may be disqualified from further trying the case (Herrmann, 1991:773).<sup>37</sup> In the same vein, the defendant has the right of

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<sup>37</sup> BGH 3 StR 452/04, Beschluss v. 8.2.2005. This is the 2005 German Supreme Court case of *Beschluss*.

appeal and can raise the issue of coercion or threat on appeal, where this is established, the appellate court is authorised to reverse the decision.<sup>38</sup> Despite these safeguards, the one thing that is obvious with the character of plea bargaining everywhere is that it is often difficult to elucidate what really constitutes 'undue pressure'. Also, like in other jurisdictions, plea bargaining continued to be largely driven by informal and private interaction between the parties (Rauxloh, 2012: 70).

A comprehensive model of plea bargaining was first accepted by the Federal Court of Justice and written into section 257c of the Code of Criminal Procedure (StPO) in 2009 (Weigend and Turner, 2014: 81). In what appears to be a long-awaited judgement, "the German Constitutional Court in 2013 upheld the constitutionality of the 2009 German law authorizing the negotiation of criminal judgments between the court and the parties" (*ibid*). Widmaier, however, argues that even before the full codification of plea bargaining into the German criminal justice system, the courts responsible for trying economic crimes were accustomed to this type of practice (cited in Rauxloh, 2012: 67). Other scholars also supported the argument that plea negotiations have been occurring in Germany long before it became a familiar phenomenon in public domain (Lynch, 2009: 67). Section 257c states that the subject matter of an agreement may only comprise the legal consequences that could be the content of the judgment and of the associated rulings, other procedural measures relating to the course of the underlying adjudication proceedings, and the conduct of the participants during the trial. It also goes further to state that 'a confession shall be an integral part of any negotiated agreement. The verdict of guilt, as well as measures of reform and prevention, may not be the subject of a negotiated agreement.' This addition to the Code also goes to the extent of stating clearly that the court is mandated to announce what content the negotiated agreement, and on free evaluation of the circumstance of the case, the court should also indicate an upper and lower sentence limit. This is in addition to the fact that participants will be given the opportunity to make submissions, while a negotiated agreement comes into existence if the defendant and the public prosecution office agree to the court's proposal.

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<sup>38</sup> BGH 4 StR 84/04, Urteil v. 16.9.2004. This is a 2004 German Supreme Court case of *Urteil*.

The German model has three forms of plea bargaining, i.e., (1) the diversion bargain, (2) the bargain over penal order and (3) the bargain over confession (Ma, 2002: 36). As Hermann (2006) states, all of these forms of negotiations occur at all stages in German criminal courts from preliminary investigation to the conclusion of a trial (cited in Rauxloh, 2012: 73). Their contents, however, depend on the nature of the offer; the time of the negotiation; the place and the parties involved (*ibid*). Hence, classification, as to which type of plea bargaining is involved, depends mainly on these variables (*ibid*).

Diversion bargain is evidently the most common form of plea bargaining under the German criminal justice system, where the defendant has an opportunity to compensate the victim or make payments to a charity or the government (Ma, 2002: 36-37). The second is the bargain over a penal order. This entails the prosecution preparing a document containing the defendant's offence and the requisite penalty, which he or she may accept or reject. In this kind of offer, the punishment mainly includes forfeiture of the proceeds of crime, a suspended sentence, a day fine or even the suspension of a driver's licence (*ibid*). The third version is the confession bargain, where the defendant agrees to confess, thereby shortening the length of the trial. In this case, the judge is authorised to indicate to the defendant the upper limit of the sentence that will likely be imposed (*ibid*). The procedure is usually for the protocol to be read out in court where the defendant pleads guilty to the alleged offence before the professional judge, after which the professional Judge retires for a conference at which the lay judges, for the first time, hear about the plea discussions. But unlike in trials, lay judges are not allowed to review the case file, hence have to "rely on the professional judges' representation of the facts to make their decision" (Turner, 2006: 211). With regards to sentence concession, the German Code states in Sec 302 that 'If a negotiated agreement (Section 257c) has preceded the judgment, a waiver shall be excluded. An appellate remedy filed by the public prosecution office for the benefit of the accused may not be withdrawn without his consent.' The rule governing a confession bargain on the other hand appears more like an exception to the general rule of German criminal justice, which does not consider a confession as a conclusive proof of guilt but rather as forming part of evidence (Rauxloh, 2012: 62).

Another important point in this procedure is that despite the defendant's right to appeal judgements, which they can as well waive (Turner, 2006: 221), judges are not permitted to take part in a discussion relating to waiver of such appellate rights.<sup>39</sup> Hence, any such agreement is mainly informal between the defendants and public attorneys. It is also important to note that such waiver has no binding force, but in practice, the parties, i.e., public attorneys usually keep to it (Turner, 2006: 222).

Another important aspect of the German model that helps in avoiding overcharging is the right of the defence to have a full knowledge of the prosecutor's evidence before the conclusion of any negotiation (Ma, 2002: 38). The challenge to this rule, however, is that prosecutors are likely to drop collateral charges in order to encourage a plea from the defendant (*ibid*). Also, to safeguard the defendant, the rules disallow the imposition of multiple consecutive sentences (Frase and Weigend, 1995: 339), and judges were not allowed to accept a guilty plea where a defendant protests his innocence (Turner, 2006: 229). Defendants are also not allowed to "plead to hypothetical crimes, or to real crimes they could not have committed" (Frase and Thomas, 1995: 344). The importance of these rules also goes as far as making it highly unlikely for the prosecution to use some mischievous tactic or threat in order to secure a plea (Turner, 2006: 220). Moreover, the law obliges prosecutors to reduce into writing the reason for any decision they make on either the disposal or trial of a case. This requirement was meant to make prosecutors cautious, and to make only genuine deals (Ma, 2002: 39).

Despite these numerous attempts to ensure safeguards, the inherent powers of the judge still create the tendency for coercion. The German law allows judges not only to initiate plea discussions but also to participate in a trial where the negotiation fails (*ibid*, 2006: 236). This is evidence to the fact that, even in plea bargaining, Germany still maintains its culture of a proactive judge (Turner, 2006: 214).

A unique element of the German model is the rule regarding victims. In this respect, the law gives the victim the powers to insist that the prosecution sends their case to trial (Ma, 2002:

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<sup>39</sup> Anfragebeschl. v. 24.7.2003, StV 10/2003, 544.



38). Where the prosecutor declines this request, the victim has the right to approach the court and ask for a review of the reason for the refusal (*ibid*). This is a significant departure from other models of plea bargaining; it is also a rule that in many ways ensure the interest of the victim is not compromised or completely surpassed by the interests of the prosecution. The general rule in this context is however limited to instances where the prosecutor's decision not to pursue a trial is on evidential grounds and not in relation to public interest, in which case the victim's right does not apply (*ibid*).

The German model also stresses the centrality of the search for truth and the proportionality of punishment (Weigend and Turner, 2014: 82). Yet, this idea of proportionality which emphasises consistency of sentences, is challenged by the fact that the various prosecutorial offices across localities or district have different ways in which they deal with cases, especially the choice of whether or not to prosecute certain category of cases is subject to different kinds of approaches (*ibid*: 39).

Opinion on plea bargaining among legal practitioners in Germany is divided. Some are keen to accept these new changes as some form of utilitarian reform (Swenson, 1995), while others tend to lean more towards the old regime (Langbein, 1979), contending that negotiating with an offender violates *Rechtsstaat-principles*.<sup>40</sup> Proponents, however, countered this argument, maintaining that confession and agreements are, in fact, compatible with the concept of the *Rechtsstaat* (Fionda, 1995). Schmidt-Hieber (1982), for instance, suggests, "cooperative disposition of cases leads to friendlier, more benevolent sentences", and that agreements should be permissible as long as they are a mutual search for the correct outcome (cited in Swenson, 1995: 398). This argument, however, fails to accept that many of the unresolved flaws of plea bargaining do in fact contradict the fundamentals of *Rechtsstaat*. While the principles of *Rechtsstaat* places emphasis on ethics, morality, and rationality, numerous studies on plea bargaining reveal how threat, coercion and the personal interest of officials often drive the process of negotiation (Kipnis 1976; Mulcahy, 1994; Bargill and Ben-Shahar, 2004).

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<sup>40</sup> The *Rechtsstaat* is a doctrine common with continental Europe which is that the power of the state is limited by the provisions of the law. It is essentially a principle that protects the citizen from the arbitrariness of state power by defining the role of criminal justice and outlines the source and extent of governmental authority.

What is also of no doubt is the fact that the rise of plea bargaining has an effect on the traditional emphasis on truth-seeking since it does not allow for careful judicial scrutiny of every fact and every item of evidence. Despite these challenges, a recent study by Dahs revealed that in about 30 to 40 percent of all criminal cases, there is evidence of an attempt at negotiation (cited in Rauxloh, 2012:72). Similarly, Lynch claims that negotiated pleas account for 20 to 30 percent of all convictions (2009: 67). A recent study by Satzger (2006) suggests a dramatic surge of up to 80 percent in some courts. Making a general appraisal of the system, Damaska stated that the German criminal justice has, over the years witnessed a transition from the hierarchical towards the coordinate model of justice. Meaning that, “the traditional unilateral decision making has, to some extent, been replaced by a cooperation of prosecutors, judges, defence counsel and the accused” (cited in Herrmann, 1991: 775). The defendant is no longer restricted as a subordinate. Instead, he is now legally authorised to participate in the process (*ibid*). What is important about this model is the way in which all parties, including the victim, are involved in the process and the fact that the defendant’s right to appeal still remains (*ibid*).

#### **4.4 Italy**

One of the landmark attempts to introduce plea bargaining in Italy occurred in October 1988 when the Italian Parliament adopted a proposal for a new Code of Criminal Procedure (*Codice di procedura penale*) (Ogg, 2012: 232). As the Code came into force in 1989, many scholars saw it as an ambitious attempt towards the introduction of some adversarial elements based on Anglo-American model into a system that was traditionally guided by civil law principles (Montagna, 2004: 430). The main trigger for this reform was the level of inefficiency and backlog in the Italian criminal justice system, to the extent that, on a number of occasions the Parliament felt compelled “to grant amnesty to whole classes of defendants, in the vain hope that its action would provide the overburdened system with a fresh start” (Pizzi and Marafioti, 1992: 6). Other factors that the 1988 reform attempted to address include the need to divest the excessive powers of the judges, and shift some of these powers to the public prosecutor ‘*Pubblico ministero*’ (Pizzi and Montagna, 2004: 431).

On the International political arena, there was also the enormous pressure by institutions such as the European Court of Human Rights, Amnesty International and others, who insistently called on the Italian state to review its laws in order to deal with the notorious level of inefficiency (Pizzi and Montagna, 2004: 438; Ogg, 2012: 232). Out of this pressure for reform, which includes summary procedure in form of plea bargaining. At first, the reforms faced resistance from judges resulting in a large number of appeals reaching the constitutional court, especially in the early years of the introduction of the Code (Illuminati, 2005: 572-576). Illuminati further notes “(f)ar more constitutional claims came before the Constitutional Court in the first years after the reform than were ever referred to the Court during the preceding four decades under the provisions of the Code of 1930” (*ibid*: 574).

The disapproval of this system was mainly centred on the argument that it infringed Article 112 of the Italian Constitution, which provides for the legality principle.<sup>41</sup> This led to the courts giving series of broad interpretations of the exceptions to the new adversarial rules, especially regarding evidence (Ogg, 2012: 240). As a result, judges continued going back to the old method of introducing evidence at trial and re-launching “a system that began to look more and more inquisitorial and less adversarial” (Pizzi and Montagna, 2004: 430). Evidence also suggests that because Italian prosecutors are mainly educated and trained in a civil law system, they also continued to view this transplant as a departure from acceptable norms (Boari and Fiorentina, 2001: 219).

The Italian Parliament was forced to intervene and amend the constitution in 1999, abolishing many of the exceptions created by the courts (Illuminati, 2005: 576). Again, the Parliament was called upon in 2001 to intervene owing to the continuous resistance of the Constitutional Court to adapt to the new reforms contain in the Code.<sup>42</sup> Taking a bold stance, the Parliament stated the “Constitutional Court's systematic misinterpretation of the Constitution” has necessitated the Parliament to adopt plea bargaining as a recognised method of criminal procedure (Semukhina and Reynolds, 2009: 408).

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<sup>41</sup> *Costituzione della Repubblica italiana.*

<sup>42</sup> *Codice di procedura penale.*

The Italian model of plea bargaining is based on the adoption of two forms of abbreviated procedures categorised as ‘party agreed sentence’ (*Pettegiamento dula pena*)<sup>43</sup> and ‘summary trial’ (Ma, 2002: 390). In a party agreed sentence, the prosecution and the defence enter into an agreement as to the extent of a sentence, in which case the sentence should not exceed two years, even if the original sentence for the offence is above two years (Maffei, 2004: 1061). It also allows the defence to negotiate up to a one-third reduction in sentence (*ibid*).<sup>44</sup>

Another distinctive feature of the Italian model is the permission given to the accused to make a direct request for a bargained settlement either at the preliminary hearing or during the trial (Boari and Fiorentina, 2001: 216).<sup>45</sup> Where this happens, the prosecution is then authorised to accept or reject such request. But the Code went further to put a burden upon the prosecution when he or she rejects the defendants offer, they are required to state clearly the reasons for such refusal, which the judge is empowered to overrule and go ahead to impose a sentence as requested by the defendant (Miller, 1989: 230).<sup>46</sup> To protect the prosecution from a situation where the judge and the defendant might be conspiring to avoid due process, the Code went further to grant the prosecution the right to appeal such a decision if the judge overrides the prosecution.<sup>47</sup> But where there are no such situations, parties are barred from appealing convictions unless if the prosecution has modified the nature of the original charge or charges.<sup>48</sup>

The Italian model also demands that where the request for negotiated settlement comes only during the trial, then any pronouncement by the judge should be made at the close of such trial.<sup>49</sup> Furthermore, the law requires the judge to ascertain the voluntariness of the plea and to ensure that the sentence agreed between the parties is proportionate to the gravity of the offence and the circumstances of the case as contained in the prosecutors file

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<sup>43</sup> Sometime referred to as “bargaining as to the punishment”, it is a procedure closest to plea bargaining in common law regimes. See, e.g. Newcombe, K. (2007). Russia. In C. M. Bradley (Ed.), *Criminal procedure. A worldwide study*. Durham, NC: Carolina Academic Press.

<sup>44</sup> C.P.P. art. 444.

<sup>45</sup> *ibid*, art. 446(l).

<sup>46</sup> *ibid*, art. 448(1).

<sup>47</sup> *ibid*. art. 448(2).

<sup>48</sup> *ibid*, 443.

<sup>49</sup> *ibid*, art. 448(1).

(Miller, 1989: 231).<sup>50</sup> This power to review cases or even overrule the prosecution has prompted some scholars to contend that the Italian system of plea bargaining has placed unhelpful restriction on the powers of the public prosecutor (Maffei, 2004: 1061).

Another important distinction between the Italian model and other models is the degree of limitation imposed by the Code. In the sense that a party agreed sentence is only applicable to minor categories of offences involving pecuniary fines or where, in light of the circumstances of the offense and the offender, the statutory sentence reduction of up to one-third, does not exceed two years imprisonment (Gifford, 1983: 80).<sup>51</sup>

The 'abbreviated or summary procedure', on the other hand, can only be initiated by the defence, who puts a request to the court for a quick disposal of his case. Although some may argue that this type of summary trial does not qualify as plea bargaining, its procedural character places it within the definition of plea bargaining, because it is not only followed by mandatory sentence discount at the preliminary stage of the matter,<sup>52</sup> it is also described under the Code to constitute practices that are akin to most types of plea bargaining. Article 439 of the Code states that to initiate a summary procedure; the prosecution should present the defendant's request to the court, at least, five days prior to the preliminary hearing. The judge is then at liberty to accept to reject such request, at least, three days before the hearing.<sup>53</sup> This, however, does not deter presenting the same request again during a hearing<sup>54</sup> in which case the judge's decision on whether to accept or reject is to be made instantaneously.<sup>55</sup> Similar to the rules in the party agreed sentence is that where the prosecutor refuses to consent, the defendant can directly ask the judge for such a reduction in sentence and the judge may overrule the prosecutor (Ma, 2002:41).

Critics, however, argue that by making prosecutorial consent a prerequisite,<sup>56</sup> the prosecutors power have been expanded, and made the defence vulnerable (Miller, 1989:

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<sup>50</sup> *ibid*, art. 444(2).

<sup>51</sup> *ibid*, art. 444(1).

<sup>52</sup> *ibid*, art. 442.

<sup>53</sup> *ibid*, art. 440(1).

<sup>54</sup> *ibid*, art. 440(3).

<sup>55</sup> *ibid*, art. 440(1).

<sup>56</sup> *ibid*, art. 438.

228). Another situation that further puts the defence under pressure is the general structure of the Italian penal system, in which judges and prosecutors have closer occupational relationship than in common law jurisdictions, which makes it often unlikely for the judges to overrule the prosecutor for the sake of the defendant's interest (Boari and Fiorentina, 2001: 211).

Evidence also shows that most plea bargains in Italy involve lower courts, i.e., the *Pretura*,<sup>57</sup> whose jurisdictions are limited to offences attracting four years of prison term or pecuniary fines (*ibid*). Because of this limitation in jurisdiction, the development of plea bargaining in Italy has been slow, that in the first five years since the introduction of the new Code, only about 8 per cent of all cases were disposed through negotiations (*ibid*: 213). Hence, two decades on, the Italian criminal justice system still struggles with overly protracted cases (Ogg, 2012: 229). Part of the reasons for this slow success according to Boari and Fiorentina is the limit placed on sentence reduction, which made plea bargaining particularly unattractive to many defendants (2001: 214). Aware of the flawed character of trials notorious for their delay, loss of evidence and the frequent absence of witnesses, most defendants, especially those on bail tactically exploit these flaws instead of accepting guilt (Pizzi and Marafioti, 1992:6; Boari and Fiorentini, 2001: 217). What plea bargaining achieved, however, was the alteration of the dynamics of court processes, especially for minor offences by ensuring the opportunity to negotiate. Furthermore, Miller argues, "by permitting the parties to decide on the merits of the case as well as on the sentence, the procedure validates the role of the competing parties" (*ibid*: 230). Yet, there are aspects of the Italian model that touches on some of the principles of criminal justice, particularly the rule that bars parties from appealing unless the prosecution has modified the original charges.

## 4.5 Russia

The Russian Criminal Procedure Code (CPC) introduced in 2001 was one of the significant turning points that saw the emergence of adversarial elements, including plea bargaining

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<sup>57</sup> The *Pretura* is the lower court in Italy, similar to Magistrate courts in England and other common law regimes.

into a system that was historically an inquisitorial one (Solomon, 2005; Burnham and Kahn, 2008). Although the CPC came into force in 2001, it was the result of series of painstaking decisions and amendments stretching back to the mid-1990's (Pomorski, 2006: 130). These new rules heralded the beginning of substantial changes to the previous Soviet era criminal justice procedure (Burnham and Kahn, 2008). It was also a step that saw the separation of judicial functions from prosecutorial ones (Pomorski, 2006: 131).<sup>58</sup> These developments were the prelude to what was later to become a Russian model of plea bargaining. The aim of the reform they said was to increase the efficiency of the criminal justice system by reducing the number of cases that went through to full trial (Semukhina and Reynolds, 2009: 407).

The Russian model of plea bargaining, commonly referred in Russia as 'Special Court Order Proceedings' brought a paradigm shift in prosecutorial process, restricting the enormous powers of judges by adopting a consensual procedure that gave parties incentives to negotiate (Sharlet *et al.*, 2005: 194; Mizulina, 2006: 785). The new practice was mainly modelled on the Italian 'bargaining as to the punishment' (*Pettegiamento dula pena*), and has the common procedural elements of most continental European plea bargaining practices (Newcombe, 2007). Although the CPC did not mention the phrase 'plea bargaining', it clearly recognises and legitimises a bargain between the prosecution and the defence (Pormoski, 2006: 139). Yet, it is important to state that the features of this model are restrictive, as much as they guard strongly against the kind of prosecutorial discretion found in other countries. Judges were also left with their powers to accept, reject or amend charges (Geintse cited in Semukhina and Reynolds, 2009: 406)

According to Russian procedural laws, the defendant has the choice to either agree entirely with the charges against them or go to trial (Semukhina and Reynolds, 2009: 405). Therefore, the prosecutor is not allowed to charge for a lesser offence than the one committed (*Ibid*). Where they accept the charges, defendants then file a petition requesting a "special order of court proceeding," in which the judge is authorised to go ahead and pass

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<sup>58</sup>Art. 123(3) of CPC. See also Decree of January 14, 2000, which struck out Article. 256(1) and (2) of the Criminal Procedure Code.

a sentence without a trial,<sup>59</sup> and any penal concession should not be more than two-thirds of the maximum sentence allowed for the offence (*ibid*: 401). Regarding the limit and scope of offences to be negotiated, the law only allows for those offences whose original punishment does not exceed 10 years, with the exception of juvenile offenders (*ibid*: 40).

Another feature of the Russian model is that the victim has the powers to consent or reject any request for plea bargaining.<sup>60</sup> If the victim refused to give his or her consent and the prosecution still goes ahead to negotiate with the defendant,, the negotiation becomes reversible on appeal (*ibid*). On appeals generally, a defendant cannot appeal his conviction based on 'factual error', because in the cause of special court order proceedings, the court is not considered to be engaged in fact-finding processes (*ibid*).

Further entrenching plea bargaining, the Duma in 2009 amended the CPC to the extent that a defendant who willingly signs an agreement of cooperation with the police and fulfils the agreement will be awarded some concession, and his sentence will not exceed 50 per cent of the original maximum sentence allowed for the crime (*ibid*). Yet, similar to other legal reforms that occurred after 2001, there was a great deal of scepticism amongst scholars and practitioners on the potential effect of plea bargaining on the Russian criminal justice system (Orland, 2002; Rybalov, 2003). This concern became even more widespread according to the available data, which shows how plea bargaining is rapidly becoming common phenomena in criminal courts across the country (Semukhina and Reynolds, 2009: 409), suggesting that up to one-third of all criminal cases are dealt with through plea bargaining (*ibid*). But in many ways argued Jara, there is an evidence of retreat to the inquisitorial model as defendants can choose to be adjudged based only on the investigative file, and the supervisory function of Russian judges has not been completely diluted (2013: 6). Iovene also argues that the summary trials are slowly becoming more like the traditional inquisitorial proceeding that was practiced prior to the introduction of the CPC, as the courts now become deeply involved in rigorous investigation of the case, hence resulting in long and cumbersome trials, the aftermath of which is the resurgence of judicial backlog

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<sup>59</sup> Articles 314- 317 CPC 2001.

<sup>60</sup> Article 314, CPC 2001.



(2013: 1), which in the first place was among the challenges that plea bargaining was meant to remedy.

## 4.6 China

With over 700,000 criminal cases filed every year (Lynch, 2009: 68) and an increasing number of criminal cases handled by the police (Fu, 2003: 194), the strain on criminal justice administration in China is obvious. This exponential year-by-year rise is causing enormous cost, and also challenging the efficiency of the justice system (Weidong, 2006: 1). One of the primary reasons for this heavy burden is the procedural character of the Chinese criminal justice, which requires repeated supplementary investigations, and also the familiar situation of witnesses disappearing, causing delays (Tao, 2004: 4; Weidong, 2006: 1). But even before the introduction of plea bargaining, China have a prevalent culture of harsh interrogation technique with the aim of securing guilty pleas, sometimes awarding leniency for those who confess and severe punishment for those who resisted (Cohen, 1966: 503). This has historically led to a large number of guilty pleas (Peerenboom, 2008: 858)

In 2003, the Supreme People's Court acknowledged the widespread practice of simplified mode of trial in Chinese courts and agreed to introduce it as a new reform (Gen-ju, 2002: 28). This was followed by the Supreme People's Procuracy and the Ministry of Justice issuing a joint statement authorising the use of a simplified procedure in criminal cases (Lynch, 2009: 69). This combination of legal and policy statement marked a defining moment in what was to become a fully articulated Chinese model of plea bargaining. Many commentators, however, cautioned on the need to set limits to the class of crimes which are negotiable (Lynch, 2009: 69). One of the most striking points of this debate was that China should not copy a system of justice from the United States (*ibid*). Many Chinese scholars and commentators argued that China must uphold its traditional values of proportionality between crime and sanction (Tao, 2004: 4).

The Chinese model of plea bargaining introduced two kinds of practices, i.e., the summary procedure (*jianyi chengxu*), and the simplified procedure (*Putong chengxu jianhua shen*) (Lynch, 2009: 68). While the summary procedure aims at dealing with less serious crimes

that attract a prison term of not more than 3 years,<sup>61</sup> the simplified procedure, on the other hand, is mainly applied to offences that attract a prison term of more than three years (Gen-ju, 2002: 27). The two practices are all based on negotiated pleas, but restricted to the requirement that “the facts are clear, the evidence is sufficient, and the defendant confesses” (Lynch, 2009: 68). It is also required that the prosecutor, the defendant, and the judge all agree to this method (Gen-ju, 2002: 27).

In practice, the Chinese model of plea bargaining does not mean that all forms of trials are suspended. Instead, the practice works in a simple way where parties agree to a negotiated settlement, and the prosecutor presents his or her case file to the judge for review, after which the defendant is then called upon to make a final statement to the judge before sentence (*ibid*: 68). Once a judge consents, no further examination of witnesses or verification of evidence is necessary (*ibid*). The main aim of plea bargaining in China is to expedite the disposal of the case. A general exception to both procedures is that they cannot be applied to cases that attract the capital punishment (*ibid*).

An empirical study by New York University School of Law and the U.S Asia Law institute showed that one-fifth to one-third of all criminal cases in China are now disposed of through plea bargaining (Lynch, 2009). However, the result of this study points to some defects in the system, including the lack of adequate legal representation (Weng, 2002: 36; Lynch, 2009: 69). Weng also pointed out that a major challenge to the application of plea bargaining in China, which could be relevant in the context of other nations, especially in the developing world, is the lack of adequate defence attorneys (2002: 36). Hence, most defendants are left at the mercy of the prosecution and the court. This is a major difficulty for defendants who lack any informed advice to either plead guilty or insist on trial (Weng, 2002: 36). Another problem that was identified was that, while the rule requires the court to obtain the defendant's consent before any simplified or summary procedure is applied, the courts, in many instances, introduce or suggest such procedure during the hearing itself, thereby depriving the defendant of sufficient time to make any informed assessment of his situation (Lynch, 2009: 70).

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<sup>61</sup> Chapter 2 of the Code of Criminal Procedure, 1996.

Another character of the Chinese criminal justice that poses the risk of inappropriate pleas is one that is similar to what is obtained in the US where you have punitive legislations existing side by side a system that offers lenient sentence to those who plead guilty. Despite these flaws, research has shown that most judges and prosecutors agree that the existence of this practice has added a great deal of utility to the justice system, whereas defence lawyers are divided on whether it is a positive development or not (Lynch, 2009: 20). But beyond this utilitarian argument, most judges also admitted that the process is more concerned with efficiency than with the delivery of justice (*ibid*). What is apparent is that the introduction of plea bargaining in China has ushered in a new paradigm into a system that was traditionally based on a socialist model of criminal justice.

#### **4.7 Conclusion**

A close examination of the different jurisdictions discussed reveals how contemporary reforms in criminal justice across the world have resulted in hybridisation of both common law and civil procedures. One of the major outcomes of these changes is the way the orthodox approach of subjecting every criminal case to a full trial is diminishing, replaced mainly by a system of plea bargaining. The growth in the practice of plea bargaining, especially in civil law systems, is further evidence of how emerging criminal justice policies represent a radical departure from the old priorities.

The comparative evidence of these developments across regimes also reveals that the system of plea bargaining is mostly a product of routine practice among legal practitioners and not one that necessarily began as a response to clearly defined problems. It is, for most part a product of convenience that also became a tool to manage caseload. Over time, each legal system accepted the concept and developed its own model based on its priorities and legal culture. Yet, one thing that remains clear is the way plea bargaining changes the face of criminal procedure.

Evidence also reveals that the procedural laws enacted to govern plea bargaining often differ between different jurisdictions. For example, most civil law regimes set limits to the

kind of offences allowed to be negotiated, and judges still have much stake in the process compared to common law. Contrary to some theoretical approaches, evidence also shows that both in the civil and the common law areas, it is the parties that mostly define how a plea negotiation is achieved. This perhaps is because the system mostly operates in a private fashion and consists of all kinds of compromises and trade-offs. Owing to these challenges and inconsistencies, legal regimes such as Russia have imposed strict regulations on the extent of sentence concession and on the powers, that each of the parties is permitted to exercise. What is also evident is that despite the flaws and criticisms that often follows the application of plea bargaining, policy makers have shown willingness to integrate the system into their criminal law statutes. The system has proven time and again to be attractive even in the face of a tradition of 'legality principles'.

As plea bargaining continues its global reach, a constellation of factors has also continued to influence its development. These include factors such as punitive legislations, the need for efficiency, the idea of managerialism, cost and other socio-legal elements that have historically affected criminal justice reforms.

Although each jurisdiction has its own motive for introducing plea bargaining, a common feature of these regimes is the way the system has reshaped the procedural characters of each regime. It was seen for example how the system leads to either a concentration of powers in the hands of the the prosecution in which case such powers are likely to be abused, or the abdication of such powers by the judge, which makes the search for truth even more difficult. The most obvious tension in all of these is in trying to reconcile between long-standing values and a new transplant. This is often the complex choice that had to be made between those who support plea bargaining and those oppose to it. As Jung pointed out, what at first seemed only like a mechanism for a more streamlined channelling of complex cases and a heavy caseload, "on the second sight, hint(s) at a new attitude and position as regards the relationship between the state, society and the individual" (1997: 122).

A careful study of the different regimes also reveals how rules are constantly reviewed and guidelines issued, which is indicative of the wariness of allowing an unchecked system of

plea bargaining. This also suggests that there is a clear concern about the way plea bargaining clashes with some of the fundamental values of process rights and human rights. For example, most civil law regimes are apprehensive of the idea that a prosecutor may choose freely whom to prosecute and who not to. Hence, the degree of limitation and judicial control often imposed. Other safeguards are found in jurisdictions whose model includes the consent of the victim as a way of adding transparency and quality to the process, and also a way of reducing the common suspicion of a deep compromise by the prosecution i.e., in Germany and Russia.

What is also common is the kind of power imbalance that plea bargaining results in, especially in common law. This becomes even more concerning owing to the fact that plea bargaining everywhere is a system that allows conviction without a trial. In this context, one is tempted to look more closely at the German model, which is hedged with more safeguards, as it provides the basic platforms upon which the prosecution, defendant, and the victim all have the opportunity to influence and agree on how these negotiations take place. Similarly, it has allowed the right to appeal, which in itself is a guarantee that errors will be revisited and amended. Perhaps, it is impossible to have a universal standard procedure of plea bargaining, giving the fact that every legal regime is rooted in a distinct socio-political foundation, with different socio-legal priorities. These were among the reasons why in all jurisdictions, including Nigeria, plea bargaining has resulted in polarised opinions among scholars as well as practitioners. Yet, neither the strength of criticism nor the evidence of how the system has affected process rights was enough to reverse this trend of negotiating with offenders. Since it first emerged, plea bargaining has shown resilience by transcending its traditional boundaries of common law, it has also found its way as an integral part of the legal system of many countries across the world.

## Chapter Five

### Critique of plea bargaining.

#### 5.0 Introduction

As discussed in earlier chapters, the past four decades has seen the expansion of plea bargaining around the world. What used to be an informal and unregulated practice, has been transformed into a legislatively sanctioned procedure. Yet, the controversy that greeted plea bargaining since it first came to attention has remained as intense as ever (Blumberg, 1967; Alschuler, 1968; Casper, 1972; Kipnis, 1976; Langbein, 1992; Schulhofer, 1992; O'Hear, 2007; Burke, 2007). One of the major reasons for opposing this system is the perception that the process has very little respect for process rights. Alschuler, for example, has maintained that plea bargaining undermines the structure of criminal justice by shifting the process of determining sanctions out of the courtroom into informal channels and arrangements (1979: 32). Because the process lacks transparency, argued Binder, it thrives on institutional conditions utterly inconsistent with the interest of the society (2002: 348).

Other scholars argue that the system as neither serving the goals of retribution nor deters or rehabilitates offenders (Stitt and Chaires 1992: 72-74). It is simply a process synonymous with the 'commodification of justice', turning legal sanctions into negotiable instruments to be bargained and discounted, the outcome of which has been the flagrant dilution of the social fabric of justice (*ibid*: 72-74). A Texas judge once referred to plea bargaining as a process that "inevitably produces the ridiculous result that, as crime grows worse, sentencing becomes more lenient" (Callan, 1979: 327). Kassing and Wrightsman claim that plea bargaining condones practices contrary to these legal requirements of freedom from coercion, transparency and other values of due process (1981: 490).<sup>62</sup> For the process to be legitimate argues Binder, it must not only submit to procedural checks of an independent court but also the political check provided by a democratic public (2002: 330).

Another wider implication of plea bargaining is that the insistence on trial by the accused has become a less condonable conduct capable of attracting heavier sanctions. Ashworth referred to this paradox saying that, if the presumption of innocence is a fundamental right, then it is wrong that the exercise of this right by someone who is convicted at trial should

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<sup>62</sup>*Chambers v. Florida*, 309 US. 227, 1940.

result in a sentence that is higher than would have been if he pleaded guilty (1998: 288). Proponents, on the other hand, defend plea bargaining as a form of consensual agreement where individuals accept an offer for plea bargaining on their own volition. (Bar-Gill and Gazal 2006: 2). Similarly, 'contractarian' theorists suggest that a concluded bargain benefits all parties as "it both saves judicial resources and makes all participants better off than they would be if they had taken the risk of losing at trial" (Zacharias, 1997: 1138).

Although plea bargaining is a system that has been criticised from different perspectives, it is crucial for this thesis to examine these issues and further relate them to the debates on the emergence and application in Nigeria. Hence, relevance will be given to those areas that define the issues which made plea bargaining possible in Nigeria and those that generate criticism. The chapter begins by looking at the general idea of bureaucratisation of criminal justice. This leads to further discussions on specific aspects relevant to this research, which include the claims of forced guilty pleas and those relating to inconsistent sentencing practices as well issues that touch on the legitimacy of shifting criminal procedure from open courts to private or informal channels. The chapter will critically examine these issues from both theoretical and empirical standpoints.

## **5.1 Bureaucratization of criminal justice procedure**

Conventional trials are broadly referred to as the means for a free and fair criminal procedure (Skolnick, 2011). Likewise, the culture of a transparent process before an independent judge along with the guarantees of subjecting evidence to intense scrutiny has been the foremost argument of proponents of procedural justice. Although plea bargaining has often rejected the technicalities of criminal justice procedure, these procedures, according to Vogler (2005), are the bedrock of human rights. These elements of perceived due process, which also include the presumption of innocence and freedom from coercion, are often postulated as fundamental components that ensure fairness and safeguard the rights of all parties (*ibid*). Commenting on the significance of these values, Justice Felix qualified them as a necessary compendious expression for all those rights that must be

enforced in criminal justice of all free societies.<sup>63</sup> These values also collectively constitute what scholars such as Amann termed as 'constitutional criminal procedure', which operates within the framework of clearly defined procedural codes of legality, consistency, and equality (2000: 814). Other general principles in this realm include the principle that accused persons must not be subjected to secret trials, the essence of which is to foster fairness and truth in the administration of justice by opening legal proceedings to public scrutiny (Bassiouni, 1992: 267).

The advent of plea bargaining is seen by opponents as a challenge to the core values of criminal justice. Instead of promoting rights, it is seen as a system that introduced bureaucratic ethos which allow criminal cases to be decided privately between parties using the mechanism of charges, or sentences discount while avoiding clear and open adjudication. Opponents further argue that even if criminal justice is hungry for reform, plea bargaining is not the best alternative (Alschuler, 1968: 71). They also condemn the notion that plea bargaining has the advantage of flexibility that trials do not have, stating that "flexibility is an advantage that all lawless systems exhibit in comparison with systems of administering justice by rules" (*ibid*). It is also criticised as an unfair process that tends to determine a criminal case "without full investigation, without testimony and evidence and impartial fact-finding" (*ibid*). Others condemned plea bargaining as an 'anti adversary' method that accommodates unrestrained discretion that often affects the "accurate separation of the guilty from the innocent" (Schulhofer, 1979: 1979).

For the most part, plea bargaining is seen as a bureaucratic procedure in which the court seldom functions as an organ of the state that inquires into the facts and applies legal rules to what really happened. Instead, it sits simply to pass sentence (Lynch, 2014: 1676). This is because, in contrast to the traditional principles of criminal justice, plea bargaining allows parties to agree jointly to some compromise prior to trial or outside the court, and then choose the information they want to put forth, or the one they think is relevant to what they want to achieve. In the end, the dispute is settled in any way they see fit and not necessarily based on the strength of facts and evidence (*ibid*: 1677). Hence, as Lynch further

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<sup>63</sup> *Wolf v Colorado*, 338 U.S 25 (1949).



argues, the court ceases to be “an independent engine for state administration of justice,” but rather plays the simple role of arbitrator. The implication of this is “because our governing ideology does not admit that prosecutors adjudicate guilt and set punishments, the procedures by which they do so are neither formally regulated nor invariably followed (*ibid*: 1680). In most cases argued Scott and Stuntz, the courts award sentences “because of what prosecutors and defence lawyers do not say at sentencing (1992: 1912). Hence, the sentencing hearing seems rigged to support the deal that the two attorneys have already struck” (*ibid*). It is, therefore, a system that is seen as clearly shifting criminal justice process from adversarial practice to an administrative one, often affecting the “rigorous subsumption of the true facts to their statutory criminal elements, as a guarantee of the equal enforcement of the law” (Thaman, 2010: XVIII).

However, it was noted that any administrative process depends largely on the defendant’s willingness not to insist on trial (Lynch, 2014: 1680). Vogler and Jokhadze also pointed out that the pressure to plead guilty often comes from “avaricious and overcommitted defence lawyers, incompetent trial lawyers, lawyers anxious about their success rate or simply those lawyers wishing to curry favour with their opponents or the court” (2011: 29). Yet, in contrast to the general rules of criminal procedure, the bureaucratic elements of plea bargaining have obviously created a system where the defendant is expected to argue his case and even evidence with the prosecution and outside the court in order to have a better deal in the negotiation (Lynch, 2014: 1680).

Another consequence of administering criminal justice through negotiations is that the accused is often regarded as factually guilty and therefore expected to plead without objection (Mcconville cited in Rauxloh, 2012: 53). Consequently, the prosecution assumes the role of adjudicating as well as setting punishments (Lynch, 1997: 2124-2130). Hence, Blumberg characterised plea bargaining as “a contrived, synthetic, and perfunctory substitute for real justice” (1974: 29). As part of his comprehensive and sustained attack on plea bargaining Alschuler said:

The practice of plea bargaining is inconsistent with the principle that a decent society should want to hear what an accused person might say in his defense-and

with constitutional guarantees that embody this principle and other professed ideals for the resolution of criminal disputes. Moreover, plea bargaining has undercut the goals of legal doctrines as diverse as the fourth amendment exclusionary rule, the insanity defense, the right of confrontation, the defendant's right to attend criminal proceedings, and the recently announced right of the press and the public to observe the administration of criminal justice (1983: 933-934).

Some scholars suggest that the structural and procedural underpinnings of most plea negotiations are so skewed that they impede the opportunity for parties to either enjoy a transparent public trial or even demand further scrutiny or review of their case or evidence. The bureaucratic nature of this system also leads to situations where the prosecutor and the defence attorney become commonly bound in the quest for organisational convenience rather than their moral responsibility of ensuring justice (Feeley, 1982: 3). Other scholars view plea bargaining as a process synonymous to, "exchange of official concession for a defendant's act of self-conviction" (Alschuler, 1979: 3). Part of this is because of the way that even the defence counsel becomes a party prone to making "bland assurances, and in effect manipulates his client, who is usually willing to do and say the things, true or not, which will help his attorney extricate him" (Blumberg, 1967: 29). These criticisms become possible because characteristically, plea bargaining entails deals made for a variety of reasons that do not necessarily fall within accepted standards of legal procedure (Wright and Miller, 2002: 34).

Easterbrook, however, contends that a bargain between a defendant and the state, approved and enforced by a court should not be simply condemned as unfair or unregulated (1992: 1976). Not only is the practice of plea bargaining a rejection of the rigours of trials, but it is also evident that it is a system used across the world to deal with the challenges brought by overcrowded dockets and the complexity of certain criminal cases whose character cannot be easily proved through a full trial. Therefore, argues Palermo *et al.*, plea negotiations should not simply be rejected on the grounds that only trials are a manifestation of justice (1998: 119). What cannot be disputed, however, is the procedural contrast between plea bargaining and trial. The latter is premised on the principle that "factual guilt does not replace legal guilt as the test to determine whether someone should be convicted of the offence charged" (Rauxloh, 2012: 53). Plea bargaining, on the other hand, involves agreements that mostly occur in "the prosecutor's or defence attorney's

offices, the judge's chambers, in the corridor outside the courtroom, or over lunch in a local restaurant” (Cloyd, 1979: 454). The finality of the process is often found in the willingness of the defendant to cooperate with the State in pleading guilty without a trial (*ibid*). Even when plea negotiation attempts to take on the character of conventional trials, there is often the potential for significant power imbalance between the prosecutor and defendant that naturally makes adversariness difficult (O’Hear, 2007: 424). In the sense that unlike conventional trials where the defendant presents his defence in an open court and is allowed to challenge every evidence presented by the prosecution, plea bargaining is by its character an out-of-court process. In the end, argues Justice Charles Levin, the system descends into a charade based on the willingness of administrators to reduce the standards of justice in order to fulfil certain objectives (cited in Alschuler, 1983: 931).

Yet, proponents maintained that the debate on plea bargaining should be pragmatic enough to admit that “the opportunity for adversariness has expanded in direct proportion to, and perhaps as a result of, the growth of plea bargaining” (Feeley, 1982: 338). Gentile, for instance, argues that the practice does not affect adversariness, but the dynamics of the adversarial system (1969: 523). This argument suggests that plea bargaining only alters the role of the parties, but the ultimate choice of accepting a plea deal still lies with the defendant (*ibid*). Hence, negotiation is an indication of the strength of the adversarial criminal justice system that is undergoing a new phase of reform and readjustment (Feeley, 1982: 338-345). Even if the criminal justice system has the capacity to try every case, argues Douglas, “conviction without trial will continue to be a necessary and proper part of the administration of criminal justice” (1988: 266). Other proponents insist that the imperfection of plea bargaining is only a reflection of the imperfection of an anticipated trial (Easterbrook, 1992: 1976). Vogler and Jokhadze also argue that the justification for the acceptance of plea bargaining by most institutions and courts is based on the notion that the principles of due process are mainly concerned with the prohibition of coercion rather than voluntariness of parties to cooperate with authorities (2011: 24). Yet, they cautioned that for plea bargaining to be successful, it must be accompanied by due process safeguards (*ibid*: 25). Rejecting the idea of plea deals, A Federal judge once said:

(T)o me, the essence of this practice, and what radically distinguishes it from the adversarial litigation model embodied in textbooks, criminal procedure rules, and the popular imagination, is that the prosecutor, rather than a judge or jury, is the central adjudicator of facts (as well as replacing the judge as arbiter of most legal issues and of the appropriate sentence to be imposed) (cited in Lynch, 2003: 1403-1404).

Other critics such as Stitt and Chaires argue that plea bargaining is a practice that annihilates the possibility of procedural safeguards because the way it operates resembles some form of commercial contract in which the sentence becomes a negotiable instrument (1992: 72-74). It is important, however, to assert that there are clear distinctions between commercial contract and plea bargaining. As Easterbrook pointed out, courts do not enforce the promise to plead guilty in the future, whereas, the principle of an 'executory contract' is an integral part of contract law (Easterbrook, 1992: 1975). Again, judges who do not take part in the plea negotiation often set the price (punishment), whereas, in all commercial contracts, the price is a matter of prerogative to be decided by the parties in the course of the agreement (*ibid*).

Plea bargaining by its character leads to situations where the defendant surrenders most of the rights enshrined in the principle of adversariality, i.e., the right to cross-examine witnesses and scrutinise evidence and the privilege against self-incrimination (Ross, 2006: 720).<sup>64</sup> Hence, it becomes prone to abuses and unethical conducts, sometimes degenerating into a process that is driven by convenience instead of the will to do justice. Most importantly, bureaucracy and adjudication should not be merged into one single conglomerate, so also, the question of guilt and innocence must not be viewed as subcategories of each other (Alschuler, 1968: 111).

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<sup>64</sup> This position was laid in *Boykin v. Alabama*, 395 U.S. 238 (1969). It is however worthy to note that in some jurisdictions, defendants may retain the right to appeal especially where judges refused the agreed recommendation of sentence. But in others, even that had to be waived, either as a rule or by the terms of the agreement, See e.g. *United States v. Melancom*, 972 F.2d 566 (5th Cir. 1992). *United States v. Berberich*, 254 F.3d 721 (8th Cir. 2001).

## 5.2 Elements of threat, coercion and undue influence

Scholars across all the jurisdictions studied in this thesis have continued to debate on the subject of coercion and threat in criminal justice (Kipnis, 1976; Leo, 1992; Pollock, 2014; Baswell *et al.*, 2014). Newman and Weitz argued, “where that most precious of all elements ‘Free will’ is stolen, the law hastened to erect its doctrine of duress to mark the larceny” (1956: 313). Also, the general rule of criminal responsibility is that an act is done without compulsion, that if a person commits any act under compulsion, responsibility for such act cannot be ascribed to him or her as his or her willingness becomes a question of both fact and law (*ibid*). These are important principles that no criminal law or statute should fail to recognize.

In relation to the prevalence of threat and coercion in plea bargaining, the debate often originates from the broad range of discretionary powers of the prosecution. Studies, especially in the US where plea bargaining is most practiced indicates that threats are common mechanisms of manipulation used in securing guilty pleas (Alschuler, 1968: 60-61). Gersham for instance argues that the enormous discretionary powers exercised by officials, especially prosecutors, has given rise to situations where they have the freehand to decide “whom to charge, what charges to bring, whether to permit a defendant to plead guilty and whether to confer immunity” (cited in Stitt and Chaires, 1993: 72). In other instances, they unilaterally fit in certain kinds of charges which they deemed appropriate, to different kinds of offences, or fit into similar offences, different kinds of charges (Ma, 2002: 22).

Prosecutors have also been accused of threatening defendants with the choice between pleading guilty to a reduced charge/sentence, or going to trial to risk the full rigour of the law (Bar-Gill and Ben-Shahar, 2004: 43). This practice according to Langbein is immoral as it subjects the accused to fear and to condemnation without proper adjudication (1979: 204). He equated the practice to the medieval method of extracting a confession through torture saying, “there is, of course, a difference between having your limbs crushed if you refuse to confess, and suffering some extra years of imprisonment if you refuse to confess, but the difference is of degree, not kind. Plea bargaining, like torture, is coercive” (Langbein, 1978: 12-13). Langer, however, contends that despite these discretionary powers, most

negotiations are achieved not by threat but by the weight of evidence available to the state (2005: 251). Hence, when properly exercised, plea bargaining is a method that facilitates rather than hinder the process of justice (Ma, 2002: 22). These kinds of arguments on whether it is threat or the strength of evidence that leads to a concluded plea bargaining appears to remain unresolved not because they are contradictory, but because of the nature of the institution of plea bargaining which has established for itself a reputation for condoning informal and out of court agreements that are not always transparent. Hence, the character of each individual case and how a plea was agreed is often difficult to know. This has caused scholars to theorise these complexities by identifying some of the major factors that lead to a concluded bargain, of which strength of evidence is one and threatening the defendant is another. An important principle that must be taken into account is that, whether through the exercise of discretion or otherwise, the principles of criminal justice forbid any form of threat and coercion? The overwhelming answer to this question is that when an individual is coerced to accept culpability, the whole process becomes prejudicial to the rights of such individual and may lead to wrongful convictions (Bar-Gill and Gazal, 2004: 1).

While legislation and guidelines have been enacted in many jurisdictions to discourage putting the defendant under pressure, these legal measures are limited and “some of the traditional anti-duress measures may not do much to redress their misfortune...it might often be better for these coerced individuals if such anti-duress measures would not be applied at all” (Gazal and Ben-Shahar, 2004: 1). This counter-intuitive position of Gazal and Ben-Shahar is based on the theory of ‘Credible Coercion’, which suggests that “if the threat were to be turned down, it would be in the interest of the threatening party to carry out the threat, rather than retreat” (*ibid*). Although in principle there are other traditional safeguards such as ‘allocation procedure’, during which the court puts questions to the accused in order to ascertain their voluntariness, evidence has shown that in most cases of plea bargaining, the courts focus more on the form of the plea rather than its substance (McConville, 1998: 569). Some critics, therefore, see even the process of allocation<sup>65</sup> as a way of legitimating the accused’s plea rather than a means of inquiry (*ibid*).

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<sup>65</sup> Allocation or *allocutus* is a statement that defendants make to the court after conviction but before sentencing. It is often done to seek the courts leniency.

Another common practice is the mis-presentation or exaggeration of evidence. This technique is often used as form of intimidation to threaten the accused with a harsh penalty at trial and with leniency for pleading guilty (Turner, 2006: 206). The implication of this is that plea bargaining is presented to the defendant as the only reliable means to avoid a punitive sentence, which in the end allows the prosecutor to effectively dictate the terms of the negotiation, leaving the defence with fewer options than to plead guilty (O'Hear, 2007: 425). This controversial character of plea bargaining has essentially turned the prosecutor into an agent of the state whose primary role is to ensure a guilty plea at all cost. It also undermines the moral responsibilities of him or her as a servant of the law whose duty is to ensure that the guilty does not escape, and the innocent does not suffer.<sup>66</sup>

The controversial nature of prosecutorial powers and their potential misuse was revealed in an empirical study by Caldwell (2011), where he showed how prosecutors engage in the noxious behaviour of overcharging defendants in order to pressure them into accepting a plea bargain.<sup>67</sup> He identified the prevalence of this kind of behaviour, which he categorised as 'the horizontal' and 'the vertical' overcharging technique (*ibid*: 85).<sup>68</sup> Easterbrook, however, contends that the practice of setting high offers is mainly for the guilty, as for the innocent, such offers will often be rejected in the hope that an acquittal at trial is imminent (1992: 1969). Yet, short of open admissions of guilt by the defendant, the prosecution will not always know, beyond reasonable doubt, that the defendant is, in fact, guilty (Caldwell, 2011: 72). Hence, one is bound to disagree with Easterbrook in the face of empirical evidence that suggests that plea bargaining is associated with coercive practices in framing charges. As unethical and misleading as these practices are, evidence further suggests that they are amongst the key factors that make plea bargaining work effectively, especially in relation to the risk-averse defendant, often resulting in inaccuracy and wrongful convictions (Bar-Gill and Gazal, 2004: 1). Yet, some proponents maintain that such conducts do not arise because of the enthusiasm of the prosecutor to obtain a conviction, but because the

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<sup>66</sup> *Berger v. United States*, 295 U.S. 78 (1935).

<sup>67</sup> Over-charging in the general sense connotes a situation where the prosecution formulates charges for offences that the defendant is clearly innocent of in order to induce a guilty plea for the original accusation. See e.g. Standen (1993).

<sup>68</sup> Some scholars e.g. Caldwell (2011: 85) categorised this practice stating that 'Horizontal over-charging' entails a situation where charges are filed on distinct crimes resulting from similar conducts and 'Vertical over-charging' involves the charging of harsh variations of the same crime where the evidence available only supports lesser variation.

innocent may sometimes appear guilty (Easterbrook, 1992: 1971). Therefore, what disrupts the separation of the guilty from the innocent should not be seen as only a flaw in a bargaining process, but also a flaw that is common with trials (*ibid*). A further claim was that most prosecutors are well aware that charging the innocent is a poor choice because such persons are likely to fight in trial and earn an acquittal (*ibid*). These argument, however, do not take away the bad reputation of coerced pleas. It is therefore important not to ignore the use of discretionary powers, especially where officials unfairly decide which law to enforce and which to disregard.

Although some studies have attempted to discredit the argument that innocent people plead guilty due to obnoxious behaviours of officials (Radelet *et al.*, 1992), a recent work by Rakoff *et al.*, (2014) demonstrated that the case of innocent defendants pleading guilty is a widespread problem in plea bargaining. They cited other similar examples of the disturbing frequency of this problem, particularly the records of the US National Registry of Exonerations,<sup>69</sup> which indicates that of the 1,428 legally acknowledged exonerations that have occurred since 1989 involving the full range of felony charges, 151 (or, again, about 10 per cent) involved false guilty pleas (*ibid*). In allegations that attract capital punishment, empirical studies have long demonstrated evidence to suggest that innocent defendants often plead guilty to avoid the death penalty (*ibid*). Similar findings by Gross (1996) have shown that in allegations of offences that attract the death penalty, prosecutors use the threat of full sentence at trial to secure a guilty plea. Erhdhard (2008) also revealed the consensus among prosecuting and defence attorneys that intimidation with a potential death penalty for capital offences is a strong impetus that puts the prosecutor in a unique position of power and advantage (*ibid*: 316-317). Perhaps, this critique cannot be generalised because capital punishment is no longer universal.

Other scholars, however, argue that it is not in the prosecutor's best interest to engage in coercing the innocent because “every conviction of an innocent person undermines deterrence by reducing the marginal punishment of the guilty, and thus injures the prosecutor” (Easterbrook, 1992: 1971). Notwithstanding these arguments, the advantages

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<sup>69</sup> This is a joint project of Michigan Law School and Northwestern Law School in the United States of America.



that guilty plea confers makes it very likely that officials might act inappropriately to secure the defendant's plea (Standen, 1993: 1501). Bar-Gill and Ben-Shahar (2004), however, contend that the only fault-line in respect of prosecutorial coercion is when such threats are not credible (*ibid*: 44). Where the evidence against the accused is strong, cogent and verifiable, then such a threat is not only credible, it is in fact to the advantage of the accused, because a trial will indeed result in a heavier sentence (*ibid*). Bibas also argues that by threatening to go to trial, the prosecution is only assuring that he or she will exercise legislatively authorised powers (2003: 1427). Any assumed unfairness occurs only where the prosecutor uses disproportionate offers or false claims as a means of circumventing weak or difficult cases (Gentile, 1969: 550) But it could be argued that overcharging or fraudulently misrepresenting evidence contradict the essential principles of justice. Scott and Stuntz also argued that as long as post-trial sentencing was not manipulated by the prosecution, “coercion in the sense of few and unpalatable choices does not necessarily negate voluntary choice,” and neither does a large sentencing discount (1992: 1920-1921). This line of argument is also weak on the ground that, coercion and threat, in all forms, affect voluntariness; negate the values of a fair deal, and leads to imposition rather than free choice. There is no doubt an accused always has the option to insist on a trial, but the problem is that he or she may not always know whether the threat is genuine or not, as the bulk of evidence or the absence of it is often held by officials. Justice Stevens of the Wisconsin Supreme Court summed up the inappropriateness of coercion saying:

A prosecutor should not act as a partisan eager to convict, but as an officer of the court, whose duty it is to aid in arriving at the truth in every case... His object, like that of the court, would be simply justice; and he has no right to sacrifice this to any pride of professional success. And, however strong may be his belief of the prisoner's guilt, he must remember that, though unfair means may happen to result in doing justice to the prisoner in the particular case, yet justice so attained is unjust and dangerous to the whole community.<sup>70</sup>

There has been a number of proposals on how to remedy these undesirable aspects of plea bargaining. Bibas, for instance, advocated the full involvement of defence counsel so that facts and evidence could be evaluated by a professional on behalf of their clients (2004: 2531). Others suggested that rules should be implemented to require some organisational

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<sup>70</sup> *State v O'Neil*, 189 Wis. 259 (1926).

review of the facts at an early stage before the prosecutor formulates any charges (*ibid*).<sup>71</sup> The problem here is that internal organisational oversight often involves members of the same organisation and, therefore, lacks the necessary objectivity (Caldwell, 2011: 90). Furthermore, where such oversight becomes firm and objective, it has a tendency to result in confrontational outcomes as members of the organisation may likely be pitched against each other (*ibid*).

Other critics called for a system of plea bargaining that should only emphasise on sentence bargain (Alschuler, 1976: 1137). Where charge bargaining becomes necessary it “should be used only as an incident to ‘sentence bargaining’ in situations in which the sentence that seems appropriate cannot be imposed without an adjustment of the charge” (*ibid*). This idea is premised on the notion that, if the sentence is not determined by the charge but by evidence, it will technically restrict prosecutors to filing only appropriate charges (*ibid*). But even with these kinds of measures, nothing stops prosecutors from filing excessive charges, and in the fear of testing evidence at trial, defendants will continue pleading guilty to lesser charges in spite of the weakness of evidence (Caldwell, 2011: 86). Therefore, he contends, it is only when the justice system is trial centred, that a prosecutor will have less reason to file charges that he does not intend to pursue, or that which cannot secure a conviction (*ibid*: 84).

Coercion also touches on the principle of individual liberty and human rights.<sup>72</sup> Hence, courts have consistently emphasised the essence of voluntariness, with some going to the extent of declaring any plea deal induced by threat as void.<sup>73</sup> It is indeed important to state the common regulations contained in most plea bargaining guidelines of different legal regimes in which voluntariness is cardinal to the outcome of any plea bargain. Paradoxically, studies have shown that because negotiations promote judicial economy and procedural efficiency among other things, judges are often reluctant to venture into the arena of testing the fairness of an already concluded deal (Fisher, 2000: 1039; Turner, 2006: 206;

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<sup>71</sup> The German Model of plea bargaining has incorporated these requirements in their system, allowing the defence to inspect the prosecutors file.

<sup>72</sup> For instance, other provisions such that in rule 11 of the American Federal Rules of Criminal Procedure gives the judge the discretion to reject a plea bargain on these grounds and to advise the defendant on his right to withdraw his plea, See e.g. Starkweather (1992:859).

<sup>73</sup> *Machibroda v. United States*, 368 U.S. 487 (1962); *Kercheval v. United States*, 274 U.S. 220 (1927).

Caldwell, 2011: 71). The knowledge of this lack of judicial scrutiny is also among the reasons prosecutors use skewed tactics and undue pressure on defendants (*ibid*: 84). Moreover, in jurisdictions where prosecutors have strong political affiliations, especially where they are elected,<sup>74</sup> they may choose to prioritise the securing of convictions as a means of boosting their reputation and their future political prospects (Alschuler, 1968: 106).

To address some of the problems of coercion and compromises inherent in plea bargaining, some scholars think judicial participation should be encouraged in order to “balance the normative obligation of neutrality with the bureaucratic demand for efficiency” (Lee, 2005: 33). Although some critics argue that judicial involvement slows plea bargaining, it is also important to note that the quest for expediency, no matter how important, should not compromise the rights of parties to obtain justice (Langer, 2005: 250). Striking a balance between the two i.e., ‘due process’ and ‘efficiency’, it is safe to argue that even when ensuring due process, efficiency can still be achieved, especially if the system avoids unnecessary legal technicalities and relies mainly on the substance of a case. Moreover, it is important to stress that the legitimacy of any criminal justice system is that it does not compromise procedural justice for the sake of efficiency and cost. Furthermore, if plea bargaining becomes inevitable, defendants unsatisfied with the decision should be able to request a new hearing or go on appeal. This knowledge by the prosecution and the defendant of other legal alternatives is an important reform for the institution of plea bargaining.

### **5.3 Inconsistent sentencing**

One of the most important theoretical attempts to explain penal inconsistency in criminal justice was the ‘conflict theory’, which attributes sentencing variation to the power relation inherent in class societies. The theory demonstrates that the most severe sanctions are often imposed on persons in the lowest social class (Chambliss and Seidman, 1971: 475). Although this theory has generated a great deal of interest, critics maintain that the evidence put forward “consistently fails to support the expectations of conflict

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<sup>74</sup> In the United States, the office of the prosecutor, mostly referred as the District Attorney could either be an elected or appointed official. Depending on the jurisdiction, district attorneys may an appointee of the chief executive or elected by the voters.

criminologists with regard to the state's sanctioning machinery" (Chirico and Waldo, 1975: 769). They further argue that even 'conflict criminology' does not necessarily have the capacity to give a clear perspective on the many variables that create inconsistencies in the criminal justice process because "conflict does no better than traditional perspectives in criminology" (*ibid*). What these arguments demonstrate is that scholars, especially in the field of criminology have made attempts to explain the causes of inconsistent sentencing in criminal justice. Even though a number of theories have been debated, each of the theories seemed to come under criticism. In the context of plea bargaining, there are other theories that have attempted to give a better perspective on this debate.

Attempts to explain sentencing inconsistency was also one expressed in 'labelling theory', which sees the bias and inconsistency in sentencing as mainly caused by the response to the accused as deviant. Although this view of subconscious bias has not suffered as much hostile criticism as conflict theory, scholars such as Tittie (1975) and Gove (1975) have insisted that empirical evidence has failed to provide cogent support for this perspective (Bernstein *et al.*, 1977: 362). Yet, in an attempt to balance the dynamics of these arguments, Maynard pointed out that, depending on the stage of the process and the kind of variables examined, each has different and contradictory effects that often do not explain much of the discrepancy in sentencing outcomes (1982: 348-349). This argument supports the position of many scholars of plea bargaining, who argue that inconsistency in sentencing outcomes is as a result of many factors. They include the choices that different prosecutors make and how much they are willing to compromise. It also includes the nature of the defendant the ability of his or her legal representative to negotiate for the best possible outcome. As will be seen in the later part of this study, empirical evidence has shown how the rich and powerful who can afford the best lawyers are often more likely to get large sentence discount than the poor defendant. What is perhaps common is that plea bargaining has a reputation for awarding a different kind of sentences to the same kinds of offences (Davies, 1970; Langbein, 1979; Chilton, 1991; Zander *et al.*, 1993; Mcconville, 1998). This inconsistency is so unpredictable that for the rich, plea bargaining could be a way to escape justice and for the poor, it could result in situations where they are coerced and threatened to admit guilt. As some scholars argue, it is common for defendants to come under pressure to plead guilty (Baldwin and Mcconville, 1979: 296). A study by Wright (2005) reveals how

jurisdictions like the US, which has a high number of cases treated in this skewed method have a lower rate of acquittal and a higher rate of guilty pleas. The study also shows how a large number of defendants are attracted to abandon what could have been meritorious trial that could have led to acquittal because they have been awarded a sentencing discount that is far less consistent with the allegation (*ibid*). However, comparing the nature of sentencing between guilty pleas and conventional trials is a complex undertaking, as the two practices “represent different processes to which defendants are nonrandomly assigned” (LaFree, 1985: 291). Instead, each of the two processes has a different way of dealing with a criminal matter i.e., plea bargaining is based on negotiated settlement while conventional trials are based on the rigorous argument on facts and evidence in open courts. Evidence by LaFree suggests that defendants’ insistence on trial may get a defendant acquitted for offence that he might have been convicted if he or she pleads guilty (*ibid*).

Proponents of plea bargaining, on the other hand, stressed that the defendant who helps in the expeditious disposal of his case also saves time and resources and, therefore, deserves to be rewarded.<sup>75</sup> In the words of one Chicago judge, “defendants who waste taxpayer’s money and the court’s time deserve more time in jail” (cited in Samaha, 2005: 348). This notion, which is inherently driven by an economic way of thinking is clearly inconsistent with traditional expressions of legal rationality because it invariably turns ‘cost’ into an ethical phenomenon, the waste of which is deemed punishable (McConville, 1998: 578). But according to Lynch, implying that guilt and sentence are determined by some form of mercantile bartering is wrong, stressing, “the process of negotiating pleas, in my experience, is not accurately regarded as one of ‘bargaining’, if by that one imagines some simplistic model of haggling over prices” (2002: 1403).

Other scholars such as Wright and Miller have cautioned over discounting sentence solely for defendant’s cooperation (2002: 33). They pointed to how this approach inadvertently

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<sup>75</sup> See Rauxloh, 2012: 51, also A study of the Magistrates Courts in England conducted by Flood-Page and Mackie (1998) casts doubt on this much-emphasised sentence discount. The result reveals that discount for most guilty pleaders is actually insignificant. There is in fact a slight sentence discount of 3.8 months for those sentenced at trial, as against 3.7 months for those who pleaded guilty, Flood-Page and Mackie (1998). Sentencing practice: an examination of decisions in magistrates’ courts and the Crown Court in the mid-1990’s. London: Home Office. This finding is in contrast with the situation in the US. A study of the US Federal Courts shows that defendants who plead guilty often receive substantial discount, See *Turner* (2006).

sends a symbolic message to the defendant of being 'rewarded' instead of being punished (*ibid*). In the end, it affects the victims' understanding of justice and retribution, and makes the public sceptical of the system, especially where they observe an unexplained leniency that suggests a compromise (*ibid*). Scott and Stuntz also stressed that the allocation of a criminal sentence through what looks like "a street bazaar" has proved unappealing to most observers (1992: 1912). They point to the "seeming hypocrisy of using an elaborate trial process as window dressing while doing all the real business of the system through the most unelaborate process imaginable" (*Ibid*). Commenting on the inherent problem of this kind of sentencing culture, Felekens (1976) states:

If the great majority of plea agreements are successful in handling accused persons justly and swiftly, as proponents of the practice suggest, it is a useful and acceptable pattern of prosecutorial behaviour. However, as long as it remains a process with all the possibilities of dealing with accused persons unequally in order to achieve self-serving goals, plea negotiations will not be recognized as a proper and useful procedure in the criminal law" (134-135).

This argument by Felkens relates to the series of evidence that show how plea bargaining presents inconsistency in the criminal justice system due to reasons that include the prosecutors attitude of coercion and threat, unequal treatment of offenders based on the bias of labelling the poor as deviant etc. Even though inconsistent sentencing is often possible due to the discretion of prosecutors to drop charges as part of a negotiated deal, proponents, insist that such sentence discount cannot simply be regarded as unethical since they are not based on promises made by the prosecutor with the intent of breaching them later (Douglas, 1988: 286). Ferguson went further to stress that it is "not only unnecessary, but also dangerous, to prohibit it on a differential treatment causing undue pressure type of argument" (1972: 40).

Most of the argument about inconsistency in sentencing relates back to the attitude of the prosecution who is mostly seen as the party with the most influence in plea negotiation, as the defendant is often left with the fear of uncertainty if they insist on trial. Paradoxically, studies have also shown that misjudging the outcome of trials and settling for negotiations is not a matter only for the defendant; prosecutors can equally underestimate the likelihood of conviction and settle for terms that do not by any proportion, correspond to the gravity

of the offence (Turner, 2006: 209). Hence, the high or low of charges or sentence concession may depend on the perception of the parties (*ibid*). Another factor discovered by researchers is that, in the face of a strong prosecutorial case, even professional defence attorneys may be risk averse, and lead their clients to plead guilty (McConville, 1998: 567). The general effect of these aspects of plea bargaining is that parties negotiate when they would otherwise go to trial, or go to trial when they would otherwise bargain (Bibas, 2008: 2468).

Ferguson contends that the argument about the defendant's anticipation of a lenient outcome as some form of undue influence is ironic (1972: 35). If such leniency is to be abolished, then all forms of plea bargains had to be abolished, as each comes with the promise or an expectation of a reduced charge or a reduced penalty (*ibid*). Another paradox according to Kipnis is that, when bargained-for sentences are considered as reasonably lenient, it goes to suggest that by insisting on a trial, the defendants must relinquish their opportunity to the lowest reasonable sentence (1979: 564).

As criminal justice systems across the world continue to come to terms with the expansion of plea bargaining, they are also becoming aware of the challenges of inconsistency of this process. Hence, a number of guidelines (as seen in chapter four) have continued to emerge in jurisdiction like the US as well as England, aimed at alleviating the problem of inconsistency. One such example is the provision of Section 170 (9) of the Criminal Justice Act 2003 of England and Wales which states that sentence reduction is appropriate in guilty pleas because such pleas reduce the cost of trials (cited in Rauxloh, 2012: 35). Similarly, a decision by the English Court of Appeal states explicitly that where a defendant pleads guilty, he is entitled to sentence discount.<sup>76</sup> Again in 2007, a sentencing guideline was issued, which highlights the level of approved sentence reduction in cases where accused persons plead guilty (Easton and Piper, 2012: 96).<sup>77</sup> The challenge to these statutory declarations, however, lies in the fact that, sentencing differential will always have closer or even similar effects on the defendant as much as inducement will have (Gallagher, 1974: 45). This, of course, is in the face of the arguments that the defendant who willingly pleads

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<sup>76</sup> *R v March* (2002) 2 Cr App R (S) 98.

<sup>77</sup> Sentencing Guidelines Council, Reduction in Sentence for Guilty Pleas Definitive Guidelines, 2007 (Revised)

guilty while sufficiently aware of his rights, should be considered as someone that relieves the community to a greater or lesser inconvenience, and should be rewarded (Bradley, 1999: 72-73). While this line of argument sounds compelling, it is obviously lacking in perspective as it fails to give adequate consideration to other aspects such as coercion and threat that have characterised the institution of plea bargaining. Hence, Bradley's argument appears to look at the end and not the means through which a negotiation was achieved. It also fails to admit the fact that in criminal justice, the process is as important as the outcome.

#### **5.4 Lack of transparency and public participation**

In his work 'Transparent Policing', Luna (1999) described how the secret enforcement of laws harms trust, damages legitimacy and affects the general perception of justice. This is similar to Bentham's philosophy which insists that the legitimacy and strength of legal principles and procedure are premised on the transparency of the system (Müller-Schneider, 2013: 51). Hence, transparency is not only at the centre of criminal justice, but also a fundamental aspect of jurisprudence. It is emblematic of fairness, equity, and the confidence that the law is fair and open to address the excesses and misconducts of officials (McCormick and Garland, 1998: 27; Zedner, 2004: 15-16). Likewise, argued Blumberg, it is through openness that "possibilities and opportunities fraught with the danger of venal and dishonest release of defendants on the pretext of bargaining" will be avoided (1967: 179).

The institution of plea bargaining has been heavily criticised for its lack of procedural transparency (Felkenes, 1976: 136; Lynch, 1994: 116; Stuntz, 2006: 947). As much as open trials serve as a means of illuminating facts, evidence and official misconducts, the lack of transparency in plea bargaining serve as a tool that covers them up (Zacharias, 1997: 1178). Hence, the legitimate interest of the community in ensuring that the law works even against the law enforcer becomes compromised (Alschuler, 1968: 79). Blumberg argues that the amount of secrecy common in plea bargaining creates the distinct possibility for even culpable defendants to benefit (1967: 179).



What is even more problematic is that plea deals are influenced by a range of factors such as the degree of compromise among parties, coercion of defendants, personal interest of prosecution, administrative desire for efficiency instead of legality etc.,, most of which are outside the acceptable norms of criminal justice's idea of adjudication based on facts and evidence (Wright and Miller, 2002: 32-35). In the end, the surrounding circumstances that influenced the outcome remains known only to the few parties involved (*ibid*: 34). Arguing for transparency in the process of justice delivery, Felekens emphasised that basic constitutional tenets "are opposed to the rule of men; rather, the accepted rule of law demands that its legal processes be open to the scrutiny of the public as well as the appellate courts" (1976: 134-135). Schulhofer also maintained that any form of justice achieved behind closed doors impairs the possibility for the effective punishment of crime and also the accurate separation of the guilty from the innocent (1979: 1979). Hence, the notion of Baldwin and Mcconville who criticise plea bargaining as mainly an institutional routine meant to provide administrative convenience to attorneys and judges (1979: 300). In the quest for convenience, officials have become complacent in dealing with the many problems that lack of transparency brings.

Looking at the other side of this debate, it obvious that any attempt to make plea bargaining a public affair will inevitably reduce the number of successful negotiations, which will, in turn, lead to more trials, fewer convictions and more burden on the criminal justice system (Gentile, 1969: 544). This is because by turning the system into a transparent process, many of the skewed negotiation technics and unethical behaviour that have plagued the system may not be condoned. In his argument, Gentile contends that to sustain the practice of plea bargaining, prosecutors and defence attorneys, who are capable of protecting their interests, should be allowed to devise their own mode of settlement (Gentile, 1969: 544). There are, however, a number of problems with this line of argument. The first is that secrecy limits any external review and, therefore, makes the process vulnerable to abuse and corruption. Secondly, defendants, especially those under-represented by legal counsels face the risk of been left at the mercy of the professional and powerful prosecutor. Thirdly, as crime continuous to be an offence against the state and not against an individual, any process or outcome that prevents the public from knowing the truth affects the legitimacy of the entire criminal justice system. Another problem is where the public perceives that the

interest of the prosecution and those of the court are aligned against those of the individual defendant (Hessick and Saujani, 2009: 231). While the desire for efficiency, expediency and finality are incentives that are hard to reject in the face of workload and cost, these utilitarian elements must also be balanced with the values of 'process rights' to ensure that defendants are not subjected to unfair secret arrangements in which the fundamental values of justice are undermined.

## 5.5 Conclusion

Considerable evidence point to the fact plea bargaining contradicts some of the most important principles of due process such as transparency, consistency, and freedom from coercion. Yet, it is no doubt that plea bargaining had also provided real benefits in addressing some of the challenges of criminal justice, particularly those of protracted criminal procedure. Furthermore, it has become a means to remedy or to 'repair' the excessive levels of punishment resulting from the kind of punitive legislation which has been promoted by crime control advocates and populist political groups (Jung, 1997: 122). The challenge here is that, without addressing some of the flaws inherent in the process of plea bargaining, the system will continue to produce results that are inconsistent with criminal justice ideals, the aftermath of which may continue to see the guilty as well as the innocent been convicted.

This chapter has also shown that the institution of plea bargaining has presented a situation that accommodates bureaucracy in criminal justice administration that allows a practice environment where the state officials, particularly the prosecution to have different options of either pushing for a full trial or working towards a negotiated settlement. As Langer states, they routinely act as the sole *de facto* adjudicators of cases that, when they decide to dismiss charges, they effectively acquit the defendant, and when they pursue and obtain a guilty plea, they effectively convict (2005: 250). This is because whatever the motive is on the side of the prosecution, a charged dropped lets the defendant off and a guilty plea automatically convicts the defendant. This reconfiguration of the role and responsibilities of parties and the imbalance of power has exposed criminal justice to legitimate criticism, prompting "reformists" to demand for rules that will place officials under strict ethical

obligation and practice guidelines. Above all, the sentiment of equality and fairness, which are essential for the development of legitimate legal reform are becoming irrelevant, especially to those who do not accept that plea bargaining has enormous flaws.

The amount of evidence demonstrating the improper behaviour of officials in trying to secure guilty pleas will continue to raise questions as to whether to persist with a system that is guided by neither procedural standards nor by the rule of law (Cohen and Dobb, 1989: 91), or to reject it. Notwithstanding the strong utilitarian arguments put forward by proponents, the fact that plea bargaining is deeply compromised by lack of transparency, coercion and inconsistency in sentencing will continue to generate widespread concerns in public and scholarly discourse. This becomes even more problematic because little is known about the rules followed, the ones circumvented, and how many are broken behind the invisible curtains of plea negotiation.

The various arguments contained in this part underline the problems facing jurisdictions such as Nigeria. It demonstrates how the emergence of plea bargaining and its application have generated diverse opinions on the future of criminal justice. The search for procedural alternatives to full trials has not only allowed plea bargaining to gain prominence in different jurisdictions, but also reveals how reforms in criminal justice are sometimes capable of affecting the traditional foundation of justice. For example, evidence has shown how plea bargaining promotes managerialism at the expense of adversariality. It also shows how the inquisitorial concept of 'search for the truth' is replaced by an administrative way of decision making.

However, as discussed at the beginning of this study, the search for efficiency has been the driver of plea bargaining. This, as will be seen in subsequent chapters, is among the key arguments for the emergence of plea bargaining in Nigeria. A closer look at the opinions of some scholars also demonstrates the legitimacy of the utilitarian juxtaposition for plea bargaining, and the strength of the decision theory model as key to understanding the dynamics of individual plea deals. The plethora of arguments, empirical evidence and theories discussed so far are necessary foundations for understanding the emergence of plea bargaining in Nigeria and elsewhere as much as they are also relevant for the

subsequent analysis of the practical application, problems and advantages of this system in Nigeria.

## **Part B**

“If we never do anything which has not been done before, we shall never get anywhere. The law will stand still while the rest of the world goes on, and that will be bad for both.” Lord Denning in *Parker v Parker* [1954] All ER 22.

## **Chapter Six**

### **The emergence of plea bargaining in Nigeria.**

#### **6.0 Introduction**

In discussing the emergence of plea bargaining in Nigeria, this thesis contributes as an original work that for the first time looks at the concept of plea bargaining in Nigeria from an empirical perspective. As will be seen in subsequent chapter, the effort made was to find and discuss and analyse data from primary sources on the emergence, development and application of plea bargaining in Nigeria. It is also the first indepth study that looks at the provisions of the new ACJA 2015 as they relate to the procedure of plea bargaining in Nigeria.

Throughout the first part of this thesis, a wide range of factors that led to the introduction plea bargaining in different jurisdictions around the world have been identified. In subsequent chapters, it will be shown that one of the major arguments for plea bargaining in Nigeria was the inability of conventional trials to deal with cases of corruption and other financial crimes. In particular, it was the establishment of the two prominent special anti-graft commissions, i.e., the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices Commission (ICPC) in 2000 and 2003 respectively that heralded the debate on plea bargaining in Nigeria.

Over the last decade, these two anti-graft agencies have embarked on the relentless investigation and prosecution of financial crimes and have used both trials and plea bargaining to secure convictions. Although there is no record to suggest that plea bargaining has occurred anywhere and at any time before the establishment of the two commissions, there is evidence to show that since the commissions came into existence, a number of cases involving high profile government officials were subjected to plea bargaining. There is also a strong argument among proponents that one of the motivations for using plea bargaining was the failure of conventional mechanisms (courts and prosecution) in dealing with these kinds of offences. (Okwori, 2010; Osipitan and Odusote, 2014; Adebayor, 2014).

Since it first emerged within the Nigerian criminal justice practice, plea bargaining has continued to generate enormous criticism mainly on the basis that the system was illegal and completely incompatible with the objectives of fighting corruption (Osipitan and Odusote, 2014). Proponents, however, claimed that the system had proven to be effective, especially in the face of complex cases that were hard to prosecute and have historically been impossible to convict.<sup>78</sup>

As the practice continued, scholars and commentators have attempted to discuss its legality, utility, nature, effect and significance to criminal justice administration. Often, the argument is premised on whether the system serves the general and legitimate interest of the society or whether it was a transplant meant to serve personal and institutional goals. What is obviously lacking in this debate was an empirical study on how the system emerged; how it operates, and the extent to which it breaches or compliment criminal law and criminal justice procedure and reforms in Nigeria. This is by far the major gap that this study intends to fill.

## **6.1 Background to the emergence of plea bargaining in Nigeria**

There is a near consensus among both scholars and legal practitioners that the establishment of the EFCC and the ICPC at the turn of the millennium was the beginning of plea bargaining in Nigeria (Adebayor, 2014, Okwori, 2010).<sup>79</sup> As was the case in Germany after its unification, discussed in Chapter four of this study, the motivation to use negotiation instead of the full trial was augmented by the determination to ensure expedited conviction and the recovery of the proceeds of corruption in both the public and private sectors (Adebayor, 2014). Yet, a comprehensive study tracing the genesis of plea bargaining in Nigeria must also involve an understanding not only of the motivation for plea bargaining, but also the policy choices that resulted in the establishment of the two anti-graft commissions as well as the trajectories of Nigeria's political transition since independence in 1960.

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<sup>78</sup> In interviews No. 1 and 9.

<sup>79</sup> Also in Interviews No. 2, 3, 6, 9, 10, 11, 14, 20 and 29,

The period immediately after independence was essentially a formative stage for most institutions, including criminal justice. Six years into its new found independence and democracy, there was military coup which culminated in a civil war (Panter-Brick, 1970; Diamond *et al.*, 1997, Joseph, 2014). Subsequently, Nigeria remained under military rule until 1979 (*ibid*). This was again interrupted by another coup in 1983 (*ibid*). One military coup followed after another, and the country continued to survive under dictatorships and authoritarianism until the elections of 1999 (Joseph, 2014).

The implication of these series of military interventions was that constitutionalism, and essentially the rule of law were weakened, substituted essentially with authoritarian military Decrees and Edicts. This affected most democratic and civil institutions and created inefficiency in constitutional criminal justice (Ojo, 1987; Nwabueze, 1992). Because of the way the lack of the rule of law creates a power imbalance, most courts, and their decisions became ineffective in the face of an overriding military dictatorship. With a weak legal system and little adherence to the rule of law, corruption, embezzlement, and abuse of power became prevalent.

The return of democracy in 1999 came with the challenges of reinvigorating the political and economic status of the country, which also entailed restoring the strength and efficacy of the justice system. This was arguably a task that is not achievable within a short term (Jega, 2007). Another policy decision of the new democratic government was to develop a radical approach towards the fight against systemic corruption and other economic crimes that were the hallmark of most of the previous military dictatorships (Fagbadebo, 2007: 29). At the inauguration conference of the Ibadan School of Government and Policy, former president Obasanjo told the crowd that, identifying corruption as the greatest single threat to society was the reason he established the ICPC and the EFCC.<sup>80</sup>

It is, however, important to state that there are long-existing laws within the Nigerian criminal statute that deal with the investigation and prosecution of crimes of public corruption,<sup>81</sup> breach of trust, criminal misappropriation, fraud, etc. (Obilade, 1979). Yet, it

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<sup>80</sup> The Tribune, Nigeria, 02/02/2016.

<sup>81</sup> Section 98 of the CCA for examples deals with matters to do with corruption by public officers.



was obvious that the previous approach to prosecution needed restructuring. Hence, policy makers were compelled to make sweeping reforms by establishing new and dedicated commissions. This development was welcomed both in Nigeria and internationally.<sup>82</sup> Most scholars and commentators agree that economic crimes were endemic in Nigeria and were having a colossal effect on the development and integrity of the country (Obayelu, 2007; Kate, 2010; Ogbodo and Mieseigha, 2013). Hence, the establishment of these commissions opened a new page in Nigerian criminal justice strategies. For the first time, serial fraudsters, senior government officials and leading captains of industries were investigated, indicted and successfully convicted for different financial crimes (Obuah, 2010; Adebani and Obadare, 2011). A number of these cases were however, disposed using some elements of plea bargaining, often charge bargain i.e., the case of Cecilia Ibru (Iwuchukwu, 2014: 201) and the earlier case of DSP Alamieyeseigha (Akinola, 2012: 21-22). Despite the success in securing convictions, this unorthodox approach to criminal cases ignited new questions as to why a justice system that was purely adversarial should resort to a procedure of dropping charges and penal discount, especially since this was not a procedure known to Nigeria's criminal law.

Yet, there was a silent resolve among policy makers that to successfully prosecute cases of corruption, it is necessary to reform the workings of the criminal justice system and also give other constitutional bodies the powers to enable them to work effectively.<sup>83</sup> Added to this was the concern and pressure of the International Community to make the Nigerian criminal justice system effective enough in dealing with the cases of corruption and financial crimes.<sup>84</sup> As a result, a number of reforms were proposed, one of these was the establishment of the Independent Corrupt Practices Commission (ICPC) in 2000, as a body dedicated to combating corruption and guiding transparency and integrity in public service.

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<sup>82</sup> See for example "United Nations Global Programme against Money Laundering, Proceeds of Crime and the Financing of Terrorism (GPML)," Independent Evaluation Unit Document of February 2011. See also, "Actions Against the Abuse of the Global Financial System: Report from G7 Finance Ministers to Heads of State and Government", Okinawa, 21 July, 2000; "Financial System Abuse, Financial Crime and Money Laundering – Background Paper.", February 12, 2001. On the OFC Program contained in the "Offshore Financial Centres: The Role of the IMF," June 23, 2000.

<sup>83</sup> In interview No. 19 and 28.

<sup>84</sup> Report on Transnational Organized Crime in the West African Region. United Nations Office on Drugs and Crime Vienna, 2005; Financial Action Task Force on Money Laundering (FATF). Mutual Evaluation & Follow up Reports. Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) document.

The ICPC did not achieve the anticipated success, especially in areas of prosecution of cases of corruption. As a result, the government, in 2003 decided to create a sister commission i.e., the Economic and Financial Crimes Commission (EFCC), which was then given more powers and jurisdiction including some form of strategic partnership with international agencies like the Interpol.<sup>85</sup>

### **6.1.1. Independent Corrupt Practices Commission (ICPC)**

The Independent Corrupt Practices Commission (ICPC) was established under the Corrupt Practices and other Related Offences Act 2000, No. 5 Laws of the Federation of Nigeria (henceforth, ICPC Act). The commission was tasked under Section 5 (1), ICPC Act, to receive, investigate and prosecute allegations of corruption and other related offences. The commission also has powers to search properties and seize items if suspected to be the proceeds of crime (*ibid*). Other provisions of the Act also authorise the Commission to examine, direct and supervise a review of the practices, systems, and procedures of public bodies, particularly in situations where the Commission is of the opinion that such practices will aid or facilitate fraud or corruption.<sup>86</sup>

In relation to what constituted criminal offence by a public official, the Act created a number of crimes, including what in tort law may only qualify as strict liability. Section 8 of the Act, for example, stated that agreeing or even attempting to receive or obtain any property by corrupt means was a punishable offence. Other offences under this provision included an official asking or obtaining any form of benefit for themselves or on behalf of others. This also included involvement in receiving any kind of favour for duty done in the discharge of official conduct. While these crimes may be different both in degree and context, i.e., the attempt to receive any benefit consensually and the crime of compelling any party to give favour e.g., to threaten a party that unless he or she pays money then there would be consequence., In this kind of circumstance, the law prescribed a blanket

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<sup>85</sup> 6th INTERPOL Global Programme on Anti-Corruption, Financial Crime and Asset Recovery, 7-11 October 2013 - Abuja, Nigeria.

<sup>86</sup> Powers and immunities of the Officers of the Commission, ICPC Act. Cap 359 LFN. 5.

punishment of seven years imprisonment. Furthermore, Section 26 of the Act emphasises the idea of expediency in the prosecution and disposal of these cases.

On the need for expedited prosecution, the Act provided that prosecution for an offence “shall be concluded and judgment delivered within ninety (90) working days of its commencement save that the jurisdiction of the court to continue to hear and determine the case shall not be affected where good grounds exist for a delay.” This clearly indicates how the law placed upon the prosecution an extra burden to dispose cases within the limit of specified period. Taking these provisions into context, one is bound to concede that the law did not distinguish the gravity of these offences by placing a uniform penalty on all of them and imposing upon the prosecution in all cases the task of securing conviction quickly. The nature of this law has also added to the pressure to subject cases to some form of summary procedure instead of pursuing the long path of a full trial. In this sense, both the prosecution and the defendant are likely to look towards a negotiated settlement because the defendant is worried about the potential of a harsh sentence, and the prosecution is concerned about the time and resources needed to pursue a full trial.

### **6.1.2. Economic and Financial Crimes Commission (EFCC)**

The Economic and Financial Crimes Commission (EFCC) was established under the Economic and Financial Crimes Commission (Establishment) Act 2002, Laws of the Federation of Nigeria (henceforth EFCC Act). Unlike the ICPC, whose scope and jurisdiction were limited to matters regarding domestic institutional corruption and bad practices, the EFCC was granted broader responsibilities and wider powers to engage with international bodies in investigating, combating and prosecuting cases of corruption, money laundering, and organised crimes (Ayobami, 2011; Raimi *et al.*, 2013). These wider powers are suggestive not only of the concern for financial and cross border crimes but also the feeling that earlier commitments i.e., the ICPC did not live to expectation. Moreover, evidence shows that around the period the Nigerian government submitted a proposal for the establishment of the EFCC, it was experiencing concerted pressure from the Financial Action Task Force on Money Laundering (FATF), requesting Nigeria and other countries to introduce reforms that would deal with money laundering and other financial crimes within its borders (Johnson,

2004). The FATF emphasised its commitment to helping the government implement effective reforms covering the criminal justice system, the financial sector, as well as building networks for international cooperation.<sup>87</sup> As will be fully discussed in later parts of this study, some commentators also suggested that the sense of inefficiency, especially in the way the notorious case of *Nwude* was handled was the major catalyst for the establishment of the EFCC (Abati and Osadolor, 2007; Glenny, 2008).

Evidently, the wider mandate of the EFCC made it more proactive and outreaching than the ICPC. These powers are contained in various parts of the EFCC establishment law. For instance, Section 6 (2) of the EFCC Act states that the commission, has powers to enforce the provisions of other statutes that deal with different forms of white collar offences i.e., offences defined under several laws, which include the Money Laundering Act 1995, The Advance Fee Fraud and Other Fraud Related Offences Act 1995 as well as The Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994, as amended. Furthermore, the Act, in Section 5 (1) gave the Commission extended jurisdiction, which included the examination and investigation of all crimes mentioned under the laws above i.e., money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, credit card fraud, contract scam, etc. It is also mandated to examine and investigate all reported cases with a view to identifying and prosecuting individuals and groups involved. The law also gave the Commission the powers to track, freeze, confiscate or seize proceeds derived from these crimes.

One particular area that makes the EFCC different from other investigating and prosecuting bodies in Nigeria is the powers involving the exchange of scientific and technical information with other agencies across the world. It also involved the opportunity for joint operations with foreign governments and bodies outside as well as the maintenance of a system for monitoring international economic and financial crimes in order to identify suspicious transactions. These exercises are mainly carried out through the Special Control Unit Against Money Laundering (SCUML).<sup>88</sup> The nature of these combined tasks is unprecedented in the

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<sup>87</sup> IMF Factsheet, 27, March 2015.

<sup>88</sup> The establishment of SCUML in 2005 was as a commitment by Nigeria, through the Federal Government constituted Presidential Inter-Agency Committee, to the Financial Action Task Force (FATF). The objectives

history of Nigeria's criminal justice institutions. Essentially, the EFCC was given powers and responsibilities that are traditionally divided between State Security Services (SSS), The National Intelligence Service (NIA), the Prosecutor General of the Federation, the Police and the local branch of Interpol. This also signifies that the Commission was established with grander aims and also explains, partly, why they extended their approach to prosecution by adopting new measures and procedures such as plea bargaining, in order to deal with cases effectively and expeditiously. Other provisions of the Act, which are far reaching include Section 6 (1) (b), which gave the commission powers to investigate any person if it appears to the Commission that the person's lifestyle and extent of the properties are not justified by his source of income.

As an examination and analysis of data will show in the next chapter, the EFCC has taken a leading role in utilising plea bargaining. What has rather been unclear, and consequently a crucial topic of this research, was how the practice was adopted and structured in the absence of clear legislation, and how widespread and successful the practice has been.

## **6.2 Primary causes of plea bargaining in Nigeria.**

Apart from the general political and economic reasons that motivated the applications of plea bargaining, the system of plea bargaining was also a response to the existing procedural constraints on criminal litigation. Hence, alternative and more effective routes were unavailable to achieve the objective of successful prosecution and combating those categories of crimes that have become a major challenge to Nigeria's political economy as well as point of concern to its relationship and stance in the wider community of nations.

### **6.2.1 Contingencies of the traditional method of trial**

The argument that the conventional method of trial is increasingly giving way to other alternative procedures such as plea bargaining is true of many legal regimes around the world. Various studies have revealed how the nature of crimes had changed, making investigation and prosecution more complex and expensive (Rutherford, 1984; Stuntz, 1997; McLaughlin *et al.*, 2001; Miller and Drake, 2006, Damshenas *et al.*, 2012). The rise of plea

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were to remedy identified inadequacies of AML/CFT legislation and institutional framework for implementation in Nigeria.

bargaining in Nigeria shares the same characteristic, but it also comes with its own peculiarity, since a considerable body of empirical evidence, as will be seen in subsequent chapters suggest that the system of negotiating with criminal offenders is mainly restricted to cases of corruption and economic crimes.<sup>89</sup> Hence, the changes witnessed over the last decade did not affect the entire landscape of criminal justice procedure and criminal courts in the country. Instead, it was a system that was largely restricted to within the jurisdiction of anti-graft agencies, whose main objective was to find alternative to the inefficiency in the prosecution of some special kinds of crimes. In doing so, they subsequently resorted to plea bargaining as the most preferred or the most viable option. As proponents frequently argue, the constraints imposed by the daunting reality of ensuring an effective way of dealing with cases of corruption was the key factor that pushed for the adoption of new and sometimes unconventional alternatives. As one prosecutor states:

*“Plea bargaining is not really something we are so proud of, we want to ensure that justice is done thorough conventional means, but in doing so, you also have to weigh the contingencies and device what is feasible and not to dwell on uncertainty and end up wasting resources and losing your case. Not all cases are concluded through plea bargaining; this is something people need to know. It is not like we hate trials, but you have to weigh the chances, be objective and realistic in understanding and deciding on what is reasonable and feasible in the circumstance.”<sup>90</sup>*

To understand this from the context of Nigeria's legal system, one has to understand that the prosecutorial process in criminal trials is one influenced mainly by adversarial procedure borrowed from the common law system (Mwalimu, 2005: 4). As a result, the contingencies and technicalities of proving every case beyond reasonable doubt require a considerably high standard. This becomes further complicated by the slow and inefficient nature of prosecution, judicial corruption and lack of professionalism among investigators.<sup>91</sup> As one judge lamented:

*“You know the situation with our justice system, sometimes with inexplicable issues of lack of diligent prosecution, and some degree of corruption on the bench, and even the bar. On many occasion, you see the prosecution having a good case, but*

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<sup>89</sup> Interview No. 3, 11 and 14.

<sup>90</sup> Interview No. 9.

<sup>91</sup> Most criminal cases, particularly in magistrates' courts are prosecuted by junior Police officers who are mostly not learned in law and procedure.

*somehow, witnesses begin to disappear from the court, the evidence starts taking another dimension, and before you know it, you are faced with a situation that it is no longer possible to convict.*"<sup>92</sup>

The major challenge to plea bargaining, however, had been the lack of clear legal framework on how to substitute trial with a different system entirely. This has further expanded the debate among scholars, practitioners and other commentators. The argument by proponents is that, to achieve the goal of dealing with these crimes, the criminal justice system needs to be reviewed in ways that will give room for new procedural strategies such as plea negotiation.<sup>93</sup>

Some referred the need for new criminal justice measures to developments in the last two decades of crime syndicates with ties to Nigeria (Buchanan and Grant, 2010).<sup>94</sup> These criminal organisations, also known as Nigerian Crime Enterprises (NCE's) became a problem not only in Nigeria but internationally (*ibid*). Yet, effective investigation and prosecution were constantly hampered by the technicalities of the traditional adversarial prosecution procedures (Osipitan and Odusote, 2014). Compounding these challenges were bottlenecks such as 'interlocutory appeals' used to delay court process for decades until evidence or witnesses begin to either disappear or contradict themselves.<sup>95</sup> Many cases, therefore, remain in court for years due to these adversarial technicalities.<sup>96</sup> These problems therefore gave some degree of legitimacy and justification for the adoption of alternatives methods.

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<sup>92</sup> Interview No. 3.

<sup>93</sup> In interviews No. 1, 14 and 22.

<sup>94</sup> In interviews No. 1 and 28.

<sup>95</sup> The principle of interlocutory appeals has succeeded in ensuring delays in court processes. The as Supreme Court position has also compounded this problem by insisting that "the court should not, upon an interlocutory application, make a pronouncement amounting to a pre-judgment on issues which are yet to be resolved *Adiatu Ladunni vs Oludoyin Adekunle Kukoyi and others* SC 27/1970; *Chief Samuel Adebisi Falomo v. Obaomoniyibanigbe and others* SC. 127/1995; *Onwuegbu v. Ibrahim* (1997) 3 NWLR (Pt.491) 11.

<sup>96</sup> An example of this is the on-going court case of companies involved in Nigeria's state-run fuel subsidy scheme through which the country lost \$6.8bn between 2009 to 2011. A senate report in 2012 revealed a number of companies among the Seventy-two fuel importers; some with allegedly close links to senior government officials are involved in this fraud. In one case of the cases, payments totalling \$6.4m flowed from the state treasury 128 times within 24 hours to "unknown entities". Yet, the cases are still in court with no sign of ending any time soon.

The argument for the efficacy of plea bargaining becomes even more persuasive following criticism of the way some notorious cases were previously mishandled e.g., the famous case of Nwude (Schuller, 2010: 97). Scholars described this case as one of the largest banking frauds in world history (*ibid*). The accused swindled 242 million Dollars from Banco Noroeste of Brazil,<sup>97</sup> undermining the financial position of the bank so seriously that it collapsed in 2001 (Oriola, 2007). An international investigation into the incident began across Switzerland, Nigeria, UK, the US and Brazil (Glenny, 2008). The accused persons were subsequently traced to Nigeria. But due to the ineffective nature of the investigation and lack of prosecutorial will, the trial was protracted and almost compromised (*ibid*). It was with the establishment of the EFCC that the matter was reopened and through plea bargaining, the EFCC concluded the case and the conviction of the offenders (Obuah, 2010: 3).

### **6.2.2 International influence**

Another explanation for the emergence of plea bargaining was the pressure by international bodies for legal reforms in Nigeria, especially as organised crimes continued to increase in the country. There is also evidence to suggest that the resolve by the ICPC and the EFCC to adopt plea bargaining was a reflection of the trend and the growing interchange of ideas and legal strategies happening across the world.<sup>98</sup> Around the turn of the millennium for instance (shortly before the ICPC and the EFCC were established), institutions like the International Monetary Fund (IMF) made the fight against money laundering, financing of terrorism and other related crimes a priority.<sup>99</sup> The IMF claimed to be concerned about the grave consequence of these crimes on the integrity and stability of both domestic and international finance and economy (*ibid*).

As seen earlier, there is also evidence to suggest that in countries like the UK, who share close economic, legal and political ties with Nigeria, there was a shift from insistence on adversariality to some form of plea negotiations. Similarly trend was evident in countries like the US, where Federal courts continued to witness a significant rise in the use of plea

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<sup>97</sup> Banco Noroeste was a Brazilian commercial bank.

<sup>98</sup> In interviews No. 6, 9 and 28.

<sup>99</sup> IMF Factsheet, March 27, 2015.



bargaining (Wright and Miller, 2003: 1415).<sup>100</sup> Hence, there is a reason to suggest that the two commissions in Nigeria were not isolated in their use of plea bargaining. In line with these developments, one respondent stated:

*“Part of the reason plea bargaining started in this country (Nigeria) has a lot to do with the developments in other partner nations where plea bargain was increasingly used for the purpose of dealing with most criminal cases.”<sup>101</sup>*

Apart from following the trend of other nations, Nigeria was also aware of the consequence of not dealing properly with the growing number of organised crime and financial corruption in the country. These crimes not only diminish the economic prospect of nations, they also hinder the prospect for foreign investment, affecting international capital flows necessary for development and employment, especially in developing economies (Bartlett, 2002). In the end, the nation's economic stability may be severely affected, causing a diminished macroeconomic performance, welfare losses, draining of resources and likely spill-over effects on the economies of other countries (Sharman, 2008).<sup>102</sup> Hence, policy makers were aware that Nigeria cannot afford the continues lack of efficiency in its criminal justice system. They were also aware that traditional methods of investigation and prosecution have proven quite ineffective, particularly in combating these kinds of crimes. Therefore, the need to create more effective investigating and prosecuting institutions became an ultimate priority leading to the establishment of the ICPC and the EFCC; two agencies that subsequently resorted to the use of plea bargaining to ensure expeditious disposal of cases.

Responding to this study, officials admitted that, from the onset, the commissions have placed emphasis on the possibilities of adopting alternative procedures that will make conviction easier.<sup>103</sup> Moreover, Nigeria was at the forefront in the establishment of the *Groupe Intergovernmental d'Action Contre le Blanchiment d'Argent en Afrique de l'Ouest* (GIABA).<sup>104</sup> Established in 2000, GIABA was modelled on the Financial Action Task Force

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<sup>100</sup> It is important to note that, the EFCC and the ICPC were also Federal prosecution agencies and their cases are often instituted in Federal courts.

<sup>101</sup> Interview No. 2.

<sup>102</sup> *R v Dougall* [2010] EWCA Crim 1048, [2011] 1 Cr App R (S) 37.

<sup>103</sup> In interviews No. 14, 24 and 28,

<sup>104</sup> GIABA in English means Inter-Governmental Action Group against Money Laundering in West Africa. It was established just before the creation of the ICPC and the EFCC.

(FATF) to work with member states in the subcontinent to ensure compliance with International Anti Money Laundering and Countering Finance of Terrorism (AML/CFT) standards. Nigeria again took centre stage in ratifying the objectives of this action plan and promoting the cause of fighting against organised crimes through its own domestic commissions, i.e., the ICPC and EFCC. Other affiliations to the GIABA concept were the United Nations Office on Drugs and Crime (UNODC), the European Union, Interpol, the International Monetary Fund (IMF), the FATF, the Commonwealth Secretariat and other bodies that share a common interest in the fight against organised crime. The challenge for Nigeria in keeping up with the fight against corruption is its history of cumbersome and slow legal process. Hence, plea bargaining, which is seen as an alternative used in other legal regimes was subsequently adopted to deal with cases of corruption and organised crimes. As will be seen in the later part of this research, a number of high profile cases of public corruption that will ordinarily remain in court for decades were expeditiously dealt with through plea bargaining.

The EFCC, by virtue of its establishment Act and extended role had since become part of a larger global network of countries committed to tracing and returning looted funds.<sup>105</sup> In some instances, this includes extradition for cases of fraud and cybercrime. For example, as recently as 2015, six Nigerians were extradited to face justice in the US for offences ranging from conspiracy to commit mail fraud, conspiracy to commit money laundering, wire fraud, bank fraud, conspiracy to commit identity theft, use of unauthorized account access devices as well as theft of U.S. government funds (Oluwarotimi, 2015: 1).

In the ensuing years since establishment, the mode of prosecution by these commissions, especially the EFCC began shifting towards the use of plea bargaining. In a statement released to the media in 2013, the EFCC disclosed that it has, in the last ten years, recovered N497.482 (Over 2 billion US dollars) from fraudsters and money launderers, of which N476.367 billion had been released to the victims (Ronald, 2013: 1). These kinds of massive recovery entail not only trials but also negotiation, repatriation and plea deals.

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<sup>105</sup> The Vanguard Newspaper, 12/01/2016; Saharareporters, 15/01/2015 reported that the EFCC in 2015 recovered \$23,886 for Olanta Kasza, an American based in New York who was defrauded by a Nigerian through cyber scam.

### 6.3 Transition from trial to plea bargaining

Prosecution of organised and institutional crimes everywhere in the world presents unique challenges. Often, it entails the investigation of complex transactions whose facts and evidences are difficult to decipher. The EFCC and the ICPC were established to manage this onerous task (Abati and Osadolor, 2007). Aware of the intricate structure and nature of these types of crimes, both commissions began looking towards unconventional options. This includes assurance of charge reduction or substitution of charges for guilty pleas.<sup>106</sup> Responding to this research, one of the legal officers of the EFCC narrated this gradual and inevitable shift, saying:

*"From (the) establishment of the commission, we knew our role was to prosecute proactively corruption and the organised crime that is bringing Nigeria a lot of bad names, but were also aware that the old ways are not feasible. No one is unaware of the weaknesses of our judicial system and the corruption that hinder diligent prosecution and conviction of criminals. But remember also that we are still mandated to prosecute matters before the very courts we deemed as weak and ineffective. We, therefore, made it a priority to deal with these crooks in a strategic way, by doing our investigation and putting every bit of indicting evidence right in front of them. It is then left for them to either demand for a negotiated settlement in which they know they will refund any stolen money, or go to trial and face the harshest of penalties. Other parts of the world were doing the same and getting results; and so were we."<sup>107</sup>*

Since matters began going through plea bargaining, a number of serious cases involving public corruption, money laundering, and fraud have been successfully convicted by the commissions. Foremost is the case involving the former Inspector-General of Police Mr. Tafa Balogun in 2005, and the former Governor of Bayelsa State, Mr. DSP Alamieyeseigha. In both cases, charges were dropped in exchange for a guilty plea.<sup>108</sup> But most importantly is the fact that such high level convictions were uncommon in Nigeria's legal history. Expressing broader view on this development, one lawyer states:

*"Several factors may have led to what is now plea bargaining. First, we must appreciate that many judges discourage prolonged trial process. It is in furtherance of this that we have this idea of alternative dispute resolution. But again, delayed*

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<sup>106</sup> In interviews No. 1, 9 and 22.

<sup>107</sup> Interview No. 28.

<sup>108</sup> In interviews No. 1, 22 and 28.

*prosecution also means overcrowded prisons and a huge number of people awaiting trial, which in turn defeats the very essence of justice, equity and fairness. All these, among others, have encouraged the shift by EFCC from trial to plea bargain. Although we must also admit that plea bargaining is still a very controversial practice.”<sup>109</sup>*

Essentially, this response is suggestive of the problem of protracted trial in Nigeria where a large number of defendants spend a long time in prisons awaiting trial. With plea bargaining, there is the chance of finality in a case as well as the chance of defendants spending lesser sentence. In both of these scenarios, plea bargaining is seen as a way of lessening prison congestion. Moreover, this notion of expediency is also reflected in the provision of Section 26 (3) of the ICPC Act, which explicitly requires the commission to expedite the disposal of criminal cases. Hence, plea bargaining was energetically defended and justified as the best option to fulfil this requirement of the law. Therefore, argued some respondents, plea bargaining should be seen as an essential reform towards dealing with some of the challenges that necessitated the establishment of the commissions.<sup>110</sup> Other claims include the fact that traditional criminal justice processes and the delays of prosecution have necessitated gravitation from an orthodox to a more liberal approach.<sup>111</sup> Some respondents showed reservation, pointing out that even if Nigeria’s criminal justice system needed reform, plea bargaining is untimely and is not the best option.<sup>112</sup> Yet, there is also an opposite notion that suggests, when properly administered, plea bargaining has the potential of adding to the efficiency of the criminal justice system.<sup>113</sup> For the commissions, especially the EFCC, there is growing confidence and optimism that plea bargaining is a viable alternative for securing convictions.<sup>114</sup> For example, the first Chairman of the EFCC, in a speech delivered at an Academic Staff Union of Universities Seminar at the University of Ibadan in February 2007, expressed the resolve of his commission:

Let us not mince words today, my friends, our country sways at the edge of a fundamental ethical turning point in which the unspeakable level of grand corruption runs the risk of cancelling our democratic future, the foundations of our economy and the indeed the social fabric of our nation. From the direct experience of the data

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<sup>109</sup> Interview No. 26.

<sup>110</sup> In interviews No. 1, 22 and 28.

<sup>111</sup> In interviews No. 1, 9, 19, 22 and 23.

<sup>112</sup> In interview No. 2, 3 and 27.

<sup>113</sup> In interviews No. 3, 10, 19, 27 and 29.

<sup>114</sup> In interviews No. 1 and 22.

I have at my disposal I have no doubt in mind that this is a ticking time bomb situation, and we have a monumental emergency with severe, tragic proportions on our hands (Abati and Osadolor, 2007: 2).

These statements are indicative of the enthusiasm and activism with which the Commissions pursued their cases. Yet, there is a common knowledge among officials of the Commission of the legal challenges to the application of plea bargaining, especially the lack of clear statutory provisions. Hence, prosecutors continued to demand legality for the system through inferences to certain provisions of some existing laws. The most commonly referred provisions were Section 14 (2) of the EFCC Act 2004, and Section 180 (1) of the Criminal Procedure Act (CPA). Although these provisions generally allow prosecutor, with the consent of the court, to withdraw some charges, the controversy of interpretation and application was clear. This important area of statutes and conflict of laws will be discussed in subsequent chapters.

Other respondents to this study proposed different reasons for the growth of plea bargaining in Nigeria, which include the expediency and finality of this system as against the technicalities that often make traditional adversarial processes slow and cumbersome.<sup>115</sup> The claim of expediency and finality is suggestive of the fact that in most of the cases of plea bargaining, one can hardly find situations where the defendant appeals his or her conviction. While the two anti-graft Commissions benefit from the quick disposal of cases, it was also suggested that other stakeholders in the criminal justice system also benefit from this process. As one prosecutor points out:

*"Judges are well aware of our plea bargaining system. They see us withdrawing and substituting charges. It is, I will say, to their advantage as much as it is to us. A very easy way of disposing a case without the nuances of a witness after witness and evidence after evidence."*<sup>116</sup>

Corroborating the above assertion, a judge admitted that the system of plea bargaining is well within the knowledge of judges.<sup>117</sup> Yet, they often desist from taking part in the process

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<sup>115</sup> In interviews No. 9, 11, 19, 21, 23, 26 and 30.

<sup>116</sup> Interview No. 24.

<sup>117</sup> In interviews No. 7, 17 and 21.

for various reasons that include the legal constraints and the controversy that the system has generated over the years.<sup>118</sup>

*“When you find EFCC or ICPC prosecutors withdrawing or downgrading initial charges, it is clear they have reached some out of court agreement with the offender. What they do out of court is not the business of the court. Ours is to look at the charges before us and make our decision in line with the provisions of the law.”<sup>119</sup>*

However, he went on to agree that, in most of these cases where EFCC or ICPC uses plea bargaining, *“the court certainly finds its job easier with the expedited disposal of the case. No one is under any obligation to establish the case beyond reasonable doubt.”<sup>120</sup>* These reasons, among others, had encouraged prosecutors to continue using plea bargaining whenever the opportunity to do so presents itself. As a result, the commissions have managed to secure convictions in some notable cases that ordinarily would have remained protracted in court beyond a decade. Some of these include the following:

Name	Offence	Sentence awarded	Date case was decided	Court
Tafa Balogun. Crimes committed while he was Inspector General of Police 2002 – 2005	70 Counts of Money Laundering charges involving 13billion Naira reduced to 50 counts.	Six Months Imprisonment	November 2005	Federal High Court, Abuja
Lucky Igbinedion. Crimes committed while he was	191 counts reduced to 6 for offences of money laundering and	Six months imprisonment with the option of 3.5million	December 2008	Federal High Court, Enugu

<sup>118</sup> In interviews No. 7 and 21.

<sup>119</sup> Interview No. 7.

<sup>120</sup> Interview No. 7.

Governor of Edo State 1999 – 2007	embezzlement of 24million Dollars	Naira fine		
Bode George. Crimes committed while he was Chairman of the Nigerian Ports Authority 1999-2003	163 counts reduced to 63 involving abuse of office and contract inflation worth 84billion Naira	30 months imprisonment	October 2009	High Court, Lagos
Cecelia Ibru. Crimes committed while she was the Managing Director and Chief Executive Officer of Oceanic Bank Nigeria	25 counts of Bank and Securities fraud of about 1billion Euros.	Six months imprisonment and forfeiture of 150billion in assets and cash.	October 2010.	Federal High Court, Lagos.
John Yusuf. Crimes committed while serving as a Director of the Police Pension	Two counts of conversion of public funds worth 27billion Naira	Two years imprisonment with an option of 750, 000 Naira fine.	January 2013.	Federal High Court, Abuja.

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Source: Kehinde (2013)

It is important to state here that, in all these cases, the defendants were required to return the looted fund and then pay a fine or serve prison term for their conviction. Where the defendant is given an option of a fine, they often pay instead of going to prison. Where the conviction is without an option of a fine, the defendant then serves the prison stipulated in the judgement of the court..

Although these cases captured headlines because of their notoriety, many others that were negotiated did not. As it will be seen in later part of this study, the EFCC alone had more than a hundred cases, most of which were disposed through plea bargaining. However, this study will pose the argument that while the Commissions refer to these convictions as a great success, they are only a fraction of the enormous number of criminal cases tried daily in criminal courts across the country.<sup>121</sup>

## 6.4 Conclusion

The various discussions in this chapter explain the emergence of plea bargaining as a phenomenon driven by different but interconnected factors. First, it is clear that the establishment of the two prominent anti-graft Commissions in the 2000s marked the beginning of a new chapter in criminal justice procedure. It is also evident that even as the ICPC predated the EFCC, (as it was established two years before the EFCC), overwhelming evidence suggests that the first cases of plea bargaining were those initiated by the EFCC, which according to some scholars relates directly to the wide statutory remit and jurisdictional powers granted the EFCC as against the limited ones given to the ICPC (Obuah, 2010; Raimi *et al.*, 2013).

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<sup>121</sup> Various state attorney generals are involved in the prosecution of criminal misappropriation, breach of trust, cheating, fraud, etc. Most of these are not prosecuted by the EFCC but by the office of the Director(s) of Public Prosecution (DPP) of all the 36 states of the federation. Each state has its own prosecuting body.



Nigeria, whose economic progress is imperilled by widespread cases of corruption and financial crimes, was constrained to take the centre stage in reinvigorating its criminal justice institutions. The most important of which was the creation of the anti-graft commissions. It is, however, evident that the two commissions have similar responsibilities and the EFCC was partly a response to the inadequacy of the ICPC. Hence, an inference can be drawn as to how reforms can often be difficult and may not always achieve the projected objectives.

This chapter also shows that the EFCC's expanded jurisdiction has paved the way for its collaboration with International agencies, and looking towards the reforms on the global stage, it was also swayed to adopt new measures, part of which appears to be the practice of plea bargaining. It is also evident that the convictions secured in cases that could have ordinarily been slow and protracted further re-energised the EFCC to continue exploring the possibility of concluding cases through negotiations. Although, practitioners were constantly challenged by lack of clear legislations and guidelines, it was shown throughout Chapter four of this study plea bargaining does not often need a clear legislation or even a legal framework for it to emerge or be practiced. By far, it has mostly proven to be product of spontaneous routine practice among criminal justice practitioners.

It is also evident that since the EFCC first started adopting this method ten years ago, Nigeria's criminal justice has continued to experience a legal process that is a mixture of traditional adversarial process and one in which some cases are settled through plea negotiations. Although the number of plea deals is relatively small, evidence shows that plea bargaining is an option that had continuously been adopted, with the EFCC being the body that uses plea bargaining more than the ICPC, using it mainly as a means to expedite the conviction and sentencing of white-collar criminals and to recover proceeds of crime. Although there were long-existing laws on corruption and other financial crimes that could have been sufficient, it is also important to relate back to the evidence that shows how the history of Nigeria's criminal justice, especially in the prosecution of corruption and other high profile financial offences, exposes the inefficiency of the judicial system. This has generated several recommendations for legal reforms targeted at finding feasible ways of prosecuting and convicting financial offences and other related offences. These recommendations were part of the driving force for the establishment of the two anti graft

agencies Hence, it is quite understandable that the establishment of the two Commissions; the mandate to prosecute effectively and aggressively, were all part of the same drive that is influenced by both internal and external factors. The idea that cases will remain in court for decades was increasingly becoming unacceptable. This is even more important when taking into account the political and economic objectives of using criminal justice as a means of bringing sanity scarce resources to meet the enormous demands of a developing nation like Nigeria. Hence, these alternative methods become justifiable.

Another theory on the development of plea bargaining in Nigeria is based on the proposition that international influence reinvigorates the first two theories. At the turn of the millennium, there was a renewed call by international bodies for a strategic partnership amongst nations in fighting cross-border crimes and also the prosecution of domestic crimes especially those that have a serious negative impact on economic development.<sup>122</sup> The establishment of EFCC, for example, is seen as part of the overarching reaction to these influences. This argument is further justified by the notorious case of Nwude and other subsequent cases of corruption in which billions were appropriated.

Evidently, the establishment of these commissions and their enthusiastic embrace of plea bargaining has changed the face of prosecution, especially in the way organised crimes and crimes relating to institutional corruption were dealt with. For instance, it was with the coming of these agencies that Nigeria, for the first time in decades, witnessed instances where criminal cases against top government officials and captains of private industries were disposed within a reasonable time and by constitutional courts. Although there are criticisms as to the legality and suitability of adopting this new method, what is even more contentious is the introduction of a system that was seen as alien and that which substitutes adversariality with negotiation. As will be seen in subsequent chapters this has continued to generate enormous debate and controversy among practitioners and scholars alike. This, however, did not deter plea bargaining from growing into the system, mainly among

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<sup>122</sup> These were argued from the context of various International engagements, conferences and bilateral documents across different international jurisdictions, including the 6th INTERPOL Global Programme on Anti-Corruption, Financial Crime and Asset Recovery, 7-11 October 2013 - Abuja, Nigeria, Financial Action Task Force on Money Laundering (FATF). Mutual Evaluation & Follow up Reports. Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) document and the Vienna Report on Transnational Organized Crime in the West African Region. United Nations Office on Drugs and Crime, 2005 etc

practitioners with the EFCC, who, over the years have made this practice a fitting alternative.

## **Chapter Seven**

### **General practice of plea bargaining in Nigeria.**

#### **7.0 Introduction**

Empirical evidence from previous chapters has established that in most jurisdictions around the world, plea bargaining is a product of routine criminal justice practices.<sup>123</sup> All available evidence indicates that the practice often emanates from clear legislations but at a way of creating some convenience and efficiency in the disposition of cases. This is true of Nigeria where plea bargaining began a decade ago in an atmosphere that lacks any legislation or guideline. What is evident however is that despite the criticism of illegality that greeted some of the earlier cases of plea bargaining, the practice continued unabated (Appendix A and B). In almost all the evidence gathered throughout this research, plea bargaining in Nigeria has continued as a practice exclusive to the two anti graft Commissions.

This chapter intends to rely on both primary and secondary data in analysing and explaining how the practice of plea bargaining was developed and structured. Essentially, the chapter will bring to light the methods used by practitioners prior to the enactment of an enabling law for the application of plea bargaining. This analysis will also explain how a system not sanctioned by law became possible in legal practice, and how significantly such circumstances affect parties and the entire justice system. The chapter will also identify and explain the individual role that parties play and their constraints in the process. The chapter will then conclude with a discussion of the most recent developments in Nigeria's criminal justice system, particularly the enactment of the Administration of Criminal Justice Act (ACJA) 2015 and how it has controversially altered the debate on plea bargaining and indeed the question of reform in the entire criminal justice system.

#### **7.1 Initiating plea bargaining**

Since early 2000, when the two anti-graft commission came into existence and began using plea bargaining, the debate began on the lack of clear statutory provisions and procedural guidelines for this new and unfamiliar legal process. This has made the system of plea bargaining develop through an informal and unregulated manner, mostly without any

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<sup>123</sup> See for example chapter four of this thesis.

standard mode of application.<sup>124</sup> Prosecutors wanting to apply plea bargaining were therefore constrained to formulate a kind of approach that would allow offenders to agree to plead guilty or return proceeds of crime in exchange for some terms, often in the form of reduced charges.<sup>125</sup> Since the first recorded cases around 2005, prosecutors (in the EFCC) have continuously used plea bargaining, often by making an inference to the provisions of Section 14(2) of the EFCC Act, which allows for compounding of offences.<sup>126</sup> This provision permits a prosecutor to compound any offence, 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.

Although, none of the laws commonly referred to by proponents proves that plea bargaining is lawful, those willing to negotiate have kept expanding the meaning of these existing statutory provisions in order to accommodate and give some degree of legitimacy to the concept of negotiating and obtaining the plea of persons accused of criminal offences. As will be seen later, proponents have continued to make reference to some parts of the EFCC Act and the Criminal Procedure Code (CPC).<sup>127</sup>

According to findings of this research, the most common procedure that leads to plea bargaining in Nigeria begins with an investigation into the facts and circumstances of an alleged offence.<sup>128</sup> This is done through the exercise of statutory powers of arrest and investigation vested on officials of the Commissions under Sections 27-28 of the ICPC Act (2000) and sections 6-7 of the EFCC Act (2002). Once a *prima facie* case is established, a case diary is then filed with the court.<sup>129</sup> It is important to note here that, “*whether with the prospect of a future negotiation or not, nothing starts until the prosecutor presents the case to a court of competent jurisdiction.*”<sup>130</sup> Technically, this process suggests that in Nigeria, filing of case before the courts come first before any discussion on plea bargaining. Therefore, the prosecution is also constrained to fulfil the legal requirement of filing all

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<sup>124</sup> In interviews No. 2, 3, 5, 9, 25 and 26.

<sup>125</sup> In interviews No. 2, 5, 12, 18 and 25.

<sup>126</sup> interview No. 1.

<sup>127</sup> In interviews No. 1, 9 and 12.

<sup>128</sup> In interviews No. 1, 9, 12 and 28.

<sup>129</sup> These courts are mainly State High courts or Federal High courts. Records shows that both commission do not have any case that was decided in lower courts i.e. Magistrates’ court.

<sup>130</sup> Interview No. 1.

relevant documents required for the initiation of a criminal case.<sup>131</sup> The legal standards for initiating prosecution by the EFCC or the ICPC are the same as that of all other prosecuting bodies in the country.<sup>132</sup> Every criminal matter begins with the mandatory court process provided under Sec 185 (b) of the Penal Code and also the Federal High Court Practice Direction, 2013.

The legal standard for all prosecutions before higher courts in Nigeria (the courts where the EFCC and the ICPC file their cases) requires the prosecution to attach a document called an 'evidence diary,' which contains the charges, the evidence and the list of all witnesses that they intend to present during the trial. These documents are then served on the defence as well.<sup>133</sup> One of the major implications of this legal requirement is that the prosecution is obliged to ensure that they have cogent and verifiable grounds for arraigning the accused, because the evidence diary has to contain all those evidence they intend to rely upon.

Once a case had been filed, the court gives a date for the substantive matter to begin.<sup>134</sup> During the grace period between the service of these documents and the time scheduled for a trial to commence, the defence must have perused and digested the pre-trial disclosure, which will enable them to understand what they stand to gain or risk by going to trial.<sup>135</sup> It is at this stage that most parties begin to contemplate the possibility of a negotiated settlement.

Plea bargaining, therefore, starts after a case had been duly filed before a court through the process discussed above. It may begin before the start of hearing or after, but it has to be prior to the conclusion of evidence.<sup>136</sup> Giving insight into some of the trajectories of this process, a prosecutor of the EFCC claims that due to the nature and objectives of the EFCC, a lot was invested in terms of professionalism in investigation and prosecution so that there is always the capacity for thorough investigation and solid evidence that is strong both in

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<sup>131</sup> In interviews No. 1 and 9.

<sup>132</sup> Note that the EFCC and the ICPC only institute matters before high courts of states or federal. Also in interviews No. 1, 9 and 12.

<sup>133</sup> *Adamu Suleman Mohammed Bello v The Commissioner of Police*. S.C. 19/2005.

<sup>134</sup> In interviews No. 1, 9, 12 and 23.

<sup>135</sup> In interviews No. 1, 9, 12 and 22.

<sup>136</sup> In interviews No. 1, 9, 7, 12, 19, 22, 28 and 30.

trial and in the event of plea bargaining.<sup>137</sup> He further states, *“our prime objective is to make sure we place on the table strong and solid evidence that the defence is aware of our capability of getting a conviction, this way an offer for plea bargain becomes very likely.”*<sup>138</sup> This assertion gives further credence to the ‘functionalist theory’ perspective discussed in chapter three of this research, which suggests that professionalism on the side of state officials is among the key elements that compel offenders to seek plea bargaining. Furthermore, this disclosure also confirms that the practice is mainly centred around a ‘charge bargain’ procedure, whose common pattern involves the dropping or substitution of the initial charges by the prosecution after a plea deal had been struck outside the court. The main difference with other models of charge bargaining is that in Nigeria, the matter is first presented to the court before the charges are subsequently replaced or substituted.

Another distinct feature of the practice in Nigeria, as disclosed by prosecutors, is that the offer to negotiate was originally expected to come from the defence.<sup>139</sup> There are important things to note here. The first is that lack of clear legal framework makes it unwarrantable for the prosecution, being the representatives of the state, to ask for a negotiated settlement. But then, the second aspect is that, after filing the process before the court with all the evidence, the defence will have the opportunity to peruse the evidence diary, assess its strength and decide on whether to offer to negotiate or go to trial. In both instances, the prosecution, to whom the offer is made has the upper hand because it gives him the influence to place conditions for his or her acceptance of the offer.<sup>140</sup> As stated by respondents to this research, the defence’s knowledge of a strong case against them is the prosecutor’s most potent tool to guide the negotiation process.<sup>141</sup> Explaining how this often occurs, a prosecutors state:

*“In all of the cases where I participated in plea bargaining, it is usually a case file with as many charges as we can prove, and of course, many others that may not necessarily be proved beyond doubt. With these before the court, and with the knowledge that we really mean business in our pursuance of conviction on all the charges regardless of the enormity of the stipulated maximum sentence under the*

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<sup>137</sup> Interview No. 1.

<sup>138</sup> *ibid.*

<sup>139</sup> In interviews No. 1, 9 and 22.

<sup>140</sup> In interviews No. 2, 6 and 23.

<sup>141</sup> In interviews No. 1, 11, 14, 22 and 28.

*law, the defence almost certainly runs back to us seeking for what they usually call an 'advice' or 'way forward'. But 'advice' or 'way forward' in this context means whether there is any room for concession that we are ready to give. It is an implied way of saying they want to negotiate.*"<sup>142</sup>

While this notion by a prosecutor suggests the utility of plea bargaining as an efficient mode of disposing cases, it also confirms how the idea of negotiating may not necessarily be about the substance of a case. Instead, it could simply be a means to achieve a particular objective i.e., securing conviction as expeditiously as possible even if it means compromising some of the genuine charges against the defendant. This kind of attitude certainly infringes on the principle of fairness to the victim and the values of ensuring that justice is duly served.

Another aspect relevant to the approach by prosecutors is how imposing plea bargaining is on the defendant because of the punitive nature of Nigeria's criminal legislations. This is evident from the response of prosecutors who confirmed that *"when the strength of evidence becomes clear to the defence, they end up pleading with us for negotiation on the charges because they know the implication of a full sentence."*<sup>143</sup> He gave an instance relating to punishment under the Advance Fee Fraud and other Related Offences Act (2006) in which the least is seven years imprisonment without the option of fine.<sup>144</sup> Hence, when defendants are faced with this impending long-term jail time, there is often the likelihood that they will seek for a concession to substitute the charges in exchange for a guilty plea.<sup>145</sup> The way a charge bargaining is achieved as found during this study is e.g., the offence of 'obtaining money by false pretence' as defined under the Advance Fee Fraud and other Related Offences Act (2006) attracts a sentence of seven years imprisonment without the option of a fine.<sup>146</sup> The same kind of offence 'Obtaining money by trick' defined under the Criminal Code Act (1990) attracts a maximum sentence of three years with no minimum<sup>147</sup> (here the judge has the discretion to award term below three years). From available records, these are offences and charges often interchanged by the EFCC to fulfil plea

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<sup>142</sup> interview No. 9.

<sup>143</sup> Interview No. 1.

<sup>144</sup> Section 1 (3), Advance Fee Fraud and other Related Offences Act 2006.

<sup>145</sup> Interview No. 1.

<sup>146</sup> Section 1 (3) Advance Fee Fraud and other Related Offences Act 2006.

<sup>147</sup> Section 419 Criminal Code Act, Laws of the Federation 1990.



arrangements.<sup>148</sup> It is important to state here that in the records contained in Appendix A and B, these kinds of substitutions of charges were evident. This is discussed in detail in chapter eight of this research.

The question however is, how do the parties whose case is already before a court end up substituting charges. To answer this question, respondents clarified that when prosecutors are approached by the defence for some kind of concessional arrangement over the impending charges, the prosecutors then seek for an adjournment from the court to delay the continuation of the matter and give room for the defence to make their offer.<sup>149</sup> If successful, the prosecution returns to court and applies for the withdrawal or substitution of the initial charges.<sup>150</sup> Evidence from the interviews, however, suggests that some judges may infer, at this stage that the parties have struck some kind of negotiated settlement and may even question the prosecution about the withdrawal or substitution of the charges.<sup>151</sup> This scrutiny by judges is driven by two major concerns. The first is that there has been no clear legal provision for plea bargaining,<sup>152</sup> and the second is the way plea bargaining has resulted in enormous controversy which will be fully discussed in the next part of this study. However, because of the prevailing laws that grant the prosecution the prerogative to withdraw charges, the court is left with fewer options other than to allow the application.<sup>153</sup> The charge sheet and the evidence diary is then amended to reflect the new charges.

There are many examples of this practice of withdrawing and substituting charges since the earliest cases of plea bargaining emerged in Nigeria.<sup>154</sup> For example, in the notorious case of Cecilia Ibru,<sup>155</sup> in August 2009, the EFCC brought twenty-five counts against the accused.<sup>156</sup> Pending the substantive court hearing of the matter, the defence, and the prosecution entered into a negotiation on the terms that the defendant would forfeit the proceeds of the crime amounting to 191 billion Naira (approximately 1 billion US Dollars) in

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<sup>148</sup> See for example appendix A and B of this thesis.

<sup>149</sup> In interviews No.1 and 9.

<sup>150</sup> In interviews No. 1, 9, 12, 22, 23 and 28.

<sup>151</sup> In interviews No. 1, 9, 21 and 22.

<sup>152</sup> In interviews No. 9 and 12.

<sup>153</sup> Section 181 of the Criminal Procedure Act.

<sup>154</sup> See, *FRN v Dr (Mrs) Cecilia Ibru* FHC/L/297C/2009

<sup>155</sup> *Ibid.*

<sup>156</sup> Former Managing Director and Chief Executive Officer of Oceanic Bank Nigeria.

return for lesser charges and also the dropping of most of the other charges. On those terms, the accused pleaded guilty and was convicted on only three counts, attracting a six months' custodial sentence and the forfeiture of the agreed assets and monies. A similar scenario ensued in the famous case of *Alamieyeseigha*,<sup>157</sup> where thirty-three counts of money laundering, illegal acquisition of property, corruption, and false declaration of assets, etc., were reduced to six counts in exchange for a guilty plea, a lighter sentence and the forfeiture of assets.<sup>158</sup> It is important to note here that, the law allowing substitution of charges is a common characteristic of the adversarial trial, which on its own does not necessarily suggest that such substitution is a question of negotiation. Rather, it is a normal procedural aspect of the adversarial system where every aspect of fact, evidence and charges are decided by the prosecution before they are presented to the court for trial. What is different here is that, the substitutions in both of these cases were not done because the prosecution could not prove the charges but because of the negotiation to plead guilty without contest.

Taking into account the powers of the prosecution as disclosed by many respondents, especially the situation where the defence is expected to be the one that offers to negotiate, along with the punitive nature of sentence on trial, the system in Nigeria undoubtedly puts the defence in a weaker position. The effect of the prosecutor's far-reaching powers and near absence of disincentives in plea bargaining is well covered in scholarship as a phenomenon that creates negotiating environments that are unfair and domineering. This is because the defendant has to deal with a system in which the prosecution is not constrained by any legal guidelines or limitations, and can therefore use different tactics including threat of punitive sentence to secure a guilty plea. This type of situation has consistently generated broad criticism from scholars, commentators, and even judges.<sup>159</sup>

Further compounding this problem is the evidence which suggests that almost all

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<sup>157</sup> *State v DSP Alamieyeseigha* CA/PH/124/2006.

<sup>158</sup> Diepreye Alamieyeseigha was the Governor of Bayelsa State, Nigeria from 1999 to 2005.

<sup>159</sup> Recently, for example, the Norwegian Supreme Court in the Norwegian Supreme Courts Grand chamber judgment (Rt. 2009 p. 1336, paras. 20 and 23) opined that a criminal procedure where the defendant's legal position is dependent on the prosecutors, is highly unfortunate.

negotiations are concluded privately,<sup>160</sup> making it even more convenient for the prosecution to exert more pressure and take advantage of the defence susceptibility. Some proponents who responded to this study, however claimed that, despite the privacy, plea bargaining in Nigeria is mostly a consensual and credible process.<sup>161</sup> Their argument is that *“all arrangements are coordinated in a manner that allows the defence to make a willing and informed offer through an application to either the head of operations or that of the legal department of the Commissions.”*<sup>162</sup> If accepted, this application is then processed and discussed in a conference with the defence, the investigators and the legal team of the ICPC or the EFCC, in order to agree to the terms and conditions of the negotiation.<sup>163</sup> The process also entails a system where *“if individual victims are to be restored, the victims or their representatives are also called upon to participate in the conference.”*<sup>164</sup> While this sounds like quite a formal and fair bureaucratic process, it is coming from respondents that are all prosecutors. Moreover, the process still does not give sufficient guarantees about what exactly occurs behind closed doors, as the fear of punitive sentence and the lack of legal safeguards for the defendant are factors that leave the defendant vulnerable to a judicial process that is not transparent<sup>165</sup>.

Another approach by the Commissions is the use of accomplices to acquire evidence against co-accused. This is especially common when a crime is so deeply embedded in institutional routines that evidence is hard to acquire or to prove.<sup>166</sup> Usually, where offences are admitted by some respondents, a negotiation of this nature ends up with extensive compromises and assurances because, if the negotiation fails, the chances of convicting the accused become highly unlikely.<sup>167</sup> Where the accomplice agrees to testify, his particulars are also included in the evidence diary as a potential witness.<sup>168</sup> An example of this is the case of Tochukwu,<sup>169</sup> a Nigerian drug trafficker who, through a deal for charge concession,

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<sup>160</sup> In interviews No. 1, 7, 9, 12, 19, 28 and 29.

<sup>161</sup> In interviews No. 1, 9, 22 and 28.

<sup>162</sup> Interview No. 22, Also in No. 9.

<sup>163</sup> Interviews No. 1, 9, 22 and 28.

<sup>164</sup> Interview No. 1.

<sup>165</sup> Interview No. 22.

<sup>166</sup> *EFCC v John Yakubu*, FHC/ABJACR/54/2012.

<sup>167</sup> In interviews No. 1, 9, 19, 22, 23 and 28.

<sup>168</sup> *ibid.*

<sup>169</sup> *NDLEA v Tochukwu Harris Ubah* (unreported).

cooperated to give details about leaders and the nature of their operation.<sup>170</sup> It is important to note that also that the idea of engaging accomplices as potential witnesses is not isolated to Nigeria; rather, it is a familiar practice around the world (Katz, 1979; Bibas, 2005; Hansen, 2009). This kind of approach has been criticised on the basis that it leads to induced perjury or the investigation of an unrelated set of transactions in order to create some ‘exposure’ that will give the prosecutor effective ‘leverage’ (Katz: 1979: 446-447).

## 7.2 The concurrency of trial and negotiations

Although parties might begin negotiation before the commencement of the substantive trial in court, evidence suggests that both negotiation and trial sometimes do occur concurrently.<sup>171</sup>

*“We do not withdraw a case even when there is a negotiation going on. Instead, we keep our adjournments and wait to finalise the agreement before deciding whether to withdraw or substitute whatever charge we might have originally presented to the court.”<sup>172</sup>*

Confirming how this process works, a prosecutor disclosed that from the moment a matter is brought before the court, *“we have to make the defence understand we are not bluffing and must maintain the tempo of our case even if we think an offer for negotiation is feasible. This is the best strategy to get the defendant to throw in the towel and seek for plea bargaining.”<sup>173</sup>* What this suggests is that unless the offer to negotiate comes at the beginning of the hearing, the case continues through a full adversarial process. Evidence also shows that in some cases, a matter goes as far as the calling of series of witnesses.<sup>174</sup> A prosecutor stressed that prosecutors do not stop or delay a case in anticipation of a defendant's offer, such delay or adjournment comes when the defence has shown interest

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<sup>170</sup> Mr Tochukwu was arrested after a painstaking operation and cooperation with others that are aware of the operation pattern. He was found with illegal exportation of 576kgs of narcotics to Durban, South Africa through Apapa Port, Lagos, Nigeria. The drug made up of 266kg of methamphetamine and 310kgs of ephedrine valued at N4.6 billion Naira. Premium Times, 04/12/ 2015.

<sup>171</sup> In interviews No. 1, 7, 22 and 28.

<sup>172</sup> Interview No. 22.

<sup>173</sup> interview No. 1.

<sup>174</sup> In interviews No. 1 and 22.

in offering to negotiate.<sup>175</sup> What prosecutors do he says, is to keep their case open and continue with the presentation of evidence until *“defendants become convinced that we really mean business and that we are ready and willing to pursue a conviction and seek the maximum sentence.”*<sup>176</sup>

Another important finding is the explanation given by a prosecutor on how charges are substituted:

*“There are ways we deal with the substitution of charges without necessarily offending the law... Assuming a man was charged under Sec 1 (1) of the Advance Fee Fraud Act for an offence of obtaining money by pretence, which attracts a minimum of seven years without option of fine and the accused decides to plead guilty, the charge is usually substituted by for instance, section 516 of the Criminal Code Act, which says, obtaining money by trick. These two offences have similar ingredients but different punishments. Another way is to decline to tender some of the evidence during the trial and the court will therefore not consider those charges for which you refuse to tender enough evidence. That technically reduces the potential for large sentence.”*<sup>177</sup>

From this explanation, one can deduce how the presence of different statutes with similar offences have created the possibility to fulfil the agreements in plea bargaining, even when there were no clear laws to support these substitutions. Essentially, the practice was framed in a way that, without going outside the statutes, prosecutors have devised techniques to fulfil their end of the bargain. Although this does not necessarily save the defendant from punishment, it technically confines the judge to the new charges and the sentence limit provided under the law. Another example given by respondents is that for a plea deal for the offence of forgery under the Criminal Code Act Cap 38 LFN, 2004, for which the sentence is life imprisonment without an option of fine, prosecutors substitute the charge to what is provided under the Penal Code Laws or the Criminal Code Laws, both of which have offences of forgery with a sentence limit below fourteen years imprisonment.<sup>178</sup> This clearly contradicts the familiar argument that sentence concessions are made outside the framework of the law. In the real sense, the sentences awarded are within the limit of the

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<sup>175</sup> Interview No. 22.

<sup>176</sup> *ibid.*

<sup>177</sup> Interview No. 1 also in interview No 18 and 23.

<sup>178</sup> Interview No. 22.

charges against the accused. What is rather contentious is that the original offences were sometimes not the ones for which the accused is sentenced.<sup>179</sup> In some situations, some charges are dropped even as it is evident that the accused has committed those offences. This some proponents say is necessary in order to allow for the *“a smooth negotiation where there are several charges against the accused, and he or she is ready to accept the remaining charges.”*<sup>180</sup>

Essentially, the criminal law in Nigeria gives the prosecutor the legitimate powers to choose and to substitute charges from a range of legislations where the nature of the offence did not fit the original charge or charges. What the law did not allow is for such substitution to be defined by some form of negotiation with the offender in exchange for his guilty plea. Again, when the courts sentence an accused based on the new charges and in accordance with the sentence limits provided for the new charges, the court is also not doing anything outside what the law prescribes. But again, the law does not allow judges to exonerate an offender of some charges because he has agreed to plead guilty to others.

This practice of choosing different legislations to enable a negotiation, which has similarities with what occurs in some jurisdictions in the US, has been criticised by some scholars as a form of selective enforcement of the law (Ma, 2002: 26). One of the foremost criticisms relates to the prosecutor’s discretion to choose from overlapping criminal statutes to fit the same kinds of charges to different types of conducts, or to fit similar conduct into different kinds of charges. These are seen as discretionary powers relating to how and what laws to uphold or disregard, which effectively turns the prosecutor into a legislator. The major problem with this common setting in plea bargaining is the way power is concentrated in the hands of the prosecution that in the end may be abused. As evidence continuous to show, this enormous powers that the prosecution has is what leads to threat and coercion that is now centre stage in the debate about plea bargaining. Hence, there is the need to revisit this familiar flaw of plea bargaining by ensuring that procedural mechanisms are put in place to check the excesses of prosecutor. One of such recommendations was to make the system open and transparent and to also allow judges to scrutinise every case of plea

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<sup>179</sup> Appendix A and B.

<sup>180</sup> Interviews No. 22, also in 12 and 28.

bargaining. A further option is the need to allow every case of plea bargaining to be open to appeal where parties become unsatisfied with the outcome.

At the end of all sorts of negotiations and substitutions, the court is then presented with an offender ready to plead guilty. Findings also suggest that, where there are individual victims to be compensated by the defence, the issue is clearly raised before conviction, and application is made by the prosecution for the court to consider restitution in its verdict.<sup>181</sup> Records of conviction from both the EFCC and the ICPC show that in numerous cases where the parties ended of plea bargaining, the courts in addition to the sentence also give monetary restitution or compensation (Appendix A and B). It is not clear whether in all of these circumstances; the prosecution needs to apply for such compensation or restitution. What is evident, however, is that in instances where such application is made, the court often considers them.<sup>182</sup>

### **7.3 Judicial participation and sentencing practices**

In most adversarial systems, the involvement of judges in plea bargaining is minimal, compared to civil law systems. Yet, both judicial participation and non-participation have been subjects of contention amongst scholars and commentators (Bar-Gill and Ben-Shahar, 2004: 45; Hessick and Saujani, 2009: 226). Evidently, the judges influence over sentencing creates an atmosphere of disproportionate pressure on defendants capable of breaching the standards of fair adjudication.

From this study, there is no evidence to suggest that judges in Nigeria were called upon to participate in the negotiation process.<sup>183</sup> On the contrary, what evidence shows is that some judges show disapproval for any act by the prosecution that suggests a plea bargain would or has taken place.<sup>184</sup> On numerous cases, especially those involving the EFCC, judges have been found to question attempts by the prosecution to amend charges, often under the suspicion that the prosecution is trying to strike a plea bargain with the defendants. *"I have*

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<sup>181</sup> In interviews No. 1, 12, 18 and 23.

<sup>182</sup> *Ibid.*

<sup>183</sup> In interviews No. 1, 3, 7, 9, 12, 18, 22, 23, 28 and 29.

<sup>184</sup> In interviews No. 1, 12 and 19.

*witnessed situations where judges openly challenge prosecutors on plea bargaining*” said one prosecutor.<sup>185</sup> He further confirmed, *“A judge once said to me, ‘I do not know this thing you are trying to do, and I am not part of it’.”* But then, even if judges are not willing to see a negotiated settlement, they cannot withhold from the prosecutor the power of amending charges. A prosecutor can at any time before the defence opens its case, amend a charge. What evidence shows is the open discontent that some judges show when they suspect that the prosecutors act was an outcome of a plea deal.<sup>186</sup>

An enquiry into the reasons why judges are not involved or why they often tend to stay away from plea arrangements revealed various motivations. Foremost is that no legal provision has granted them any participatory role in plea bargaining, and this allows the prosecution to exclude them.<sup>187</sup> In the words of one prosecutor, involving judges is an exercise that risks the potential to ruin a plea bargain as that may *“end up in unnecessary inquiries that will eventually turn into a trial. They may ask the prosecution to present some kind of evidence and even request the accused to make submissions.”*<sup>188</sup>

Another reason judges are wary of plea bargaining is the concern about the consequences of engaging in such procedure.<sup>189</sup> Evidence has shown that courts have been subjected to accusations of complicity following the outcome of some notorious cases of plea bargaining in Nigeria. For example, when the famous case of John Yakubu<sup>190</sup> was decided by the Abuja High Court in 2013 and the accused was given a two years jail term with an option of 750,000 Naira (approximately 2000 British pounds) fine for the offence of embezzling over 20 billion Naira (approximately 5 million British pounds) (Nnochiri, 2013), almost all the major newspapers and blogs in the country carried the news with accusations of complicity of the court.<sup>191</sup> Public reaction was equally a mixture of fury and disbelief. One popular news blog captioned the story as *“Pension Thief, Go Home and Enjoy Your Loot”*, quoting at the beginning of the article *“A nation can thrive under disbelief but not on injustice ~ Sheikh*

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<sup>185</sup> Interview No. 1.

<sup>186</sup> In interviews No. 1, 9, 12 and 28.

<sup>187</sup> In interviews No. 9, 7, 21, 23 and 29.

<sup>188</sup> Interview No. 28.

<sup>189</sup> In interviews No. 7, 12, 17, and 21.

<sup>190</sup> *EFCC v John Yakubu*, FHC/ABJACR/54/2012.

<sup>191</sup> Vanguard News Nigeria, January 29 January 2013.



Usman Dan Fodio” (Jimoh, 2013). Similar reactions were seen in previous cases of plea bargaining involving high profile offenders, often with blame being attributed to judges for blatantly engaging in compromise and flagrant violation of the morality and standards of law. Affirming the difficulty that judges face in these kinds of situations, respondents admitted that plea bargaining has resulted in serious controversy and accusations of judicial corruption. As a result said one prosecutor, judges do often show disapproval for plea bargaining:

*“If you are to inform the court that you are withdrawing the charges in order to do some plea bargain with the offender, then certainly you are in for an encounter with some of these judges. Not many of them will be willing to be seen openly supporting such proposition. They are aware and concerned about the public reaction and accusations. Perhaps they know plea bargaining occurs outside the court, and they also know we withdraw and substitute charges mostly, for this reason, but they do not want to be seen or perceived as part of the deal. They are very careful.”<sup>192</sup>*

Despite their reservations, some judges conceded that plea bargaining offers certain advantages to the courts:

*“Most of us are aware that prosecutors do plea bargaining. Even though we often do not support the idea, but one must admit that prosecutors and defence are not the only beneficiaries of a successfully bargained outcome. Remember, any case settled without the intrigues of calling too much witness and perusing through the vast amount of evidence, day and night, is a smooth path that adds to every judges’ record of performance. After all, every conviction reflects simply as a case heard and concluded.”<sup>193</sup>*

A clear example of ways in which judges benefit from plea bargaining is the criteria laid down by the National Judicial Council (NJC) in appraising and reviewing the performance of judges across Nigeria.<sup>194</sup> The NJC has certain conditions that are mainly based on a quarterly return of every judge’s record of cases successfully disposed. Hence, every concluded plea bargain gives the judge the advantage to dispose of a case within a very short time. Not only does this reduce their workload, but it also adds to their records of concluded cases,

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<sup>192</sup> Interview No. 1, also in No. 12.

<sup>193</sup> Interview No. 7.

<sup>194</sup> The National Judicial Council is one of the Federal Executive Bodies established under Section 153 of the 1999 Constitution of the Federal Republic of Nigeria. Their mission statement includes strengthening of the structures and integrity of courts and preserving and improving justice delivery.

thereby improving their record of performance and potentially accelerating their promotion.

Further evidence suggests that where cases are not publicised or do not involve persons of interest, some judges advise the parties to have a discussion out of court pending the final determination of the cases, particularly where restitution or compensation is involved.<sup>195</sup> There is, however, no evidence to suggest that judges out rightly advice parties to engage in plea bargaining. The empirical evidence from the study overwhelmingly suggests that the system of plea bargaining in Nigeria is based mainly on ‘Charge Bargain’.

Essentially, the absence of judges in the process of plea bargaining did not alter their powers over sentencing. This is even more so because no law allows any other party to engage in sentencing decisions in any way, including through recommendations.<sup>196</sup> Judges in Nigeria are therefore not bound by anything contained in any plea bargain on either the extent or limit of the sentence. What ties them essentially is the limit of sentence prescribed by law. Aware of this reality, prosecutors refrain from interfering with judges on issues of sentencing.<sup>197</sup> In fact, findings suggest that not doing so is the way to avoid the suspicion of any plea bargaining or even a confrontation with the judge.<sup>198</sup> Attempt to pursued the judge may also result in a suspicion of illicit arrangements between the prosecution and the defence, *“which in the end may affect the outcome of the sentence, even prompting the judge to give the full sentence when he has the discretion to be lenient.”*<sup>199</sup>

While prosecutors and defence attorneys are bound by ethical standards to guide the court on the nature of punishment prescribed by the law,<sup>200</sup> this process cannot be construed as a sentence recommendation; it is rather a reminder to the court on what the law says about a particular offence and its limit of sentence. The defence, for its part, has the right to plead

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<sup>195</sup> In interviews No. 1, 7 and 12.

<sup>196</sup> Note that in the US, prosecutors often make sentence recommendations to the judge where a plea deal had to be struck.

<sup>197</sup> In interviews No. 1, 7, 9, 21 and 28.

<sup>198</sup> In interviews No. 1, 9, and 28.

<sup>199</sup> Interview No. 22.

<sup>200</sup> in interviews No. 2, 6, 14, 22 and 29.

with the court for a lesser punishment and apply for an *allocutus*, which is often not objected to by the prosecution, especially when there was a plea agreement reached.<sup>201</sup>

Regarding the idea of judicial participation, it is again important to bring into context some recent developments that have far-reaching effects on how judges in Nigeria approach issues of plea bargaining. One of these was the reaction that followed the famous Pension Fraud case of John Yakubu (discussed earlier),<sup>202</sup> where the accused was arraigned on two counts under Sec 27 of the EFCC Act.<sup>203</sup> The ingredients of the offence involve misappropriating of billions of Naira. After the plea deal, the charges were substituted and brought under Sec 309 of the Criminal Procedure Act, (CPA). Unlike the first charges under the EFCC Act, which attract a compulsory minimum jail term of fourteen years jail term without fine, the new charge under the CPA comes with an option of fine, granting the judge the choice of either awarding a custodial sentence or an option of fine. The judge awarded a fine of 750,000 Naira fine (approximately 2000 British pounds) (Nnochiri, 2013). This was perceived as uniquely disproportionate owing to the gravity of the offence and the amount involved. Hence, the decision was followed by enormous public condemnation from activists, civil society groups, and the public. To exonerate itself from the barrage of blame and accusations, the EFCC hastily issued a statement expressing reservations about the decision of the court:

The EFCC has expressed reservation about the ruling of an FCT High Court, Abuja, which handed a six-year-jail term with the option of N750, 000 fine to John Yakubu Yusufu, one of the persons standing trial in the police pension scam. The commission is of the view that the option of fine runs contrary to the understanding between the prosecution and the defence wherein the convict consented to a custodial sentence with the forfeiture of all assets and money that are proceeds of the crime.”

Although this may seem like an exceptional case that ignited a new kind of debate on the morality and justification for plea bargaining, it no doubt reveals how the system is

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<sup>201</sup> in interviews No. 1, 9, 19, 23 and 29.

<sup>202</sup> *EFCC v John Yakubu*, FHC/ABJACR/54/2012.

<sup>203</sup> Some legal scholars are of the opinion that the Sections 27(1), 27(3)(c) and 38(2)(b) of the EFCC Act that compels persons arrested to declare their assets contravene the provisions of Section 35(2) of the 1999 Constitution which clearly states “any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his choice”.

vulnerable to abuse and is far less than the kind of reform that a political system like Nigeria expects, especially with public corruption been the leading cause of economic and institutional decay. The kind of disproportionate sentence given in this case can only be possible because of plea bargaining.

Moreover, the irony of the statement issued by the EFCC is how an agreement between the prosecution and the defence would be binding upon a judge who was not engaged in the process of the negotiation? Most significant however is the petition filed against the presiding judge, Justice Talba, by the Anti-Corruption Network (a coalition of civil society groups) to the National Judicial Council (NJC) accusing him of complicity and receiving a bribe in exchange for a ridiculously lighter penalty. In reaction to these allegations, the NJC, in a meeting held on the 24<sup>th</sup> and 25<sup>th</sup> of April 2013 under the Chairmanship of the Hon. Chief Justice of Nigeria, suspended Justice Talba from office for twelve months without pay (*ibid*).

While the decision by the NJC was welcomed by many, it no doubt has far reaching implication on the future of plea bargaining, as it sets a warning precedent for judges to stay away from making decisions on matters that have a semblance of any kind of plea bargaining. In reference to this incident, one prosecutor laments:

*“Weeks after the suspension of Justice Talba by the NJC, I was in an Abuja high court for a matter, and even though the judge would ordinarily give an option of fine to such crimes since the accused pleaded guilty after we have resolved on a negotiated agreement, she awarded both fine and custodial sentence. All of us in the legal team were shocked and surprised, but we were also aware her choice has a lot to do with the events of the previous month that saw the suspension of her colleague [Justice Talba].”<sup>204</sup>*

A similar incident that again reveals the extent to which plea bargaining has suffered a judicial setback is the ongoing prosecution where a Justice of the Federal Capital Territory High Court, sitting on the 14<sup>th</sup> of December 2015, said in open court to the prosecution, *“Don’t mention plea bargain here. I don’t want to hear about it”*.<sup>205</sup> Although the ACJA 2015 Section 396 (3) and (4), stipulates speedy trial in any criminal matters, counsel for the accused had here demanded the court to consider grounds for plea bargaining, the judge

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<sup>204</sup> Interview No. 12.

<sup>205</sup> Premium Times, 14 December, 2015.

was clear and adamant in his response, insisting only on full trial of the four accused person brought by the EFCC on a 29-count charge of conspiracy and collecting money by false pretence (*ibid*).

Considering the implications of these incidents on judicial participation, there is now a growing tendency for cases of plea bargaining to fail, notwithstanding the provisions of the ACJA 2015. Clearly, judges are becoming increasingly reluctant to allow a process that may end up in recrimination, accusations, and even suspension. But judicial participation itself is problematic. For example, studies have shown that when judges insist that parties should negotiate, it may be perceived as an administrative strategy for convenience, meant to alleviate the burden of full trial, as against the best interest of justice (Baldwin and Mcconville, 1979: 300), and where this becomes the prevailing perception of the public, it compromises the sentiment of fairness and justice. In general, judicial participation may not necessarily affect individual parties who might have consented to the outcome of the negotiation, but may affect the community's perception of justice. There is also the problem which arises where a negotiation begins with the judge deeply involved, and it fails, thereby risking the possibility of damaging the defendant's chances for a fair trial.

#### **7.4 Administration of Criminal Justice Act, 2015**

One of the most significant reforms in Nigeria's criminal justice administration was the recent enactment of the Administration of Criminal Justice Act, 2015 (henceforth ACJA). This law, which came into effect on the 15th of May 2015, is the only legislation that ever mentioned 'plea bargaining'. It is important to state that this law, which brought in some important and far-reaching changes to criminal justice administration was deliberated and passed without proper publicity and without appropriate consultations with the public. It was, like many other legislations, done by the national assembly without subjecting it to public debate. Hence, it has now become a subject of controversy. The first time the case of the ACJA became a subject of national debate was on April 16<sup>th</sup> 2016, the senate introduced

another controversial bill to amend the Act,<sup>206</sup> arguing that some provisions of the Act are fatal to Nigeria's judicial system.

In relation to the provisions of the Act on plea bargaining, it provides clear procedural rules on how and when the state can negotiate with a criminal offender. This is covered in Part 28 of the Act. The provision did not put limitations as to the type of offences that can be negotiated. Instead, it implies that all types of offences can be subjected to plea bargaining. The opening sections of this part of the statute, i.e., Sec 270 (1) and (2) gives prosecutors the powers to "receive or offer" a plea bargain to a defendant charged with a criminal offence. The section went further to state that, the prosecution may enter into plea bargaining with the defendant, with the consent of the victim or his representative during or after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defence. This is a replica of the old practice where a matter had to be filed before a court for any negotiations to begin. The implication of this process in the new Act will be discussed in the later part of this chapter.

The preamble to the Act states that the purpose of the Act is to ensure that criminal justice administration in Nigeria becomes more efficient in the speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and also the victim.<sup>207</sup> The Act states that it, "shall apply to criminal trials for offences established by an Act of the National Assembly and other crimes punishable in the Federal Capital Territory, Abuja."<sup>208</sup> This opening provision appears to have far-reaching implication regarding the concepts of both justice and jurisprudence. Although it is still too early to have any empirical evidence of the extent of its application and impact, it is evident that some of the exceptions and clauses contained in this Act are already raising some controversial jurisprudential questions that necessitate critical appraisal, especially as it creates a somewhat hybrid criminal justice process.

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<sup>206</sup> This proposed amendment, which also includes amendment to the Code of Conduct Bureau (CCB) was not reflected on the Order Papers that had 6 presentations of proposed bills, the Chief Whip, Senator Bala Ibn N'allah, while introducing the bill did mention that these two bills be considered for amendment. See Daily Post, 12 April, 2016.

<sup>207</sup> Section 1 (1) ACJA 2015

<sup>208</sup> Section 2(1) ACJA 2015

This research has already established that lower courts, i.e., magistrate's courts across the country, do not engage in plea bargaining. All judges and attorneys interviewed in connection with this study confirmed that lower courts across Nigeria do not have laws that permit plea bargaining and it is hardly seen anywhere in their system of adjudication (with the exception of Lagos state that will be discussed later in this research). This suggests that simple offences and misdemeanour cases that often occur in magistrates courts are technically exempted from this new legislation.<sup>209</sup> Furthermore, the Act clearly states that it applies only to offences established under the Act of the National Assembly, i.e., offences within exclusive Federal legislations such as money laundering, treasonable felony, crimes against national security or economy, human trafficking, and other related offences. Although these crimes are within the category of the gravest criminal offences in legislation, the new Act gives prosecutors unlimited discretion to negotiate in respect of any and all of these crimes.

It is also noteworthy that many crimes defined under Nigeria's Federal laws are white collar crimes that can be committed only by people with access to resources while most of the simple crimes that are heard by the magistrates courts are perpetrated by those in the lower class i.e. shoplifting, street fighting, and other similar offences. These simple crimes sometimes attract up to two years jail term, and magistrates do not hesitate in awarding such sentences.<sup>210</sup> This can be compared to cases of plea bargaining i.e. the John Yakubu case or the Cecilia Ibru case, which are grave in nature and degree, but have attracted lighter sentences due to plea bargaining. Hence, some respondents referred to this and other cases, where they expressed severe concerns about the inconsistencies in sentencing.<sup>211</sup>

With the idea of offering or receiving an offer to negotiate at the centre of the new provision included in the ACJA, the Act opened the way for federal offences to be subjected to plea bargaining. However, because the ACJA is a statute that does not operate in lower courts across the various states (with the exception of Lagos state), it technically creates a

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<sup>209</sup> Section 2 (1) and (2) ACJA 2015

<sup>210</sup> Interviews No. 2, 4, 15 and 23.

<sup>211</sup> In interviews No. 2 and 14.

hybrid system of criminal justice in which some courts can entertain plea bargaining while others lack the mandate to do so. What is even more contentious is that there are offences for which state and federal courts have concurrent jurisdiction. This means that the same offence can be negotiated if it is prosecuted in a federal court and where the offender happens to be arraigned by a state prosecutor, then a full trial is the only option. Hence, punitive sentencing continues in states and negotiations emerge in federal courts. This is an issue that would raise a number of criticisms as the courts begin to use plea bargaining frequently. Essentially, any system that treats the same kinds of offences with different sentencing procedure and outcomes is bound to attract criticism.

Taking into account the social and economic inequality in Nigeria, the legal inconsistencies and sentencing differential arising from plea bargaining can easily be interpreted through the lenses of 'conflict theory', and attributed to power relations, where the weak get punished, and the strong get acquitted. Scholars such as Chambliss and Seidman (1971), Wacquant (2000) and Burke (2012) have all raised this challenge in criminal justice where the most severe sanctions are often imposed on persons in the lowest social class.

It could be argued that the new Act has created a very fluid and jurisprudentially biased understanding of justice. As Felekens has pointed out, as long as plea bargaining continues to be a process with the potential of dealing with accused persons unequally, it will not be regarded as a procedure for ensuring justice (1976: 134). Although some scholars maintain that differential sentences cannot be labelled as unethical or unjust procedure (Scott and Stuntz, 1992; Turner, 2006), none of these scholars envisage an outcome where the inconsistency would be about punishing small crimes with a heavy sentence and serious crimes with a lighter sentence.

The procedure laid down under Sec 270 (2) of the Act states that the prosecution may enter into plea bargaining with the consent of the victim or his representative, during or after the presentation of the prosecution's evidence but before the defence opens his case. This is a clear departure from the previous procedure in which the victim consent is irrelevant. Also, in conventional trials, the victim only serves as a witness and where necessary be compensated for any loss. Another important comparative aspect of this provision is that it



resembles the requirement under in civil law systems such as Germany and Italy, despite the fact that Nigeria is traditionally a common law regime. In relation to when the parties may enter a plea bargain, the ACJA in Sec 270 (2) laid down a precondition that the evidence of the prosecution must be sufficient to prove the offence charged beyond a reasonable doubt. The implication of this provision is that the prosecution must provide the court with a case diary containing sufficient evidence capable of securing a conviction before they embark on any negotiation. It is, however, important to stress here that, in contrast to what the drafters of this legislation may have imagined, the strength or weakness of any evidence remains a mere assumption until it is fully tested through rigours adversarial cross-examination. Therefore the question of whether the evidence is capable of securing a conviction or not cannot be fully ascertained where the matter is not fully heard and evidence not fully challenged. The prosecution and the court may assume that the evidence is sufficient, but only after a rigorous trial can it be concluded that the accused is guilty or not. The fact that a case diary had been submitted to the court and a plea deal was struck prior to a full trial still leaves the question on whether a full trial could have acquitted the defendant. Where the accused on his or her own volition decides to plead guilty, then it could be strongly assumed that guilt has been duly established. But where the matter goes through some form of negotiation outside the court in which some charges were likely to be dropped in exchange for concession, then the truth of what transpired that led to the finality of the negotiation still remains only known to the parties that negotiated.

Another implication of Sec 270 (2) is that the court must see all the contents of the indicting evidence contained in the prosecution's evidence diary and in some cases listen to the prosecution as it presents its case against the accused. But because negotiations start before the defence opens its case, the judge is told only one side of the story, without hearing the other. This situation poses an inherent problem for the defence whose part of the story remains unheard, but also whose guilt had already been canvassed before the court. This is likely to put some defendants in a very disadvantaged situation because the provision of Sec 270 (4) goes further to state that after the conclusion of the negotiation, the judge or magistrate can convict the accused for his plea of guilty and impose the appropriate sentence. This clearly suggests that the judge is expected to sentence the

accused after he may have heard the prosecutor's side of evidence and not that of the defence.

The Act also provides certain clauses and exceptions that are relatively vague and subject to multiple interpretations. For example, Sec 270 (3) states that "for a prosecutor to offer or accept any plea bargaining, he must be of the view that the negotiation is in the interest of justice, the public interest, public policy and the need to prevent abuse of legal process." The Act goes further to lay down certain criteria by which what public interest can be assessed. In Sec 270 (5) (b) (i) to (ix) enumerate public interest to mean a situation where the prosecution weighs all relevant factors, including:

- (i) The defendant's willingness to cooperate in the investigation or prosecution of others.
- (ii) The defendant's history with respect to criminal activity.
- (iii) The defendant's remorse or contrition and his willingness to assume responsibility for his conduct.
- (iv) The desirability of prompt and certain disposition of the case.
- (v) The likelihood of obtaining a conviction at trial and the probable effect on witnesses.
- (vi) The probable sentence or other consequences if the defendant is convicted.
- (vii) The need to avoid delay in the disposition of other pending cases; and
- (viii) The expense of trial and appeal.
- (ix) The defendant's willingness to make restitution or pay compensation to the victim where appropriate.

Although the list above suggests the importance of remorse and restitution or compensation where necessary, it also shows that the state has an interest in the cooperative ethos of managerialism which requires the defendant to cooperate, and to be willing to plead guilty in order not to waste the time and resources of the state public interest. This insistence on the defendant plead guilty for reduced sentence has been discussed extensively in scholarship as an aspect that sends a symbolic message to the public that the system's prevailing priority is to obtain a conviction and not pursue justice based on facts and evidence (Wright and Miller, 2002: 33). It also affects the victims' and

the public's perception of justice, especially when unexplained leniency is awarded that apparently suggests that the primary goal is processing a case rapidly while justice is only a secondary objective (*ibid*).

Concerning the extent of and limits on judges' activities, the Act in Sec 270 (8) states that the presiding judge should not participate in the discussion. However, Subsections (9) to (10) state that the prosecution and defence must inform the judge of a completed negotiation, and the judge is then expected to make inquiries and to seek confirmation from the defence about the voluntariness or the plea. Sec 270 (9) (b) gives an extended power to the judge to rescind the plea agreement if in his opinion, the defendant cannot be convicted of the offence in respect of which the agreement was reached and to which the defendant has pleaded guilty or that the agreement is in conflict with the defendant's right. If this becomes the case, a plea of not guilty shall be recorded, and the matter is tried fully. This provision raises a new kind of problem on whether the defendant will have his or her trial under an atmosphere where he or she will be presumed innocent until proven guilty. However, the strength of this safeguard lies in the hope that the trial judge is the person that declines to accept such plea because he or she thinks the substance of the case and the negotiation is not sufficient to convict the defendant. By this, the prosecution is put under the obligation of proving the case in an open court and every piece of evidence is henceforth bound to be subjected to scrutiny.

With regard to sentence limits in a plea bargain, the Act in Sec 270 (11) stipulates that in the event of a successful bargain the judge should consider the penalty as agreed upon and (a) satisfied that such sentence is an appropriate sentence, it shall be imposed, or impose a lesser sentence if that is the most suitable in the circumstance. This is a departure from the old unregulated practice where judges do not receive any information on the agreement between the parties. Earlier, empirical evidence from this research has shown that prosecutors do not engage in any form sentence recommendation to judges. It is, however, important to stress that by the provisions of the Act, the judge is not under obligation to accept any sentence agreed upon by the parties. Sec 270 (11-15) states that where the judge is of the view that the offence requires a heavier sentence than the sentence agreed upon, he shall inform the defendant of such heavier sentence he considers to be

appropriate, in which case the defendant may abide by his plea of guilty as agreed upon and agree that, subject to the defendant's right to lead evidence and to present argument relevant to sentencing, the presiding judge or magistrate proceed with the sentencing.

Sec 270 (18) also provides that any judgement reached after a negotiated plea is final and cannot be appealed, except where fraud is alleged. This is clearly a major issue for the new Act. The idea that matters are closed against any judicial review, affects the right of parties to raise the case before a superior court even where there is a legitimate cause to do so. Yet, the significance of appeals and judicial review in criminal justice cannot be over emphasised. It has historically been the most important means through which parties can challenge the decision of the lower court and seek redress. Where the law, such as the one contained in this new Act, clearly prohibits appeals, then parties have to accept any verdict irrespective of how bad or unjustified it turns out to be.

Apart from what was already discussed, there are other implications of the model as set out in this Act. First is that all parties are involved. Although one may argue that the provisions of Sec 270 (8) prevent the judge from participating, but the fact that the prosecution evidence is first presented and argued before him, along with the requirement for the judge to inquire into the contents of the negotiation, technically makes him or her a party to the process. Secondly, the victim whose permission should be sought is also a principal party in the negotiation, because without his or her consent, the negotiation cannot be valid. Although this system is at its formative stage and has not yet revealed sufficient insight into the intricacies of how all these parties work in ensuring a negotiated settlements, critique of plea bargaining in other regimes have discussed how bringing all the parties including the judge and the victim into the process, often makes bargaining impossible (Batra, 2015: 582).

Other important aspects of the new Act that are worthy of note includes the fact that it makes no limitation as to the type or degree of offences to be negotiated. While this resembles the system in the US, it also differs in the sense that, victims in Nigeria have powers to reject a proposal for a plea bargaining proposal.<sup>212</sup> In this case, the prosecution is

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<sup>212</sup> Section 270 ACJA 2015.

left with only the option of pursuing a full trial. The Act also gives judges powers of inquiry into the negotiation.<sup>213</sup> This tilts the system to resemble models in civil law such as Germany, Italy and Russia where the victim and the judge are all principal parties in the negotiation. However, it is different from civil law models from the context of the kinds of offences that are allowed to be negotiated and on issues of appeal. The ACJA 2015 permits prosecutors in Nigeria to negotiate all classes of offence but limits the powers of appeal.<sup>214</sup> The Nigerian model under the new Act is, therefore, unique in its own right. First, it does not follow the US model as it gives powers to the victim to accept or reject plea bargaining. It also does not follow most continental European models because it limits most negotiations to serious rather than simple offences.

The Italian Model also set clear limits to plea bargaining, especially in a 'Party Agreed Sentence' (*Patteggiamento della pena*) which only allows for plea 'bargaining in minor categories of offences involving pecuniary fines or where the statutory sentence reduction of up to one-third, would not exceed two years imprisonment (Gifford, 1983: 80). If one takes the Russian model into account, the CPC 2001 restricts plea bargaining to only those offences whose original punishment does not exceed 10 years.<sup>215</sup>

Although the new Act appears to be limited in scope, it no doubt covers most of the offences within the statutory jurisdiction of the EFCC and the ICPC. The question, however, remains as to how the two commissions will cope with a newly modelled practice that requires all parties to be involved in the process. It is too early to reach any firm conclusion as to how the Act will operate since it is yet to undergo a rigorous test in both conventional courts and the court of public opinion.

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<sup>213</sup> *Ibid.*

<sup>214</sup> For example, the decision of the German *Bundesgerichtshof*, clearly sets limit to plea negotiation. BGHSt NJN 1998, 86.

<sup>215</sup> Article 314, CPC 2001.

## 7.5 Conclusion

Whether in the context of the old unregulated practice or the new modelled introduced via the ACJA 2015, evidence shows that the system of plea bargaining in Nigeria is mainly driven by the 'charge bargain' procedure that entails a common pattern of dropping or substitution of charges solely by the prosecution. Although the old practice appears to be entirely a matter between the prosecution and the defence, there are now new players in the process who include the judge and the victim. What evidence shows also is that in the new model, the standard practice begins with investigation and prosecution where prosecutors present to the court the accusation and the evidence diary. This process is the same for all criminal cases initiated before any high court of the land. All available evidence suggests that plea bargaining is discussed after the case has been duly filed with the court.

The development of plea bargaining in Nigeria also suggests that when a system grant attractive incentives to parties, it is likely to continue among parties even if it is criticised from the outside. Data from this research has, for example, shown that in order to benefit from the expediency and finality that plea bargaining offers, practitioners have been able to devise an informal design of deliberate arraignment of accused person and then seeking for constant adjournments until a negotiated settlement becomes possible. Once that goal is reached, the prosecution then returns to court to begin the process of withdrawing and substituting charges, which is allowed under the law. This subsequent process which is legal now shields the previous technic which is not legal. Moreover, what the parties do not say to the court is their motivation to withdraw or substitute charges were based on a negotiated settlement. The practice has also developed to include a system of delaying cases through adjournments, where the parties need to resolve matters of compensation for victims. As will be discussed at length in the following chapters, prosecutors have the advantage of withdrawing or substituting charges with similar ones under different statutes because the criminal legislation allows a choice of alternative statutes in formulating charges. Even though this method has come under criticism, it does not necessarily offend against the existing law. Instead, it is an old custom of the adversarial system, which grants the prosecution the powers to decide on the charges to present before a judge.

The success of prosecutors and defence counsels in inventing a method of plea negotiation at a time when there was no law to that effect can be attributed to many factors. Although earlier discussions have pointed to the relevance and influence of bigger conceptions such as the globalisation of plea bargaining and the pressure of the international community for Nigeria to reform the way it deals with the growing cases of corruption and cross-border organized crimes, there is also the internal institutional perspective which has been demonstrated in this chapter. Evidently, the initiative that brought the EFCC and the ICPC also came with a new approach to professionalism and the regulation of work in terms of investigation and prosecution. This relates to back to the 'functionalist theory' perspective discussed earlier in this research, which suggests that professionalism is on the side of state officials, and the ability to obtain strong and irrefutable evidence is key in persuading a negotiated plea. Respondents to this research have also confirmed the extent of investment made to empower the commissions and enhance their capacity for investigation and prosecution. Another important factor is that most of the cases under the jurisdiction of the commissions carry punitive penalties. That, along with the possibility of a negotiated settlement for a lesser sentence is no doubt an incentive for both the prosecution and the defence to come to terms of the gravity of charges and to seek a plea bargain.

However, as evidence shows, there is a peculiar implication with the old practice that is unregulated and designed in a way that the offer to negotiate is expected to come from the defence. This has put the defence in a very weak position and ensured that the prosecution has the strongest influence on the outcome. However, it is also important to stress that, in all the cases of plea bargaining contained in Appendix A and B, the prosecution have shown a tendency to award large sentence concessions for guilty pleas. What this demonstrates is that both the prosecution and the defence could be beneficiaries of a successful plea bargain. Some proponents went further to argue that plea bargaining in Nigeria is mostly a consensual process that allows the defence to make "willing and informed decision capable of reducing their sentence."<sup>216</sup>

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<sup>216</sup> In interview No. 9 and 22.

In terms of judicial participation and sentencing, there is clear evidence to suggest that judges do not engage in the process of any negotiation but maintain an absolute prerogative over sentencing, irrespective of what the negotiation contains. It is, however, important to state that where charges are withdrawn or downgraded, the judges' powers to award punitive sentence are drastically reduced because he cannot award beyond what the law stipulates for the new offence. Hence, they are constrained to give a sentence with particular legal limits. Keeping judges entirely outside plea bargaining has to a greater extent proved effective, but it was also shown how this has also fueled controversies in the criminal justice system.

While plea bargaining has over the years developed as part of the prosecution system, the introduction of the ACJA is bound to affect the future of these negotiations. The provisions of the new Act clearly create a controversial new regime of criminal justice because the chance to negotiate is reserved to Federal offences, and mostly to offences that are serious in nature. Another characteristic introduced by the new Act resembles the problematic model often found in civil law regimes where all parties including the victim have a stake in the negotiation process. Other areas of difficulty include the clauses that disallow appeal, which has the potential of creating dispute and negative perception where a case happens to be controversially decided. It is, however, early to make strong claims about the how the Act will operate in practice and the kinds of polemics it will generate.

For many reasons including jurisprudential, historical, political and economic, a large proportion of the public and professionals alike do not endorse plea bargaining as a system that promotes the legitimate objectives of the criminal justice system not to mention the priorities for which the EFCC and the ICPC were established. What is evident, however, is that both commissions have unceasingly used this system to successfully secure convictions conviction of a number of notorious cases that would ordinarily have been protracted in courts for decades.



## Chapter Eight

### **Practical dynamics of charges and sentencing: an examination of records and the hierarchy of courts.**

#### **8.0 Introduction**

Previous chapters have shown that the controversy on plea bargaining in Nigeria were often due to either the notoriety of the cases been negotiated or the lack of empirical knowledge about the nature and extent of the operation of plea bargaining in the criminal justice system. Hence, it safe to argue that the character of the defendants, the gravity of the offence as well as in the lack of transparency, rather than the amount of cases involving negotiation have been the major sources of contention and confusion. Another aspect that often adds to the controversy is the degree of unexplained sentence concession awarded for negotiated cases. These aspects of plea bargaining have significantly affected public perceptions.

Having demonstrated in earlier chapters the low rate of plea bargaining in Nigeria in comparison to full trials; it is important also to distinguish the extent of the application of plea bargaining as this differs between the two prominent prosecuting agencies, i.e., the EFCC and the ICPC. The aim is to explore the prosecutorial activities of these agencies in the cause of of plea bargaining. To do this, the chapter will examine the records of the EFCC and the ICPC regarding the various cases prosecuted in various courts in order to understand the variables that define the processes and outcomes. This will include the legal and procedural technicalities, as well as the way convictions are obtained, and sentences passed.

As a background to this chapter, it is relevant to note that prosecutors responding to this research maintained that cases of plea bargaining are often treated in the simplest way i.e., through the technicality of withdrawal and substitution of charges, *“which happens quickly and often very quietly.”*<sup>217</sup> Evidence also shows that neither inside the court nor the records of prosecution or conviction was the phrase ‘plea bargaining’ often mentioned.<sup>218</sup> Instead, one can detect its existence from the expedited mode the cases were disposed, the disclosure by prosecutors of the EFCC and the ICPC that these are evidence of plea

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<sup>217</sup> In interviews No. 9 and 22.

<sup>218</sup> In interviews No. 1, 2, 7, 12, 18, 22 and 28.

bargaining, and indeed the evidence that the degree of sentence awarded to a particular case is in contrast to the compulsory sentencing limit for the original charge contained in the document. (As will be seen later, the final sentence for these cases is often greatly discounted when compared to the mandatory sentence for the original charges contained in the records). Relying on these records of charges and conviction as well as the responses of interviewees, this chapter analyses the issues raised previously. It also examines the technics used in securing a guilty plea.

### **8.1 Analysis of records of Conviction by the EFCC and the ICPC**

The records contained in Appendix A, B and C were the only accurate and public records obtained and they are arranged in this research in the following order:

- a. Appendix A and B contain the records of prosecution and conviction from 2006 to 2014.
- b. Appendix C is the record of conviction and sentencing by the ICPC from 2009 to 2014.

#### **8.1.1 Analysis of Appendix A: EFCC Records of Conviction, 2013**

First, the data in Appendix A and B gives credence to earlier claims that prosecution and convictions by the EFCC are almost all the time pursued in High courts, with no record to show that any of the cases was heard in a lower court. Hence, the history of the application of plea bargaining is one that currently excludes lower courts, i.e., magistrates' court. In addition, analysis of the nature of offences and the sentenced awarded (in Appendix A, B, and C), it is evident that about 40 per cent of the sentences were lighter than those which could have been imposed in respect of the original charges. Although the substitutions of charges were not clearly reflected in the document, it is evident from the levels of the final sentence that the defendants were not sentenced for the original charges on the documents. Shedding light on the relative leniency of the final sentences as compared to the original charges, prosecutors admit that they are often as a result of negotiation, substitution, and concession.<sup>219</sup> As one prosecutor states, *"in cases that involve crimes relating to fraud, cheating or misappropriation of public fund, which are the most common*

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<sup>219</sup> In interviews No. 1, 22 and 28.

in our diary, *the Commission, after a successful negotiation, substitute(s) the charges with those that give the room for a shorter sentence.*"<sup>220</sup>

Records from Appendix A and B (EFCC records of conviction) clearly shows the prevalence of charges for the offence of 'Obtaining Money by False Pretence', which is an offence defined under Section 1 of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 (henceforth, AFFA).<sup>221</sup> The provision of this section holds that it is a crime for any person by themselves or through accessories to use false pretence to defraud and obtains money or property.<sup>222</sup> The punishment as provided in the same section is imprisonment for a term of not less than seven years without the option of a fine. What often happens here is that since the ingredients of this offence cover an array of criminal acts often prosecuted by the Commission; it becomes a convenient and an all-encompassing provision to use in framing charges.<sup>223</sup> The reason this charge is frequently used according to prosecutors is because the ingredients of this offence cover the characteristics of many other related offences, like fraud, cheating, cyber scam, using false documents or some form of false representation to obtain money or any valuable item, or using all sorts of tricks to defraud and take money from unsuspecting individuals.<sup>224</sup> Remember, said one respondent:

*"Whenever a person wants to defraud others, he must either pretend he is someone he is not, or use a false document, make false claims, misrepresent facts or pretend that what is illegitimate is legitimate. So the offence of obtaining money or any valuable under false pretence can easily accommodate the elements (of) many financial crimes."*<sup>225</sup>

Most importantly, the harsh sentence provided for this offence makes it an obvious way of encouraging the defendant to accept a guilty plea. Prosecutors of the EFCC admit that this provision is commonly used, and defendants often agree to negotiate if the charge will be substituted with one that has a lighter sentence or one that carries an option of fine. Prosecutors<sup>226</sup> admit that when parties agree to negotiate, the charge under the AFFA is often substituted with its counterpart under the Criminal Code Act, 2004 (henceforth,

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<sup>220</sup> Interview No. 22, also in interviews No. 1 and 28.

<sup>221</sup> AFFA.

<sup>222</sup> *ibid*, Section 1 (1) and (2).

<sup>223</sup> *ibid*, (3).

<sup>224</sup> In interviews No. 1, 12 and 28.

<sup>225</sup> Interview No. 22.

<sup>226</sup> In interviews No. 1, 22 and 28.

CCA),<sup>227</sup> particularly the section that defines the offence of 'Obtaining Property by false pretences; Cheating',<sup>228</sup> or the Penal Codes Act, 2004 (henceforth, PCA),<sup>229</sup> which define similar offence as 'Obtaining money or property by false or cheating'.<sup>230</sup> Both laws far lesser sentence that the AFFA. The CCA, for instance, carries a prison term of two years while the PCA carries a sentence of fewer than five years with an option of a fine.<sup>231</sup>

In trying to further analyse the above situations in light of the sentence outcome of a negotiated case and those which went through full trial, , the research took examples from cases No. 7,<sup>232</sup> 105<sup>233</sup> and 110,<sup>234</sup> where the charges were for the offence of 'obtaining money under false pretence', which is an offence provided under the AFFA. The AFFA was clear that for this kind of offence, the mandatory conviction is a minimum prison term of seven years without the option of a fine. And in all the three cases mentioned above, the accused persons were given sentences as prescribed under the AFFA. However, when one looks at the same charges in cases No. 61<sup>235</sup> and 69,<sup>236</sup> the defendants were given a proportionally smaller sentence of six months imprisonment. This clearly shows that, despite the original charge under the AFFA, the later defendants (No. 61 and 69) were not sentenced under this law. Instead, their charges were substituted, which allowed the court to give a disproportionately shorter sentence of 6 months for each of the accused. This pattern can be seen throughout the table of cases in both appendices A and B.

The above examples are evidence of the extent of concession enjoyed by those who resort to plea bargaining as against those who go to trial. It, however, raises a significant question regarding discrepancies in sentencing similar offences and raises questions as to how prosecutors compromise on charges in order to obtain guilty pleas. A typical example of this kind of significant compromise is case No. 95, in which the accused was charged with five counts including impersonation, forgery, conspiracy, money laundering and obtaining money by false pretence. Records of conviction for this case shows that the offender was

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<sup>227</sup> Criminal Code Act, CAP. C38, Laws of the Federation of Nigeria, 2004.

<sup>228</sup> *ibid*, 421.

<sup>229</sup> Penal Codes Act, CAP. P3 Law of the Federation of Nigeria, 2004

<sup>230</sup> *ibid*, Section 323.

<sup>231</sup> *ibid*.

<sup>232</sup> FHC/KD/64C/2011.

<sup>233</sup> K/EFCC/10/2012.

<sup>234</sup> FNC/B/66C/2011.

<sup>235</sup> K/EFCC/12/2012.

<sup>236</sup> FHC/TRST/2C/2012.

given a mere four months' imprisonment while others convicted of similar combined charges received more than 10 years in jail. Paradoxically, in the case mentioned above, i.e., case No. 105,<sup>237</sup> the accused was convicted for only one of the charges here and was sentenced to a 14 years prison term.

Evidence of harsh penalties after trial are also seen throughout the appendixes. In cases No. 12,<sup>238</sup> 31,<sup>239</sup> 34<sup>240</sup>, and 41<sup>241</sup> of appendix A, and others in appendix B, common feature can be discerned i.e., these cases were in court for between 4 to six years before conviction, suggesting that they went through full trial, the outcome of which were punitive jail terms for each of the defendants in these case. Beyond the sentences, it also confirms how cases that did not go through plea bargaining can last for years even with the EFCC.

Another important question addressed by this research relates to the few cases where the final sentence shows evidence of plea bargaining, yet they appear to have been in court for a long period. Explaining this paradox, prosecutors suggest that some cases take a longer time to arrive at an agreed settlement because of certain contingencies such as the identification and confiscation of assets, or restoration of victims.<sup>242</sup> To arrive at an agreed compensation for victims or the repatriation of public funds concealed in other places, investigations may well continue for a long time while the case is pending in court.<sup>243</sup> This situation is evident for example in cases No. 58,<sup>244</sup> which began in 2009 and ended in 2013. In this case, the defendant was sentenced to pay restitution of 7.2million Naira. Similarly, case No. 65,<sup>245</sup> which began in 2010 until 2013 involved the recovery of a large amount of property.

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<sup>237</sup> K/EFCC/10/2012.

<sup>238</sup> PLD/J/30C/2009.

<sup>239</sup> FHC/L/18C/2009.

<sup>240</sup> ID/48C/2008.

<sup>241</sup> B/EFCC/1C/2006.

<sup>242</sup> In interviews No. 1, 9, 22 and 28.

<sup>243</sup> Interview No. 28.

<sup>244</sup> K/EFCC/08/2009.

<sup>245</sup> FHC/ASB/3C/2010.

### 8.1.2 Appendix B, EFCC Records of Conviction, 2014

A further examination of the contents of Appendix B shows that the character of the charges and sentencing has not changed from the previous year. What is important to note, however, is that the rate of plea bargaining has increased compared to what was found in the previous record, i.e., appendix A. About 50 per cent of the convictions in 2014 show that the final sentence is a reduction from what could have been awarded if the defendants were convicted on the original charges, as against 40 per cent in 2013. A similar pattern of significant concessions can be seen in this Appendix. For example, in case No. 23,<sup>246</sup> the accused was convicted and sentenced to 14 years imprisonment in addition to 220,000 Nigerian Naira restitution for the offences of fraud and obtaining money by false pretences.<sup>247</sup> Similarly, situations were found in cases No. 26,<sup>248</sup> and 27<sup>249</sup> of the same appendix. These are clear examples of convictions without plea bargaining. But in case No. 30,<sup>250</sup> another person was convicted of the same kind of offence. Yet, in what is clearly a case of substituted charge due to plea bargaining, a proportionately lenient sentence of 6 months imprisonment with an option of fine was granted by the court.<sup>251</sup> This is noticeable because the minimum sentence for the original charges is above 6 months imprisonment and only a substitution of charges will bring the sentence to 6 months.

Another detail evident in this Appendix is that 73 cases were in state high courts and 53 in federal high courts. This shows that 63 per cent of all the cases in 2013 were in state high courts, suggesting a drop from 71 per cent in 2013 record. This evidence shows that the EFCC is resorting more to the Federal high courts for convictions rather than state high courts as in previous years. There is, however, more to this than just seeking for conviction. As one respondent stated, *“depending on the nature of the case and the jurisdiction of the courts, we decided either to prosecute in a federal court or a state high court.”*<sup>252</sup> The explanation here is that there is a rise in the prosecution of certain cases that are under the exclusive jurisdiction of federal high courts, i.e., cases of cyber-crime, bunkering of a petroleum pipeline or illegal dealing in petroleum products and currency counterfeiting,

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<sup>246</sup> FHC/KN/CR/49/2013.

<sup>247</sup> K/EFCC13/2013.

<sup>248</sup> K/EFCC/15/2013.

<sup>249</sup> FHC/KN/CR/86/2013.

<sup>250</sup> FHC/DT/CR/12/2014.

<sup>251</sup> FHC/DT/CR/12/2014.

<sup>252</sup> Interview No. 1.

which is also evident in the contents of the Appendix. It is, however, important to stress that this change is not substantial, and it was virtually unnoticed by the respondents until they were confronted with the details during this research.

### **8.1.3 Analysis of Appendix C, ICPC Records of Conviction 2013-2014**

The records of conviction of criminal cases obtained from the ICPC from 2013 to 2014 show the extent of application of plea bargaining as well the manner in which the Commission pursues its cases in various courts across the country.

Unlike the EFCC, the ICPC had only undertaken a few criminal prosecutions and obtained even fewer convictions. The records contained in Appendix C to this chapter record only 93 criminal cases spanning from 2001 to 2014. Contrary to what was found in the records of the EFCC, the ICPC has a number of civil cases. Most significant is that the record from the ICPC scarcely indicate any form of plea bargaining, which further confirms the views of prosecutors of the Commission that the ICPC application of plea bargaining is small compared to that of the EFCC.<sup>253</sup> *“Even when we do plea bargaining, we tend to be discreet about it,”* reported a prosecutor of the ICPC.<sup>254</sup>

The records in Appendix C show that of the 54 criminal cases still pending in 2013, there were only four successful convictions, three others were on appeal in the Court of Appeals, while six were pending at the Supreme Court. 2014 saw even fewer convictions; only 3 cases were successfully convicted, six were pending in the Court of Appeals and one in the Supreme Court. In all, in the span of two years, the ICPC obtained only seven convictions, while over 90 per cent of their criminal cases were still pending in various courts across the country, with some still at early stages of prosecution after more than 2 years before the court.<sup>255</sup> Another aspect of prosecution by the ICPC is found to be slowness and inefficiency. For example in cases No. 4<sup>256</sup> and 7<sup>257</sup> and 14,<sup>258</sup> the cases were dated 2013 but scheduled

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<sup>253</sup> In interviews No. 9 and 12

<sup>254</sup> Interview No. 9

<sup>255</sup> See for example *FRN v Dr. Alor and Anor*, HAB/CPC/2C/2013; *FRN v Eze Ubiaru and Anor*, HU/36C/2013; *FRN v Nwabueze Chiboyi James*, CR/2/2013.

<sup>256</sup> *FRN v Collin C. Martin*, CR/99/2013

<sup>257</sup> *FRN v David Iornem*, FCH/ABJ/CR/124/2013

<sup>258</sup> *FRN v Mohammed Nasir Umar*, FCT/HC/CR/89/2013

to be mentioned in court in 2015. Similar to the criminal cases mentioned, records of the civil cases show the same pattern. Of the 39 civil cases contained in their records, the majority are still pending in courts.

In all, the approach of the ICPC to prosecution has shown a clear departure from the principle of expediency and efficiency, which the Commissions agenda emphasises. This can be seen in the many instances mentioned. Especially, it can be seen in records where the courts were constrained to strike out cases because the only reason the Commission could give was that accused person has disappeared, and all efforts to trace them had proved abortive.<sup>259</sup> There are also cases in the document that were struck out due to a lack of diligent prosecution.<sup>260</sup> These different scenarios reveal lucidly that the ICPC, for the most part, is slow and ineffective, lacking the kind of proactive approach of the EFCC.

The records in Appendix B is conclusive evidence of the fact that, even if the ICPC is discreet about the way it applies plea bargaining, as claimed by a prosecutor of the Commission,<sup>261</sup> the low number of successful convictions shows a pattern that reveals even fewer cases of plea bargaining.<sup>262</sup> This further confirms the overall state of plea bargaining as put by one respondent:

*“The system of plea bargaining is not so pervasive, and opinions on whether it is justified or not are sharply divided even among senior officials of the Commission. For the few that are disposed to apply(ing) (sic) plea bargain, they mostly do it in a careful and inconspicuous manner. It is not as common as many people assume. So far, I can say even the bosses in our office (ICPC) sometimes avoid it.”*<sup>263</sup>

Concerning the choice of court, records in Appendix B reveal that most of the cases by the ICPC were instituted in state high courts and very few in federal high courts. This choice of jurisdiction is not unrelated to the fact that, unlike the EFCC which was mandated by law to apply a number of Federal statutes such as the Money Laundering Act 1995, the Advance Fee Fraud and other Related Offences act, 2006, the Failed Banks (Recovery of Debts) and the Financial Malpractices in Banks Act 1994 (as amended), and the Banks and other

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<sup>259</sup> See for example *FRN v Emmanuel Okeke*, ID/414C/2013; *FRN v Hon. Philip Shaibu*, HC/ICPC/1/2013.

<sup>260</sup> See for example *FRN v Hon. Victor Bamidele and 2 others*, HCL/77C/2013; Also *FRN v Hon. Basil Ganagana and 2 others* A/ICPC/1C/2014.

<sup>261</sup> Interview No. 9.

<sup>262</sup> In interviews No. 9 and 12

<sup>263</sup> Interview No. 9.



Financial Institutions Act 1991 (as amended), Miscellaneous Offences Act,<sup>264</sup> the ICPC, for the most part, applies only the ICPC Act or the provisions of the CCA. Another factor is that the ICPC has a divided role, which involves bureaucratic oversight over governmental institutions and well as public awareness campaigns on anti-corruption initiatives. These are not prosecutorial roles. Putting this into context, one of the prosecutors of the Commission argued, *“We are involved in more than prosecution. The Commission also review issues of due process and ethical standards among governmental and private institutions.”*<sup>265</sup> It is evident that the Commission places great weight on these oversight functions and in its 2013 official bulletin it proudly claimed success in addressing some of the growing bad practices in institutions of learning and dealing with situations of colleges that have not met licencing standards.<sup>266</sup> Hence, the earlier assumption that the ICPC also engages in numerous cases of plea bargaining lacks empirical foundation. From the entire records contained in Appendix C, there was only one case to suggest that plea bargaining took place.<sup>267</sup>

## 8.2 Dynamics of Charging and Sentencing

There are a number of dynamics in the Nigerian criminal justice system that make plea bargaining possible notwithstanding the legislative framework. Most important is the power of prosecutors to apply different laws to frame charges. To understand how this operates, one has to understand that Nigeria’s criminal system is determined by a complex web of legislation designed for different prosecutorial bodies. Furthermore, these laws are often very punitive, particularly when it comes to the use of custodial sentences.<sup>268</sup> As seen in the Appendixes, they are even harsher when punishing the types of crimes that often end up on the negotiating table of the EFCC. Hence, there is always the potential that those prosecuted by the EFCC face the daunting reality of either offering to negotiate or risking a very punitive outcome. The techniques used for choosing and applying the provisions of different laws have become a successful methodology by which the EFCC can bargain. The

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<sup>264</sup> Section 6 (2) of the EFCC Act.

<sup>265</sup> Interview No 12.

<sup>266</sup> Daily Independent, August 7, 2015.

<sup>267</sup> *FRN v Mathew Joseph Abasi Ifreke*, FCT/HC/CR/3/2013. In this case, the accused was found guilty of visa racketeering and an expedited sentenced of two-year jail term with an option of fine was awarded.

<sup>268</sup> Although most of these provisions come with options of fine, which is often a very small amount of money, custodial sentences are not so lenient. For the offence of shoplifting, a defendant may be jailed to up to three years in harsh prison condition.

case of Cecilia Ibru, the former CEO of Oceanic Bank Nigeria is a typical example of this. After negotiation, she pleaded guilty to three of the 25 initial charges of fraud and mismanagement and was sentenced to six months in jail. The offences, if not negotiated could have attracted up to 14 years in jail. Discussing this, a prosecutor noted:

*“To fulfil the terms of a negotiation, parties explore this legal diversity and come to terms on what charges to uphold and which to substitute or drop. Where the ingredients for the alleged crime are similar under different legislations, one may choose from the one that has the most lenient sentence. This serves as the reward for the accused person’s willingness to plead guilty.”<sup>269</sup>*

Others instances found in the records reveal the dynamics of charging and sentencing techniques. A case in point is the offence of forging a document contrary to Section 465 of the CCA and described as the altering of any genuine document or writing in any material part, either by erasure, obliteration, changing or removal of any part, or making any material addition to the body of a genuine document.<sup>270</sup> This offence, if convicted under the CCA, attracts a penalty of up to life imprisonment as against the same offence under the PCA, described as ‘making a false document’, which attracts a punishment not exceeding fourteen years jail term. What the records in Appendix A and B show that the EFCC places its initial charges based on these punitive legislations and when it is time to negotiate, they then substitute the harsh charges under the CCA, which attracts life imprisonment with others that are lenient e.g., the PCA or the AFFA, both of which result in a significantly reduced sentence.<sup>271</sup>

Another obvious technique used, which is evident in both Appendix A and B is that charges are first framed using the harshest legislation, which technically is a way of either ensuring the toughest penalty or encouraging the alleged offender to seek for plea bargaining. Despite the evidence that negotiations, substitution of charges and concessions exist, nowhere in the documents obtained was there any mention of ‘plea bargaining’. It is, however, important to state that no evidence suggests that excessively punitive legislation was amongst the key factors that gave rise to plea bargaining in Nigeria, what the data explains is that the existence of harsher sentences, side by side with lighter ones has created the opportunity for parties to have different choices. But it is also important to note

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<sup>269</sup> Interview No. 9.

<sup>270</sup> Section 465, CCA, 1999, LFN.

<sup>271</sup> See for example Section 367 to 369 of Penal Code Act, Cap 53 LFN.

that this situation is an incentive, especially for prosecutors.

### **8.3 Effects of hierarchy, division of courts and jurisdictional boundaries**

One of the most important aspects affecting the application of laws in Nigeria is the nature of the country's constitutional federalism that allows each of the 36 states to have their high courts and magistrates' courts. The jurisdictional powers of these courts, particularly the magistrates' courts are set out by individual states legislation. Although some respondents claimed that the EFCC and the ICPC have wide jurisdictions over different offences, including misdemeanours that they also prosecuted before magistrates,<sup>272</sup> there is no evidence in all of this research to suggest that any of the Commissions used these powers.<sup>273</sup> Moreover, the ICPC Act clearly states that the Attorney General of the Federation can delegate his authority in a proceeding before any superior court of record so designated by the Chief Judge of a State, or the Chief Judge of the Federal Capital Territory.<sup>274</sup> This provision made clear reference to 'Superior courts' i.e. high courts. Because prosecutors of both the ICPC and EFCC are regarded in law as serving under the Attorney General of the Federation, reference can easily be made to this provision as a way of avoiding magistrates' courts.

Prosecutors of the EFCC, however, maintained that because the Commission is concerned with major offences, there is no need to become embroiled in the heavy workload of minor offences. Hence, they allow other prosecuting bodies, i.e., staff at the various state offices of public prosecution as well as police prosecutors, to deal with offences in lower courts.<sup>275</sup> Another reason why lower courts are sometimes avoided by the EFCC was articulated by one of the respondents who pointed out, *"since offences such as breach of trust can also be tried at High Courts, we prefer to deal with those courts than go to magistrates' courts. It is actually not about legal restriction; it is just a custom developed over time."*<sup>276</sup> This claim is verifiable, for example from the records in appendix A, particularly cases No. 9,<sup>277</sup> 19<sup>278</sup> and

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<sup>272</sup> In interviews No. 1, and 12.

<sup>273</sup> Appendix A, B and C.

<sup>274</sup> Section 26 of the ICPC Act.

<sup>275</sup> In interviews No. 1 and 12.

<sup>276</sup> Interview No. 1 and also in interview No. 9.

<sup>277</sup> SS9.a/50C/06.

<sup>278</sup> SS/23C/2011.

83,<sup>279</sup> where the accused persons were charged with offences ranging from an attempt to steal, conspiracy to criminal breach of trust. These are offences that fall within the jurisdiction of most magistrates, but also triable by High Courts.

From the evidence gathered, it is clear that the two Commissions have made it customary to avoid magistrates' courts for prosecutions even when the offence is within the jurisdiction of a magistrate.<sup>280</sup> There is, however, an exception to this custom as pointed out by one prosecutor. He referred to situations where the High Court is on vacation, and the need arises for a remand warrant to be issued. If there is a need to keep the suspect longer for further investigation or where the scheduled date for the first arraignment is distant, then the Commission usually approaches a magistrate for an order to remand the accused or to move them to a prison facility.<sup>281</sup> The argument that chasing simple offences will add to their workload is legitimate. However, it is important also to note that if they were to use Magistrates' Courts more frequently, then the opportunity to use charges with punitive penalties, as a bargaining counter would be unavailable because most magistrates lack the jurisdiction to impose such harsh penalties.

## **8.5 Conclusion**

Analysis of the records of prosecution and the sentencing shows that there are many variables that lead to a successful plea bargain. The major factor as was evident in the records examined so far was the choice that a prosecutor makes in framing charges and accepting a plea offer. These choices become possible because the law does not give rules of procedure on the application of plea bargaining. Hence, it becomes wholly a matter of discretion for the prosecution to use different means and technicalities that will ensure a negotiated settlement. The character of all the negotiated cases examined during this research reveal a clear pattern designed around the substitution and downgrading of charges by the prosecution.. Being that the system of plea bargaining in Nigeria is built around the charge bargaining procedure also permits the prosecution to "cherry pick" among different existing laws in order to fulfil the conditions for a negotiation.

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<sup>279</sup> ID/237C/13.

<sup>280</sup> In interviews No. 1, 9 and 28.

<sup>281</sup> In interview No. 1 and 28.

Another important finding is that, unlike what was previously thought by other writers and commentators, empirical evidence shows only a limited number of plea bargained cases in Nigeria. The ICPC, in fact, has only one case that shows signs of a negotiated settlement. Although this does not mean that they have not had other cases settled through this procedure, there is not tangible evidence in that regard.

Based on these findings, one can plausibly argue that the utility of plea bargaining in Nigeria is not related to the excessive workload or overcrowded docket theory as is the case in other jurisdictions around the world. What is evident is that through routine practice and the need for convenience, prosecutors have devised techniques, foremost of which is that of strategic overcharging to evoke fear in the defendant. By doing so, they are assured of the potential for the defence to seek a negotiated settlement. Prosecutors, especially at the EFCC claimed to be well trained and their capacity to gather strong evidence is a major factor that makes plea bargaining possible.<sup>282</sup>

Although prosecutors were adamant to admit that overcharging is a coercive means of obtaining a plea, the practice of using punitive laws to frame initial charges and substituting them with lighter ones after a plea bargaining, qualifies as psychological coercion, especially since the defendant knows that the only means of obtaining a substantial penal discount is to plead guilty. This, however, does not undermine the fact that, through plea bargaining, a number of high profile cases were successfully resolved. The documents analysed have demonstrated this advantage that plea bargaining presents. Moreover, plea bargaining has proven to be a system that serves institutional demands as well the interest of parties, perhaps depending on the circumstances of the case. What is also clear from this chapter is that plea bargaining, as opposed to lengthy trials has proven to be a highly suitable alternative for cases of corruption, particularly those handled by the EFCC.

The major problem is that the quest for efficiency is allowed to take the place of procedural justice, since most cases of plea bargaining are about how much the prosecution is willing to trade-off and what kind of offer the defendant is willing to accept. Unlike conventional trials, the system of negotiation is like a trade with an offer and an offeree, the outcome of which is based on the consensus of the two parties and is often not known to the public

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<sup>282</sup> In interviews No 1 and 22.

how the process was carried out. Hence, plea bargaining has continued to breed suspicion among the public whose legitimate interest in criminal justice is to see an open process where facts and evidence will be transparently argued and resolved. But as seen throughout the development of plea bargaining, negotiations are not done in open space, which has resulted in negative sentiment on legality, procedural justice and fairness of the entire process. While the prosecution may be interested in the expeditious disposal of cases, it is notable that such attitude presents the danger of dismantling the legitimacy of the criminal justice system by compromising its core values of transparency and accountability, especially in jurisdictions like Nigeria where the justice system has remained under enormous public scrutiny and accusation of bias and corruption.

## Chapter Nine

### Legality and Legitimacy: statute, precedent, and sentiment.

#### 9.0 Introduction

Against the backdrop of the controversies that greeted some of the cases settled through plea bargaining, Nigerians have expressed a variety of opinions on the utility and legality of plea bargaining. Some of these are strong opinions that touch on some important issues surrounding both legal procedure, conflict of laws, and even the principles of the rule of law. As we saw in the previous chapters, the criticism to plea bargaining has led to other extended challenges, including the pressure on practitioners to avoid negotiation. Even the introduction of the ACJA 2015, which might have been expected to have resolved the issue has, in fact, ignited new controversies.

In a recent debate organized by the News Agency of Nigeria (NAN) regarding the inclusion of plea bargaining in the ACJA 2015, it was evident how divergent opinions are even amongst legal experts. Two senior lawyers among the participants argued that plea bargaining in Nigeria raises serious issues relating to equality before the law. This they said is because the system applies exclusively to defendants who are accused of corruption.<sup>283</sup> Stealing public money said another, and “returning part of it and walking away is like encouraging us to steal more” (*ibid*). He further stated that, despite the advantages of plea bargaining, it is not the best mechanisms if the scourge of public corruption is to be addressed (*ibid*). Others raised similar concerns, “the most dangerous crimes are those committed by public officers whose actions affect the generality of the public, but the most punitive sentences are often given to those involved in cases of minor thefts” (*ibid*).

Reflecting on the opinions of various respondents, this chapter will examine the criticism of plea bargaining in Nigeria. The chapter will also relate these responses to the broader topics of law reform, the economics of criminal justice as well as the issues of morality and jurisprudence as they relate to the idea of plea bargaining in Nigeria.

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<sup>283</sup> The Nigerian Lawyer, 18/01/2016.

## 9.1 Legality

Some proponents of plea bargaining have continued to argue that the process had existed as part of Nigeria's criminal justice procedure for decades. They refute any claim that it is a new importation by prosecutors and officials of the two anti-graft Commissions. Often referring to section 180 and 181 of the CPA, they contend that these provisions have existed since 1990, allowing for some form of negotiation with a criminal offender.<sup>284</sup> Odinkalu, for instance, argues in support of this opinion, saying plea bargaining is not a new concept in Nigeria's criminal law, but also went on to caution, "this is not to say that plea bargain is or has been used properly in Nigeria" (cited in Kehinde, 2013: 13). One of the respondents to this research also claimed that plea bargaining did not begin with the two anti-graft Commissions:

*"I have argued this timeously at seminars and conferences" he claims. "and a lot of criminal law experts including Kevin Nwosu agreed with me. The argument on the origin of plea bargaining should instead be done hypothetically. A prosecutor need not mention the word or phrase plea bargaining; it may simply be called a deal, agreement, an understanding; whatever you want to call it. In the end, it is all plea bargaining."<sup>285</sup>*

This group of proponents often refer to Sections 13 (2) and 14(2) of the EFCC Act. Section 13 (2), which allows prosecutors to withdraw charges against the accused. However, a contrary view suggests that negotiation with offenders was actually a construction of convenience that was conducted unlawfully before it was adopted into the new CJA 2015.<sup>286</sup>

A closer analysis of the contents of the CPA and the EFCC Act is, therefore, important at this juncture. The provisions of sections 180 to 181 CPA states only that when more than one charge is brought against a person "and conviction has been had on one or more of them, the prosecutor may, with the consent of the court, withdraw the remaining charge or charges or the court on its own motion, may stay trial of such charge or charges."<sup>287</sup> It goes on to further clarify, "at any time after the completion of the inquiry and before the

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<sup>284</sup> The Criminal Procedure Act, Chapter 80 Laws of the Federation of Nigeria 1990 is an Act that guides criminal procedures High Court and Magistrates' Courts. Later amendments did not affect most of the provisions, especially the provisions of Sec 180 and 181 that are been referred to here.

<sup>285</sup> *ibid*

<sup>286</sup> In interviews No. 2 and 6.

<sup>287</sup> Section 180 (1) Criminal Procedure Act. CAP C41 LFN 2004.



commencement of the trial in the High Court, the Attorney-General may, by notice to the High Court, amend the charge as framed at the inquiry or substitute for that charge such other charge or charges as he may see fit.”<sup>288</sup> Unless misinterpreted to accommodate plea bargaining, these provisions do not in any way refer to any kind of negotiation of a plea in return for penal concession, which is what plea bargaining entails. The provisions only capture what prosecutors can do in any adversarial trial, i.e., to withdraw any charges they deem fit and pursue others without any condition. Moreover, the provisions clearly include the phrase ‘with the consent of the court’. In many plea bargains, the consent of the court is not necessary for the prosecution to strike a deal with the offender.

Similarly, Section 13 (2) of the EFCC Act reads:

Without prejudice to section 174 of the Constitution of the Federal Republic of Nigeria 1999 (which relates to the power of the Attorney-General of the Federation to institute, continue or discontinue criminal proceedings against any persons in any court of law), the Commission may 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.

And section 14 (2) reads:

The Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence.<sup>289</sup>

Referring to these provisions and those of the CPA, a prosecutor with the EFCC claimed that section 180 of the CPA and sections 13 and 14 of the EFCC Act are provisions that made plea bargaining lawful because they allow the prosecution to either drop charges or compound them.”<sup>290</sup> This is also quite possibly a mistake in understanding the nature of plea bargaining. Compounding offences or dropping charges on their own do not qualify as plea bargaining. As the words literally express it, there has to be a ‘bargain’ and a ‘plea’.

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<sup>288</sup> Section 182 Criminal Procedure Act. CAP C41 LFN 2004

<sup>289</sup> S. 14(2) Economic and Financial Crimes Commission (Establishment) Act. CAP E1 LFN 2004.

<sup>290</sup> Interview No. 1.

The contents of both Section 13 (2) and 14(2) of the EFCC Act hinge primarily on withdrawal or stay of a count, especially in situations where the accused is standing trial on numerous counts. It is also clear that the sections are referring to such stay or withdrawal after the defendant had been convicted for the rest. This is at variance with the standard procedure of plea bargaining because plea bargaining presupposes agreements struck before conviction and not afterwards. None of the definitions or descriptions of plea bargaining point to an agreement reached after conviction. This, however, is not the only problem, Reading section 180 (1) of the CPA without a further reading of Section 180 (2) of the same law would be more of a statutory 'cherry-picking' exercise. Subsection 2 essentially states:

Such withdrawal shall have the effect of an acquittal on such charge or charges unless the conviction which has been had is set aside, in which case, subject to any order of the court setting aside such conviction, the court before which the withdrawal was made may, on the request of the prosecutor, proceed upon the charge or charges so withdrawn (Inyang, 2012: 2).

Inyang further argues that subsection (1) technically contains two scenarios; a withdrawal by the prosecutor and a stay by the court while the provisions of subsection (2) cover only the withdrawal and the grant of what he describes as "a temporary or subjective acquittal" (*ibid*). The ambiguity arises as to whether these provisions clearly permit negotiation or not and this is an issue that continues to be unresolved among scholars and practitioners. Much clearly depends on the definition of plea bargaining which is adopted.

For critics, the last decade of the application of plea bargaining in Nigeria has been characterised by routine use with no legal basis.<sup>291</sup> They for instance argue, "*a clear and unambiguous reading of the provisions of the CPA and the EFCC Act, both of which have been the strongest point for justifying plea bargaining are not referring to negotiation with a criminal offender.*"<sup>292</sup> Yekini contends that the EFCC Act allows the prosecution only to weigh the option of recovering any amount which might have been squandered in lieu of prosecution or otherwise (2008:9). Interpreted unambiguously, this provision is mainly about the discontinuation of other charges (*ibid*). But as the practice becomes a convenient routine, "*some lawyers and a few judges started misinterpreting certain sections of the law*

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<sup>291</sup> In interviews No. 2 and 14.

<sup>292</sup> Interview No. 2. Also in 14, 18 and 19.

*and turning them to mean plea bargaining. But the truth is, no part of our laws mentions anything (about) plea bargaining.*<sup>293</sup>

A recent decision of the court of appeal raised an important question on whether plea bargaining had been operated illegally since 2005. In this important judgment in 2014, Justice Ogunwumiju, gave clear guidance, stating “Plea bargain is as at now generally unknown to our criminal justice administration and indeed our criminal jurisprudence.”<sup>294</sup> This decision further makes it difficult to argue that the system operated legally. Despite the knowledge of the provisions cited by proponents to justify plea bargaining, the court did not contemplate the verdict that plea bargaining was a nullity. As one respondent added:

*“Perhaps when they want to do plea bargaining, some lawyers parade and construe some provisions of the law to give it legal support. The truth is, it was indeed the Economic and Financial Crimes Commission armed with Section 13(2) of the EFCC Act that recently brought it into the public purview in their escapades towards tackling white collar crimes and engaging in asset recovery from corrupt politicians and their partners in crime within the private sector in the country. Short of that, the system never had clear legal basis until the coming of this new law for federal offences in 2015.”*<sup>295</sup>

Similarly, one judge said that the amount of controversy it has generated is enough evidence that the system was not defined under the Nigerian law when it first began, *“remember, it took ten years of legal experts asking whether plea bargaining is legal or not. This alone means that it had a questionable and unclear position under the law.”*<sup>296</sup>

Referring to the recent development in the ACJA 2015, another respondent claimed that “the efforts and vigour with which the EFCC and other advocates pursue the inclusion of plea bargaining in the ACJA 2015 clearly affirms that there was no legal basis for its application all this while, and this raised questions about past convictions done on the basis of Plea bargaining.”<sup>297</sup>

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<sup>293</sup> Interview No. 9.

<sup>294</sup> *F.R.N v. Igbiniedion* (2014) All FWLR Pt. 734, 101 at 144.

<sup>295</sup> Interview No. 19.

<sup>296</sup> Interview No. 21.

<sup>297</sup> Interview No. 6. Also in interview No. 29.

Except for the prosecutors of the EFCC and the ICPC, there was near consensus that the system operated without any clear legal authority or procedural guidelines. Instead, respondents believed that it is merely the desperation on the part of those who support plea bargaining in Nigeria that led to the misinterpretation of the law in order to accommodate the practice.”<sup>298</sup> He further insisted that legal practitioners should adhere to the concept of legality, which requires that issues of the administration of justice actually deliver justice.<sup>299</sup> Most importantly he said, “when such issues relate to criminal matters, *“they should not be products of implication, inherence and or abstraction. There is going to be a new battle against this selective provision that only serves selected few.”*<sup>300</sup>

Clearly, the enactment of the new ACJA in May 2015 has changed the whole perspective regarding the criticism of the institution of plea bargaining, particularly with regards to Federal offences. For offences under State laws, the position remains the same, as plea bargaining is still not expressly stated or permitted in most of the states in Nigeria, with the exception of Lagos state which has express provisions for plea bargaining since 2011. As will be discussed subsequently, the presence of plea bargaining in the new ACJA 2015 generates new procedural dilemma in the area of conflicts with other existing criminal procedure laws and judicial precedents. Moreover, since the ACJA 2015 applies only to some courts in the country, this makes it technically restricted to those offences within the jurisdictions of those courts. These inherent divergences and lack of uniformity in the application and practice are already raising new contentions among scholars and practitioners. Those who approve of the new developments offered optimistic opinions that the new Act, may in some way, *“cure some of the injustices done through plea bargaining, that is if it is applied logically and judiciously.”*<sup>301</sup>

All the discussions in this research point to the conclusion that prior to the promulgation of the ACJA 2015, plea bargaining was not legally sanctioned in any of the legislations in Nigeria. Despite the few claims of legality, nowhere in any of the laws on criminal justice in Nigeria was the idea of negotiating with an offender mentioned or even implied. The only

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<sup>298</sup> In interview No. 5, 11 and 29.

<sup>299</sup> *ibid.*

<sup>300</sup> *ibid.*

<sup>301</sup> Interview No. 20.

provisions, that which some scholars pointed to and which were discussed in this chapter were Sec 180-181 of the CPA and Sec 13-14 of the EFCC Act both of which allowed for ‘compounding charges’, which is distinct from plea bargaining.

## 9.2 Conflict of laws

In the context of some of the principal statutes governing criminal procedure in Nigeria, plea bargaining is faced with major challenges. The first is that it does not uphold the conventional principle that culpability must be established by way of clear evidence. This is seen by some respondents as an affront to the legal standards of proof and evidence that are guided by the provisions of the Evidence Act, Cap 40, 1990, now Evidence Act, Cap E14, 2011 (henceforth Evidence Act).<sup>302</sup> This law is binding in all criminal proceedings across the country.<sup>303</sup> The only exceptions are proceedings before an Arbitrator; or to a Field General Court Martial; or to judicial proceedings in any civil cause or matter in or before any Sharia Court of Appeal, Customary Court of Appeal, Area Court or Customary Courts. Section 141 of the Evidence Act further provides that nothing should “prejudice or diminish in any respect the obligation to establish by evidence according to law any acts, omissions or intentions which are legally necessary to constitute the offence with which the person accused is charged.” The construction of this law is, therefore, clear, as no matter the amount of guilt in the eyes of the prosecution, there is a legal obligation to present sufficient proof and to provide evidence in support before a court. There is a clear insistence on the adversarial procedure, which puts any kind of negotiation to question.

The Supreme Court has also handed down clear rulings on aspects of evidence and the onus of proof. The position of the Apex court is that, in criminal cases, the onus is entirely on the prosecution to establish the guilt of the accused beyond reasonable doubt.<sup>304</sup> Furthermore, the Nigerian Constitution (1999 as amended) legitimises any judicial process that leads to self-incrimination. Specifically, Section 36 (11) states, “No person who is tried for a criminal offence shall be compelled to give evidence at the trial.” This also includes any compulsion to plead guilty. Although the admission of guilt in plea bargaining may not necessarily be the

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<sup>302</sup> In interviews No. 2, 11 and 20.

<sup>303</sup> Section 1 (2) Evidence Act, Cap E14, 2011.

<sup>304</sup> *Joseph Ubi Igri vs. The State*, (SC. 203/2010).

result of pressure or threat, it is well established in scholarship that prosecutors use all sorts of coercive ways to secure guilty pleas (Standen, 1993; Bar-Gill and Ben-Shahar; 2004; O’Hear, 2007; Caldwell, 2011). This technique was also found to be common among prosecutors of the EFCC. What is also concerning is the provision of the ACJA 2015 that bars the defendant from appealing a decision reached through plea bargaining. These are very serious issues that touch on the fabric procedural justice. This also means that any error in the process cannot be reversed even if such error breaches the fundamental values of procedural justice or any of the rights of the parties. This provision therefore touches on one of the core values that define the legitimacy of the institution of criminal justice, which is the principle that the law must ensure that only the guilty is penalised and no innocent person should suffer.

Other legal challenges to the application of plea bargaining are the provisions of Section 245 of the CPA as well as Section 268 (1) and 269 (1) of the CPC. These laws states categorically that for a court judgment to be valid, it must be written; must contain the points for determination and; must also contain the decision on each point.<sup>305</sup> The importance of these requirements was also laid down by a Supreme Court, which stated that that failure of any trial court to abide by these provisions and to give recorded reasons for its decision is liable to lead to the judgment being quashed on appeal.<sup>306</sup> One respondent gave an analogy of how these different and contradicting legal provisions create disconcerting problems to the coherent application of law. He said, *“you know the law is a coherent whole. It is like a net for fishing; each of the segments of the net is useful and contributes in covering a particular part of the whole.”*<sup>307</sup> He further argued that in Nigeria, the constitution is the principal document governing procedure, and there are also general and specific laws, all which should exist in harmony with one another. However, plea bargaining, he argued does not seem to be in conform to this requirement.<sup>308</sup> What evidence also shows is how any

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<sup>305</sup> Commonly referred to as the principle of ‘ratio decidendi’, this aspect is part of the fundamental principles of criminal trials and is deeply entrenched in the Nigerian criminal justice procedure.

<sup>306</sup> *Akibu v. Opaleye*, (1974) 11 SC 189, and also in *The State v. Ajie*, (2000) FWLR (PT. 16) 2831, particularly at page 2844.

<sup>307</sup> Interview No. 2.

<sup>308</sup> *ibid.*

such lack of conformity can be protected from public scrutiny by keeping the process quiet and quick.<sup>309</sup>

Another respondent claimed that these problems would continue to affect legal processes. He argues that criminal justice risks controversy whenever the original intent of the statute is distorted or misinterpreted in order to accommodate the application of plea bargaining, or when plea bargaining is given preference over conventional trials.<sup>310</sup>

In the effort to accommodate plea bargaining Inyang (2012: 1) argues, prosecutors have disregarded the implication of stretching and expanding the meaning and intentions of the law. Any controversy that arises from such distortion sends a symbolic message to the wider public that the entire criminal justice system is being compromised to serve other interests aside from those of law and justice.<sup>311</sup>

As plea bargaining is introduced into a system traditionally wedded to the principles of adversariality, it is expected that many issues may arise in respect of the conflict of laws because many provisions of the law that emphasis on adversarilty is still existent. But not only that, there is considerable concern about the morality and jurisprudential justification for choosing a particular class of offenders; offences and courts for the application of the consensual criminal procedure. This new controversy is now apparent both inside and outside the courts.

Beyond the questions of legality and the conflict of laws, there are other key dividing lines between different groups of experts and commentators. These arguments represent effectiveness, economy and even the timeliness of using plea bargaining in Nigeria. As one respondent argues, *“if the goal is to do justice through the use of summary procedures, plea bargaining is absolutely not the way to go. We should instead focus on summary trials before an open court not some agreements behind the scene.”*<sup>312</sup> While these opinions are familiar in everyday discourse, there is a lack of empirical data on the strength or

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<sup>309</sup> In interviews No. 1, 9 and 22.

<sup>310</sup> Interview No. 6.

<sup>311</sup> In interviews No. 2 and 10.

<sup>312</sup> Interview No. 26.

weaknesses of the different claims that people often make. For instance, one of the respondents to this research states:

*“Plea bargaining is a system that still raises questions in Nigeria and around the world. It must, therefore, be carefully examined before been applied in Nigeria. There are a lot of things to be understood and a lot more at stake.”<sup>313</sup>*

### **9.3 Judicial compromise**

While the two anti-graft Commissions see themselves as institutions for combating corruption, there is an overwhelming narrative that including plea bargaining in their prosecutorial routine only aids corrupt officials to escape justice. The unfamiliar incidents that involved substantial penal concessions for people convicted of massive corruption have become a point of reference in every debate over plea bargaining. It is evident that the concessions have assisted in achieving a faster conviction, but it is also true that there was a disproportionately large penal discount involved in most of the notorious cases of plea bargaining. This was shown in the previous chapters where offenders that would ordinarily spend up to fourteen years in jail were given six months or less. Hence, in a conference presentation in 2012, the former Chief Justice of Nigeria described the system of plea bargaining as “a novel concept of dubious origin invented to provide a soft landing to high profile criminals who loot the treasury entrusted to them.”<sup>314</sup> He went further to accuse the system of a “flagrant subordination of the public’s interest to the interest of criminal justice administration, but worst of all, the concept generally promotes a cynical view of the entire legal system”.<sup>315</sup> It is, he concluded, an obstacle to the fight against corruption and that it should never be mentioned in Nigeria’s jurisprudence.

This vigorous condemnation of plea bargaining by the most senior judge in the country has appeared in almost every discussion about plea bargaining in Nigeria. In a similar response by one the respondents to this research, it was argued that, even with the overwhelming

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<sup>313</sup> Interview No. 14.

<sup>314</sup> Justice D. Mustapha, The Nigerian Bar Association Conference, 16<sup>th</sup> July, 2012. Abuja Nigeria

<sup>315</sup> *ibid.*



changes in criminal justice across the world, plea bargaining in Nigeria is not predicated on good faith:

It is a burdensome conundrum and hydra-headed monster that serves only the corrupt tendencies of few public officials and white-collar thieves. I concur with the former Chief Justice of Nigeria, Hon. Justice Dahiru Musdapher, when he dismissed the system as one with a sneaky motive and its evident fraudulent application, which is a triumph of administrative and organizational interest over Justice.<sup>316</sup>

The legitimacy of these criticisms is premised on the understanding that plea bargaining was used as a means to grant notorious criminals a means of avoiding penalties. While most people admit that the system is common in other regimes and has helped in improving the administration of justice, they criticize how in Nigeria, it operates outside the objectives and principles of justice. A lawyer for instance argued:

*“I am aware that plea bargain has worked and still working in other countries of the world with noticeable progress, I would say here that Nigeria is not like any other country, we must, therefore, borrow and apply these procedures with a sense of caution, taking into account the peculiarities of our justice system and of plea bargaining. So far, it has continued to serve only the interest of a few.”<sup>317</sup>*

Other respondents have adopted a more conciliatory approach, arguing that the system, if reformed, has the potential of making the criminal justice system become more efficient, but as it stands now, it shows little tendency of ensuring that corrupt officials are punished appropriately.<sup>318</sup> An important aspect of all these criticisms is that, because the system lacks transparency, most respondents believe that plea bargaining is very selective and applies only to cases of corruption. However, evidence from this research shows clearly that it is not as pervasive as many people think, and it has been used for as simple as cases involving minor breaches of trust as well as others such as pipeline vandalism (Appendix A and B).

The reaction that followed the recent case of John Yakubu<sup>319</sup> reveals how plea bargaining is viewed with such hostility by many critics that it culminated in a protest by civil society

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<sup>316</sup> Interview No. 2.

<sup>317</sup> Interview No. 2.

<sup>318</sup> Interview No. 27. Also in Interview No. 11 and 26.

<sup>319</sup> This is a case that ignited yet another accusation on the practice of plea bargaining in Nigeria. It was a case of fraud involving an assistant Director of the Police Pension Board Mr. John Yusuf, for misappropriating up to

groups, leading to the suspension of the Presiding judge. Commentators on and off the media also expressed outrage over the decision to plea bargain in a case which was seen to have affected the lives of thousands of pensioners whose entitlement of over \$203 million dollars was siphoned off by the accused. The level of this outrage was exemplified by the series of comments that followed when the news of the conviction and sentence was first reported. For example, one editorial sought to show, “How Judge Tricked EFCC to Free \$203 Million Pension Fund Thief.”<sup>320</sup>

*“The Nigerian judiciary if they ever had any credibility have now been shown to be a bunch of fraudsters and armed robbers, yes they are armed with their pens and the power of their bogus judgments.” Easy.*<sup>321</sup>

*“The best thing today in Nigeria is to open all the prison gates because the inmates have committed no offence.” Uzodimms.*<sup>322</sup>

*“In conclusion, every criminal brought by the EFCC can bargain their way out. WHAT A BUNCH OF JOKERS!!!.” (Anonymous).*<sup>323</sup>

*“So criminal cases are decided after meetings between the accused, his counsel, prosecutor and trial judge? Or is it because the amount involved in (sic) large and they have to agree on the sharing formula?”*<sup>324</sup>

*“The people need Justice! Why are you plea bargaining! We need justice! This is the beginning of our country imploding” (Anonymous).*<sup>325</sup>

Other criminal cases with similar characteristics and outcome have also provoked very similar outrage from members of the public.<sup>326</sup> The wider impact of using plea bargaining on the public’s understanding of justice is noticeable. One of the respondents suggested:

*“There is a general sentiment that it is designed to serve the rich and powerful. Look at how corruption has battered this country, and then you hear the culprits negotiating with public prosecutors. That is the irony. You cannot sell plea bargaining to the Nigerian public in its present shape and form...I think a plea bargain is for*

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32 billion Naira. He was convicted and sentenced to two years’ imprisonment for all the charges with an option to pay N750, 000 as fine. He paid the fine right there at the court after the sentence and walked away.

<sup>320</sup> Editorial, Saharareporters, Editorial 02 May, 2013.

<sup>321</sup> Public comment for Article op cit 327.

<sup>322</sup> *Ibid.*

<sup>323</sup> *ibid.*

<sup>324</sup> *ibid.*

<sup>325</sup> *ibid.*

<sup>326</sup> Cecilia Ibru, Alameseigha, Ibori, Tafa etc.

*countries whose Justice system has reached a reasonable level of transparency and accountability. What we need in Nigeria is stiffer sanction for corrupt officials to serve as retribution and deterrence.*<sup>327</sup>

A prominent Professor of political science also criticised the system saying:

*"Plea bargaining in Nigeria has become an aspect of corruption. When someone steals from the public treasury and is allowed to use a part of it to bail himself out, how do you justify that? It is highly incomprehensible."*<sup>328</sup>

The above respondent went further to give an instance of another notorious case of a prominent State governor Mr. Igbiniedion, who was accused of embezzling 25 billion Naira, but due to the substitution and downgrading of charges, he ended paying a fine of 3.5 million Naira.<sup>329</sup> It is a system he argues, with the *"potential to let criminals off the hook"*.<sup>330</sup>

In other instances, respondents vehemently questioned the morality of granting concessions to criminals whose acts or omissions have affected the lives of millions of people. Stressing this, one respondent pointed out:

*"The purpose of criminal justice is to secure the society and maintain public order through protecting the citizens and holding criminals liable for their acts. What plea bargaining did in many cases, was to defend corruption thereby creating unnecessary tension and dragging criminal justice further into the mud. Why are we bargaining with big criminals and jailing petty thieves? Punishment cannot be substituted because someone says he is guilty. Offenders are simply allowed to go and then commit or aid the Commission of similar offence again. What the court simply does is to endorse every good or bad deal that the parties bring. How can this be a mark of justice?"*<sup>331</sup>

Another important implication of these negative perceptions is the extent to which it is affecting criminal practice, especially the way even judges are reluctant to accept processes that appear to have elements of plea bargaining. This wariness on the part of judges was further exacerbated by the suspension of the judge who accepted the plea negotiation in the earlier mentioned case involving John Yakubu. A prosecutor of the ICPC claimed that the

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<sup>327</sup> Interview No. 10

<sup>328</sup> *ibid.*

<sup>329</sup> *ibid.*

<sup>330</sup> *ibid.*

<sup>331</sup> Interview No. 2.

circumstance of that case was a phenomenal setback to the development of plea bargaining in Nigeria.<sup>332</sup> This effect has extended to prosecutors who admitted that they are sometimes forced to drop a potential offer for negotiation through fear of the public response, or they try to do it as quietly and as quickly as possible before the case receives any publicity.<sup>333</sup> Sharing his experience, one prosecutor admitted:

*“There are situations where our colleagues were petitioned for engaging in plea bargaining. We have also seen cases where judges were suspended because of the scandals of plea bargaining. Very small number of prosecutors are now confidently bargaining with defendants. In one of my cases, the judge perceived I have negotiated to drop some charges, and his attitude towards the case suddenly changed. He virtually shut all of us down and subsequently gave the defendant the maximum punishment even though I did not object to the defence’s plea for an option of fine.”*<sup>334</sup>

Opinions about the relationship between corruption and plea bargaining have become serious and popular topics of debate. What is however of great concern is the way the system is turning into a tool for political and judicial populism. Judges, prosecutors, and senior political office-holders have been distancing themselves from plea bargaining in order to appease the public and portray a kind of new resolve to deal with crimes retributively without giving the offender any room to negotiate. This is a recent and significant phenomenon that presents a new kind of dynamic in the criminal justice administration in Nigeria. A typical and important example of this was the statement of the Attorney General of the Federation on the 30<sup>th</sup> of December 2015, where he made a far-reaching announcement to a group of civil society activist that, henceforth, there would not be the option of plea bargaining for people accused of corruption or terrorism.<sup>335</sup> Clearly, this statement contradicts the provisions contained in section 270 of the new ACJA 2015. More ironically still, this *caveat* comes from a person who is the chief prosecutor of the Federation, seven months after the introduction of Federal law that allows for plea bargaining for every offence.

This also explains why, ten years since the system emerged, records of prosecution for both the EFCC and the ICPC contain only a small number of negotiated cases. Although this does

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<sup>332</sup> Interview No. 12.

<sup>333</sup> In interviews No. 1.

<sup>334</sup> *ibid.*

<sup>335</sup> Premium Times, 30<sup>th</sup> December, 2015.

not suggest that the records obtained (Appendix A, B, and C) are the only cases of plea bargaining, but they are the only empirical evidence currently available.

## 9.4 Lack of consistency in sentencing practices

One of the distinct characters of plea bargaining in Nigeria, as seen in previous chapters is that minor offences had been systematically exempted from its ambit. This aspect, which touches on the concept of equality and the rule of law, has attracted legitimate criticism from the public, human rights groups, and practitioners. To critics *“it is inappropriate, even illegitimate to have two opposite operations of the law where one court is allowed to negotiate with offenders and the other is not.”*<sup>336</sup> The risk posed by this is that punitive sentencing, which is common in Nigeria’s criminal justice system applies fully to offenders in lower courts, while cases in higher courts, especially federal offences prosecuted by the anti-graft Commissions, would continue to be negotiated. As one respondent further confirms, the system is generally not extended to ordinary crimes that are often brought before magistrates, *“leaving many Nigerians wondering whether the country is now operating two distinct penal systems, one for the big and other for the small, poor criminal.”*<sup>337</sup> Hence, it is seen as a process where *“the bigger your offence; the more likely you are to benefit from plea bargaining.”*<sup>338</sup> Describing his understanding of how the system operates, a commentator wrote, *“A man stole a chicken, he was given nine years imprisonment, without an option of fine, and a rich man stole 32 billion, he is give (sic) two years imprisonment with an option of fine. What an injustice.”*<sup>339</sup>

Prosecutors of the two anti-graft agencies have attempted to justify this by arguing that plea bargaining is mainly for cases that are very technical and those involving the high profile offence of corruption, and organized crimes,<sup>340</sup> evidence from Appendix A and B gives a different picture entirely. It shows that sometimes, cases that are not high profile are being negotiated. For example, there are a number of cases in Appendix A and B that

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<sup>336</sup> Interview No. 6.

<sup>337</sup> Interview No. 16. Also in interview No. 18 and 29.

<sup>338</sup> Interview No. 2

<sup>339</sup> In the comment section of the Pension Case news, Editorial, Saharareporters, 02/05/2013

<sup>340</sup> In interview No. 1, 9 and 22.

involved ‘issuance of dishonoured cheques’, ‘criminal breach of trust’ involving individual victims, ‘impersonation’ etc., that are not high profile offences. Hence, it further raises the question of equality and fairness and consistency of sentencing in the justice system, as other offenders that committed similar crimes and are prosecuted by different prosecuting bodies do not have the opportunity to negotiate, since other prosecuting bodies do not involve in plea bargaining. Moreover, the new ACJA 2015 did not solve this problem because it is still not applicable in all the courts across the country. Other critics stress that because plea bargaining is not based on verifiable facts and evidence fully examined before an independent judge, there will always be inconsistency in sentencing.<sup>341</sup> *If a system of plea bargaining is ever going to be legitimate and appealing*” said one respondent, *“it has to be a more holistic system that does not discriminate, not the present hoax which has only the rich and elites as beneficiaries.”*<sup>342</sup> He argued that consistency in sentencing is key to legitimate criminal justice.<sup>343</sup> It is also important to stress that consistency and uniformity not only enhances the legitimacy of the system, it is also a way that will help the criminal justice system, at least within the utilitarian context of plea bargaining. For example, allowing the system to be applied uniformly across all the courts (including lower courts where the bulk of criminal cases are prosecuted) is capable of creating the kind of expediency and efficiency that plea bargaining often propagates. Yet, it also important to be clear on the type of cases to be negotiated and those that should be subjected to full trial. Although this research is capable of making recommendations as to whether certain offences should not subjected to plea bargaining, the most ideal thing in the circumstance is for legislators to open a comprehensive public debate on the issue where inputs will be made by both professionals and the general community on what the guideline for negotiation should be. The manner in which the ACJA 2015 was promulgated falls short of democratic values in establishing such far reaching legal reforms without subjecting the issues to public debate and scrutiny.

The legitimacy of a criminal justice procedure that consents to the differential application of sentencing principles is one that had triggered a great deal of jurisprudential debate among legal theorists as well as scholars on plea bargaining (Langbein, 1978; Alschuler, 1983; Stitt and Chaires, 1992; Cooper, 1999; Tamanaha, 2004; O’Hear, 2007; Bingham, 2011). But

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<sup>341</sup> In interviews No. 19 and 27.

<sup>342</sup> Interview No. 29.

<sup>343</sup> *ibid.*

unlike the in-depth work in Western scholarship, the overwhelming point of contention in Nigeria is on how the system was imported as a way to ensure efficiency, only to be turned into a mechanism to exonerate the rich and powerful from the law. One lawyer vehemently accuses the system of promoting inequality in a long appraisal of what he called a travesty of justice:

*“There are few records of its application on other ordinary citizens. Plea bargaining only legitimizes our already double-edged Justice system. What played out in the case of John Yusuf is a typical example. He stole about twenty-three billion 23 Naira from Nigeria and every citizen expected him to go to jail, but plea bargaining was used to give him a warm handshake by just asking him to pay a paltry amount as fine. Pitifully, just 24 hours after this travesty of Justice, an Ibadan High court headed by one Justice Moshood Abass, sentenced the provost and bursar of the federal cooperative College to four years imprisonment without the option of fine for misappropriating three million Naira. In a similar development, another high court in Delta State sentenced a roadside mechanic to death by hanging for stealing a car stereo. In these cases, no options of plea bargain were opened to them because they are déclassé. This is the major reason I say strongly that the practice of plea bargain is ludicrous, selective and has compromised the fair administration of Justice in Nigeria.”<sup>344</sup>*

Similarly, even the proponents of plea bargaining have some reservations.<sup>345</sup> One of them argued:

*“It is sometimes a compromise that is unwarranted. Even though we are the ones that represent these clients in negotiations, we also acknowledge that it has a serious effect on the general sense of fairness when, eventually, those that committed some of the worst crimes get the largest sentence relief.”<sup>346</sup>*

This argument reflects some of the concerns raised by others, such as the respondent who stated:

*“No doubt plea bargaining is a quick way of concluding whatever there is to be concluded. But when you have situations where the accused, expressly or impliedly chooses his own sentence and is rewarded instead of punished, then the essence of justice is completely defeated. Justice is the last hope of a society and must not be*

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<sup>344</sup> Interview No. 29.

<sup>345</sup> In interviews No. 9, 20 and 22.

<sup>346</sup> Interview No. 20.

*traded in plea bargaining. I think there is the need to re-examine this system very well to stop this on-going ridicule of our justice system.*”<sup>347</sup>

## 9.5 Lack of procedural transparency

The lack of transparency in plea bargaining has made it difficult for many people to accept the legitimacy of its outcome. Often, it is only the parties involved that know the process that gave birth to the final outcome. By all standards, for example, turning a 7-year mandatory sentence to an option of a fine for an offence that seriously undermines the nations desire for ensuring the rule of law and ensuring the values of equality and transparency in a political system that is struggling to embrace the values of constitutional democracy. Hence, plea bargaining has continued to generate controversy as much as it alters perception on both the utility and legitimacy of a process of criminal justice that punishes one offender in open and negotiates with another in secret.<sup>348</sup> It is, according to one respondent ‘ridiculously secretive and self-serving’. He maintained further that plea bargaining in Nigeria is designed in a way that the sentence is technically decided even before going to court.”<sup>349</sup>

Another lawyer cautioned:

*“We must also be wary of submitting to a judicial process that cannot be regulated. True, plea bargain may be applied successfully as a way of avoiding the nuances of trials, but that is not enough reason to turn the legal system into an informal conversation in offices where you go back and forth with an offender over his crime and sentence. Our system is not ready for that yet. Let the law remain a tool for sending a clear message that crimes and violations would be punished. We must avoid the opposite.”*<sup>350</sup>

A prosecutor of the ICPC also argued:

*“It is not always appropriate when you come across the kind of privacy involved in redrafting charges in order to fulfil some of these negotiations. In most occasions, serious charges are the ones dropped. Of course, there is also the influence of the*

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<sup>347</sup> Interview No. 2.

<sup>348</sup> This happened in a recent Pension Fraud case where the accused was given an option of fine instead of a 7-year mandatory sentence as provided under the Advance Fee Fraud Act.

<sup>349</sup> Interview No. 2.

<sup>350</sup> Interview No. 29.



*relationship between prosecutors and defence lawyers that often leads to these trade-offs to satisfy each other since there is no judge and no members of the public to object to any of these arrangements.”<sup>351</sup>*

This lack of transparency in the way prosecutors deal with, and discount charges have also added to judicial wariness about plea bargaining. As some prosecutors admit, judges are likely to show discontent when they sense that charges had been highly discounted from what was originally contained in the ‘evidence diary’, when this happens, some judges may even go to the extent of discharging their infuriation on the defendant by imposing the maximum sentence possible.<sup>352</sup> It is clearly a situation where the judge, having seen the first set of charges contained in the initial ‘evidence diary’ is subsequently required to ignore everything; forget all the previous charges and evidence and act only on the new ones. This situation has been a source of tension, especially because the system is characteristically based on ‘charge bargaining’. However, a prosecutor defended the idea, saying, *“even if it is not judicious, it is still judicial.”<sup>353</sup>* Explaining what that means, he said, *“When charges are substituted and replaced with new ones that come with lighter sentence, the courts award what is contained in the law based on the new charges. This is judicial, but it is not always judicious because the gravity of some of these offences and the available evidence do not deserve any alteration or substitution of charges.”<sup>354</sup>*

Highlighting this challenge, another prosecutor argued:

*“Not all of them (judges) say it out rightly, but the body language of a judge is enough to tell you how they feel when they suspect you are making applications to withdraw or substitute charges, or when you bring back the case, and they realize you have dropped most of the relevant charges. What they do is give the maximum sentence for all the remaining charges without any reduction even when the accused pleads for the leniency of the court.”<sup>355</sup>*

Another respondent pointed out that lack of transparency, coupled with the knowledge of prosecutorial corruption are also among the elements that make some judges suspicious of, and resistant to plea bargaining. *“It is known that there are some corrupt prosecutors who*

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<sup>351</sup> Interview No. 9.

<sup>352</sup> In Interviews No. 7, 9 and 21.

<sup>353</sup> Interview No. 1.

<sup>354</sup> *ibid.*

<sup>355</sup> Interview No. 28.

*may do plea bargaining as a disguise to achieve certain gains and also rob the courts of their traditional and constitutional role of deciding sentences, not all judges will take that.*<sup>356</sup>

Yet, some respondents were optimistic that the system can be improved if significant fault lines such as transparency and accountability are addressed.<sup>357</sup> The most common view is that the community deserved information about the way the system works and the reasoning behind any plea bargain.<sup>358</sup> Taking into account the kinds of cases that are subjected to plea bargaining, it is no doubt that the community will be eager and to know how these cases were investigated, prosecuted and sentenced. *“There is no other way to go about justice than be transparent and sincere,”* said one respondent.<sup>359</sup> Essentially, the administration of plea bargaining without explanation as to how and why agreements were reached *“has caused the system a lot of bad name.”*<sup>360</sup> The silence with which plea bargaining occurs *“is in itself an extension of corruption in the judicial system...in the end, it produces an exceptionally unequal treatment of offenders that no one really understands.”*<sup>361</sup>

In general, transparency is an issue that has always occupied a central position in the discourse on criminal justice administration. Where this culture of openness is excluded from criminal procedure, the community is highly likely to become suspicious and to question the entire process. However, one of the respondents gave a contrary view:

*“The rights of the community and even those of the victim in criminal justice are not always as simple as represented in public. A close observation of the laws and the constitution would tell you most of these claims about lack of transparency in plea bargaining as trampling upon rights of parties are not accurate representations of what the statute contains. In the real sense, we have to understand and separate legal rights from moral rights. Take the victim for example. The law does not provide the victims with the right to details of an investigation or prosecution. They may be entitled to compensations or whatever the courts decide to award for damage. But any crime committed is a state concern. And if the victim cannot dictate how these*

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<sup>356</sup> Interview No. 29.

<sup>357</sup> In interviews No. 5, 9, 11, 19 and 26.

<sup>358</sup> Interviews No., 2, 7, 8, 11, 14, 17, 21 and 24.

<sup>359</sup> Interview No. 26. Also in Interview No. 11.

<sup>360</sup> Interview No. 5. Also in 14, 23 and 27.

<sup>361</sup> Interview No. 27.

*rights can be enforced, the community also cannot. Therefore, it is not a right; not in a legal sense anyway.*<sup>362</sup>

Yet, in plea bargaining, the lack of transparency makes it often difficult to detect whether a guilty plea was secured through coercion or not. This research, for instance, has established how charges attracting the harshest sentence were among the common tools used to secure plea bargain. Unlike in regular court proceedings argued one respondent, plea bargaining has succeeded in annihilating the public from listening to cases and evidence, and even knowing the reason for the final verdict.<sup>363</sup> The idea of plea bargaining in Nigeria is simply:

*“You hear of a person arraigned on twenty or thirty serious charges. Weeks later, you read on the pages of a newspaper that most of the charges had been dropped, and the criminal was given some petty sentence or some little fine. No trial; no witnesses; nothing. The worst part is that some of these cases are not even reported in our weekly or monthly law reports. No one can tell with certainty what happened. If we want plea bargaining, then we must tidy up these terrible issues.”*<sup>364</sup>

While these are legitimate concerns, it is important to state that both proponents and opponents alike, agree that the system is not going to disappear anytime soon.<sup>365</sup> The logical approach would be to create transparency in the process, at least by modelling it the system in the German way by keeping record of the cases and making them public. What is to most people an affront to criminal justices’ best values is for the system to operate as an informal and secretive arrangement. As much as transparency denotes to the legitimacy of criminal justice, lack of it does the exact opposite.

## **9.6 Hybridisation of criminal justice**

One of the major findings of this research is the way plea bargaining has created a hybrid system of criminal justice both in terms of prosecution and in sentencing. This situation is not familiar in other legal regimes across the world. The peculiarity of this problem lies in the fact that offenders receive different kinds of sentencing choices not because of what the law says but solely because of which prosecuting agency is handling their case. For instance, we have seen throughout this study that the EFCC and the ICPC are the only agencies that

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<sup>362</sup> Interview No. 19.

<sup>363</sup> Interview No. 27.

<sup>364</sup> *ibid.*

<sup>365</sup> In interviews No. 5, 9, 11 and 29.

resort to plea bargaining. Technically this means that an offender only stands the chance of benefitting from plea bargaining if his or her case is handled by any of these two agencies. Moreover, some may raise the argument that these agencies only deal with financial crimes. What is evident however is that, over the years, they have prosecuted cases ranging from pipeline vandalism to offences of 'criminal breach of trust' (Appendix A and B). In all of these kinds of cases, the offenders had the chance of negotiation and sentence discount. Similar offenders prosecuted by all other agencies across the country do not have this choice. Although legal systems like Russia and Italy have categorised offences to those that can be negotiated and those that should not be subjected to plea negotiation in a way that may simply be described as hybrid, the kind of hybridisation in Nigeria is unique and distinctive as it is often the result of where the prosecution takes place and who is responsible for the prosecution. For example, if two individuals Mr. A and Mr. B are accused of 'cheating' and Mr. A is prosecuted by the EFCC WHILE Mr. B is prosecuted by the Attorney General or the Police as the case may be; there is a strong likelihood that Mr. A will have a chance to negotiate with the EFCC while Mr. B is sure of standing trial since neither the police nor the Attorney General engage in plea bargaining.

What is even more problematic is the growing sentiment that plea bargaining is skewed to favour the rich and powerful. For the weak and poor whose legal representation is mostly inadequate, there is the ever present risk of being coerced to plead guilty. A kind of sentiment that is now dragging some judges towards penal populism, as they take pride in making public their disdain for plea bargaining.<sup>366</sup> This type of populist rhetoric reached a new height when the Chief legal officer of the country, i.e., the Attorney General of the Federation announced that henceforth, people accused of corruption will not benefit from plea bargaining. Like with the disparity in sentencing, this statement also disregards the provisions of the ACJA 2015. Moreover, evidence also shows dishonesty on the part of prosecutors who, after reaching a bargain with offenders, they go ahead to lie to the court that there was nothing like plea bargaining been struck. All of these elements, i.e., dishonesty, populism, selective enforcement and disregard to the provisions of the law pose a colossal threat to the idea of justice and the rule of law. Despite these problems, it is also

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<sup>366</sup> In interviews No. 1, 12 and 22.

evident that there are areas in which plea bargaining has proven to be of advantage to the administration of criminal justice.

### 9.7 Efficiency and finality in prosecuting cases of corruption

Notwithstanding these criticisms, a successful plea bargain is always a chance for an expedited sentence, reduced workload and reduced cost of criminal justice administration. Even those respondents who have reservations about the advantage of plea bargaining concede that properly administered; plea bargaining may help remedy the slow and resource-consuming character of trials.<sup>367</sup> From an EFCC viewpoint, one of the common arguments for plea bargaining is that:

*“Players in the administration of criminal justice are aware that in many cases, especially when monies or property were misappropriated, negotiation is the most effective way to recover looted funds and to secure a fast conviction as the old culture of a long and stressful trials without guarantee of conviction.”<sup>368</sup>*

This view was repeatedly echoed by other prosecutors of the two Commissions:

*“Our traditional judicial process has proven to be inefficient and bedevilled with so many problems. In one of the courts in Port Harcourt where I prosecute most of my cases, you have more than sixty cases been mentioned every day, and there is only one judge. There is also a huge number of defence lawyers. In this instance, you discover that the judges are overloaded and we feel not every case should go to full trial. What we mostly do when we know that we can recover money or property from the accused is to not insist on a full trial but any form of negotiation that will ensure the end objective.”<sup>369</sup>*

Hence, the foremost argument for plea bargaining in Nigeria is that the system serves the fight against corruption. It is seen mainly as an alternative intervention and a legal strategy against corruption. Making a historical argument on the entire criminal justice system, some argue that since plea bargaining was introduced, the prosecution of cases of corruption has become more effective.<sup>370</sup> Without plea bargaining, one pointed, *“I do not think any of the*

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<sup>367</sup> In interviews No. 2, 5, 16 and 26.

<sup>368</sup> Interview No. 22.

<sup>369</sup> Interview No. 9.

<sup>370</sup> In interviews No., 1, 12, 22 and 28.

*high profile convictions could have been achieved. I think that is a great leap forward.*"<sup>371</sup>

But others have a more cautious view. Ordinarily said one:

*"On a case-to-case basis, I would not mind subscribing to plea bargain to the extent allowed by the law, but that should only be in exceptional cases where plea bargaining is the only option. In ordinary circumstance, the law should be allowed to take its natural course. Seen from the second perspective, although still undergoing a baby-stepping process and has the potential to be abused, I am of the opinion the plea bargain has come to stay, and it can be made better for the sake of expediency and the cost of litigation."*<sup>372</sup>

Taking into context the complexity and sophistication of some of the crimes that were dealt with through plea bargaining, one respondent argued:

*"It is apparent that traditional Penal and Criminal Codes procedures are grossly inadequate in dealing with some of the well-organized crimes we see every day. The evidence is hard to fetch; you need at least a fifth columnist to agree to open the can for you to be able to see the worms. That is the challenge; it is also the irony on modern day criminal justice. We cannot avoid plea bargain. The fact that plea bargain has been in Nigerian for years now suggest it is useful and important."*<sup>373</sup>

Defending the utility of plea bargaining by reference to court and prison decongestion, another respondent argued about the familiar congested prisons in which a sizable percentage is awaiting trial. This he argues, *"has for so long become a common problem across all jurisdictions in this country. If plea bargaining helps to alleviate this, then we should support it."*<sup>374</sup> From this context, even if plea bargaining is not to be subscribed to, it is important to reform any criminal justice that keeps accused persons in excessively lengthy detention awaiting trial. The legitimacy of plea bargaining sometimes comes from the illegitimacy of unnecessary delays in trial. The technicalities of adversarial trial often affect the rights of *"the defendant whose case is unnecessarily allowed to linger for a long time while he or she struggles with the chain of a criminal allegation hanging around their necks."*<sup>375</sup> In a similar response, another respondent asserted:

*"Applied appropriately, plea bargaining can actually pass as a tempting incentive. It alleviates the inundating routine of scheduling more case for a trial in an already*

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<sup>371</sup> In interviews No. 1, 14 and 28.

<sup>372</sup> Interview No. 26.

<sup>373</sup> Interview No. 19.

<sup>374</sup> *ibid.*

<sup>375</sup> Interview No. 26

*overcrowded court. Many people, including judges and prosecutors, are aware of the injustice in remanding people for years without trial. This may be receptive to the processing out of offenders who are not likely to do much jail time anyway. If a trial will end up in injustice, then there is nothing wrong in trying plea bargaining.”<sup>376</sup>*

Similar support was voiced by those who believe that through plea bargaining; judges get less work, and the prosecutor’s burden is lightened; while the defendant ends up getting a lighter sentence.”<sup>377</sup> However, most people agree that *“victims remain victims. Many of them do not get what their own expectation of justice is because they see the criminals [have] not been adequately punished.”<sup>378</sup>* This argument tends to ignore the fact that plea bargaining in Nigeria has actually helped to recover ill-gotten properties and to obtain compensation for victims, especially those defrauded of their monies or property. Yet, it is also important to note that unless they understand the jurisprudential reasoning for such process and how it advances justice, the victim, and the community are not likely to have confidence in the operation of plea bargaining.<sup>379</sup> As with any other legal reform, *“democracy requires that legal reforms be applied based on reasoning and consensus among the people.”<sup>380</sup>*

## **9.8 Dealing with the labour and cost of trials**

In all of their responses, prosecutors of the EFCC and the ICPC emphasise the issues of resource management as key to the success of the Commissions. The opportunity to negotiate, *“has granted the Commission opportunities to use its limited resources in securing many convictions.”<sup>381</sup>* Another maintained, *“it clears our table and gives us the chance to conclude our cases within a reasonable (time) without exhausting too much energy and the taxpayer’s money.”<sup>382</sup>* He went on to argue that the amount of resources needed if every case were to go through full trial would be enormous. Depending on the case, *“you will agree with me that trials are very costly in this country, they go on indefinitely especially when corruption at the highest level is involved.”*

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<sup>376</sup> Interview No. 19.

<sup>377</sup> Interview No. 26

<sup>378</sup> *ibid.*

<sup>379</sup> *ibid.*

<sup>380</sup> *ibid.*

<sup>381</sup> Interview No. 28.

<sup>382</sup> Interview No 1.

Despite the argument that prosecutors can resort to plea bargaining to ensure a speedy and cost-effective disposal of cases, there is evidence to suggest that this is not always the case. For example, respondents gave instances where defence counsel allegedly had other motives such as earning more money from their clients and refusing to allow for a fast-tracked negotiation. Others defence counsel may insist on trial until the time when the prosecution has presented all their evidence and are ready to close the case, before seeking to negotiate.<sup>383</sup> These are in fact tendencies recorded by other scholars, explaining how the self-interest of legal practitioners affects the process of plea bargaining (Rhodes, 1976: 336; Feeley, 1982: 3).<sup>384</sup>

A deeply rooted utilitarian view of plea bargaining emphasises that for criminal justice to survive in the contemporary period, it must be open to pragmatic procedures that are not based exclusively on traditional forms of adversarial and retributive justice procedure. As one respondent argues:

*“There are obvious challenges to the administration of criminal justice all over the world. As the nature and number of crimes change, evolve so should the approach to dealing with them. Look at the way people do money laundering, kidnapping, human trafficking, drug and all sorts of very sophisticated crimes that we have to deal with as they pile up including cyber-crimes. If we do not deal with the potential for more moribund cases, the system may collapse. Think about prison decongestion also. Plea bargaining may have a great impact on the future of criminal justice. It means less cost and more results.”*<sup>385</sup>

Supporting this line of argument, another respondent claimed:

*“No matter how strong the evidence may be, no case is a foregone conclusion. One may have a good case but still loose due to legal technicalities or other contingencies. That is especially why plea bargaining is the best idea to dealing with intricate cases. For other types of crimes, it is a good alternative to the problem of years in court. What is better than securing in six weeks what would instead go on for six years. This is a boost, and it saves lots of trauma for everyone.”*<sup>386</sup>

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<sup>383</sup> *ibid.*

<sup>384</sup> See e.g. Blumberg (1966), where he espoused these kinds of cooperation, saying, “Indeed, the adversary features which are manifest are for the most part muted and exist even in their attenuated form largely for external consumption. The principals, lawyer and assistant district attorney, rely upon one another’s cooperation for their continued professional existence, and so the bargaining between them tends usually to be reasonable rather than fierce.

<sup>385</sup> Interview No. 26.

<sup>386</sup> Interview No. 1. Also in interviews No. 12 and 19.



This line of argument has its legitimacy in the economy of law. Beyond doubt, the shifting nature of crimes is making prosecution more expensive because of the need to sometimes involve sophisticated and resource consuming ways of investigation and evidence.

*“What do you do with a criminal offender that is part of a sophisticated network and who is willing to give you evidence and classified information on the transactions of the gang? Of course, there are forensic teams and expert investigators, but I tell you that is not enough. Sometimes you just have to compromise and allow some of these accomplices to have what they asked for, leniency or even immunity unless you want to bust the whole case and go empty handed.”<sup>387</sup>*

He further gave an instance with the famous case of Nwude, which led investigators to five countries to retrieve records of wire transactions and other means used to commit the crime. Evidently, this case is not only notorious but also one that tested the capacity of the EFCC to the limit. In the end, the EFCC still had to use some of the accomplices in order to build a strong case and to secure a conviction. Although these arguments are a reminder of the ever-present relationship between law and economics, it is also important said McConville, to be cautious of making cost an ethical consideration, the waste of which is deemed punishable (1998: 578). This indeed is one of the conflicts of plea bargaining as practitioners struggle to reconcile between institutional priorities and fundamental values of due process. In this fluid state of affairs, authorities have become susceptible to compromise.<sup>388</sup>

## 9.9 Conclusion

The dominant proposition for plea bargaining in Nigeria is one that is closely associated with the need to find an alternative but more effective criminal procedure to deal with cases of corruption and other financial crimes. This is the overwhelming argument from prosecutors of the EFCC and the ICPC, who were the first to apply plea bargaining. Paradoxically, there is strong opposition to this system by scholars and commentators who think the idea is itself an extension of corruption in the justice system. This is how polemical the debate on plea

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<sup>387</sup> Interview No. 28.

<sup>388</sup> Interview No. 2.

bargaining had been since it first came to prominence a decade ago. What is also evident is that apart from the officials of the EFCC and the ICPC, plea bargaining in Nigeria has more critics than proponents. As evident from the data of this study, there are some legitimate reasons why plea bargaining is unpopular among many Nigerians. The main points of criticism are those that see plea bargaining as secretive, selective and full of compromises.

Taking into account some of the notorious cases settled through plea bargaining, it is quite understandable that many people would suspect that the system is inconsistent with the objectives of criminal justice. First, evidence has shown how some of the most notorious cases of corruption were given extremely lighter sentence through plea bargain. Perhaps, this is the nature of plea bargaining, but it is also a situation that may not appeal to a population who see corruption as the main problem of the country. Another aspect that added to the criticism is the lack of legally defined parameters for plea bargaining. Professionals, especially those with knowledge of legal procedure were right to accuse the EFCC and the ICPC of introducing a system that is not sanctioned by law. Yet, this study has also found out that most people do not have a clear idea of the extent and limits of the application of plea bargain. As much as they think the system is pervasive, records from this study show otherwise. Evidence also shows that plea bargaining is not only applied to notorious cases but also in some lesser offences that the EFCC prosecutes. However, it is obvious that even those prosecutors keen on applying plea bargaining often do so discreetly, or at least, they do not disclose to the court or the public about the negotiation. Hence, both records of convictions obtained from the EFCC and the ICPC appear not to clearly state which case was negotiated and which underwent full trial.

It is also evident that because the system existed for a long time without an enabling law, all effort to give it statutory legitimacy only generated more controversy and conflict of opinions on law and jurisprudence. This challenge not only provokes more debates over legality, but it also affected the way prosecutors undertake plea bargaining, and also affected the sentiment of judges who are sceptical about being part of a system so controversial and unpopular. This incidentally has resulted in some considerable levels of judicial populism, with judges sending clear signals that plea bargaining is not tolerated in their courts. Such evident judicial populism may well affect judicial reasoning. This was also

apparent in the views of senior legal officers, who have tried to dissociate themselves from the system.

In relation to the workload theory which is amongst the most popular justifications for plea bargaining around the world. It is also evident that plea bargaining has served as a mechanism that helps prosecutors of the EFCC to deal with high profile cases of corruption that if allowed to go through conventional trial, these cases may likely longer time and enormous resource without the certainty of conviction.

Another important aspect is the absence of any reliable evidence to suggest that plea bargaining in Nigeria is a regulated process, especially the manner in which charges are substituted or discounted. This is evident from the high degree of discretion exercised by prosecutors and the lack of transparency even in the records of conviction. Yet, because the law mandates the filing of an 'evidence diary' at the initiation of every prosecution, one can easily see how final sentences are legally inconsistent with the charges first filed. These inherent flaws have also created the possibility for prosecutors to use coercive measures to pursue guilty pleas. As in other jurisdictions around the world, evidence has shown that overcharging is among the common technics used by prosecutors in Nigeria to secure guilty pleas. It is, therefore, safe to argue that, with these critical elements still in place, and with the failure to have a clear and uniform application of plea throughout the courts in Nigeria, the system will remain under serious criticism.

The new ACJA 2015 may be an opportunity to expand the application of plea bargaining to other courts across the country. But evidence has already emerged showing how the deep-rooted public sentiment against plea bargaining is challenging this prospect. For example, this research has established how political and judicial populism against plea bargaining is becoming so widespread that influential legal figures such as the Attorney General of the Federation openly reject plea bargaining for some classes of offences even when he is aware that the ACJA 2015 allows it. Despite these challenges there appear to be a considerable sense of optimism among proponents and a sense of acceptance among some opponents that the system is not going to disappear

Another problem with the ACJA 2015, is that it has ignited new controversies relating to jurisprudence and the conflict of laws. For example, some of the provisions of the new legislation that support plea bargaining are in clear contrast with other important laws and judicial precedents that insist on strict adherence to adversarial procedure and open court trials such as the Evidence Act. Another point of contention is that the new ACJL 2015 is exclusively for Federal offences, meaning all state laws and courts across the country are not covered under this law. This further suggests how plea bargaining can only be selectively applied in courts covered by the ACJA 2015, a situation that touches on the rule of law and equity. It also segregates the way criminal charges and sanctions are applied, giving Federal courts and Federal offences the opportunity for negotiation and allowing all other courts to continue with the traditional model of a full trial and often a full sentence.

Hence, it is evident that the ACJA 2015, along with other substantive laws operating side by side, have generated a new phase of controversy. From the period when there was no law to support plea bargaining to a new era where there is a law but an inconsistent one. However, this fluid and inconsistent transition towards the institution of plea bargaining may also be a reflection of the lack of confidence and the deficiencies of a system of trials that is slow and ineffective. The historical reality that a number of criminal cases remain in Nigerian courts for a long period without conviction and without acquittal has contributed to the overwhelming necessity to find an alternative, even if it is unpopular.

## **Chapter Ten**

### **General conclusion.**

This study has shown that the institution of law, particularly criminal justice is one that is constantly affected by a range of social, political and economic trajectories. Whether in legal drafting, the prosecutor's decision-making, in court processes or in far-reaching legislative reforms, there are always contingencies that motivate the choices and objectives of the different players in criminal justice administration. This perhaps explains the multifactorial nature of the development of plea bargaining.

In trying to trace the genesis of plea bargaining within the larger framework of legal practice, this study has shown evidence of a steady transformation of simple summary trials to a system where prosecutors, judges, and the defence agree on consensual terms to bargain on charges and sentencing, often influenced by the extent to which each party is ready to offer or what compromises he or she is ready to make. While this process continuous to redefine the role and relevance of criminal justice practitioners, scholars have also attempted to contextualise the reasons for the emergence and indeed the proliferation of the idea of negotiating with a criminal offender. The majority of these scholarly explanations appear to revolve around workload and efficiency theories. However, it is also evident that there are extended variables, including the juxtaposition by the 'functionalist theorists', whose approach is closely related to the decision theory. A number of studies on plea bargaining also point to other specific elements such as 'strength of evidence' as key factors in persuading defendants and also motivating prosecutors to offer or accept a plea bargain.

The theoretical approaches to plea bargaining contained in this research have also underscored the relevance of both individual and institutional priorities in the emergence and application of plea bargaining. What is common across all regimes is the strong utilitarian argument that plea bargaining generates as a system that enhances efficiency and finality in criminal justice. This sense of utility has led many legal regimes to legislate and integrate plea bargaining as part and parcel of criminal justice procedure. Evidence for this has been demonstrated for Nigeria, England and Wales, Italy, Germany, Russia, China, etc. Similarly, this study has shown how the economics of law in the context of 'cost' has

become a prevailing ideology that defines how police, prosecutors, courts, and prisons function. Added to the idea of economics is the influence of institutional bureaucracies embedded in what scholar's term as 'new managerialism'. The convergence of these multifaceted elements marks a new transition from the traditional ideas of retributive justice to one that carries an econo-legal construct.

The aspects of efficiency, economy and managerialism have also proven to be significant in tracing the genesis of plea bargaining in Nigeria. This study has, for instance shown, that the establishment of the two anti-graft Commissions, i.e., the EFCC and the ICPC in early 2000, was not only a response to the growing cases of corruption that are causing colossal damage to the economy and reputation of the country but also because the traditional methods of criminal justice have proven less effective in prosecution and conviction, especially of organised financial. This sense of urgency was found to be a key factor that prompted the resort to alternative routes. Further evidence also shows that the development of plea bargaining in Nigeria was not originally through clear legal provisions, but through the kind of routine practice common with internal institutional priorities. The notable objective was to ensure the presence of an alternative procedure that will guarantee finality, even as the system entails certain unavoidable compromises.

While these institutional aspects are relevant to the development of plea bargaining in Nigeria, this research has also gone further to explore other important issues that touch on the politics of criminal justice. It has drawn from the works of scholars such Garland (2001) and Burke (2009) on the contemporary idea of a 'risk society' and growing penal populism on the need to exert harsh punishment on offenders that pose a risk to the society; a rhetoric that is increasingly becoming relevant in penal legislations. These socio-political components have resulted in diluting the orthodox philosophy of criminal justice and ushered in a new kind of jurisprudence. As seen in the first part of this study, some jurisdictions e.g., In England and Wales, offences that were previously considered as civil violations are now been redefined to form part of criminal responsibility, resulting in over-criminalisation and thereby adding further workload to criminal justice systems.

One of the key paradox in this fluid transition is the upsurge of punitive justice on one hand, and the rise of plea bargaining on the other. Although this inconsistency is not a general

phenomenon across all legal regimes, they are particularly common in some jurisdictions, e.g., the US, which has historically been at the forefront of promoting plea bargaining. Furthermore, this research has demonstrated that the debate about plea bargaining in Nigeria had always had political undertones. Many respondents believe the idea has more to do with shielding the rich and powerful than the advancement of criminal justice's primary ideals. What is also evident is the way this sentiment of partiality and inconsistency has generated strong criticism across board. There is now a growing attitude even among judges to reject any signs of negotiated settlement, which is leading to some form of judicial activism. For instance, evidence has shown that in some cases, judges have openly question a prosecutor's motives when the sense that there was some kind of bargain between the parties.<sup>389</sup> This has led to some judges giving the harshest penalty even when they could otherwise grant leniency. Similar, this populism has extended even to the judicial disciplinary committee, where judges suspected of accepting the outcome of a plea bargain were criticised, questioned and sanctioned.

It is important, however, to note that there are voices that are championing the return of a right based approach which insists on the principles that "no end justifies taking away human rights" (Pollock, 2014: 402). Although this does not necessarily mean that all forms of plea bargaining should be abolished, the principle of process rights promoted by many bodies including the United Nations, the Council of Europe and others around the world. This to some degree appears to be in contrast to the argument of some proponents of plea bargaining, especially those who maintain that the advantages of negotiation justify certain compromises; a line of argument that seemed to legitimise the prioritisation of organizational above procedural rights. One of the findings of this research that raises concern is the evidence that suggest prosecutors of the EFCC and even the ICPC engaged in plea bargaining do sometimes circumvent what the statutes contain in order to fulfil the terms of the negotiation. Defence counsel, on their part also tended to offer negotiated settlement as a means of securing the most lenient penal option for their clients, often through private agreements, the terms of which are not known to any other person.

This lack of transparency is so acute in Nigeria that even the records of prosecution and

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<sup>389</sup> In interviews No. 1 and 12.

conviction obtained from the EFCC and the ICPC do not reveal clearly what the substituted charges were or why. They also do not even state clearly that a plea was negotiated. Instead, the only thing available to the public is the record of the original charges and the amount of the final sentence. A close analysis of the documents, as was done throughout this research reveals that the final sentence does not reflect the statutory sentence limit for the charges on those records. Hence, it not only proves the presence of plea bargaining and the substitution of charges, but it also shows that charges with higher sentences are used as a bargaining chip to be later substituted with ones that carry lighter sentence. Therefore, even if the defendants benefit from sentence discount, which is the hallmark of plea bargaining, it subverts the principles of justice and fairness because, in most cases, it lacks transparency. It is also acutely inconsistent as it sends a clear message of rewarding guilty pleas and punishing those who insist on their constitutional rights to an open trial. This irrational tendency in crime and penology cannot be equated with the morality of law and the sense of justice, as it turns cost and time into ethical aspects of justice, the waste of which should be punished with a harsher sentence. It is important to state here that the enactment of the new ACJA in Nigeria in 2015 has included certain clauses in order to safeguard some of the undesirable conducts of prosecutors. However, empirical studies on plea bargaining have shown that even when such anti-duress measures are put in place, they do very little to deter prosecutors obnoxious conduct (Gazal and Ben-Shahar 2004: 1401). Moreover, plea bargaining has altered the rights and legitimate interest of other parties in criminal justice process. For example, the community had been alienated from participating either as witnesses to a crime or as observers of the judicial process.

Despite these problems, the comparative perspective of this research has shown that plea bargaining has since become a global concept, essentially breaking out of its traditional adversarial frontiers to even those jurisdictions that have a history of socialist criminal justice system i.e., China and Russia. In all of these territories, the notion of efficiency and a cost-effective process is at the centre of the debate. In its traditional jurisdictions like the US, plea bargaining had since become a norm in dealing with a large number of criminal cases. This perhaps is similar to the antecedents in places like China where the increase in criminal cases was claimed to be the main reason that prompted the need for an alternative system to ease the burden of the courts.



It is important to note that, because of the deep-rooted culture of inquisitoriality, legal regimes like China were among those least expected to adopt plea bargaining. This further confirms the expansion and globalisation of the system of plea bargaining. The paradox in all this is that, while countries like the US and the China defend the application of plea bargaining often from the workload theory, this may not be true of other regimes such as Germany or even the Netherlands (Brants-Langeraar, 2007). In the later jurisdictions, crime rates are not as high, and the judicial system has the capacity to try most cases without necessarily resorting to plea bargaining. This also explains the theoretical arguments raised in this research that plea bargaining may not necessarily be driven by workload. Instead, it may be a product of factors including occupational routine and procedural convenience.

This study further shows that the guidelines for the application of plea bargaining often depend on the legal culture and the legal priorities of a society. Hence, these modes of application differ from one society to another. A closer look at the different jurisdictions reviewed in this study reveals that common law systems have a stronger tendency of augmenting the existing powers of the prosecution, thereby making judges even more passive. These powers have often given the prosecution the opportunity not only to negotiate based on their own terms, but to also to threaten and coerce defendants into submission. Civil law regimes on the other hand have given the defendant more relevance and an opportunity to take part in their case as against the previous culture of the all-powerful prosecutors and judges. Although plea bargaining has affected the powers of judges in both civil and common law, judges in civil law still have more stake in plea bargaining than their counterparts in most common law jurisdictions.

In relation to limitations, evidence shows that in most civil law regimes, plea bargaining is allowed only for certain types of cases, especially misdemeanours and simple offences. The study also shows that the consent of the judge as well as the victim is often essential for a successful plea bargain. Similarly, even the extent of sentence discount is acutely regulated e.g., in Russia and Italy. Again, depending on whether the country follows the 'legality principle' or the 'expediency principle,' most civil law regimes have set limits to the discretionary powers of the prosecution. In jurisdictions where the expediency principle applies, for example, issues such as public interest are expected to be taken into account during negotiation. In relation to these similarities and dissimilarities, this research has also

discovered that similarities in legal tradition do not necessarily suggest that regimes will have similar procedural guidelines on plea bargaining. For example, the US system allows the prosecution to recommend a sentence to the judge, while England and Wales do not allow for such recommendation. Similarly, Nigeria, which is traditionally a common law system has included the victim and the judge as part of the negotiation process as contained in the ACJA 2015. Nigeria also copied another element of civil law which is the question of public interest in the application of plea bargaining.

Most critics see plea bargaining as a system that challenges the principles of procedural justice theory, as it places greater emphasis on the end rather than the means (Tyler, 2006b: 227). Because it is often secretive and legitimises bureaucracy and informality above criminal justices best practices of judicial review/appeal, plea bargaining is capable of endangering the concept of judicial fairness. It is also a system that does not necessarily serve the goals of retribution or deterrence. At best, it still is more of a practice that mainly serves procedural economy, providing administrative convenience to attorneys and judges and alleviating the cost of criminal justice administration. One of the consequences of this is the way similar offences are punished differently, depending on the accused person's degree of cooperation. This has resulted in inconsistent and false pleas that result in lower rate of acquittals and a higher rate of guilty pleas (Baldwin and Mcconville, 1979; Wright, 2005). Moreover, this familiar pattern of securing guilty pleas through processes that are not transparent, often with the promise of leniency or immunity has allowed prosecutors and even judges to be coercive that innocent people become susceptible to pleading guilty out of fear. Hence, the argument that plea bargaining is an anti-adversary process that promotes bureaucratic ethos of which the process and the outcome are defined by what the prosecutors present, not by the merits of the evidence duly heard and decided in open courts. This complex interplay of legal and economic priorities leads to the argument that criminal justice now operates in a paradigm that has produced some extraordinary conflicts between the desire to retain criminal justice's traditional values on one hand, and the need to shift towards liberisation and consensual justice on the other.

Irrespective of the flaws of plea bargaining, one thing that remain factual is that it is a system that ranks high in terms of providing an expeditious and effective alternative to the

rigours and cost of trials. This explains the development of plea bargaining in Nigeria, which was mainly a response to the inefficiency of traditional methods to deal with cases of corruption. As evidence shows, it was this problem that saw the establishment of the two anti-graft Commissions, leading to the introduction of plea bargaining into the criminal justice system in Nigeria. The main idea was to have alternative investigative and prosecuting agencies that will deal with financial crimes in a robust manner. Hence, one can safely place plea bargaining in Nigeria as a procedural transplant located within the wider political economy of the state. However, without the ability to ensure deterrence, it has also proven ineffective in combating the very corruption that it was meant to fight. Based on evidence compiled since plea bargaining was first introduced, Nigeria's place in the corruption index has not improved until very recently,<sup>390</sup> which was not due to plea bargaining but the emerging political commitment to investigate, prosecute and sentence without necessarily resorting to negotiated settlements. Evidence also shows that plea bargaining in Nigeria has not offered much solution to the caseload in various courts across the country. This is largely because it is not applied in lower courts where the bulk of criminal cases are prosecuted.

Another important aspect of this study is the evidence that plea bargaining was not sanctioned under any statute in Nigeria until 2015. Despite arguments to the contrary, the overwhelming evidence is that plea bargaining was a system that, for over a decade, operated outside the law. This perhaps was the reason why, in order to justify plea bargaining, prosecutors continued to make inaccurate inference to the provisions of other laws that allow for offences to be compounded, misinterpreting the laws to mean plea bargaining. Analyses of those provisions have proven that 'compounding', in the sense of the law does not mean negotiation. Yet, it is also evident that through these inferences, the Commissions, particularly the EFCC, have succeeded in disposing cases that would ordinarily have remained in court for decades. Through the exclusive use of 'Charge bargain', prosecutors and defence have developed a way of ensuring guilty pleas.

Another important evidence from this study is that the system of plea bargaining in Nigeria has never been endemic in Nigeria. This is contrary to what was in public discourse about

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<sup>390</sup> Corruption Perception Index, Transparency International report from 2001-2015.

plea bargaining in Nigeria.. For example, evidence has shown that the number of criminal cases handled by the EFCC and the ICPC (Appendices A, B, and C) in comparison to the enormous amount of criminal trials across Nigeria, full trials are still the dominant procedure. To better understand the reasons for the low rate of plea bargaining, this research was able to analyse certain impediments/constraints within the general framework of Nigeria's criminal justice system. First is the absence of a clear legal framework since the process first emerged in the early 2000s. As a result, no other prosecuting agencies across the country engage in any form of plea bargaining. The second reason is the amount of public outrage that continued to create wariness and reluctance among legal practitioners, especially judges. Third is the traditional culture of adversariality, which sees negotiation as an unfamiliar and often criticised as illegal and immoral. In their responses, even the prosecutors of the two Commissions admitted that plea bargaining occurs with a lot of compromises and it is always capable of generating enormous controversy, hence most of the negotiations are done quietly and quickly. Hence, the general response to plea bargaining in Nigeria has continued to be a mixture of legal and moral sentiments. There is an overwhelming sense of suspicion about the way in which the system was imported and how it is applied. Most respondents and commentators are of the opinion that it is applied mainly as a lenient process upon selected cases involving senior officials found guilty of corruption. However, relying on the data contained in Appendix A and B, it can be seen that the notion that plea bargaining is exclusively applied on the rich and powerful is incorrect. Plea bargaining has also been applied more in cases that do not involve the rich and powerful, up to seventy per cent of the cases in Appendix A and B do not involve high profile crimes and they also do not suggest that the persons involved are among the category of the rich and powerful in Nigeria.

Although prosecutors of the Commissions claim that they do not apply plea bargaining based on the class or position of the individual but rather on the opportunity that the prevailing circumstance presents, there is sufficient evidence to show that shows those who benefit from large sentence reduction are mostly among the people that committed the gravest offence, i.e., influential politicians and powerful captains of industries involved in

corruption.<sup>391</sup> But since the aim is to ensure conviction and sometimes recover proceeds of crime, the Commission were compelled to compromise in order to avoid legal confrontation with some of these defendants that have the resources to hire the best attorneys and to sustain a prolonged trial without the certainty of conviction. Evidence also shows that prosecutors are aware of the problematic nature of plea bargaining in terms of public perception and even the protection of the fundamental values of criminal justice.

In general, the findings of this research show that:

- A. Plea bargaining has created an uncommon situation in Nigeria by creating an uncommon hybrid system of criminal justice.
- B. It is evident that plea bargaining in Nigeria is not as endemic as presumed by many commentators. Empirical evidence clearly shows that the practice is limited to prosecutors of the EFCC and the ICPC. Moreover, lower courts i.e., magistrates courts where most criminal cases are brought were completely exempted from plea bargaining. These two major reasons suggest strongly that plea bargaining is not as widespread as previously thought.
- C. It is mostly restricted to superior courts.
- D. Apart from the EFCC, even the records of ICPC's prosecution show little sign of plea bargaining. For other prosecutorial agencies in the State e.g., the Police, the Attorney Generals Chambers etc., have no record or evidence to suggest they use plea bargaining.
- E. Despite certain previous arguments as to whether plea bargaining was allowed prior to the promulgation of the ACJA 2015, reading through law, precedents and empirical evidence has shown clearly that plea bargaining was not sanctioned under any previous legislations.

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<sup>391</sup> See for example previous discussion in Chapter six of the case of Tafa Balogun, Cecilia Ibru, John Yusuf, Lucky Igbenidion and Bode George all of whom were high ranking officials found responsible for serious embezzlement of large amounts of public money but yet, given very light sentences as compared to cases of impersonation, breach of trust and other cases against individual victims that involve relatively very small amounts but the defendants were given higher jail terms.

- F. The choice to negotiate is mostly supported by prosecutors of the EFCC, while other players in the criminal justice system show a great deal of reservation and concern, especially with regards to legality, suitability and other aspects such as lack of transparency and judicial corruption.
- G. Evidence also suggests that even after the promulgation of the ACJA 2014, some judges are still wary of accepting plea bargaining. This perhaps, as evidence shows is due to the numerous backlash that a number of cases of plea bargaining generated over the last decade.
- H. Plea bargaining in Nigeria as contained in the new ACJA 2015 closely resembles the American model. But in an unfamiliar turn, it also has an element of civil law system, being that the victim has a stake in whether the negotiation should take place or not.
- I. Lastly, the empirical evidence from this research found that plea bargaining is not popular among most legal practitioners and especially among the general public. What was further discovered is that most of the popular cases of plea bargaining in Nigeria are those involving high profile public corruption and the sentences awarded are far from what will reasonably be regarded as proportionate. Hence, it is not out of place that in both the responses of interviewees and the various public comments and reactions especially in newspapers, one can see an obvious sense of dismissal as well as suspicion of the institution of plea bargaining as a system that covers the rich and powerful from the full wrath of the law. As a result, there now a growing attitude of political populism as seen in the comments of the Attorney General of the Federation and of judicial activism as seen in the attitude of judges who take pride in disclosing their dislike for plea bargaining. These emerging dimensions are posing a new challenge for the future development of plea bargaining in Nigeria.

Although plea bargaining has been argued by some scholars as a cost effective and efficient way of criminal justice administration, it is also true that not every reform of this kind fits in every political setting. For countries like Nigeria, plethora of evidence has shown that corruption in every sector of the society is one of the major challenges that the country has

been dealing with. Hence, any reform that does not adequately deal with corruption cannot be regarded as one that appeals to the majority of the people who want to see transparency and accountability in the political and economic system. Paradoxically, plea bargaining, by its characteristic is not a system that promotes transparency, especially in the way criminal cases are negotiated and settled. It is by far, a system that, contrary to open and transparent trials in courts where all facts and evidence are clearly argued and decided, plea bargaining on the other hand condones a system of judicial bureaucracy where prosecutors and defense discuss, negotiate and agree on what to present before the court and in what way. Therefore, one will argue very strongly that for a young democracy like Nigeria where the populace demand and expect transparency, the rule of law and equality in the way cases are tried and settled, plea bargaining is the least of legal reforms that will appeal to the general population. Most importantly, this research has shown how people reacted to cases of corruption that were settled through plea bargaining, a mind of vehement accusation of the criminal justice system that is now causing judicial activism among some judges by their open and unreserved opposition to plea bargaining. The research also shows how leading legal officers, particularly the Attorney General of the Federation stating, in contrast to what the ACJA 2015 contains, that cases of corruption will no longer be settled through plea bargaining. These are contradictions that are mainly caused by the way plea bargaining was used, which lacks uniformity and often appears discriminatory.

Finally, this research concludes that, all over the world, the concept of plea bargaining is mostly defined by prevailing contingencies that criminal justice faces (utilitarian perspective) on one hand, and the individual choices that parties and legal practitioners make (decision theory) on the other. Fisher's notion that plea bargaining is the product of those who laboured in the criminal courts seemed closer to explaining the development of plea bargaining (2000: 904). In Nigeria, the system is about ensuring certainty in the expeditious conviction of cases involving corruption and other financial crimes. Yet, a new struggle seemed to be emerging due to the enormous criticism developing against plea bargaining in Nigeria. There is now an evidence of retreat among legal practitioners, judges, and even policy makers. There is also a lack of confidence in the system among the public. In order to address these problems, there is the need to look at the various problems that has for years generated negative sentiments against the application of plea bargaining. There

are also the challenges of lack of uniformity in application, lack of transparency and the fact that legislators did not place limits over the types of crimes that should be negotiated. So far, the practice appears to be constrained by many factors, foremost of which are the conflict of laws and public perception.

### **Future research.**

The enactment of the ACJA 2015, which for the first time introduced plea bargaining is already raising enormous controversy. Yet, to have a credible understanding of how this will shape the future of criminal justice and the legal battles that will emanate, the Act has to be rigorously tested in and outside the court room over a period of time. This perhaps will subsequently open a new area of interest for scholarship. Some of the areas that presently create contentions include the fact that the application of the Act was restricted to Federal courts, thereby excluding lower courts spread all over the country and creating a hybrid system of criminal adjudication. Another challenge is that, even as it is still at an early stage, the ACJA 2015 has been the subject of populist criticisms, especially taking into account the statements of the Attorney General of the Federation who, contrary to what is provided in the Act, suggested that cases of corruption and terrorism would not be subjected to plea bargaining. No doubt, the ACJA 2015 and its endorsement of plea bargaining has triggered a new phase of debate and controversy in Nigeria's criminal justice system, a debate that would continue to resonate and which may require further research.



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## Abbreviations

Against Money Laundering, Proceeds of Crime and the Director of Public Prosecution	(DPP).
Economic and Financial Crimes Commission	(EFCC)
Financial Action Task Force on Money Laundering	(FATF).
Financing of Terrorism	(GPML)
ICCPR International Covenant on Civil and Political Rights.	
Independent Corrupt Practices and other Inter-Governmental Action Group against Money Laundering in West Africa ( <i>Groupe Intergovernmental d'Action Contre le Blanchiment d'Argent en Afrique de l'Ouest</i> )	(GIABA).
International Monetary Fund	(IMF).
National Judicial Council	(NJC).
Nigerian Crime Enterprises	(NCE's).
Related Offences Commission	(ICPC)
Special Control Unit Against Money Laundering	(SCUML)
State Security Services	(SSS)
The European Convention on Human Rights	(ECHR)
The European Court of Human Rights	(ECHR)
The International Covenant on Civil and Political Rights	(ICCPR)
The National Intelligence Service	(NIA),
The Universal Declaration of Human Rights	(UDHR)
United Nations Global Programme	(UNGP)
United Nations Office on Drugs and Crime	(UNODC).

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## Appendices

### Appendix A



## Economic and Financial Crimes Commission

NO. 5, FOMELLA STREET, OFF ADETOKUNBO ADEMOLA CRESCENT, WUSE II, ABUJA, NIGERIA

Hot Lines: 09-7831798, 09-7831799; Website: [www.efccnigeria.org](http://www.efccnigeria.org) EFCC Facebook/official, Twitter: @officialfccc,

Youtube: [www.youtube.com/officialfccc](http://www.youtube.com/officialfccc),

## For the Records: 2013 CONVICTIONS

S/NO	CHARGE NO.	DATE FILED	OFFENCE	DATE OF CONVICTION	COURT/JUDGE	PARTIES/NAMES OF ACCUSED/ CONVICTS	VERDICT
1	FHO KD/160C/2008	18/11/2008	POSSESSION OF DOCUMENTS CONTAINING FALSE PRETENCE CONTRARY TO S.6 AND 8(B) OF THE ADVANCE FEE FRAUD AND RELATED OFFENCES ACT 2006 IN THE FHC KD	8/2/2013	JUSTICE M.L. SHUAIBU	FRN V ATURU OLUWAFEMI VICTOR	SIX MONTHS IMPRISONMENT ON EACH COUNT AND THE JAIL TERM WAS TO RUN CONCURRENTLY FROM 8TH FEBRUARY 2013.
2	FHCM0190200Q	4/3/2009	ATTEMPTING TO OBTAIN PROPERTY BY FALSE PRETENCE	8/2/2013	JUSTICE M. L. SHUAIBU	FRN V. MICHAEL ADEWUMI LFASHOLE	SIX MONTHS FROM THE DATE OF JUDGMENT
3	FHC/ABI/CR/152/2012	26/11/2013	FALSE DECLARATION OF FUNDS	1/17/2012	HON JUSTICE ADAMU BELLO	FRN V ABDULRASHEED IBRAHIM	FORFEIT 25% OF THE \$188,858 USD. TO BE PAID TO FED GOVT TREASURY.
4	CR/75/2008	13/2/2006	DISHONEST CONVERSION OF VARIOUS CUSTOMERS MONEY	28/1/2013	HON JUSTICE SADIQ UMAR	FRN V AKIN OLADIPUPO AND RAINBOW GLOBAL VENTURES LIMITED	SIX MONTH IMPRISONMENT ON 1 FIRST COUNT AND TWO YEARS IMPRISONMENT ON COUNTS TWO
5	FHC/KD/82C/2008	28/6/2008	POSSESSION OF A DOCUMENT CONTAINING FALSE PRETENCE	8/2/2013	HON JUSTICE M. L. SHUAIBU	FRN IBINI KAYODE	SIX MONTHS IMPRISONMENT
6	FHC/ABJACR/54/2012	28/3/2012	CRIMINAL MISAPPROPRIATION	201/2013	JUSTICE ABUBAKAR TALBA	FRN V. JOHN YAKUBU YUSUFU	N 250,000.00 FINE ON EACH OF THE 3 COUNTS
7	FHC/KD/64C/2011	15/08/2011	OBTAINING MONEY UNDER FALSE PRETENCE	28/4/2013	HON JUSTICE M. L. SHUAIBU	FRN V IFEANYI ECHEBIRI & OGBUEFI SYLVESTER IFEANYI	SEVEN YEARS IMPRISONMENT OR EACH OF THE SEVENTEEN COUNT RUN CONCURRENTLY
8	8.CR/22/12	4/9/2012	CONSPIRACY TO FORGE AND FORGERY	5/18/2013	FCT HAH CRT.9 FRN V EMEKA OKAFOR	NINE YEARS IMPRISONMENT ON EACH COUNT WITHOUT AN OPTION OF FINE AND TO RUN CONCURRENT	
9	9.A/50C/06	24/11/2005	CONSPIRACY TO STEAL AND STEALING	22/5/2013	UGH COURT, ABA, ABE STATE	FRN VOKOGBUJI URUM AND A-RAN PETROLEUM.	THREE YEARS IMPRISONMENT WITH HARD LABOUR
10	CR/110/2008	12/5/2006	CONSPIRACY, THEFT, FORGERY AND USING AS GENUINE FORGED DOCUMENT.	19/6/2013	COURT 15 FCT HIGH COURT	FRN V JAMES ADDLE & JERRY ONUOHA	THREE YEARS IMPRISONMENT OR ALL THE COUNTS EXCEPT COUNTS 5,8,48WIFTOUT TIE OPTION OF FINE
11	KTH/BC/2009	06/11/2008	POSSESSION OF DOCUMENTS CONTAINING FAKE INFER MA IAN	15/7/2013	KATSINA STATE HIGH COURT	FRN VS ANTHONY IDEMUDIA	TWO YEARS IMPRISONMENT WITHOUT AN OPTION OF FINE ON EACH OF THE TWO COUNT CHARGE
12	PLD/J/30C/2009	10/6/2009	CRIMINAL CONSPIRACY ATTEMPT TO OBTAIN MONEY BY FALSE PRETENCES AND IMPERSONATION	11/7/2013	HIGH COURT OF JUSTICE, JOS PLATEAU SLATE	FRN V MOHAMMED UMAR	SEVEN YEARS IMPRISONMENT ,EAD WITHOUT AN OPTION OF FINE ON COUNTS 1 AND 2, ON COUNT 3 THREE, THE ACCUSED WAS FOUND GUILTY AND SENTENCED TO 1 YEAR IMPRISONMENT WITH AN OPTION A FINE OF N50,000.00 (FIFTY THOUSAND NARIA ONLY.
13	FHC/MN/CR/1/2011	25/10/2011	CONSPIRACY AND OBTAINING MONEY UNDER FALSE PRETENCE	11/1/2013	FEDERAL HIGH COURT 1, MINNA, NIGER STATE	FRN V OWOLABI ADEWALE	TWO YEARS IMPRISONMENT ON COUNT 1 AND 3 WITH HARD LABOUR THE SENTENCE IS TO COMMENCE ON THE 1/11/2013. BUT ACQUITTED OF COUNT 3.
14	FHC/KD/98C/2012	5/12/2012	CONSPIRACY AND OBTAINING MONEY UNDER FALSE PRETENCE	11/5/2013	FEDERAL HIGH COURT 1 KADUNA STATE	FRN V SAM GWANDU	SEVEN YEARS IMPRISONMENT ON EACH COUNT TO RUN CONCURRENTLY FROM THE DATE OF ARREST
15	FHC/AFT VCR/80/11	10/6/2011	CRIMINAL CONSPIRACY AND BEING IN UNLAWFUL DOS SESSION OFFICE UNITED STATES CURRENCIES	16/12/2013	FHC 8, ABUJA	FRN V ALI SAIDU AND NARU SANI	5 YEARS IMPRISONMENT
16	L/E FCC/2/2 013	28/10/2013	OBTAINING BY FALSE PRETENCE, FORGERY AND UTTERING	13/12/2013	HIGH COURT 2 BENIN	FRN V ESOSA AKONEDO JUSTICE J	1 YEAR IMPRISONMENT ON EACH OF THE 5 COUNTS OR N 20,000.00 ON EACH OF THE 5 COUNTS
17	CR/09/2007	10/10/2007	PERSONATING A PUBIC SERVANT AID ATTEMPT TO	10/12/2013	FCT HIGH COURT 14	FRN V SAMUEL Z. BINDE (ALIAS AUSTIN SAMUEL)	1 YEAR IMPRISONMENT
18	KDH/2/L/08C/13	15/5/13	CRIMINAL BREACH OF TRUST	19/6/13	HCT1. ZARIA	FRN V DAVID DANJUMA GWANI	6 MONTHS IMPRISONMENT OR OPTION OF N2 50,000.00
19	SS/23C/2011	18/10/2011	CRIMINAL BREACH OF TRUST 6 THEFT	23/4/13	HCT SOKOTO	FRN V ESTHER ALAGBA	3 MONTH IMPRISONMENT OR N500,000.00 FINE ON EACH OF THE COUNTS

# 2013 EFCC CONVICTIONS

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20	K/EFCC/11/2010	22/03/ 2010	MISAPPROPRIATION	29/4/13	HCT 16 KANO	FRN V BENSON UKUM	1 YEAR IMPRISONMENT OR N500,000.00 FINE AND FORFEITURE OF BAIL BOND
21	FHC/GV 12C/2012	3/21/ 2012	WILLFUL OBSTRUCTION OF AUTHORIZED OFFICERS	26/3/13	FHC GUSAU	FRN V ALYU IDRLS	9 MONTHS IMPRISONMENT OR N120,000.00 FINE
22	B/HC/FRN/11/11	12/V 2011	OBTAINING BY FALSE PRETENCE	9/3/2013	HCT KEBBI	FRN V MITE LOVE AHMED	7 YEARS IMPRISONMENT
23	K/EFCC/06/11	21/03/2012	OBTAINING MONEY UNDER FALSE PRETENCE	24/6/13	HCT, 15, KANO	FRN V ABU YUSUF AKA ABU USMAN	1 YEAR IMPRISONMENT
24	E/113C/2012	4/11/2011	OBTAINING BY FALSE PRETENCE, FORGERY 8I UTERINE	13/06/2013	HC ENUGU	FRN V GODE MBACHU	TWO YEARS IMPRISONMENT
25	CR/416/2008	11/7/2008	USE OF PREMISES & NON REGISTRATION	17/6/2013	FHC AWKA	FRN VOI GABRIEL ARINZE	REPRIMANDED
26	LCD/131/ 2012	27/07/2012	OBTAINING MONEY UNDER FALSE PRETENCE	2 1/11/2013	HC, LAGOS	FRN V JEJE OLANIRAN	1 YEAR IMPRISONMENT & RESTITUTION
27	LCD/131/ 12	27/07/2013	FORGERY OF FOREIGN MONEY ORDER 2	1/01/2013	HC, LAGOS	FRN V AKANNI RASHEED	3 YEARS IMPRISONMENT
28	FHC/ASB/29 C/11	21/7/11	BANKING SCAM	1/7/2013	FHC, ASABA	FRN V MUSTARD SEED MICRO INVESTMENT LTD	10 YEARS IMPRISONMENT
29	D/377C/11	22/1/13	ATTEMPT TO OBTAIN BY FALSE PRETENCE, FORGERY & UTTERING	2/6/2013	HC, LAGOS	FRN V SARA AKPAN	7 YEARS IMPRISONMENT
30	ID/193C/12	13/11/12	CONSPIRACY & ATTEMPT TO OBTAIN BY FALSE PRETENCE 2	3/01/2013	HC, IKEJA	FRN V DAVE AKANNI JOEL & DAVID OMOWUNMI	1 YEAR IMPRISONMENT
31	ID/42C/2008	07/01/2008	FORGERY	2/6/2013	HC, LAGOS	FRN V SARAH AKPAN	7 YEARS IMPRISONMENT
32	FHC/L/18C/2009	02/09/2009	CONSPIRACY TO TAMPER WITH OIL PIPELINE FOR TRANS PORTATION OF PETROLEUM	1/2/2013	FHC, LAGOS	FRN V EMILIOJU ABIODUN	15 YEARS IMPRISONMENT
33	ID/177C/201 1	23/05/2011	OBTAINING BY FALSE PRETENCE 1	8/02/2013	HC, IKEJA	FRN V VERA OGBONNA	7 YEARS IMPRISONMENT
34	ID/48C/20 08	06/09/2008	CONSPIRACY & OBTAINING BY FALSE PRETENCE	3 1/01/2013	HC, IKEJA	FRN V OLUWATOSIN ADEBISI MICHAEL	8 YEARS IMPRISONMENT
35	FHC/L/36C/13	27/3/13	MONEY LAUNDERING	3/6/2013	FHC, LAGOS	FRN V CHUKWUONO NNAEMEKA	25% OF UNDECLARED SUM FORFEITED TO FGN
36	LCD/125 C/12/	23/10/ 2012	FORGERY OF FOREIGN MONEY ORDER/ CHEQUES	1 3/02/2013	HC, LAGOS	FRN V AYODELE BABALOLA	9 YEARS IMPRISONMENT
37	ID/63C/2008	201	OBTAINING BY FALSE PRETENCE 1	3/02/2013	HC, LAGOS	FRN V ELIHA WILLAMS	6 MONTHS IMPRISONMENT
38	ID/296C/12	06/06/ 2013	OBTAINING BY FALSE PRETENCE	3/6/2013	HC, IKEJA	FRN V OKONTA VINCENT CHINEDU	2 YEARS IMPRISONMENT
39	FHC/L/168C/13	24/04/2012	MONEY LAUNDERING	5/8/2013	FHC, LAGOS	FRN V FATAI APAMPA ADESINA	FORFEITURE OF \$140,000.00 TO FGN
40	FHC/L/79C/13	01/03 2013	MONEY LAUNDERING	5/7/2013	FHC, LAGOS	FRN V AKINNOYE ABIOLA OLUWAFUNKE	FORFEITURE OF \$ 51,205,00 TO FGN
41	B/EFCC/1C/06	25/07/06	OBTAINING BY FALSE PRETENCE	5/3/2013	HC, BENIN	FRN V FREDICK IGBOVBOA & ANO	7 YEARS IMPRISONMENT
42	LCD/53/13	4/3/2013	STEALING & FORGERY 2	2/05/2013	FHC, LAGOS	FRN V OLANIYI KEHINDE, OGUNJIMIN SUNDAY, FREDICK OHIAERI	3 MONTH IMPRISONMENT
43	LCD/01/2013	7/1/2013	OBTAINING BY FALSE PRETENCE 2	5/03/2013	HC, LAGOS	FRN V IMMACULATE AZIEGBEMI	1 YEAR IMPRISONMENT
44	ID/24C/2013	7/5/2013	OBTAINING BY FALSE PRETENCE 2	5/03/2013	HC, LAGOS	FRN V OLAOLU SALAU	7 YEARS IMPRISONMENT AND RESTITUTION
45	FHC/L/62C/2006	5/4/2006	CONSPIRACY, FORGERY UTTERING OF US POSTAL ORDERS	27/5/2013	FHC, LAGOS	FRN V P ETER NOSA IYEN	60 YEARS & 5 YEARS IMPRISONMENT TO RUN CURRENTLY
46	I/2EFCC/2013	07/06/2013	OBTAINING BY FALSE PRETENCE 2	5/06/2013	HC, IBADAN	FRN V AKINLUYI AKINTUNDE (AKA AKIN CINDY)	3 YEARS IMPRISONMENT
47	FHC/L/87C/2011	24/2/2011	ILLEGAL OPERATION OF PREMIUM MOTOR SPIRIT	5/3/2013	FHC, LAGOS	FRN V GUAN P IN MANG & 2 OTHERS	2 YEARS IMPRISONMENT
48	ID/162C/200 6	20/11/2006	CONSPIRACY & OBTAINING BY FALSE PRETENCE	1/7/2013	HC, LAGOS	FRN V OLARENWAJU	9 YEARS & 7 MONTHS IMPRISONMENT
49	K/EFCC/05/201 1	30/06/2011	FAILURE OF SURETY TO PRODUCE ACCUSED PERSON	1 4/05/2013	HCT KN	FRN V P ATRICK AKOR	6 MONTHS IMPRISONMENT OR FORFEITURE OF N 20 0,000.00 BAIL BOND

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50	K/EFCC/8/2013	27/3/2013	CRIMINAL CONS PIRACY AND OBTAINING BY FALSE PRETENCE	24/6/13	HC KANO	FRN V ABUBAKAR SAADIQ MAIGASKIYA & 3 ORS	<b>1ST ACCUSED</b> SENTENCED TO 6 MONTHS IMPRISONMENT OR N50,000.00 FINE ON 1ST COUNT, 4 MONTHS IMPRISONMENT OR N100,000 FINE ON 2ND COUNT, 6 MONTHS IMPRISONMENT OR N100,000.00 FINE ON 3RD COUNT, 6 MONTHS IMPRISONMENT OR N150,000.00 FINE ON 4TH COUNT <b>2ND ACCUSED</b> SENTENCED TO 6 MONTHS IMPRISONMENT OR N100,000 FINE ON 1ST COUNT, 6 MONTHS IMPRISONMENT OR N50,000.00 ON 4TH COUNT, <b>3RD ACCUSED</b> SENTENCED TO 6 MONTHS IMPRISONMENT OR N8 0,000.00 ON 1ST COUNT & 6 MONTHS IMPRISONMENT OR N5 0,000.00 FINE ON 4TH COUNT
51	ID/69C/2008 7 YEARS IMPRISONMENT	24/6/2009	OBTAINING BY FALSE PRETENCE	8/7/2013	HC, LAGOS	FRN V OLUSEGUN AGBANIMU AND SUNDAY SAMUEL OMENGOR	(FOR 1ST ACCUSED) AND 6 MONTHS IMPRISONMENT (FOR 2 <sup>ND</sup> ACCUSED)
52	ID/72C/2011	9/3/2011	OBTAINING BY FALSE PRETENCE	25/7/2013	HC LAGOS	FRN V PINCE BAYO LAWAL & ANO	5 YEARS IMPRISONMENT AND RESTITUTION OF N62,573,000.00 TO VICTIMS FORFEITED \$12,000
53	FHC/KN/C R/196/2012	12/12/2013	MONEY LAUNDERING	15/01/2013	FCH 2 KANO FATU RIMAN J.	FRN VS LDRIS HAMZA	FORFEITED \$20,000
54	FHC/KN/C R/193/2012	12/12/2012	MONEY LAUNDERING	15/01/2013	FCH 2 KANO FATU RIMAN J.	FRN VS UMAR MUSA KIBIYA	FORFEITED \$65,000.00
55	FHC/KN/C R/210/2012	12/12/2012	MONEY LAUNDERING	15/01/2013	FCH 2 KANO FATU RIMAN J.	FRN VS BASHIR ABDU	FORFEITED \$12,000
56	K/EFCC/01/2010	23/12/2012	CHEATING	22/01/3013	HCT KANO	FRN AUWAL IBRAHIM HASSAN	FORFEITED N 100,000.00 OR 3 YEARS IMPRISONMENT
57	K/EFCC/05/2010	23/12/2012	CHEATING	22/01/2013	HCT KANO	FRN VS IBRAHIM HAMISU	FORFEIT N100,000.00 OR 3 YEARS IMPRISONMENT
58	K/EFCC/08/2009	21/1/2010	CONSPIRACY, CONVERSION AND CHEATING	5/2/2013	HCT KANO	FRN VS ABDU HARUNA & SANI HARUNA	6MTHS IMPRISONMENT FOR 1 & 2 COUNTS: PAYMENT OF N7,200,000.00 OR 2 YEARS IMPRISONMENT AS RESTITUTION.
59	K/EFCC/13/2012	27/12/2012	OBTAINING BY FALSE PRETENCE.	31/01/2013	HCT 13 KANO	FRN VS AUWAI IBRAHIM	3YEARS IMPRISONMENT OR OPTION OF FINE N250,000.00
60	K/EFCC/16/2011	20/1/2012	FAILURE TO PRODUCE ACCUSED PERSON	22/01/2013	HCT KANO	FRN VS MU'AZU MOHAMMAD & USMAN MOHAMMAD	6 MONTHS IMPRISONMENT OR OPTION OF N300,000.00
61	K/EFCC/12/2012	13/12/2012	OBTAINING BY FALSE PRETENCE	11/2/2013	HCT 6 KANO	FRN VS NATHANIEL ABU TOR	6 MONTHS IMPRISONMENT OR N20,000.00 FHE
62	K/E FCC/05/2011	30/6/11	USING AS GENUINE A CERTAIN DOCUMENT	13/02/2013	HCT 10 KANO	F RN VS UGOJI UGOJI THEOPHILUS	9 MONTHS IMPRISONMENT OR N200,000.00 FINE
63	K/EFCC/09/2012	9/10/2012	CONSPIRACY, MISAPPROPRIATION & FORGERY	21/2/2013	HCT 9 KANO	FRN VS FUNSHO OLAYETE & ABIOLA P. AYOADE	23 MONTHS IMPRISONMENT & N410,000 FINE & N700,000 RESTITUTION
64	K/E FCC/02/2011	15/7/2011	OBTAINING BY FALSE PRETENCE	26/2/2013	HCT KANO AISHA MAHOUD J.	FRN VS UGOJI T. UGOJI	2 YEARS IMPRISONMENT OR N100,000 FINE
65	FHC/ASB/3C/2010	4/2/2010	ILLEGAL DEALING IN PETROLEUM PRODUCT	8/1/2013	FE0.HIGH COURT A SABA	FRN V HELEN ITEM OA & ANOR	6 YEARS IMPRISONMENT OR AN OPTION OF FINE OF N600,000 FINE AND THE TRUCK WITH REG. NO. XN 789 ENU LOADED WITH ABOUT 136 DRUMS OF PETROLEUM PRODUCT (AGO) FORFEITED TO FGN
66	TR5J/49C/2011	27/7/2011	OBTAINING BY FALSE PRETENCE	26/03/2013	HC,JALH»»	FRN V MAIGARI BELO IBRAHIM T.	9 YEARS IMPRISONMENT OR N75,000.00 FINE
67	ID/42C/2008	01/07/2008	CONSPIRACY & OBTAINING BY FALSE PRETENCE	02/06/2013	HC LAGOS JUSTICE OLOKOBA	FRN V SARAH AKPAN	7 WARS IMPRISONMENT
68	FHC/6M/36C/2013	13/11/2013	COUNTERFEIT OF CURRENCY	29/11/2013	FHC, GOMBE	FRN V MARK THOMAS	2 YEARS IMPRISONMENT
69	FHC/TR5T/2C/12	29/6/2012	OBTAINING BY FALSE PRETENCE	22/04/2013	FHC, JALINGO	FRN V DANIEL DAN FULANI & ANO	6MONTHS IMPRISONMENT
70	LD/69C/2010	5/8/2010	OBTAINING BY FALSE PRETENCE	29/4/2013	HC LAGOS	FRN V ARUNA MUNIRU ADESHINA	5 YEARS IMPRISONMENT
71	ID/38C/2010	26/4/2010	OBTAINING BY FALSE PRETENCE	29/4/2013	HC LAGOS	FRN V ARUNA MUNIRU ADESHINA	7 YEARS IMPRISONMENT
72	ID/15 9C/2011	6/6/2011	STEALING, FORGERY, ISSUANCE OF DUD CHEQUE	11/7/2013	HC LAGOS	FRN V AYOIOIA S. COKER INVESTMENT	2 YEARS IMPRISONMENT
73	M/18W2012	5/10/2012	OBTAINING BY FALSE PRETENCE	17/6/2013	HC LAGOS	FRN V SOLOMON ROLAND UZOR	6 MONTHS IMPRISONMENT
74	ID/185C/2012	5/10/2012	OBTAINING BY FALSE PRETENCE	17/6/2013	HC LAGOS	FRN V JUVENTUS NONSO LLODI	6 MONTHS IMPRISONMENT
75	LCD/228/2013	31AK/2013	STEALING & FORGERY	4/10/2013	HC LAGOS	FRN V LAWAL QASIM	6 MONTHS IMPRISONMENT

# 2013 EFCC CONVICTIONS

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76	ID/252C/2 012	5/12/2012	OBTAINING BY FALSE PRETENCE	17/10/2013	HC LAGOS	FRN V PROGRESS UMOERA & ANO	18 MONTHS IMPRISONMENT
77	D/137E/12	13/6/ 2013	OBTAINING BY FALSE PRETENCE	29/10/2013	HC LAGOS	FRN V JIDE YINKA	12MONTHS IMPRISONMENT & N356,000.00 RESTITUTION
78	B/195/2013	30/10/2013	OBTAINING BY FALSE PRETENCE	11/11/2013	HC LAGOS	FRN V JUNIOR WILLIAMS	7 MONTHS IMPRISONMENT
79	LD/44C/2010	18/11/2010	OBTAINING BY FALSE PRETENCE	18/11/2013	HC LAGOS	FRN V OLABAMIJI MICHAEL KAYODE	15 YEARS IMPRISONMENT
80	D/299C/13	25/10/2013	FORGERY	18/11/2013	HC LAGOS	FRN V SEGUN OLUFEMI	3 YEARS IMPRISONMENT
81	FHC/L/CS/346C/13	25/11/2013	OBTAINING BY	25/11/13	FHC, LAGOS	FRN V AUGUSTINE ONWE	FORFEITED N2,000,000.00
82	ID/300C/1 3	5/9/2013	FORGERY	3/12/2013	HC, LAGOS	FRN V GODWIN OMOSUYI	8 MONTHS IMPRISONMENT
83	ID/237C/1 3	21/11/2012	CONSPIRACY, ATTEMPT TO STEAL AND UTTERING	1 8/12/2013	HC, LAGOS	FRN V AJAGBE OMOTAYO& ANO	1 YEAR AND 6 MONTHS IMPRISONMENT
84	I/ 3EFCC/2013	7/6/2013	OBTAINING BY FALSE PRETENCE	20/12/13	HC, IBADAN	FRN V JOHN AUDU KANU	14 YEARS IMPRISONMENT
85	ID/87C/20 13	7/6/2013	OBTAINING BY FALSE PRETENCE 0	8/10/2013	HC, LAGOS FRN V	BENJAMIN OTUORIMUO	6 MONTHS IMPRISONMENT & RESTITUTION OF \$4, 016 .25
86	ID/HOW/4EFCC/12	24/09/2011	OBTAINING & FRAUDULENT USE OF PREMISES	7/12/ 2013	HC, OWERRI	FRN V NWAKA OZICHI BIAISE	7 YEARS & 3 YEARS IMPRISONMENT
87	CR/08 2/2012	22/6/2012	OBTAINING BY FALSE PRETENCE & POSSESSION OF SCAM DOCUMENTS	28/11/13	FHC, ENUGU	FRN V ONYIA IFEANYI Y	
88	CR/34 0/2011	25/11/2011	TRANSACTION OF BANKING BUSINESS WITHOUT A VALID LICENCE 2	8/11/2013	FHC, ENUGU	FRN V EDITH NKUNITE EGBUJE & ANO	6 MONTHS IMPRISONMENT OR N1 50,000.00 FINE & 1 MONTH IMPRISONMENT OR N50,000.00 FINE
89	FCT/HC/CR/07/06	09/09/2013	OBTAINING BY FALSE PRETENCE	8/10/2013	FCT HC, ABJ	FRN V JOSEPH MORAH	10 YEARS IMPRISONMENT
90	FHC/L/26C/2011	21/03/2011	CONVERSION	13/11/ 2013	FHC, LOKOJA	FRN VENESI JIMOH SULIEMAN	6 MONTHS IMPRISONMENT
91	CR/22 4/2012	29/4/2013	OBTAINING BY FALSE PRETENCE	7/10/2013	FHC, ENUGU	FRN V JELILI GBENGA	6 MONTHS IMPRISONMENT
92	CR/08 5/2011	8/1/2013	OBTAINING BY FALSE PRETENCE 2	4/10/2013	FHC, ENUGU	FRN V OYEKANMI ADEWALE	2 YEARS IMPRISONMENT
93	FHC/B/69C/2013	10/7/2012	IMPERSONATION, FORGERY, CONSPIRACY, MONEY LAUNDERING & OBTAINING BY FALSE PRETENCE	8/ 11/2013	FHC, BENIN	FRN V NOSA AGHO	3 YEARS IMPRISONMENT
94	CR/15 3/2008	11/2/2010	CONSPIRACY, VANDALISM AND ILLEGAL BUNKERING	19/11/ 2013	FHC, OWERRI	FRN V HEN RY THOMAS & ANO	5 MONTHS IMPRISONMENT
95	FHC/PH/229C/2013	18/11/2013	IMPERSONATION, FORGERY, POSSESSION OF SCAM DOCUMENTS, CONSPIRACY & OBTAINING BY FALSE PRETENCE	2/12/2013	FHC, PH	FRN V OKOLIE EMMANUEL EMEKA & 2 ORS	4 MONTHS IMPRISONMENT
96	FHC/GS/ 11C/2012	21/03/12	WILLFUL OBSTRUCTION OF AUTHORIZED OFFICERS 2	6/03/2013	FHC GUSAU	FRN V ALIYU MUSA & 2 ORS	6 MONTHS IMPRISONMENT OR FINE OF N100,000.00
97	FHC/KN/CR/21/ 2013	17/01/2012	COUNTERFEITING OF CURRENCY	10/7/2013	FHC 2 KANO	FRN V MUHAMMED SANI	3 YEARS IMPRISONMENT FOR EACH COUNT OR N150 ,000.00 FOR EACH COUNT
98	FHC/KN/CR/85/ 2013	24/03/2012	COUNTERFEITING OF CURRENCY ( US DOLLARS)	10/7/2013	FHC 2 KANO	FRN V MUHAMMED SHEHU	3 YEARS IMPRISONMENT FOR EACH COUNT OR N150 ,000.00 FOR EACH
99	FHC/KN/CR/194/ 2012	17/12/2012	COUNTERFEITING OF CURRENCY(U S DOLLARS	11/7/3013	FHC 2 KANO	FRN V TUKUR ABDULLAHI	5 YEARS IMPRISONMENT FOR EACH COUNT OR N 15 0,000.00 FOR EACH COUNT
100	FHC/KN/CR/192 /2012	12/12/2012	MONEY LAUNDERING	12/7/2013	FHC 2 KANO	FRN AMINU SULE LAMIDO	TO FORFEIT 25% OF UNDECLARED FUNDS
101	K/EFCC/03/201 3	18/02/2013	MISAPPROPRIATION 2	2/07/2013	HCT 10 KANO	FRN V USMAN SALIFU	6 MONTHS IMPRISONMENT OR N2,000,000.00 AND PAYMENT OF N56,879,0 00.00 AS COMPENSATION TO COMPLAINANT
102	FHC/KN/CR/38/ 2013	18/02/2013	MONEY LAUNDERING	09/12/203	FHC 2 KANO	FRN V USMAN SALIFU	1 YEAR IMPRISONMENT OR N 250,000.00 FINE 103 K/EFCC/16/200 8 17/12/2008 CONSPIRACY AND OBTAINING MONEY UNDER FALSE PRETENCE 2 8/12/2013 HCT 6 KANO FRN V UCHE OYENKPA & FRANK OBI 1 YEAR IMPRISONMENT
104	K/EFCC12/2013	11/7/2013	FORGERY 1	8/12/2013	HCT 10 KANO	FRN V AUGUSTINE OLAYINKA & OKEH ANONE	2 YEARS IMPRISONMENT OR FINE OF N100,000.00
105	K/EFCC/10/2012	9/10/2012	OBTAINING BY FALSE PRETENCE AND FORGERY	30/12/13	HCT 10 KANO	FRN V BASHIR ALI & SALE JIBRIN	14 YEARS IMPRISONMENT WITH FINE OF N1,000,000.00



## 2013 EFCC CONVICTIONS

S/NO	CHARGE NO.	DATE FILED	OFFENCE	DATE OF CONVICTION	COURT/JUDGE	PARTIES/NAMES OF ACCUSED/ CONVICTS	VERDICT
106	FHC/ASB/4C/2011	2/18/2011	ILLEGAL DEALING IN PETROLEUM PRODU CT 1	9/04/2013	FHC ASABA	FRN V EFE ASAKPA	6 MONTHS IMPRISONMENT AND FINE OF N30,000.00 ON EACH COUNT
107	FHC/ASB/24 C/2011	7/13/2010	ILLEGAL DEALING IN PETROLEUM PRODU CT	7/6/2013	FHC ASABA	FRN V OYEKAN ABIDUN, EMOKPAI HENRY, VINCENT EMAYIKU	3 YEARS IMPRISONMENT
108	FHC/ASB/3C/2011	2/18/2011	ILLEGAL DEALING IN PETROLEUM PRODU CT	6/7/2013	FHC ASABA	FRN V DAYA DANIEL, AKPOS MICHAEL	2 YEARS IMPRISONMENT OR FINE OF N 50,000.00 ON EACH COUNT
109	FHC/B/57C/ 2011	7/15/2011	OBTAINING BY FALSE PRETENCES 1	3/06/2013	FHC ASABA	FRN V AIMUAMWEHI FRIDAY OSAREREN, OMOREDE DARLINGTON, IYOKHO NOSA	91 YEARS IMPRISONMENT
110	FHC/B/66C/ 2011	9/19/2011	OBTAINING BY FALSE PRETENCE 1	3/06/2013	FHC ASABA	FRN V AGUBGA CHUKUEMEKA	15 YEARS IMPRISONMENT AND TO REFUND TO THE COMPLAINANT THE SUM OF N7,500,000.00
111	FHC/PH/135C/20 11	11/2/2011	OBTAINING BY FALSE PRETENCE	6/7/2013	FHC P H	FRN V BABATUNDE BOLAJI MURITALA	7 YEARS IMPRISONMENT
112	FHC/PH/262C/20 12	10/9/2012	OBTAINING BY FALSE PRETENCE AND FORGERY	11/1/2013	FHC P H	FRN V ADEBISI ADEBAYO ADENIYI J.	3 YEARS IMPRISONMENT
113	FHC/PH/35C/201 2	3/19/2013	ILLEGAL DEALING IN PETROLEUM PRODU CT 1	3/12/2013	FHC P H	FRN V SULEIMAN ABDUL	2 YEARS IMPRISONMENT
114	FHC/EN/CR/ 41/ 2012	25/06/2012	POSSESSION OF SCAM DOCUMENTS 2	5/03/2013	FHC ENUGU	FRN V DARAMOLA OLAWALE	2 YEARS IMPRISONMENT
115	ID/94C/2009	16/07/2009	ISSUANCE OF DISHONORED CHEQUE 2	4/10/2013	HC IKEJA	FRN V ALAWEMO AND SYNERGY RESOURCES MANAGEMENT LTD	6 MONTHS AND REFUND OF \$4,016 .25
116	ID/24C/2006	6/3/2006	OBTAINING BY FALSE PRETENCE 2	2/05/2013	HC IKEJA	FRN V KOREDE ONAMUTI	2 YEARS IMPRISONMENT
117	CR/82 /2009	17/10/2009	ISSUANCE OF DISHONORED CHEQUE 2	1/02/2013	FCT HIGH COURT 32 ABUJA	FRN V ALHAJI IBRAHIM SALEH	4 MONTHS IMPRISONMENT

## Appendix B



### Economic and Financial Crimes Commission

NO. 5, FOMELLA STREET, OFF ADDETOKUNBO ADEMOLA CRESCENT, WUSE II, ABUJA, NIGERIA

Hotlines: 09-7831798, 09-7831799 officialEFCC officialEFCC officialEFCC officialEFCC www.efccnigeria.org

#### CONVICTIONS SECURED IN 2014

S/N	ACCUSED(S) NAME	CHARGE NO.	OFFENCE(S)	DATE CASE CHARGED TO COURT	TRIAL COURT	TRIAL JUDGE'S NAME	DATE OF CONVICTION	SENTENCE
1	AI ASSOCIATES, & BARRISTER IBRAHIM ABDUL	CR/13/2009	Criminal breach of trust	2009	H/C 14 GUDU	JUSTICE A. A. I BANJOKO	3/3/2014	1st accused sentenced to 2 years imprisonment or fine of N5m. Failure to pay the fine the Managing Director or principal officer will serve the sentence, 2nd accused (Managing Director) sentenced to 5 years imprisonment or fine of N20 million.
2	CHIEF B.A. OMOLE AGBOWORIM	CR/62/2005	Misappropriation of public funds.	2005	H/C 12 MAITAMA	JUSTICE SADIQ UMAR	6/2/2014	15 months imprisonment.
3	ALHAJI MUSTAPHA SULEIMAN	CR/431/2010	Issuance of dishonoured cheque	2010	H/C 21 APO	JUSTICE ADEGBOLA ADENIYI	21/5/2014	2years imprisonment without option of fine.
4	PAUL. MOMOH & DURU COSMAS	CR/86/2012	Criminal breach of trust	2012	H/C 21 APO	JUSTICE ADEGBOLA ADENIYI	8/7/2014	2 years imprisonment or fine of N1,250,000.00 on each of the two counts of the charge.
5	MOHAMMED JAMEEL & 1 OTHER.	FCT/HR/CR/27/09	Criminal breach of trust	4/11/2009	HC FCT	Justice A.S.Umar	3/19/2014	1st accused sentenced to 2 years imprisonment, and 2nd accused sentenced to a fine N5,000.00.
6	ABDULMALIK K. SULEIMAN & ABDULAZEEZ ADABANEGE	FCT/HR/CR/27/09	Impersonation and attempt to obtain money by false pretence.	4/11/2009	FCT High Court No.21 Apo	Justice O Adegbola Adeniyi	20/06/2014	1st accused sentenced to 33 years imprisonment, and 2nd accused sentenced to 25 yrs imprisonment
7	EBILOMA ABDULLAHI	FCT/HR/CR/02/09	Forgery and obtaining money by false pretence	4/11/2009	FCT High Court 20 Apo	Justice O Adegbola Adeniyi	16/05/2014	Accused sentenced to 2years imprisonment on count 1 and 10yrs imprisonment on count 7.
8	PASTOR ELABE ROBLES JNR.	CR/78/2010	Issuance of dishonoured cheque	30/11/2009	FCT High Court	Justice Kutigi	29/01/2014	4 months imprisonment
9	GODWIN BELLO ONIMISI	CR/382/13	Cheating and Impersonation	23/10/2013	H/Court 15 Gudu	Justice A.A.I Banjoko	12/1/2014	3 months imprisonment
10	AYUBA MOHAMMED	CR/185/13	Impersonation	27/10/2014	H/Court 15 Gudu	Justice A.A.I Banjoko	28/3/2014	3 years imprisonment
11	FRIDAY JOSEPH IDACHABA (DCP)	HCL/54C/2013	Obtaining by false pretence	12/2/2014	Kogi State High Court 3 Okene	Justice JJ Majebi	28/11/2014	7 years imprisonment without option of fine. Restitution on the sum of N 1,403,114.00 to the Nigerian Prisons
12	BASHIR AHMAD HARUNA	K/EFCC15/2013	Conspiracy and Obtaining Money by false Pretences.	11/6/2013	HCT 9	Justice Dije Aboki	1/8/2014	2nd sentenced to 4months Imprisonment and N200,000.00 fine . Failure to pay fine he shall serve another 4months on count 5 and 3months on count 7.
13	ALHAJI ABDULKADIR MOHAMMED	FHC/KN/CR/141/2013	Issuance of dishonoured cheque	9/6/2013	FHC 2 KANO	Justice Fatu Riman	1/28/2014	7years imprisonment or option of fine of N1,050,000.00
14	ABDULAZEEZ ABUBAKAR	KDH/KAD/2/EFCC/2013	Criminal breach of trust	21/2/2013	HCT 2 Kaduna	Hon. Justice Tukur A. Muazu	1/31/2014	1year Imprisonment without option of fine.
15	IBRAHIM SALE NAGERO& IBRAHIM SALE NAGERO TRANSPORT (NIG.) LTD.	FHC/KN/CR/EFCC0173 /2013	Forgery and diversion of funds	21/10/2013	FHC 2 KANO	Justice Fatu Riman	2/6/2014	1st & 2nd Accused are Sentenced to 2years imprisonment and fine of N500,000.00
16	OMORODION UYI BRIGHT; KELVIN ENOMA; OKIN KANATIOUS; CHARLES EHIS	FHC/b/95c/13	Conspiracy and Internet Fraud	19/10/2013	FHC Benin, Edo State	Justice A.M Liman	5-Feb-14	Convicted and sentenced to 7 years in prison with out the option of fine, to be suspended for 2 years and all monies in their bank be forfeited to the FGN
17	MOSES KOLA OLAYEMI	K/EFCC/10/2013	Criminal Misappropriation	27-May-13	HCT 13 Kano	Justice Faruk Lawan	28-Mar-14	3 years imprisonment and N120,000.00 on all the 3 counts
18	HADIZA MUSTAPHA	K/EFCC/02C/2013	Theft And Fraud	31-Jan-13	HCT 7, Kano	Justice Dije Aboki	31-Mar-14	Convicted and sentenced to 1 year imprisonment together with a fine of N50,000.00 for count 2 and for count 3,4,5,6,7,8,9 and 10 she was sentenced to 4 years imprisonment or an option of fine of N280,000.00.
19	OPARA DANIEL (SO CALLED IBRAHIM LAMORDE)	K/EFCC08/2014	Misappropriation obtaining by false pretence and employment scam	5-May-14	HCT 10 Kano	Justice Faruk Lawan	27-May-14	1year imprisonment on counts 2 & 3 and sentenced to 1year imprisonment in respect of Count 1 to run consecutively.
20	MOHAMMED BASHIR ABDULKADIR	FHC/KN/CR/32/2014	Possession of counterfeit currency	31-Jan-13	FHC 2 Kano	Justice Fatu Riman	31-Mar-14	He pleaded guilty and Sentence to 5 Months imprisonment on each of count 1, 2, and 3, to run concurrently and also sentence to 3 years imprisonment in respect of count 4 or fine of N200,000 and 3 years in prison on count 5 or fine of N100,000.00
21	BRIGHT EYOGBAI & OKECHUKU OKOLO	K/EFCC/08/2012	Conspiracy,Obtaining by false pretence and forgery	8-Oct-12	HCT 7 Kano	Justice Dije Aboki	5/6/2014	Convicted and sentenced to 42 years imprisonment for Count 1,2,3,4,5, & 6 to run Concurrently and also Sentenced to 6months in prison . restitution of N 9,000,000.00, and fine of N 70,000
22	STEPHEN ONYEKACHI (ALIAS STEVEN ONYERO)	K/EFCC13/2013		10-Sep-13	HCT 7 Kano	Justice Dije Aboki	26-Jun-14	Convicted and Sentenced 14years Imprisonment for the 2 Count Charges to run Concurrently.
23	STEPHEN ONYEKACHI (ALIAS STEVEN ONYERO)	FHC/KN/CR/49/2013	Fraud and Obtaining money by false pretence	28-Feb-13	FHC 2 Kano	Justice Fatu Riman	6-Jul-14	Convicted and Sentenced 14years Imprisonment for the 2 Count Charges to run Concurrently. Restitution of N 220,000.00

24	AUWAL IBRAHIM	K/EFCC/19/2013	Criminal Misappropriation	27-Dec-13	HCT 10 Kano	Justice Farouk Lawan	10-Jul-14	Sentence to 6months Imprisonment for each of the 2 Counts to run concurrently or fine of N100,000
25	ABUBAKAR SALIHU A.K.A. ABUBAKAR NYIBANGO GADOGGAJI NYIBANGO	FHC/KN/CR/134/2014	Prossession of Fake Dollars	5-Sep-14	FHC 2 Kano	Justice Fatu Riman	30-Sep-14	Sentence to 5years Imprisonment or N300,000.00 Fine.
26	ABDUL YAHAYA AND BASHIR AHMAD HARUNA	K/EFCC15/2013	Conspiracy & Obtaining Money by False Pretence.	6-Nov-13	HCT 7 Kano	Justice Dije Aboki	10-Oct-14	Sentenced to 7 years in prison for count 2 and 6 months imprisonment each for counts 1,3,4,5, and 6 without an option of fine. The court also ordered the convict to pay the sum of N2,027,900.00 as restitution to the complainant.
27	MOHAMMED MANSUR ADAM AND MOHAMMED AUWAL	FHC/KN/CR/86/2013	Conspiracy, Forgery & Attempt to Obtain Money under false Pretence	3-Jun-13	FHC 2 Kano	Justice Fatu Riman	28-Oct-14	Both Accused sentence to 7years Imprisonment Without option of Fine for each of the 3 Counts Charge to run Concurrently.
28	UMARA. UMAR	FHC/DT/CR/40/2014	Cheating, Criminal Breach of Trust & Misappropriation of Funds	30/9/2014	FHC Dutse	Justice Salihu Yahuza	18/11/2014	He pleaded guilty and Sentenced to 1 year in prison with hard Labour Starting from 18/11/2014
29	ABUBAKAR ABDULLAH (MAI SABULU BUREAU DE CHANGE)	K/EFCC13/2014	Criminal breach of trust and theft	9/7/2014	HCT 7 Kano	Justice Dije Aboki	19/11/2014	He pleaded guilty and Sentenced to pay the sum of N250,000.00 or to serve 4months in prison
30	DANIEL OJO JEROME A.K.A. PETER OKUNDAYO	FHC/DT/CR/12/2014	Obtaining Money by false pretence	17/9/2014	FHC Dutse	Justice Salihu Yahuza	20/11/2014	Sentenced to 6months in prison with hard labour or to pay the sum of N50,000.00 Fine.
31	MOHAMMED LAWAN MOHAMMED AND 4 OTHERS	K/EFCC/04/2010	Conspiracy and OBT	25/1/2010	HCT 13 Kano	Justice A.M Bayero	21/11/2014	Sentenced to 7years Imprisonment without option of Fine. And to pay the sum of N7,950,000.00 as compensation, failure of which he shall serve 5years imprisonment.
32	SOUFIYANOU ISSA	FHC/KN/CR/108/2014	False declaration of funds	5/6/2014	FHC 2 Kano	Justice Fatu Riman	21/11/2014	To Forfeit 50% of undeclared funds of \$132,100 (US Dollars) to the Federal Government of Nigeria
33	DENNIS ERESHE INUNG	K/EFCC/06/2012	Theft	10/9/2012	HCT 13 Kano	Justice A.M Bayero	9/12/2014	He pleaded guilty and Sentence to 6 Months imprisonment with a fine of N30,000.00. The court also ordered the convict to pay the sum of N280,000.00 as restitution to the complainant or in the alternative serve 2 years in prison.
34	AMINU MOHAMMED AND 5 OTHERS	K/EFCC/10/2008	Conspiracy, Impersonation & Obtaining Money by False Pretence	16/4/2008	HCT 7 Kano	Justice Dije Aboki	16/12/2014	Sentenced to 10years and 6months imprisonment. The court also ordered the convict to pay the sum of N11,000,000.00 as restitution to the complainant. In default of payment the Convict Shall Serve another 3 years in prison.
35	TAJO SANI INUSA AND ANOR	K/EFCC/04/2014	Issuance of Dud Cheque	17/10/2013	HCT 7 Kano	Justice Dije Aboki	24/12/2014	Sentenced to 3months Imprisonment or in the Alternative pay a Fine of N100,000.00
36	ANTHONY ANIUZOIGWE ALIAS JOHNSON NWAEKWE	K/EFCC/30/2014	Obtaining money by false pretence	3/12/2014	HCT 9 Kano	Justice Yusuf M. Ubale	30/12/2014	Sentenced to 3years Imprisonment or an option of Fine of N50,000.00 for count 1. And 1year Imprisonment or an option of Fine of N25,000.00 in respect of count 2. The convict was also ordered to refund the sum of N235,000.00 to the victim.
37	BLESSING CHINENYENWA OKWARA	ID/17C/2008	OBT, personation and forgery	2008	Lagos State High Court, Igbosere	Justice M.O. Obadina	9/1/2014	The defendant was sentenced to two (2) years imprisonment for forgery. The sentence is to run concurrently defendant to restitute the sum of N 4,380,000.00 to the victims.
38	ADEFIOYE ADEGBOYE	ID/55C/2003	Forgery of National Drivers' license	27/02/2013	Lagos State High Court, Igbosere	Justice Jose	13/01/2014	Sentenced to a term of one and half years imprisonment
39	(1) OLUWADARE SUNDAY (2) JOHN GBADEBO (3) SUNDAY OLEKUNLE (4) AWE RAPHAEL OLATUNBOSUN (5) LAIDE AYENI (6) ERNEST OKOH	ID/32C/2004	Stealing and Conspiracy	3/3/2004	Lagos State High Court, Igbosere	Justice M.O. Obadina	15/01/2014	The 2nd and 3rd defendant were convicted for conspiracy, stealing and forgery and sentenced to 2 years imprisonment, 4th defendant was discharged and acquitted of all the offences, 5th defendant had pleaded guilty in 2009 and has since been convicted and sentenced.
40	DAMILIOLA EKUNDAYO	ID/231C/2013	Forgery	7/5/2013	Ikeja High Court,	Hon. Justice Ipaye	28/01/2014	The defendant was sentenced to a year and 6 months imprisonment commencing from the date of his arrest, 4th of June, 2013 and the prison term to be served at Ikoyi Prison
41	(1) MOHAMMED UBALE (2) AHMED JALLO	ID/212C/2012	Stealing and Conspiracy	2/11/2010	Lagos State High Court, Ikeja	Justice Adeniyi Onigbanjo	30/01/2014	1st defendant was convicted for stealing and sentenced to two (2) years imprisonment. 2nd defendant was convicted for receiving of stolen property and sentenced to 3 years imprisonment. Their sentences are to run concurrently with effect from 30/01/2014. No order of restitution as the nominal complainant Alh. Kawule Mohammed informed the Court that he had forgiven the defendants and was no longer interested in the money stolen from him.
42	MARTINS BENSON	ID/172C/2013	Conspiracy to steal, attempt to steal and stealing.	22/05/2013	High Court, Ikeja	Hon. Justice Ogunsanya	6/2/2014	The defendant was charged for attempted, conspiracy to steal and stealing and was convicted and sentenced to 1year imprisonment with effect from the date of arraignment(1/7/13)
43	ADELABU KOLAWOLE	ID/230C/2013	Possession of fraudulent documents, OBT	22/07/2013	High Court, Ikeja	Hon. Justice Ogunsanya	10/2/2014	The defendant was arraigned on a 3 count amended information and was sentenced to a year imprisonment on counts 1 and 2 bordering on possession of fraudulent document and 2 years imprisonment on count 3 bordering on obtaining money by false pretence. The sentence are to run concurrently from the date of remand 12/11/2013
44	ADEBAYO OKHIO	ID/164C/2009	Conspiracy to steal, attempt to steal and stealing.	12/12/2009	High Court Ikeja	Hon. Justice Adeniyi Onigbanjo	18/2/2014	The defendant was arraigned on 12 counts amended information and was sentenced to 3 years imprisonment. The sentence are to run concurrently from the date of arraignment 12/11/2013
45	ADEYINKA AJIBOYE	KWS/56C/2011	Theft and criminal Breach of Trust.	Aug-12	Kwara State High Court	Hon. Justice Mahmud Abdul-Gatar	11/2/2014	The accused person was convicted and sentenced to 3years imprisonments without option of fine commencing from 11th day of Feb. 2014. The court also made a consequential order of forfeiture of the accused person's property at Tanke Akata village Ilorin to the Guaranty Trust Bank Plc the victim of the offence, to restitute the sum of N10,000,000.00 to GTBank
46	SEUN JAMIU ODUNAYO	ID/149C/2012	Fraudulent false accounting of the records of Skye Bank Plc	16/8/2012	High Court Ikeja	Hon. Justice Akinlade	17/02/2014	The defendant was convicted, sentenced to 3years imprisonment without an option of fine, sentence from the date remand 1st November, 2012. defendant's uncompleted 3 bedroom bungalow at Bisonbin in Okpadamuwe Ogun State to be forfeited to the complainant as restitution

47	CHINEDU ONUIGBO	ID/141C/2012	OBT and issuance of dishonoured cheque	8/10/2012	High Court, Ikeja	Hon. Justice Akinlade	19/02/2014	The defendant was convicted on a 4 count charge and sentenced to 6 months imprisonment and the team to run concurrently on each count. defendant has fully restituted the victim
48	ADEDOYE ADEBOYE OMOTOSHO BABATUNDE	ID/402C/2013	Conspiracy, Forgery and Possession of documents	13/6/2013	High Court, Ikeja	Hon. Justice Ipaye	27/02/2014	The defendants were sentence to 1 and half years imprisonment commencing from 1st day of arraignment.
49	CHRISTOPHER CLEMENT VICTOR AKUSHODE	LCD/393C/2013	Conspiracy to defraud, stealing and attempt to obtain	13/11/2013	High Court of Lagos Igbosere	Hon. Opefanwo	17/03/2014	The defendants were convicted and sentence to 6 months imprisonment commencing from the date of conviction (17/3/2014). He has fully restituted the whole to the victim.
50	MALIK AMZAT AND NOIMAT AMZAT	AB/EFCC/01/2011	Stealing N8,390,788.53 from Ogun State Staff Salary Acct; Ogun State Police Salary Acct and Ogun State Universal Basic Education Staff Salary Acct.	9/6/2011	High Court of Ogun State Abeokuta	Hon. Justice Lamina	26/03/2014	The 1st defendant was convicted and sentenced to 2 years imprisonment. Option of fine of N100,000.00 on all counts
51	OKIEMUTE AGGREY	ID/259C/2013	Stealing	22/7/2013	High Court of Lagos, Ikeja	Hon. F.S. Ogunsunya	15/01/2014 and 20/01/2014	The defendant was sentenced to 6 months imprisonment. Defendant to pay sum of N1,500,000.00 to complainant
52	ADEBOWALE RASAQ OLAMILEKAN	ID/34C/2012	Conspiracy, Stealing, forgery and Uttering.	9/3/2012	High Court Lagos	Hon. Akinlade	28/1/2014	The defendant was sentenced to 5 years imprisonment without the option of fine, on each count, he was however acquitted of count 1 (Conspiracy). The sentencing is to run concurrently with effect from the 14th of June, 2012 when he was arraigned. Court ordered that the sum of N200,000.00 recovered from the defendant be given to complainant as restitution
53	ADE ADEFIOYE	FHC/L/86C/2013	False declaration of assets	4/4/2013	Federal High Court, Lagos	Hon. Justice Seidu	1/4/2014	The defendant was sentenced to 6 months imprisonment commencing from the day of conviction. Court also ordered that the Toyota Camry with Reg. No. LSD640AV be forfeited to the Federal Republic of Nigeria.
54	HASSAN ODUMBONI	LCD/14/2013	OBT and possession of fraudulent documents containing false pretence	21/1/2013	High Court Lagos	Hon Justice Opesanwo	15/4/2014	The defendant was convicted and sentenced to 6 months imprisonment commencing from the day of conviction on each count. Sentence to run concurrently.
55	NASIR SHEHU	ID/134C/2011	Conspiracy to steal	6/4/2011	Lagos State High Court	Hon. Justice Akinlade	15/4/2014	The defendant was convicted and sentenced to 6 months imprisonment without an option of fine on the 1st count and 6 years imprisonment without an option of fine on the second count. Sentence to run concurrently on each count.
57	AYINLA YUSUF NIFEMI	ID/295C/2013	Possession of fraudulent documents	30/8/2013	High Court of Lagos State	Hon. Justice K. Jose	26/5/2014	The Court convicted and sentenced the defendant to one year imprisonment for each count. The sentencing is to run concurrently with effect from the 25th November, 2013 when the defendant was first arraigned. Sum of N2,769,601.07 in his First Bank account be forfeited to the victim as restitution. Sentencing is to run concurrently with effect from 25/11/2013 when the convict was first arraigned.
58	MOHAMMED ALI	ID/71/2010	Stealing	4/8/2010	High Court of Lagos State, Ikeja Division	Hon. Justice Onigbanjo	4/6/2014	The Court convicted and sentenced the defendant to 2 years imprisonment with hard labour. The sentencing is to take effect from the 4th June, 2014 when the defendant was first arraigned.
60	OLUWASEYI BANKOLE	ID/232C/2013	Possession of fraudulent documents and OBT	4/7/2013	High Court, Ikeja, Lagos State	Hon. Justice Ipaye	16/6/2014	The Court convicted and sentenced the defendant to one year imprisonment. The sentencing is to take effect from the 3rd of June, 2013 when the defendant was first arrested.
61	NNAULO HYACEITH CHINEDU	ID/5C/2012	Attempt to Obtain and OBT	18/2/2012	High Court, of Lagos Igbosere, Lagos Division	Hon. Justice Balogun	18/6/2014	The Court convicted and sentenced the defendant to 3 and a half years imprisonment without option of fine with effect from the date of remand.
62	OLANREWAJU IBRAHIM	ID/319C/2013	Stealing	17/9/2013	High Court, Ikeja of Lagos State	Hon. Justice Opesanwo	25/6/2014	The Court convicted and sentenced the defendant to 6 months imprisonment without option of fine with effect from 27th June, 2014 and to return N100,000.00 and the sum of N200,000.00 already refunded be given to the victim as restitution
63	OLOWOFELA TOLUWALASE	ID/241C/2013	Possession of fraudulent documents, forgery and OBT	17/7/2013	High Court, Ikeja of Lagos State	Hon. Justice Jose	3/6/2014	The Court convicted and sentenced the defendant to one year imprisonment. The sentencing is to take effect from the 3rd of June, 2013 when the defendant was first arrested.
64	SAMUEL ABIDAKUN	ID/258C/2013	Stealing, Conspiracy And Forgery	17/7/2013	High Court, Ikeja of Lagos State	Hon. Justice S.S. Ogunsanya	3/7/2014	The Court convicted and sentenced the defendant to varying prison terms of 12 months to 24 months to run concurrently. The sentencing is to take effect from the 15th of November, 2013 when the defendant was committed to prison custody.
65	LANIYAN SARAFADEN BOLATITO	I/1EFCC/2009	Stealing	6th June 2009	High Court, Oyo State,	Hon. Justice S.A. Akinleye	2/6/2014	The court convicted the defendant and sentenced him to 3 years imprisonment on each count without option of fine. Sentencing to run concurrently from the date of judgment.
66	FUNSHO BABATUNDE OLADIMEJI	ID/482C/2014	Unlawful Possession of Counterfeit Currency	28/2/2014	Lagos High Court Ikeja	Hon K.A. Jose	11/9/2014	The Court convicted and sentenced the defendant to 8 months imprisonment for each counts. Sentence to run concurrently.
67	OLOMOSU KOLA	ID/58c/2014	Obtaining money by false pretence	Jun-14	Logos High Court, Ikeja	Hon Justice J.O Jose	10/9/2014	The defendant was convicted to 1 year imprisonment with effect from 3rd of April 2014 when the defendant was first arrested.
68	OLUWATOSIN OLAYEMI	ID/235C/2013	Possession of Fraudulent document and OBT.	7/4/2013	Lagos State High Court.	Hon. Justice L.B. Lawal-Akapo	3/9/2014	The defendant was convicted to 1 year imprisonment on the 3rd Sept. 2014 commencing from the date he was remanded in prison custody. Sum of N80,000.00 already refunded be given to the complainant as restitution
69	NTEPH JOHN SUNDAY	ID/582c/2014	Obtaining money by false pretence	Jun-14	High Court Ikeja	Hon Justice Jose.	10/9/2014	The defendant was convicted to 1 year imprisonment on the 3rd Sept. 2014 commencing from the date he was remanded in prison custody.
70	EMMANUEL UBAMEN	ID/238C/2013	Possession of fraudulent documents and obtaining money by false pretence	12/7/2013	Lagos State High Court Ikeja	Hon. Justice L.B. Lawal - Akapo	9/10/2014	The defendant was convicted to 1 year imprisonment commencing from the date he was remanded in prison custody by the honourable court being 25th of November, 2013 N45,000 be given to the victim as restitution.

71	FOLIKE IDAYAT KOYO AND FOLIK INTERNATIONAL VENTURE NIGERIA LIMITED	ID/105C/2013	Issuance of dud cheques	10/4/2013	Ikeja High Court,	Hon. Justice Ipaye	3/10/2014	The 1st defendant being alter ego of the 2nd defendant, the Honourable court convicted the 2nd defendant and sentenced it to a total fine of N1million. The Company to be wound up and lots assets forfeited to FGN.
72	RAHEEM MOHAMMED ABIODUN	ID/666C/2014	Possession of fraudulent documents	8/5/2014	High court Ikeja	Hon Justice Jose.	16/10/2014	The defendant was convicted and sentenced to 8 months imprisonment commencing from 17th April, 2014 being the date he was brought to the Commission
73	FISAYO AJIBOLA	ID/233C/2013	Possession of fraudulent documents	5/7/2013	High Court Ikeja	Hon Justice Ipaye	27/11/2014	The defendant was convicted and sentenced to one year imprisonment commencing from the date of judgement i.e 27/11/2014
74	AKINYERA AKINTAYO	ID/633C/2014	Possession of fraudulent documents	5/5/2014	High Court Ikeja,	Hon Justice S.S Ogunsoya	6/11/2014	The defendant was convicted and sentenced to 3months imprisonment commencing from the date of conviction
75	ADEDIGBA RIDWAN	ID/583C/2014	Possession of fraudulent documents	11/4/2014	High Court Ikeja	Justice Jose	30/10/2014	The defendant was convicted and sentenced to 6months imprisonment commencing from the day of conviction without Option of fine.
76	OLAKUNLE AKANNI, DELE OSHUNTOGUN, ADESINA AKINSOLA	ID/103C/2013	Fraudulent invitation, Conspiracy to obtain money by false pretences, OBT and Forgery	22/3/2013	High Court Ikeja	Hon Justice L.B. Lawal Akapo	4/11/2014	The 1st and 3rd defendants were convicted sentenced to 1 year imprisonment commencing from the date of judgement being 4/11/2014 while 2nd defendant was sentenced to one year imprisonment on 9/12/2014.
77	IFEANYI OBI	ID/187C/2013	Conspiracy to obtain money under false pretence.	28/10/2013	High Court Ikeja	Hon Justice Lawal Akapo	4/11/2014	The defendant was sentenced to 1 year imprisonment without option of fine with effect from the 4th of November, 2014
78	AUGUSTINE AFAGIMOH & WATER INNOVATION ENTERPRISES	LCD/3/2012	Conspiracy to steal and attempt to steal	27/11/2014	High Court of Justice, Lagos Division.	Hon Justice Candide-Johnson	28/11/2014	The defendant was sentenced to 3months imprisonment while Water innovation Nigeria Enterprises used in defrauding UBA Plc be attached to the tune of N42 million naira.
79	BENJAMIN SEGUN BRIGHT	ID/89C/2012	Stealing	7/6/2012	High Court Ikeja	Hon Justice Ipaye	15/12/2014	The defendant was sentenced to 2 years imprisonment on each count. No order for restitution.
80	KINGSWILL CHIKEZIE & KEBROY SHELTER DEVELOPMENT LTD	AB/EFCC/101/13	Conspiracy, Stealing and issuance of dud cheque	9/11/2013	High Court Abeokuta	Hon. Justice A.A. Akinyemi	15/12/2014	The Defendants were sentenced to 7 years and 3 years respectively and the 2nd accused was also ordered to pay the sum of N5million to the victims
81	PASTOR GLORY ABREFERA, REVEREND VINCENT OKPOGO & MUSTARD SEED MICRO INVST LTD	A/EFCC/1C/2012	Conspiracy and Stealing	6th April, 2013	High Court Warri Delta State.	Hon. Justice Ohwo	10/12/2014	The defendants were sentenced to 7 years imprisonment with hard labour
82	NTUEN PROMISE EKEMINI	ID/318C/2014	Attempt to steal	23/1/2014	Lagos High Court Ikeja	Hon J.K. Jose	18/12/2014	The defendant was convicted and sentenced to 1 year imprisonment
83	JAMES AMOCHI ETTETE & 1 OTHER	ID/2C/2014	Conspiracy, attempt to commit a felony, stealing, forgery and use of false documents	5/5/2014	High Court Ikeja	Hon Justice Ipaye	18/12/2014	The convicts were sentenced to two years imprisonment.
84	OKEDEJIO KABIRU	ID/243C/2014	Possession of fraudulent document	24/4/2014	High Court Ikeja	Hon. Justice Lawal Akapo	19/12/2014	The defendant was convicted on 11 count and sentenced to 2yrs on each counts all to run concurrently from the date of sentence.
85	DR. REMI FOLORUNSHO	ID/IC/2011	Forgery and Uttering	6/1/2011	Lagos State High Court Ikeja.	Hon. Justice Okunnu	29/12/2014	The defendant was convicted and sentenced to 1 year imprisonment.
86	AR DAWAKI & MUHD CHUBADO	FHC/GM/21C/2009	Counterfeit Naira Notes	30/1/2009	FHC Gombe	Hon Justice B.O Quadiri	15/1/2014	2nd Accused person is convicted to 1 year without option of fine.
87	HABILA MAMMAN (MUSA MUHD)	FHC/GM/5C/2014	Conspiracy and obtaining by false pretence	23/1/2014	FHC Gombe	Hon Justice B.O Quadiri	29/1/2014	Accused person convicted and sentenced to 7years
88	HABILA MAMMAN (LUKA AUDU)	FHC/GM/6C/2014	Conspiracy and obtaining by false pretence	23/1/2014	FHC Gombe	Hon Justice B.O Quadiri	29/1/2014	Accused person convicted and sentenced to 7years
89	LUKA AUDU	FHC/GM/7C/2014	Conspiracy and obtaining by false pretence	23/1/2014	FHC Gombe	Hon Justice B.O Quadiri	29/1/2014	Accused person convicted and sentenced to 7years
90	SULEIMAN ALIYU	TRSJ/48C/2011	Criminal breach of trust	13/6/2011	SHC Jalingo	Hon Justice Philbus Andetur	14/2/2014	Accused person convicted & sentence to 14yrs imprisonment
91	ISMAILA MOHAMMED	FHC/BAU/28C/2014	Counterfeit US Dollar bills	27/2/2014	FHC Bauchi	Hon Justice M G Umar	3/6/2014	Accused person convicted and sentenced to 3years
92	ABUBAKAR DAN-INNA ALIAS GONI BUKAR	FHC/GM/26C/2014	Obtaining by false pretence and invocation of diabolic power	30/09/2014	FHC Gombe	Hon Justice B.O Quadiri	24/3/2014	Accused person convicted and sentenced to 2years with hard labour
93	SHUAIBU MOHAMMED	FHC/BAU/27C/2014	Counterfeit naira notes	27/2/2014	FHC Bauchi	Hon Justice M G Umar	3/6/2014	Accused was convicted and but Sentencing is delayed due to authenticity of Naira note request by the Judge.
94	AHMADU ADAMU	FHC/BAU/44C/2014	Obtaining by false pretence and countefaiting US dollars	5/5/2014	FHC Bauchi	Hon Justice M G Umar	5/8/2014	Accused convicted for 5/7years on count 1&2 respectively without fine to run concurrently
95	IBRAHIM NAYAYA	FHC/JOS/16C/2013	Obtaining by false pretence	4/24/2013	FHC JOS	Hon Justice Ambrose Alagwa	5/27/2014	Accused convicted and sentenced to 2years with option of fine #500,000.00
96	KALILAHMAD BAPPA	FHC/GM/27C/2014	Counterfeit naira notes	3/31/2014	FHC Gombe	Hon Justice M G Umar	6/24/2014	Accused convicted for 12months for count 3&4 each resp. Sentence to run concurrently from date of arrest
97	HAMIDU ALI	TRSJ/51C/2011	Criminal breach of trust by public servant	7/27/2011	SHC Jalingo	Hon Justice Philbus Andetur	10/27/2014	Convicted for 3yrs on each count to run concurrently.
98	BELLO MOHAMMED	FHC/BAU/20C/2014	Counterfeit naira notes	2/11/2014	FHC Bauchi	Hon Justice M G Umar	12/3/2014	1st Accused convicted to 2 years on count 2 & 3 and 1 years on count 3 & 4 to run concurrently
99	MONDAY AGHA & 3 OTHERS	FHC/EN/CR/15/2013	Conspiracy and Impersonation	April 8th, 2013	FHC 1 Enugu	Justice M.I. Shuabu	January/17th/2014	Sentenced to 7 years imprisonment
100	NWANKWO IKECHUKWU, CHUKWUYER SUNDAY	FHC/EN/CR/34/2013	Forgery	May/22nd/2013	FHC 2 Enugu	Justice Agishi	January/27th/2014	Convicted and sentenced to 3 months imprisonment without an option of fine
101	ENOMA KELVIN, OMORODION BRIGHT UYI, IRIBHOGBE CHARLES EHSI, OMORODION BRIGHT	FHC/B/95C/2013	Impersonation and Obtaining by false pretence	October/19th/2013	FHC 1 Benin City	Hon. Justice A.M. Liman	February/5th/2014	Convicted and sentenced to years imprisonment without option of fine



102	GIFT ONYEGAM & 3 OTHERS	FHC/EN/CR/38/2013	Conspiracy and Obtaining by false pretence	June/6th/2013	FHC 1 Enugu	Justice M.I. Shuiabu	February/24th/2014	Convicted and sentenced to 10 years without an option of fine on 24th february, 2014
103	JOSEPH OKORO	FHC/EN/30C/2009	Obtaining by false pretence	June/25th/2009	FHC 1 Enugu	Justice M.I. Shuiabu	February/24th/2014	Convicted and sentenced to 7 years imprisonment without an option of fine
104	ALOZIE DAVID	A/7C/2011	Issuance of dud cheque	May/5th/2011	SHC Aba	Justice T.U.Uzokwe	March/26th/2014	Convicted and sentenced to seven (7) years imprisonment without an option of fine and the convict to retribute the sum of N10,517,940.00 to the victim and to pay the sum of N5,000,00.00 on count 1 of the charge
105	EGBEARO FRIDAY, AKPAIBOR SAMSON	FHC/B/58C/2013	Obtaining by false pretence	April/26th/2013	FHC Benin	Hon. Justice A.M. Liman	May/28th/2014	Convicted and sentenced to 7 years imprisonment without an option of fine
106	CHIMEZIE OKERE KINGSLEY	E/269/2014	Conspiracy and Stealing	10/10/2014	SHC Enugu	Hon. Justice Onovo	10/10/2014	3 years on count one and two years on count two with options of fine of N20,000 and N15,000 respectively
107	ECHANDU EJIKE	FHC/EN/63C/2014	Conspiracy, Forgery and Obtaining by false pretence	20/10/2014	FHC Enugu	Hon. Justice D. V. Agishir	20/10/2014	Two Months Imprisonment
108	VINCENT ODIONU	FHC/A/140C/2014	Obtaining cheque unlawfully	19/9/2014	FHC Abakiliki	Hon. Justice A. Onyetenu	9/12/2014	Two years imprisonment with option of two hundred thousand naira
109	AKINSEHINDE BABATUNDE	FHC/PH/334C/2012	Advance Fee Fraud.	15/11/2012	Federal High Court 4 PH	Hon. Justice S.A. Nganjwa	20/1/2014	Sentenced to five year imprisonment
110	(1) LUCKY OKERIE (2) ANDREW ANTHONY (3) KADIRI ALOYSIOUS (4) JAMESAKER	FHC/B/40C/2013	Conspiracy and Illegal Dealing in Petroleum Products.	21/2/13	Federal High Court 1 Benin,	Hon. Justice A Liman	25/3/14	Sentenced to two year imprisonment, Ford bus with Reg. No. DF 637 BEN loaded with about 80 units of 50 litres of AGO forfeited to the FGN
111	LARRY EDONWONYI	FHC/B/16C/2013	Advance Fee Fraud.	29/1/13	Federal High Court 1 Benin,	Hon. Justice A Liman	31/3/14	Sentenced to three year imprisonment
112	GIDEON NUKA VOPNA	FHC/PH/28C/2011	Conspiracy and Illegal Dealing in Petroleum Products.	16/3/11	Federal High Court Port Harcourt,	Hon. Justice M. Onyetenu	14/4/14	Sentenced to two year imprisonment , truck and content forfeited to the FGN
113	(1) IKECHUKWU OKAFOR (2) EZE EMEKA (3) PASCHAL STEVEN ABONYI (4) CHIGOZIE UMENSOFO (5) BESTMAN OTTO	FHC/PH/159C/2011	Conspiracy and Illegal dealing in petroleum products.	14/11/2011	Federal High Court 1 PH,	Hon. Justice Akanbi	2/4/2014	Sentenced to two year imprisonment , 18 drums of AGO forfeited to the FGN
114	1. MOHAMMED YUSUF 2. ADAMU MANSUR 3. SANI RABIU 4. MURTALA MOHAMMED 5. YAHAYA USMAN 6. IDRIS ABUBAKAR 7. YAHAYAMOHAMMAD 8. IBRAHIM HASSAN 9. HAMISU KAMBA 10. AMINU IBRAHIM 11. IBRAHIM AHMED	FHC/B/39C/2012	Forgery Conspiracy and Dealing in petroleum product	27/3/2012	Federal High Court 1 Benin,	Hon. Justice A Liman	20/5/14	6th and 8th Accused Persons convicted on Count 4 only and sentenced to 3 years imprisonment each from date of arrest without an option of fine. 1st, 2nd, 3rd, 4th, 5th, 7th, 10th and 11th Accused Persons discharged on count 1, 2 and 3 excluding the deceased 9th Accused person
115	1) ADESA LUCKY RUTE (aka PETER ANDERSON, ERIK STERN, ADOLPHUS KLEMENS, LUDWIG VAN & LARRES MARTEN) 2) DANICE OSAGIE	FHC/B/20C/2013	Internet scam	1/31/2013	Federal High Court 2 Benin,	Hon. Justice P.I. Ajoku	2/6/2014	Accused persons sentenced to three years imprisonment without an option of fine
116	SHEDRACK OFOSE	FHC/W/57C/2013	Illegal Dealing in Petroleum Products.	2/22/2013	Federal High Court Warri,	Hon. Justice Mohammed Abubakar	7/4/2014	Accused person sentenced to six months imprisonment without an option of fine, Ford bus & product forfeited to FGN
117	ELOGHOSA OCIAIBOR	FHC/B/25C/2013	Internet scam	31/01/2013	Federal High Court 2 Benin,	Hon. Justice P.I. Ajoku	24/9/14	Accused person sentenced to two year imprisonment on count 1 & 3 without an option of fine
118	PETER SUNDAY	FHC/B/15C/2013	Conspiracy and Illegal Dealing In Petroleum Products.	31/01/2013	Federal High Court 2 Benin,	Hon. Justice P.I. Ajoku	24/9/14	Accused person sentenced to two year imprisonment without an option of fine
119	OTOKO M. OWON & ANOR	FHC/PH/345C/2012	Advance Fee Fraud.	12/12/2012	Federal High Court 1 PH,	Hon. Justice Akanbi	9/7/2014	Accused persons sentenced to three years imprisonment without an option of fine
120	SUNDAY EZE	FHC/PH/346C/2012	Illegal Dealing in Petroleum Products.	12/12/2012	Federal High Court 1 PH,	Hon. Justice Akanbi	10/7/2014	Accused person sentenced to seven years imprisonment without an option of fine
121	IBIBA JACK	FHC/PH/141C/2007	Obtaining Money Under False Pretences.	13/6/2007	Federal High Court PH,	Hon. Justice Aikawa R.M.	29/10/2014	Accused person sentenced to thirteen years imprisonment without an option of fine and restitution to the two victims in sum of N28,550,000
122	IBIBA JACK	FHC/PH/149C/2007	Obtaining Money Under False Pretences.	18/6/2007	Federal High Court PH,	Hon. Justice Aikawa R.M.	13/02/2014	Accused person sentenced to seven years imprisonment without an option of fine and restitution to the two victims in sum of N29,700,000
123	SULEIMAN ABDUL	PH/30C/2012	Illegal dealing in petroleum product	3/14/2012	Federal High court PH	Hon. Justice M. Onyetenu	13/3/2014	Accused sentenced to two years imprisonment with hard labour without an option of fine.
124	PAPA OGBODU & 4 OTHERS	FHC/B/90C/2012	Conspiracy and Illegal Dealing in Petroleum Products.	28/9/2012	Federal High Court, Benin	Justice Ajoku	14/2/14	Sentenced to 3 years without option of fine, vehicles and products forfeited to the FGN
125	GEOFFREY OBIOHA	FHC/PH/77C/2009	Conspiracy and Illegal Dealing in Petroleum Products.	24/09/2009	Federal High Court PH,	Hon. Justice A Onyetenu.	27/11/2014	Accused person sentenced to four year imprisonment, Mercedes Benz truck with Reg no. AG 601 ABA and content forfeited to the FGN
126	SAILESH KUMAR SINGH & 11 OTHERS	FHC/YNG/7C/2013	Dealing in petroleum products	18/1/2014	Federal High Court Yenagoa	Hon. Justice L. Akanbi	5/8/2014	Each accused sentenced to fifteen years imprisonment without an option of fine.

## Appendix C

### INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION (ICPC)

#### STATUS OF CRIMINAL AND CIVIL CASES AS AT MARCH 2015 – PART I

#### A. STATUS OF CRIMINAL CASES

DATE	TRIAL COURT	DESCRIPTION OF THE ACCUSED	SUMMARY OF CHARGES	STATUS
2001	HC 2 FCT	HC/80/1/2001 FRN V Gbenga Falae & Anor NDLEA Officers	Demand and receipt of gratification	Matter is coming up on 5 <sup>th</sup> May 2015 for conclusion of trial within trial and close of the prosecution's case.
2002	Federal High Court, Abuja	FHC/ABJ/CS/319/02, Umar Ghali Na'aba v FRN Former Speaker, House of Representatives	On the basis of an invitation to the Commission, the Appellant filed an application challenging the invitation to which the Commission raised an objection which was sustained. The Appellant then filed an appeal.	The appeal has suffered several adjournments. ICPC had been appearing for the Commission and the AGF but recently the AGF briefed a lawyer who has filed a new brief for the AGF.
2002	HC, Edo State	Case No: 8/ICPC/1/2002 FRN Vs Baba Tunde Akim Balogun & Mojisola Anita 1 <sup>st</sup> accused was a Principal of Federal Technical and Science College, Uromi, Edo State	1 <sup>st</sup> accused conferred Corrupt advantage of the sum of N334,000.00 upon a public officer while the 2 <sup>nd</sup> accused using her position in the Treasury to confer on herself the salaries of another public officer.	1 <sup>st</sup> accused person admitted and was convicted summarily on 13 <sup>th</sup> June 2008 and was given option of fine of N25, 000.00 each on count one and two. While the 2 <sup>nd</sup> accused person went into the full trial and was convicted by Edo State High Court, Benin and sentenced to 6 months imprisonment without option of fine
	HC Lagos	FRN V Gbolahan Adegbule Chief Medical Director, Orthopedic Hospital, Igbobi-Lagos	Using office to confer unfair advantage on self and relation	Accused was discharged and acquitted. Prosecution has filed a notice of appeal.
	Court of Appeal, Benin Division	Peter Ayemi & Anor v FRN Permanent Secretary and Director of Finance at Edo State Universal Basic Education Commission (SUBEC)	Accused persons placed the fund of the Commission i.e. sum of N160 Million in a fixed deposit account with Sterling Bank Plc and shared the interest accruing therefrom in 2009	They appealed to Court of Appeal Benin City. Briefs of argument have been exchanged between counsel and hearing is slated for 10/9/2015
	Supreme Court	Dele Fagorola v FRN Fmr. Chairman, Akure North Local Government Council, Ondo State	Appellant filed an appeal at the Supreme Court	Appeal against the ruling of the Court of Appeal on the appellant's no case submission was dismissed and Appellant was ordered to proceed to the trial court to enter his defence.
	HC, Kogi	FRN V Emmanuel Eguvaha Fmr. Chairman, Ibaji Local Govt Council, Kogi State	Awarding contract without budgetary provision, approval and cash backing	Accused was convicted and sentenced to three years imprisonment and to pay a fine of N100,000. Accused appealed against the conviction at the Court of Appeal and the appeal was allowed. The Commission has appealed to the Supreme Court.
	HC, Kaduna	FRN v Professor Alhassan Mela Yakubu & 2 Ors. Fmr. Chief Medical Director and Director Finance of Ahmadu Bello University Teaching Hospital	Virement under Section 22(5) of the ICPC Act, 2000.	Accused persons were convicted on 16 <sup>th</sup> July, 2004 by the High Court of Kaduna State. The judgment was however recently reversed by the Court of Appeal.
		FRN v Umar Musa Fmr. staff of the State Security Service	using his position to confer corrupt advantage upon himself by removing the sum of \$10,000 US Dollars (N1,468,000) at the material time) from Alhaji Hussain Zanuwa Akwanga who was then in the custody of the State Security Service	Accused was convicted and sentenced to five years imprisonment on 1 <sup>st</sup> August, 2006
	HC, Oyo State	FRN v Adeyemi Richard Olalekan Fraudster	Impersonation and obtaining money by false pretences	Accused was convicted and sentenced to three years imprisonment.
		FRN v Chief Callistus Ibe Nwawolo Fmr. Chairman of Aniocha Local Government Area of Delta State.	Charged for fraudulent acquisition of property under Section 12 of the Act and for using his position to confer corrupt advantage upon his wife (Mrs. Patricia Ibezie Nwawolo) by approving the payment of various sums of money to her from the coffers of Aniocha North Local Government fund when she was not entitled to same	He was convicted by the Delta State High Court and sentence to 3 years imprisonment with an option of N300, 000. The judgment was delivered on 9 <sup>th</sup> August, 2007.
	HC, Lafia, Nasarawa.	Federal Republic of Nigeria V. Ethelbert Nzerem and Yusuf Lamidi. Staff of National Electric Power Authority.	They demanded for the sum of N100, 000 from the owners of a hotel in order to cancel outstanding NEPA bills	They were convicted and sentenced to 7 years imprisonment each by the High Court of Nasarawa State.
		FRN V Effiong Ekeuke, Ayobamidele Edemirukaye & Gregory C. Onumajulu	The 1 <sup>st</sup> accused was charged in count (1 & 4) for knowingly holding directly otherwise than as a member	The 1 <sup>st</sup> accused person was found guilty in count (1 and 4) as charged and is convicted according. The punishment for each of the offence is seven (7) years the

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			of a Joint Stock Company an interest in a contract contrary to and punishable under s. 12 of the ICPC Act, 2000. The 2 <sup>nd</sup> accused was charged in count (2,5 and 6) for using his office as the Bursar of the Federal Science and Technical College, Jalingo to confer corrupt advantage upon himself for the various sums of (130,000.00), (108,000.00) and (205,000.00) respectively contrary to and punishable under s. 19 of the ICPC Act, 2000; while The 3 <sup>rd</sup> accused was charged in count (3) for using his office as principal of the F.S.T.C., Jalingo to confer corrupt advantage upon himself for the sum of (N500, 000.00) which he purportedly collected as DTA and servicing of official vehicle of which he could not account for which is contrary to and punishable under s. 19 of the ICPC Act, 2000.	sentence of seven (7) years is to run concurrently. The sentence is however suspended and the 1 <sup>st</sup> accused shall show and maintain good behavior throughout the period of his sentence. The 2 <sup>nd</sup> accused is found guilty and convicted in count (2 and 5) as charged. He should pay the sum of money involved in the two count upon which he is found guilty. That is, the total sum of N238,000.00. He was however discharged on count six (6). The 3 <sup>rd</sup> accused person is discharged and acquitted in count three (3). Judgment was delivered in 2008.
HC, Jalingo, Taraba State	FRN Vs Ifraimu Bulus, Anthony Wakili (M), Ahmed Mohammed(M) Edward J. Kiledu(M), Abdul A.B. Umar(M), Ahmed Kossing(M), Amos Luka(M), Bala Kalimbu(M)  The 2 <sup>nd</sup> accuse was the Head of the Computer Unit in the office of the Accountant General of Taraba State, the remaining first to eight accused were they staff of College of Education Jalingo Accounts Section while the fourth accused was the College Registrar.	Charged with using their positions to confer corrupt advantage upon themselves by sharing the salary of six ghost workers whose names they inserted in the payroll of the college of Education Jalingo to the tune of (N2,102,000.00) Two Million One Hundred and Two Thousand Naira only		The Hon. Court in its judgment found each of the eight accused person guilty as charged but failed to convict and sentence each of the accused person accordingly. It only ordered them to pay back the total sum mentioned above to the coffers of the college and submit receipt evidencing doing so to the Honourable court. The judgment by the court was delivered sometime in 2008.
High Court, Nasarawa State	FRN Vs Isaac Olinseh and Anor Police officers in the rank of Assist Supt of Police (ASP)	charged for demanding the sum of N10,000 and receiving the sum of N5,000 from one Prince Chinedu in order to release his brother on bail.	charged for demanding the sum of N10,000 and receiving the sum of N5,000 from one Prince Chinedu in order to release his brother on bail.	Honourable Justice Ramadan of the High Court of Nasarawa State, Lafia convicted the two Accused Persons and sentenced them to 3 years imprisonment each on 28 <sup>th</sup> July, 2008.
	HU/4C/2007 FRN Vs Chudiebere Ude Former Chairman, Umunneochi local government council	Charged on a 7 count charge under s. 22 (5), s. 22 (4), s. 22 (3) of the ICPC Act 2000		Accused was discharged on count 7 but convicted on counts 1, 2, 3, 4, 5 and 6 and sentence to 3 months imprisonment with an option of fine of 20,000.00 for each of the 6 counts
HC, Lagos	Federal Republic Of Nigeria Vs Bello Lafajaji & Usman Amali  former Chairman of The National Drug Law Enforcement Agency (NDLEA) and his Special Assistant	A seven count charge for conspiracy to receive and for receiving from one Ikenna Onochie (a suspect with NDLEA), the sum of £164, 300 Euros being part of the exhibit seized from Ikenna Onochie, in order to release Mr. Ikenna Onochie and his vehicles from NDLEA custody. Dr. Bello Lafajaji was also charged in section 19 of the ICPC Act for using his office to confer corrupt advantage upon himself by receiving the said sum of 164,300 Euros from Mr. Ikenna Onochie.		Hon. Justice Shola Williams of the High Court of Lagos State convicted the two Accused Persons on all the counts and sentenced the 1 <sup>st</sup> Accused Dr. Bello Lafajaji to 4years imprisonment and the 2 <sup>nd</sup> Accused to 3 years imprisonment without any option of fine.
	FRN VS. EMMANUEL AKWUE  Lecturer in College of Education Abgor and also a lecturer in a Polytechnic in Ozoza Delta State	Charged in section 19 of the Act for conferring corrupt advantage upon himself.		He was convicted on the 14 <sup>th</sup> December, 2010 and sentenced to 2 years imprisonment without option of fine by His Lordship Justice Okolosi of Delta State High Court sitting in Sapele
	FRN V Chidi Michael Nnanaemeka	Charged for attempting to give and actually offering the sum of N50, 000 to one Mr. Gudu Michael as official of the National Drug Law Enforcement Agency (NDLEA) in order to facilitate the release of his international passport which was confiscated by the NDLEA.		He was convicted on 13 <sup>th</sup> January, 2011 and sentenced to six months imprisonment on each of the two counts, sentences to run concurrently with effect from the day the judgment was delivered
	FRN V Mohammed Haliru Madugu	Charged under section 19 for using his position to confer		The convict was sentenced to 5 years imprisonment on each of the three counts



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		Former Chairman of Kalama Local Government Area in Kwara State. .	corrupt advantage upon himself	which should run concurrently. He was also ordered to refund the sum of N500, 000 which he embezzled to Kalama Local Government
	HC, Ondo State	<b>FRN V Sgt. Joseph Adebayo</b> Police Officer	Demanding the sum of N10, 500 in order to release the son of the complainant who was detained on the allegation of theft of N5000 belonging to his neighbours. A Sting operation was carried out and the accused was arrested in Ondo town on September 9, 2008. Since the investigators were unable to recover the exhibit money N10, 500 from the accused in the process of sting operation, he was charged under Section 8 and 10 of the ICPC Act, 2000	Accused convicted on count 1 and 2 but discharged and acquitted on counts 2 and 4. He was however cautioned and discharged by Hon. Justice Nelson Adeyanju of Ondo State High Court on June 10, 2011.
	HC, Edo State	<b>FRN VS. TEMPLE NWANKWOALA (DSP)</b> Deputy Superintendent of Police in charge of the Homicide Section attached to the office of the Assistant Inspector General of Police.	Demand and receipt of gratification.	He was convicted and sentenced to 7 years imprisonment with hard labour by Honourable Justice E.F. Ikponmwien of the High Court of Justice Edo State in January, 2012.
		<b>FRN V DALA BUKAR KONDUGA</b> Education Secretary of Konduga Local Government in Borno State.	Charged under Section 22 (5) of the Corrupt Practices And Other Related Offences Act, 2000 for transferring the sum of 3.1 million meant for leave grant of staff to pay salaries of 79 newly recruited teachers.	He was convicted and sentenced to one year imprisonment by Honourable Justice Ngadda of the High Court of Justice, Maiduguri on 6 <sup>th</sup> March, 2012
		<b>FRN V UMARU SALLA &amp; GARBA HASSAN WARA</b> Fmr. Chairman of Maiyama Local Government Council of Kebbi State and 2 <sup>nd</sup> accused agent of the Consultant engaged to establish a Micro Finance Bank for the Council.	Conspiracy with 2 <sup>nd</sup> accused an agent of the Consultant engaged to establish a Micro Finance Bank for the Council to inflate the consultancy fee from 1.7 Million Naira to 5.3 Million Naira.  The accused persons were charged jointly and severally for; use of office to confer corrupt advantage upon self- contrary to s. 19, making false return contrary to s. 16, conspiracy contrary to s. 26, and inflation of cost of service contrary to section 22 (3) making false statement to a public officer contrary to section 25 of the Independent Corrupt Practices and Other Related Offences Act, 2000.	Consequently the 2 <sup>nd</sup> accused person was convicted and sentenced to 3 years imprisonment with an option of N20, 000.00 (Twenty Thousand Naira) fine for abetting the 1 <sup>st</sup> accused to inflate the consultancy fee contrary to section 26 and punishable under section 22 (3) and fined N100, 000.00 (One Hundred Thousand Naira fine) for making an untrue to a public officer contrary to and punishable under section 25 the Independent Corrupt Practices and Other Related Offences Act, 2000 respectively.
2003	HC Benin	<b>FRN v Prof Austin Obasohan</b> Chief Medical Director, University of Benin Teaching Hospital	Making false returns and conspiracy	Defence made a no-case submission at the close of prosecution's case which was over-ruled and they were asked to open their defence.
2003	HC 2 FCT	<b>FCT/HC/1/2003</b> <b>FRN V Mohammed Ali Balogun</b> Chief Magistrate, FCT	Demand and receipt of gratification	Slated for judgment on 14 <sup>th</sup> April 2015.
2003	HC, FCT	<b>FCT/HC/CR/07/2003</b> <b>FRN V Ugwu Simon</b> Police prosecutor	Demanding and receiving gratification contrary to Section 8(1) of the ICPC Act, 2000	Accused person convicted on 24 <sup>th</sup> February, 2007.
2004	Court of Appeal, Abuja	<b>CA/A101M/04</b> <b>Umar Ghali Na'aba v FRN</b> Former Speaker, House of Representatives	Accepting gratification from NYSC Corp members	Appeal has been adjourned for hearing at a date to be announced later.
2004	HC, FCT	<b>FRN V Dr. Omale Joseph Amedu</b> Medical Doctor, Federal Staff Clinic Abuja	Conspiracy and Virement	Application to quash the charges brought against him was over-ruled and accused filed appeals at the Court of Appeal and Supreme Court as such the matter is still pending at the trial court.
2005	HC, Jos	<b>PLD/J/40C/2005</b> <b>FRN V Prof Akerejola &amp; Anor</b> Fmr. DG & Chairman Industrial Training Fund, Plateau State	Conspiracy and Virement	Accused persons made a no-case submission which was over-ruled by the trial court. Matter pending at the trial court until the determination of interlocutory appeal.
2005	HC, FCT	<b>FCT/HC/CR/66/2005</b> <b>Marius Ameh v FRN</b> Asst Supt of Police at Force Hqtrs, Abuja	Asking for and receiving gratification.	Convicted in January 2007 and sentenced to 2yrs imprisonment.

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	Supreme Court, Abuja	Marius Ameh v FRN Asst Supt of Police at Force Hqtrs, Abuja	Asking for and receiving gratification.	Waiting for hearing date from Supreme Court.
2005	HC 1, FCT	CR/31/2005 FRN V Sen. Adolphus Wabara, Sen. Ibrahim Abdulazeez and Prof. Fabian Osuji Fmr. Senate President, Fmr. Senator of the Federal Republic and Fmr. Minister of Education respectively	Demand and receipt of ₦50 Million bribe in order to pass the budget of the Federal Ministry of Education	Accused persons filed a preliminary objection which was over-ruled and appealed against the ruling at the Court of Appeal.
2005	HC, FCT	Charge No.HOS/3C/2005 FRN v Caleb Ojo & Anor Chairman, Oriade Local Govt., Osun State and his brother.	Giving a bribe of N20,000 to a staff of CPC in order to induce him to write a letter exonerating the Chairman from allegation of corruption leveled against him in a petition being investigated by the Commission	Convicted and sentenced to one year imprisonment on each of the two counts on 17 <sup>th</sup> March, 2006 .
2005	HC, Ogun State	AB/ICPC/1/2005 FRN V. Alh. M.O. Aijsegiri & Anor Fmr. Chairman, Abeokuta North Local Govt	Virement- money allocated for printing of exercise books on ileya gift	The Accused person was convicted for violating the provision of section 22(5) of the Corrupt Practices and Other Related Offences Act, 2000 when he spent money allocated for printing of exercise books on ileya gift.
2006	Court of Appeal, Abuja Division	CA/A7/IC/2006 Sen. Adolphus Wabara, Sen. Ibrahim Abdulazeez and Prof. Fabian Osuji V FRN Fmr. Senate President, Fmr. Senator of the Federal Republic and Fmr. Minister of Education respectively	Demand and receipt of ₦50 Million bribe in order to pass the budget of the Federal Ministry of Education	The Court of Appeal allowed the appeal against the ruling of the trial court and quashed the charges against the accused persons which was appealed against at the Supreme Court.
2006	Court of Appeal, Benin Division	CA/B/117/2006 Prof Austin Obasohan V FRN	Appeal against ruling of the trial court on no-case submission	Court of Appeal dismissed the appeal and ordered that accused enter its defence.
2006	HC, Borno	M/51C/2006 FRN V Alh. Babagana Abbas Dawa Fmr. Chairman, Damboa Local Govt, Borno	Using office to confer corrupt advantage on self and another as well as making false reports	Convicted and sentenced to 7 years imprisonment
2006	HC, FCT	FRN V Akinbola Johnson Police officer attached to Utako police station	Receiving gratification in the course of official duty	Convicted and sentenced to 2 years imprisonment
2006	Court of Appeal, Abuja Division	CA/A/167C/2006 Akinbola Johnson v FRN	Convict appealed against the judgment of the trial judge convicting him	Decision of the trial court was affirmed by the Court of Appeal
2006	HC, Nasarawa, Lafia	NSD/LF/46C/2006 FRN V Hon. Zakari Sani & Anor Fmr. Chairman and Director of Finance, Toto Local Govt Council	Conspiracy, inflation of contract and conferring corrupt advantage upon self	The two accused persons were discharged and acquitted.
2006	Court of Appeal, Jos Division	CA/J/150CA/06 Otumba A. Bello v FRN Fmr. Chairman Industrial Training Fund, Plateau State	Conspiracy and Virement	Appeal against ruling of trial court on no-case submission was dismissed by the Court of Appeal.
2006	HC Jos and Court of Appeal, Jos	CA/J/150C/06 FRN V Prof Olu Akerejola & Anor 1 <sup>st</sup> accused/Appellant was Director-General while 2 <sup>nd</sup> accused was Chairman of the Industrial Training Funds, Jos	Accused persons were charged with Virement and conferring corrupt advantage on their relations	Accused persons filed appeal against the ruling of trial court on their no-case submission application. The Court of Appeal has given a judgment in respect of the 1 <sup>st</sup> accused person's appeal affirming the ruling of the trial court. Matter adjourned to 20 <sup>th</sup> January 2015 for judgment on 2 <sup>nd</sup> accused person's appeal but could not go on due to the judiciary worker's strike. No new date yet. Stated for continuation of hearing.
2006	HC 2, Lafia Nassarawa No. 4	NSD/LF/207/06 FRN V Yakubu Ishaku & Anor	Giving false information to public officer	
2006	HC, Akure Ondo State	AK/32C/2006 FRN V Dele Fagoriola Former Akure North Local Govt Council Chairman, Ondo State	Giving of false information and conferring unfair advantage upon his relation and himself	The matter has gone as far as the Supreme Court based on application of no-case submission made by the Accused Person. Matter is now back in the trial court for accused to enter his defence and he has filed three interlocutory motions which were decided in favour of the prosecution. The matter is now adjourned for the accused person to conclude his defence or have his case closed and adjourned for final addresses.
2006	High Court No.2, Calabar	HC/53/2006 FRN Vs Emmanuel N. Ibor	Use of position to confer corrupt advantage upon self	The matter commenced denovo twice because the trial judges were either transferred or elevated.

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2006	HC, Benin	A former Chief Accountant with INEC, Calabar Office  B/ICPC/1/2006 FRN V Temple Nwankwoala Deputy Superintendent of Police	Demanding and receiving gratification as well as failing to report bribery transaction	Slated for continuation of hearing on 16 <sup>th</sup> , 17 <sup>th</sup> and 18 <sup>th</sup> February, 2015, but stalled by judicial staff strike action. No new date yet. Accused was convicted and sentenced to 7 years imprisonment by the trial court. His appeal against the conviction will be heard by the Court of Appeal on 26 <sup>th</sup> March, 2015.
2006	High Court, Akure	FRN V Dele Fagorola Fmr. Chairman, Akure North Local Government Council, Ondo State	Furnishing false statement and conferring unfair advantage on himself and his relation	Accused to proceed with his defence on the next adjourned date which is yet to be fixed due to the ongoing judiciary staff strike action.
2006	HC, Bauchi	FRN V Jonathan Folmi Adams & Reuben Ali Chief Magistrate and police prosecutor	Demanding and receiving gratification contrary to Section 8(1) of the ICPC Act, 2000	2 <sup>nd</sup> accused person died in the course of trial and case struck out.
2006		Suit No. PLD/JICR/CPO/2006 FRN Vs Martins Ogbu & 7 Ors.	Criminal conspiracy, forgery, agreement to extort, false representation, extortion, and attempt to extort under Section 97, 364, 132, 293 and 292 of the Penal Code	They were each sentenced on each of the 6 counts to 2 years imprisonment without an option of fine on the 29 <sup>th</sup> of February 2008 by Hon. Justice Y. G. Dakwak
2006	High Court, Akure, Ondo State	AK/33C/2006 FRN VS. GBENGA OJO AND ANR Fmr. Vice Chairman and Secretary of Akure North LGA in Ondo State respectively.	Charged on two counts of conspiracy and making false statement contrary to section 16 and 26(1) of the ICPC Act, 2000.	Judgment was delivered by Hon. Justice T. O. Osoba on 28 <sup>th</sup> January, 2014. The 1 <sup>st</sup> accused was sentenced to 5yrs each on 1 <sup>st</sup> , 2 <sup>nd</sup> and 3 <sup>rd</sup> counts with an option of N2 million on each count. The 2 <sup>nd</sup> accused was also sentenced to 5yrs each on 2 <sup>nd</sup> and 3 <sup>rd</sup> counts with an option of N2 million on each count respectively. The sentences are to run concurrently in all but the option of fine shall be cumulative.
2007	HC, Borno	FRN V Shugaba Umar Gana Fmr. Chairman, Monguno Local Govt. Council	Conferring corrupt advantage on self, making false returns and conspiracy	Convicted and sentenced to 17 years for all the counts.
2007	HC, Oyo State sitting in Ibadan	I/4/ICPC/2007 FRN V Mrs. Gbonjibola Balogun & Anor Wife and husband, Commissioner Works and Transport, Oyo State	Having indirect interest in a contract and abetting	Pending before the Court for arraignment of accused persons after series of interlocutory appeals on attempts to quash the charge.
2007	HC, Lagos	ID/24C/2007 FRN V Prince Lukman Ajose Fmr. Chairman, Lagos Island Local Government, Lagos	Conferring corrupt advantage on self by collecting monies for conferences he did not attend	Accused convicted and sentenced to 2 years imprisonment without option of fine.
2007	HC 2 Asaba	ICPC/5C/2007 FRN V Mary Chidi & Anor Former Local Govt Chairman, Ndokwa East, Delta State and her Personal Assistant	Use of office to confer corrupt advantage of N7.5 Million on the 1 <sup>st</sup> accused person and her Personal Assistant	Defence to continue its case on 20 <sup>th</sup> May, 2015.
2007	HC 9, Jos	PLD/J23C/2007 FRN V Sergeant Abbah Peter Nigeria Police, Maitama, Abuja	Asking for and receiving gratification	For final address on 21 <sup>st</sup> January 2015, but stalled by judicial staff strike action. No new date yet.
2007	HC 3 Kaduna	KDH/KAD/1/ICPC/2007 FRN V Prof Lamido Tanko Zaria & Anor Accused persons were former Director-General and Registrar of the Nigerian Institute for Trypanosomiasis Research (NITR), Kaduna	Alleged to have spent or transferred a sum allocated for a particular service or project on another project	Trial has been stalled by the application of the accused seeking to arrest arraignment and dispense with their personal attendance for subsequent commencement of the trial. The matter is on appeal against the ruling of the High Court
2007	HC Minna	NSHC/MN/ICPC/IC/07 FRN V Ibrahim Shabafu & 2 Ors Chief Magistrate, Minna, Niger State	Bribery, asking for and receiving gratification	The matter was at the defense stage, case to start de novo as trial judge was elevated. Monetary exhibits tendered during the previous proceedings were tampered with while in the custody of the Court's Registrar. Adjourned to 25 <sup>th</sup> April 2015.
2007	Court of Appeal, Jos	CA/J/63C/2011 (appeal number) M/27c/107 (case number) Alkali Imam (m) v FRN Accountant with the Borno State Board of Internal Revenue	Criminal Conspiracy, Furnishing false statements	Accused person filed an appeal against his conviction. Adjourned to 14 <sup>th</sup> January 2015 but due to the Judiciary Staff Union strike, it did not hold. New date yet to be assigned.



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2007	HC 3 Asaba	A/ICPC/1/C/2007 <b>FRN V Peter Obonyano (ni)</b> Retired Assistant Superintendent of Police and Chief Security Officer of Delta Polytechnic, Ozo	Charged for asking for and receiving gratification from a registered contractor with the school, refusal to report promise and offer of gratification.	Judgment delivered and accused person convicted on 12 <sup>th</sup> May, 2014.
2007	HC 3 Ilorin	KWS/ICPC/1/2007 <b>FRN V Prof. K.C Oni &amp; Anor</b> 1 <sup>st</sup> accused was the Director-General of the National Centre for Agricultural Mechanization (NCAM). 2 <sup>nd</sup> accused person was the Financial Controller of NCAM	Charged for conspiracy to commit virement of various sums of money from Capital cost to overhead cost; and from personnel cost to overhead cost.	After arraignment, accused persons filed an application to quash the charges which was over-ruled. They appealed to the Court of Appeal which sustained the ruling of the lower court. They further appealed to the Supreme Court but have failed to file their brief after serving the record of proceedings. A motion to quash the appeal has been filed awaiting a date to be heard.
2007	HC, Ibadan	1/3/ICPC/2007 <b>FRN V Tajudeen Olalere &amp; 2 Ors</b> Police Officers	Receiving gratification	Prosecution has closed its case and it was discovered that the exhibits in the Court's custody are missing. Defence is insisting on the exhibits being made available to them. Ruling on this and continuation of hearing slated for 10 <sup>th</sup> February, 2015, but stalled by judicial staff strike action. No new date yet
2007	High Court, Oyo State- Ibadan	1/4/ICPC/2007 <b>FRN V Mrs. Gbonjubola Balogun &amp; Anor</b> 1 <sup>st</sup> accused was a teacher in a public school while 2 <sup>nd</sup> accused person is the Husband of the 1 <sup>st</sup> accused and was then Commissioner for Works & Transport	1 <sup>st</sup> accused person was alleged to have fraudulently acquired an interest in a contract while 2 <sup>nd</sup> accused is alleged to have aided and abetted 1 <sup>st</sup> accused	Matter adjourned sine die pending the outcome of accused person's appeal against the trial court's ruling on their application to quash the charges. The Court of Appeal gave its ruling not allowing the appeal. Matter slated for arraignment of accused persons upon suspension of the strike action.
2007	HC, Gombe	GM/20C/2007 <b>FRN V Dr. Cosmas Etim Udoh</b> Police pay officer	Conferring corrupt advantage on self by converting monies allocated for burial expenses of dead police officers	Matter adjourned sine die since 2009 due to ill health of the accused person
2007	HC, Owerri	OHC/IC/2007 <b>FRN V HRH Eze Robert Ogbenna</b> Traditional ruler of Isukporo Autonomous Community, Imo State	Offering gratification to the Special Adviser to the Executive Governor of Imo State on Local Government and Chieftaincy Affairs	Defence entered a no-case submission at the end of the prosecution's case which was over-ruled by the trial court. Defence has appealed this ruling at the Court of Appeal which was pending before the trial Judge was elevated to the Court of Appeal.
2007	HC, FCT	FCT/CH/CR/19/2007 <b>FRN V O.E Chukwulozie, Mrs Angela Chukwulozie &amp; Adelaun Olukemi Ogunbe</b> Commissioner for Insurance, National Insurance Commission	Using his position as to collect as bribe the sums of N500, 000, N1, 000, 000, N2, 000, 000, N500, 000 and N500, 000 respectively from Mr. Femi Atteh in the discharge of his official duties as receiver /liquidator of Gate-way Insurance Co. Ltd	The 1 <sup>st</sup> accused Mr. Okechukwu Emmanuel Chukwulozie was convicted at the High Court of Justice FCT Abuja on 29 <sup>th</sup> January, 2014 by Hon. Justice M. N. Oniyang (as he then was) on counts 9, 10, 11, 12 and 13
2007	HC, FCT	CR/777/2007 <b>FRN V ETSU ILIYA</b>		Accused person convicted by the Court.
2007		A/ICPC/3C/2007 <b>FRN V AUSTIN BEBETEDOH</b> Fmr. Chairman of Patani Local Government Council	Charged to court on a seven count charge of conferring corrupt advantage on himself and also his wife and knowingly furnishing false statement	On 16 <sup>th</sup> May, 2013 Hon. Justice G. B. Briki – Okolosi convicted and sentenced the accused to three years imprisonment with option of fine in counts 6 and 7 respectively.
2007	Court 3 High Court of Plateau State, Jos	Suit No.PLD/17C/2007: <b>F. R. N.V. Dr. Oluleke Ayoado Oguniola</b> Provost of the Federal College of Lands Resources Technology Kuru, Jos.	Charged for making false statement and making one Chube Ayuba Audu apply for the sum of N700, 000 purportedly needed to rehabilitate the college farm and for hosting of games by the College. He falsely retired the said amount as cash advance he received from Mr. Chube Ayuba Audu for the renovation of the College farm which he never did.	Honourable Justice Edward Dakwak of convicted Dr. Oguniola in counts 1 and 2 and sentenced him to 2 years imprisonment on each of the two counts or an option of fine of N100, 000 on each count. He was discharged and acquitted in counts 3 and 4.
2007		HU/21C/2007 <b>FRNT Vs Billy Usiomon</b> Fmr. Chief Architect of the Institute of Nigerian Languages	Charged on a 5 count charge under section S. 25 (1) (a) and punishable under section (1) (b) of the ICPC Act 2000	He was discharged on count 3 but convicted in 2010 on counts 1, 2, 4 and 5 and sentenced to 1 month imprisonment with an option of fine of N10,000 for each of the counts.

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			Aba,.		Charged on a 16 count charge of conspiracy to spend and spending sum allocated for one purpose on another contrary to Section 26 (1) @ and Section 22 (5) ICPC ACT 2000.	They were each sentenced on each of the 16 counts to 1 month imprisonment with hard labour or a fine of N100, 000.00 each on Friday the 24 <sup>th</sup> of July 2009 by Hon. Justice E. O. Oshinuga.
2007			Suit No Ab/ICPC/2007 FRN Vs Samuel Taiwo Olaye & Anor Managing Director and Chief Accountant of Iwopin Pulp and Paper Company, a company under the Federal Ministry of Industry.			
2008	HC Enugu		FRN V Dr. Tony Onyishi & 2 Ors Rector of Institute of Management Technology, Enugu		Charged for holding a private interest in a contract connected with his office Use of office to confer corrupt advantage on a public officer	For commencement of defence on 8 <sup>th</sup> April, 2014.
2008	HC, Ogun State sitting in Shagamu		AB/ICPC/01/2008 FRN V Rotimi Adewoye (Dr) & Anor Staff of Olabisi Onabanjo University Teaching Hospital		Conspiracy and conferring unfair advantage on themselves	Adjourned for 4 <sup>th</sup> of June, 2015 for judgment
2008	HC 5, FCT		CR/40/2008 FRN V Plus Omoshetwha Ekireghwu Chief Programme Analyst, National Commission for Colleges of Education (NCCE)		Using position to confer corrupt advantage on self and holding private interest in a contract emanating from his office	Adjourned to 7 <sup>th</sup> May, 2015 for ruling on no-case submission made by accused.
2008	Court of Appeal, Abuja Division		CA/A/39C/2008 Mohammed Ali Balogun v FRN Chief Magistrate, FCT		Accused appealed the ruling of the trial court on trial-within-trial	Appeal was dismissed.
2008	HC Awka, Anambra State		A/86 <sup>5</sup> /2008 FRN V Sonny Obi Business man		Obtaining by false pretence	For continuation of hearing on next adjourned date which is not known as a result of the ongoing judiciary workers strike.
2008	HC Bauchi		BA/28/2008 FRN V Ibrahim Mui'd & 3 Ors Former Permanent Secretary and Former Director of Investment, Bauchi State Ministry of Finance		Use of office to confer corrupt advantage on themselves	Judgment was given in favour of the accused persons. A notice of appeal has been filed in the Court of Appeal, Jos, by the Commission.
2008	HC Abuja Now before the Supreme Court		SC/49/2008 FRN V Caleb Ojo & Anor. Former Chairman of Oriade Local Government, Osun State		Accused persons were convicted on allegation of having given bribe to an officer of the ICPC and appealed to the Court of Appeal which allowed their appeal and quashed the conviction. The Commission appealed to the Supreme Court	Court granted an order extending time within which to file brief of argument but the time to file same had lapsed by the time the order got to the Commission. Another application for further extension of time and deeming order has been filed. ICPC is yet to receive a response.
2008	HC Abuja		FCT/HC/CR/18/08 FRN V Johnson Kolawole & 2 Ors Staff of the office of the Accountant General of the Federation, Abuja		Furnishing false returns to the Accountant General of the Federation, stealing of cheques belonging to the Federal Government and conspiracy to confer corrupt advantage upon self	Case to start de novo as trial judge was elevated. Adjourned to 13 <sup>th</sup> April, 2015 for continuation of hearing.
2008	HC Asaba Court of Appeal, Benin Division		CA/B/87C/2008 FRN V Calistus Ibe Nwawolo Former Local Govt. Chairman Aniocha North LGA, Delta State		Acquiring interest in a contract emanating from his office	Judgment delivered in favour of the Commission on 30/1/2015 dismissing the appeal.
2008	HC, Maiduguri		M/15C/2008 FRN V Abubakar Zanna Jabu (m) Former Caretaker Committee Chairman, Kala Balge LGA, Borno State		Making false returns on monies allocated for a particular project but shared to party stalwarts purportedly on the directives of the State Governor	The accused person's no-case submission was upheld and accused discharged and acquitted because the prosecution witnesses could not attend court due to the insurgency in Maiduguri, Borno State.
2008	HC 1 Enugu		E/130C/08		Charged for using office to confer corrupt advantage on	The prosecution will close its case on 2 <sup>nd</sup> February, 2015 but the matter did not hold

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2008	FCT High Court No.4	FRN V Augustina Okafor (f) Senior Administrative officer with National Orientation Agency and Senior Education Officer with Enugu State Universal Basic Education Board	herself by keeping two pensionable employments simultaneously and receiving salaries from both agencies	because of the Judiciary Staff Union strike. No new date yet.
2008	High Court, Bauchi	CR/40/2008 FRN Vs Mr. Plus Omoshefwoh E. A Computer Analyst with the National Commission for Colleges of Education (NCCE), Abuja BA/37/08. FRN vs Yakubu Shehu Fanti Former Head of Personnel, Alkaleri Local Education Authority, Bauchi State	Conferring corrupt advantage upon self	Slated for Ruling on no case submission.
2008	HC, Kaduna	KDH/KAD/1/ICPC/08 FRN V CSP John Madaki Police Officer, Kaduna Police Command	Conferring corrupt advantage on self by converting a suspect's vehicle to himself	Accused discharged and acquitted on 20th July 2012.
2008		B/ICPC/3/2008: FRN V OBOATHEKEPE & ANOTHER. Principal and Bursar of St. Peter's Junior Grammar School, Agenebode Edo State stood trial on a 16 count charge.	The 1 <sup>st</sup> accused was charged separately on counts 17 and 18	At the close of prosecution's case they were discharged on counts 1- 3. They were accordingly ordered to enter their defence in respect of counts 4- 18.  In the judgment of the Court delivered on the 5 <sup>th</sup> July, 2013 the 1 <sup>st</sup> and 2 <sup>nd</sup> accused persons were discharged and acquitted on counts 4 – 16 while the 1 <sup>st</sup> accused was discharged and acquitted on counts 18. However, the 1 <sup>st</sup> accused was convicted on count 17 for violating Section 10(a)(ii) of the ICPC Act, 2000. The 1 <sup>st</sup> accused was sentenced to 7 years imprisonment with an option of a fine of N300, 000.00
2008	HC, Lagos	LCD/17/2008 FRN VS JOHN FAGBEMI & 4 ORS. The 1 <sup>st</sup> - 2 <sup>nd</sup> defendants namely, Mr. John Fagbemi and Mrs. Mubo Ikotun were tax officers in the employment of the Federal Inland Revenue Service (FIRS) integrated Tax Office, Broad Street, Lagos. Whilst Mrs. Olufunmilola Abosede Temowo, the 3 <sup>rd</sup> defendant was the Chief Accountant of the 5 <sup>th</sup> defendant. The 4 <sup>th</sup> defendant Mr. Kehinde Oduneye, was an employee of Messrs Osindero Oni & Lasebikan, Ernst & Young, a private accounting firm retained by the 5 <sup>th</sup> defendant herein, Messrs Smit Nig. Ltd.	Arraigned on a 21 count charge bordering on allegations asserting their engagement in acts of conspiracy culminating in the solicitation, offer, payment and receipt of gratification etc. in the sum of N2, 500, 000.00. The 1 <sup>st</sup> - 2 <sup>nd</sup> defendants namely, Mr. John Fagbemi and Mrs. Mubo Ikotun were tax officers in the employment of the Federal Inland Revenue Service (FIRS) integrated Tax Office, Broad Street, Lagos. Whilst Mrs. Olufunmilola Abosede Temowo, the 3 <sup>rd</sup> defendant was the Chief Accountant of the 5 <sup>th</sup> defendant. The 4 <sup>th</sup> defendant Mr. Kehinde Oduneye, was an employee of Messrs Osindero Oni & Lasebikan, Ernst & Young, a private accounting firm retained by the 5 <sup>th</sup> defendant herein, Messrs Smit Nig. Ltd to undertake and provide it with external auditing as well as general tax compliance, advisory and consultancy services, more particularly between the 5 <sup>th</sup> defendant and the relevant tax authorities.	On 9/10/2014 at eh High Court of the Lagos State, Court No. 23 sitting at Igbosere, Lagos, presided over by Her Lordship Hon. Justice O. A. Williams (Mrs.) delivered final judgment of the Court. The Court discharged and acquitted the 1 <sup>st</sup> defendant, the 3 <sup>rd</sup> and 4 <sup>th</sup> respectively. While the 2 <sup>nd</sup> and 5 <sup>th</sup> defendants were found guilty of all the 21 count charge. The sentencing hearing is scheduled for 4/11/2014
2008	Court of Appeal, Abuja Division	CA/A/54C/M/07 19/1/2008 Marius Ameh v FRN Asst Supt of Police at Force Hqtrs, Abuja	Asking for and receiving gratification.	Court of Appeal, Abuja Division affirmed the decision of the trial court. He has further appealed to the Supreme Court.
2008	High Court of Justice, Akure, Ondo State	AK/5C/2008: FRN Vs. Rev. Ghenga Awe Joseph	Impersonating staff of ICPC contrary to section 108 of the Criminal Code, corruptly asking for the sum of 16,300 to enlist NAVC members contrary to Section 8 (1) (a) of the ICPC Act, 2000, corruptly receiving 16,300.00 to enlist NAVC member contrary to section 8 (1) (a) of the ICPC Act, 2000, asking for the sum of 16,300.00 contrary to Section 10 of the ICPC Act, 2000 and receiving the sum of 16,300.00 contrary to Section 10 of the ICPC Act, 2000.	In the judgment delivered on the 29 <sup>th</sup> July, 2010 at the, Justice N. S. Adeyanju convicted the accused person on counts 2, 3, 4, and 5 and sentenced him to three (3) months imprisonment with hard labour on each of the counts with an option of 5,000 in each count. He was however discharged and acquitted on count 1.
2008	High Court of	AK/3C/2008	Mismanagement of funds meant for the distribution of	Judgment was delivered in the matter on the 18 <sup>th</sup> March, 2010. The 1 <sup>st</sup> and 2 <sup>nd</sup>



## INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION (ICPC)

	Justice Akure, Ondo State	FRN Vs George Oluwafemi Ogidan, Abraham Gbeleje & Josephine Ibrinke Osanyintuyi Staff of the National Identity Card Management Commission, Akure, Ondo.	national identity cards in Ondo State.	accused persons who were charged in counts 1 to 4 were discharged and acquitted while the 3 <sup>rd</sup> accused person, Josephine Ibrinke Osanyintuyi was convicted on count 5 for the offence of furnishing false return contrary to and punishable under section 16 of the ICPC Act, 2000. She was however discharged and acquitted on count 6. She was accordingly sentenced to 6 months imprisonment with option of fine of N50, 000.00 (Fifty Thousand Naira). The 2 <sup>nd</sup> accused person, Abraham Gbeleje who was discharged and acquitted on count 4 died on the 11 <sup>th</sup> March, 2010 before judgment was delivered.
2008		Charge No: B/ICPC/2/08 FRN V Chibuzor Iwu.	Alleged violation of the provisions of section 17 of the Corrupt Practices and other Related Offences Act, 2000 when he presented himself as a custom officer and corruptly obtained money from a private individual on the pretext that he would assist the private individual.	The accused person was convicted on 4 <sup>th</sup> February 2009 by the High Court of Justice, Benin, Edo State
2009	High Court, Ibadan	1/1/ICPC/2009 Adekanye Komolafe v FRN Bursar, Federal Cooperative College, Ibadan	Misleading his principal by issuing defective documents in the form of budget proposals and nominal rolls and representing certain casual staff as permanent staff to the Federal Govt. and conspiracy to do same	Accused has been convicted but the matter is on appeal.
2009		1/2/ICPC/2009 FRN VS YOMI ADEOLA	Demanding gratification and making false statement	He was convicted and sentenced on 3 <sup>rd</sup> March 2010 to 2 years imprisonment with hard labour and one year in imprisonment with hard labour for making false statement to an officer under section 25 (1) (a) of the Act.
2009	High Court, Ibadan	1/1/ICPC/2009 Ruth Aweto v FRN Rector, Federal Cooperative College, Ibadan	Misleading her principal by issuing defective documents in the form of budget proposals and nominal rolls and representing certain casual staff as permanent staff to the Federal Govt. and conspiracy to do same.	Accused has been convicted but the matter is on appeal.
2009	HC Osun	HOS/9C/2009 FRN V Prince Sola Oyedele Commandant of Osun State Discipline Corps	Alleged to have converted the subvention released by the Osun State Government to his own use	Slated for continuation of defence on 22 <sup>nd</sup> January, 2015 but stalled by judicial staff strike action. No new date yet.
2009	HC 2 FCT	CR/19/2009 FRN V Napoleon Oberejemre & Anor	Charged for conspiracy for asking and receiving the sum of N45, 000 from casual workers to be retained as permanent staff of Reynolds Construction Company (RCC)	Slated for continuation of hearing.
2009	High Court No.4 Now at the Court of Appeal, Abuja Division	CR/32/2009 FRN Vs Dr. Joseph Ageje Ali (M) Former Director-General, Nigerian Building and Road Research Institute (NBRRI), Abuja.	Accused person was charged with Virement	Matter on appeal at the Court of Appeal at the instance of the accused person whose no-case submission was dismissed at the trial court. No date fixed for hearing of the appeal
2009	HC, Ogun State	FRN V John Akinjirin Fmr. Councillor representing Makun/Irokan Ward in Ogun Sstate. He collected the sum of N300, 000 from Ogun Waterside Local Government for sinking, casing and screening of a 150m borehole at Igbo Edu village, but he diverted the money to his private use.	Charged for conferring corrupt advantage upon himself contrary to section 19 of the ICPC Act.	He was convicted and sentenced to 12 months imprisonment with hard labour on 1 <sup>st</sup> count and a fine of N25, 000 or six months imprisonment with hard labour in count two. The judgment was delivered on 17 <sup>th</sup> February, 2011
2009		AB/ICPC/01/2009 FRN V GBOWEGA BAKRE & ANOR. The 1 <sup>st</sup> and 2 <sup>nd</sup> accused persons were the former Chairman and Admin Officer 1 of Ogun Waterside Local Government, Abigi, Ogun State respectively.	Accused persons collected the sum of N4, 000,000.00 (Four Million Naira) at the rate of N250, 000.00 (Two Hundred and Fifty Thousand Naira) weekly from the month of September, 2005 to February, 2006 for the upkeep of mobile policemen drafted to restore peace to two communities	On the 24 <sup>th</sup> July, 2013 judgment was delivered and they were convicted and sentenced to six (6) months imprisonment on each of the counts without option of fine and the sentence is to run concurrently.
2009	HC, Kwara State	KWS/21C/2009 FRN VS. ILIYA PHILEMON HASSAN Director of Works Federal Polytechnic Offa		The judgment was delivered on the 25 <sup>th</sup> of June, 2013. The accused was found guilty on the three counts and sentenced to 3 months imprisonment with N50, 000 fine on each count. The term of imprisonment will run concurrently but the fine cumulative. In effect he was sentenced to 3 months imprisonment and N150, 000.

# INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION (ICPC)

2009		KG/ICPC/1/2009 FRN V MODUPE ADEYEMI Revenue Clerk in the Federal Medical Centre Lokoja.		She misappropriated a total of N8.3 Million (Eight Million, Three Hundred Thousand Naira) only. Each time she was sent to deposit some money in various banks, she deposited only part of the money and pocketed part of the money. She did that successfully by altering duplicate tellers which she returned to the Federal Medical Centre.	She was convicted today by His Lordship, Hon. Justice Alaba Ajiloye of Koton-Karfe Division of the High Court of Kogi State to 3 Months imprisonment without an option of fine.
2010	HC, FCT	CR/67/10: FRN Vs Eng Funso Akilapa		2 count charge of embezzlement of the sum of N10.7 for the execution of some components of the National Sheet Erosion control Pilot Project of the FGN.	The accused pleaded guilty to the two- count charge. The Court convicted him on the two-count charge and sentenced him to 6 months imprisonment in each of the two counts without optional fine. The sentences are to run concurrently.
2010	Supreme Court	SC/223/2010 Prof Austin Obasohan V FRN		Accused appealed against the judgment of the Court of Appeal on no-case submission	Briefs exchanged and hearing was caught up by the judiciary staff strike action.
2010	HC, Nasarawa sitting in Keffi	LSD/LF/41C/2010 FRN V Ayuba Bitrus Bakkat		Receiving gratification	Convicted and sentenced to 7 years imprisonment.
2010	HC, Delta State Asaba	A/ICPC/3C/2010 FRN V Victor Obi Nwanbueze & 2 Ors		Conspiracy, abuse of office and conferring an unfair advantage on selves	Adjourned sine die pending determination of interlocutory appeal at the Supreme Court
2010	Court of Appeal, Lagos Division	Prince Lukman Ajose v FRN		Conferring corrupt advantage on self by collecting monies for conferences he did not attend	Appeal against conviction and sentence was dismissed by the Court of Appeal
2010	FHC, Adamawa	FHC/NL/126C/2010 FRN V John Manassah		Money Laundering	Accused was discharged and acquitted. Appeal lodged, date for hearing yet to be fixed.
2010	HC 3 FCT	FCT/HC/CR/112/10 FRN V Joe Okhiku		Misappropriation of over N50 Million from the coffers of News Agency of Nigeria.	Arraignment to take place on 4 <sup>th</sup> April, 2015.
2010	HC Zamfara/ Court of Appeal, Sokoto.	ZMS/GS/2 /2010 FRN V Dr. Bello Shallah & Anor		Using office/position to confer corrupt advantage upon oneself.	Accused convicted, matter on appeal.
2010	HC 4 FCT	CR/96/2010 FRN V Umaru Aliyu & Anor		Falsification of contract documents and false statements to officers of the Commission.	Slated for trial within trial on 14 <sup>th</sup> April, 2015.
2010	HC 7 Niger State	NSHC/1C/2010 FRN V Sule Mohammed Barau		Charged for pretending to be a NECO staff and obtained by false pretence the sum of N316, 100.00 from one Abdullahi Umar to facilitate his admission and scholarship into a British Institution of Learning	Accused person jumped court bail before the initial trial judge who was later elevated to the Court of Appeal. Case started de novo before another judge who struck out same because the accused person is at large.
2010	HC Abuja	FCT/HC/CR/86/2010 FRN V Anthony Odoma (m)		Acquiring private interest in a contract emanating from the Federal Road Maintenance Agency	Case has started de novo as trial judge was elevated. Accused person re-arraigned and adjourned to 20 <sup>th</sup> May, 2015 for hearing.
2010	HC Abuja	CR/66/2010 FRN V Ndubuisi Oriala		Acquiring interest in a contract	Prosecution had closed its case but matter is to start de novo upon elevation of trial judge. Awaiting new date from the Court.
2010	HC 3 Abuja	FCT/HC/CR/65/2010 FRN V Ogbulator Vincent & Anor(m)		Conspiracy to present companies with fictitious payment claims before the National Economic Intelligence Committee (NEIC)	Judgment delivered. The 1 <sup>st</sup> accused person was discharged and acquitted. The 2 <sup>nd</sup> accused was convicted and sentenced to 5 years imprisonment for violating Sections 19 and 12 of the ICPC Act 2000.



# INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION (ICPC)

		Fmr. Minister of Special Duties in charge of Economic Affairs- Presidency & Fmr. People's Democratic Party (PDP) National Chairman	Inflation of contract		Trial judge was elevated and matter transferred to another judge to start de novo. No date assigned yet.
2010	HC, Bauchi No 4	BA/22 <sup>nd</sup> /2010 FRN V Ahmed M. Zubo & Anor Former Chairman, Shira Local Govt. Council, Bauchi State.			
2010	HC, Bauchi	BA/43C/10 FRN V Abdulmutallab A. Mahmud & Anor. External Auditor to and an Accounts Officer, Shira Local Govt. Council, Bauchi	8-count charge alleging use of position to confer unfair advantage upon selves		Prosecution was about to close its case when Presiding Judge was elevated to the Court of Appeal. Matter has been reassigned to a new Judge and has commenced de novo.
2010	FCT High Court	HC/CR/40/2010 FRN V HENRY OGUNDIYA Former Deputy Director office of the Head of Service of the Federation	Knowingly acquiring interest in a public contract, and making a false statement to a public officer		Adjourned sine die. Accused person has jumped bail. Warrant of arrest issued.
2010	High Court, Umuahia, Abia State	HU/78 <sup>th</sup> /2010 FRN VS GODDY KANU AND EPHRAIM IROAKAZI Former Chairmen of Umuahia South Local Govt. Council	Conspiracy to give and receipt of gratification; using office to confer corrupt advantage on an associate to the tune of ₦450 Million.		Reserved for judgment since December, 2014 but stalled by the judicial strike action.
2010	HC 1, Katsina	KTH/20C/2010 FRN vs Mohammed Tasiu Yamel. Staff of Dutse Local Govt. Area of Katsina State	Fraudulent acquisition of property under Section 12 of the ICPC Act.		For judgment. New date to be fixed when Judiciary Workers call off their ongoing strike
2010	FHC, Adamawa	FHC/NU/125C/2010 FRN V Suleiman Bello Fmr. Resident Electoral Commissioner, INEC, Adamawa State & Fmr. Minister of State for Health	Money Laundering		Matter was taken over by the Hon. Attorney- General of the Federation on the 28 <sup>th</sup> of March, 2011.
2010	HC, Adamawa State	FRN/11C/2010 FRN V Suleiman Bello Fmr. Resident Electoral Commissioner, INEC, Adamawa State & Fmr. Minister of State for Health	Conferring unfair advantage on himself and others		Matter was taken over by the Hon. Attorney- General of the Federation in March 2011.
2010	Supreme Court	SC/237/2010 FRN V Sen. Adolphus Wabara, Sen. Ibrahim Abdulazeez and Prof. Fabian Osuji Fmr. Senate President, Fmr. Senator of the Federal Republic and Fmr. Minister of Education respectively	Demand and receipt of ₦50 Million bribe in order to pass the budget of the Federal Ministry of Education		The Supreme Court allowed the appeal on 22 <sup>nd</sup> February, 2013 and remitted the matter to the trial court for trial de novo.
2010	HC, Borno	BO/HC/MG/CR/CTIO/74/10 FRN V Alhaji Dala Bukai Konduga	Virement by transferring money meant for payment of leave grant of local govt. staff to pay salaries of newly recruited teachers.		Accused convicted on 6 <sup>th</sup> March, 2012 and sentenced to 1 year imprisonment with an option of fine of ₦50, 000
2010	HC, Kwara State	KWS/29C/2010 FRN VS. ALIH TENIMU & ORS. The 1 <sup>st</sup> Accused person was Police Constable while 2 <sup>nd</sup> accused was a Police Sergeant attached to the Monitoring Unit, Kwara State Police Command Ilorin.	Corruptly collecting bribe to close a case of criminal breach of trust, cheating and threat to life.		Hon. Justice Mohammed sentenced the 1 <sup>st</sup> accused on the first count to a term of imprisonment for two years or N100, 000.00 fine. For the first count, 2 <sup>nd</sup> accused was sentenced to a term of imprisonment for two years or N100, 000.00 fine. For the second count 1 <sup>st</sup> accused was sentenced to a term of imprisonment for three years or N200, 000.00 fine. For the 3 <sup>rd</sup> count the 1 <sup>st</sup> accused was sentenced to a term of imprisonment for three years or N200, 000.00 fine. The sentences are to run concurrently
2011	HC, Kebbi State	KB/HC/FRN/35/2011 FRN V Garba Salisu Takware & Anor Fmr. Chairman, Shanga Local Govt. Council, Kebbi State	Inflation of contract and misleading principal		1 <sup>st</sup> accused was discharged and acquitted while 2 <sup>nd</sup> accused person was convicted with an option of fine
2011	HC, Kebbi State	KB/HC/FRN/36/2011 FRN V Usman Nurudeen & Anor Fmr. Chairman, Arewa Local Govt. Council, Kebbi State	Inflation of contract and misleading principal		Both accused were discharged and acquitted.
2011	Court of Appeal, Jos Division	CA/J/64C/2011 Shugaba Umar Gana v FRN Fmr. Chairman, Monguno Local Govt. Council			Convict appealed against the judgment of the trial judge convicting him. The Court of Appeal affirmed the decision of the trial court and they have further filed an appeal at the Supreme Court.
2011	HC 7 Enugu	E/140C/2011	Use of position to confer corrupt advantage upon himself		Case adjourned to 20 <sup>th</sup> , 27 <sup>th</sup> and 28 <sup>th</sup> January 2015 for continuation of hearing of

# INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION (ICPC)

2011	HC 11 Enugu	FRN V. Festus Ozonwani (m). Former Treasurer, Ezeagu Central Development Area, Enugu State. E/158c/2011 FRN V. Hon. Chukwuemeka Igboekwu & Anor. Former Administrator of Ezeagu Central Development Area	Conspiracy and use of position to confer corrupt advantage on self	PW3 but due to the Judiciary Staff Union strike, it did not hold. New date yet to be assigned.
2011	HC 11 Enugu	E/160c/2011 FRN V. Dr. Norbert Madu ile. Former HOD Dept of Business Admin., Enugu State University of Science and Tech. Enugu	Use of position to confer corrupt advantage on self	Adjourned to 6 <sup>th</sup> May 2015 for adoption of final address.
2011	HC, Ikot Ekpene	HU/31c/2011 FRN V Emanual Ebe Former Local Government Chairman, Ini Local Govt. Council, Akwa-Ibom State.	Use of office to confer corrupt advantage of the sum of N1. 3 Million	Prosecution has opened its case, matter adjourned to 9 <sup>th</sup> June, 2015 for continuation of cross-examination of PW 1.
2011	HC 6 FCT Abuja	FCT/HC/CR/129/2011 FRN V L.U.C Atuana National Chairman, National Movement of Progressive Party (NMPP)	Accused was alleged to have forged documents and was charged accordingly.	For continuation of cross-examination of PW3 on 26 <sup>th</sup> March, 2015.
2011	HC 6 FCT	CR/128/2011 FRN V Ehimen Okodolor Driver attached to the Director-General of Edo State Liaison Office	Charged for making false statement and refusing to deliver the sum of N104, 000 cost of repair of Toyota Hilux to service provider	A preliminary objection seeking to strike out or quash the charge was filed and argued. Ruling was given in favour of the Commission and the accused appealed against this and made an application to stay proceedings. However, the appellant is yet to settle his brief.
2011	CA, Markurdi	CA/100 <sup>th</sup> /2011 FRN V Abdulhameed Y. Kwarra Former Member, Nasarawa State House of Assembly	Giving false information to INEC officials in the forms he filled preparatory to contesting for office	Prosecution closed its case on the last adjourned date. Defence to open its case.
2011	HC, Lafia Nasarawa	NSD/LF/37C/2011 FRN V Oluwale J. Adelabu Consultant, Federal Polytechnic Nasarawa State	Three count charge consisting of offences of making false statements to a public officer	At the trial court, a preliminary objection was raised by accused that he had been tried, discharged and acquitted by an Area Court in Nasarawa. The trial judge overruled the objection and this ruling has been appealed by the Accused at the Court of Appeal.
2011	FCT, High Court	CR/41/2011 FRN V Jonathan Abutu & 3 ors Accounts staff of the Police Service Commission	Alleged to have used their offices to feed pseudo names into the payroll of their organization and collecting the emoluments	The matter has been concluded and final addresses filed by parties and awaiting adoption before the presiding Judge was elevated to the Court of Appeal. The matter has been reassigned to a new High Court in Lafia and has commenced de novo.
2011	Court of Appeal, Abuja Division	CA/A/611 <sup>th</sup> /M/2011 David Ififi vs FRN. Pension Officer at the Office of Head of Service	Interlocutory appeal from FCT High Court	Trial has commenced and matter adjourned to 1 <sup>st</sup> April 2015 for continuation of trial.
2011	HC, FCT	FCT/HC/CR/06/2011 FRN V Niyi Ajiboye & Hon. Mercy R. Almona Ise Fmr. Deputy Clerk House of Rep and Fmr. Honourable Member, House of Rep.	Conferring corrupt advantage on the 2 <sup>nd</sup> accused	For hearing of Appellant's motion for extension of time
2012	Court of Appeal, Markurdi	CA/MK/16C/2012 FRN V Hon. Zakari Sani & Anor Fmr Chairman and Director of Finance, Toto Local Govt Council	Conspiracy, inflation of contract and conferring corrupt advantage upon self	Hon. Attorney-General of the Federation entered a nolle prosequi on 22 <sup>nd</sup> January, 2013.
2012	HC Warri	A/ICPC/3C/2012 FRN V Akomas Albert Otimeyin & 3 Ors. Dir. Personnel, HOD Works, HOD Public Health and Principal Officer with the Ndokwa East Local Government Council, Delta State.	Using office to confer corrupt advantage upon selves.	The Appeal was dismissed and the decision of the trial court was affirmed. Court of Appeal reaffirmed the power of the Commission to investigate without a formal petition
2012	HC 6 Umuahia	HU/68C/12 FRN V. Dr. Cosmos Ndukwue (m) Former MD/Chief Executive, Abia State Environmental Protection Agency	Official corruption and abuse of office by receiving a total of N54 million purportedly as loan from contract sum due to a contractor under his department	Scheduled for definite hearing on 20 <sup>th</sup> May, 2015.
2012	HC 3 GUSAU	HU/68C/12	False information to officers of ICPC and abetment to	Matter was struck out in 2014. Matter to be re-filed.
				Prosecution has closed its case, slated for defence to open its case on 21 <sup>st</sup> May,

# INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION (ICPC)

		FRN V. Lawal M. Karakkai (m) Former Local Govt. Chairman in Zamfara State	commit a crime under the Act	2015	
2012	HC 3 GUSAU	ZMS/GS/43 <sup>rd</sup> /12 FRN V. Yakubu Dandale(m). Former class teacher in Kaura Namoda Local Education Authority, of Zamfara State	Obtaining of money under false pretence	Accused person convicted on 22nd July 2013	
2012	HC 3 Umuahia	HU/54C/2011 FRN V. Sylvester Ubazi (m). A Deputy Director with Legal Aid Council and who holds simultaneous appointment as Asst. Commandant of Nigeria Security and Civil Defense Corps	False information to public officers and use of position to confer corrupt advantage upon self	Notice of appeal filed in respect of ruling of the Court on no-case submission.	
2012	HC 7 Enugu	E/91C/2012 FRN V Emetu Nnanna Official of Nigerian Prisons Service	Extortion of over ₦1 Million from private individuals under the guise that he will secure jobs for them with the Nigerian Immigration Service	Slated for hearing on 4 <sup>th</sup> May, 2015.	
2012	HC FCT	FCT/HC/CR/76/12 FRN V David Akpan Ekanem Asst. Director, Federal Ministry of Education	Using office to confer corrupt advantage	For continuation of hearing on 16 <sup>th</sup> February, 2015	
2012	HC, Owerri now on Appeal	HOW/ICPC/2012 FRN V Dennis Ike Bursar, School of Nursing, Owerri	Obtaining the sum of ₦75,000 to facilitate the admission of some students into School of Nursing, Owerri.	For argument on application to stay of proceedings but date yet to be assigned for this because of the judiciary strike.	
2012	HC Enugu	E/GC/2012 FRN V Austin Bonna Managing Director, Austin Bonna Ventures	Making false statement to officers of the Commission (investigators) claiming that he did not employ anyone to work for his company	Adjourned to 6 <sup>th</sup> June 2015 for continuation of hearing	
2012	HC 3 FCT	CR/61/2012 FRN V Ekene Onyia Contractor with the Federal Ministry of Health	Forged documents of another company to obtain payments from the Federal Ministry of Health.	Arraignment was done on 14/07/2014 and fixed for continuation of hearing on 22 <sup>nd</sup> April, 2015.	
2012	HC, Enugu	E/37C/2010 FRN V Prof Martins Aghaji Professor and thoracic surgeon, UNTH, Enugu	Facing a four-count charge of bribery and extortion on account of allegation of demand and receipt of bribe before operating on a patient who eventually passed on	At trial stage, five witnesses have been called, adjourned to 10 <sup>th</sup> February, 2014 for cross-examination of the investigator. Matter adjourned for continuation of hearing but stalled by the ongoing judiciary strike action.	
2012	HC 3 Benin, Edo State	B/ICPC/1/2012 FRN V Micheal Aidedeyan & 4 Ors 1 <sup>st</sup> , 2 <sup>nd</sup> and 3 <sup>rd</sup> accused persons were Rector, Registrar and Bursar of the Institute of Continuing Education, Benin City respectively while the 4 <sup>th</sup> accused was the Registrar, Adekunle Ajasin University, Akungba-Akoko, Ondo State.	Alleged to have been running an outreach centre leading to the award of degrees without the approval of the NUC	Defence brought an application to quash the charge on the ground that the accused persons were charged under a non-existing law. The application has been argued and adjourned to 25 <sup>th</sup> January, 2015 for ruling but this could not hold due to the judiciary workers strike. No new date yet.	
2012	HC 5 FCT, Abuja	CR/53/2012 FRN V Engr. Victor Igboanugo Former Director, Procurement Ministry of Niger Delta and Secretary of the Ministerial Tender Board at the Ministry of Environment	Charged for awarding several contracts to his companies running into Millions of Naira and receiving money from contractors who bidded and won contracts in the Ministry	The case is slated for forfeiture of his property scheduled for 21 <sup>st</sup> May, 2015.	
2012	HC 5 FCT, Abuja	CR/106/2012 FRN V John Agabi Emmanuel Data processing officer in Pension Department in the Office of the Head of Service of the Federation	Alleged to have included the names of his children and other fictitious persons in the pension pay roll	The case has suffered series of adjournments. Matter adjourned for hearing.	
2012	HC 3, Benin, Edo State	B/ICPC/2/2012 FRN V Micheal Aidedeyan & 4 Ors 1 <sup>st</sup> , 2 <sup>nd</sup> and 3 <sup>rd</sup> accused persons were Rector, Registrar and Bursar of the Institute of Continuing Education, Benin City respectively	Alleged to have been running an outreach centre leading to the award of degrees without the approval of the NUC	Defence made a no-case submission after the prosecution closed its case which has been argued and ruling delivered in favour of the Commission. Defence to open its case on the next adjourned date.	
2012	HC Abuja	FCT/HC/CR/92/12 FRN V Sunday Ehindero & Anor (m) Former Inspector-General of Police and Fmr. Commissioner of	Using position to confer corrupt advantage and making false statements to officers of ICPC	Case started de novo on 29th October, 2014 as judge was elevated. Appeal lodged against the ruling of the trial Court on its application challenging jurisdiction of trial court which was dismissed upholding the ruling of the trial Court. 1 <sup>st</sup> accused has filed a further appeal to the Supreme Court which is yet to be heard.	



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				commit a crime under the Act	2015
2012	HC 3 GUSAU	FRN V. Lawal M. Karakkai (m) Former Local Govt. Chairman in Zamfara State		Obtaining of money under false pretence	Accused person convicted on 22nd July 2013
2012	HC 3 Umuahia	ZMS/GS/43 <sup>rd</sup> /12 FRN V. Yakubu Dandale(m). Former class teacher in Kaura Namoda Local Education Authority, of Zamfara State		False information to public officers and use of position to confer corrupt advantage upon self	Notice of appeal filed in respect of ruling of the Court on no-case submission.
2012	HC 7 Enugu	HU/54C/2011 FRN V. Sylvester Ubazi (m). A Deputy Director with Legal Aid Council and who holds simultaneous appointment as Asst. Commandant of Nigeria Security and Civil Defense Corps		Extortion of over ₦1 Million from private individuals under the guise that he will secure jobs for them with the Nigerian Immigration Service	Slated for hearing on 4 <sup>th</sup> May, 2015.
2012	HC FCT	E/91C/2012 FRN V Emetu Nnamma Official of Nigerian Prisons Service		Using office to confer corrupt advantage	For continuation of hearing on 16 <sup>th</sup> February, 2015
2012	HC, Owerri now on Appeal	FCT/HC/CR/76/12 FRN V David Akpan Ekanem Asst. Director, Federal Ministry of Education		Obtaining the sum of ₦75,000 to facilitate the admission of some students into School of Nursing, Owerri.	For argument on application to stay of proceedings but date yet to be assigned for this because of the judiciary strike.
2012	HC Enugu	HOW/ICPC/2012 FRN V Dennis Ike Bursar, School of Nursing, Owerri		Making false statement to officers of the Commission (Investigators) claiming that he did not employ anyone to work for his company	Adjourned to 6 <sup>th</sup> June 2015 for continuation of hearing
2012	HC 3 FCT	E/GC/2012 FRN V Austin Bonna Managing Director, Austin Bonna Ventures		Forged documents of another company to obtain payments from the Federal Ministry of Health.	Arraignment was done on 14/07/2014 and fixed for continuation of hearing on 22 <sup>nd</sup> April, 2015.
2012	HC, Enugu	CR/61/2012 FRN V Ekene Onyia Contractor with the Federal Ministry of Health		Facing a four-count charge of bribery and extortion on account of allegation of demand and receipt of bribe before operating on a patient who eventually passed on	At trial stage, five witnesses have been called, adjourned to 10 <sup>th</sup> February, 2014 for cross-examination of the investigator. Matter adjourned for continuation of hearing but stalled by the ongoing judiciary strike action.
2012	HC 3 Benin, Edo State	E/37C/2010 FRN V Prof Martins Aghaji Professor and thoracic surgeon, UNTH, Enugu		Alleged to have been running an outreach centre leading to the award of degrees without the approval of the NUC	Defence brought an application to quash the charge on the ground that the accused persons were charged under a non-existing law. The application has been argued and adjourned to 29 <sup>th</sup> January, 2015 for ruling but this could not hold due to the judiciary workers strike. No new date yet.
2012	HC 5 FCT, Abuja	B/ICPC/1/2012 FRN V Micheal Aideyan & 4 Ors 1 <sup>st</sup> , 2 <sup>nd</sup> and 3 <sup>rd</sup> accused persons were Rector, Registrar and Bursar of the Institute of Continuing Education, Benin City respectively while the 4 <sup>th</sup> accused was the Registrar, Adekunle Alajin University, Akungba-Akoko, Ondo State.		Charged for awarding several contracts to his companies running into Millions of Naira and receiving money from contractors who bidded and won contracts in the Ministry	The case is slated for forfeiture of his property scheduled for 21 <sup>st</sup> May, 2015.
2012	HC 5 FCT, Abuja	CR/53/2012 FRN V Engr. Victor Igboanugo Former Director, Procurement Ministry of Niger Delta and Secretary of the Ministerial Tender Board at the Ministry of Environment		Alleged to have included the names of his children and other fictitious persons in the pension pay roll	The case has suffered series of adjournments. Matter adjourned for hearing.
2012	HC 3, Benin, Edo State	CR/106/2012 FRN V John Agabi Emmanuel Data processing officer in Pension Department in the Office of the Head of Service of the Federation		Alleged to have been running an outreach centre leading to the award of degrees without the approval of the NUC	Defence made a no-case submission after the prosecution closed its case which has been argued and ruling delivered in favour of the Commission. Defence to open its case on the next adjourned date.
2012	HC Abuja	B/ICPC/2/2012 FRN V Micheal Aideyan & 4 Ors 1 <sup>st</sup> , 2 <sup>nd</sup> and 3 <sup>rd</sup> accused persons were Rector, Registrar and Bursar of the Institute of Continuing Education, Benin City respectively		Using position to confer corrupt advantage and making false statements to officers of ICPC	Case started de novo on 29th October, 2014 as judge was elevated. Appeal lodged against the ruling of the trial Court on his application challenging jurisdiction of trial court which was dismissed upholding the ruling of the trial Court. 1 <sup>st</sup> accused has filed a further appeal to the Supreme Court which is yet to be heard.

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2012	Court of Appeal, Abuja Division	Police (John Obaniyi) in charge of Budget CA/A/551C/2012 Sunday Gabriel Ehindero v FRN Former Inspector-General of Police	Using position to confer corrupt advantage and making false statements to officers of ICPC	Matter adjourned to 28 <sup>th</sup> April 2015 for continuation of hearing at the trial court. Appeal lodged against the ruling of the trial Court on his application challenging jurisdiction of trial court was dismissed.
2012	Court of Appeal, Abuja Division	CA/A/552C/2012 John Obaniyi v FRN Fmr. Commissioner of Police in charge of Budget	Using position to confer corrupt advantage and making false statements to officers of ICPC	Appellant's motion to file brief out of time pending before the Court.
2012	Court of Appeal, Benin Division	CA/B/106/2012 Temple Nwankwoala v FRN Deputy Superintendent of Police	Demanding and receiving gratification as well as failing to report bribery transaction	Appellant filed appeal against the conviction of the trial court which the Court of Appeal dismissed affirming the decision of the trial court on 23 <sup>rd</sup> February, 2015.
2012	HC 3 Benin, Edo State	B/ICPC/2/2012 FRN V Michael Aideyan & 20rs 1 <sup>st</sup> , 2 <sup>nd</sup> and 3 <sup>rd</sup> accused persons were Rector, Registrar and Bursar of the Institute of Continuing Education, Benin City respectively.	Alleged to have been running an outreach centre leading to the award of degrees without the approval of the NUC	Defence made a no-case submission after the prosecution closed its case. Written addresses have been exchanged and will be heard on the next adjourned date.
2012	HC 2 Akure	AK/1 <sup>st</sup> /2012 FRN V Bode Olowoye & Anor	Giving false information to public officer and disobedience to constituted authority	Concluded and accused convicted and sentenced to 2 years on all 5-count charges in December 2014.
2012	High Court No.3 Benin City	B/ICPC/4/2012 FRN Vs Monday I. Okoh and Enudi Lazarus. First accused was an accounts officer and second accused was a cashier with the Benin Owena River Basin Development Authority.	Using office to confer corrupt advantage on selves and as well the first accused conferred corrupt advantage on the second accused person	Stated for the continuation of hearing on 3 <sup>rd</sup> and 4 <sup>th</sup> March, 2015 but was stalled by the ongoing judiciary staff strike action.
2012	High Court, Warri	F A/ICPC/2 <sup>nd</sup> /2012 FRN V Abayomi Tom Kelekumo Education Secretary, Bomadi Local Government Council, Delta State	Charged for diverting funds meant for subvention for Primary Schools for other purposes – virement and using office to confer unfair advantage on daughter	Prosecution has closed its case and defence entered a no –case submission. Written addresses have been filed and exchanged. Matter adjourned to 22 <sup>nd</sup> April, 2015 for hearing on no-case submission.
2012	Edo State High Court, Benin City	ICPC/B/2/12 FRN V Peter Ayeni & Pius Ojemolon Permanent Secretary and Director of Finance at Edo State Universal Basic Education Commission (SUBEC)	Accused persons placed the fund of the Commission i.e. sum of N160 Million in a fixed deposit account with Sterling Bank Plc and shared the interest accruing therefrom in 2009	Prosecution closed its case in December 2014. The accused person made a no case submission which was over-ruled.
2012	Nasarawa State High Court	NAS/IAF/74 <sup>th</sup> /12 FRN V Anja Baba Usman & Rayyanu Lamus Former Executive Chairman & Director of Finance & Accounts of Wamba Local Government of Nasarawa	Alleged to have conferred a corrupt advantage on themselves by diverting the sum of N15,027,750.00 being money meant for electrification of Nakene Village in Wamba Local Government Council	Accused persons were discharged and acquitted on the 12 <sup>th</sup> of December 2014 by the trial court. Prosecution is about to file appeal against the judgment immediately the judicial staff strike action is suspended.
2012	Delta State High Court sitting in Warri	ICPC/C/A/02/12 FRN V Agbeye Peter Odiete Public Officer in the position of Executive Secretary of Delta State Traditional Medicine Board, Asaba	Alleged to have inflated the price of Keke Napep which he bought at N339,000.00 but claimed and obtained receipt in the sum of N888,600.00	Hearing has been concluded. Awaiting submission and adoption of written address. Defence is yet to file written address. Matter adjourned to 22 <sup>nd</sup> April, 2015.
2012	High Court of Lagos State	ID/88 <sup>th</sup> /12 FRN V Dr Louis Obine Former employee of National Biotechnology Development Agency (NABDA)	Obtained by false pretence the sum of N2.5 Million from one Dr. Mrs Maureen Nwagwu on the pretext that he will assist her in securing a contract from NABDA	Prosecution has closed its case and accused has made a no-case submission. Written addresses have been filed and awaiting adoption on the next adjourned date.
2012	HC, Zamfara	ZMS/GS/43C/12 FRN V Yakubu Dandali Fmr. Teacher under Zamfara State Primary Education Board, Kaura Namoda Local Education Authority	Obtaining money under false pretence from his employer	Accused person was convicted on 2 <sup>nd</sup> July, 2013 and sentenced to 2 years imprisonment with option of fine of ₦7,000.00 and to refund all the money collected.
2012	HC, Rivers State	PHC/1426/CR/2012 FRN V Fred Abiye Dawari Staff of Head of Service, Rivers State	Failure to report demand for gratification	Accused person absconded and could not be served with the charge
2012	Court of Appeal, Markudi Division	CA/MK/22C/2012 AYUBA BITRUS BAKKAT V FRN	Receiving gratification	The Appeal was dismissed and the judgment of the trial court upheld. The Court of Appeal also affirmed the constitutionality of the ICPC Act 2000.
2012	HC, Akure	AK/1C/2012	Allegation of impersonation of ICPC Staff and collecting	Judgment was delivered by Hon. Justice T. O. Osoba on 18 <sup>th</sup> December, 2014. The

## INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION (ICPC)

2013	HC 4 Bauchi	FRN VS. BODE OLAWOLE AND ANTI-CORRUPTION AWARENESS ORGANIZATION OF NIGERIA (ACAON) State Director of the 2 <sup>nd</sup> Accused Person, a Non-Government Organization (NGO)	money unduly from unsuspecting members of the public at Ibadan. Charged under section 25(1) of the Corrupt Practices and Other Related Offences Act 2000 in Counts 1 and 2 of the Charge Sheet for making false representation to the office of the Attorney-General of Ondo State and the office of the Governor of Ondo State who are public officers within the meaning provided under section 2 of the Corrupt Practices and Other Related Offences Act, 2000.	1 <sup>st</sup> Accused Person was sentenced to 2 years each on counts 1, 2, 3 and 4 with an option of N100, 000.00 on each count. The 1 <sup>st</sup> Accused Person was also sentenced to 2 years on count 5 with an option of N60, 000.00. The sentences are to run concurrently in all the 5 counts but the option of fine shall be cumulative
2013	HC, FCT	BA/49C/2013 FRN V Ibikunle Okusote & 2 Ors FCT/HC/CR/3/13 FRN V Matthew Joseph Abasi Ifreke Visa racketeer	Conferring corrupt advantage on the 3rd accused with regards to staff salaries Impersonating a public officer	Matter was adjourned for defence to continue its case but was stalled due to the judicial workers strike action. No new date yet. Accused person convicted an sentenced to 2 years imprisonment with a fine of ₦100, 000
2013	Supreme Court	Prince Lukman Ajose v FRN Fmr. Chairman, Lagos Island Local Government, Lagos	Conferring corrupt advantage on self by collecting monies for conferences he did not attend	Appeal against judgment of the Court of Appeal dismissed.
2013	HC 6 Abuja	CR/99/2013 FRN V Collins C Martins Operative of the NSCDC	Making false statement on oath to the commissioner for oaths and obtaining by false pretence by selling land to members of the public without title.	Accused person arraigned and adjourned to 7 <sup>th</sup> July, 2015 for continuation of PW1's testimony.
2013	FHC 1 Enugu	FHC/EN/CR/85/2013 FRN V. Richmond University Ltd., Mazi Chris Okoro & Charles Ebue Proprietor/ Vice Chancellor and Registrar of illegal degree-awarding institution respectively	Operating a degree awarding institution without compliance with the Education National Minimum Standards and Accreditation of Institutions Act and obtaining money under false pretences contrary to Advance Fee Fraud Act 2006.	Accused to be re-arraigned following the elevation of the trial judge to the Court of Appeal. No new date yet.
2013	HC 2 Benin City	B/ICPC/3/2013 FRN V. Sammed Global Services Ltd, MIT Benin Ltd & Mrs Patricia Okoh Operators and Registrar of illegal degree awarding institution	False assumption of authority to offer admission to students and obtaining over N8m from students under false pretence that the school is affiliated to Ambrose Alli University, Ekpoma to offer degree courses contrary to Advance Fee Fraud Act 2006	Arraigned and granted bail on 24 <sup>th</sup> January, 2014. Accused persons filed preliminary objection which has been argued and ruling delivered. Matter adjourned to 19 <sup>th</sup> January 2015 for hearing but was stalled as a result of the judicial strike action. No new date yet.
2013	FHC 7 Abuja	FCH/ABJ/CR/124/13 FRN V Prof (Sen.) David Iornem Proprietor and operator of illegal degree awarding institution	False assumption of authority to offer admission to students and obtaining over N100m for award of honorary doctorate degrees of Commonwealth University Belize under false pretence that the school is a foreign university based in Belize.	Accused persons arraigned and slated for trial on 5 <sup>th</sup> May, 2015.
2013	HC Lagos	LCD/454/13 FRN V. Asedegbede Private business man	Obtaining the sum of 4 million naira by false pretence contrary to Advance Fee Fraud Act 2006	Accused person refused to show up for arraignment and a bench warrant has been issued.
2013	FHC Enugu	FHC/EN/CR/86/13 FRN V. Prof. Edwin Onyeneje. Former Rector, IMT Enugu	Obtaining the sum of N54 million naira from IMT Enugu under false pretence	Charge was struck out. Accused to be re-arraigned.
2013	HC Asaba	A/ICPC/1C/2013 FRN V. Faith Fab Salisu Business woman	Making corrupt offer of N20,000.00 bribe to a Police Officer to close investigation against her brothers	Arraigned and prosecution has opened its case. Matter adjourned to .
2013	HC Port Harcourt	PHC/888/CR/2013 FRN V Aso Adason Morison & Anor Private individuals claiming to be staff of the NNPC.	Obtaining by false pretence	Case adjourned sine die because of the peculiar situation in the Rivers State Judiciary.
2013	HC 6 FCT	CR/248/13 FRN V Iranola Akingun Roberts & 2 Ors 1 <sup>st</sup> Accused – Former Acting Director General of National Commission for Museums and Monuments 2 <sup>nd</sup> & 3 <sup>rd</sup> accused persons- Acting Head of Administration and Acting Head, Finance and Accounts at the National Commission for Museums and Monuments	Making false statements to the then Hon. Minister of Tourism, Culture and National Orientation in respect of N25 Million and conspiracy to confer corrupt advantage on the 3 <sup>rd</sup> accused person	Slated for hearing of application for leave to prefer criminal charges against the accused.



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2013	HC Port Harcourt	PHC/2339/CR/13 FRN V Aye Atamah Pepple Member, Rivers State House of Assembly	Using office to confer corrupt advantage	Arraignment slated for 22 <sup>nd</sup> January, 2015 but was stalled as a result of the strike action. No new date yet.
2013	HC FCT	FCT/HC/CR/89/2013 FRN V Mohammed Nasir Umar Asst. Comptroller General (Admin) Customs	Conspiracy and using office to confer corrupt advantage	Arraignment to take place on 12 <sup>th</sup> May 2015.
2013	HC FCT	FCT/HC/CR/34/13 FRN V Gabriel Olusesi Omolalu Principal Staff Officer, PHCN	Using office to confer corrupt advantage	Accused person arraigned and slated for definite hearing on 10 <sup>th</sup> February, 2015.
2013	HC Ibadan, Oyo State	I/1 <sup>st</sup> /ICPC/2013 FRN V Benjamin Adefemi Ogunbodede & 2 Ors Executive Director and Chief Accountant, Institute of Agriculture and Research, Ibadan	Use of office to confer corrupt advantage	Prosecution has opened its case and matter slated for continuation of hearing on the next adjourned date which is yet to be fixed as a result of the ongoing judiciary strike action.
2013	HC Abakaliki, Ebonyi	HAB/ICPC/2C/2013 FRN V Dr. Alor & Anor 1 <sup>st</sup> accused is a medical doctor and former Health Commissioner, Ebonyi State. 2 <sup>nd</sup> accused was a Manager of First Bank Plc, Okigwe at the material time	Charged with a 10- count charge for converting money meant for a contract which 1 <sup>st</sup> accused awarded to Parkerloyed Intl Ltd and used his patient to execute while acting as health Commissioner. 2 <sup>nd</sup> accused person aided by opening an account for the company making the said patient and his personal assistant signatories.	Prosecution has opened its case and called one witness and adjourned to 28 <sup>th</sup> 29 <sup>th</sup> April, 2015 for continuation of hearing.
2013	FHC, Abakaliki Ebonyi	FHC/A1/59C/2013 FRN V Dr. Alor & 1 Or 1 <sup>st</sup> accused is a medical doctor and former Health Commissioner, Ebonyi State. 2 <sup>nd</sup> accused was a Manager of First Bank Plc at the material time	Charged with an 11-count charge on money laundering for converting money meant for a contract which 1 <sup>st</sup> accused awarded to Parker Lloyd Intl Ltd. and used his patient to execute while acting as health Commissioner. 2 <sup>nd</sup> accused person aided by opening an account for the company making the said patient and his personal assistant signatories.	Case adjourned to 11 <sup>th</sup> , 12 <sup>th</sup> , 13 <sup>th</sup> , 14 <sup>th</sup> and 15 <sup>th</sup> of May 2015 for hearing.
2013	FHC	FHC/A1/58C/2013 FRN V Getrude Alor & 2 Ors 3 <sup>rd</sup> accused is a medical doctor and former Commissioner of Health, Ebonyi State. 1 <sup>st</sup> accused person is his spouse while the 2 <sup>nd</sup> accused person was a Manager of First Bank Plc at the material time.	The 3 <sup>rd</sup> accused is alleged to have awarded a contract to a company called Author-Green Nigeria Ltd while a Commissioner. 1 <sup>st</sup> accused is alleged to have opened an account for the company with the help of the 2 <sup>nd</sup> accused and made herself sole signatory to the company's account. 2 <sup>nd</sup> accused also executed the contract and transferred part of the contract sum to some people including her husband, the 3 <sup>rd</sup> accused.	Case adjourned to 11 <sup>th</sup> , 12 <sup>th</sup> , 13 <sup>th</sup> , 14 <sup>th</sup> and 15 <sup>th</sup> of May 2015 for hearing.
2013	HC, Abakaliki	HAB/ICPC/1C/2013 FRN V Dr. Paul Ajah & Anor. 1 <sup>st</sup> accused was the former provost, Federal College of Agriculture, Ebonyi while the 2 <sup>nd</sup> accused was the College Bursar	Both are facing a 10-count charge for allegedly opening a college account in favour of a staff through which they embezzled college funds. 1 <sup>st</sup> accused also awarded contracts without following due process.	Prosecution has opened its case and matter adjourned to 30 <sup>th</sup> April 2015.
2013	HC 4 Umuahia, Abia State	HU/36C/2013 FRN V Eze Ubiaru & Anor 1 <sup>st</sup> accused person is the Eze of Ipupe autonomous community while the 2 <sup>nd</sup> accused is the secretary of the Eze-in -Council	Facing a 7-count charge, they are alleged to have misappropriated N40 Million from the National Integrated Power Project (NIPP) for the relocation of the community's shrine to give way for power projects	Prosecution has called five witnesses and the matter has been adjourned to 19 <sup>th</sup> February, 2015 for continuation of hearing but stalled due to the judiciary staff strike action. No new date yet.
2013	HC 55 Lagos State	ID/186C/2013 FRN V Omar Suleiman & Anor 1 <sup>st</sup> accused person is the former Managing Director and 2 <sup>nd</sup> accused person is the former General Manager, Marine Services, Nigerian Port Authority.	Charged for making false statement with intent to deceive their principal about the lowest, evaluated and responsive price for a project.	Matter has been taken over by the Attorney-General of the Federation.
2013	HC 6 Abuja	CR/93/2013 FRN V Onoja Margaret Operative of the NSCDC	Making false statement on oath to the commissioner for oaths and obtaining by false pretence by selling land to members of the public without title	Matter began de novo and adjourned to 26 <sup>th</sup> March, 2015 for continuation of hearing of PW1's testimony.
2013	HC 6 Abuja	CR/100/2013 FRN V Barbara Ekeocha Operative of the NSCDC	Making false statement on oath to the commissioner for oaths and obtaining by false pretence by selling land to members of the public without title	Started de novo and adjourned to 7 <sup>th</sup> July 2015 for hearing of PW1's testimony.

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2013	HC Lagos	ID/415c/13 FRN V Adiline Philomena Eke kalu &Anor Private citizens	Forgery of visa application documents and conspiracy to forge visa application documents	Adjudged to 25 <sup>th</sup> – 27 <sup>th</sup> May, 2015 for continuation of hearing.
2013	HC Awka	ID/412c/13 FRN V Innocent Eze Onwuka Accountant, Anambra State Ministry of Finance, (Aguata Sub Treasury)	Making false returns and using position to confer advantage	Accused person has been arraigned adjourned to 22 <sup>nd</sup> – 23 <sup>rd</sup> January, 2015 for hearing but due to the Judiciary Staff Union strike, it did not hold. New date yet to be assigned.
2013	HC Lagos	ID/416c/13 FRN V Opara Oscar Chidera Visa racketeer	Forgery of visa application documents and conspiracy to forge visa application documents	Defence entered a no-case submission at the end of the prosecution's case which was not upheld. Defence to open its case on 20 <sup>th</sup> May, 2015.
2013	HC Lagos	ID/53c/2013 FRN V Danladi Nyashi Customs officer attached to Federal Operations Unit (FOU)	Asking for and receiving gratification to release a vehicle seized by the FOU and conferring of corrupt advantage	Bench warrant was issued by the court for the production of the accused person which has been served accordingly. Matter adjourned to 13 <sup>th</sup> April, 2015 for hearing
2013	HC Lagos	ID/418c/2013 FRN V Helen Bando & 2 Ors. NYSC Corp Member, Travel Agent and Visa racketeer	Forgery of visa application documents and conspiracy to forge visa application documents	Accused persons convicted and presently serving a 1 year imprisonment.
2013	HC Lagos	ID/417c/13 FRN V Ntiedo Sampson (m) Visa racketeer	Forgery of visa application documents and conspiracy to forge visa application documents	Accused person has been arraigned and adjourned to 19 <sup>th</sup> January, 2015 for hearing but due to the Judiciary Staff Union strike, it did not hold. New date yet to be assigned.
2013	HC Lagos	ID/413c/13 FRN V Sylvester Aghaonu (m) Visa racketeer	Forgery of visa application documents and conspiracy to forge visa application documents	Prosecution's case is ongoing and adjourned to 26 <sup>th</sup> May, 2015 for hearing.
2013	HC Lagos	ID/412c/13 FRN V Chukwu Daniel Okoro Visa racketeer	Forgery of Indian visa application documents and conspiracy to forge visa application documents	Accused convicted and matter adjourned to 2 <sup>nd</sup> April 2015 for sentencing.
2013	HC 9 Abuja	CR/97/2013 FRN V Henry Ogolo Operative of the NSCDC	Making false statement on oath to the commissioner for oaths and obtaining by false pretence by selling land to members of the public without title	Started de novo following compulsory retirement of trial judge. Accused has been arraigned and matter slated for definite hearing on 31 <sup>st</sup> March, 2015.
2013	HC Abuja	CR/101/2013 FRN V Ishola Birtu Operative of the NSCDC	Making false statement on oath to the commissioner for oaths and obtaining by false pretence by selling land to members of the public without title.	Started de novo following compulsory retirement of trial judge. Matter adjourned to 16 <sup>th</sup> April 2015 for hearing.
2013	HC 6 Calabar	HC/25C/13 FRN V Deacon Moses Akubiro & Charles Obene Land speculators	Charged for obtaining money by false pretence for the sale of a non-existent land in Calabar	Prosecution has closed its case after calling 4 witnesses. Defence has opened its case, DWI to be cross-examined on 27 <sup>th</sup> January, 2015 but the matter did not hold because of the Judiciary Staff Union strike. No new date yet.
2013	HC 3 Benin	B/ICPC/1/13 FRN V Hon Philip Shaibu (m) Member of House of Assembly, Edo State.	Charged for giving false information to officers of Edo State Inland Revenue Services while applying for Tax Clearance Certificate with which he vied for election into the House of Assembly and uttering of documents.	Accused had been evading service. Service was eventually effected and arraignment done. Prosecution has taken two witnesses and matter was adjourned to 21 <sup>st</sup> and 22 <sup>nd</sup> January, 2015 but did not hold due to the Judiciary Staff Union strike. No new date yet.
2013	HC 5 Kogi	HCL/77C/2013 FRN V Hon Victor Bamidele & 2 Ors 1 <sup>st</sup> accused was former Chairman, Yagba West LGA, 2 <sup>nd</sup> accused retired Head of Health Department of the Council, 3 <sup>rd</sup> accused former member of Kogi State House of Assembly and presently special adviser to the Governor of Kogi State	Charged for making false returns and false statement to officers of the Commission in respect of Road and water projects.	Charge struck out. To be re-filed before a different court.
2013	HC 5, Abuja	CR/108/2013 FRN V Abiodun Osagie & 2 Ors 1 <sup>st</sup> and 3 <sup>rd</sup> accused persons are Senior Executive Officers at the Office of the Head of Civil Service of the Federation while 2 <sup>nd</sup> accused is a Trader.	Charged for conspiracy, conferring corrupt advantage upon themselves and forgery	Consent has been sought and obtained. Matter adjourned to 23 <sup>rd</sup> April, 2015 for hearing.
2013	HC 5 Abuja	CR/107/2013 FRN V Abiodun Osagie & 2 Ors 1 <sup>st</sup> accused person is a Senior Executive Officer at the Office of	Charged for conspiracy, conferring corrupt advantage upon themselves, theft, forgery and uttering.	Matter adjourned to 23 <sup>rd</sup> June, 2015 for the hearing of preliminary objection.



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			the Head of Civil Service of the Federation, 2 <sup>nd</sup> accused is a Higher Executive Officer with the Federal Ministry of Petroleum Resources and the 3 <sup>rd</sup> accused is deceased.		Forgery of Indian visa application documents and conspiracy to forge visa application documents		Accused person could not be found to attend court for his trial. Following several efforts and adjournments to produce the accused person, the matter was struck out. Accused to be re-arraigned upon arrest.
2013	HC Lagos	ID/414C/13	FRN V Emmanuel Okeke Visa racketeer		5- count charge on the offences of conferring unfair advantage on himself, acquisition of interest in an agreement and making false statement to an officer of the Commission		Accused filed a motion of preliminary objection to his arraignment which has been argued and ruling given in favour of the prosecution. Arraignment to take place on next adjourned date which yet to be fixed in view of the ongoing judiciary staff strike action.
2013	HC, Ile-Ife Osun State	HOS/10C/2013	FRN V Chief Woleola Rufus Ojo Former Chairman, Ifon Local Government Council, Osun State		Use of position to confer corrupt advantage on self		Slated for the continuation of hearing on 3 <sup>rd</sup> February, 2015 but stalled due to the ongoing judiciary staff strike action.
2013	High Court No.2 Benin City	B/ICPC/2/2013	FRN Vs Hon. Etinosa I. Ogbelwi, Former House of Assembly Member Representing Orhionmwon II Constituency EDHA		Making false statement to Commissioner of Education Bauchi with intention to defraud		Prosecution has opened its case and called 5 witnesses. Adjourned to 30 <sup>th</sup> April, 2015 for continuation of hearing
2013	High Court, Bauchi	BA/27/2013	FRN V Isah Abdullahi, Fmr. Principal, GDSS, Luda, Bauchi State		Asking and receiving a bribe in the course of the discharge of his official duty		Prosecution has opened its case and called 3 witnesses. Matter adjourned to 4/2/15 for continuation of hearing but this was stalled due to the judiciary staff strike action. No new date yet
2013	Court 4, Makurdi High Court	MHC/84/2013	FRN V Francis Akor Land Officer at Okpokwu Local Government Council, Benue State		Obtaining money by false pretence, (setting up and operating a website claiming to be the sole representative of an Indian Scholarship Scheme in West Africa)		Accused person arraigned and matter adjourned to 23 <sup>rd</sup> June, 2015 for hearing.
2013	Court 5, FCT High Court	CR/2/13	FRN V Nwabueze Chiboyi James Student, FUT, Akure		Alleged to have forged documents for processing visas to the Republic of India		Prosecution has opened its case and taken 2 witnesses. Matter adjourned to 23/1/2015 for continuation of hearing but this was stalled due to the ongoing strike action. About to take a new date
2013	FCT High Court	FCT/HC/CR/27/2013	FRN V Okonkwo John Bosco Temple Visa racketeer		Alleged to have forged documents for processing visas		Prosecution has opened its case and called one witness. Matter adjourned to 27/1/2015 for continuation of hearing. New date yet to be assigned
2013	FCT High Court	FCT/HC/CR/33/13	FRN V Mohammed Alade Yusuf Visa racketeer		Alleged to have conspired to confer corrupt advantage on themselves by diverting allocated plots of land to their private company		Case was reassigned following the elevation of the former trial judge to the Court of Appeal. Scheduled to start <i>de novo</i> but no date assigned yet.
2013	FCT High Court	FCT/HC/CR/43/13	FRN V Patrick Pillar & Anor Public officers in the position of Director of Lands at AMAC and Administrative Officer at AMAC		Alleged to be involved in forging travel documents to be used in obtaining visas to the Republic of India, Canada and Belgium		Case was reassigned following the elevation of the trial judge to the Court of Appeal. Accused to be re-arraigned on March 23, 2015.
2013	Court of Appeal, Ibadan	CA/I/366/2013	Dr. Kola Balogun Vs. FRN		Former Commissioner, Works and Transport in Oyo State charged for abetting his wife who had an indirect private interest in a contract emanating from a local government		Case is pending in High Court 18, Ibadan, Oyo State.
2013	Court of Appeal, Ibadan	CA/I/367/2013	Mrs. Gbonjubola Balogun Vs. FRN Teacher, Our Lady of Apostle Secondary School, Ibadan		Wife of a Former Commissioner, Works and Transport, Oyo State who used her influence to secure an indirect private interest in a contract emanating from a local government and demanding kickback		Case is pending in High Court 18, Ibadan, Oyo State.
2013	FCT High Court	HC/CR/9/2013	FRN VS TUMBU FORMANKA, KAKA DAUDA ZAKARI AND SUNDAY NWEKE 1 <sup>st</sup> accused person Cameroon, 2 <sup>nd</sup> and 3 <sup>rd</sup> officers of the Ministry of Foreign Affairs		Conspiracy to make false statement to a public officer, making false statement and forgery		Accused person arraigned but trial yet to start because 1 <sup>st</sup> accused person has been convicted while the other accused persons are still standing trial.
2013	HC, Minna	ICPC/P/NC/280A/2013	FRN V Abdulhakeem Lawal Staff, Skye Bank		Making false statement to deceive his principal		Prosecution has opened its case. Matter fixed for continuation of hearing on 27 <sup>th</sup> April, 2015.

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2013	Court 55, Ikeja, Lagos.	ID/155C/2013 FRN vs Mayowa Omosobi. Head of Lagos Office of Federal Ministry of Solid Minerals	Using office to confer corrupt advantage on self, receiving benefit for self and cheating.	Adjoined to 15 <sup>th</sup> April, 2015 for continuation of hearing.
2014	Court of Appeal, Ibadan	CA/1/414C/2014 Ruth Aweto v FRN Rector, Federal Cooperative College, Ibadan	Misleading her principal by issuing defective documents in the form of budget proposals and nominal rolls and representing certain casual staff as permanent staff to the Federal Govt. and conspiracy to do same.	Matter slated for 13 <sup>th</sup> April, 2015 for hearing.
2014	Court of Appeal, Ibadan	CA/1/413C/2014 Adekanye Komolafe v FRN Bursar, Federal Cooperative College, Ibadan	Misleading his principal by issuing defective documents in the form of budget proposals and nominal rolls and representing certain casual staff as permanent staff to the Federal Govt. and conspiracy to do same	Matter slated for 13 <sup>th</sup> April, 2015 for hearing
2014	HC Enugu	FRN V Ambrose Ifesinachi Accused was the Registrar of a Magistrate Court, Enugu State.	2-count charge for demanding and receiving N80,000 before issuing a warrant of release from a suspect's relation who had been in custody for 2 years	Accused person was found guilty and has been convicted.
2014	HC, Uyo	HU/51C/2014 FRN V Dr. David Umoesien Fmr. Chairman, Oruk Anan Local Government Council, Akwa-Ibom State	Using office to confer corrupt advantage and making false returns	Slated for arraignment on 26 <sup>th</sup> March, 2015
2014	Court of Appeal, Abuja Division	CA/A/650C/2014 Emeka Ebliah v FRN Secretary, National Economic Intelligence Committee	Appellant was convicted for presenting companies with fictitious payment claims before the National Economic Intelligence Committee (NEIC)	The Appellant was convicted and sentenced to 5 years imprisonment for violating Sections 19 and 12 of the ICPC Act 2000. Briefs adopted and judgment reserved.
2014	Supreme Court	Sunday Gabriel Ehindero v FRN Former Inspector-General of Police	Using position to confer corrupt advantage and making false statements to officers of ICPC	1 <sup>st</sup> accused has filed a further appeal to the Supreme Court which is yet to be heard.
2014	HC I4 Ibadan	IB/1/1CPC/2014 FRN V Adewale Azeez Business man	Impersonation of NSCDC officer and extortion from people in the guise of getting them jobs with the NSCDC	Matter stalled due to the ongoing judiciary staff strike action.
2014	HC Lagos and now before the Supreme Court	F SC/90/2014 RN V Lukman Ajose Former Chairman of Lagos Island Local Government	Convicted at the trial court for collecting money from the local government for conferences he did not attend	Appellant filed an application to the Supreme Court to file his appeal which was struck out. He has filed yet another which shall be responded to. The Court is yet to fix a date.
2014	HC 5 Asaba	A/ICPC/1C/2014 FRN V Hon. Basil Ganagana & 2 Ors. 1 <sup>st</sup> accused is Deputy Speaker of the Delta State House of Assembly, 2 <sup>nd</sup> accused is his wife and 3 <sup>rd</sup> accused is his younger brother	Charged for conferring corrupt advantage on himself and 2 <sup>nd</sup> & 3 <sup>rd</sup> accused persons by employing them as Special Assistants in Delta State House of Assembly and receiving salaries while they were employed in other Government agencies.	Matter struck out on 12 <sup>th</sup> March, 2015. To be refilled.
2014	HC Abuja	HC/CR/80/2014 FRN V Mr. Adobee Odang Anthony		
2014	HC Calabar	HC/19C/2014 FRN V Egbe Michael Nshum Supervisory Councllor for Education, Ogoja Local Government Council, Calabar.	Forgery and uttering of University Certificate and NYSC Discharge Certificate as well as making false statement to officers of the Commission.	Accused person has been arraigned and prosecution has opened its case. Matter adjourned to 17 <sup>th</sup> -18 <sup>th</sup> February, 2015 but stalled by the ongoing judiciary staff strike action.
2014	HC, Ikeja	ID/561C/2014 FRN V Victor OnyinyechukwuAkeze Head, IT Unit Nigerian Civil Aviation Authority	Receiving the sum of N12 Million as kick-back from a contract	Matter slated for 8 <sup>th</sup> October, 2014 for hearing
2014	HC, Abuja	HC/CR/131/2014 FRN V Victor Charles Ndubueze		
2014	HC, Abuja	CR/134/2014 FRN V Igwe Saturday Coordinator of Akwa Ibom State Polytechnic, Nyanya Satellite Campus.	Charged for illegal operation of the satellite campus after it had been closed down.	Matter yet to be assigned
2014	HC, Abuja	CR/135/2014 FRN V Abel Friday Chief Clerical Officer at Federal Ministry of Interior, Abuja.	Demanding and obtaining gratification to secure employment into the Civil Service.	Adjoined to 27 <sup>th</sup> March, 2015 for hearing.
2014	HC, Ibadan	F IB/2/ICPC/2014	Obtaining money under false pretenses	Date yet to be given for arraignment of the accused.

# INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION (ICPC)

		Public officer –staff of Accountant-General's Office working with IPIS	withdrew for his personal use.		
2014	Supreme Court	SC/178/2014 FRN V Solomon Enwanade & 2 Ors Officers of the Delta State Independent Electoral Commission	Alleged to have abused their office and used same to confer corrupt advantages on themselves.	Filed all necessary processes and awaiting a date for hearing to upturn the ruling of the Court of Appeal allowing the accused persons' appeal against the ruling of the trial Court overruling their application to quash the charges against them.	
2014	FCT, High Court	CR/12/2014 FRN V Obaemeka Ifeanyi Augustine Visa racketeer	Alleged to have forged documents to be used in procuring visas	Matter slated for 23 <sup>rd</sup> May, 2015 for hearing.	
2014	FCT, High Court	CR/42/2014 FRN V John Ayodele & Anor 1 <sup>st</sup> accused person is a former Director at PHCN and 2 <sup>nd</sup> accused person is a private citizen	Alleged to have given false information to a public officer	Matter scheduled for 2 <sup>nd</sup> April, 2015 for leave and arraignment.	
2014	FCT, High Court	CR/43/2014 FRN V Osahon Asemota & Anor Business men	Alleged to have committed forgery and given false information to a public officer	Matter slated for 7 <sup>th</sup> May 2015 for leave and arraignment.	
2014	Supreme Court	Beatrice Ayuba Barkat v FRN Private person	Accused person was convicted by the trial Court and appealed the conviction at the Court of Appeal, which appeal was not allowed.	Notice of appeal has been filed, record of proceedings transmitted but nothing more has been done by counsel to the Appellant.	
2014	High Court, Uyo	HU/57/2014 FRN VS ANIETIE UDOBONG AND SUNDAY JOHNSON The 1 <sup>st</sup> accused person is the secretary of a village council while the 2 <sup>nd</sup> accused person is a chartered surveyor	Making false statement, stealing compensation money for the construction of gas pipeline)	Accused person arraigned. Case coming up on 17/02/15 for commencement of hearing.	
2014	Court 5, FCT High Court	CR/11/2014 FRN V Ipregha Tutogu Harold Administrative officer in the employ of the Bayelsa State Government deployed to the Bayelsa State Liaison Office, Abuja	Making false statement to the Minister of Foreign Affairs and officer of the ICPC	Accused arraigned on 2 <sup>nd</sup> February 2015 and matter adjourned to 26 <sup>th</sup> and 27 <sup>th</sup> May 2015 for the prosecution to open its case.	
2015	HC, FCT	CR/138/15 FRN V Mercy Adeyanju Business woman	Frustration of investigation of the Commission	Slated for arraignment	
2015	HC 2, FCT	HC/CR/127/2015 FRN V Aminu Abubakar & Anor 1 <sup>st</sup> accused is a business man and founder of an NGO i.e. Goodluck Support Group and 2 <sup>nd</sup> accused works for 1 <sup>st</sup> accused.	Conspiracy to extort, extortion and threat with injury to reputation with intent to cause alarm under the Penal Code	Slated for arraignment on 5 <sup>th</sup> May, 2015.	
2015	FCT High Court	HC/CR/105/2015 FRN V Adetula Olakunle		No date fixed for arraignment of accused persons.	
2015	FCT High Court	HC/CR/106/15 FRN V Sule Haruna Staff of Abuja Environmental Protection Board (AEPB)	Alleged to have received various sums of money from Fulani herdsmen as an incentive to release stray cows which were confiscated by officers of AEPB in the course of the discharge of their official duties.	No date fixed for arraignment of accused persons.	

# INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION (ICPC)

## B. CIVIL CASES FROM 2007 - DATE ONLY -PART 1

S/N	CASE NO/ TITLE	VENUE	PARTIES	CLAIM	REMARKS
1	<b>FHC/ABJ/CS/700/07</b> NIGER DELTA WETLAND CENTRE VS ICPC & ANOTHER	Federal High Court No. 4, Abuja.	Private company alleged to be fronting for Gov DSP Alamieseigha	Declaration and injunction to stop investigation.	Adjourned for judgement sine die.
2	<b>FHC/ABJ/CS/700/07</b> NIGER DELTA WETLAND CENTRE VS ICPC & ANOTHER	Federal High Court Abuja.	Abuja based legal practitioners	Mandamus to compel investigation of Hon. Member, House of Representatives for alleged certificate forgery.	Applicants' claim struck out on 7 <sup>th</sup> May 2009.
3	<b>FHC/ABJ/CS/487/07</b> MR. KEVIN AKPANURUM VS IG POLICE, ICPC & 4 OTHERS	Federal High Court Abuja.			Struck out on 13 <sup>th</sup> October 2008 following the death of the Plaintiff.
4	<b>CV/136/2007</b> BARR. CHARLES OGBOLI & ANOTHER VS ICPC & 7 OTHERS.	FCT High Court No.1., Abuja	Abuja based legal practitioners	Mandamus to compel investigation of former Speaker, House of Representatives Hon. Patricia Etteh for alleged corrupt practices over N628m contract scam.	Plaintiff's claim struck out on 7 <sup>th</sup> May 2009 for want of jurisdiction.
5	<b>CA/A/233/07</b> CHIEF GANI FAWEHINMI V PRESIDENT FRN, ICPC AND 6 OTHERS	Court of Appeal, Abuja.	Legal crusader and human rights activist (Deceased) now sought to be substituted by son and heir.	Appeal against order of lower court dismissing application to compel investigation of Presidential Library Project of former President Olusegun Obasanjo by anti-corruption agencies.	Application to substitute name of deceased appellant by Mohammed Fawehinmi refused and appeal struck out on 24/3/2011.
6	<b>FHC/YNG/6506/07</b> NATHANIEL AHIKWO V ICPC	FHC, Yenagoa Bayelsa state.	ICPC officer dismissed for alleged corrupt practices.	Declaration, injunction and damages of N10m for wrongful termination of appointment.	Judgment in favour of plaintiff. Order for reinstatement.
7	<b>FHC/ABJ/CS/499/07</b> MR. NONSO EZIKA VS PRESIDENT YAR'ADUA, ICPC & ORS	FHC, ABUJA	Representative of a Non- Governmental Organization	Declaration and mandamus to compel investigation of Comptroller General of Customs for alleged corrupt practices.	Suit abandoned by plaintiff and struck out.
8	<b>HU/299M/ 2008</b> DEAGON RICHARD CHUKWUEMEKA HARRISON Vs. ICPC	High Court No. 3 Umuahia, AbiaState			Struck out on 19 <sup>th</sup> November 2008.
9	<b>FHC/MKD/CS/21/2008</b> DR. AUGUSTINE LAHA DZEVER VS ICPC	FHC, MAKURDI	State Commissioner	Declarations and injunction to stop invitation and investigation for alleged corrupt practices on grounds of alleged breach of fundamental rights.	Plaintiff's claim was struck out on 21/7/08.
10	<b>HU/300m/2008</b> CHIEF MASCOOT UZOR KALU VS ICPC.	High Court No. 3 Umuahia, AbiaState.	Brother of a State Governor alleged to be involved in corrupt practices.	Declaration and injunction to stop investigation for alleged corrupt practices.	Plaintiff's claim opposed and dismissed.
11	<b>FHC/B/CS/15,214/08</b> BENJAMIN ILUOBE ESQ. VS SGT. ERASMUS EHI & 19 OTHERS.	<b>FHC Benin</b>	<b>Legal Practitioner</b>	Declarations and injunction for alleged breach of fundamental rights.	Plaintiff withdrew claim against ICPC on 16/09/2009



# INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION (ICPC)

12	<b>FHC/ABJ/M/341/2008</b> ALH. SANI DODODO V EFCC, ICPC & 2 ORS	FHC, Abuja	Politician	Application for mandamus to investigate Kebbi State Governor AdamuAliero for alleged corrupt practices.	Plaintiff's claim dismissed.
13	<b>BA/133/2008</b> MOHD YAYAJI GARBA V MALLAM ABDULLAHI & ICPC	HC 8 Bauchi.	Court Registrar, Bauchi state.	Declarations and injunctions to stop investigation for alleged abuse of office.	Plaintiff's claim struck out on 29/7/09.
14	<b>BA/03/2008</b> NUHU USMAN & ORS v RESIDENT ANTICORRUPTION COMMISSIONER, BAUCHI STATE	HC Bauchi	Officers, Office of the Bauchi State Auditor General for LGAs.	Declarations and injunctions to stop investigation of alleged abuse of office in the auditing of accounts of Ganiyuwa LGA.	Plaintiffs' claim struck out for lack of jurisdiction on 29/1/09.
15	<b>FHC/B/CS/15,207/08</b> PATRICK OKECHUKWU OKOLO VS ICPC & 7 OTHERS	<b>FHC Benin</b>		Declaration and injunction to stop investigation for alleged corrupt practices.	No date.
16	<b>FHC/ABJ/CS/480/2009</b> CHIEF A. ORU V OLUSEGUN OGUNYOMI, ICPC & 7 ORS	Federal High Court, Abuja.	Lagos lawyer and Human rights activist.	Claim for an order compelling investigation of Clerk of National Assembly for alleged corruption.	Plaintiff's case dismissed on 9 <sup>th</sup> Feb, 2011.
17	<b>FHC/ABJ/CS/480/2009</b> CHIEF W. O. OJOBI v AGF, ICPC & ORS	<b>FHC, Abuja</b>			
18	<b>FHC/ABJ/CS/668/2009</b> A.O. IWARA v HON. MIN OF FINANCE, ICPC & ORS				
19	<b>OHC/56/2009</b> SAMUEL ROBINSON V. AGF & ICPC & 3 ORS.	HC, Omoku, Rivers state.	Private citizen.	Declarations and injunctions to stop invitation and investigation for alleged corrupt practices.	Plaintiff's claim opposed and struck out on 23/9/10.
20	<b>FHC/ABJ/731/2009</b> HOME EXPRESSION LTD V ICPC	FHC 4, Abuja.	Private business enterprise.	Application to release assets recovered in the course of investigation.	Plaintiff's case was opposed and struck out on 18/3/2010.
21	<b>O/503/2009</b> TYKE ANIEDOBE VS. STERLING BANK PLC, ICPC & 3 OTHERS.	High Court, Onitsha, Anambra State.	Businessman	Declaration and injunction to stop investigation on grounds of alleged violation of human rights.	Plaintiff's claim struck out on 8/12/2010. N5, 000 cost to ICPC.
22	<b>O/501/2009</b> CHIEBONAM OSAKWE VS. STERLING BANK PLC & 3 OTHERS.	High Court, Onitsha, Anambra State	Businessman	Declaration and injunction to stop investigation on grounds of alleged violation of human rights.	Plaintiff's claim struck out on 9/06/2010. N10, 000 cost awarded to ICPC.
23	<b>FHC/ABJ/CS/748/09</b> ROCKVIEW HOTEL LTD v ICPC	<b>Federal High Court, 5 Abuja</b>	<b>Abuja based hospitality company.</b>	Claim for declarations and injunction to stop investigation of General Manager for alleged conspiracy with public officers to engage in corrupt practices and tax evasion.	Judgment in favour of Applicant on 17/10/14. Appeal pending.

# INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION (ICPC)

24	<b>FHC/IL/CS/31/09</b> SALADEEN MOSHOOD V ALIH TENIMU & ICPC	FHC Ilorin.	Police officer alleged to have demanded and received the sum of N500, 000 as bribe to grant bail.	Declaration and injunction to stop investigation for alleged corrupt practices.	Plaintiff's claim dismissed.
25	<b>FHC/EN/M/29/10</b> MR FESTUS OZONWANJI V ICPC & 2 ORS	FHC Enugu	Local government officer in Enugu state.	Declaration, injunction and N20m damages to stop invitation, arrest and investigation for alleged corrupt practices.	Applicant's claim refused by judgment dated 3/12/10.
26	<b>FHC/ABJ/CS/508/10</b> HON PHILLIP SHAIKU V ICPC	Federal High Court, 2 Abuja.	Hon. Member, Edo State House of Assembly.	Claim for injunction to stop investigation for alleged certificate forgery.	Plaintiff's claim struck out for want of diligent prosecution on 29/4/13.
27	<b>FHC/ABJ/CS/820/10</b> AHMED TJANI YUSUF & ANR v ICPC	Federal High Court, 3 Abuja.	Legal practitioners/ Activists	Claim for mandamus to compel review of decision to withdraw prosecution of case of alleged corruption against a public officer without consent of Attorney General of the Federation.	Plaintiff's claim struck out for want of diligent prosecution on 29/4/13.
28	<b>FHC/PH/CS/482/10</b> PHALGA & 22 ORS V EFCC, ICPC & 14 ORS	FHC, 2, Port Harcourt.	All local governments in Rivers state.	Declarations and injunctions to stop investigation of local government finances in Rivers state.	Court upheld the submission by ICPC. Plaintiffs' claims dismissed on 31/5/12.
29	<b>FHC/ABJ/CS/396/10</b> NMPP v ICPC	FHC, 5 Abuja.	Officials of Political party.	Injunction to stop investigation of alleged corrupt practices.	Plaintiff's claim struck out for want of jurisdiction on 13 <sup>th</sup> June, 2013.
30	<b>FHC/ABJ/CS/234/10</b> HON ESEME EYIBOH v ICPC	Federal High Court, 3 Abuja	Hon. Member House of Representatives.	Claim for mandamus to compel investigation and prosecution of Area Court Judge for alleged corrupt practices.	Plaintiff's claim dismissed.
31	<b>FHC/PH/CS/454/10</b> HRH EZE EJIKE WALLI v ICPC	<b>Federal High Court, 2 Port Harcourt</b>	<b>Traditional ruler/businessman</b>	Claim for declarations and injunction to stop investigation for alleged corrupt practices in the diversion of Sixty five million one hundred and thirty three thousand nine hundred and twenty nine Naira (N65, 133, 929.00) funds provided by Total E & P Nigeria Ltd for the development of his Community.	Plaintiff's claim dismissed for lack of merit on 30/1/15.
32	<b>LD/638/2010</b> BABAIDE OGUNDIPE v ICPC	High Court, 44 Lagos.	Lagos based Legal practitioner.	Claim for declarations and injunction to stop investigation for alleged corrupt practices in respect of disposal of seized assets on grounds of threatened breach of lawyer/client privilege	Awaiting assignment to trial Judge.
33	<b>FHC/ABJ/CS/359/2010</b> CHIEF EDDIE BROWN & ANR v ICPC & 4 ORS	FHC Abuja	Businessman	Declaration and Injunction to stop investigation on grounds of alleged violation of human rights.	Plaintiff's claim struck out on 15 <sup>th</sup> May, 2013
34	<b>FHC/ABJ/CS/392/2010</b> DR EDUGIE ABEBE V ICPC & 2 ORS	Federal High Court, 5 Abuja.	Former Permanent Secretary, Federal Ministry of Transport.	Injunction and damages of N5billion for alleged wrongful arrest, humiliation and breach of fundamental rights.	Judgment entered for Plaintiff on 5/7/11. N5m damages awarded. Appeal pending.
35	<b>FHC/ABJ/CS/446/10</b> HON. PERE EBEBI V ICPC & ORS.	Federal High Court, 1 Abuja.	Former Deputy Governor of Bayelsa state.	Claim for declaration and injunction to stop investigation for alleged corrupt practices pending determination of suit to restore plaintiff to office as Deputy Governor	Following preliminary objection to jurisdiction, Plaintiff applied to withdraw suit with leave of court on 4/3/11.
36	<b>FHC/MKD/CS/62/10</b> TERVER KAKIH v GOV BENUE STATE, ICPC & 7 ORS	FHC, Makurdi.	Legal practitioner/politician.	Claim for mandamus to compel investigation and prosecution of Gov. Gabriel Suswam for alleged certificate forgery.	Plaintiff's claim struck out on 25/1/11.

# INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION (ICPC)

37	<b>FHC/ABJ/CS/538/10</b> OZO STANDARD NIG LTD v ICPC & 11 ORS	FHC Abuja	Private company	Application to compel investigation of alleged diversion of ecological funds in Anambra state.	Plaintiff withdrew claim against ICPC and same was struck out on 20/3/12.
38	<b>AB/158M/2010</b> MARKUS B. LUSA v FINAL TOUCH VENTURES, ICPC & ORS	HC Bauchi	Local Government Chairman, Bauchi state.	Claim for injunction to stop investigation for alleged corrupt practices.	Plaintiff's claim struck out for want of diligent prosecution on 13/2/12.
39	<b>FHC/ABJ/CS/409/2010</b> CHIEF NKERUWEM U. AKPAN VS HON. DIMEJI BANKOLE & 9 ORS	FHC, ABUJA	Legal Practitioner/Human Rights Activist	Declaration and mandamus	Plaintiff's case struck out for want of jurisdiction on 29/04/2011.
40	<b>FHC/ABJ/CS/753/10</b> CHIEF NKERUWEM UDOFIA AKPAN v GOV. ABIA STATE, ICPC & 37 ORS	<b>FHC, Abuja.</b>	<b>Social critic / anticorruption crusader.</b>	Mandamus to compel investigation of Abia state Governor and 35 other states Governors for alleged corruption in disbursement of security votes.	Plaintiff's claim struck out on 23/12/2013 for want of jurisdiction.
41	<b>FHC/ABJ/CS/509/10</b> JUDE IDEHEN v EFCC & ICPC	FHC Abuja	Member Edo State House of Assembly alleged to have forged academic and tax certificates.	Declaration and injunction to restrain the Respondents from investigating allegation of certificate forgery.	Pending. Last mentioned on 16/12/14.
42	<b>FHC/L/CS/322/10</b>	FHC Lagos	Businessman/politician	Declarations and injunctions to stop invitation for investigation.	Struck out for want of diligent prosecution on 23/10/14.
43	<b>PRINCE BURUJI KASHAMU v IGP, EFCC, ICPC &amp; 2 ORS</b>				
44	<b>FHC/BAU/CS/17/2011</b> MARKUS B. LUSA v ICPC	Federal High Court, Bauchi.	Local Government Chairman, Bauchi state.	Claim for injunction to stop investigation for alleged corrupt practices.	Plaintiff's claim struck out for want of diligent prosecution on 7/5/13
45	<b>FHC/PH/CS/268/11</b> ABBIA ORIAKOR v ACCESS BANK & ICPC	FHC 3 Port Harcourt	businessman	Claim for declarations and injunction to stop invitation on grounds that ICPC is not a debt recovery agency.	Plaintiff's claim struck out for want of diligent prosecution on 7 <sup>th</sup> June, 2012.
46	<b>FHC/AWK/CS/294/11</b> TANSIAN UNIVERSITY & ANR v ICPC & 2 ORS.	FHC, Awka.	Private university and administrators.	Injunction to stop investigation for alleged corrupt practices.	Applicant's case dismissed on 08/04/2014 with N10,000 cost to ICPC.
47	<b>CV/149/11</b> ANAS MUSA SABI & ANR v ICPC & 2ORS	FCT High Court14,	Private businessman alleged to have benefited from corrupt allocation of land in the FCT.	Declaration, injunction and damages of N50m to stop investigation pending determination of criminal charge against Applicant and N2m cost of action.	Injunction to stop investigation granted pending determination of criminal charge before the Upper Sharia Court against Applicant. Damages and cost of N52m not granted on 26 <sup>th</sup> July 2013.
48	<b>FHC/ABJ/CS/772/11</b> DR KENNETH IROGBU v ICPC	FHC 3, Abuja.	Medical staff of National Hospital Abuja.	The Plaintiff who was discharged and acquitted on a charge of corrupt practices and abuse of office before the FCT High Court sought an order of the Federal High Court to compel release of items seized and N100m damages.	Plaintiff's claim struck out for want of diligent prosecution on 1 <sup>st</sup> December, 2014.

# INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION (ICPC)

49	<b>GHC/379M/2011</b> TERLUMUM AKPUTU v HON MWARKAVEN G. GBAKWE & ICPC	High Court, Gboke, Benue state.	Local government Chairman.	Claim for declaration and injunction to stop invitation for investigation of alleged corrupt practices.	Plaintiff's claim struck out for want of jurisdiction on 30/10/12.
50	<b>UHC/M/5/2011</b> GOLD PACKAGE PAY LTD & 10 ORS V EFCC, ICPC & 7 ORS	HC Ughelli, Delta state.	Private trading company alleged to be involved in Ponzi scheme.	Declaration and injunction to stop investigation for alleged advance fee fraud.	Claim against ICPC dismissed on 15/5/12.
51	<b>MISC/4/2011:</b> ENGR. BASIL UZORGWU & ANR V ICPC & MR. A. A. KAYODE	HC Enugu	Public officers who stood surety for suspect in a case of alleged corrupt practices.	Declarations, injunctions and damages of N2m for alleged breach of FHR.	Plaintiff's claim opposed and struck out for want of diligent prosecution.
52	<b>FCT/HC/CV/331/2011</b> YUSUF SARKI KAWU v FCT MINISTER, & ORS	FCT High Court, Maitama.	Aggrieved land allottee whose plot was revoked by the FCT Minister.	Application to join ICPC as a party to the action for the purpose of stopping the investigation of the circumstances of the allocation.	Application opposed, withdrawn and struck out on 16/1/13.
53	<b>FHC/AK/71/2011</b> BODE OLAWOYE v ICPC	FHC, Akure.	NGO	Declaration and injunction to stop investigation for alleged corrupt practices.	Plaintiff's claim struck out.
54	<b>W/229/2011</b> HON. BASIL GANAGANA & 2ORS Vs ICPC	HC Warri Delta State.	Deputy Speaker, Delta state House of Assembly.	Injunction to stop investigation for alleged corrupt practices.	Awaiting re-assignment to new Judge.
55	<b>HU/583/11</b> MR ONUKAK OKON BASSEY v ICPC & 2 ORS	<b>High Court,</b> Uyo.	Private citizen/Estate Manager	Declarations, injunction and N10m damages to stop investigation for alleged corrupt practices on grounds of alleged threatened breach of fundamental rights..	Plaintiff's claim was opposed by preliminary objection and struck out on 16/4/12.
56	<b>FHC/ABI/CS/364/11</b> NATIONAL JUDICIAL INSTITUTE v A.A. KAYODE, ICPC & AGF.	FHC, 2 Abuja.	National Judicial Institute, a public institution for training of judicial officers	Declaration and injunction to stop investigation for alleged corrupt practices by principal officers.	Case was opposed and dismissed on 9/5/2013.
57	<b>No: HOH/7M/2011</b> DR COSMAS NDUKWE V KELVIN OPOKE	HC Ohafia	Public officer alleged to have engaged in corrupt practices and abuse of office in Abia State.	Declarations, injunctions and damages of N50m to stop invitation and investigation on grounds of alleged breach of FHR.	Plaintiff's claim opposed and struck out for want of jurisdiction on 26/3/12.
58	<b>DR AMOS ADAMU v EFCC,</b> <b>ICPC&amp; IGP</b>	High court, Abuja.	Former Sports Administrator.	Declarations and injunction to stop investigation for alleged corrupt practices following suspension from sports administration by FIFA over alleged bribery scandal.	Plaintiff's claim discontinued and struck out on 3/2/11.
59	<b>FHC/OW/CS/162/11</b> Mrs. SHIRLEY ELECHI v ICPC &ors	F H C Owerri, Imo state.	Business Woman.	Claim for enforcement of fundamental rights to stop investigation for alleged corrupt practices and N250 million damages.	Plaintiff's claim dismissed for lack of merit 25/2/14.
60	<b>FHC/OW/CS/163/2011</b> HON BARR C.C. ELECHI v ICPC	FHC Owerri	Legislator alleged to have acted in abuse of office to influence police investigation in support of his wife.	Declarations, injunctions and damages of N250m to stop invitation and investigation for alleged abuse of office.	Plaintiff's claim dismissed for lack of merit on 4/7/12.



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61	<b>FHC/OW/CS/299/11</b> HON Barr & Mrs. Elechi v ICPC	FHC Owerri	Legislator/wife	Declarations, injunctions and damages of N250m to stop investigation and prosecution on grounds of alleged breach of FHR	Plaintiff's claim struck out for being an abuse of court process on 27 <sup>th</sup> November, 2013.
62	<b>FHC/EN/M/189/2011</b> INNOCENT I. CHUKWUMA VS ICPC & ANOR	FHC, ENUGU	Businessman, MD Innoson Nigeria Ltd, private company.	Declaration, Injunction and N100m damages to stop invitation for investigation on grounds of alleged or threatened violation of human rights.	Judgment in favour of plaintiff on 15 <sup>th</sup> February, 2012. Claim of damages refused.
63	<b>HU/265/2011</b> DR. INIH GEORGE INYANG VS ICPC & ORS	HC Uyo	Landlord	Rescission of tenancy agreement, N200,000 balance of rent, and N10 million damages for alleged inhuman treatment.	No date yet on account of industrial action by Judiciary staff.
64	<b>FHC/UY/CS/24/2011</b> REG TRUSTEES OF INTL HUMAN RIGHTS AND ANTICORRUPTION SOCIETY v SEN DR ALLOYSIUS ETOK, ICPC & 20 ORS	FHC Uyo	NGO	Mandamus to investigate petition on alleged corrupt practices in the allocation and expenditure of constituency votes by political office holders in Akwalbom State.	Plaintiff's suit struck out for want of diligent prosecution.
65	<b>FHC/OW/CS/56/2012</b> BARR. ELECHI C. C. & ANOR. V. ICPC	FHC	Former Deputy Speaker Abia State.	Injunction to stop investigation for alleged corrupt practices.	Plaintiff's claim dismissed for lack of merit on 8/11/13.
66	<b>M/12258/12</b> BARR CHARLES OGBOLI & ANR V ICPC	FHC Abuja.	Private legal practitioners/Anti-corruption crusaders.	Declaration and injunction to stop investigation for alleged corrupt practices.	Plaintiff's claim was opposed and struck out 8/5/13.
67	<b>FHC/UM/M/15/2012:</b> DR COSMAS NDUKWE v KELVIN OPOKE, ICPC & 4 ORS	FHC Umuahia	Public officer alleged to have engaged in corrupt practices and abuse of office in Abia State.	Declarations, injunctions and damages of N50m to stop invitation and investigation on grounds of alleged breach of FHR	Plaintiff's claim opposed and struck out for want of jurisdiction on 15 <sup>th</sup> January 2013.
68	<b>HU/74/12</b> IME B. ATIA V ICPC	High Court, Uyo	Businessman/Money lender.	Claim for recovery of loan given to deceased NAVC staff.	Application opposed and ordered transferred to Federal High Court on 7/2/13.
69	<b>FHC/CA/M112/2012</b>	FHC 2, Calabar.	Alleged land speculator	Declaration and injunction to stop investigation for alleged corrupt practices in the sale of land.	Plaintiff's claim struck out on 24 <sup>th</sup> October, 2012.
70	<b>FHC/CA/M129/2012</b> DEACON MOSES AKUBUIRO V ICPC & 2 ORS	<b>FHC 1 Calabar</b>		Declaration and injunction to stop investigation for alleged corrupt practices.	Plaintiff's claim struck out on 3 <sup>rd</sup> Dec, 2012.
71	<b>FHC/ABI/CS/449/2012</b> SERENE GREENFIELDS LTD V HOUSE OF REPS & 5 ORS.	<b>FHC, Abuja</b>	Oil marketing company.	Declarations and injunction to restrain investigation and prosecution in respect of alleged oil subsidy scam.	Pending.
72	<b>FHC/ABI/CS/137/12</b> YAKUBU GOWON CENTRE V ICPC	FHC, Abuja	NGO	Claim for declarations and injunction to stop investigation of alleged corrupt practices in the application of donor funds to combat diseases in Nigeria and N1.5 billion Naira specific and general damages for alleged libelous publication of the Audit Report of Global Funds.	Plaintiff's claim opposed and struck out for want of jurisdiction on 21 February 2014.

# INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION (ICPC)

73	<b>SC/461/2012</b> YAKUBU GOWON CENTRE V ICPC	<b>Supreme Court,</b>	Businessman/	Appeal against decision of Court of Appeal, Abuja dated 13 <sup>th</sup> June, 2012 which dismissed the application for order of mandamus to compel investigation and prosecution of the former Governor of Kebbi State, Sen Adamu Alliero.	Pending.
74	ALHAJI SANI DODODO vs EFCC, ICPC & 2 ORS	<b>Abuja.</b>	politician		
75	<b>FHC/ABI/CS/447/12</b> NICON INSURANCE LTD V ICPC	<b>FHC, Abuja</b>	Insurance company	Declarations and injunction to restrain demand for payment of N20m from plaintiff in respect of investigation into Unified Pension scheme of parastatals under the Federal Ministry of Education.	No hearing date.
76	<b>FHC/ABI/CS/341/12</b> INTEGRATED OIL AND GAS LIMITED V HON SPEAKER, HOUSE OF REPRESENTATIVES, ICPC & 4ORS.	FHC Abuja	Private Oil marketing company.	Declaration and injunction to stop investigation for alleged involvement in fuel subsidy scam.	Mentioned in court on 17/10/12 and 27/11/12. No new date.
77	<b>FHC/PH/CS/176/2012</b> SOMAYE GLOBAL RESOURCES & ABIYE DAWARI V ICPC	FHC 1 PH	Public officer alleged to be involved in corrupt practices and money laundering through proxy company.	Declarations and injunction to stop invitation and investigation for alleged corrupt practices on grounds of alleged demand for gratification by ICPC official.	Adjourned to 31 March, 2015 for hearing.
78	<b>FHC/PH/CS/176/2012</b> AHOADA EAST LGC & 4 ORS VS ICPC & 2 ORS	FHC 1 Port Harcourt	Local Government Council & Officials.	Declaration and injunction to stop investigation and alleged illegal freezing of bank accounts of local Council.	Plaintiff's claim struck out on 29/3/13.
79	<b>FHC/ABI/CS/541/2012</b> ORUH HENRY IKECHI V ICPC	FHC ABUJA	Public officer	Declaration and injunction to stop investigation for alleged corrupt practices.	Plaintiff's claim dismissed.
80	<b>M/1096/2012:</b> AUSTIN ASEDEGBEGA & ANR v ICPC & 2 ORS	HC Lagos	Artisan alleged to have engaged in corrupt practices in the sale of land	Declarations, injunctions and damages of N5m for alleged breach of FHR.	Mentioned in court on 17/2/15 adj to 18 March, 2015.
81	<b>NSD/LF-3M/2012</b> DANLAMI O. MOHAMMED V. IGP, EFCC, ICPC.	HC LAFIA	Public officer	Declaration and Injunction to stop investigation on grounds of alleged violation of human rights.	Plaintiff's claim struck out on 27 <sup>th</sup> May, 2013.
82	Human Rights, Justice and Peace Foundation Vs ICPC	Federal High Court, Abuja.	Abuja based NGO	Injunction compelling the investigation and prosecution of Chief Vincent Ogbulafor.	
83	<b>FHC/ABI/CS/788/2013</b> SUNNIE MOTILEWA v HON ABIODUN FALEKE & ICPC	FHC, 6 ABUJA	Businessman suspected of corrupt practices in the allocation of land in FCT.	Declarations, injunction and N500million damages to stop investigation on grounds of alleged breach of FHR.	Plaintiff's claim opposed and struck out for want of jurisdiction on 19/5/14.
84	<b>FHC/ABI/CS/417/13</b> PROF. (SENATOR) DAVID IORNEM V. ICPC	FHC ABUJA	Suspected operator of illegal degree awarding institution.	Order of court to set aside warrant of search and seizure and return of all items seized from the Applicant's premises.	Applicant's claim opposed and dismissed by judgment of Court on 9 <sup>th</sup> June 2014.

# INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION (ICPC)

85	<b>FHC/ABI/CS/788/2013</b> KAYODE ABIODUN OGUNDELE Vs CUSTOMS SERVICE BOARD & ICPC	FHC, Lagos	Businessman suspected of hosting fraudulent website	Declarations, injunctions and damages of N20m for alleged breach of FHR and wrongful seizure of bank accounts.	Plaintiff's claim withdrawn and struck out on 07/03/14.
86	<b>LUMINAR INTERNATIONAL CENTRE V ICPC</b>	FHC Abuja	Operator of unaccredited degree awarding institution.	Declarations injunctions and damages for alleged wrongful closure of university.	Plaintiff's claim withdrawn and struck out on 20/1/14.
87	<b>NATFORCE v ICPC</b>	CMC, Bauchi	NGO	Application to unfreeze bank accounts and seized assets.	Plaintiff's claim opposed and struck out on 02/04/14.
88	<b>E/645M/2013</b> EDWIN ONYENJE V. ICPC	HC 2 Enugu	Former Rector, Institute of Management Technology, Enugu.	Declarations, injunctions and damages of N500m to stop invitation and investigation on grounds of alleged breach of FHR	Plaintiff's claim dismissed on 6/11/14.
89	<b>FHC/UY/CS/4/13</b> DR INNIH GEORGE INYANG V ICPC & 2ORS	FHC Uyo		Declarations, injunctions and damages of N200m for alleged breach of FHR.	N20m awarded in favour of the Plaintiff on 27/11/14.
90	<b>FHC/PH/CS/26/2013:</b> CHIEF (HON) CASSIDY IKEGBIDI & ORS VS ICPC	FHC 3 PH		Declarations and injunctions to stop investigation for alleged corrupt practices by Chairman and Council Members, Ahoada East LGA, rivers state on grounds that it amounts to double jeopardy to be investigated simultaneously by EFCC/ICPC.	Judgment against the Commission on 29/11/14. Notice of appeal filed.
91	<b>FHC/UY/CS/678/13</b> IME B. ATIA V ICPC	FHC, Uyo	Businessman/Money lender.	Claim for recovery of loan given to deceased NAVC staff.	Application opposed and struck out 15/11/13.
92	<b>HOW/243/2013</b> PRINCE MCDONALD AKONO v ICPC	High Court, owerri.	Special Asst. Gov of Imo State	Declaration to set aside summons inviting the applicant for investigation.	Plaintiff's case struck out for want of diligent prosecution.
93	<b>HOW/587/2013</b> CHIEF GERRY OKOLIE V. IGP, ICPC, EFCC & 4 ORS	<b>HC Owerri</b>	Former Commissioner for Local Government and Rural Development, Imo State	Declaration and injunction to stop invitation, threat of arrest and N10 million damages for alleged breach of fundamental rights.	Plaintiff's claim opposed and dismissed on 5 <sup>th</sup> June, 2014.
94	<b>HOW/588/2013</b> DR. PASCHAL OBI V. IGP, ICPC, EFCC & 4 ORS	HC Owerri	Principal Secretary to the Governor of Imo State	Declaration and injunction to stop invitation, threat of arrest and N10 million damages.	Plaintiff's claim dismissed on 2 <sup>nd</sup> June 2014.
95	<b>FHC/ABI/CS/7/2013</b> CASHFLOWABI NETWORK LIMITED & ANR V. EFCC, ICPC & ORS	FHC 6, Abuja	"Wonder Bank operator"	Declaration, injunction and damages of N500m for alleged wrongful arrest, humiliation and breach of fundamental rights.	Case against ICPC withdrawn and struck out on 01/07/13.
96	<b>FHC/B/CS/75/13</b> SAMMED GLOBAL SERVICES & 2ORS v ICPC	FHC Benin	Private companies alleged to be operators of unaccredited degree awarding institutions.	Declarations, injunctions and damages of N10m to stop investigation on grounds of alleged forgery of court warrant.	Plaintiff's claim opposed and struck out on 26 <sup>th</sup> July, 2013.
97	<b>FCT/HC/M/CV/51/13</b> JONAS KUBIAT & PETROLINE NIGERIA LTD v MATHEW BANKONG & ICPC	FCT HC Abuja	Construction company alleged to have diverted about N700m road contract sum	Declarations, injunctions and damages of N15m to stop investigation for alleged breach of FHR.	Plaintiff's claim opposed and struck out on 8/10/2014 for want of diligent prosecution.

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98	<b>FHC/ABI/CS/817/13</b> JOB DANGANA V ICPC	FHC Abuja	Author/Businessman	N250, 000 and 10% post judgment interest for default in launching of books.	No trial date
99	<b>HOW/586/2013</b> DR PASCHAL CHIGOZIE V ICPC & 4 ORS	HC 6, Owerri		Declarations, injunctions and damages of N10m for alleged breach of FHR.	No trial date
100	<b>FHC/ABI/CS/742/13</b> CHIEF (DR.) EMMANUEL OKEREKE V ICPC	FHC 6 Abuja	Director General of NATFORCE	Declarations and injunctions to stop investigation for alleged corrupt practices	Hearing concluded. No date given yet for judgment.
101	<b>FHC/EN/M/112/2013</b> CHARLES EBUE & 4ORS v NUC & 4 ORS	FHC 2, Enugu	Alleged operators of unaccredited degree awarding institution.	Declarations, injunctions and damages of N200m for alleged breach of FHR.	Plaintiff's claim dismissed on 5/11/14.
102	<b>FHC/EN/M/121/2013</b> RICHMOND OPEN UNIVERSITY v NUC & 4 ORS	FHC 2, Enugu	Operator of unaccredited degree awarding institution.	Declarations, injunctions and damages of N200m for alleged breach of FHR.	Applicant's claim opposed and dismissed for lacking in merit on 13/10/2014.
103	<b>FHC/EN/M/124/2013:</b> PROF. MAZI CHRIS OKORO & INSTITUTE OF JOURNALISM ENUGU V NUC, ICPC & 3 ORS	FHC 2, Enugu	Suspected operator of unaccredited degree awarding institution.	Declarations, injunctions and damages of N200m for alleged breach of FHR.	Applicants motion to amend claim adjourned to 18 <sup>th</sup> March, 2015 for hearing.
104	<b>SUNDAY UDOM v ICPC</b>	FHC Uyo	Businessman	Declaration and injunction to stop alleged wrongful invitation, threat of arrest.	Plaintiff's claim abandoned.
105	<b>LD/279M/2013:</b> BARR INYANG AYOOLA GAM-IKON v KANU NWANKWO, ICPC, & 6 ORS	HC Lagos	Hotelier	Declarations, injunctions and damages of N60m for alleged threatened breach of FHR over private business dispute.	Struck out
106	<b>CV/00/13</b> <b>FAITH SALISU V ICPC</b>	FCT High court, Abuja	Businesswoman who was arrested for offering N20,000 bribe to police officer.	Declarations, injunctions and damages of N5million for alleged breach of FHR.	Notice of discontinuance filed on .....
107	<b>FHC/EN/CS/38/2014</b> RICHMOND OPEN UNIVERSITY v NUC, ICPC & 4 ORS	FHC 2, Enugu	Suspected operator of unaccredited degree awarding institution.	Declarations, injunctions and damages of N200m to stop investigation for alleged corrupt practices on grounds of alleged breach of FHR.	Pending. For mention on 18/3/15
108	<b>BA/34/2014</b> YAKUBU MELE V ICPC	HC Bauchi	Legal practitioner	Declarations, injunctions and damages of N10m to stop arrest and investigation on grounds of alleged breach of FHR.	Plaintiff's claim dismissed on 24/6/14.
109	<b>CV/108/14</b> <b>FAITH SALISU V ICPC</b>	FCT High court, Abuja	Businesswoman who was arrested for offering N20,000 bribe to police officer.	Declarations, injunctions and damages of N5million for alleged breach of FHR.	N1.8m awarded by FCT High Court, Abuja on 12/03/14



# INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION (ICPC)

110	<b>CV/1152/14</b> KALU OKORE V ICPC	FCT High court, Abuja	Businessman who was invited for investigation for alleged corrupt practices.	Declarations, injunctions and damages of N4m to stop invitation for investigation on grounds of alleged breach of FHR.	Plaintiff's claim opposed and struck out on 29/1/15 for want of diligent prosecution.
111	<b>CV/26/14</b> AZEER ADEWALE WASIU v ICPC	FCT HC, Abuja	Suspected impersonator of public officer.	Declarations, injunctions and damages of N500m for alleged breach of FHR	Plaintiff's claim struck out for want of diligent prosecution on 09/04/14.
112	<b>E/140m/2014:</b> CHIDUBEM NIEZE & 6 ORS V ICPC & 3 ORS	HC Enugu	Businessman alleged to have conspired with public officers to engage in corrupt practices.	Declarations, injunctions and damages of N5m to stop invitation and investigation for alleged corrupt practices.	For judgment on 5/3/15. Judgment not ready. Adjourned sine die.
113	<b>FHC/PH/FHR/283/2014</b> NZEHE EDOZIE KENNETH Vs CHAIRMAN, ICPC & ANR	FHC 3, PH	Private debt recovery agent alleged to be personating ICPC staff to recover debts.	Declarations, injunctions and damages of N20m to stop investigation on grounds of alleged breach of FHR.	Applicant's claim dismissed by judgment on 16/2/2015.
114	<b>FHC/ABJ/CS/221/14</b> HON JUSTICE GLADYS OLOTU V AGF, ICPC & 17 ORS	FHC Abuja	Retired Judicial officer	Declarations, injunctions and damages of N5billion to stop investigation of alleged corrupt practices on grounds of alleged breach of FHR.	Pending. For re-assignment by CJ FHC. Awaiting fresh hearing notice.
115	<b>SUNDAY A. IDACHABA V. ICPC AND 7 ORS</b>	FCT High Court, Abuja	Private businessman alleged to have engaged in corrupt practices in the allocation of plots of land in the FCT.	Declarations, injunctions and damages of N20m to stop investigation on grounds of alleged breach of FHR.	No trial date.
116	<b>CV/1539/2014</b> ALH AMINU ABUBAKAR v ICPC & ANR	FCT High Court, Maitama		Declarations, injunctions and damages of N100m for alleged breach of FHR.	25 <sup>th</sup> February, 2015 for hearing.
117	<b>FHC/ABJ/CS/2014</b> DR AHMED MODIBBO MOHAMMED & ANR v IGP, EFCC, ICPC & AGF	FHC, Abuja	Former public officer/Politician	Declarations and injunction to stop invitation, arrest and investigation for alleged corrupt practices.	No trial date.
118	<b>CV/434/14</b> KEN SAMUEL OKOYE v ICPC	FCT HC 11 Gudu		Declarations and injunction to stop invitation and investigation for alleged corrupt practices on grounds of alleged breach of fundamental rights.	Adjourned to 4/4/2015 for hearing.
119	<b>FHC/EN/M/84/2014</b> DR JOHN ORIJI v ICPC	FHC ENUGU		Declarations and injunction to stop invitation and investigation for alleged corrupt practices on grounds of alleged breach of fundamental rights.	Adjourned to 3 <sup>rd</sup> March, 2015 for hearing.
120	<b>FHC/PH/FHR/436/2014</b> TAUNOKOMBIA ALABO vs ICPC, IGP & ANR	FHC 3, PH		Declarations, injunction and N20m damages to stop invitation and investigation for alleged corrupt practices on grounds of alleged breach of fundamental rights.	Last mentioned in Court on 3 <sup>rd</sup> November, 2014. No new trial date.
121	<b>BARTHOLOMEW EZE v ICPC</b>	FHC 2 ENUGU		Declarations and injunction to stop invitation and investigation for alleged corrupt practices on grounds of alleged breach of fundamental rights.	Last mentioned in court on 4 <sup>th</sup> November, 2014. No new trial date.

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122	<b>CA/A/2014</b> CHIEF NKEREUWEM AKPAN VS ICPC & 38 ORS	COURT OF APPEAL, ABUJA	Legal Practitioner/Human Rights Activist	Setting aside the judgment of the trial court, and order re-hearing	No date yet.
123	<b>CV/6006/2014</b> ALHAJI AMINU ABUBAKAR V ICPC & ANOR	High Court, FCT	Managing Director, Al-Mushahid Nigeria Limited	A declaration that the detention of the Applicant by the Respondents from 14 <sup>th</sup> February – 20 <sup>th</sup> February, 2014 without trial is unconstitutional and exemplary damages of N50 Million	Case was struck out on 24 <sup>th</sup> February, 2015 for want of diligent prosecution by the Applicant based on an application made by the Respondents.
124	<b>FHC/AI/CS/7/2015</b> EVANGELIST ANTHONY NWIGBERI V EBONYI STATE HOUSE ASSEMBLY & 7 ORS.	Federal High Court, Abakaliki	Chairman of Local Government, Ebonyi State.	Declaration and injunction to stop investigation on grounds of alleged breach of fundamental rights	Matter mentioned on 25th February and adjourned to 9th March, 2015.
125	<b>FHC/AI/CS/8/2015</b> HON. MOSES NWEKOYO V NIGERIA POLICE & 3 ORS	Federal High Court, Abakaliki	Chairman of Local Government, Ebonyi State.	Declaration and injunction to stop investigation on grounds of alleged breach of fundamental rights	Matter mentioned on 25th February and adjourned to 9th March, 2015.
126	<b>FHC/AI/CS/9/15</b> PHARM. ANTHONY EKO JR. V NIGERIA POLICE & 3 ORS	Federal High Court, Abakaliki	Chairman of Local Government, Ebonyi State.	Declaration and injunction to stop investigation on grounds of alleged breach of fundamental rights	Matter mentioned on 25th February and adjourned to 9th March, 2015.
127	<b>FHC/AI/CS/11/2015</b> BARR. STANLEY ODANWU V NIGERIAN POLICE & 3 ORS	Federal High Court, Abakaliki	Chairman of Local Government, Ebonyi State.	Declaration and injunction to stop investigation on grounds of alleged breach of fundamental rights	Matter mentioned on 25th February and adjourned to 9th March, 2015.
128	<b>FHC/AI/CS/12/2015</b> HON. CHAKA NWEZE V NIGERIA POLICE & 3 ORS.	Federal High Court, Abakaliki	Chairman of Local Government, Ebonyi State.	Declaration and injunction to stop investigation on grounds of alleged breach of fundamental rights	Adjourned to 20 <sup>th</sup> April, 2015.
129	<b>FHC/AI/CS/13/2015</b> BARR. MRS. CHINYERE NWANOKE V NIGERIA POLICE & 3 ORS.	Federal High Court, Abakaliki	Chairman of Local Government, Ebonyi State	Declaration and injunction to stop investigation on grounds of alleged breach of fundamental rights	. Adjourned to 20 <sup>th</sup> April, 2015.
130	<b>FHC/AI/CS/14/2015</b> ENG. JEFF OGBU V NIGERIA POLICE & 3 ORS.	Federal High Court, Abakaliki	Chairman of Local Government, Ebonyi State	Declaration and injunction to stop investigation on grounds of alleged breach of fundamental rights	Adjourned to 20 <sup>th</sup> April, 2015.
131	<b>FHC/AI/CS/15/2015</b> MRS. CHINYERE ALOME V NIGERIA POLICE & 3 ORS.	Federal High Court, Abakaliki	Chairman of Local Government, Ebonyi State	Declaration and injunction to stop investigation on grounds of alleged breach of fundamental rights	Adjourned to 20 <sup>th</sup> April, 2015.
132	<b>FHC/AI/CS/16/2015</b> ARC. GODWIN NWOGBAGA V NIGERIA POLICE & 3 ORS.	Federal High Court, Abakaliki	Chairman of Local Government, Ebonyi State	Declaration and injunction to stop investigation on grounds of alleged breach of fundamental rights	Adjourned to 20 <sup>th</sup> April, 2015.
133	<b>FHC/AI/CS/17/2015</b> HON. BARTHOLOMEW OTTAH V NIGERIA POLICE & 3 ORS.	Federal High Court, Abakaliki	Chairman of Local Government, Ebonyi State	Declaration and injunction to stop investigation on grounds of alleged breach of fundamental rights	Adjourned to 20 <sup>th</sup> April, 2015.

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134	<b>FHC/Al/CS/18/2015</b> HON. GODWIN OKEH V NIGERIA POLICE & 3 ORS.	Federal High Court, Abakaliki	Chairman of Local Government, Ebonyi State	Declaration and injunction to stop investigation on grounds of alleged breach of fundamental rights	Adjourned to 20 <sup>th</sup> April, 2015.
135	<b>FHC/Al/CS/19/2015</b> HON. JOSEPH OBASI V NIGERIA POLICE & 3 ORS.	Federal High Court, Abakaliki	Chairman of Local Government, Ebonyi State	Declaration and injunction to stop investigation on grounds of alleged breach of fundamental rights	Adjourned to 20 <sup>th</sup> April, 2015.
136	<b>FHC/Al/CS/21/2015</b> HON. PAUL IGANGA V NIGERIA POLICE & 3 ORS.	Federal High Court, Abakaliki	Chairman of Local Government, Ebonyi State	Declaration and injunction to stop investigation on grounds of alleged breach of fundamental rights	Adjourned to 20 <sup>th</sup> April, 2015.
137	<b>FHC/Al/CS/22/2015</b> COMRADE EGWU CHIMA V NIGERIA POLICE & 3 ORS.	Federal High Court, Abakaliki	Chairman of Local Government, Ebonyi State	Declaration and injunction to stop investigation on grounds of alleged breach of fundamental rights	Adjourned to 20 <sup>th</sup> April, 2015.
138	<b>CV/941/2015</b> BERNARD E. AFU V CHAIRMAN ICPC & ANOR	FCT High Court			20 <sup>th</sup> April 2015 for hearing.
139	<b>FHC/ABJ/C/62/2015</b> CHIKE JOHN OKAFOR V AGF & 4 ORS	Federal High Court, Abuja		Injunction to stop investigation till after the general elections.	Slated for mention on 16 <sup>th</sup> March, 2015
140	<b>CV/1164/15</b> ADEOLA ADEYANJU V ICPC	FCT High Court			
141	<b>FHC/L/CS/2038/15</b> COMRADE AKINYEMI BADEIOGBIN V AGF, ICPC & 3 ORS	Federal High Court, Lagos			
142	<b>FHC/ABJ/CS/111/15</b> AG EBONYI STATE & 13 ORS V EFCC, ICPC & 3 ORS	FHC 6, Abuja.	Attorney General Ebonyi State and 13 LGAs	Declarations and injunction to stop investigation and lift post no debit order on bank accounts of Applicants	15 <sup>th</sup> April, 2015 for hearing.

