

CRIMINAL JUSTICE SYSTEM IN NIGERIA: FOR THE RICH OR THE POOR?

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To say that corruption, like cankerworm, has totally devoured the very fabric of the Nigerian polity is merely stating the obvious; likewise the fact that the agencies saddled with the responsibility of checkmating corruption and prosecuting corrupt individuals have not done enough. While few people in government and their cronies keep getting richer at the public expense, the index now used to measure poverty in Nigeria is termed "The Frustration Index" being the point where unemployment and inflation meet. Despite the over-abundance of human and material resources, the majority of Nigerians continue to live below bread line. It is evident that Nigerians both at home and abroad are agreed that the judiciary as an arm of government has not done enough to fight corruption. For few convictions involving people in high places, not much success has been recorded in bringing to justice people who have acquired ill wealth. It is alleged in some quarters that the few cases where people have been tried and jailed have actually been matters of political vendetta. The judiciary in connivance with the justice ministry has in most cases either manufactured legal options to make these felons escape from justice or looked the other way when Politically Exposed Persons are involved. Knowing well the saying which goes that "Like begets Like", it would be strange to think that corruption will not fight back if you fight it. Evidently the looters use the stupendous wealth at their disposal to hire best lawyers, influence judges and in the end scuttle justice; hence this paper.

Keywords: Criminal, Nigeria, Compromise of justice, Judicial process, Hypocrisy.

Introduction

Hypocrisy according to Merriam-Webster's 11th Collegiate Dictionary means feigning to be what one is not or to believe what one does not especially the false assumption of an appearance of virtue.¹ It can be said to be actions that contradict proclaimed values, and is generally condemned as a form of dishonesty. According to John Milton, 'it is the only evil that works unnoticed except to God, No man, for any considerable period, can wear one face to himself and another to the multitude, without finally getting bewildered as to which may be the true.' Charles Caleb caps it up by saying "If Satan ever laughs, it must be at hypocrites; they are the greatest dupes he has; they serve him better than any others, and receive no wages."²

The UNDP Human Development Report of 1994, states that; "the goal of governance should be to develop capacities that are needed to realize development". In line with this reality, many countries all

¹. Merriam-Webster's 11th Collegiate Dictionary, www.merriam.webster.com Accessed on 26 April, 2014.

². Theophilus, O. "The Dilemma of Criminal Hypocrisy in Nigeria" <http://pointblanknews.com/pbn/articles-opinions/the-dilemma-of-criminal-hypocrisy-in-nigeria> Accessed on 28 April, 2014: pointblanknews.com

over the world are increasingly working hard to build democratic institutions to further strengthen democratic governance. But building democratic institutions in many of these countries have come with a great cost. In Nigeria, the major challenge has always been how to develop institutions and processes that are more responsive to the needs of ordinary citizens, including the poor, in other to eradicate extreme poverty and hunger, achieve universal primary education, promote gender equality and empower women, reduce child mortality, improve maternal health, combat HIV / AIDS, malaria and other diseases, ensure environmental sustainability, develop a global partnership for development and combat terrorism of all kinds.

These challenges must necessarily be tackled for any meaningful development to take place. But the emerging trend of criminal hypocrisy that is ravaging the country is assuming a disturbing dimension both in public and in the private sector and even within the civil society. Just imagine these headlines: “Aso Rock budgets N2.3million daily for refreshment; Two ex-ministers arrested over N19.5 billion aviation fund; Austrian contractor confesses -"I bribed Borishade N1 billion"; N4.5bn fraud: EFCC arrests another NAMA chief; EFCC: How Ex-Governor Stole N1.5billion In Five Months – Court Puts Him under House restriction; How Emirs, senators shared 65,755 tons of grains meant for starving Nigerians; NPA fraud: EFCC launches manhunt for Bode George; 64 million Nigerian youths jobless; Health workers to go on strike; The Scandal of the judges: How Osun Tribunal Was Compromised; N78m spent on Sallah rams, lands D. G. in EFCC net; How Alao-Akala looted over 1bn in 11 months; Yar’Adua, V. P. spend N655.97m on foreign trips; Exposed! \$800m Fraud Rocks PPMC...ICPC Moves in; how judge, eight others concealed N1.4bn 2007 unspent funds- and so on and so forth.”

In the polity, it is common place for people to now dishonestly proclaim a commitment to standards or principles they intend to breach. We also see a situation where people who have overtime, paraded themselves as men and women of integrity, become deeply enmeshed in corruption. Despite the seeming efforts of anti-corruption, several cases of high-profile corruption in the public sector are still unresolved due to the ineffectiveness of the criminal justice system in Nigeria in which prosecution had gone on for several years without any conclusion with the culprits still walking freely. Several menial cases involving poor common Nigerian citizens are quickly resolved by either placing the culprit in endless remand or convicted and sentenced to unreasonable duration in prison. On the other hand, high-profile cases are pending giving room for bail to be granted to the culprit while the interest of the masses waned due to government’s painfully slow pace of prosecution. In his inaugural address on May 29, 2011, President Goodluck Jonathan had pledged, in his words, to “Fight corruption regardless of the position of the person involved.” However, critics of the president have expressed concern at so many inconclusive cases of prosecution involving high-ranking former political office holders, and also wondered if the anti-corruption programme pledged at the outset of the administration, is still being pursued at all.

Conceptual Analysis

One of the most concise definitions of ‘Criminal Justice’ is that which describes it as ‘the collective institutions which an accused offender passes until the accusations have been disposed of or the assessed punishment is concluded³. The system envisages at least 3 components, (i) law enforcement, (Police, sheriffs and marshals) (ii) the judicial process (judges, prosecutors and defence lawyers and (iii) corrections (prison officials, probation and parole officers). Criminal justice is the branch of law dealing with crime; the branch of law that defines the nature of crimes and sets suitable punishments for them. There are other definitions but the foregoing appears adequate for our purpose here.

The modern criminal justice system as one would imagine is that which keeps society safe from the hazardous and deleterious effects of criminals and other law breakers. A crime prone society guarantees among the populace, low productivity, strife, discord, lawlessness and indiscipline. It is an invitation to the status of a failed State. The present criminal justice system was inherited from colonial Britain. In

³. Black’s Law Dictionary 8th Edition, p.403.

fairness, it served the colonial power rather well. But with the transformation from colonialism to self governance, democracy, military rule and now a hybrid of civilian rule and democracy, the inherited system had come under severe strain to the extent that it can safely be said to be non functional or at least comatose. That is why the Police are inefficient and mistrusted the courts or justice system prostrate and the correctional system outdated⁴. A criminal justice system that is inefficient, inadequate, corrupt, infrastructural deficient, under-financed, undermanned and prone to abuse such as the present Nigerian Criminal Justice System is a threat to the Rule of law and all other indices of democracy and good governance.

To understand the criminal justice system in Nigeria, one needs an illustration of how it works. The process commences when the police has a reasonable suspicion that a person has either committed a crime or is committing a crime. It continues through the end of trial, and continues, in case of conviction, through sentencing, imprisonment and release upon the completion of sentence. If a police officer believes that a person has committed or is committing a crime, an arrest occurs. What happens after that or the processes that such a person goes through all the way to acquittal in court or release after his jail term or completion of alternative punishment constitute the criminal justice system. As is immediately obvious from this simple explanation, the criminal justice process involves several distinct stages. And in any individual case, the process can terminate at any of such stages. The purpose of this commentary is to highlight certain obvious anomalies and shortcomings in the Nigerian Criminal Justice with a view to remodelling the system and restore its lost sanity through conscientious overhauling and the injection of radical reforms thereof.

In the Nigerian system however, the most active stages are arrest, filing of criminal charges and the bail hearing, which is otherwise known as detention hearing.⁵ Regrettably, the Judicial arm -both the bar and bench- has been caught-up in this quagmire. Many Judges have been compromised in the discharge of their official duties. Worse still, many legal practitioners have remained overly critical about governance in Nigeria; but on the other hand, they continue to frustrate the legal process and make cases unending just to satisfy greedy politicians and enrich themselves to the detriment of the nation. More so, the concept and practice of plea bargaining is now making a mockery of our judicial system. How can the nation develop when the people who are supposed to be adjudicators on civil and criminal matters frustrate the process for selfish ends? How can an arm of government which is considered by many as the last hope of the common man become highly politicized and corrupt? There is an urgent need for judicial renewal and transformation in our nation. There is even a greater need to strengthen our legislative systems, improve access to justice and public administration and develop a greater capacity to deliver basic services to those mostly in need. This is because; any society that uses falsehood and hypocrisy to dispense justice will not experience peace, harmony and progress.

The concept of plea bargaining is currently giving a different meaning to the administration of criminal justice in Nigeria and the problem is a source of concern to many scholars. Of recent, many rich and well-connected persons involved in financial crimes have gotten away with ridiculously low sentences that the ordinary man on the street began to wonder if the country's judiciary is not already compromised. Although trial of cases, both civil and criminal, is assuming a new dimension throughout the world as the time for conducting trials now varies depending on the nature of the cases, the current trend now dominating criminal trials the world over is the special legal contraption known as plea bargaining. This is a legal concept which allows both the accused and the prosecutor in a criminal case to concede some points and make some compromises in order to reach a mutually agreeable bargain. In other words, both parties trade some risks and privileges before eventually striking a bargain. It is the creation by the prosecutor or judge, whether explicitly or implicitly, of an expression of leniency that is

⁴. Daudu, J. D., *"Legislative Attention to Criminal Justice in Nigeria (1999-2009) - How Adequate?"* A Presentation at the 2009 Nigerian Bar Association Conference in (Lagos: NBA: 2009)

⁵. Ugwuonye, E. E., *"Nigeria's Criminal Justice System: Problems And Challenges"* (elombah.com: 2011: <http://www.elombah.com/index.php/articles-mainmenu/9135-nigerias-criminal-justice-system-problems-and-challenges-v15-9135> Posted on December 11, 2011 and Accessed on April 27, 2014

subsequently honored in exchange for the entry of guilty plea.⁶ So, in the words of Roberts and Williams, the accused relinquishes the right to go to trial, while the prosecutor surrenders the right to seek the highest sentence or pursue the most serious charges possible.⁷ It then means that the accused has given up any chance of being acquitted at the trial and, of course, the outcome of the bargain would be different from what could have ordinarily been the result if the case has gone the whole hog of the trial. Strictly speaking, however, once a plea bargaining is adopted as a mode of settling a case, the accused person stands convicted although he gets away with a lighter punishment. Church in 1979, however, feels that “so long as defendants routinely expect to receive some form of sentencing consideration in exchange for an admission of guilt, the essence of a system of bargain justice is present.” Does this practice help in attaining the height of justice?

Criminal Justice System and the Manifestation of the Nigerian Factor

Nigeria as a political entity is bedeviled with a myriad of socio economic and political problems, which are inherently multifarious in nature.⁸ Some of these problems include political instability or uncertainty, corruption⁹, poverty, moral decadence, and various forms of economic crimes such as currency trafficking, product adulteration and piracy among others. It is often said that these problems are indicative of the level of underdevelopment in the country, nay, Africa as a whole.¹⁰ As grave as these problems are, the country continues to trudge on. What is however more depressing is when these problems impinge upon, and seems to overwhelm an essential arm of government that is supposed to provide the required succor and redress when the basic rights of citizens are being violated. This is more so when reference is made to the criminal process which necessarily entails an infraction or curtailment of certain rights of citizens. The criminal process by its very nature is constructed in such a manner as to give full effect to the inquisitorial system being practiced in the country.¹¹

The Nigerian factor basically refers to a peculiar characteristic identifiable as Nigerian, which strives to ensure that things and issues are handled the negative way. The concept covers such unhealthy and unsavory conducts as corruption, dishonesty, fraud, favouritism, ethnicity and tribalism.¹² According to Munzali Jibril, the Nigerian factor “has come to mean unfortunately, corruption, nepotism, dishonesty, fraud and anything that is negative in our national life.¹³ It is now a common feature for someone who could hardly eke out a living with members of his family but who finds himself in the corridors of power either as a Minister, Commissioner or even member of any of the Legislative Houses to literally swim in money soon after his appointment or election. How he acquired this apparently unmerited wealth is not the concern of Nigerians. On the contrary, such a person would be hailed or extolled as having made it by behaving as a true Nigerian. Moreover, it seems to be an accepted norm in contemporary Nigeria that with money, power and connections, one can get whatever one wants. This perception is usually manifested in various spheres of life: Thus it is not unusual for people to secure both government and company contracts in clear contravention of laid down rules and procedures simply because the contractor

⁶ Howe, S. W. “*The Value of Plea Bargaining*” (Oklahoma Law Review. 58 599,635: 2005)

⁷ Robert, E. S. and Williams, J. S., “*Plea Bargaining as Contract 101*” (1991-1992: Yale Law) p.1911.

⁸ Ubeku, A. K., “*The Social and Economic Foundations of Corruption and Other Economic Crimes in Nigeria*,” In Kalu, A. and Osinbajo, Y. (eds), *Perspectives on Corruption and Other Economic Crimes in Nigeria* (Lagos: Federal Ministry of Justice: 1991) pp.39, 41, 43.

⁹ Musa, S. “*Anatomy of Corruption and Other Economic Crimes in Nigerian Public Life*” In Kalu and Osinbajo, *Perspectives on Corruption*: pp.94-96.

¹⁰ Eze, O. “*African Democracy, Governance and Development*” In *The Challenge of African Development* (CASS: 1998) pp. 71-74.

¹¹ Ofori-Amankwah, E. H., “*Criminal Law in the Northern States of Nigeria*” (Zaria: Gaskiya: 1986) pp. 98-102.

¹² Nlerum, S. O., “*The Nigerian Factor and the Criminal Justice System*” (Unpublished Paper: Senior Lecturer and Head, Dept of Jurisprudence & International Law Rivers State University of Science & Technology Nkpolu, Port Harcourt, Nigeria)

¹³ Jibril, M. “*The Nigerian Factor and the Nigerian Condition*” *The Guardian*, Thursday, October 2, 2003, 8, 10

happens to be opportune and well-connected with those responsible for the award of the contract. It also seems pedestrian for people to secure admission into universities without passing the qualifying examination at the required level, if they have the necessary contacts, while those that scored much higher grades are not admitted¹⁴. Concerning access to justice, the Nigerian factor is seen as a weapon through which justice can be manipulated to suit the personal interests of the high and mighty. The maxim “equality before the law” appears to be honoured more in breach than in its observance.¹⁵

Pre-Trial Processes

As indicated earlier on, the Nigeria factor is present and very potent in several of the pre-trial processes involved in a criminal matter. It is accordingly intended to examine the various manifestations of this concept in a criminal trial, from commencement to its conclusion. It is a mandatory statutory requirement that when an offence is alleged to have been committed, the complainant must report to the police or any anti-graft agency which has the duty of investigating allegations. It is based on this statutory injunction that the courts have consistently maintained that once there is an allegation of the commission of an offence¹⁶, report must be lodged with the Police. In practice, however, that dangerous concept of Nigerian factor usually creeps into this process. Thus when a complaint is made, the amount of seriousness to be attached to the investigation of the matter depends on a number of factors, chief among which is the complainant’s ability and willingness to ‘grease’ the palms of the police. Where a complainant is either so impecunious or unwilling to part with any reasonable sum of money, the matter cannot be investigated or properly investigated. The reason often given for this unfortunate state of affairs revolves around lack of necessary logistic support. An even more worrisome aspect of the pre-trial process where the Nigerian factor easily comes to play is in the issue of grant of police bail. It is a well-known fact that the grant of bail is designed to ensure that a suspect is made available any time he is required in the course of investigation of the case.

An even more worrisome aspect of the pre-trial process where the Nigerian factor easily comes to play is in the issue of grant of police bail. It is a well-known fact that the grant of bail is designed to ensure that a suspect is made available any time he is required in the course of investigation of the case¹⁷. While bail is required to be free, in practice it is usually granted on the condition of payment of given sums of money. In most cities in Nigeria, the rate of police bail varies from Division to Division and it ranges from N2, 000 to N10, 000 depending on the gravity of the alleged offence and the willingness of the suspect or his relations to pay for same. These unholy and illegal practices take place even where there are notices at the police charge room boldly stating that “bail is free”. Indeed, the recognizance form usually contains a clause that the bail was granted free. Should a suspect or his relations insist on being released or releasing the relation free, such a person runs the risk of spending more time than is necessary as the police would apply one delay tactics or the other, resulting in the suspect spending more days in detention; of course, the pre-conceived motive for this is to compel him to pay and have his freedom. The usual excuse could be lack of bail forms, absence of the approving officers, that investigation is still going on or that some of the suspects are yet to be arrested. However, in the Nigerian fashion, as soon as the suspect or his relations comply with the demand, these contrived and well oiled justifications disappear or pale into insignificance and bail is immediately granted.

Another worrisome aspect of the pre-trial process where this Nigerian factor plays a significant role is where a radical transformation could take place such that a complainant would eventually become the suspect: Although in law there is nothing wrong in this happening if it is based on findings during investigation, it very often happens that this phenomenon usually manifests after water has passed under the bridge between the initial suspect and the investigating police officers. More often than not, this

¹⁴. Abati, R. “How to be a Nigerian” *The Guardian*, Sunday November 2, 2003, p.18.

¹⁵. Aguda, T. A., “*The Crisis of Justice*” (Eresu Hills: 1986) pp.31-32.

¹⁶. Section 24 (1) Police Act; s.10 Criminal Procedure Law

¹⁷. Okagbue, I. “*Bail Reform in Nigeria*” (Lagos: NIALS and Caltop: 1996) pp.2-6.

usually happens where a suspect is wealthier than a complainant and is able to release enough funds to suppress the other side of the matter. On the strength of the above, it is evident that everything boils down of money. As rigorous as the pre-trial process sounds for the poor (an average Nigerian), it is totally a different world for the rich and connected figures.

Trial Process

When a matter is properly before the Court for trial, it is then the manifest inadequacies of our criminal justice system come to the fore. This entails reckoning with the attendant delays in the trial process, the manipulations and antics of legal practitioners, and of course, the attitude of the Presiding Judge or Magistrate. In Nigeria, it is not surprising for a simple case of assault occasioning harm to last for over five (5) years during which the accused is remanded in prison. Instances where cases have lasted between ten to fifteen years are legion.¹⁸ Some Lawyers are in the habit of seeking unmerited adjournments from courts, and this usually happens where the Barrister is either not prepared to go on with the case or has not been properly settled financially by his clients.¹⁹

Unfortunately, this practice has also robbed off on Judges and Magistrates. It is not uncommon therefore for such judicial officers to arrive court either very late or even fails to go to Court for some days without any extenuating or compelling reasons. The cumulative effect of this is that litigants continue to groan under this debilitating scenario of undue delays in the dispensation of justice. According to Dr. Akinola Aguda, this “slow motion judicial process” has adverse effect on the quest for the quick dispensation of justice.

Sentencing and Post-Conviction

At the conclusion of a criminal trial, if the accused person is found guilty, he has to be given the appropriate punishment for his reprehensible conduct. It is through such punishments that the society’s abhorrence of the conduct in question is usually expressed. While sentencing itself is a special act which requires proper assessment and passionate consideration, Judges and Magistrates sometimes operate as if it were a mechanical process of merely giving fixed tariffs²⁰. The result is that very often, sentences are passed which do not have cognate relationship to the circumstances of an accused person, nor do they have any rational or consistent basis.

In the execution of sentences imposed at the conclusion of a trial, there is a manifestation of the Nigerian factor also. Thus sentences are often executed bearing in mind extraneous circumstances. It is common for sentences meant for certain convicts to be applied to others. The recent pathetic case Bello v Attorney General of Oyo State is a case in point. It would be recalled that in that case, the appellant, a convict whose appeal was pending in a superior court was wrongly executed by the Oyo State Government. It is a well-known fact that prison cells in Nigeria are extremely congested such that cells designed to accommodate 100 inmates, for example, often accommodate well over 400 inmates, thus making it increasingly difficult for the reformatory conceptions of the prison to be put into operation²¹. Add to this the fact that prisoners go through harrowing experiences at the prisons in terms of feeding, medical and other welfare matters. Based on these prevailing conditions, the appellant died in the prison and the Supreme Court generously lamented this pathetic state of affairs and consequently ordered the payment of compensation to the family of the deceased appellant. Who would have meted out such treatment to a well-connected rich figure?

¹⁸. Aguda, T. A, “*The Challenge for Nigerian Law and the Nigerian Lawyer in the Twenty-First Century*,” Nigerian National Merit Award Winner’s Lecture delivered on Wednesday, September 14, 1988, p.20.

¹⁹. Ojukwu, E. “*Legal Practitioner’s Charges in Nigeria: Law and Practice*” (Aba: Helen-Roberts: 1997) p. 35.

²⁰. Okonkwo, C. O., “*Criminal Law in Nigeria*” 2nd ed., (London: Sweet & Maxwell) p.39

²¹. Onwubiko, E., “*Search for Improved Justice and Prison System*” *The Guardian*, Tuesday, January 6, 2004, p.13.

Anti-Graft Agencies: Prosecutions and Convictions

At independence in 1960, many Nigerians believed their country was destined for greatness on the world stage. Instead, more than 50 years on, the country largely remains a “crippled giant”²². Corruption has turned what should be one of the country’s strongest assets— its vast oil wealth—into a curse. Rather than lead to concrete improvements in the lives of ordinary Nigerians, oil revenues have fueled political violence, fraudulent elections, police abuses, and other human rights violations, even as living standards have slipped and key public institutions have collapsed²³ while it has been estimated that between independence and the end of military rule in 1999, more than US\$380 billion was lost to graft and mismanagement.²⁴ Endemic corruption has continued since then.

Following the end of military rule in 1999, and in recognition of the widespread nature of corruption, the Nigerian government established the Independent Corrupt Practices and Other Related Offences Commission (ICPC) in September 2000 to combat public sector graft such as bribery and abuse of office by public officials. The ICPC was intended to build on the Code of Conduct Bureau (C. C. B.) and its sister entity the Code of Conduct Tribunal, which was established in 1990 to enforce a code of conduct for public officials. Neither institution proved effective in curbing rampant public sector corruption.

Amid pressure from the international community to address what then-president Olusegun Obasanjo referred to as the “corruption quagmire” in Nigeria, the Nigerian government established the Economic and Financial Crimes Commission (EFCC) in December 2002 with the National Assembly’s passage of the Economic and Financial Crimes Commission (Establishment) Act.²⁵ The agency, which was granted broad powers to investigate and prosecute economic and financial crimes, was intended primarily as a tool to fight crimes such as money laundering and advance fee fraud. Since its inception, the EFCC has grown into Nigeria’s largest anti-corruption agency, with an annual budget of US\$60 million in 2010 and more than 1,700 personnel.²⁶

The EFCC’s initial caseload reflected its intended focus. The institution proved especially effective in prosecuting cases of advance fee fraud (commonly known in Nigeria as “4-1-9” scams after the relevant provision in the Nigerian Criminal Code)—a crime that includes the pervasive email scams that are widely associated with Nigeria.²⁷ In November 2005 the EFCC made headlines when it successfully prosecuted the so-called “Brazil” case, involving an advance fee fraud scheme whose Nigerian authors duped a corrupt official at a major Brazilian bank into stealing about \$242 million and giving most of it to them.²⁸ The EFCC soon acquired a reputation for dynamism and efficiency that the largely toothless C. C. B. and the vast but largely ineffective ICPC could not claim. While the EFCC’s mandate was not specifically crafted to target public sector corruption, it was written broadly enough to encompass it.²⁹

²². Eghosa, E. O., *“Crippled Giant: Nigeria since Independence”* (Bloomington: Indiana University Press, 1998). p.5.

²³. United Nations Development Programme, *“Human Development Report 2010,”* (<http://hdr.undp.org/en/reports/global/hdr2010/chapters/en/> Posted November 2010 and Accessed March 22, 2014

²⁴. “Nigeria leaders ‘stole’ \$380bn,” BBC News Online, <http://news.bbc.co.uk/2/hi/africa/6069230.stm> Posted on October 20, 2006 and Accessed on March 23, 2014

²⁵. Text of President Obasanjo’s Speech, *“From Pond of Corruption to Island of Integrity”* (<http://allafrica.com/stories/200311200461.html>) Posted on November 7, 2003 and Accessed June 19, 2014

²⁶. Appropriation Amendment Bill 2010, Budget Office of the Federation, Federal Republic of Nigeria, [http://www.budgetoffice.gov.ng/2010%20app%20amended/2010%20AMENDMENT%20\(NASS\)BOF_v1.pdf](http://www.budgetoffice.gov.ng/2010%20app%20amended/2010%20AMENDMENT%20(NASS)BOF_v1.pdf) Accessed on June 10, 2014

²⁷. Criminal Code Act, Chapter 33, Section 419, <http://www.nigeria-law.org/Criminal%20Code%20Act-Tables.htm> Accessed June 19, 2014

²⁸. Human Rights Watch interview with Babajide Ogundipe, former EFCC outside counsel, Lagos, February 19, 2011. *“Nigerian Bank Fraudsters Guilty,”* BBC News Online: <http://news.bbc.co.uk/2/hi/africa/4451766.stm> Posted on November 19, 2009 and Accessed June 17, 2014

²⁹. EFCC Act, Sections. 6, 7, and 46, http://www.efccnigeria.org/index.php?option=com_docman&task=doc_view&gid=5 Accessed on April 27, 2014

As the chairman of the Senate committee that oversees both the EFCC and the ICPC put it, the EFCC began pursuing cases of government corruption “principally because the ICPC was not performing”.

Plea-Bargaining: Structural and Functional Hideout of Influential Thieves

In recent time in the history of criminal justice in Nigeria, a new dimension or trend, which Nigerians are not used to, is gradually gaining popularity in criminal prosecution, and that is plea bargaining. The concept of plea bargaining has been given various meanings by different jurists. Notable among these is that given by Garner. He opines that it is a negotiated agreement between the prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for some concession by the prosecutor, usually a more lenient sentence or a dismissal of the other charges.³⁰ Corruption is endemic in the Nigerian polity and the desire to wipe it out is becoming a wishful thinking. Thus, the issue of plea bargaining in the country’s penal system is not only disturbing but a subtle way of letting corrupt government officials and persons off the hook of judicial sanction.

There are some basic general statements that can be made about the Nigerian criminal justice system. For one, the Nigerian criminal justice system is failing in the war against crime. Secondly, Nigerian criminal justice practitioners and policies often contribute to the very problem that they seek to solve. Thirdly, our criminal justice system reflects a pattern of bias: it deals mostly with poor criminals although the rich pose a greater danger and the cost to us all than the poor. Our criminal justice system treats the poor as criminals and overlooks the more costly criminal and dangerous acts of the wealthy and powerful. The result is that in Nigeria today, to borrow the title of Jeffrey H. Reiman’s classic book of the same title, *The Rich Get Richer and The Poor Get Prison*.³¹ Fourthly, our criminal justice system not only houses criminals, it also breeds criminals and is manned by criminal operators who serve criminal interests. Indeed, instead of serving as a protective, rehabilitative, crime-fighting and justice-dispensing institutions, our criminal justice system have become crime-generating, crime-breeding and criminal abodes for convicted and non-convicted criminals. Hence our criminal justice system is actually a “criminal” justice system. An elucidation here would be very much in order.

Recently, there has been some doubt as to whether genuine plea bargaining actually exists in Nigeria. The former Chief Justice of Nigeria, Justice Dahiru Musdapher, in his own words contends that:

*“When I described the concept as of “dubious origin”, I was not referring to the original ‘raison d’être’ or the judicial motive behind its conception way back either in the United States or England in the early 19th century, I was referring to the sneaky motive, if not, behind its introduction into our legal system, then evidently in its fraudulent application; I have said that our wavering disposition on the ethical standard jeopardizes our peace, security and progress. And it is the reason that I have chosen this occasion to speak, with all sense of solemnity, on a matter that has continued to eat away the modest gains that we seem to be making in reforming both the infrastructure and the overall judicial template of the Nigerian Judiciary”.*³²

The method of applying the concept in Nigeria appears retrogressive, crude and certainly not above board. In Nigeria, many criminal prosecution especially corruption-related cases are concluded without recourse to full-blown trials. It has been argued by scholars that it is considered unjust and an exclusive preserve for protecting the corrupt rich. A retired Justice of the Supreme Court, Justice Kayode Eso, was reportedly of the opinion that it is an act of corruption to have brought plea bargain into our criminal justice system; thus, making it a subtle escape route for the rich in the society. The view is reinforced when contrasted against the reality of countless convicted and ‘awaiting trial’ persons in our prisons,

³⁰. Garner, B. *Black’s Law Dictionary*, 7th ed., (St. Paul Minn: 1999: West Publishing Co. Ltd.) p.1173.

³¹. Reiman, J. H. *“The Rich Get Richer and The Poor Get Prison”* (New York: 1984: John Wiley and Sons) p.7.

³². Musdapher, D. Paper presented at a 2-day Capacity Building Workshop for judicial correspondent at (Abuja; 2012) Vanguard Newspaper, Wednesday, June 20, 2012.

many of whom have been sentenced for offences which are not as grievous as public office or private enterprises corruption. Plea bargain is hardly contemplated for such classes of offenders because they do not belong to the so-called 'club of the rich'. The whole purport of plea bargain is to serve the interest of justice as swiftly as possible; however, it has been hijacked to serve the interest of the rich while the poor who constitute the largest percentage of the population languish in our over-congested prisons. It is incomprehensible how highly placed thieves of many millions and billions of naira are allowed to get away with miserable small sentence in the name of plea bargain while thieves of small level without the high-level placement or connection bag the weighty sentences generally more commensurate to their offences³³. Scholars therefore argue that this makes a mockery of the seriousness of our criminal justice system.

It is imperative to point out in the Nigerian context; the opposition to plea bargain from the street is primarily due to the fact that it seems to be used for only rich and powerful thieves, not even an option extended to every criminal. The fact that people steal money meant for the use of general society is the chief reason behind the decay and collapse of Nigeria as a country; as the absence of funds means social amenities and welfare programmes cannot be provided. Consequently, the wrath of the people demands the rolling of the embezzlers' head and not merely the slapping their wrists. The plea bargain concept was invented to provide a soft landing to higher profile criminals who loathe the treasury entrusted to them. According to Justice Musdapher on Monday 5th 2012 at a workshop for judicial correspondents, he opined that "please bargain is not only a flagrant subordination of the public's interest to the interest of the 'criminal justice administration', but worst of all, the concept generally promotes a syndical view of the entire legal system".³⁴

Scholars have lamented the rate at which those who have looted the nation's treasury are being glorified and legally protected from execution. The rich gets access to justice while the poor are denied any form of leniency. Another Senior Advocate of Nigeria, Mr. Vincent Ohaeri, says that the plea bargain was a well thought-out initiative but would not thrive in Nigeria's political, judicial and socio-economic milieu. According to him, the application of plea bargain has not augur well in Nigeria as it has made our criminal justice system a safe haven for the corrupt rich while most political 'big wigs' have seized the opportunity of plea bargain to get away with serious offences that required criminal prosecution. "A handful of our elites in the country have used plea bargain to run away from just punishment for criminal acts while the poor are not opportune".³⁵

It is no exaggeration that the subtle incursion of plea bargaining into Nigeria's criminal justice system during the trial of some influential personalities in the law courts, in recent times has provoked flurry of debates in the polity. Shortly after the former Governor of Bayelsa State, Diepreye Alamiesiegha, 'pleaded guilty' to money laundering charges preferred against him at a Federal High Court in Lagos, two years ago, the 'guilty plea' he made propelled him to freedom. Some of the businessmen who were tried for corrupt practices and economic crimes in the state High Court had also been released from custody after plea bargaining. Interestingly, however, advocates of social justice query the rationale behind this practice that allowed an offender to pay a fine instead of going to jail to serve as a deterrent to others. Indeed, it is illogical that a person adjudged guilty for a criminal offence attracting a jail term is let off the hook with a lighter sentence after entering into a plea bargain with the prosecution. As it were, it amounts to a sacrifice of criminal justice at the expense of reducing the cost of criminal

³³. Adedayo, A. "Plea Bargain and the Administration of Criminal Justice" (The Punch Newspaper: www.punchng.com/feature/the-law-you/plea-bargain-and-the-administration-of-criminal-justice) Posted on of February 6, 2012 and Accessed on the 7th May, 2014

³⁴. Keith, I. "The Legality of the Use of Plea Bargain in the Nigerian Criminal Justice System" www.topeadebayollp.wordpress.com/2012/03/27/the-legality-of-the-use-of-plea-bargain-in-the-nigerian-criminal-justice-system Posted on 27th March 2012 and Accessed on the 7th May, 2014

³⁵. Oladipo, O. "Plea Bargain and Nigeria's Criminal Justice Administration" (Orient Newspaper of 17th January, 2013; [www.http://orientnewspaper.com/plea-bargain-and-nigerias-criminal-justice-administration](http://www.orientnewspaper.com/plea-bargain-and-nigerias-criminal-justice-administration) Accessed on 7th May, 2014

prosecution. Meritorious as this argument might seem, proponents of plea bargaining believed that the adoption of this concept facilitates speedy determination of cases and thereby reduces prolonged trial.³⁶

A law student, Faculty of Law, Adekunle Ajasin University, Akungba-Akoko, Mr. Adewale Adeyeye, also agreed that the device was prone to abuse of the country's criminal justice system. He said if plea bargain would be applied, it should be subjected to certain parameters. In his words "It should not be an escape route for those who have committed grievous offences to get away with light sentences. Rather, it should be structured in a manner that will guarantee its effectiveness in attacking the problem of delay in our judicial system. The outcome of plea bargaining should not be laughable or make a mockery of our justice system." It can therefore be submitted that plea bargain is an elite skill/policy to entrench corruption in the society. This is steal as you like, if you are caught, we take few from you, you retain many. Law thus becomes instrument of class rule and domination. As Esiemokha notes that law is the most potent instrument of class struggle³⁷ and because laws are made by the ruling class in order to solidify their class position in the society, the legislative organs of the state are dominated by powerful dominant groups. These groups promulgate, amend and thinker with fiscal legislation, review in their own interests before the people's interest are addressed, if ever. He went further to say that in free enterprise societies; the laws often favour the propertied class, bankers, politicians and people with means. The big thief receives a light sentence, while the common petty thieves receive the full weight of the law.

In Nigeria of today, plea bargain lacks social justice content. As it has been noted by Transparency international, the trial of the former Governors who were alleged to have siphoned billions of public funds have been reduced to a playboy affair. A special 'rule of law' has been contrived in their favour which may result in their escaping justice. This is because those that visited people with underdevelopment through corruption are being made the receivers of lighter punishment for their evil deed. While the majority of the toiling masses suffer agony of poverty, they live in affluence, even still clamouring to lead the Nigerian state making Nigeria appear to be a "lootocratic" state, a state run by financial rogues. The commoners on the street don't enjoy this. As Arikibe has submitted, plea bargaining engenders unfairness, inequity and travesty of justice³⁸. It is not fair to the poor and the less privileged of the society, as they will never be in position to negotiate for the mitigation of punishment likely to be meted out. As we can see, those who benefited from this "largesse" are members of the upper class of the society.

High and Low Profile Cases in the Nigerian Society

In practical reality, there is a catalogue of cases of corruption which are presently going on in the country. Top on the list is the \$620,000 oil subsidy scandal involving Alhaji Farouk Lawan, a member of the House of Representatives and some others. There are also the Halliburton Willbros Siemens multi-million dollar scandals which involve a number of Nigerians. Those involved in the scandal were tried and heavily punished in the countries where the bribes originated. However, their Nigerian collaborators still walk about the streets unmolested. Having gone this far, it is believed that specific study of the cases of some of the various people that have been involved in plea bargaining since the concept was adopted in Nigeria would present an interesting story.

Tafa Balogun was the former Inspector General of Police; Tafa Balogun was the EFCC's first conviction of a nationally prominent political figure. Charged to court in April 2005, just months after being forced to retire. Tafa Balogun went to Court challenging the powers of the EFCC to prosecute him. However, Balogun ultimately pleaded guilty of failing to declare his assets, and his front companies were convicted of eight counts of money laundering. In November 2005 he was sentenced to six months in prison and the court ordered the seizure of his assets—reportedly worth in excess of \$150 million. The

³⁶. Famoroti, F. *"Plea Bargaining: A Blessing or Curse to Nigeria's Criminal Justice System"* (Feb. 2009)

³⁷. Esiemokha, E. *"2011: Law and Morality in Nigeria"* The Punch, Monday, November 8, 2010

³⁸. Arikibe, E. O., *"Plea Bargaining and the Nigerian Legal System"* (Daily Sun Newspaper, Thursday, November 11, 2010) p.21.

sentence struck many as light given the severity of the allegations. Balogun has since reportedly retired to a luxury home in a high-end Lagos neighborhood.³⁹ It was clearly a case of plea bargaining as his case from court led to the negotiation by which his punishment was reduced to six months imprisonment after forfeiting some of his loots to the government.

Dieprieve Alamiesiegha served as governor of Nigeria's oil-rich but deeply impoverished Bayelsa State from 1999 to 2005. In September 2005, he was arrested by British authorities in London. The London Metropolitan Police found about £1 million in cash at his home and charged him with money laundering. Released on bail, Alamiesiegha managed to flee the UK—the EFCC says disguised as a woman—and reappeared in his home state, claiming he had been transported there by God. As a sitting governor he enjoyed immunity from prosecution in Nigeria, but three months later he was impeached by his state legislature, and the EFCC charged him with embezzling about \$55 million in public funds.⁴⁰ He was arrested and taken to court by the EFCC who after entering into negotiation with the accused reduced the charges against him to six. He was sentenced to two years imprisonment while he refunded some amount of money into the government coffers.

Lucky Igbinedion was charged by EFCC prosecutors in January 2008 with siphoning off more than \$25 million of public funds. He ultimately pleaded guilty in December 2008 to failing to declare his assets and his front company was convicted on 27 counts of money laundering. But the trial judge in the case, Abdullahi Kafarati, deviated from the terms of the plea agreement and handed down a very light sentence that included no jail time. Igbinedion paid the equivalent of a \$25,000 fine, agreed to forfeit some of his property, and walked free on the spot.⁴¹ The EFCC appealed the light sentence however; in May 2011 the court dismissed the case, ruling that the new charges would amount to double jeopardy. Though Igbinedion walked away a free man in Nigeria, he was effectively barred by the United States Government on January 12, 2013 from entering its territory henceforth.

Nigeria maintains a single judicial structure, from the magistrate court through the Supreme Court. Yakubu Yusuf is one of seven persons standing trial for their involvement in the appropriation of fund totaling N32.8bn meant for police pension scheme.⁴² He was convicted by the Federal High Court, Abuja presided over by Justice Abubakar Talba where he was sentenced to two years imprisonment or a fine of N750,000.00 that being the maximum punishment provided for in Section 309 of the Penal Code under which he was charged⁴³ while it is within the same judicial system that one Idowu Olayinka was sentenced to 2 years in prison for stealing vegetables; In 2001, a man in Sokoto state had his hand chopped off after he was convicted for stealing a goat; Danyeola Alfred was jailed for two months for absconding with a Nokia handset valued at N48, 000 and recently, an Oshodi Magistrates' Court presided over by Mr. Akeem Fashola in Lagos State slammed a 500,000 bail each on two employees alleged to have stolen 30 liters of diesel valued at N4,800.⁴⁴

Babatunde Ogunjobi and Oluwatoyin Yusuf, alleged to have stolen the mobile phone of Governor Aregbesola of Osun State, and for defrauding other persons, including Oba Gabriel Adekunle Aromolaran

³⁹. Soniyi, T. "Court Jails Balogun" The Punch Newspaper, Wednesday November 23, 2005, p. 5.

⁴⁰. Polgreen, L., "As Nigeria Tried to Fight Graft, a New Sordid Tale" The New York Times, (<http://www.nytimes.com/2005/11/29/international/africa/29nigeria.html?pagewanted=print>) Posted on November 29, 2005 and Accessed May 2, 2014)

⁴¹. Ibileke, J. "Federal Court Discharges Lucky Igbinedion of Corruption Charges" Next Magazine (Lagos), June 1, 2011. p.3.

⁴². Akido, A. "Plea Bargain And The Yakubu Yusuf's Verdict" PM News Nigeria (<http://www.pmnewsnigeria.com/2013/03/06/plea-bargain-and-the-yakubu-yusufs-verdict>) Posted on March 6, 2013 and Accessed on Monday, May 05, 2014

⁴³. Adekunle, T. K., "Plea bargaining and the Nigerian penal system: Giving judicial imprimatur to corruption" (Institute of African Studies: 2013: University of Ibadan) New Ground Research Journal of Legal Studies Research and Essays Vol. 1 No.1 <http://www.newgroundresjournals.org/journals/NGRJSRE>

⁴⁴. "Incredible: Court Issues N500,000 Bail to two men for Stealing Diesel worth N4,800" News Agency of Nigeria: (www.today.ng/metro/court-hands-down-n500000-bail-to-two-men-for-stealing-30-litresofdiesel/?utm_content=buffer0c6a6&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer) Posted on 14th June, 2014 and Accessed on 15th June, 2014

were served with a shocking sentence of 27 years in prison by Justice Oyejide Falola who could be said to be a poster-child for everything that is wrong with the Nigerian judiciary. In the case of the two friends who stole the mobile phone of the governor of Osun State, the judge demonstrated a blatant abuse of judicial discretion by sentencing them to 27 years in jail. While theft is a crime punishable by law, the punishment must coincide with the crime. The poor defendants in the mobile phone case probably got the long sentences because the judge was making efforts to secure the favor of the governor. I wonder how Justice Oyejide would go to bed at night knowing that he destroyed two human lives for the sake of a mobile phone as if the governor was a saint or as if Governor Aregbesola has never helped himself with the public treasury.

It was discovered that this was the same judge that acquitted Oba Adebukola Alli over the allegation of rape of Miss Helen Okpara, a former member of the National Youth Service Corps.⁴⁵ In Helen's case, the basis for the monarch's acquittal was that the complainant failed to show bruises on her body as evidence of rape, and again, that the complainant failed to show that her clothes were torn. Justice Oyejide's judgment in Helen's case raised many unanswered questions about our judiciary and the reasoning of our judges. He assumed that Nigerians had become sophisticated that a victim of rape should know to preserve the evidence or to notify the police immediately or head straight to obtain medical care. The health facility that victims should consult for medical examination and the police force that they should notify must exist in the judge's world, and nowhere else in Nigeria. Sometimes, our public servants perform their duties with such unreasonableness as if they came from another planet and most probably, Justice Oyejide must not be a Nigerian.

Conclusion

Many Nigerians lament to high heavens the absence of laws that provide severe punishment for corrupt public officials to serve as deterrent to others who might be tempted to toe the perfidious path, forgetting that it is not the deficiency of severe punishment in the statute books that is the problem but the inability of our criminal justice system to convict corrupt persons based on the terms of subsisting laws. The fact that the law provides capital punishment for murder yet no appreciable conviction has been secured among the high profile cases except those involving high treason is an indication that it is the criminal justice system that is in need of being strengthened and not the law.

The reputation of Nigeria's court system took a beating in February 2011 when Ayo Salami, the former president of the federal Court of Appeal, publicly accused Supreme Court chief justice, Aloysius Katsina-Alu, of trying to pressure him to decide a key electoral petition in favor of the ruling party.¹⁵⁹ It did not help matters that Mary Odili, wife of notorious and allegedly corrupt former Rivers State governor Peter Odili, was elevated to a Supreme Court seat the same month.¹⁶⁰ Not long after, leaked US State Department cables revealed that Dimeji Bankole, at that time Speaker of Nigeria's House of Representatives, claimed to US diplomats he had proof Supreme Court justices had taken bribes to validate Umaru Yar'Adua's election as president in 2007. The country's criminal justice system is built to reward corruption, not punish it. If a law enforcement officer wants the work to be done, it will be done. But he may be denigrated, isolated, treated like a deviant. As private lawyer and EFCC prosecutor Festus Keyamo put it:

"You don't go picking [arresting] a high-profile serving government official without clearing from the president. Whoever is the EFCC chairman, he can't go beyond the wish of the president. If he does, he would be removed the next day.... At the end of

⁴⁵ Ojukwu, N. S., "Made In Nigeria Justice: The Pathetic Case Of Babatunde Ogunjobi And Oluwatoyin Yusuf" (<http://saharareporters.com/article/made-nigeria-justice-pathetic-case-babatunde-ogunjobi-and-oluwatoyin-yusuf>) Posted on March, 06 2014 and Accessed Sunday, 4 May 2014

the day, anyone who is the chairman of the EFCC will have to read the body language of Mr. President to do what he wants".⁴⁶

Ten months after former Bayelsa State governor Diepreye Alamieyeseigha was convicted on corruption charges, Goodluck Jonathan, who was vice president at the time, and late president Yar'Adua openly campaigned alongside Alamieyeseigha in May 2008 at a political rally in Bayelsa State. These images of senior government officials embracing convicted criminals only served to reinforce the broader trend of impunity that these convictions were meant to push back against.

The paper recommends that there is the need for criminal justice administration database and the establishment of Fast Track Courts that will utilise special rules of procedure in justice delivery system in the country. Perhaps, due to the imperative of criminal justice reforms, the Federal Government should set up a Criminal Law Reform Committee to embark on holistic review of the criminal justice administration in the country. The subversion of the instrument of justice by the rich and connected individuals in Nigeria at the expense of the less privileged Nigerians who are rotting away in the many poorly funded Nigeria prisons mostly for crimes they knew nothing about must be urgently looked into and necessary measures taken to allow for equity and fairness in the dispensing of justice in the country. The judiciary as expected everywhere across the world is and always expected to stand out as the conscience of the society and the hope of the common man.

⁴⁶. Human Rights Watch interview with Festus Keyamo, Lagos, February 21, 2011