

The Legal Framework for Plea Bargain under Kaduna State Administration of Criminal Justice Law 2017: An Appraisal

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Abstract

Inordinate and undue delay in the determination of criminal cases remained a major challenge to the administration of criminal justice in Kaduna State and in Nigeria as a whole. These delays are to a large extent due to some infrastructures such as inbuilt delay mechanism in law as well as failure on the part of courts, lawyers, law enforcement agencies, litigants and witnesses. The Kaduna State Administration of Criminal Justice Law, 2017 was analysed and appraised to determine its framework to deal with inordinate delay in administering criminal justice in Kaduna State. The paper adopted the doctrinal method of research which analytically appraised the provision of Economic and Financial Crimes (Establishment ETC) Act, 2004, Administration of Criminal Justice Act, 2015, Kaduna State Administration of Criminal Justice Law, 2017, books and Journal publications. It was found that there existed some loopholes in the law particularly lack of time frame for plea bargain process and the non-inauguration of the Administration of Criminal Justice Monitoring Committee. It was therefore recommended that there be enacted a specified period, probably thirty to sixty days, to complete plea bargain agreement, subject to each individual case. It was also recommended that the Administration of Criminal Justice Monitory Committee be inaugurated without further delay to enable the Committee's take off.

Key words: Agreement, Bargain, Committee, Criminal, Defendant, Judge, justice, Legal, plea, Prosecutor.

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Introduction

The law provides for administration of criminal justice in the courts of Kaduna State² and for other matters as well as repealing Criminal Procedure Code³ with effects from 29, May, 2017.⁴

The purpose of the Law is to ensure that the system of administration of criminal justice in Kaduna State provides efficient management of criminal justice institution, speedy dispensation of justice, protection of society from crimes and protection of rights and interest of suspects, the defendants and victims;

The law is divided into fifty-one parts⁵ covering preliminary, constitution and powers of criminal courts, arrests, bail and preventive justice; warrants; prevention of offences and security for good behaviour; proceedings in all cases subsequent to order to furnish security; public nuisance; attachment where a person disobeys summons or warrant, provisions relating to criminal trials and inquiries in general; place of trial or inquiry; power of Attorney General; control of criminal proceedings by the Attorney General.

The law also covers institution of Proceedings; First Information Report; Enforcing appearance of suspect; issue, forms and service of summons, miscellaneous provisions regarding process; saving of validity of process; search warrants. Bail and recognisance generally; property and persons; the charge; alteration or amendment of charges; convictions when charged with one of several offences or of another offence; one of several offences or of another offence; previous acquittals or convictions, witnesses compelling attendance and taking oath or making affirmation; witness expenses; examination of witness, plea bargain and plea generally including Persons of unsound mind.

The law further covers detention time limits. presentation of case by prosecutors and defence and conclusion of trial;

² Kaduna state is one of 36 states of the Federation of Nigeria.

³ Cap. 43 Laws of Kaduna state, 1991

⁴ Section 2 *Kaduna State Administration of Criminal Justice Law 2017*

⁵ Made up of Sections 1 - 493

compensation, damage and rectification; custody, disposal, restoration of property; seizure, forfeiture, confiscation and destruction of instrument of crime; summary procedure in perjury; trials and summary trials generally rule rating to charges, provision relating to sentence to Death, procedure where woman convicted of capital offences is alleged to be pregnant; sentencing generally other than capital sentence; detention in a safe custody or suitable place other than prison or mental health asylum; child offenders; probation and non-custodial alternatives; parole.

The provision of the law also covers administration of criminal justice monitoring committee; trial of corporation; appeal from Magistrate Court to High Court; supplementary provision-compounding offences fees and miscellaneous provision and interpretation, saving and repeal.

The paper appraises the framework of the law by examining the provision on plea bargain and its administrative provisions with the aim of determining its efficacy in the dispensation of criminal justice in Kaduna-state in particular and Nigeria in general.

Clarification of some Terms

The terms to be clarified are plea bargain, criminal justice system and administration of criminal justice.

a. Plea Bargain

Section 3 of the law⁶ defines plea bargain to mean:

The process in criminal proceedings whereby the defendant and the prosecution work out a mutually acceptable disposition of the case; including the plea of the defendant to a lesser offence than that charged in the complaint or charge and in conformity with other conditions imposed by the prosecution, in return for a lighter sentence than that for the higher charge subject to the court's approval.

⁶ *Kaduna State Administration of Criminal Justice Law, 2017*. This provision is similar to Section 494, *Administration of Criminal Justice Act, 2015*.

Plea bargain is also defined to mean

A negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for some concessions by the prosecutor or a more lenient sentence or a dismissal of the other charges⁷

Plea bargain is different from charge bargain in which a prosecutor agrees to drop some of the contents or reduce the charge to a lesser serious offences in exchange for a plea of either guilty or no contest from the defendant⁸

Plea bargain is also different from compounding offences under section 485 of the law⁹ where some offences are classified as compoundable and results into the acquittal of the defendant.¹⁰

b. **Criminal Justice System**

Criminal justice system means the collective institutions through which an accused offender passes until the accusations have been disposed off or the assessed punishment concluded¹¹

Criminal justice is a generic term for the procedure by which criminal conduct is investigated, arrest made, evidence gathered, charged brought, defences raised, trials conducted, sentences rendered and punishment carried out¹²

According to Danbazau¹³ criminal justice system consist of the institution created to apprehend the alleged wrong doers, determine those persons that have indeed committed crimes and

⁷ Bryan A Garner (ed) Black's Law Dictionary, Thomson West, (2004), 8th ed. P. 1191

⁸ *Ibid*

⁹ *Kaduna State Administration of criminal justice Law*, 2017

¹⁰ *Ibid.* Section 465(1)(4)(5)(8).

¹¹ Op.cit P. 403

¹² [Http// legal dictionary. Com/criminal force/ the function. Com](http://legal.dictionary.com/criminal_force/the_function.com)

¹³ Danbazau, AB, *Criminal and Criminal Justice*(Spectrum Books 2007),175

punish those who are found guilty according to society's wishes,¹⁴. The purpose of criminal justice system is to enforce accepted standard of conducts in order that the individual and community are protected.

Criminal justice system could therefore be viewed as a sequence of decision making stages and through the stages offenders are either passed on to the next stages or diverted out of the system. In other words through the system of criminal justice, offenders found liable are punished accordingly and those not liable are set free¹⁵. Each subsequent stage of that process of criminal justice is dependent on the previous stage for its action and this explains the nature of criminal justice system.

Criminal justice system is also the method by which a society deals with those who are accused of having committed crimes¹⁶. Criminal justice system typically has three components, laws enforcement (i.e. police), the judiciary and the prison.

This also means the system of law enforcement, the bar, the judiciary, correctional that is directly involved in the apprehension, prosecution, defence, sentencing, incarceration and suspension of those suspected of or charged with criminal offences¹⁷.

The scope of criminal justice in a criminal case is that justice must be done to all parties since justice is not for the accused only but for the society and the complainant.

In *State v. Ajaji*¹⁸ the Court of Appeal in granting the prosecution's application for stay of proceedings cited the decision in *Joseph v. The State*¹⁹ Per Oputa Jsc

That justice is not one way traffic; it is not justice for appellants only. Justice is not even only a two way traffic, it is really a three way traffic. Justice for the

¹⁴ Ibid

¹⁵ Dambazau A. B, Op. cit P175

¹⁶ Bryan A Garner Black's Law Dictionary, 7th edition pg 381

¹⁷ [http://www. Answer. Com/topic/criminal_justice](http://www.Answer.Com/topic/criminal_justice)

¹⁸ (1997) 5NWLR (pt505) 382 @ 399 par F-H

¹⁹ (1985) INWLR (pt 1) 125 at 141

appellant, justice for the victim and finally justice to the society whose social norms and value had been desecrated and broken by the criminal act complaint of.

c. **Administration of Criminal Justice**

Administration of criminal justice is the maintenance of rights within a political community by means of the coercive or physical force of the state or the state application of the sanction of force to the rule of right²⁰. In criminal matters, it starts with the complaint made by an aggrieved or complainant at the police station to officers who are saddled with the responsibility of hearing, investigating and prosecuting complaint with the views to deciding whether the subject of complaint should be arrested or summoned and taken before the court²¹.

The criminal justice administration system in Nigeria is a product of the country's colonial history which led to a different regime of criminal laws where by the Criminal Procedure Code and Penal Code are applied in the Northern Nigeria while Criminal Code and Criminal Procedure Act are applicable in the southern part of Nigeria.

The Black's Law Dictionary²² defines administration of Criminal justice as the mechanism of rights within a political community by means of the physical force of the states, the state application of the sanction of force to the rules of the right.

The administration of criminal justice mostly involves, to a large extent, the police because most of the criminal cases that come before the court are through the police. The system of administration of criminal justice in Nigeria is premised upon the hierarchy of court

²⁰ Bryan A Garner Black's Law Dictionary, 7th edition pg 381

²¹ Ejembi, "Roles of Magistrates in the Administration of Criminal Justice in Nigeria" being a paper presented at the National Workshop for Magistrate at Calabar Cross River State Nigeria between 16-20 may,2005.

²² Bryan A Garner Black's Law Dictionary, 7th edition pg 381

along which a litigant climbs from the lowest court to the highest by way of successive appeals.

History of Plea Bargain in Nigeria

The practice of plea bargain is a recent innovation in Nigeria criminal justice system .What seems to look like plea bargain is charge bargain relating to prosecution of economic crimes whereby there is negotiation settlement out of court between the prosecutor and the defence²³. This is so that, the objective of Economic and Financial Crimes (Establishment Act) Act is amongst others, to generate revenue through prosecutor.

Section 14 of the Act provides:

Subject to the provision of Section 174 Constitution of the Federal Republic of Nigeria, 1999 (as amended) which relate to the powers of Attorney General of the Federation to institute, continue, takeover or discontinue criminal proceedings against any person in any court of law, the commission may compound any offence punishable under the 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 the offence.²⁴

In a legal parlance, or going by the definition of plea bargain²⁵ the procedure above is referred to as plea bargain or plea agreement, or negotiated plea whereby the defendant pleads guilty in exchange for some concessions by the prosecutor which is usually on a more lenient or convenient sentence.

²³ Section 14(2) *Economic and Financial Crimes (Establishment) Act*, Cap. E.I. Laws A CX of the Federation of Nigeria 2004

²⁴ *Ibid.*

²⁵ Section 3 *Kaduna State Administration of Criminal Justice Law*, 2017

It is worth of note that the procedure to be adopted in the arrangement under section 14 (2) of the Act is not set out and it appears that the exercise is at the absolute discretion of the prosecutor. This uncertain and unpredictable approach is liable to abuses, and can lead to questionable deals been brokered under the guise of plea bargain or compounding offences as used under the Act.

It is the view of this paper that one of the modern developments in penology is that punishment should not only fit the crime and the criminal, it should be geared towards compensating the victim of the crime. It may seem that the loopholes in the Economic and Financial Crimes(Establishment ETC) Act on plea bargain have been filled by the enactment of Administration of Criminal Justice Law, 2017.

Appraisal of Legal Frame Work for Plea Bargain

Guidelines for the Application

Section 282 of the law²⁶ states that notwithstanding anything in this law or in any other law, the prosecutor may

- a. receive and consider a plea bargain from a defendant or on his behalf; or
- b. offer a plea bargain to a defendant charged with an offence.

Sub-section 2 of the law allows the prosecutor to enter into plea bargain with the defendant and provides

The prosecutor may enter into plea bargain with the defendant during or after the presentation of the evidence for the prosecution but before the presentation of the evidence of the defence, provided that in any offence affecting the human body, the consent of the victim must first be sought and obtained before entering into a plea bargain.

²⁶ *Ibid.*

Sub- section 3 provides that where the prosecutor is of the view that the offer or acceptance of a plea bargain is in the interest of justice, the public interest, public policy and the need to prevent abuse of legal process, he may offer or accept plea bargain .

The prosecutor seems to have been conferred with some discretionary powers by the Law regarding acceptance of plea bargain. It is the view of this paper that the discretion conferred on the prosecutor must be exercised judiciously and judicially. Thus, in determining whether it is in the public interest to enter into a plea bargain, the prosecutor shall weigh all relevant factors including the following:²⁷

- i. The defendant's willingness to cooperate in the investigation or prosecution of others by providing relevant information for the prosecution of other defendants.
- ii. The defendant's history with respect to criminal activities.
- iii. The defendant's remorse or contribution 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 case.
- viii. The expense of trial and appeal.
- ix. The defendant's willingness to make restitution or return the proceeds of the crime or pay compensation to the victim where appropriate.

²⁷ *Ibid* See *provisio* to section 282 (5)

Nature of Plea Bargain Agreement

Section 282 of the law²⁸ states that the prosecutor and the defendant or his legal practitioner may before the plea to the charged, enter into an agreement as follows:

- a. In respect of the plea bargain which may include the sentences recommended within the appropriate range of punishment stipulated for the offence or plea of guilty by the defendant to the offence charged or a lesser offence of which he may be convicted on the charge.;
- b. An appropriate sentence to be imposed by the court where defendant is convicted of the offence to which he intends to plead guilty.

It seems that the above discretion conferred on the prosecutor is subject to the fulfilment of the following;

- i. That prosecution must consult with the police responsible for the investigation of the case and the victim or his representative before entering into plea bargain agreement; and
- ii. That the prosecutor must have due regard to the nature and circumstances relating to the offence, the defendant and public interest before entering into plea bargain.

Contents of Plea Bargain Agreement

The agreement between the parties shall be reduced to writing stating that before conclusion of the agreement, the defendant has been informed

1. That he has a right to remain silent with the consequences of not remaining silent, and that he is not obliged to make any

²⁸ *Op. cit* Section 282 (4)

confession or admission that could be used in evidence against him.²⁹

2. The terms of the agreement and any admission made shall be fully stated in the agreement which shall be signed by the prosecutor, the defendant or the legal practitioner and the interpreter as the case may be.

A copy of the agreement shall be forwarded to the State Attorney – General..

Procedure before the Court

The presiding judge or magistrate shall not participate in the plea bargain process³⁰ but the prosecutor shall inform him of the agreement reached with the defendant. The court shall inquire from the defendant³¹

- a. the authenticity of terms of the agreement
- b. the admission of the allegations in the charge that he has pleaded to
- c. whether the agreement is entered into voluntarily without undue influence.

The magistrate may, on being satisfied that the defendant is guilty of the offences to which he has pleaded guilty, convict him and award the compensation to the victim in accordance with the terms of the agreement taking into consideration the provision of Section 325 of the Law³².

Section 325 provides:

Notwithstanding the limit of its civil or criminal jurisdiction, a court has power, in delivering its judgment, to award to a victim commensurate

²⁹ *Ibid.*282 (7)(a)(1)

³⁰ *Ibid* Section 282(8)

³¹ *Ibid*

³² *op.cit*

compensation to be paid by the defendant or any other person or State, The court in considering the award of compensation to the victim may call for additional evidence to enable it determine the quantum of compensation to award to the victim.³³

Where the court is satisfied with the authenticity of the agreement and the guilt of the defendant, the judge or magistrate, in convicting the defendant, shall consider the sentence as agreed upon provided:

- a. He is satisfied that such sentence is appropriate
- b. He is of the view that he would have imposed a lesser sentence than the sentence agreed and imposed the lesser sentence;
- c. Of the view that the offence requires a heavier sentence than agreed by the prosecutor and the defendant but the presiding judge or magistrate should inform the defendant of such heavier sentence he considers to be appropriate.

The defendant has to exercise a discretion either to abide by his plea of guilty as agreed upon or withdraw from the plea. Where the defendant abides by his plea of guilty, he shall have the right to lead evidence and to present argument relevant to sentencing before the magistrate proceeds to sentence.³⁴

Where the defendant withdraws his plea of guilty, the trial shall proceed *denovo* before another presiding judge or magistrate with the consequence that:

- i. no reference shall be made to the agreement
- ii. no admission contained therein or statement relating thereto shall be admissible against the defendant, and

³³ *op. cit.* section 325(1)(2)

³⁴ *Ibid.* Sub section 15

- iii. the prosecutor and the defendant shall never enter into a similar plea and sentence agreement³⁵.

The presiding judge or magistrate shall after conviction and sentence make order to transfer and vest in the victims or his representative or any other person as may be appropriate or reasonably feasible any money, asset or property agreed to be forfeited under plea bargain³⁶.

The prosecutor shall take reasonable steps to enforce the order notwithstanding the provision of the Sheriff and Civil Process Law³⁷.

Appraisal of Administrative Framework of plea bargain

Establishment of Monitoring Committee

Section 466 of the law established the Administration of Criminal Justice Monitoring Committee referred to as “the Committee” which consists of

- a. The Chief Judge of the state who shall be the Chairman
- b. a judge of the High Court
- c. Grand *Khadi* or *Khadi*
- d. President, Customary Court of Appeal or Judge
- e. Attorney - General or his representation not below the rank of a Director in the Ministry.
- f. Director of Public Prosecutor
- g. The Commissioner of Police or his representative not below the rank of Chief Superintendent of Police
- h. The Controller of Nigeria Prison in the state or his representative not below the rank of Chief Superintendent of Prison.

³⁵ *Ibid* sub section 16

³⁶ *Ibid* sub section 12

³⁷ *Ibid*

- i. The State Director of National Human Rights Commission or his representative not below the rank of Assistant Director.
- j. The Chairman of any of the local branch of Nigeria Bar Association in the state to serve for two years.
- k. State Director of Department of Security Service or his representative.
- l. The State Director of the Legal Aid Council of Nigeria or his representative not below the rank of Assistant Director; and
- m. A representative of the Civil Society working on human rights and access to justice or women rights to be appointed by the committee to serve for a period of two years only.

Function of the Committee

The committee is charged with the responsibility of ensuring effective and efficient application of the law by relevant agencies³⁸.

The function of the Committee include ensuring that

- a. criminal matters are speedily dealt with
- b. drastically reducing congestion of criminal cases in court
- c. congestion in prisons is reduced to the barest minimum.
- d. persons awaiting trials are, as far as possible, not detained in prison custody.
- e. cordial and maximum cooperation among the organs in the administration of criminal justice in the state.
- f. collate, analyse and publish information in relation to the administration of criminal justice sector in the state.
- g. Submit quarterly report to the Governor to keep him abreast of the development towards improved criminal justice delivery and for necessary action; and
- h. carry out such other activities as are necessary for the effective and efficient administration of criminal justice.

³⁸ *op. cit* Section 467 (1)

- i. The Committee shall also prepare and publish an annual report of its activities³⁹

The law conferred special powers of obtaining information on the Committee for effective performance of its function.

Section 472 of the Law provides that for the purpose of carrying out the functions conferred on the committee under the law:

- i. It shall have a right of access to all the record of any of the organs in the administration of criminal justice sector to which the law applies; and
- ii. May by notice in writing, serve on any person in charge of any such organs require that person to furnish information on such matter as may be specified in the notice which must be complied with within the period of seven days.⁴⁰

Secretariat of the Committee

Section 468 of the law states:

The Committee shall establish and maintain a secretariat with such number of staff as it considers necessary for the effective running of its affairs provided the number of staff shall not exceed ten except with the approval of the Governor.

The secretariat shall be headed by a secretary who shall be nominated by the Attorney General and shall be a legal practitioner of not less than 5 years post call experience. The secretary shall be the Accounting officer for the purpose of controlling and disbursing monies from the Fund established under Section 469 of the Law and be responsible for preparation of audit account which shall be forwarded to the Governor for his consideration and directives.

Funds of the Committee

³⁹ *Ibid* .Section 471

⁴⁰ *Ibid* . Section 472 (1)

Section 469 provides that there is established for the committee a Fund into which shall be paid:

- (a) Budgetary allocation to it through the office of the Attorney General;
- (b) Such monies as may from time to time, be provided to the Committee by any public, private or international organisation by way of grants, support or assistance on such terms as are consistent with its funding, and
- (c) Such monies as may be received by the Committee in relation to the exercise of its funding under the law.

For the purpose of accountability and holistic spending of funds the law provides that the secretary is the Accounting Officer for the purpose of controlling and disbursing monies from the fund established⁴¹ and shall submit to the Attorney-General not later than 30th September in each financial year, an estimate of its expenditure and income during the new financial year.⁴²

The Committee must keep proper account and records for auditing not later than 2 months from the end of each financial year and the audited account should be forwarded to the Governor for his consideration and directives.⁴³

Appraisal of the framework of Plea Bargain

Administration of justice in any country is a serious matter and it could be said that the existence or otherwise of a nation depends on the way it administers justice. Law was found to be a viable and ordinary means of regulating and bringing peace and order in the society⁴⁴

Dispensation of justice in Nigeria is so much fraught with difficulties such that one continues to wonder whether justice is

⁴¹ *Ibid.* Section 469(2)

⁴² *Ibid.* Section 470(1)

⁴³ Section 470(2)(3)

⁴⁴ Yakubu, Y.A. *Administration of Justice in Nigeria* Malthouse press Ltd Ikeja (2000) 1

available to any litigant at the end of his case considering the age long judicial aphorism that 'justice delayed is justice denied'.

Causes of Delays in Administration of Justice in Nigeria

It has been observed that noticeable causes of delays in the dispensation of justice in Nigeria includes:

- a. The adversary system of dispensing justice over adherence to due process or lack of infrastructure facilities,
- b. The magnitude of work load, laziness, inexperience or incompetence of judges and magistrate, attitude of lawyers and litigants, unavailability of witnesses,
- c. Paucity of judicial personnel and tardiness of judicial officers and the ineptitude of police in criminal trials ⁴⁵

Inordinate and undue delay in hearing and determination of criminal cases remain a major challenge to the administration of criminal justice in Kaduna State and in Nigeria as a whole. These delays are to a large extent due to some infrastructure such as inbuilt delay mechanism in law as well as failure on the part of courts, lawyers, law enforcement agencies, litigants and witnesses, for example taking proceedings in long hand by judges, inadequate infrastructure like computers, unwarranted application for adjournment by lawyers, persistent absent of prosecution witnesses, etc.

This scenario was described by Aguda⁴⁶ in the following words:

The chorus, 'Justice delayed is justice denied' has become a senseless nuisance to most of the persons

⁴⁵ Fatula, *et al* Travail of justice and Human Rights in Nigeria" The Journal of Public Law and Jurisprudence, Usmanu Danfodiyo University, Sokoto 2008/ 2009 vol.1 p 11

⁴⁶ Aguda, T.A. The Challenges for Nigerian Law and the Nigerian lawyers in the 21st century' presented at the at the Nigeria national award lectures. September, 14, 1988 pp.3-4

and institutions which are intimately connected with the administration of criminal justice in our country and as a saddened remainder to those directly affected, of a total bankrupt system of administration of justice

Composition and Function of the Monitoring Committee

A curious look at the composition of the committee seems to show that the committee does not have such coercive powers that is commensurate with their functions which seems to explain the purpose of complementing the powers of the committee with its composition comprising heads of the parties in criminal justice administration in Kaduna-State.

Plea Bargain procedure

Section 282 of the Law deals generally on the plea bargain guidelines but a conscious x- ray of the guidelines shows that there is no time frame to complete the plea bargain process.

It is the view of this paper that the absence of this may result in the delay that the Law intends to abridge. The consequence herein is that rooms may be laid opened for the prosecution under the canopy of quick resolution of case to abuse their powers.

Summary and Findings

The paper appraised the provisions on guidelines to plea bargain, the establishment, composition and functions of Administration of Criminal Justice Monitoring Committee as well as its funding.

The paper also appraised plea bargain guidelines by examining contents conduct and procedure before the court as well as the establishment, function, secretarial and funding of the Committee

It was found that though, the law on plea bargain is laudable, it has some flaws which need to be solved by way of amendment to the law or by making rules under section 490 Kaduna State

Administration of Criminal Justice Law, 2017 to provide for time limit within which plea bargain arrangement will be completed.

It was also found that the Administration of Criminal Justice Monitoring Committee is yet to be inaugurated.

Recommendations

It is recommended that the Committee should be inaugurated to enable the Committee carry out its functions and for the proper assessment of the effectiveness of the provision of plea bargain in the quick dispensation of criminal justice administration in Kaduna State.