

**COMPARATIVE ANALYSIS OF THE APPLICATION OF NOLLE PROSEQUI
IN NIGERIA AND THE UNITED KINGDOM**

**UNAH OLAEDO WILMA
GOU/U21/LAW/400**

**A LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, GODFREY OKOYE
UNIVERSITY, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE
AWARD OF THE BACHELOR OF LAW (LL.B) OF GODFREY OKOYE
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JUNE 2026.

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SUPERVISOR: JOY OBIANUJU NNANI

JUNE 2026.

DECLARATION

I, Unah Olaedo Wilma, with registration number GOU/U21/LAW/400, hereby declare that this Long Essay entitled “COMPARATIVE ANALYSIS OF NOLLE PROSEQUI IN NIGERIA AND THE UNITED KINGDOM” is an original work done by me, with the direct diligent supervision of Mrs Joy Obianuju Nnani, and has not been submitted to this or any other institution, either wholly or partly, for the award of any degree or qualification. It has been approved by the administrative and academic staff of the Faculty of Law, Godfrey Okoye University, Enugu. In partial fulfilment of the requirement for the award of Bachelor of Laws (LL.B) Degree. All sources consulted have been duly acknowledged and referenced.

Unah Olaedo Wilma

CERTIFICATION

This is to certify that this Long Essay entitled "COMPARATIVE ANALYSIS OF THE APPLICATION OF NOLLE PROSEQUI IN NIGERIA AND THE UNITED KINGDOM" was carried out by UNAH OLAEDO WILMA, with Matriculation Number GOU/U21/LAW/400, under my supervision and has been approved for submission to the Faculty of Law, Godfrey Okoye University, in partial fulfilment of the requirements for the award of the degree of Bachelor of Laws (LL.B).

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Date

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EXTERNAL EXAMINER

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Date

DEDICATION

This research work is dedicated to my beloved parents, whose immeasurable love, unwavering support, prayers, sacrifices, and words of encouragement have shaped my life and made this accomplishment possible. I remain deeply grateful for your constant belief in me. To my family and friends, thank you for your encouragement, patience, and support during every stage of this research. This achievement is as much yours as it is mine.

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Convention on Human Rights)
Criminal Procedure Act
Criminal Procedure and Investigations Act 1996
Criminal Procedure Rules 2020
Crown Prosecution Service Inspectorate Act 2000
Economic and Financial Crimes Commission Act 2004
Independent Corrupt Practices and Other Related Offences Commission Act 2000
Police Act 2020
Prosecution of Offences Act 1985
Statute of Westminster the Second 1283 (13 Edw I c 10)
United States Constitution

LIST OF ABBREVIATIONS

AC	Appeal Cases
AG	Attorney General
ACJA	Administration of Criminal Justice Act
AJLHR	African Journal of Law and Human Rights
CFRN	Constitution of the Federal Republic of Nigeria
CPS	Crown Prosecution Service
DPP	Director of Public Prosecutions
EFCC	Economic and Financial Crimes Commission
ECHR	European Convention on Human Rights
FHC	Federal High Court
FRN	Federal Republic of Nigeria
HL	House of Lords
ICPC	Independent Corrupt Practices Commission
IJRISS	International Journal of Research and Innovation in Social Science
JSC	Justice of the Supreme Court
LL.B	Bachelor of Laws
LFN	Laws of the Federation of Nigeria
LQR	Law Quarterly Review
NMLR	Nigerian Monthly Law Reports
NWLR	Nigerian Weekly Law Reports
OUP	Oxford University Press
SC	Supreme Court
SCNLR	Supreme Court of Nigeria Law Reports
UK	United Kingdom
US	United States
WLR	Weekly Law Reports
WRN	Weekly Reports of Nigeria

ABSTRACT

The power of *nolle prosequi* occupies a significant position in criminal justice administration, as it allows the Attorney General to discontinue criminal proceedings before judgment. While this power is intended to promote justice and prevent abuse of legal process, concerns have arisen regarding its potential abuse, particularly in cases involving politically exposed persons and matters of public interest. This study examined the exercise of *nolle prosequi* in Nigeria and the United Kingdom with a view to assess its impact on the administration of criminal justice and proposing reforms for Nigeria. The objectives of the study were to examine the practice of *nolle prosequi* in both jurisdictions, evaluate the extent to which the concept is applied in Nigeria and recommend measures for improving transparency and accountability in Nigerian criminal justice system. The study adopted doctrinal research methodology, relying on primary sources such as constitutional provisions, statutes, case law, and other relevant legislation, as well as secondary sources including books, journal articles, conference papers, newspapers, and credible online materials. The study found that while the Constitution of the Federal Republic of Nigeria 1999 grants extensive *nolle prosequi* powers to the Attorney General under sections 174 and 211, there are no clear guidelines to ensure compliance with the constitution. The absolute nature of the power creates opportunities for abuse and injustice. In contrast, the United Kingdom operates a more structured and accountable prosecutorial system through institutional guidelines and oversight procedures. The study recommends legislative reforms, mandatory written reasons for discontinuance decisions, the establishment of an independent prosecutorial oversight body, greater protection of victims' rights to enhance accountability and public confidence in Nigeria's criminal justice system.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

In common law jurisdictions, one of the most significant expressions of prosecutorial discretion is the Attorney General's power to enter a *nolle prosequi*,¹ which is the formal decision to discontinue a criminal case before judgment. The authority to enter a *nolle prosequi* has its roots in English common law and became part of Nigerian law through the colonial reception of English legal principles.² While the United Kingdom has, over time, reformed its prosecutorial structure by introducing statutory regulations and strengthening the methods of institutional checks and balances, Nigeria has continued to operate a constitutional model that gives the Attorney General very broad and to a large extent, unrestricted authority under sections 174 and 211 of the constitution.³ Within Nigeria's criminal justice system, the exercise of this wide discretion has generated substantial controversy.⁴ In practice, the decision to terminate a criminal case is often taken without transparency and typically occurs without any form of judicial oversight.⁵ Cases where the courts have held that they have no power to question the motives or propriety of the Attorney General's decision to enter *nolle prosequi* are manifold.⁶ This lack of scrutiny has led to critiques suggesting that the power can be misused, particularly to shield politically exposed individuals, interfere with proceedings that have

¹Bryan A Garner (ed), *Black's Law Dictionary* (11th edn, Thomson Reuters 2019) sv 'Nolle Prosequi'.

² Andrew E Abuza, 'The Power of the Attorney-General to Enter a *nolle prosequi* Under the 1999 Constitution of Nigeria: An Analysis of the Issues Involved' [2021] (7) (2) *International Journal of Science and Qualitative Analysis* 41.

³ Constitution of The Federal Republic of Nigeria 1999 (as amended).

⁴ Edoba B Omoregie, 'Power of the Attorney-General over Public Prosecution under the Nigerian Constitution: Need for a Judicial Restatement' (University of Benin, Faculty of Law, Lecture Series No 4, 2004).

⁵ S C Chukwuma, H T Ogidi, 'Rethinking the Power of Nolle Prosequi in Nigeria: The Case of State V. Ilori' [2014] (2) (1) *Global Journal Politics and Law Research* 11.

⁶ The State v S O Ilori and Others (1983) 1 SCNLR.

already consumed a significant amount of time, and diminish public trust in the fairness and integrity of the system of criminal justice.⁷

The rule of law, the separation of powers, prosecutorial independence, and the necessity of efficient checks and balances are some of the more general constitutional and theoretical issues that are touched upon by these worries. The political aspect of the Attorney General's office further complicates the issue.⁸ The Attorney-General is a member of the executive body and is appointed by the President or Governor; this duality in his role poses questions of impartiality, conflict of interest, and interference of politics in criminal justice.⁹ The UK, on the other hand, has a more institutionalised and regulated procedure for ending prosecutions. To achieve consistency and accountability, the Crown Prosecution Service (CPS) operates through a system of internal checks and balances, to help guarantee that there is accountability and freedom from political influence while using the discretionary power.¹⁰

A comparison of the use of *nolle prosequi* in Nigeria and the UK is both appropriate and necessary considering these notable distinctions between the practice in Nigeria and the United Kingdom from where the legal system of Nigeria originated. Therefore, this study examines the philosophy, legality, and history of this power and assesses its practical effects on the administration of criminal justice in Nigeria. The study compares Nigeria's system with that in the UK, in order to find any gaps, and suggest ways to improve prosecutorial accountability while maintaining the values of natural justice and the rule of law.

⁷ EE Nwankwo, 'The Impact of the Power of Nolle Prosequi on the Fight against Corruption in Nigeria' [2025] (9) (8) *International Journal of Research and Innovation in Social Science (IJRISS)* 2315; <<https://www.vanguardngr.com/2025/08/nolle-prosequi-sans-differ-on-calls-for-review/>> accessed 2 March 2026.

⁸ AAM Ekundayo, Constitutional provision of nolle prosequi: a blessing or a curse (Nigerian Institute of Advanced Legal Studies 1988) 21-22.

⁹ Ibid.

¹⁰ Crown Prosecution Service, 'Termination of Proceedings (Including Discontinuance)' (CPS, 5 November 2019) <<https://www.cps.gov.uk/prosecution-guidance/termination-proceedings-including-discontinuance>> accessed 10 March 2026.

1.2 Statement of the Problem

Regardless of the recognition of the power to enter *nolle prosequi* in the constitution of Nigeria,¹¹ the exercise of this power, over time, raised concerns regarding prosecutorial discretion, accountability, and the administration of criminal justice.¹² In Nigeria, the Attorney General's authority to discontinue criminal proceedings under section 174 of the Constitution is usually criticised for not having clear guiding principles or judicially enforceable standards.¹³ Although the Constitution requires that this power be exercised in the public interest, the interest of justice, and to prevent abuse of legal process,¹⁴ it does not clearly state how these considerations are assessed in practice, to know whether they are adhered to. As a result, there are persistent doubts regarding the extent to which political, personal, or institutional influences shape such decisions.¹⁵

Moreover, because there are no clear institutional checks, the power can easily be exercised in an arbitrary manner with possible consequences for victims' rights and public confidence in the justice system.¹⁶ The discontinuance of cases also has financial and administrative implications, including wasted time and resources spent preparing litigation that is later abandoned.¹⁷ Compared with the United Kingdom which also relies on particular bodies on prosecutorial discretion,¹⁸ its legal framework has more specific channels and guidelines that tend to prevent any abuse while promoting transparency.¹⁹ This juxtaposition points to an existing gap in Nigerian legal system, regarding the regulation and guiding principles for the

¹¹ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 174(1)(c).

¹² Nwankwo, (n 7).

¹³ Benjamin O Igwenyi, 'Jurisprudential Appraisal of Nolle Prosequi in Nigeria' (2016) (4) (4) *Global Journal of Politics and Law Research* 10.

¹⁴ CFRN 1999, s 174(3).

¹⁵ Abuza, (n 2).

¹⁶ Igwenyi, (n 13).

¹⁷ Abuza, (n 2).

¹⁸ Prosecution of Offences Act 1985, s 1(1).

¹⁹ Crown Prosecution Service, 'Termination of Proceedings (Including Discontinuance)' (CPS, 5 November 2019) <<https://www.cps.gov.uk/prosecution-guidance/termination-proceedings-including-discontinuance>> accessed 10 March 2026.

exercise of *nolle prosequi*. In Nigeria, the power to enter *nolle prosequi*, primarily vested in the Attorney-General of the Federation and the Attorney-General of a State,²⁰ is characterized by absolute discretion with limited clear articulation of any mechanisms that ensure due process. Unlike the more structured system of prosecution in the United Kingdom, where the decisions of the prosecutor are governed by institutional standards developed by the Crown Prosecution Service, the system in Nigeria lacks clear articulation of principles governing the exercise of this power.

The core problem lies in the absence of clearly defined standards governing the application of *nolle prosequi* in Nigerian courts. This uncertainty allows for inconsistent or politically motivated use of the power, which may undermine public confidence in the criminal justice system, weaken victims' rights, and raise concerns about prosecutorial accountability.²¹ The research is prompted by the need to evaluate the implications of this unregulated discretion for criminal justice reform, victims' rights, and the integrity of the prosecutorial process, and to explore how comparative insights can inform more accountable and justice-oriented practices. By examining the procedural safeguards, prosecutorial guidelines, and institutional accountability mechanisms that regulate prosecutorial discretion in the United Kingdom, the study aims to highlight the deficiencies within the Nigerian framework and propose insights that may contribute to clearer principles, transparency, and more accountable prosecutorial practices within Nigeria's criminal justice system.

Research Questions

The questions addressed in this research are as follows:

1. How is the power of the Attorney General to enter *nolle prosequi* exercised in Nigeria?

²⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 172 and s 211.

²¹ Emmanuel Isaac Onuche, 'Attorney General's Power of Nolle Prosequi: A Relic of Colonialism or a Burden to Rule of Law?' (2021) 5(2) *African Journal of Law and Human Rights (AJLHR)* 55.

2. Are there guidelines applied to ensure public interest, the interest of justice, and the prevention of abuse of legal process?
3. What effects does the use of *nolle prosequi* have on Nigeria's criminal justice system?
4. What are the variations in legal & institutional framework for *nolle prosequi* in Nigeria & United Kingdom?
5. What reforms are required to guarantee a more accountable, transparent, and uniform application of *nolle prosequi* in Nigeria?

Aim and Objectives of the Study

The aim of this study is to analyse the application of *Nolle prosequi* in Nigeria and the United Kingdom. The objectives of the study were to:

1. Examine the practice of *nolle prosequi* in Nigeria and United Kingdom.
2. Evaluate the extent to which the Attorney General of Nigeria applies the principles of fairness, public interest, and prevention of abuse of the judicial system in applying *nolle prosequi*.
3. Analyse how prosecutorial discretion exerted in the exercise of *nolle prosequi* impacts the criminal justice system in Nigeria, particularly with regards to protecting victim rights.
4. Compare *Nolle Prosequi* practices in Nigeria and in the UK and propose improvements for making *nolle prosequi* practices in Nigeria more transparent, accountable, and equitable.
5. Propose reforms and recommend practical solutions aimed at improving transparency, accountability, and equity in the exercise of *nolle prosequi* powers in Nigeria.

1.5 Scope and Limitation of the Study

This study mainly explores the legal framework for the application of *nolle prosequi* in Nigeria, with specific focus on the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended), particularly Sections 174 and 211, which confer the power of discontinuation of criminal proceedings on the Attorney-General of the federation and state respectively. The study also examines how well the exercise of this constitutional power is regulated, particularly in relation to the need to uphold public interest, ensure fairness, and prevent abuse of the judicial process. The study also compares the Nigerian system with the system of discontinuation of proceedings in the United Kingdom with the aim of identifying similarities, differences, and lessons that can be learned from the comparison. The study, however, does not examine the structure of the entire criminal justice systems of Nigeria and the United Kingdom.

1.6 Significance of the Study

This research work explains how the Nigeria case file on *nolle prosequi* has developed since the country adopted its system of laws from the UK. It reveals where there are loopholes in the Nigerian prosecutorial process by comparing the approach in both countries.

With regard to criminal justice reform, the study provides lawmakers with valuable information by pointing out flaws in the current legal system and demonstrating how clearer regulations, transparency, and stronger accountability measures could enhance the proper use of *nolle prosequi* in Nigeria. In order to guarantee that the use of *nolle prosequi* is consistent with modern standards of transparency and fairness the study also exposes more explicit regulations which will ensure that the use of *nolle prosequi* is consistent with the constitutional ideals. The study will also benefit academics, students, and legal professionals, on topics regarding the rights of victims, public interest, and the distribution of power in the criminal justice system.

1.7 Research Methodology

This study adopted the doctrinal research design. Data was sourced from both primary and secondary sources. The primary sources of data include statutes, conventions, constitutional provisions, case laws and other relevant legislation from Nigeria and other jurisdictions, while secondary sources of data consist of scholarly opinions found in relevant books, articles, newspapers, conference papers and credible online materials. Data collected were subjected to content analysis and comparative law reviews.

1.8 Literature Review

Academics have expressed concern about the continued existence of a colonial-era prosecutorial power in the Nigerian constitution, despite the procedural rationale underlying the discretionary power.²² Changing from a dominating executive prosecutorial system to one founded on the principles of the rule of law, division of powers, and accountability is identified as the source of conflict amongst scholars.²³ Onuche²⁴ argues that *nolle prosequi* has become a colonial relic that conflicts with contemporary constitutional values, characterising this tension as a sign of a larger failure to adapt inherited common law doctrines to Nigeria's presidential system of government.

A common problem in Nigerian legal studies is the notion that the separation of powers idea and the power of the Attorney General to enter *nolle prosequi* are incompatible.²⁵ The current use of the power, according to critics, amounts to an illegal invasion of the judicial branch.²⁶ Onuche²⁷ contends that the Supreme Court's affirmation of the Attorney-General's discretion

²² Emmanuel Isaac Onuche, 'Attorney-General's Power of Nolle Prosequi: A Relic of Colonialism or a Burden to Rule of Law?' (2021) 5(2) *African Journal of Law and Human Rights (AJLHR)* 55.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

in *State v. Ilori*²⁸ effectively subjugates the judiciary to the administration, jeopardising judicial independence and constitutional supremacy. The political nature of Nigeria's Attorney General's office supports this criticism.²⁹ The dual position that the Attorney General occupies as the chief law officer of the federation and state respectively and a political appointee whose appointment is subject to the discretion of the President and Governor, as the case may be, creates a situation where political loyalty and duty often become intertwined and provide a rich soil for abuse of nolle prosequi powers for political purposes.³⁰ Akanmu³¹ similarly observes that the Attorney-General frequently functions as an agent of the executive rather than as an independent guardian of the public interest, with adverse consequences for the administration of criminal justice and public confidence in the legal system.

Also, the Supreme Court's ruling in *State v. Ilori*,³² which has drawn harsh scholarly criticism, continues to be Nigeria's final ruling on nolle prosequi.³³ Ogidi and Chukwuma³⁴ challenge the Court's logic and the doctrinal foundation for recognising the Attorney-General's discretion as exempt from judicial review. Sections 174(3) and 211(3) of the Constitution,³⁵ which expresses the limitation of the use of prosecutorial powers are deemed incompatible with the position of the Courts.³⁶ It is contended that although the constitutional text suggests a criterion that can be judicially assessed, Nigerian courts have repeatedly refused to examine whether these

²⁸ (1983)1 SCNLR 94.

²⁹ Osita Mba, 'Judicial Review of the Prosecutorial Powers of the Attorney General in England and Wales and Nigeria: An Imperative of the Rule of Law' (2010) (2)(1) *Oxford University Comparative Law Forum* <<https://ouclf.law.ox.ac.uk/category/authors/osita-mba/>> accessed 10 March 2026.

³⁰ Ibid.

³¹ <<https://www.lawglobalhub.com/assessment-power-implications-of-nolle-prosequi-on-justice-administration-nigeria-akanmu/>> accessed 10 March 2026.

³² (1983)1 SCNLR 94.

³³ Chukwuma, (n5).

³⁴ Ibid.

³⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended).

³⁶ Chukwuma, (n5).

requirements are actually met.³⁷ The authors argue that judicial reinterpretation is more likely to result in significant reform than constitutional amendment alone.³⁸

The Supreme Court's support of the Attorney-General's authority to repeatedly enter nolle prosequi and then re-initiate criminal proceedings against the same accused individual is a problematic implication of *Ilori*, according to further doctrinal examination. Academic analyses of *Eso JSC* and *Aniagolu JSC* argue that this view exposes accused people to ongoing legal risk by allowing for endless prosecution.³⁹ This result is generally seen to be detrimental to the concepts of legal certainty and finality as well as incompatible with the right to a fair trial as guaranteed by section 36 of the Constitution.⁴⁰

More recent research places the misuse of nolle prosequi in the context of Nigeria's larger fight against corruption⁴¹. Using a criminological viewpoint, Nwankwo⁴² shows how Attorneys-General have often used nolle prosequi to end corruption cases involving politically exposed individuals. His findings suggest that, rather than serving the public interest, the power has often been instrumentalised to shield powerful actors from legal accountability, thereby weakening anti-corruption institutions and norms. Abuza⁴³ reinforces this position by arguing that the Supreme Court's posture in *Ilori's case* has emboldened Attorneys-General to exercise their discretion with near impunity. He argues that the notion of executive discipline and public opinion providing a "crisis-resistant firewall" protecting the override power from abuse is not foolproof and that, within the Nigerian political milieu, "such safeguards are essentially

³⁷ Benjamin O Igwenyi, 'Jurisprudential Appraisal of Nolle Prosequi in Nigeria' (2016) 4(4) *Global Journal of Politics and Law Research* 10.

³⁸ Ibid.

³⁹ Nigerian Law Guru, 'Delimiting the Scope of The Powers of the Attorney General To Re charge an Accused Person After a Nolle Prosequi had been Entered' (2024) <<https://nigerianlawguru.com/articles/delimiting-the-scope-of-the-powers-of-the-attorney-general-to-re-charge-an-accused-person-after-a-nolle-prosequi-had-been-entered/>> accessed 8 April 2026.

⁴⁰ Nwankwo, (n7).

⁴¹ Ibid.

⁴² Ibid.

⁴³ Abuza, (n2).

meaningless.” In arguing that the actions of the political executive cannot be unilaterally dependent on the discretion of the officeholder without checks by the judicial arm of the state if the long-term consequences are the potential abrogation of individual rights and justice. The literature also draws attention to the practical injustices arising from the timing of *nolle prosequi*, particularly when entered at an advanced stage of trial.⁴⁴ Although *nolle prosequi* has a formal legal impact of release rather than acquittal, experts point out that this distinction is essentially theoretical in practice due to the lack of later re-prosecution.⁴⁵ As a result, victims are effectively shut out of the legal system, accused individuals suffer financially and psychologically, and judicial resources are wasted.⁴⁶

Even with the depth of current research, there are still significant gaps.⁴⁷ Additionally, individual abuses of discretion are often the focus of scholarly research rather than the flaws in institutional architecture that permit such abuses.⁴⁸ Instead of being included into doctrinal and constitutional research, issues pertaining to victims' rights, administrative expenses, and public trust in the legal system are frequently handled as ancillary matters.⁴⁹ This study builds on earlier research by systematically comparing Nigeria and the UK with a focus on constitutional provisions, judicial interpretation, and prosecutorial agencies. Existing literature has examined, extensively, the power of the Attorney General to enter *nolle prosequi* in Nigeria. However, much of it remains doctrinal and confined to the Nigerian context. A comparative analyses such as that of Abuza,⁵⁰ has explored other jurisdictions like Kenya and the United States of America, but no significant study has undertaken a focused comparison between Nigeria and

⁴⁴ Abuza, (n2).

⁴⁵ Igwenyi, (n 13).

⁴⁶ Nwankwo, (n7).

⁴⁷ Abuza, (n2).

⁴⁸ Nwankwo, (n7) and Igwenyi, (n13).

⁴⁹ Jamiu Akanmu, 'Assessment of the Power and Implications of Nolle Prosequi on Justice Administration in Nigeria' (2025) SSRN Working Paper <<https://ssrn.com/abstract=5104807>> accessed 19 March 2026.

⁵⁰ Andrew Ejovwo Abuza, 'A Comparative Analysis of the Power of the Attorney-General to Enter a Nolle Prosequi under the 1999 Constitution of Nigeria' [2024] 16(2) *African Journal of Legal Studies* 169-191.

the United Kingdom, where Nigeria's common law tradition is rooted. The lack of this discussion creates a gap in the understanding of the role of prosecutorial discretion in a shared legal tradition, particularly in relation to accountability, transparency, and the rule of law.⁵¹ The study seeks to bridge this gap through a comparative analysis of the Nigerian and United Kingdom jurisdictions in the exercise of the power of the Attorney-General in the entering of a *nolle prosequi*.

The study contends that, unlike in the UK where prosecutorial discretion is subject to institutional control, the Nigerian approach is characterized by a wider discretion that maybe susceptible to abuse. By incorporating the theoretical discussion of the system with practical recommendations for its improvement, the current research aspires to contribute to the development of a more accountable and transparent prosecution system in Nigeria.

⁵¹ Igwenyi, (n13).

CHAPTER TWO

CONCEPTUAL AND THEORITICAL FRAMEWORK

2.1 Conceptual Framework

2.1.1 *Nolle Prosequi*

The Nigerian Constitution vests the Attorney General with certain powers regarding criminal prosecution⁵². The powers are discretionary and can be seen as unlimited.⁵³ Despite efforts by many scholars and legal practitioners questioning the extent of these powers, they remain without limitation within the constitution.⁵⁴ One of those powers is the discretion of the Attorney General to discontinue a criminal prosecution at any time before the judgment is given, in any court in Nigeria except the court martial.⁵⁵ The expression *nolle prosequi* originates from Latin and generally refers to the prosecutor's decision to discontinue criminal proceedings before judgement is given. It is commonly exercised by prosecutorial authorities acting in public interest.⁵⁶

Osborn's Concise Law Dictionary defines *Nolle prosequi* as an acknowledgment or undertaking entered on record by the plaintiff in an action, to forbear to proceed in the action, either wholly or partially superseded by the morden practice of discontinuance.⁵⁷ According to the Black's Law Dictionary, *Nolle Prosequi* is a formal entry upon the record, by the plaintiff in a civil suit, or the prosecuting officer in a criminal action, by which he declares that he will no further prosecute the case, either as to some of the counts, or some of the defendants, or altogether.⁵⁸ A *nolle prosequi* is in the nature of an acknowledgment or undertaking by the

⁵² Constitution of the Federal Republic of Nigeria 1999 (as amended), s 174(1) and 211(1).

⁵³ The State v S O Ilori and Others (1983)1 SCNLR 94.

⁵⁴ AAM Ekundayo, *Constitutional provision of nolle prosequi: a blessing or a curse* (Nigerian Institute of Advanced Legal Studies 1988).

⁵⁵ CFRN 1999, ss, 174(1)(c), 211(1).

⁵⁶ Benjamin O Igwenyi, 'Jurisprudential Appraisal of Nolle Prosequi in Nigeria' (2016) 4(4) *Global Journal of Politics and Law Research* 10.

⁵⁷ M Woodley (ed), *Osborn's Concise Law Dictionary* (11th edn, Sweet & Maxwell 2009).

⁵⁸ Bryan A Garner (ed), *Black's Law Dictionary* (9th edn, West 2009).

plaintiff in an action to forbear to proceed any further, either in the action altogether, or as to some part of it, or as to some of the defendants; and is different from a non pros, by which the plaintiff is put out of court with respect to all the defendants.⁵⁹ it is a declaration made to the judge by a prosecutor in a criminal case or by a plaintiff in a civil suit either before or during trial, stating that the case against the defendant is being dropped.⁶⁰

Origin of Nolle Prosequi

The concept of *nolle prosequi* finds its origin in the historical prerogative powers of the English Crown over the institution and control of criminal prosecutions in medieval England.⁶¹ Early English criminal justice treated prosecutions not as an individual right of victims but as proceedings conducted in the name and authority of the Crown. As a consequence, the crown's legal representatives, exercised a control over the commencement and termination of criminal proceedings, a practice that eventually evolved into the modern doctrine of *nolle prosequi*.⁶² This prerogative was exercised through the King's legal representatives,⁶³ notably the King's Attorneys or King's Serjeants, whose role can be traced back to the 13th century during the reign of Henry III. ⁶⁴ The power to institute, regulate, and terminate prosecutions was entrusted to the Crown, and subsequently exercised by the Attorney General as the King's principal legal adviser.⁶⁵ As expressed by the Lord Chief Justice of the Court of Common Pleas, "all indictments and informations were "the King's suits" and hence remained at his disposal, while informations filed by the Attorney-General were "immediate emanations of his will and

⁵⁹ Bryan Garner (ed), Black's Law Dictionary (9th edn, West 2009).

⁶⁰ Emmanuel Isaac Onuche, 'Attorney General's Power of Nolle Prosequi: A Relic of Colonialism or a Burden to Rule of Law?' (2021) 5(2) *African Journal of Law and Human Rights (AJLHR)* 55.

⁶¹ WS Holdsworth, *A History of English Law*, vol I (Methuen 1922).

⁶² Osita Mba, 'Judicial Review of the Prosecutorial Powers of the Attorney General in England and Wales and Nigeria: An Imperative of the Rule of Law' [2010] (2)(1) *Oxford University Comparative Law Forum*.

⁶³ James Fitzjames Stephen, *A History of the Criminal Law of England*, vol I (Macmillan 1883).

⁶⁴ Holdsworth, (n 61).

⁶⁵ Stephen, (n 63).

pleasure".⁶⁶ This constitutional structure gave the legal basis for *nolle prosequi*, a Latin term meaning "to no longer proceed with a specific criminal matter."⁶⁷

Although the office of the Attorney General only took the form of a fixed institution during the reign of Edward IV, at least there was a functional premature royal legal representation in existence earlier.⁶⁸ According to Sir James Stephen, "general attorney" was used to describe a general agent or representative, not relating only to the King.⁶⁹ The Statute of Westminster shows that the concept of a general attorney was quite normal in the English law and pointed out the very requirement for powerful interests, especially the Crown, to act through legal agents in judicial procedures.⁷⁰ In this context, *nolle prosequi* was one of the procedural manifestations of the Crown's discretion in criminal matters. Given that prosecutions were instituted in the King's name, it naturally followed that the King, through the Attorney General, had the right to terminate them at any time prior to judgment. This prerogative gradually shifted from an individual royal prerogative to a constitutional duty exercised by the Attorney General in the public interest and was the historical precursor of *nolle prosequi* as it currently exists in the modern common law world.⁷¹ However, in the modern common law jurisdictions, especially those whose legal system has been influenced by the English legal system, the traditional *nolle prosequi* doctrine has undergone considerable transformation, in that the discontinuation of prosecution by the Crown is no longer left to the discretion of the Crown, but rather is regulated by statute and subject to considerations of public interest.⁷² This development signifies the transition of the *nolle prosequi* doctrine from an act of absolute

⁶⁶ R v Wilkes (1768) Wilm 322, 97 ER 123.

⁶⁷ Onuche, (n9).

⁶⁸ Mba, (n 29).

⁶⁹ Ibid

⁷⁰ Statute of Westminster the Second, 13 Ed. I, c.10 (1283).

⁷¹ W Blackstone, Commentaries on the Laws of England, Book IV (1769, Clarendon Press Oxford).

⁷² Prosecution of Offences Act 1985 (UK).

prerogative power to a regulated constitutional act, designed to balance prosecutorial efficiency with fairness, accountability, and the integrity of the criminal justice system.⁷³

2.1.2 Nature of *Nolle Prosequi*

In common law, the principle of prosecutorial discretion is a fundamental aspect of criminal justice administration, which allows the prosecuting authority to determine whether to initiate, continue, or discontinue criminal proceedings at any stage before judgment is given.⁷⁴ This discretion stems from the understanding that criminal prosecution is not merely a private dispute but a public function exercised in the interest of society as a whole.⁷⁵ In Nigeria, this discretionary authority is constitutionally vested in the Attorneys General of the Federation and the States, who have the power to discontinue criminal proceedings through the entry of *nolle prosequi*,⁷⁶ a position similarly reflected in the prosecutorial system of the United Kingdom.⁷⁷ Under common law, *nolle prosequi* can be entered at any stage of criminal proceedings before judgment is passed, regardless of the status of the case, provided that the decision is made by the competent prosecuting authority.⁷⁸ The aim of such entry is to bring the proceedings to an immediate halt, by that, discontinuing the case without a determination of guilt or innocence by the court.⁷⁹ It is worthy to note that a *nolle prosequi* does not amount to an acquittal of the accused person, nor does it operate as a bar to a new indictment for the same offence, provided that such further prosecution is not otherwise prohibited by law.⁸⁰ Instead, it only ends the existing proceedings, leaving open the possibility of charges being reinstated in the future if necessary.⁸¹ This principle has been adopted and constitutionalised in Nigeria as part of its

⁷³ Andrew Ashworth and Mike Redmayne, *The Criminal Process* (5th edn, Oxford University Press 2010).

⁷⁴ Mba, (n11).

⁷⁵ John H Baker, *An Introduction to English Legal History* (5th edn, Oxford University Press 2019).

⁷⁶ CFRN 1999 (as amended) ss 174(3), 211(3).

⁷⁷ *Gouriet v Union of Post Office Workers* 1978 AC 435 at 487.

⁷⁸ William Blackstone, *Commentaries on the Laws of England* (1765–1769).

⁷⁹ Ashworth, (n 73).

⁸⁰ GE Oyedokun and SO Oni, 'Nolle Prosequi: Comparative Assessment of the power of the Attorney-General in Nigeria and the United Kingdom' [2025] (5)(1) *AFAR Multidisciplinary Journal of Social Sciences (MJSS)*.

⁸¹ *R v Director of Public Prosecutions, ex parte Kebilene* [2000] 2 AC 326 (HL).

inherited English legal system.⁸² This constitutional entrenchment highlights the importance of prosecutorial discretion in Nigeria's criminal justice system and also highlights the important role of the Attorneys General as the law officers of the federation and state respectively.⁸³ The Supreme Court of Nigeria affirmed the nature and extent of *nolle prosequi* in the well-known case of *State v. Ilori*,⁸⁴ holding that it is an executive act within the Attorney-General's exclusive discretion, that the courts must recognise once it is properly exercised.⁸⁵ The Court further stressed that since the power is not judicial in nature, it does not need judicial approval, supervision, or assent before it takes effect.⁸⁶ This stance reflects the Nigerian constitution's separation of judicial authority from prosecutorial discretion.⁸⁷ This means that once the Attorney General validly enters a *nolle*, the court has no authority to question, refuse or override that decision.

2.1.3 Constitutional Basis of Nolle Prosequi in Nigeria.

The Nigerian constitution provides for the unfettered power of the attorney general of the federation to discontinue criminal proceedings, at any stage before judgment is delivered, in any court in Nigeria, except the court martial.⁸⁸ This same power is conferred on the Attorney-General of a State with respect to offences under state law.⁸⁹ These provisions elevate the doctrine of *nolle prosequi* from a mere common law prerogative to a constitutionally protected prosecutorial discretion.⁹⁰ Furthermore, the Attorney-General, in exercising his power, is required to have regard: the public interest, the interest of justice, and the need to prevent abuse

⁸²CO Okonkwo, ME Naish, *Okonkwo and Naish on Criminal Law in Nigeria* (2nd edn, Sweet & Maxwell 1980).

⁸³A L Goodhart, 'The Office of Attorney General' (1933) 49 LQR 433.

⁸⁴The State v S O Ilori and Others (1983)1 SCNLR 94.

⁸⁵Ibid.

⁸⁶Ibid.

⁸⁷Niki Tobi, *Cases and Materials on Nigerian Criminal Law* (Malthouse Press 1999).

⁸⁸CFRN 1999 (as amended) s 174(1)(c).

⁸⁹CFRN 1999 (as amended) s 211(1)(c)

⁹⁰Igwenyi, (n5).

of legal process.⁹¹ However, Nigerian courts have, time and again, held that these considerations provided in the constitution, do not impose enforceable legal limitations on the Attorney General's discretion.⁹² In other words, this constitutional power of the Attorney General is unfettered and absolute.⁹³ This means that the Attorney-General's discretion in deciding whether to start, continue or discontinue a criminal matter, is not subject to control or review by the courts.

2.1.4 Effect of Nolle Prosequi

The legal effect that emanates from entering *nolle prosequi*, is the immediate discharge of the accused person.⁹⁴ *Nolle prosequi* has an impact on the procedural status of the court record's as it formally brings the specific proceedings to an end without delivering a judgment on the merits.⁹⁵ This means that the court no longer has jurisdiction over the matter until a new charge is filed, and the case file is closed with regard to that charge.⁹⁶ However, it differs from other types of termination, such acquittal or dismissal, in that it is solely based on prosecutorial discretion rather than judicial evaluation of the evidence.⁹⁷ The fact that nolle prosequi does not eliminate the charge or the evidence that has already been offered to the court is another significant consequence.⁹⁸ Instead, it suspends the adjudicatory process at the point it has reached, leaving the evidential record intact but legally inactive.⁹⁹ This leaves the substantive accusations unanswered in court by creating a procedural gap in which the accused is neither found guilty nor vindicated.¹⁰⁰

⁹¹ CFRN (as amended) s 174(3).

⁹² The State v S O Ilori and Others (1983)1 SCNLR 94.

⁹³ Ekundayo, (n8).

⁹⁴ Administration of Criminal Justice Act 2015, s 107(4).

⁹⁵ Andrew Ashworth and Mike Redmayne, *The Criminal Process* (5th edn, Oxford University Press 2010).

⁹⁶ JH Baker, *An Introduction to English Legal History* (5th edn, Oxford University Press 2019).

⁹⁷ The State v S O Ilori and Others (1983)1 SCNLR 94.

⁹⁸ William Blackstone, *Commentaries on the Laws of England* (Oxford University Press 2016).

⁹⁹ Andrew Ashworth and Mike Redmayne, *The Criminal Process* (5th edn, Oxford University Press 2010).

¹⁰⁰ Ibid.

Practically speaking, the entry of *nolle prosequi* may lead to the release of the accused from custody in cases where their detention was primarily due to the ongoing trial.¹⁰¹ The stigma attached to the criminal allegation may still exist in social and professional settings, and such release does not constitute a declaration of innocence.¹⁰² The fact that the accused individual does not receive complete legal or social closure is a reflection of the imperfect character of the legal effect.¹⁰³ In common law criminal trials, the Attorney General's entry of a *nolle prosequi* has the cumulative effect of discharge rather than acquittal and does not prevent the accused from being tried again.¹⁰⁴ This result is unjust, especially if the Attorney General enters the *nolle prosequi* on the day of the verdict or prior to the verdict after all prosecution witnesses have had a chance to testify.¹⁰⁵ In addition, the use of *nolle prosequi* to discontinue proceedings has a big impact on the distribution of court resources and judicial efficiency.¹⁰⁶ The time, effort, and public resources invested in hearing the case up until the point of discontinuance are essentially deemed inconclusive, which could add to congestion in the justice system and reduce the effectiveness of trial processes.¹⁰⁷ In places where criminal cases are lengthy and frequently adjourned, this effect is most noticeable.¹⁰⁸ This leads to prolonged psychological and financial hardship for all parties involved and ultimately, leads to injustice especially on the victim who is left without closure or a clear outcome of the case.¹⁰⁹ In the end, *nolle prosequi* results in a compromise between procedural incompleteness and prosecutorial freedom.¹¹⁰ Although it is an important mechanism for preventing unnecessary prolonging of

¹⁰¹ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 36.

¹⁰² Susan Matrangol and Marcia Neely, 'Nolle Prosequi | Meaning & Examples' *Study.com* <<https://study.com/learn/lesson/what-is-nolle-prosequi.html>> accessed 23 June 2026.

¹⁰³ Jonathan Doak, *Victims' Rights, Human Rights and Criminal Justice* (Hart 2008).

¹⁰⁴ Abuza, (n2).

¹⁰⁵ Ibid.

¹⁰⁶ JA Jolowicz, *Civil Litigation: The Administration of Justice* (Cambridge University Press 2000).

¹⁰⁷ Ibid.

¹⁰⁸ EE Nwankwo, 'The Impact of the Power of Nolle Prosequi on the Fight against Corruption in Nigeria' (2025) 9(8) *International Journal of Research and Innovation in Social Science (IJRISS)* 2315.

¹⁰⁹ Jonathan Doak, *Victims' Rights, Human Rights and Criminal Justice* (Hart 2008).

¹¹⁰ Arthur Lehman Goodhart, 'The Office of Attorney-General' (1933) 49 *Law Quarterly Review* 433.

weak or inappropriate prosecutions, its effects reveals the fundamental conflicts in criminal justice administration between efficiency, fairness, and finality.¹¹¹

2.1.5 Application of Nolle Prosequi in Nigeria

This power of the attorney general to discontinue criminal proceedings, can be exercised at any time before judgement is passed, in any court in Nigeria except the court martial.¹¹² *Nolle prosequi* is exercised either by the attorney general himself or through his officers.¹¹³ Nevertheless, for an officer in the Attorney General's office to exercise this power, there should be a sitting Attorney General.¹¹⁴ The procedure for entering a *nolle* is provided under Part 11 of the Administration of Criminal Justice Act¹¹⁵ The Attorney General of the Federation may end any criminal proceeding for an offence created by an Act of the National Assembly at any point before judgement by either declaring in court or notifying the court in writing that the Attorney-General of the Federation intends for the proceeding to end. Based on the notice, the suspect will be immediately released with regard to the charge or information for which the discontinuance is entered.¹¹⁶

The development and application of the doctrine of *nolle prosequi* in Nigeria have been largely a judicial function, where the courts have consistently been defining the scope and limitations of the Attorney-General's powers.¹¹⁷ Although the concept originates from English common law, its operation in Nigeria has acquired a constitutional character,¹¹⁸ particularly through provisions such as section 191 of the 1979 Constitution¹¹⁹ and its equivalent in the 1999

¹¹¹ Andrew Ashworth and Mike Redmayne, *The Criminal Process* (5th edn, Oxford University Press 2010).

¹¹² CFRN 1999 (as amended) s 174(1)(c).

¹¹³ *The State v Chukwurah* (1964) NMLR (Pt 64) 65.

¹¹⁴ *Attorney General, Kaduna State v. Hassan* [1985] 2 NWLR (Pt 8) 683.

¹¹⁵ Administration of Criminal Justice Act 2015, s 107(1).

¹¹⁶ Administration of Criminal Justice Act 2015, s 107(1).

¹¹⁷ Mba, (n21)

¹¹⁸ Emmanuel Isaac Onuche, 'Attorney-General's Power of Nolle Prosequi: A Relic of Colonialism or a Burden to Rule of Law?' (2021) 5(2) *African Journal of Law and Human Rights (AJLHR)* 55.

¹¹⁹ Constitution of the Federal Republic of Nigeria 1979, s 191.

Constitution.¹²⁰ The most authoritative pronouncement on the issue of *Nolle Prosequi* in Nigeria, is the Supreme Court's decision in *State v Ilori*.¹²¹ In that case, the appellant challenged the Attorney General's entry of a *nolle prosequi* by alleging that it was done in bad faith and contrary to public interest, relying heavily on section 191(3) of the constitution.¹²² The Court rejected the contention stating that subsection (3)¹²³ merely restated existing common law principles and did not create enforceable legal standards.¹²⁴ Consequently, the Attorney-General's discretion remained unfettered, and the courts lacked the jurisdiction to inquire into his motives or the propriety of his decision.¹²⁵ As a result, while public interest is constitutionally prescribed, its determination is left almost entirely to the subjective judgment of the Attorney-General.¹²⁶

2.2 Theoretical Framework

2.2.1. Natural Justice Theory

The theory of natural justice, derived from the jurisprudential concept of *jus naturale* (law of nature), is a fundamental principle of fairness that is not dependent on statutory enactment but is inherent in the legal order.¹²⁷ It connotes universal standards of justice recognized across civilized societies, predicated upon the idea that certain principles of fairness are self-evident and binding irrespective of legislative authority.¹²⁸ It seeks to prevent arbitrariness, bias, and injustice in decision-making processes.¹²⁹ The rule against prejudice (*nemo iudex in causa sua*, or "no man a judge in his own cause") and the right to a fair hearing (*audi alteram partem*, or

¹²⁰CFRN 1999 (as amended), ss 174(1)(c), 221(1)(c)

¹²¹ [1983]1 SCNLR (Pt 94).

¹²² CFRN 1979, s 191(3).

¹²³ Ibid.

¹²⁴ The State v S. O. Ilori & Ors [1983]1 SCNLR (Pt 94).

¹²⁵ Onuche, (n21).

¹²⁶ Abuza, (n2).

¹²⁷ Jones David Philip and Anne De Villars, *Principles of Administrative Law* (5th edn, Carswell 2009).

¹²⁸ Thomas Aquinas, *Summa Theologica* (trans Fathers of the English Dominican Province, Benziger Bros 1947).

William Blackstone, *Commentaries on the Laws of England* (1765–1769).

¹²⁹ J Finnis, *Natural Law and Natural Rights* (Oxford University Press 1980).

"hear the other side") are the two components of a fair hearing that are associated with natural justice.¹³⁰ The right of fair hearing is guaranteed in Section 36 of the Nigerian constitution.¹³¹

Which states that:

(1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

(4) Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal...

The supreme court affirmed, in the case of *Sule Katagum v Roberts*,¹³² that administrative and judicial bodies must adhere to the principles of natural justice. It established that any authority exercising powers that affect the rights of others is bound by the "twin pillars" of natural justice.¹³³ In the same vein, Oputa JSC explained the rule of *Audi Alterem Partem* which demands that each party in a case must be given the opportunity to present his case, stating "God has given you two ears, hear both sides".¹³⁴ De Smith¹³⁵ confirms that this principle was applied to Adam and Eve in the Garden of Eden, stating, thus: "Even God himself did not pass sentence upon Adam before he was called upon to make his defence. God said to Adam, "Where art thou? Has thou not eaten out of the tree whereof I commanded thee that thou should not eat?"¹³⁶ This

¹³⁰ DP Jones and Anne De Villars, *Principles of Administrative Law* (5th edn, Carswell 2009)

¹³¹ CFRN 1999 (as amended) s 36.

¹³² *Sule Katagum & Ors v. Roberts* (1967) 1 All NLR 129

¹³³ *Ibid.*

¹³⁴ *Garba & Ors v University of Maiduguri* [1986] 1 NWLR (Pt 18) 550.

¹³⁵ Stanley A. De Smith, *Judicial Review of Administrative Action* (4th edn, Stevens & Sons 1980) 120.

¹³⁶ Gen 3:9–11 (King James Version).

theory emphasizes the importance of maintaining principles of justice in the processes of adjudication, any breach renders the process of adjudication invalid.¹³⁷

2.2.2. Rule of Law Theory

The of Rule of law theory is an important foundational principle in legal and political theory which represents the supremacy of law over arbitrary authority within an organised system of governance.¹³⁸ When we better understand the principles of the rule of law, we can more effectively support reforms that strengthen it.¹³⁹

The Black's Law Dictionary defined rule of law as "A legal principle, of general application, sanctioned by the recognition of authorities, and usually expressed in the form of a maxim or logical proposition called a "rule," because in doubtful or unforeseen cases it is a guide or norm for their decision."¹⁴⁰ According to Oxford English Dictionary, Rule of Law is defined as "The authority and influence of law in society, especially when viewed as a constraint on individual and institutional behaviour; hence the principle whereby all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes."¹⁴¹

According to Plato 'Where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, is not far off; but if law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a state'.¹⁴² Dicey described the rule of law as comprising three core principles. First, the absolute supremacy of law, excluding arbitrary or discretionary

¹³⁷ Cletus Ojumu, Aruwa Emeje, and Patrick Okereke Nwajah, 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' (2022) 10(1) *Afe Babalola University Law Journal* (ALJ)1.

¹³⁸ A V Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959).

¹³⁹ Stein A Robert, 'What Exactly Is the Rule of Law?' (2019) (57) (1) *Houston Law Review* 185.

¹⁴⁰ BA Garner (ed), *Black's Law Dictionary* (10th edn, Thomson Reuters 2014) 1531.

¹⁴¹ 'Rule of Law' (Oxford English Dictionary Online, Oxford University Press March 2011, revised Sept 2025); <https://www.oed.com/dictionary/rule-of-law_n> accessed 3 April 2026.

¹⁴² Jeremy Waldron, 'The Rule of Law', *The Stanford Encyclopedia of Philosophy* (Summer 2016 Edition), Edward N Zalta (ed); <https://www.academia.edu/30687386/Rule_of_Law> accessed on 3 April 2026.

government power. Second, equality before the law, ensuring all persons are subject to the same legal rules and courts. Third, the constitution is not the source of rights but their consequence, arising from judicial decisions. In this sense, individual rights are defined and enforced by the courts.¹⁴³

Oputa, JSC (as he then was) described rule of law in the following words:

‘The rule of law presupposes that the state is subject to the law, that the judiciary is a necessary agency of the rule of law, that the Government should respect the right of individual citizens under the rule of law and that to the judiciary, is assigned both by the rule of law and by our constitution the determination of all actions and proceedings relating to matters in disputes between persons, Governments or authority’.¹⁴⁴

In the same vein, in his own conceptualization of the rule of law in the same case, Obaseki, JSC (as he then was) stated: ‘Rule of law primarily means that Government should be conducted within the framework of recognized rules and principles which restrict discretionary powers which Coke¹⁴⁵ colourfully spoke of as a golden and straight method of law as opposed to the uncertain and crooked cord of discretion’.¹⁴⁶

Summarily, the concept of rule of law implies that every citizen, regardless of class, is subject to the law including those who are lawmakers, law enforcement officials and judges contrasting the idea of monarchy and oligarchy where the ruler is above the law.¹⁴⁷ This theory highlights the importance of judicial oversight and equality before the law, both of which are critical in examining how *nolle prosequi* is used in practice. The observance of the rule of law demands that such actions do not put anyone above the law or prevent courts from performing their

¹⁴³ ‘Rule of Law’ (Oxford English Dictionary Online, Oxford University Press March 2011, revised Sept 2025)

¹⁴⁴ *Governor of Lagos State v Ojukwu* [1986] 1 NWLR (Pt 621) 647.

¹⁴⁵ Sir Edward Coke, *The First Part of the Institutes of the Lawes of England: Or, A Commentary Upon Littleton* (1st edn 1628, The Lawbook Exchange 2002).

¹⁴⁶ *Ibid.*

¹⁴⁷ Jullian Sempill, ‘The Rule of Law and the Rule of Men: History, Legacy, Obscurity’ (2020) (12)(3) *Hague Journal on Rule Law*, 511 <<https://doi.org/10.1007/s40803-020-00149-9>> accessed 3 April 2026.

functions. The exercise of such prosecutorial powers must not place any individual above the law, nor should it prevent the courts from fulfilling their constitutional role as arbiters of justice.

2.2.3. Public Interest Theory.

Public interest theory is one of the key theories under administrative law, which postulates that the aim of any governmental action is to serve the common good of society instead of any private interest.¹⁴⁸ This theory is based on the assumption that the state is a neutral and benign actor, capable of identifying the needs of society and enacting policies for promoting the greatest good and equality within the community.¹⁴⁹

It assumes that the public servants, including the regulatory agencies and prosecution agencies, act based on the spirit of serving the common interest and therefore will perform their duties bearing in mind the overall public interests.¹⁵⁰ The theory of public interest emerged as a response to the limitations of laissez-faire economic systems, particularly the inability of unregulated markets to deal with problems like monopoly, externalities, inequality, and information asymmetry.¹⁵¹ Within the legal system, public interest theory provides a basis for exercising discretionary powers, in the context of the law, especially in situations like prosecutorial decision-making, where rigid adherence to rules may lead to unjust or inefficient outcomes.¹⁵²

Therefore, the use of powers like *nolle prosequi* could be seen from the perspective of public interest theory when continuing a prosecution would be oppressive, unnecessary, or contrary to societal welfare.¹⁵³ The theory also emphasises the importance of fairness and balance, in the sense that any action based on public interest should ensure that the rights of the accused,

¹⁴⁸ RA Posner, *Economic Analysis of Law* (9th edn, Wolters Kluwer 2014).

¹⁴⁹ Robert Baldwin, Martin Cave and Martin Lodge, *Understanding Regulation: Theory, Strategy, and Practice* (2nd edn, Oxford University Press 2012).

¹⁵⁰ Anthony Ogus, *Regulation: Legal Form and Economic Theory* (1st edn, Hart Publishing 2004).

¹⁵¹ Arthur Cecil Pigou, *The Economics of Welfare* (4th edn, Macmillan and Co 1932).

¹⁵² Andrew Ashworth and Mike Redmayne, *The Criminal Process* (4th edn, Oxford University Press 2010).

¹⁵³ Glanville Williams, *Textbook of Criminal Law* (2nd edn, Stevens & Sons 1983).

as well as the victim, have been considered.¹⁵⁴ Critics argue that in reality, political pressure, personal gain, or bias on the part of public officials could affect their judgment, thereby undermining the neutrality required by the theory.¹⁵⁵

This has led to concerns about the possible abuse of discretionary powers, including the possibility that decisions purportedly made in the public interest may in fact serve the interest of the elite.¹⁵⁶ This theory is particularly useful in assessing how different jurisdictions interpret and apply the concept of public interest, as well as the measures designed to provide accountability and transparency in decision-making processes.¹⁵⁷

Discussing these theories has necessitated a discussion on certain related doctrines as follows:

i. Doctrine of Separation of Power: The Doctrine of separation of power is an imperative content of modern democratic political systems.¹⁵⁸ The ancient Greek philosophers Plato (427-347 BC), Aristotle (384-322 BC), and historian Polybius (205-123 BC), among others, are credited by Western scholars for laying the foundation for the concept of separation of powers. Aristotle, in formulating his theories of government, is recorded to have studied about 158 Constitutions of Greek city-state constitutions in formulating his ideas on governance. He wrote:

There are three elements in each constitution in respect of which every serious lawgiver must look for what is advantageous to it; of these are well arranged, the constitution is bound to be well arranged, and the differences in constitutions are bound to correspond to the differences between each of these elements. The three are, first, the deliberative, which discusses everything of common importance; second, the magisterial or official; and third, the judicial element.¹⁵⁹

¹⁵⁴ Andrew Ashworth, *Principles of Criminal Law* (7th edn, Oxford University Press 2013).

¹⁵⁵ Sam Peltzman, 'Toward a More General Theory of Regulation' [1976] (19) (2) *Journal of Law and Economics* 211.

¹⁵⁶ Daniel Carpenter and David A Moss, *Preventing Regulatory Capture* (Cambridge University Press 2013).

¹⁵⁷ Mark Tushnet, *Advanced Introduction to Comparative Constitutional Law* (Edward Elgar 2014).

¹⁵⁸ Agbede Oore, 'The Doctrine of Separation of Powers Over Time and a Case for the Review of Nigeria's Power Separation Model' [2021] (5)(1) *University of Lagos Law Review (ULR)*.

¹⁵⁹ Hilaire Barnett, *Constitutional & Administrative Law* (12th edn, Routledge 2017) 80.

The Doctrine of Separation of Power was espoused by the French Philosopher Baron de Montesquieu in his book.¹⁶⁰ He stated that there can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates... or if the power of judging be not separated from the legislative and executive powers.¹⁶¹ In defining the doctrine of separation of power, Oraegbunam linked its motivation to Adam Smith's idea of the division of labour in economics, pointing out that the motivation goes beyond efficiency to include preventing the abuse of power.¹⁶²

The Nigerian Court of Appeal, in a judgment by Salami JCA, held that the doctrine of separation of powers consists of three main principles, thus: First, the same person must not be a member of more than one of the three branches or arms of government. Secondly, one branch or arm of government must not dominate or control the other, as it is a crucial factor in the balance of power in the executive and judicial branches. Thirdly, a branch or arm of government must never perform the roles or duties assigned to the other.¹⁶³ For instance, the President, regardless of the powers vested in the office, must never be the lawmaker, just as the legislative branch must never be the interpreter. If in doubt, it must seek the interpretation from the courts.¹⁶⁴ The absolute power of the Attorney General to enter nolle in a case pending before a Judge seems to run contrary to this doctrine. The Executive, through the AG performing the duty of the judiciary.

ii. Doctrine of Prosecutorial Discretion

Prosecutorial discretion is a power saddled in a prosecutor which enables them make decisions pertaining to the case at different stages of their case, such as determining whether to press

¹⁶⁰ Baron de Montesquieu, *The Spirit of Laws*, trans Thomas Nugent (first published 1750, rev edn, Colonial Press 1899).

¹⁶¹ Ibid.

¹⁶² IKE Oraegbunam, 'Separation of powers and Nigerian Constitutional democracy' [2009] (5)(7) *Benin Journal of Public Law*, 26.

¹⁶³ *Ahmad v Sokoto State House of Assembly* [2002] 44 WRN 52.

¹⁶⁴ Ibid.

charges, negotiating plea bargains.¹⁶⁵ It is the discretion exercised by the Attorney-General in all matters within his authority relating to the prosecution of criminal offences.¹⁶⁶ It includes all decisions regarding the nature and extent of the prosecution and the Attorney General's involvement in it.¹⁶⁷ This discretion is in line with the principles of fundamental justice. It serves as an essential mechanism for the effective enforcement of criminal law.¹⁶⁸ Article II of the US Constitution provides for a clause, which requires the president to take Care that the Laws be faithfully executed.¹⁶⁹ The courts have construed this to mean that the President and federal officials have broad discretion in the enforcement of criminal laws.¹⁷⁰

In the case of federal prosecutors, the Supreme Court has decided that once there is probable cause to believe that a crime has been committed, the decision on what charges to file is within the discretion of the prosecutor.¹⁷¹ However, the discretion does not stop at the charges; it goes on to plea bargains, immunity grants, and sentencing.¹⁷² In the same vein, the Nigerian constitution provides for the power of the attorney general to discontinue criminal matters at any point before judgement is given.¹⁷³ This supports the constitutional provision of the Attorney-General's power to enter *nolle prosequi* because it highlights the breadth of prosecutorial discretion in the administration of criminal justice. Since prosecutorial discretion allows a prosecutor to make decisions at every stage of a case, including whether to initiate, continue, modify, or terminate proceedings, the power of the Attorney General to discontinue a case is a natural extension of that discretion.

¹⁶⁵ Samuel Strom, 'What Is Prosecutorial Discretion?' (LegalMatch, 2024) legalmatch.com; <<https://www.findlaw.com/criminal/criminal-procedure/what-is-prosecutorial-discretion.html>> accessed 8 April 2026.

¹⁶⁶ *R v Anderson* [2014] 2 SCR 167.

¹⁶⁷ *Krieger v Law Society of Alberta* [2002] 3 SCR 372.

¹⁶⁸ *Sriskandarajah v United States of America* [2012] 3 SCR 609.

¹⁶⁹ US Constitution, art II, s 3.

¹⁷⁰ 'Federal Prosecutorial Discretion: A Brief Overview' (13 February 2026) LSB11326 <<https://www.congress.gov/crs-product/LSB11326>> accessed 2 April 2026.

¹⁷¹ *United States v Armstrong* 517 US 456 (1996).

¹⁷² *Ibid.*

¹⁷³ CFRN 1999 (as amended) ss 174,211.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK OF NOLLE PROSEQUI IN NIGERIA

3.1 Legal Framework

3.1.1 Constitution of the Federal Republic of Nigeria 1999 (as amended)

The Constitution which has been academically,¹⁷⁴ statutorily¹⁷⁵ and judicially¹⁷⁶ recognised as the supreme law and ultimate source of validity of all other laws, vests significant prosecutorial powers in the Attorney-General.¹⁷⁷ One of the most notable of these powers is the power to discontinue criminal proceedings through the doctrine of nolle prosequi. This power is granted under section 174(1)(c) of the Constitution,¹⁷⁸ which states that the Attorney-General of the Federation may discontinue any criminal proceedings brought by him or anybody else save in cases before a court-martial. Section 174(1)(b)¹⁷⁹ gives the Attorney-General the authority to take over and continue criminal cases initiated by any other person or agency. This is evidence of the Attorney-General's role as the chief law officer, helping to maintain order and consistency in how criminal cases are handled.¹⁸⁰

However, under Section 174(3),¹⁸¹ the Attorney-General, in exercising these powers, must consider the public interest, the interest of justice, and the need to prevent abuse of legal process. These conditions act as safeguards to prevent the power from being used unfairly or improperly. Similarly, at the state level, section 211 of the Constitution confers equivalent powers on the Attorney-General of a State to institute, take over, and discontinue criminal proceedings within that state, excluding proceedings before a court-martial. Section 211(3) reiterates the same guiding considerations of public interest, justice, and prevention of abuse

¹⁷⁴ Hans Kelsen, *Pure Theory of Law* (Max Knight tr, University of California Press 1967).

¹⁷⁵ CFRN 1999 (as amended), s1.

¹⁷⁶ *Lakanmi v Attorney-General (Western State)* (1971) 1 UILR 201 (SC).

¹⁷⁷ CFRN 1999 (as amended), s174.

¹⁷⁸ *Ibid*

¹⁷⁹ *Ibid*

¹⁸⁰ CFRN 1999(as amended), s150(1)

¹⁸¹ CFRN 1999(as amended).

of process.¹⁸² Regardless of these constitutional provisions, some writers argue¹⁸³ that the broad discretion granted to the Attorney-General may be used to shield politically exposed persons from prosecution.¹⁸⁴

Nigerian courts have generally adopted a position of restraint in reviewing the exercise of this power.¹⁸⁵ The judiciary has consistently held that the Attorney-General's discretion to enter a *nolle prosequi* is very wide and largely unfettered.¹⁸⁶ Judicial intervention will only arise in exceptional circumstances where there is clear evidence of bad faith, abuse of process, or where the action undermines the rule of law.¹⁸⁷

Overall, the Constitution provides the strongest legal foundation for the doctrine of *nolle prosequi* in Nigeria. It not only establishes the authority of the Attorney-General to discontinue criminal proceedings but also sets out the principles meant to guide its exercise.¹⁸⁸ Still, the wide scope of this power raises concerns about accountability and possible misuse in Nigeria's criminal justice system.¹⁸⁹

3.1.2. Administration of Criminal Justice Act (2015)

The power of *nolle prosequi* power in Nigeria is further supported and regulated by statutory law, particularly the Administration of Criminal Justice Act 2015 (ACJA). The Act was enacted to ensure efficiency in the management of criminal justice institutions, speedy dispensation of justice and protection of the rights of the suspect, defendant and victim in criminal proceedings.¹⁹⁰ Although the ACJA does not create the power of *nolle prosequi*, which can only

¹⁸² CFRN 1999, s 211(3).

¹⁸³ AE Abuza, 'The Power of the Attorney-General to Enter a Nolle Prosequi under the 1999 Constitution of Nigeria: An Analysis of the Issues Involved' (2021) 7(2) *International Journal of Science and Qualitative Analysis* 47.

¹⁸⁴ CO Okonkwo and ME Naish, *Okonkwo and Naish on Criminal Law in Nigeria* (2nd edn, Sweet & Maxwell 1980).

¹⁸⁵ *The State v Ilori* (1983)1 SCNLR 94.

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*

¹⁸⁸ CFRN 1999 (as amended), ss 174(1)(c), 211(1)(c).

¹⁸⁹ Benjamin Igwenyi, 'Jurisprudential Appraisal of Nolle Prosequi in Nigeria' [2016] 4(4) *Global Journal of Politics and Law Research* 10.

¹⁹⁰ Administration of Criminal Justice Act 2015, s1(1).

be conferred by virtue of the constitution, the Act contains the procedure for the exercise of such powers in criminal proceedings in the courts.¹⁹¹ The Act recognises the role of the Attorney-General as the principal prosecuting authority and preserves his constitutional powers, including the power to discontinue proceedings.¹⁹²

It is also important to note that similar provisions exist at the state level. The constitution grants the Attorney General of the state corresponding powers in respect of offences created under state laws. This ensures that the use of *nolle prosequi* operates at both federal and state levels within Nigeria's federal system of government. Furthermore, it is worth noting that all states in Nigeria have adopted states' versions of the Administration of Criminal Justice Law (ACJL), and this law contains provisions equivalent to those of the ACJA.¹⁹³ This has played a role in standardizing the procedures applied in criminal justice administration in Nigeria, including the exercise of prosecutorial powers such as *nolle prosequi*. The Attorney General still enjoys broad discretion, although, from the intent of the statute, this discretion should be used responsibly and in line with the principles of justice and equity.¹⁹⁴

The significance of the ACJA in relation to *nolle prosequi* lies in the fact that it provides an organised procedural framework within which the Attorney General's constitutional powers are exercised.¹⁹⁵ Although the Constitution confers the substantive power to discontinue criminal proceedings, the ACJA regulates the overall conduct of criminal trials and ensures that the use of prosecutorial powers takes place within a criminal procedure system that is orderly.¹⁹⁶ In this regard, the Act compliments uniformity, consistency, and

¹⁹¹ ACJA (2015), s107.

¹⁹² ACJA (2015), s 106(a).

¹⁹³ 'Leaving a Legacy of Criminal Justice Reform in Nigeria' (MacArthur Foundation 2025)

<<https://www.macfound.org/press/perspectives/leaving-a-legacy-of-criminal-justice-reform-in-nigeria>> accessed 2 April 2026. 'Minister Confirms Full Adoption of Criminal Justice Reform' (Voice of Nigeria, 2025).

¹⁹⁴ CFRN 1999 (as amended), s174(3).

¹⁹⁵ Administration of Criminal Justice Act 2015, s 1; Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 174 and 211.

¹⁹⁶ Administration of Criminal Justice Act 2015.

certainty in the criminal justice system, which enhances the Constitution.¹⁹⁷ Furthermore, the procedural reforms brought about by the ACJA, such as those intended to eliminate delays, unnecessary adjournments, and efficient case management, indirectly affect the decision on the use of *nolle prosequi*.¹⁹⁸ Because the Act seeks to ensure prompt resolution of criminal cases, the discontinuance of the proceedings must not be abused so as not to defeat the purposes of the legislation or waste judicial resources unnecessarily.¹⁹⁹ Therefore, the exercise of this power should be made in accordance with valid reasons and not arbitrarily or improperly.²⁰⁰

It is also important to note that while the ACJA retains the constitutional prerogative of the Attorney-General, it operates within a system where the supremacy of the rule of law and accountability apply.²⁰¹ By this, the exercise of the *nolle prosequi* power will always be made in compliance with the constitutional mandate that consideration be given to the public interest and the interests of justice in order to prevent the abuse of the process of law.²⁰² These constitutional considerations remain applicable notwithstanding the procedural framework established under the ACJA.²⁰³

Even though the constitutional provisions form the basis of *nolle prosequi*, the ACJA contributes to this process by establishing procedural guidelines on the application of *nolle prosequi* in Nigeria.

¹⁹⁷ Yemi Akinseye-George, *The Administration of Criminal Justice Act 2015: Annotated* (Princeton Publishing 2015) 3–5.

¹⁹⁸ Administration of Criminal Justice Act 2015, ss 1, 396, 306.

¹⁹⁹ Yemi Akinseye-George, *The Administration of Criminal Justice Act 2015: Annotated* (Princeton Publishing 2015) 3–5.

²⁰⁰ *The State v S O Ilori* (1983) 1 SCNLR 94.

²⁰¹ Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 174(3), 211(3).

²⁰² *Ibid.*

²⁰³ Chukwudi Madumere, *The Administration of Criminal Justice Act 2015: Innovation or Revolution?* (Nigerian Institute of Advanced Legal Studies 2018) 24–26.

3.2 Institutional Framework

3.2.1. Ministry of Justice

The ministry of justice is the principal institution through which the Attorney General exercises prosecutorial powers. As the chief law officer of the Federation or a State,²⁰⁴ the Attorney General operates within the Ministry and is assisted by law officers such as Directors of Public Prosecutions (DPP's), state counsel, and other staff.²⁰⁵ In practice, most criminal prosecutions are handled by the Department of Public Prosecutions within the Ministry of Justice.²⁰⁶ These officers aid in reviewing case files, giving legal advice to the police, and determine whether a matter should proceed to trial or be discontinued.²⁰⁷ Where necessary, they may recommend the entry of *nolle prosequi* to the Attorney General.²⁰⁸ This shows that although the power is constitutionally vested in the Attorney General, its exercise is often based on institutional processes and legal advice within the Ministry.

Scholarly writings have noted that the wide discretionary powers of the Attorney General, exercised through the Ministry of Justice, have sometimes been criticised for lack of transparency and accountability,²⁰⁹ especially in politically sensitive cases.²¹⁰ This shows the need for internal checks within the Ministry to ensure that decisions to discontinue cases are made strictly in the interest of justice. Furthermore, the Ministry of Justice contributes to the development of prosecutorial standards and guidelines that influence decisions relating to the continuation or discontinuance of criminal proceedings. Through, legal opinions, and professional oversight of the department of public prosecutors, the Ministry seeks to promote

²⁰⁴ CFRN 1999 (as amended), s150(1).

²⁰⁵ ACJA 2015, s106.

²⁰⁶ Y Akinseye-George, *Criminal Litigation and Sentencing in Nigeria* (2nd edn, Princeton Publishing 2019) 45.

²⁰⁷ ACJA 2015, ss 376-377.

²⁰⁸ AE Abuza, 'The Power of the Attorney-General to Enter a Nolle Prosequi under the 1999 Constitution of Nigeria' (2021) (7)(2) *International Journal of Science and Qualitative Analysis* 42.

²⁰⁹ Y Akinseye-George, *Criminal Litigation and Sentencing in Nigeria* (2nd edn, Princeton Publishing 2019) 45

²¹⁰ Mohammed Abacha v Federal Republic of Nigeria [2014] 6 NWLR (Pt 1402) 43; State v Deepak Khilnani & Sushil Chandra (Lagos State High Court, Ikeja Judicial Division, Criminal Case No ID/1544C/2015, judgment delivered 2017).

consistency and fairness in the administration of criminal justice.²¹¹ In addition to its duties, the Ministry ensures that prosecutions are carried out diligently and in compliance with established legal procedures, this involves keeping an eye on the progress of court cases. The Ministry may recommend that the proceedings be discontinued in order to avoid a miscarriage of justice when flaws in the prosecution of a case are found, such as inadequate evidence, inconsistencies in the procedure, or witnesses' inability to support their testimony.²¹²

Further, the institutional structure of the Ministry of Justice enables the creation of a hierarchical system in which decisions are reviewed by prosecutors at various levels. Case files usually go through a series of reviews starting with investigating police, then going up to state counsels before finally getting to senior people like the Director of Public Prosecutions and the Attorney General.²¹³ The purpose of such a hierarchical decision making system is to ensure that decisions about prosecution or discontinuance are not arbitrary and are done in good faith.²¹⁴ The Ministry of Justice also plays a key role in coordinating interactions between law enforcement agencies and the prosecuting authorities. Through legal advice and directives issued to the police and other investigative bodies, the Ministry influences the direction of investigations from the earliest stages.²¹⁵ This coordination is essential because the quality the evidence acquired during an inquiry frequently affects whether a matter goes to trial or is considered for discontinuation through *nolle prosequi*.²¹⁶

However, despite these institutional mechanisms, concerns regarding the absence of a statutory requirement for detailed reasons to be given when *nolle prosequi* is entered has often made it

²¹¹ Y Akinseye-George, *Criminal Litigation and Sentencing in Nigeria* (2nd edn, Princeton Publishing 2019) 45

²¹² Administration of Criminal Justice Act 2015, ss 1, 109.

²¹³ Yemi Akinseye-George, *The Administration of Criminal Justice Act 2015: Annotated* (Princeton Publishing 2015) 27–30.

²¹⁴ Chukwudi Madumere, *The Administration of Criminal Justice Act 2015: Innovation or Revolution?* (Nigerian Institute of Advanced Legal Studies 2018) 33–35.

²¹⁵ Administration of Criminal Justice Act 2015, ss 105–110.

²¹⁶ Andrew Ashworth and Mike Redmayne, *The Criminal Process* (5th edn, Oxford University Press 2010) 45–48.

difficult to assess whether such decisions were made in the interest. As a result, there have been growing demands for reforms to ensure that prosecutorial powers are exercised in a more transparent, accountable, and fair manner within the Nigerian criminal justice system.

3.2.2. Judiciary

The judiciary plays a more limited but still important role in the operation of *nolle prosequi* in Nigeria.²¹⁷ Generally, once a *nolle prosequi* is entered by the Attorney General, the court has little or no power to question or refuse it.²¹⁸ The supreme court affirmed that this power is absolute and not subject to review by the court thereby limiting the role of the judiciary to terminating the proceedings when applied for.²¹⁹ which simply means that the court only gives effect to the discontinuance. Similarly in the UK, the entry of *nolle prosequi* is an executive prosecutorial function exercised by the Attorney General.²²⁰ The role of the judiciary in this instance, is confined to formally recording the discontinuance of proceedings.²²¹ Although the British system highlights the principle of prosecutorial independence and internal control over the judiciary, both jurisdictions share the common principle that the judiciary lacks control over prosecutorial discretion in entering *nolle prosequi* but merely gives it legal effect. Regardless, many scholars argue that the absence of judicial control creates room for abuse, since there is no requirement for the Attorney General to provide reasons for discontinuing a case.²²² This has led to calls for reform, including suggestions that court approval should be required before a *nolle prosequi* can take effect.²²³ Although the courts have a limited role with regards to the entry of *nolle prosequi*, the judiciary remains an important institution in preserving the broader administration of justice. Through judicial pronouncements, courts have clarified the scope and

²¹⁷ AO Obilade, *The Nigerian Legal System* (Spectrum Books 1989) 19.

²¹⁸ *The State v S O Ilori and Others* (1983)1 SCNLR 94.

²¹⁹ *Ibid.*

²²⁰ Prosecution of Offences Act, 1985 (UK).

²²¹ Andrew Ashworth, Liz Campbell and Mike Redmayne, *The Criminal Process* (5th edn, Oxford University Press 2019) 156.

²²² AO Obilade, *The Nigerian Legal System* (Spectrum Books 1989) 19.

²²³ Y Osinbajo, 'Discretionary Powers of the Attorney-General in Nigeria' (1981) 3 *Journal of African Law* 45.

constitutional basis of the Attorney General's prosecutorial powers, thereby contributing to the development of legal principles governing their exercise. In both Nigeria and the United Kingdom, judicial decisions have helped define the relationship between prosecutorial discretion and the rule of law, even though judges cannot ordinarily interfere with a validly entered *nolle prosequi*.²²⁴ As a consequence, it continues to influence the legal framework within which such powers operate and ensures that the criminal justice system functions according to constitutional and legal standards even though the judiciary does not exercise direct control over the discontinuance of criminal proceedings.

3.2.3. Police

It is provided under the constitution of Nigeria that there shall be a police force for Nigeria, which shall be known as the Nigeria Police Force, and no other police force shall be established for the Federation or any part.²²⁵ The Nigerian Police Force as the primary investigative authority in Nigeria, plays an important role in the criminal justice system.²²⁶ They are responsible for the detection of crime, arrest of suspects, and the gathering of evidence that supports criminal prosecution.²²⁷ Although the police may initiate criminal proceedings, usually in lower Courts through charges or complaints,²²⁸ their prosecutorial role remains subject to and subordinate to the overriding constitutional powers of the Attorney-General under sections 174 and 211 of the Constitution of the Federal Republic of Nigeria,²²⁹ as well as section 106 of the ACJA. This means that any criminal case commenced by the police may be taken over or discontinued through the exercise of *nolle prosequi* by the Attorney-General.²³⁰ This reflects the central nature of the Attorney General in criminal prosecution as

²²⁴ The State v S O Ilori and Others (1983)1 SCNLR 94.

²²⁵ CFRN 1999 (as amended), s214.

²²⁶ Ibid.

²²⁷ CE Okonkwo and NA Naish, *Criminal Law in Nigeria* (2nd edn, Spectrum Books 1980); Police Act 2020, s 4

²²⁸ Police Act 2020, s 66.

²²⁹ Ibid.

²³⁰ The State v S O Ilori and Others (1983)1 SCNLR 94.

the police functions primarily as an initiating and subordinate institution in criminal prosecution in Nigeria. It is also important to note that extended pre-trial detention of suspects may result from delays in police investigations and the transfer of case files to the Ministry of Justice. In these situations, the Attorney General may use the power of discontinuance after the case file has been reviewed if further prosecution is no longer warranted due to missing evidence, unavailable witnesses, or undue delay.²³¹ This demonstrates how systemic inefficiencies in investigative procedures may have an indirect impact on the results of prosecutions. Because the quality of the evidence gathered during an investigation frequently determines whether a case goes to trial or is considered for discontinuance through *nolle prosequi*, this coordination is essential.

Furthermore, the relationship between the Attorney General and the police raises significant questions about coordination and accountability in the criminal justice system. Although the police have the constitutional authority to identify and investigate crimes, their actions must ultimately comply with the prosecutorial standards established by the Attorney General's office.²³² There is a greater chance of either wrongful prosecution or needless case discontinuance through *nolle prosequi* when there is inadequate coordination between both institutions.²³³

The quality of police investigations would often influence prosecutorial decisions, including whether a case should proceed to trial or be discontinued.²³⁴ Where investigations reveal insufficient evidence, procedural irregularities, or circumstances indicating that going ahead with prosecution would not serve the interests of justice, the Attorney General may exercise the power of *nolle prosequi* upon reviewing the case. Furthermore, the need for closer

²³¹ Yemi Akinseye-George, *The Administration of Criminal Justice Act 2015: Annotated* (Princeton Publishing 2015) 36–38.

²³² Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 174, 211.

²³³ Niki Tobi, *Nigerian Criminal Law and Procedure* (Malthouse Press 1999) 118–120.

²³⁴ CFRN 1999 (as amended), s 214.

cooperation between investigative agencies and prosecutorial authorities has increased due to the growing complexity of contemporary criminal investigations, particularly in financial crimes, cybercrime, and organised offences.²³⁵ Although the police are responsible for initiating criminal proceedings through investigation and arrest, their actions do not ultimately determine the fate of a criminal case. Instead, prosecutorial discretion exercised by the Attorney General is a supervisory mechanism that ensures criminal prosecutions are conducted according to legal standards, fairness, and the public interest.

3.2.4 Independent Corrupt Practices and Other Related Offences Commission (ICPC)

The Independent Corrupt Practices and Other Related Offences Commission (ICPC) is a statutory body established²³⁶ to investigate and prosecute corruption and related offences in Nigeria.²³⁷ It is empowered to institute criminal proceedings under its enabling Act in both State and Federal courts.²³⁸ In practice, the Commission operates as part of Nigeria's anti-corruption architecture alongside other prosecuting agencies.²³⁹ However, the prosecutorial authority of the ICPC is constitutionally subordinate to that of the Attorney General²⁴⁰ because the constitution gives the Attorney General the unfettered power to institute, take over, or discontinue any criminal proceedings, including those initiated by the ICPC.²⁴¹ This includes the power to enter *nolle prosequi*, which automatically terminates ongoing proceedings regardless of the stage of trial.²⁴² The Supreme Court has confirmed that this discretion is broad and largely unreviewable, reinforcing the Attorney-General's dominant constitutional position

²³⁵ Andrew Ashworth and Mike Redmayne, *The Criminal Process* (5th edn, Oxford University Press 2010) 52–55.

²³⁶ Independent Corrupt Practices and Other Related Offences Commission Act 2000, s1.

²³⁷ ICPC Act 2000, s 3.

²³⁸ ICPC Act 2000, s 6.

²³⁹ Idayat Hassan, 'The EFCC and ICPC in Nigeria: Overlapping Mandates and Duplication of Effort in the Fight against Corruption' (SOAS Anti-Corruption Evidence Working Paper 038, November 2021)

<<https://ace.soas.ac.uk/publication/the-efcc-and-icpc-in-nigeria-overlapping-mandates-and-duplication-of-effort-in-the-fight-against-corruption/>> accessed 19 May 2026.

²⁴⁰ CFRN 1999 (as amended), s174.

²⁴¹ Ibid.

²⁴² CFRN 1999 (as amended), s174(3).

in criminal prosecution.²⁴³ Consequently, even corruption cases actively prosecuted by the ICPC may be discontinued by the Attorney-General where deemed appropriate. Scholars argue that this arrangement reflects constitutional centralisation of prosecutorial power but raises concerns where discontinuance appears to undermine anti-corruption efforts.²⁴⁴

Critics further contend that the lack of statutory safeguards requiring justification for discontinuance creates room for abuse or political interference.²⁴⁵ Regardless of the absolute nature of the Attorney General's prosecutorial powers, the ICPC remains an important institution in the fight against corruption in Nigeria. The Commission is saddled with investigative and prosecutorial expertise particularly directed towards the detection and prosecution of offences relating to corruption within the country. Some of its activities include, public enlightenment programmes, and prosecution of offenders.

The ICPC to a large extent, contributes to promoting transparency, accountability, and good governance. However, the possibility that criminal proceedings initiated by the Commission may be discontinued through the exercise of *nolle prosequi* has generated considerable debate among legal scholars and advocates against corruption. It has been argued that excessive interference with the Commission's prosecutions may weaken public confidence in the fight against corruption and delay existing regulatory precautions. As a result, there is need to balance the constitutional powers of the Attorney General with the operational independence and effectiveness of specialised anti-corruption agencies such as the ICPC.

3.2.5 Economic and Financial Crimes Commission (EFCC)

The Economic and Financial Crimes Commission (EFCC) is a key enforcement agency responsible for investigating and prosecuting economic and financial crimes such as fraud,

²⁴³ *State v Ilori* [1983] 1 SCNLR 94.

²⁴⁴ AO Obilade, *The Nigerian Legal System* (Sweet & Maxwell 1979) 316.

²⁴⁵ Y Osinbajo, 'Prosecutorial Discretion in Nigeria' (1981) 3 *Journal of African Law* 45.

money laundering, and financial abuse of office.²⁴⁶ The EFCC derives its prosecutorial powers from the EFCC Act 2004²⁴⁷ and is empowered to institute criminal proceedings in appropriate cases, in all courts of competent jurisdiction.²⁴⁸ Despite its wide enforcement mandate, the powers of the EFCC are exercised subject to the control of the Attorney General, who retains constitutional authority over all criminal prosecutions.²⁴⁹ Accordingly, the Attorney General may take over or discontinue EFCC prosecutions at any stage of proceedings.²⁵⁰ The judiciary has affirmed that prosecutorial discretion under section 174 is not subject to judicial interference, thereby limiting courts to merely giving effect to such decisions.²⁵¹ This reinforces the hierarchical structure of Nigeria's criminal justice system, where the Attorney-General occupies the apex prosecutorial position.²⁵² However, legal scholars have criticised this arrangement, particularly where high-profile EFCC cases are discontinued, arguing that it weakens institutional independence and public confidence in anti-corruption enforcement.²⁵³ Despite the supervisory powers of the Attorney General, the EFCC remains one of the most prominent institutions in the fight against economic and financial crimes in Nigeria.²⁵⁴ Through specialised investigative units, intelligence mechanisms, and prosecution of financial offences, the Commission has played an important role in promoting accountability and recovering proceeds of crime.²⁵⁵ The activities of the EFCC have greatly contributed to strengthening the enforcement of anti-corruption laws and enhancing public awareness of financial crimes.

²⁴⁶ Economic and Financial Crimes Commission Act 2004, s 6.

²⁴⁷ Economic and Financial Crimes Commission Act, Cap E1, LFN 2004

²⁴⁸ EFCC Act 2004, s13.

²⁴⁹ CFRN 1999 (as amended), s174.

²⁵⁰ Ibid.

²⁵¹ Attorney-General of the Federation v Abubakar (2007) 10 NWLR (Pt 1041) 1 (SC).

²⁵² Andrew Ashworth and Mike Redmayne, *The Criminal Process* (5th edn, Oxford University Press 2010) 160.

²⁵³ E Azinge, *The Attorney-General and the Administration of Criminal Justice in Nigeria* (Nigerian Institute of Advanced Legal Studies Press 2012) 88.

²⁵⁴ Idris Ahmed Jamo, 'Economic and Financial Crimes Commission (EFCC) and Anti-Corruption Crusade in Nigeria: Success and Challenges' (2021) 4(2) *Gusau International Journal of Management and Social Sciences* 13.

²⁵⁵ Economic and Financial Crimes Commission (EFCC), 'Overview of EFCC Functions and Mandate' (EFCC Official Website) <<https://www.efcc.gov.ng>> accessed 4 June 2026.

However, the constitutional power of the Attorney General to discontinue criminal proceedings through *nolle prosequi* has caused a lot of debate, especially in cases involving political leaders or matters of public interest. Many writers argue that although prosecutors need some level of discretion to do their work effectively, there should be more transparency and accountability in how this power is used. This is to ensure that discontinuance of EFCC prosecutions does not reduce public trust in the rule of law and the fight against corruption in Nigeria.

CHAPTER FOUR

NOLLE PROSEQUI IN THE UNITED KINGDOM

4.1. Prosecutorial Discretion

Prosecutorial discretion in the United Kingdom continues to be an absolute necessity for the administration of criminal justice.²⁵⁶ No criminal justice system can operate effectively, without some level of prosecutorial discretion in assessing individual cases.²⁵⁷ Prosecutors must keep weighing the evidence, public interest, proportionality, interest of the victim, and concerns of justice before deciding whether to prosecute or withdraw the case.²⁵⁸ The essential difference in the United Kingdom is not that discretion exists but the manner in which this discretion is organized, controlled, reviewed, and justified within an institutional framework.²⁵⁹

Prosecutions in England and Wales are handled mainly by the Crown Prosecution Service (CPS), which operates under a structured system of laws and policies.²⁶⁰ The CPS is guided by the Code for Crown Prosecutors which provides that prosecutions can take place only if a case passes the two parts of the Full Code Test, namely the evidential stage and the public interest stage.²⁶¹ For a prosecution to be carried out, it must meet the standard set by the evidential stage,²⁶² which entails that there must be sufficient evidence to secure a realistic chance of a conviction, while the public interest part, which holds that prosecution must be necessary and proportional.²⁶³ It is also worth noting that in line with its public guidance, the CPS recommends that prosecutors consider both the positive and negative sides of prosecution in equal measure and that prosecution should proceed unless the factors against prosecution

²⁵⁶ Crown Prosecution Service, *The Code for Crown Prosecutors* (CPS 2018); <https://www.cps.gov.uk/publication/code-crown-prosecutors> accessed 2 May 2026.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ Ibid.

²⁶⁰ Prosecution of Offences Act 1985.

²⁶¹ Crown Prosecution Service, *The Code for Crown Prosecutors* (CPS 2018) para 4.1; <https://www.cps.gov.uk/publication/code-crown-prosecutors> accessed 2 May 2026.

²⁶² Ibid para 4.6.

²⁶³ Ibid para 4.9.

clearly outweigh those in favour.²⁶⁴ The exercise of prosecutorial discretion also includes the ability to discontinue proceedings through mechanisms similar to those involved in *nolle prosequi*, but the formal use of *nolle prosequi* in the UK has become very uncommon and is obsolete within criminal law practice.²⁶⁵ Instead, discontinuance usually takes place through a process regulated by statutory provisions, particularly, the Prosecution of Offences Act 1985 which empowers the CPS to bring an end to proceedings where there is no justification for their continuation.²⁶⁶ This reflects a shift from the use of prerogative powers to a more formalized process for making prosecutorial decisions.²⁶⁷ The restrained use of discretionary power not only maintains the independence of prosecutors but ensures that discretion is used in compliance with the law.²⁶⁸

Furthermore, the exercise of discretion by prosecutors, is an essential mechanism for effectively managing case volumes and setting priorities in criminal justice systems.²⁶⁹ It helps in avoiding trivial cases and trials by screening out frivolous or poor cases.²⁷⁰ It also protects defendants from any arbitrary prosecution.²⁷¹ In conclusion, prosecutorial discretion in the United Kingdom represents a fine-tuned process that creates a balance between independence and accountability, codified standards and institutional framework. The system has a highly

²⁶⁴ Crown Prosecution Service, *The Code for Crown Prosecutors* (CPS, 2018) paras 4.9–4.14. <<https://www.cps.gov.uk/publication/code-crown-prosecutors>> accessed 2 May 2026.

²⁶⁵ Crown Prosecution Service, ‘Termination of Proceedings (Including Discontinuance)’ (Legal Guidance, 15 October 2024) <<https://www.cps.gov.uk/prosecution-guidance/termination-proceedings-including-discontinuance>> accessed 21 May 2026.

²⁶⁶ Prosecution of Offences Act 1985, s 23.

²⁶⁷ David Ormerod and Karl Laird, *Smith, Hogan, and Ormerod’s Criminal Law* (15th edn, Oxford University Press 2018) 6.

²⁶⁸ Andrew Ashworth, Liz Campbell and Mike Redmayne, *The Criminal Process* (5th edn, Oxford University Press 2019) 162.

²⁶⁹ John Sprack, *A Practical Approach to Criminal Procedure* (14th edn, Oxford University Press 2015) 242.

²⁷⁰ *Ibid.*

²⁷¹ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) art 6; <https://www.echr.coe.int/documents/d/echr/convention_ENG> accessed 21 May 2026.

systematic approach to its operation which makes it quite different from other systems that rely heavily on discretion.

4.2. Role of the Crown Prosecution Service (CPS)

The Crown Prosecution Service (CPS) is the principal public prosecuting authority in England and Wales, being responsible for the prosecution of criminal cases conducted by the police and other agencies according to the framework provided by statute.²⁷² The CPS was created by the Prosecution of Offences Act 1985, it introduced a unified and independent prosecuting body with the aim of ensuring consistency and justice in criminal proceedings. Prior to the enactment of the Prosecution of Offences Act 1985, the police were in charge of both investigation and prosecution, which caused dissatisfaction due to compromising objectivity and lack of impartiality.²⁷³ This way, the establishment of the CPS therefore marked a significant institutional reform for ensuring impartiality in the process of conducting criminal justice.²⁷⁴

The CPS operates under the authority of the Director of Public Prosecutions (DPP) who exercises prosecutorial powers independently, under the supervision of the Attorney General.²⁷⁵

The Attorney General is accountable to Parliament for the general operation of the CPS and retains constitutional responsibility for it, despite not being personally involved in daily prosecutorial decisions.²⁷⁶ This structure enables the CPS to operate without excessive political intervention while being subject to democratic inspection, which strikes a balance between independence and accountability.²⁷⁷ The CPS carries out a number of crucial tasks, including reviewing evidence submitted by the police, deciding whether to file charges, preparing cases

²⁷² Prosecution of Offences Act 1985, s 1.

²⁷³ Royal Commission on Criminal Procedure, *Report* (Cmnd 8092, 1981);
https://www.academia.edu/88720177/The_Royal_Commission_on_criminal_procedure_First_principles >

²⁷⁴ Ibid

²⁷⁵ Prosecution of Offences Act 1985, s 2.

²⁷⁶ Ibid.

²⁷⁷ Andrew Ashworth, *The Criminal Process* (4th edn, Oxford University Press 2010) 188.

for trial, and presenting prosecutions.²⁷⁸ In undertaking these functions, the CPS applies the Code for Crown Prosecutors, which provides the legal framework guiding prosecutorial decisions.²⁷⁹ The Code establishes the Full Code Test, which requires prosecutors to be satisfied that there is sufficient evidence to provide a realistic prospect of conviction before proceeding with a case.²⁸⁰ Prosecutors must take into account the public interest stage in addition to the evidential stage, which entails determining whether prosecution is warranted in light of the circumstances of the case.²⁸¹ In *R v. Director of Public Prosecutions, ex parte Kebilene*, the House of Lords acknowledged the independence of prosecutorial discretion within the confines of legal standards, confirming the significance of these factors.²⁸² The CPS is in charge of making sure that prosecutors fulfil their disclosure responsibilities, which include disclosing material evidence that could strengthen the defence or weaken the prosecution's case.²⁸³ This duty is grounded in principles of fairness and was highlighted in *R v. Ward*, where it was held that failure in disclosure undermines the integrity of the trial process.²⁸⁴ In addition to prosecutorial functions, the CPS provides legal advice to the police during investigations, particularly in serious or complex cases, thereby improving the standard of the evidence collected in such cases.²⁸⁵

The CPS also determines appropriate charges in serious offences, ensuring that charges reflect the gravity and nature of the alleged conduct.²⁸⁶ Within the context of terminating criminal proceedings, the CPS exercises the power to discontinue cases under the Prosecution of

²⁷⁸ Crown Prosecution Service, *What the CPS does*, <<https://www.cps.gov.uk/about-cps/what-we-do>> accessed on 5 May 2026.

²⁷⁹ *Ibid.*

²⁸⁰ Crown Prosecution Service, *The Code for Crown Prosecutors* (CPS 2018) para 4.6; <<https://www.cps.gov.uk/publication/code-crown-prosecutors>>

²⁸¹ *Ibid* para 4.12.

²⁸² *R v DPP, ex parte Kebilene* [2000] 2 AC 326 (HL).

²⁸³ Criminal Procedure and Investigations Act 1996.

²⁸⁴ *R v Ward* [1993] 1 WLR 619 (CA).

²⁸⁵ Crown Prosecution Service, *What the CPS does*, <<https://www.cps.gov.uk/about-cps/what-we-do>> accessed on 5 May 2026.

²⁸⁶ Crown Prosecution Service, *The Code for Crown Prosecutors* (CPS 2018) para 2.5.

Offences Act 1985.²⁸⁷ This power gives the CPS the mandate to discontinue proceedings where the evidential or public interest tests are no longer satisfied, thereby preventing unjust or unnecessary prosecutions.²⁸⁸ Unlike in common law where the CPS has the power to issue *nolle prosequi*, this power is reserved for the Attorney General, in England and Wales, the power is only conferred on the Attorney General.²⁸⁹ The use of *nolle prosequi* in England and Wales is rare and is generally confined to exceptional circumstances, as noted in *R v Comptroller-General of Patents, ex parte Tomlinson*.²⁹⁰ Discontinuance and withdrawing of charges are the main methods employed in practice by the CPS for terminating proceedings.²⁹¹ In order to make sure that decisions are still justifiable in light of changing circumstances and evidence, the CPS has an ongoing review obligation to evaluate cases.²⁹² This ongoing review obligation ensures that prosecutions do not proceed where they lack merit, thereby safeguarding the rights of defendants.²⁹³ The CPS also has the function of communicating their decision and giving victims the reasons for such a decision.²⁹⁴ The implementation of the Victims' Right to Review scheme enables victims to review the prosecutor's decision against prosecution or discontinuance of proceedings.²⁹⁵

The CPS is also supervised by the Crown Prosecution Service Inspectorate, whereby performance is evaluated and best practices are promoted within the organisation.²⁹⁶ Moreover, judicial review ensures accountability, since a decision by the prosecutor can be subject to

²⁸⁷ Prosecution of Offences Act 1985, s 23.

²⁸⁸ Crown Prosecution Service, *The Code for Crown Prosecutors* (CPS, 2018) paras 4.6–4.14.

²⁸⁹ John Edwards, *The Law Officers of the Crown* (Sweet & Maxwell 1964).

²⁹⁰ *R v Comptroller-General of Patents, ex parte Tomlinson* [1899] 1 QB 909.

²⁹¹ Crown Prosecution Service, *Termination of Proceedings* (CPS Prosecution Guidance); <<https://www.cps.gov.uk/prosecution-guidance/termination-proceedings-including-discontinuance>> accessed on 4 May 2026.

²⁹² Crown Prosecution Service, *The Code for Crown Prosecutors* (CPS 2018) para 3.6.

²⁹³ *Ibid.*

²⁹⁴ Crown Prosecution Service, *Victims' Right to Review Scheme* (CPS, 2016) <<https://www.cps.gov.uk/legal-guidance/victims-right-review-scheme>> accessed 4 May 2026.

²⁹⁵ *Ibid.*

²⁹⁶ Crown Prosecution Service Inspectorate Act 2000, s 2.

judicial review, where it is challenged on the grounds of either lawfulness or rationality.²⁹⁷ This was demonstrated in *R (Corner House Research) v Director of the Serious Fraud Office*,²⁹⁸ where the court examined the limits of prosecutorial discretion in light of public interest considerations.²⁹⁹ The CPS therefore functions as a gatekeeper of the criminal justice system, ensuring that prosecutions are conducted fairly, consistently, and in accordance with legal principles. Its role in reviewing cases, applying legal standards, and discontinuing proceedings where appropriate highlights its importance in maintaining the integrity of the criminal justice process.

4.3. Guidelines for Discontinuance of Prosecution

The discontinuance of criminal proceedings in England and Wales is governed by a structured statutory and administrative framework designed to ensure that prosecutorial decisions are principled, transparent, and consistent.³⁰⁰ The primary statutory basis for discontinuance is the Prosecution of Offences Act 1985, which enables the Crown Prosecution Service (CPS) to discontinue proceedings at any stage before the trial is concluded.³⁰¹ This provision allows prosecutors to terminate cases without the need for judicial approval, this reflects the acknowledgement that prosecutorial authorities are in the better position to determine the feasibility of proceedings.³⁰²

However, this discretion is not absolute, as it must be exercised in accordance with the Code for Crown Prosecutors, which lays out guidelines for such decisions.³⁰³ The Code for Crown Prosecutors provides for the Full Code Test, which comprises of the evidential stage and the public interest stage, both of which must be satisfied before a prosecution is commenced or

²⁹⁷ *R v Director of Public Prosecutions, ex parte Manning* [2001] QB 330.

²⁹⁸ [2008] UKHL 60.

²⁹⁹ *R (Corner House Research) v Director of the Serious Fraud Office* [2008] UKHL 60.

³⁰⁰ Prosecution of Offences Act 1985.

³⁰¹ *Ibid* s 23.

³⁰² *Ibid*.

³⁰³ Crown Prosecution Service, *The Code for Crown Prosecutors* (CPS 2018).

continued.³⁰⁴ In a situation where the evidential stage is not reached, the CPS is under the obligation to discontinue the proceedings.³⁰⁵ This obligation reflects the fundamental principle that individuals should not be subjected to criminal trials when there is no reasonable prospect of conviction.³⁰⁶ Also, even where there is sufficient evidence, a trial may be discontinued if it no longer satisfies the public interest test.³⁰⁷ Public interest test includes factors such as the seriousness of the offence, the culpability of the suspect, the circumstances of the victim, and the proportionality of prosecution.³⁰⁸

There also exists a Threshold Test which is an exception to the Full Code Test, allowing a suspect to be charged only where an immediate decision is necessary but the full evidential standard has not yet been met.³⁰⁹ It applies in serious cases where urgency is the justification of early charging, particularly where there are substantial grounds to oppose bail.³¹⁰ However, it is strictly controlled and must not be used prematurely. All five required conditions must be satisfied before it can be applied.³¹¹ If any one condition fails, the test cannot be used and no charge may be brought.³¹² These conditions include; reasonable grounds to suspect the person has committed the offence based on credible, reliable evidence; a realistic prospect that further evidence will be obtained to meet the Full Code Test; that the seriousness of the case justifies an immediate charging decision; substantial, properly assessed grounds to refuse bail due to risk; and that charging is in the public interest at that stage.³¹³

³⁰⁴ Crown Prosecution Service, *The Code for Crown Prosecutors* (CPS 2018) paras 4.6–4.14.

³⁰⁵ *Ibid.*

³⁰⁶ Andrew Ashworth, *The Criminal Process* (4th edn, Oxford University Press 2010) 191.

³⁰⁷ Crown Prosecution Service, *The Code for Crown Prosecutors* (CPS 2018) para 4.9.

³⁰⁸ *Ibid.*, para 4.14.

³⁰⁹ *Ibid.*, para 5.1.

³¹⁰ *Ibid.*

³¹¹ *Ibid.*, para 5.2.

³¹² *Ibid.*

³¹³ *Ibid.*, para 5.3 –5.10.

The CPS is also under a duty to review cases, meaning that decisions are revisited as new evidence emerges or circumstances change.³¹⁴ This continuous review process ensures that prosecutions remain justified throughout the criminal process and prevents the continuation of weak or inappropriate cases.³¹⁵ As part of the discontinuance procedure, the CPS is required to serve a formal notice of discontinuance on the court and the defendant, stating specifically the charges to which the decision relates.³¹⁶ This requirement promotes transparency and ensures that all parties are formally informed of the termination of proceedings.³¹⁷ In most instances, the CPS must also provide reasons for discontinuance, particularly where the decision may be subject to scrutiny or challenge.³¹⁸

Discontinuance does not result to an acquittal and therefore does not give rise to the protection against double jeopardy.³¹⁹ Therefore, in order to protect the interest of justice, proceedings may be reinstituted if new and compelling evidence becomes available.³²⁰ In circumstances where a defendant has already entered a plea, the prosecution may be required to seek the court's permission to withdraw charges rather than simply issuing a notice of discontinuance.³²¹ This distinction introduces an element of judicial oversight in situations where the termination of proceedings has progressed to a more advanced stage.³²² The rights and interests of the victims are taken into account by the CPS when making decisions to discontinue proceedings.³²³

³¹⁴ Ibid, para 3.6.

³¹⁵ Crown Prosecution Service, *The Code for Crown Prosecutors* (CPS 2018) para 3.6.

³¹⁶ Prosecution of Offences Act 1985, s 23(5).

³¹⁷ Ibid.

³¹⁸ Ibid.

³¹⁹ Prosecution of Offences Act 1985, s 23(9).

³²⁰ Ibid.

³²¹ Criminal Procedure Rules 2020, SI 2020/759, r 7.3.

³²² John Sprack, *A Practical Approach to Criminal Procedure* (16th edn, Oxford University Press 2021) ch 7.

³²³ Ministry of Justice, *Code of Practice for Victims of Crime* (updated 2020); Crown Prosecution Service, *The Code for Crown Prosecutors* (CPS 2018) para 4.9.

Victims have the right to request a review of decisions to discontinue cases under the Victims' Right to Review scheme.³²⁴ This process guarantees that prosecutorial decisions are subject to internal revision where necessary thereby enhancing accountability. Judicial authorities have acknowledged the importance of fairness and consistency in discontinuance decisions in cases such as *R v DPP, ex parte Manning*, where the court emphasised that prosecutorial discretion must be exercised in accordance with established legal principles.³²⁵

Furthermore, the CPS guidance on termination of proceedings provides detailed instructions to prosecutors on how and when to apply discontinuance.³²⁶ These guidelines reaffirm that decisions must be supported by facts, reasonable, and in line with the objectives of the criminal justice system. Overall, the framework for discontinuance in the United Kingdom, shows a structured and principled approach that strikes a balance between prosecutorial discretion and measures designed to protect defendants and maintain public confidence in the justice system.

4.4. Judicial Oversight and Accountability

Judicial oversight and accountability are essential features of criminal justice system in the United Kingdom, which ensure that there is lawful exercise of prosecutorial discretion.³²⁷ The decisions of the CPS are subject to numerous forms of legal and institutional control, even though it possesses the broad authority to initiate and discontinue trials.³²⁸ One crucial supervisory mechanism is seen when prosecutorial decisions need judicial approval, particularly in cases involving withdrawal of charges.³²⁹ The court, in such instances, must be convinced that the withdrawal is appropriate and does not undermine the interest of justice.³³⁰

³²⁴ Crown Prosecution Service, *Victims' Right to Review Scheme* (2013).

³²⁵ *R v Director of Public Prosecutions, ex p Manning* [2001] QB 330 (CA).

³²⁶ Crown Prosecution Service, *Termination of Proceedings (Including Discontinuance)* (2019, updated 2024) <<https://www.cps.gov.uk/prosecution-guidance/termination-proceedings-including-discontinuance#c2>> accessed on 5 May 2026.

³²⁷ Ashworth and Redmayne, (n222).

³²⁸ Ibid.

³²⁹ Criminal Procedure Rules 2020.

³³⁰ Ibid.

This provision ensures that the integrity of the legal system is maintained.³³¹ Another important mechanism for monitoring prosecutorial discretion is judicial review.³³² Courts can assess the legality, rationality, and procedural fairness of CPS decisions through judicial review.³³³ In *R v DPP, ex parte Kebilene*, the house of lords affirmed that prosecutorial decisions are subject to review on conventional public law, defining the extent of judicial review in this context.³³⁴ Similarly, the court also highlighted that although prosecutorial discretion is broad, it must be exercised in accordance with legal principles and is subject to scrutiny.³³⁵ Judicial oversight is largely strengthened by the courts' inherent jurisdiction to prevent abuse of process.³³⁶ When prosecutorial actions might make a trial unfair or damage the administration of justice, this jurisdiction permits courts to stay proceedings.³³⁷ In *R v. Horseferry Road Magistrates' Court, ex parte Bennett*, the House of Lords made it clear that courts have the authority to step in when executive measures undermine justice.³³⁸ Also, the Attorney General, who oversees the CPS, is subject to legislative review, which ensures accountability.³³⁹ The Attorney General is answerable to Parliament for the performance of the CPS, thereby ensuring democratic accountability.³⁴⁰ His Majesty's Crown Prosecution Service Inspectorate, which independently inspects the CPS, provides further institutional control.³⁴¹ These inspections evaluate performance, identify deficiencies, and promote improvements in prosecutorial practice.

The Victims' Right to Review scheme also contributes towards achieving accountability by enabling victims to challenge decisions not to prosecute or to discontinue proceedings.³⁴² This

³³¹ Criminal Procedure Rules 2020.

³³² *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 (HL).

³³³ *Ibid.*

³³⁴ *R v DPP, ex p Kebilene* [2000] 2 AC 326 (HL).

³³⁵ *R v DPP, ex p Manning* [2001] QB 330 (CA).

³³⁶ *Connelly v DPP* [1964] AC 1254 (HL).

³³⁷ *Ibid.*

³³⁸ *R v Horseferry Road Magistrates' Court, ex p Bennett* [1994] 1 AC 42 (HL).

³³⁹ *Prosecution of Offences Act 1985*, s 3.

³⁴⁰ *Ibid.*

³⁴¹ *Crown Prosecution Service Inspectorate Act 2000*.

³⁴² *Crown Prosecution Service, Victims' Right to Review Scheme* (Prosecution Guidance, 2020) <<https://www.cps.gov.uk/prosecution-guidance/victims-right-review-scheme>> accessed 23 May 2026.

mechanism ensures that prosecutorial decisions not only get scrutinized internally, but is also responsive to the concerns of victims. The publication of the policies and guidelines of the CPS ensures a degree of transparency in the decision-making process. These processes work together to create a system that balances strong accountability structures with prosecutorial independence. Another important accountability mechanism within the United Kingdom is the requirement that prosecutorial decisions are based on objective evidential standards rather than personal or political considerations. Prosecutors are required to apply the evidential and public interest tests consistently in every case, irrespective of the status of the suspect or the nature of the offence. This promotes equality before the law and minimises the risk of selective prosecution or arbitrary discontinuance of criminal proceedings.³⁴³

In addition, the comprehensive operational guidelines of the crown prosecution service, on specific categories of offences serve to strengthen prosecutorial accountability. These include guidelines regarding sexual offences, fraud, homicide, terrorism, domestic abuse, and cybercrime.³⁴⁴ Such specialised guidance ensures that prosecutors have a consistent approach to complex criminal matters and reduces the possibility of inconsistent or arbitrary decision-making. The availability of publicly available guidelines improves understanding by the public of how prosecutorial discretion is used in various categories of cases.

The professional capacity of prosecutors also plays an important role in ensuring the accountability of the prosecution process in the UK. The law stipulates that the prosecutors are supposed to engage in continuous professional development, and they are kept informed about new legislative acts and court decisions related to criminal procedure.³⁴⁵ Continuous training

³⁴³ Crown Prosecution Service, *The Code for Crown Prosecutors* (2025) paras 4.6–4.14.

³⁴⁴ Crown Prosecution Service, *Prosecution Guidance* <<https://www.cps.gov.uk/prosecution-guidance>> accessed 13 June 2026.

³⁴⁵ Andrew Ashworth and Mike Redmayne, *The Criminal Process* (5th edn, Oxford University Press 2010) 182–188.

improves the quality of prosecutorial decision making by making sure that discretion is used in accordance with legal norms and standards.

One more significant characteristic is the consideration of the ethical aspects of prosecutorial decision-making. Prosecutors are required to make decisions independently, objectively and fairly, not influenced by personal interests, politics or other external factors.³⁴⁶ These ethical principles highlight the constitutional nature of the prosecution as an institution meant to work for justice, not just as advocates trying to secure convictions. Therefore, the decision to commence or discontinue criminal proceedings is supposed to be taken from a position of higher interest of justice.

The combined operation of these mechanisms of accountability, demonstrates that prosecutorial discretion in the United Kingdom is exercised within a comprehensive institutional framework characterised by legal regulation, professional oversight and administrative supervision. Instead of diminishing prosecutorial independence, these safeguards enhance the legitimacy of prosecutorial decisions by ensuring that discretion is exercised consistently, objectively and in accordance with the rule of law. This integrated framework provides a useful model for jurisdictions such as Nigeria, where such procedural safeguards could further strengthen public confidence in the exercise of prosecutorial powers, particularly the power to discontinue criminal proceedings through *nolle prosequi*.³⁴⁷

4.5. Lessons for Nigeria.

There are significant lessons to be learnt from the method of approach to prosecutorial discretion and termination of criminal proceedings in the United Kingdom, beginning from the organised operation of the Crown Prosecution Service (CPS).

³⁴⁶ Crown Prosecution Service, *The Code for Crown Prosecutors* (2025) paras 2.1–2.8.

³⁴⁷ John Sprack, *A Practical Approach to Criminal Procedure* (15th edn, Oxford University Press 2022) 74–79.

In order to improve impartiality in the administration of criminal justice, the Prosecution of Offences Act of 1985 established the CPS as an independent prosecuting institution that divided the roles of investigation and prosecution.³⁴⁸ Another lesson for Nigeria is the importance of codified prosecutorial guidelines, particularly the Code for Crown Prosecutors, which structures prosecutorial decisions around the Full Code Test, requiring that a prosecution must only proceed where there is sufficient evidence to establish a possibility of conviction and where it is also in the interest of the public to prosecute.³⁴⁹

A demonstration of structured flexibility is the Threshold Test, which permits charging choices in urgent situations where the Full Code Test is not yet met but only under stringent circumstances, because all requirements must be met before it may be used, this guarantees that prosecutorial discretion is not used arbitrarily.³⁵⁰

The function of court supervision in controlling prosecutorial discretion is another crucial lesson.³⁵¹ In order to verify adherence to the principles of legality, logic, and procedural fairness, courts in the United Kingdom may use judicial review to examine prosecutorial decisions.³⁵² Courts may step in when choices are illegal or unreasonable, regardless of their reluctance to interfere with prosecutorial independence.³⁵³ In order to maintain the integrity of the legal system, courts also have the inherent authority to stay proceedings in cases when prosecutorial actions amount to an abuse of process.³⁵⁴

Furthermore, in the UK, prosecutorial decisions may be examined in light of more general constitutional considerations, guaranteeing that discretion is used within legal bounds and not in a way that compromises justice. The Attorney General oversees the CPS, guaranteeing

³⁴⁸ Prosecution of Offences Act 1985.

³⁴⁹ Crown Prosecution Service, *The Code for Crown Prosecutors* (CPS 2018) paras 4.6.–4.14.

³⁵⁰ Crown Prosecution Service, *The Code for Crown Prosecutors* (CPS 2018) paras 5.1.–5.10.

³⁵¹ *R v Director of Public Prosecutions, ex p Manning* [2001] QB 330 (CA).

³⁵² *Connelly v Director of Public Prosecutions* [1964] AC 1254 (HL).

³⁵³ *Ibid.*

³⁵⁴ *Ibid.*

ministerial responsibility to Parliament while preserving operational authority in specific instances.³⁵⁵ In prosecutorial decision-making, this framework promotes a balance between independence and accountability.

The institutional culture of giving detailed reasons for important prosecutorial decisions is another important lesson that can be learned from the United Kingdom. The Crown Prosecution Service has policies requiring prosecutors to document the reasons for commencing, reviewing, or discontinuing criminal proceedings, even though not all prosecutorial decisions are accompanied by a public explanation. Public trust in the integrity of prosecutorial decisions is strengthened by this internal documentation, which also encourages consistency in decision making and makes supervisory review within the CPS easier. By ensuring that decisions to end criminal proceedings are appropriately documented and subject to administrative review when needed, a similar procedure in Nigeria would improve transparency in the application of *nolle prosequi*.³⁵⁶ The emphasis on professional training and of prosecutors is another important aspect of the prosecutorial framework in the United Kingdom. The Crown Prosecution Service offers its prosecutors continuous training in criminal law, ethics, evidence, human rights, and prosecutorial decision making.³⁵⁷ This reduces the possibility of arbitrary or legally unsound decisions and helps to increase consistency in the use of prosecutorial discretion. The quality of decisions regarding the continuation or termination of criminal proceedings would be further improved by bolstering specialised prosecutorial training within the Nigerian Ministry of Justice.

Lastly, the comparative study shows that the effective regulation of prosecutorial discretion depends not just on the existence of legal powers but on the institutions responsible for exercising them. Clear statutory provisions, published policies, institutional independence,

³⁵⁵ Prosecution of Offences Act 1985, s 3.

³⁵⁶ Crown Prosecution Service, *The Code for Crown Prosecutors* (CPS, 2025) paras 10–11.

³⁵⁷ Prosecution of Offences Act 1985; Crown Prosecution Service, *The Code for Crown Prosecutors* (2025) <<https://www.cps.gov.uk/publication/code-crown-prosecutors>> accessed 13 June 2026.

ongoing case review, and efficient supervisory structures all support discretion in the prosecutorial system that the United Kingdom has established. These systems collectively reduce the possibility of arbitrary judgement while maintaining the adaptability required for successful criminal prosecution. The main takeaway for Nigeria is that while constitutional powers like *nolle prosequi* should remain in place, their use should be supported by stronger institutional protections, more transparent procedural rules, and improved accountability systems to enhance public trust in the criminal justice system.³⁵⁸

Overall, the UK model shows that rather than being left to unfettered discretion,³⁵⁹ prosecutorial discretion works best when it is governed by explicit legal frameworks, institutional structures, and judicial review procedures. This method encourages the administration of criminal justice to be transparent, equitable, and consistent. By guaranteeing that prosecutorial decisions are institutionally and legally sound, it also increases public trust in those decisions.

³⁵⁸ John Sprack, *A Practical Approach to Criminal Procedure* (15th edn, Oxford University Press 2022) 70–75.

³⁵⁹ *The State v S O Ilori & Ors* (1983) 1 SCNLR 94.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1. Summary of Findings

This research work examined the concept of *nolle prosequi* in Nigeria and compared the application of *nolle prosequi* in Nigeria with and the United Kingdom. The findings of the study are summarised as follows: On question one, regarding the exercise of *nolle prosequi* in Nigeria, this study finds that *nolle prosequi* in Nigeria is preserved under section 174 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), which vests the Attorney General of the Federation with the authority to institute, prosecute, conduct, take over, and terminate criminal proceedings before judgment has been delivered. Concurrently, that Attorneys General in the State enjoy the same powers under section 211 of the Constitution. In Addition, Section 174(3) of the Constitution stipulates that in exercising these powers, the Attorney General shall have regard, the best interests of the public, the interests of justice and the need to prevent abuse of legal process. Nigerian courts have consistently recognised this power as a constitutional prerogative and generally do not interfere in the process of *nolle prosequi* once it is properly initiated, this can be seen in the judicial decision of the infamous case of *The State v Ilori*.

On question two, concerning the existence of guidelines to ensure public interest, the interests of justice, and the prevention of abuse of legal process, this study finds that although sections 174(3) and 211(3) of the Constitution stipulates that in exercising these powers, the Attorney General shall have regard, the best interests of the public, the interests of justice and the need to prevent abuse of legal process, there are no procedures established under the Constitution to ensure compliance. The absolute authority is vested in the Attorney General, and this gives opportunity for abuse of powers, injustice, and unaccountability.

On question three, regarding the effect of *nolle prosequi* on Nigeria's criminal justice system, this study found that the use of *nolle prosequi* has both positive and negative effects on Nigeria's criminal justice system. On the positive side, it allows the Attorney General to discontinue weak, defective, or unnecessary prosecutions so as to ensure the efficient administration of justice. However, the study also revealed that the broad and uncontrolled nature of the power creates opportunities for abuse, political influence, selective prosecution, and the discontinuance of cases involving influential individuals. This may undermine public confidence in the justice system and affect the interests of victims and the wider public.

On question four, regarding the variations in legal & institutional framework of *nolle prosequi* in Nigeria & United Kingdom, this study revealed significant differences between the frameworks in Nigerian and United Kingdom. While Nigeria maintains the constitutional power of *nolle prosequi* as an express prosecutorial power of the Attorney General, the United Kingdom has adopted a more structured, institutionalized and regulated prosecutorial system through the Crown Prosecution Service. Prosecutorial decisions in the United Kingdom are guided by properly defined legal standards, public interest tests, internal review procedures, and institutional accountability, through this method, the likelihood of arbitrary exercise of prosecutorial discretion is reduced.

Finally, on question five, regarding the reforms which are required to guarantee a more accountable, transparent, and uniform application of *nolle prosequi* in Nigeria, the study found that such reforms as the establishment of clear statutory guidelines that regulate the exercise of the *nolle prosequi*, mandatory disclosure of reasons for discontinuing criminal cases, strengthened judicial and legislative oversight mechanisms, enhanced protection of victims' interests, and the development of prosecutorial policies that promote transparency and consistency, are all meaningful reforms which are necessary to ensure a more accountable, transparent and uniform application of *nolle prosequi* in Nigeria. These reforms would help

ensure that the exercise of *nolle prosequi* rightly serves the public interest, protects the integrity of the criminal justice system, and strengthens public confidence in the administration of justice.

5.2. Recommendations

Based on the findings of this study, the following recommendations are hereby made:

First, it is important for the Nigerian government to undertake necessary reforms in its constitution and laws to provide specifically for the regulation of the powers of *nolle prosequi* in Nigeria. Though section 174 and 211 of the Constitution provide for the principles of public interest and preventing abuse of legal process, these provisions are general, vague and lacking. Therefore, specific legislation needs to be enacted to address this gap.

Secondly, prosecutorial decisions to enter *nolle prosequi* should be followed by a written statement of reasons. This is necessary especially in cases involving politically exposed persons, public interest, corruption, or financial offences among others.

Thirdly, it is quite important that Nigeria has a prosecutorial oversight authority like His Majesty's Crown Prosecution Service Inspectorate in the United Kingdom. This body will monitor, audit, investigate and review the activities of prosecuting authorities, assess their compliance with law, investigate alleged misconducts by prosecuting officials, and promote best practice in the work of prosecutors.

Fourthly, it is important for the Nigerian government to adopt a prosecutorial code, such as the Code for Crown Prosecutors in the United Kingdom. This code will amongst others, define standards related to sufficiency of evidence, issues of public interest, discontinuance of proceedings, and the conduct of prosecutors. The development of uniform prosecutorial guidelines will help minimize inconsistencies and arbitrariness in prosecutorial decisions.

The fifth step should involve strengthening judicial control of prosecutorial discretion. Although it is essential to maintain prosecutorial independence, the courts should have some power to review prosecutorial decisions in case of malice, political influence, bribery, and constitutional abuses. Judicial control will ensure the exercise of prosecutorial discretion in line with constitutionalism and the rule of law. Victims of crimes can also benefit from rights to review prosecutorial decisions not to prosecute or discontinue prosecution of criminal cases. In adopting a similar right, Nigeria can emulate the Victims' Right to Review Scheme in England and Wales.

In addition, it is noteworthy that prosecutorial functions should be protected from political influence. The combination of political office with prosecutorial authority often creates conflicts of interest, this conflict largely leads to abuse of prosecutorial process. Therefore, it may be necessary to put into consideration, the separation of the office of the Attorney general from that of the minister of justice. This distinction, to a large extent, strengthens prosecutorial independence. Finally, it is imperative that continuous professional trainings be provided for prosecutors on the best practices relating to prosecutorial discretion.

5.3. Conclusion

No criminal justice system can survive without giving prosecutors some degree of discretion to determine when proceedings should be initiated, continued, or discontinued in the interest of justice. While Nigeria and Uk recognise the importance of such powers, the manner in which they are exercised are significantly different. The constitutional powers of the attorney general in Nigeria are broad and unfettered, thereby creating opportunity for abuse, political influence among others. On the other hand, the United Kingdom had developed a more organised prosecutorial system, which prioritises accountability, transparency and fairness.

The comparative analysis taken in this study reveals that the major challenge in Nigeria is not the existence of prosecutorial discretion itself but the lack of a properly structured framework which governs its exercise. As a result, there is need for meaningful reforms aimed at improving accountability, transparency and institutional oversight. Such reforms would help ensure that the power of nolle prosequi is used in such a manner that promotes public interest, upholds justice and prevents the abuse of prosecutorial authority.

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