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The Grant of Pardon and the Fight against Corruption in Nigeria: Comparative Analysis

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Abstract

After conviction, a convict has a constitutional right of appeal up to the Supreme Court of Nigeria being the apex court. While no right of appeal exists after the decision of the Supreme Court affirming a conviction (or acquittal), the convict may be granted pardon as provided in Sections 175 and 212 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (CFRN) by the President of the Federal Republic of Nigeria or the Governor of a State respectively. Although the exercise of the powers may be subject to consultation, in some cases, the exercise has been coloured by political consideration with no clear-cut objective criteria. Recently in Nigeria, some persons convicted of economic crimes and corruption related offences have been pardoned on the alleged exercise of the power of pardon. This paper examines the exercise of the power to grant pardon within the context of the constitutional provision and extant laws, the challenges, and the effect on the fight against corruption. Adopting a doctrinal research methodology, the authors analyse the exercise of the power of pardon and the interpretation by the courts and make a comparative study of the exercise of similar powers in other jurisdictions. They proffer suggestions on how the power can be used sparingly in order not to impede the fight against corruption and legitimize criminality.

Keywords

Pardon, Amnesty, Corruption, Prerogative of Mercy

1. Introduction

It is paradoxical for a country like Nigeria ravaged by unprecedented level of

corruption to be seen to be granting pardon to persons convicted and sentenced for corruption related offences[1]. A commentator reacting to the controversial presidential grant of pardon to the former Governors of Plateau and Taraba States in Nigeria has sarcastically called for the extension of presidential pardon to persons convicted of petty thieves in Nigeria[2]. Corruption in Nigeria has graduated beyond being committed by humans but by animals wherein it has been reported that snakes, monkeys, and other animals are now swallowing money and are accused of corruption[3]. The inevitable question, therefore, is how would an animal be arraigned since it cannot take its plea and more importantly the animals exist in the metaphysical realm? It is therefore an anathema that persons convicted of corruption related offences in Nigeria will be pardoned by the government especially where the Court of Appeal or even the Supreme Court has affirmed such conviction and sentence. Presently, Nigeria is ranked 154 out of 180 corrupt countries according to the Latest Corruption Perceptions Index reported by Transparency International[4].

One of the greatest factors that enable corruption is lack of consequence for wrong doing. The effect of pardon amounts to the nullification of punishment or consequences of a crime and conviction. The convict is fully restored, as if he never committed an offence in the first place (Abati, 2023). The researchers herein shall proceed in this article by looking at the historical development of the exercise of power of pardon, and in doing this shall visit other jurisdictions for purposes of understanding the genesis of the concept. Furthermore, the laws (Constitutional, Statutory and Case laws) in Nigeria on pardon shall be examined and analysed so as to x-ray through our laws the Nigeria yesterday, today and offer suggestions for tomorrow on how to deploy the power of pardon without encouraging corruption. There shall equally be a comparative analysis on the exercise of power of pardon in other jurisdictions like United Kingdom, United States of America, and Canada; thereafter, Conclusion and Recommendations.

2. Definition of Key Concepts

Pardon:

The Black's Law Dictionary (Garner, 2009) defines "Pardon" as "the act or an instance of officially nullifying punishment or other legal consequences." The

[1]https://www.premiumtimesng.com/news/headlines/524495-analysis-buharis-pardon-for-jailed-governors-confirms-his-hidden-soft-spot-for-corruption.html?tztc=1 accessed December 30th 2023 at 7:40 pm.

[2]See comments of Femi Falana, a Senior lawyer in Nigeria and a human rights activist in https://dailypost.ng/2022/04/16/dariye-nyame-extend-presidential-pardon-to-petty-thieves-falana-tells-buhari/ accessed December 31st 2023 at 1:45 pm.

[3]https://www.bbc.com/news/world-africa-43030827 visited 2nd July 2023 at 6:36 pm.

[4]https://saharareporters.com/2023/01/31/nigeria-drops-four-places-154th-180-countries-latest-global-corruption-index-ranking accessed 2nd July 2023 at 6:48 pm. In 2022, Nigeria was 150 of 180 in the Corruption Perception Index (CPI). According to the Transparency International, Corruption is damaging crucial enablers of progress—democracy, security and development—across Sub-Saharan Africa. See https://www.transparency.org/en/cpi/2022/index/nga accessed 14 November 2023 at 10.17 am.

Nigerian Court of Appeal in the case of (Falae v. Obasanjo (No. 2), 1999) opined that "a pardon is an act of grace by the appropriate authority which mitigates or obliterates the punishment the law demands for the offence and restores the rights and privileges forfeited on account of the offence. The effect of pardon is to make the offender a new man (*novus homo*), to acquit him of all or corporal penalties and forfeitures annexed to the offence pardoned." Thus, it must be noted that a pardon does not raise the inference that the person pardoned had not in fact committed the crime for which the pardon was granted. A pardon stops with the punishment and the consequences attaching thereto but does not wipe out the fact of conviction (Okongwu v. State, 1986; Compare Hay v Tower Division of London, 1890). However, it is regarded as defamatory to refer to a person granted pardon as a convict in a derogatory tone (Okongwu v State, 1986).

Grant of Pardon may be absolute, full or partial (Garner, 2009). However, under the Nigerian law, there is no distinction between absolute, full or partial pardon. The word used in the 1999 CFRN is "Pardon", and in that context, pardon may be with or without any condition[5].

It must be noted that there are other species of pardon, although not relevant for our purpose here, which usually flow from a victim of a crime. These types of pardon come in form of condonation of offence[6] and compounding of offence[7]. Both are forms of forgiveness by a victim of crime to an offender. The major difference is that in compounding of offence the offender is not treated as if the offence had not been committed, but by condoning the offence, the offender is treated as if the offence had not been committed in the first place (Romrig (Nig.) Ltd v. Federal Republic of Nigeria, 2018; (PML (Securities) Co. Ltd. V. Federal Republic of Nigeria, 2018; Gava Corp. Ltd v. Federal Republic of Nigeria, 2019). However, compounding of offence should be distinguished from compounding of crime, which on its own is a crime (Chidolue v. Economic and Financial Crimes Commission, 2012).

Amnesty:

The Black's Law Dictionary defines amnesty as "A pardon extended by the government to a group or class of persons, usually for a political offence; the act of a sovereign power officially forgiving certain classes of persons who are subject to trial but have not yet been convicted" (Garner, 2009). It continued to note that "unlike an ordinary pardon, amnesty is usually addressed to crimes against state sovereignty—that is, to political offences with respect to which forgiveness is deemed more expedient for the public welfare than prosecution and punishment. Amnesty is usually general, addressed to classes or even communities—also termed *general pardon*." (Garner, 2009). The implication of amnesty is that it

[5]See Sections 175(1)(a) and 212(1)(a); *Falae v. Obasanjo* (No. 2) (supra).

[6]Condonation is "the voluntary overlooking or pardon of an offence", an "implied pardon of an offence by treating the offence as if it had not been committed".

[7]The difference between condoning and compounding of offence is that while the compounding of an offence does not mean that the offence had not been committed, by condoning the offence, the offender is treated as if the offence had not been committed in the first place.

cancels the punishment provided by the law in respect of the offence committed (Oloyede v. State, 2018; Isibor v. State, 2002). The researchers submit that in the case of amnesty, the relevant prosecutorial agencies or the State are yet to officially file a criminal charge in a court of law.

Corruption:

The Black's Law Dictionary (Garner, 2009) defines corruption as "Depravity, perversion, or taint; an impairment of integrity, virtue, or moral principle; especially, the impairment of a public official's duties by bribery. The act of doing something with the intent to give some advantage inconsistent with official duty and the rights of others; a fiduciary's or official's use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others." The dictionary definition of corruption as reproduced above is quite broad, and does not limit the meaning only to malfeasance which occur only public offices. However, the Nigeria Criminal Laws seem to have criminalised, prosecute and punish only official corruption, and did not take into consideration corrupt acts or behaviours which occur in private lives and relationships[8]. Thus, in this work, the emphasis of the researchers shall be on how grant of pardon affects the fight against official corruption.

3. Historical Development of the Exercise of Power of Pardon

Any study of the origin of "pardon" in Western thought must consider the paradox of the Greek culture. A study of the earliest Greek literature and philosophy indicates that the Greeks developed a strong sense of justice and law as related to both gods and humans, but did not develop a concept of forgiveness and mercy. The closest they came to the latter concept was the practice of legal leniency and the notion of "pity" (Leigh, 2004). Where clemency in the nature of "leniency" and pity is to be shown, the ancient Greek believed that power rested with the people rather than the sovereign (Nadagoudar & Gowda, 2014). Thus, before obtaining clemency under the Greek processes, a petition supported by at least 6000 people in a secret poll was needed (Kumar, 2009). Due to the difficulty of obtaining such a large number of supporters, the possibility of receiving a pardon was generally reserved for athletes, orators and other influential figures (Kobil, 1991; Ngwoke & Abayomi, 2022).

In Rome, the concept of clemency, *a fortiori* pardon was developed after the fall of Roman democratic republic. When the Roman democratic republic fell and the monarchical empire arose, a new vocabulary of power was needed to help balance the awesome abilities of the state to inflict harm and the need of its people for individual protection (Dowling, 2006). In Roman Empire, clemency was seen as the necessary attribute of those in control of power. To the Romans, "the opposite of clemency (*clementia*) is not severity (*severitas*) but savagery. *Severitas*, strictness with those who offend…is as much a virtue as a vice in Ro-

[8]See Ss. 98-112 of the Criminal Code, 115-133 Penal Code; Independent Corrupt Practices and Other Related Offences Commission Act, 2000.

man thought. Too much severity is not a good thing, but some *severitas* is salutary and help maintain order. Thus *clementia* and *severitas* are compliments rather than opposites"[9] However, unlike the Greek, the Romans did not find pity desirable or meritorious. Clemency could be "reserved for those who sin but repent"[10] Finally; the last development of the idea of clemency in Roman came with Christianity. Christian authors developed "the philosophy of mercy to include the mandate that, because God spares us, each man must exercise clemency toward himself"[11]. This obviously influenced the concept of pardon in western sense.

In United Kingdom, the concept of pardon began with the Royal prerogative of mercy. The Royal prerogative of mercy was originally used to permit the monarch to withdraw, or provide alternatives to death sentences in the seventeenth century[12]. The study of the royal power of pardon illuminates the English criminal justice system, particularly in the eighteenth century. Pardons granted on condition of transportation acted as a counterbalance to the harshness of the "Bloody Code", notably after 1689 when a considerable increase in the number of capital statutes triggered a vast rise in executions (Beattie, 2006).

Expectedly, the legal and administrative systems of Nigeria were greatly influenced and copied from that of Great Britain, being a former colony. It appears that the first entrance of the concept of pardon as a form of prerogative of mercy into the Nigerian Legal system was in the 1963 Nigerian Republican Constitution[13]. The same provision was made in the 1979 Constitution of the Federal Republic of Nigeria, although the provision under the 1963 Constitution was more elaborate[14]. Then the current bases for grant of pardon in Nigeria as earlier noted can be found in sections 175 and 212 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) (CFRN).

One thing that can be inferred from the history of pardon as briefly narrated above is that the reason for its introduction in various jurisdictions is well intentioned. Pardon is meant to be granted to deserving individuals. In our view, the spirit behind the concept of pardon as originally conceived is that pardon should be part of criminal justice administration, and not a political tool used by sovereigns to expand their political empire and attract loyalty. This point shall be expanded further in this article.

4. An Examination of the Constitutional Provisions and Other Laws in Nigeria on Pardon

It is the provisions on pardon in the (CFRN, 1999), and Transfer of Convicted Offenders (Enactment and Enforcement) Act, as amended in 2013 that will be

[9] *Op cit* at p. 7.
[10] *Op cit* at p. 98.
[11] *Op cit* at p. 221.
[12] Royal prerogative of mercy—Wikipedia: https://en.m.wikipedia.org, last accessed on 3rd June, 2023.
[13] See section 101 of the 1963 Nigerian Republican Constitution.
[14] See section 161 of the 1979 Constitution of the Federal Republic of Nigeria.

considered under this heading. Be that as it may, it bears repeating that the genesis of the constitutional provision in Nigeria on pardon was 1963 under the republican constitution[15]. Also the provision on pardon was included in the 1979 Constitution[16] and retained in the 1999 Constitution. The major difference is that the provision of the 1963 Constitution is more elaborate and appears to have been crafted to suit the then parliamentary system of government.

Thus, the necessary starting point in addressing this part is to reproduce the sections of the 1999 Constitution and that of Transfer of Convicted Offenders (Enactment and Enforcement) Act that are relevant for our purpose. Section 175 of the Constitution of the Federal Republic of Nigeria provides as follows:

"(1) The President may-

(a) grant any person concerned with or convicted of any offence created by an Act of the National Assembly pardon, either free or subject to lawful conditions;

(2) The powers of the President under subsection (1) of this section shall be exercised by him after consultation with the Council of State.

(3) The President, acting in accordance with the advice of the Council of State, may exercise his powers under subsection (1) of this section in relation to persons concerned with offences against the army, naval or air-force law or convicted or sentenced by a court-martial."[17]

Section 36(9) & (10) of the 1999 Constitution of the Federal Republic of Nigeria provides as follows:

(9) "No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of superior court."

(10) "No person who shows that he has been pardoned for criminal offence shall again be tried for that offence".

Furthermore, Sections 3 and 13 of Transfer of Convicted Offenders (Enactment and Enforcement) Act, as amended provide as follows:

"3—Any person convicted and sentenced to a term of imprisonment in one country (hereinafter referred to as "the sentencing country") for an offence may be transferred in accordance with the provisions of this Act to another country (hereinafter in this Act referred to as "the administering country") in order that he may serve the remainder of that sentence in the administering country.

13(1) Unless the sentencing and the administering countries otherwise agree, only the sentencing country may in accordance with its Constitution or other laws grant pardon, amnesty or commutation of the sentence of a transferred convicted offender.

There is argument with regards to section 175(1)(a), (CRFN, 1999) as it relates to the category of persons who can be beneficiary of pardon under the section. It

[15]*Ibid*, sections 101(1)(a), (2),(3)&(4)(a-c); 102(1)(a-c),(2) & (3)(a-b); 103(1),(2)&(3).

[16]*Ibid*, section 161(1)(a).

[17]See also section 212 (1)(a)&(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) in respect of the power of the Governor of a State to grant pardon in respect of state offences.

has been argued and judicially endorsed too that there are two limbs to the category of persons that are beneficiaries of pardon under the 1999 Constitution. The first are those "concerned with offence" and the second are those "convicted of offence". The interpretative implication of the section by this categorization is that there is pre-conviction/judgment pardon and post-conviction/judgment pardon (Federal Republic of Nigeria v Alkali, 2018). On the other hand, there are proponents who maintained that the only purposive interpretation of the section taking into account other sections of the constitution like the section on presumption of innocence (Section 36(5), CFRN) as pardon can only be granted to a convict because it will amount to absurdity to grant pardon where there is no infraction of any law (Federal Republic of Nigeria v Achida, 2018; Adeola v State 2017). This argument has been stretched further, and surprisingly too, the Court of Appeal has taken a conflicting position by holding that there cannot be a pardon prior to conviction, and that the only option open to an offender prior to conviction is for the Attorney General to discontinue the proceeding through the instrumentality of *Nolle Prosequi* (Federal Republic of Nigeria v. Dingyadi, 2018). Also, some other line of cases have held that pardon cannot be granted while appeal is pending or in cases of capital offences, pardon cannot be granted where the window of appeal is still open or where it is presumed that an appeal has been lodged (Solola v. State, 2005; Obidike v. the State, 2001). Furthermore, the combined reading of section 36(9) & (10) of the (CFRN) equally compounds the argument. It can as well be argued that from the sections, pardon can only be granted after conviction, and that is why the provision that a person tried and convicted cannot be tried again was made before the provision that a person pardoned cannot be tried again. This means that there must be a conviction before a pardon. However, on the flip side, the combined reading of section 36(9) & (10) of the (CFRN) may equally be interpreted to mean that if under section 36(9) of the (CFRN), it has been provided that a person already convicted of a crime cannot be tried again, and conviction is a condition precedent for grant of pardon, it then means that section 36(10) is superfluous, therefore unnecessary. This issue shall be addressed further subsequently while analysing case laws on pardon.

Another issue arising from section 175(1)(a) is that pardon can be granted with or without condition (Falae v Obasanjo). This provision has been often misunderstood to mean that there is full pardon and ordinary pardon under the Constitution as obtainable in other jurisdiction like the United States of America, while that is not the case. Constitution only provides that pardon can be granted conditionally or unconditionally, and while adopting any of the options the president shall exercise such power after consultation with or the advice of the Council of State[18]. Furthermore, the Transfer of Convicted Offenders (Enactment and Enforcement) Act takes care of a situation where there is a

[18]Advisory Council of the state on prerogative of mercy as it relates governors of states.
See also section 153 and item B(6)(a)(ii) part I, third schedule of the Constitution of the Federal Republic of Nigeria (as amended) for the composition and power Council of State.

transfer of convicted and sentenced offender to Nigeria to serve the remainder of the sentence, from other jurisdictions within the commonwealth, having a reciprocity agreement with Nigeria. From the provisions of the Act as reproduced above, it is the sentencing Country that has the powers to grant pardon under their constitution or other laws, except where there is an agreement between the sentencing country and Nigeria conceding such powers to Nigeria.

5. An Analysis of the Nigerian Case Laws on Pardon and Amnesty

There are conflicting decisions of Nigerian Courts on some of the issues pertaining to pardon and amnesty. The approach in addressing this sub-heading is to attempt distilling some of the key issues on pardon and amnesty that have been decided by Nigerian Courts, group the cases and analyse them based on the issues decided. Nigerian case laws on pardon and amnesty basically addressed the following issues:

1) Whether there is a distinction between a pardon and a full pardon under the Nigerian law, or whether the Nigerian law only recognises conditional and unconditional pardon?

2) The effect of pardon or amnesty when granted.

3) Whether pardon can be granted while appeal is pending and the impact of grant of pardon or amnesty on a case pending on appeal.

4) The distinction between pardon and amnesty.

5) When the exercise of power to grant pardon can be challenged in a court of law?

6) Whether pre-conviction pardon and post-conviction pardon can be granted under the 1999 Constitution of the Federal Republic of Nigeria (as amended)?

7) Whether it is mandatory for the President or the Governor of a State to consult the Council of State or Advisory Council on prerogative of mercy respectively before the power to grant pardon can be validly exercised?

8) Whether the fact of consultation with the Council of State or Advisory Council on prerogative of mercy respectively must be stated on the instrument of pardon?

In *Falae v. Obasanjo* (No. 2), the Court had to decide on whether there is a distinction between a pardon (ordinary) and a full pardon under the Nigerian law, or whether the Nigerian law only recognises conditional and unconditional pardon. In this case the Court of Appeal held that under the Nigerian law there is no distinction between a "pardon and full pardon", the constitution only provides that pardon can be granted with or without condition. We agree entirely with the decision of the Court on this issue based on the provision of sections 175(1)(a) and 212(1)(a) of the CFRN which requires no interpretation. The position of the law is that where the provision of any statute is clear and unambiguous, it requires no interpretation as its literal and ordinary meaning should be employed; all the court is required to do is to apply the law as it is (Ezeani v

Onyereri, 2023). The Constitution did not make any distinction between pardon and full pardon, rather the constitution only provides that pardon can be granted with or without condition.

6. What Is the Effect of Pardon?

The second issue that has arisen in Nigerian Courts is the effect of pardon when it is granted. In Falae v Obasanjo (No. 2), it was held that pardon mitigates or obliterates the punishment the law demands from the offence and restores the rights and privileges forfeited on account of the offence and consequent conviction. Musdapher, JCA (as he then was) said in that case:

> "In my view, under Nigerian law there is no distinction between 'pardon' and 'a full pardon.' A pardon is an act of grace by the appropriate authority which mitigates or obliterates the punishment the law demands for the offence and restores the rights and the privileges on account of the offence. The effect of a pardon is to make the offender a new man, or *novus homo*, to acquit him of all corporal penalties and forfeitures annexed to the offence pardoned".[19]

Furthermore, the court in Okongwu v State (1986) held that a free pardon had the effect of erasing "all suffering, consequences, and punishments whatsoever that the said conviction may ensure, but not to wipe out the conviction itself". It follows that pardon does not set aside the judgment of the court, rather the impact of the judgment (Federal Republic of Nigeria v Alkali, 2018). It appears that there is an agreement on the effect of pardon when granted (Adeola v State, 2017)[20]. Generally, Article II, section 2 of the United States Constitution authorizes the President "to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment". Thus, in *Ex Parte* Garland (1866), the Supreme Court summarized the reach of a presidential pardon as follows:

> "A pardon reaches both the punishment prescribed for the offence and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence. If granted before conviction, it prevents . . . the penalties and disabilities consequent upon conviction from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity".

It is submitted that the above interpretation of the effect of a pardon was affirmed in Knote v. United States, 1877; Boyd v. United States (1892) where the court stated:

[19]Ibid at P. 495, paras. D-E.

[20]See also Section 36(10) 1999 Constitution of the Federal Republic of Nigeria (as amended).

> "A pardon is an act of grace by which an offender is released from the consequences of his offense, so far as such release is practicable and within control of the pardoning power, or of officers under its direction. It releases the offender from all disabilities imposed by the offense, and restores to him all his civil rights. In contemplation of law, it so far blots out the offence, that afterwards it cannot be imputed to him to prevent the assertion of his legal rights".

Again, at common law it is well settled that a pardon by the king removed not only the punishment that flowed from the offense, but also all the legal disabilities consequent on the crime (Cuddington v. Wilkins, 1614).

6.1. Grant of Pardon While Appeal Is Pending at the Appellate Court

There are conflicting decisions on whether pardon can be granted while appeal is pending. In the cases of Solola v State and Obidike v State the Supreme Court held that there is no question of pardon until appeal is concluded. In *Solola's* case the question as to whether a murder convict who has appealed can be granted pardon whilst the appeal is yet to be determined was answered in the negative, that is, that pardon cannot be granted until the termination of the appeal. In *Obidike's* case, the same court held that such purported exercise of power to grant pardon amounts to executive lawlessness of the highest order. Conversely, in Adeola v. State the Court of Appeal held that pardon wipes out the conviction and sentence and in the event of a pending appeal, pardon renders the appeal academic and liable to be struck out; whilst amnesty does not extirpate the crime, conviction and sentence entered thereon. The implication of the decision of the Court of Appeal in Adeola, s case is that pardon can be granted while a case is on appeal, but amnesty cannot be granted. However, it is the opinion of the researchers herein that there is nothing in the provisions of the Constitution or any other law on pardon or amnesty to suggest that pardon or amnesty cannot be granted while a case is on appeal. If this is the position, and we believe so, the Court when called to interpret the provision of a statute is not expected to add or remove from the provision of the statute. It is submitted that an offender who accepts the grant of a pardon whilst the appeal against the conviction is pending waives all rights upon the appeal even though the Court of Appeal had in Okongwu's case opined per Akpata JCA as he then was, that a person granted pardon can still appeal for the sake of proving his innocence[21]. We respectfully disagree with this view of my Lord because pardon is a cleanser. The recipient becomes a new born and all records are wiped off and accordingly there is no record for which an appeal can be lodged. You cannot place something on nothing and expect it to stand (Macfoy v United Africa Company Limited, 1961; Osafile v Odi, 1990). Nevertheless, it is our ultimate submission that pardon ought not and should not be granted by the executive arm of govern-

[21]See also the dictum of Ogundare JCA as he then was at page 751.

ment (President/ Governor) when an appeal is pending as this will be a clear and an unbridled usurpation and interference of the exercise of powers of the judiciary thereby ridiculing the independence of the judiciary (Sections 84 (1), (2), (4), (7), 121 (3) CFRN); (Oba Lamide Adeyemi (Alafin of Oyo) and Ors. V Attorney General Oyo State and Ors., 1984). This is against the doctrine of separation of powers as enshrined in the Constitution (Sections 4, 5, 6 CFRN); (United States v Alvarez, 2012). The correct procedure which accords with decency is for the appellant who is appealing his conviction to be directed by the Executive to first of all file a notice of withdrawal of his appeal before the hearing of the appeal and have same withdrawn by consent of the parties or by order of the court and the appeal dismissed as a condition precedent before the grant of pardon (CAR, 2021). This is so because an appeal and an application for the grant of pardon are contradictory to each other and should not be pending concurrently. It is submitted that the Court of Appeal in Adeola's case did not hold that Pardon can and should be granted while an appeal is pending. It rather held that, assuming such incidence occurred, it will abate the appeal. Consequently, the position of the law remains as enunciated by the Supreme Court in Solola and Obidike's case that Pardon cannot be granted whilst an appeal is pending.

6.2. Whether the Power to Grant Pardon Is Subject to Court Litigation

The Court of Appeal in Federal Republic of Nigeria v. Alkali & Anor (2018) held that the power to grant pardon is not subject to litigation because of its discretionary nature, provided it is carried out in line with the outlined procedure (Biddel v. Perorich, 1972). Hence, where the exercise of power of grant of pardon is not done in line with the outlined procedure like consultation with the Council of State or Advisory Council on prerogative of mercy, the pardon granted will be invalidated (Federal Republic of Nigeria v. Dingyadi, 2018). We agree with this decision because where a statute has laid down the procedure of performing an act, failure to abide by the procedure renders the purported act performed impotent. We place reliance on the recent Supreme Court case of Charles v State of Lagos (2023). The implication therefore is that the power to grant pardon is not subject to court litigation where the laid down procedure has been followed, but it will be subject to litigation where the laid down procedure is not followed as the court of law by section 6 of the CFRN will assume jurisdiction to set aside such illegal exercise of executive power.

6.3. Whether Pre-Conviction Pardon and Post-Conviction Pardon Are Recognised under the 1999 Constitution

One of the most contentious unresolved issues in Nigerian criminal justice is as to whether a "pre-conviction pardon and post-conviction pardon can be granted under the CFRN"? In Federal Republic of Nigeria v. Alkali & Anor (2018), the Court of Appeal held that a pre-conviction pardon as well as post-conviction pardon can be granted under the Nigerian Constitution. In arriving at this deci-

sion, the Court noted that there are two limbs to the category of persons that can benefit from pardon under the Nigerian constitution. The first are those "concerned with offence" and the second are those "convicted of any offence". The Court reasoned that the word "Or" used in sections 175(1)(a) and 212(1)(a) of the Constitution is a disjunctive article relying on the interpretation Act (IA, 2004) and case law (Alhaji Atiku Abubakar v. Yardua, 2009).

The Court also noted that from the definition of pardon, one of the effects of pardon is to obliterate or mitigate "other legal consequences of crime", which in the opinion of the court includes criminal prosecution. Hence, criminal prosecution being a pre-conviction procedure validates the exercise of power to grant pre-conviction pardon to persons concerned with offence. The Court finally maintained that the appropriate cannon of interpretation is literal rule as sections 175(1)(a) and 212(1)(a) of the Constitution are clear and unambiguous, thus required no interpretation, rather to apply the sections as they are.

In other cases, the same Court of Appeal in Federal Republic of Nigeria v. Dingyadi (2018), and Federal Republic of Nigeria v. Achida (2018)) held differently that interpreting sections 175(1)(a) and 212(1)(a) of the Constitution to mean that a pre-conviction pardon could be granted by the President and Governors would amount to stretching the import of the sections too far, and conferring on the executive the powers of the Attorney-General to discontinue under sections 174 and 211 CFRN, which was not the intendment of the makers of the constitution. The Court held that giving sections 175(1)(a) and 212(1)(a) of the CFRN a narrow interpretation will lead to absurdity and inconsistency, and that the appropriate cannon of interpretation is "*Ejus dem generis* rule" (Kabirikim v Emefor (2009) which will give effect to the principle upon which the constitution was established, rather than the direct operation or literal meaning of the word used. The Court reasoned that interpreting the Constitution as a whole and considering section 36 of the constitution on presumption of innocence, the lawmakers could not have intended that a person who has not been convicted of a crime could be forgiven under sections 175(1)(a) and 212(1)(a) of the Constitution. The Court finally maintained that for the purpose of manifesting an effective result, the "Living Tree" doctrine of Constitutional interpretation enunciated in (Edward v. Canada, 1932) which postulates that the constitution must be capable of growth to meet the future, must come to mind. We must agree that the arguments on both sides are persuasive and are near equal in strength. This is because a strict and literal interpretation of "any person concerned with offence" under sections 175(1)(a) and 212(1)(a) of the Constitution would mean that pre-conviction pardon could be granted under the sections. However, we disagree with the argument of the proponents of pre-conviction pardon that because pardon forgives other legal consequences of a crime, that legal consequence of crime includes criminal prosecution. This is because criminal prosecution is not a legal consequence of a crime. Criminal prosecution is a process of determining whether a crime has been committed by presenting before the court the facts and evidence by the prosecution and allow the court rule as regards

culpability or not. The beginning of a legal consequence of a crime we submit is after conviction and sentence to a term of imprisonment.

Conversely, we agree that interpreting sections 175(1)(a) and 212(1)(a) of the Constitution literally would lead to absurdity and inconsistency. This is because Nigeria practises adversarial system of criminal justice administration, which presumes a defendant innocent until proven guilty. Thus, sections 175(1)(a) and 212(1)(a) of the Constitution would be perfect as it relates to pre-conviction pardon in jurisdictions where inquisitorial system of criminal justice administration is practised. It must be noted at the risk of repetition that the grant of pardon is intended, and it should be part of criminal justice administration, thus there is a need to set standards and criteria for grant of same, as exercise of such powers by the president and governors must be checked and enjoyment of same must be by deserving persons. Therefore, we are of the view that sections 175(1)(a) and 212(1)(a) of the Constitution should be amended to reflect the avowed adversarial system of criminal justice administration practised in Nigeria, by restricting and clearly providing for post-conviction pardon only.

6.4. Whether It Is Mandatory for the President or Governor of a State to Consult the Council of State or Advisory Council on Prerogative of Mercy before the Grant of Pardon?

Must the President or the Governor of the State consult the Council of State or the Advisory Council respectively before the grant of pardon and must the fact of such consultation be indicated on the Instrument? This question appears to have been answered in the case of (Federal Republic of Nigeria v. Dingyadi (2018) and Federal Republic of Nigeria v. Achida (2018). The Court of Appeal held that it is a condition precedent and mandatory for the Governor of a State and by extension the President to consult the Advisory Council on prerogative of mercy (or the Council of State in the case of the president) and that such fact must be expressly stated on the instrument of pardon. We are in total agreement with this position because, if a law or statute provides for a procedure for performing an action, that procedure must be followed and no other way will be allowed (Charles v State of Lagos, 2023). It is submitted that request for the grant of Pardon is to be considered by the Committee on Prerogative of Mercy and send their report to the Council of State which shall advice the President or the State Governor as the case may be on the appropriateness or otherwise (Section 409 ACJA, 2015; Section 307 ACJL, Lagos, 2015; Section 402 ACJL, Kano, 2019).

7. Pardon/Prerogative of Mercy in Other Jurisdictions

7.1. The Canadian Experience

Grant of pardon in Canada is regulated exclusively by the Parole Board of Canada. The Board is conferred with the power to grant, refuse to grant or to revoke a pardon/record suspension based on the circumstances of each case. The Board is empowered to investigate royal prerogative of mercy requests for Federal of-

fences under the Corrections and Conditional Release Act (CCRA, 1992) upon the directives of the minister of Public Safety and make recommendations thereof. The implication of this is that pardon may be granted conditionally or unconditionally, or the application may be refused. The power of the Board is derived from the Canadian Criminal Records Act (CRA, 1985). In Canada, the Governor General of Canada has been vested with the power of Clemency by virtue of the letters patent and as set out in specific sections of the Criminal code. Section 748 (CRA, 1985) confers on the Governor-General (cabinet) the power to exercise the prerogative of mercy administered by the Parole Board. Section 749 of the Canadian Criminal Code enables Her Majesty to grant royal prerogative of mercy. The royal prerogative of mercy is rarely exercised except in cases extreme or substantial injustice or hardship.

Under the Canadian law unlike in Nigeria, there is what is referred to as **pardon/record suspension.** A pardon/record suspension allows people who were convicted of a criminal offence, but have completed their sentence and demonstrated they are law-abiding citizens, to have their criminal record kept separate and apart from other active criminal records. Pardons/Record Suspensions are issued by the Federal government of Canada. This means that any search of the Canadian Police Information Centre (CPIC) will not show that the beneficiary had a criminal record, or that he was issued a pardon/record suspension[22]. Over the years the Criminal Records Act has been amended in line with current realities of the age. The first amendment to the Act was Bill C-23A which is christened Limiting Pardons for Serious Crimes Act (LPSCA, 2010) by making provisions regulating eligibility or ineligibility to apply under the Act. Additionally, the Criminal Records Act was further amended by the Bill C-10 referred to as Safe Streets and Communities Act (SSCA, 2012). The law barred individuals convicted for more than three indictable offences ineligible to apply for record suspension and persons convicted for sexual crimes against children and other extremely serious offences cannot apply for record suspension. In the exercise of this power the Board must ensure that the independence of the judiciary shall be respected and there shall be no interference with a court's decision when to do so would result in the mere substitution of the discretion of the Governor General, or the Governor in Council, for that of the courts. There must exist clear and strong evidence of an error in law, of excessive hardship and/or inequity, beyond that which could have been foreseen at the time of the conviction and sentencing[23]. It is therefore exercised in exceptional circumstances only.

7.2. The Indian Experience

The Indian constitution like the Nigerian constitution empowers both the President and the Governor of a State to grant pardon. Article 72 of the (Indian Constitution (1949) empowers the President to grant pardons, reprieves, respites

[22]https://www.pardons.org/pardons/faqs/ accessed 19th August 2023 at 11:25 am.

[23]https://www.canada.ca/en/parole-board/services/clemency/how-are-requests-for-clemency-reviewed.html accessed 19th August 2023 at 04:10 pm.

or remissions of punishment in all cases where the punishment is for an offense against any law to which the executive power of the union extends. This same power extends to the Governor in relation to the State under section 161 of the Indian constitution. Prior to the enactment of the Indian constitution, the power of pardon was provided for in the Government of India Act (GIA, 1935).

The basis for the provision of the power of pardon in the Indian constitution was aptly summarized by (Seervai, 2023) when he said "Judges must enforce the laws whatever they be, and decide according to the best of their lights; but the laws are not always just and the lights are not always luminous. Nor, again are judicial methods always adequate to secure justice. The power of pardon exists to prevent injustice whether from harsh, unjust laws or from judgments which results in injustice; hence the necessity of vesting that power in an authority other than the judiciary has always been recognized".

Like what is obtainable in Nigerian law, to exercise the power of pardon in India, the advice must proceed from the council of ministers, as provided in Articles 74 and 163 of the Constitution[24]. The President or the Governor is under obligation to act in accordance with the advice of the council of ministers and not arbitrarily (Maru Ram v. Union of India, 1980). Where the President is not satisfied with the advice of the council of ministers, he sends back the file for reconsideration to the ministry after which the recommendations of the ministry are again sent to the President[25]. In India the power of pardon is exercised against punishment or sentence imposed by the court and not otherwise.

Section 72 provides as follows:

(1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence-

(a) In all cases where the punishment or sentence is by a Court Martial;

(b) In all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

(c) In all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court Martial.

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor [1][***] of a State under any law for the time being in force.

It is submitted that the Indian constitutional provision regarding pardon is wider in scope than the provisions of section 175 of the Nigerian constitution. The Indian constitution specifically gave the President the power to grant par-

[24]See Chirag Madan and G. Sai Krishna Kumar, "Scope and Exercise of Power of Clemency and Judicial Review: A Jurisprudential Analysis" at https://legiteye.com/scope-and-exercise-of-power-of-clemency-and-judicial-review-a-jurisprudential-analysis-by-chirag-madan-and-g-sai-krishna-kumar/ accessed 18th August 2023.

[25]https://blog.ipleaders.in/article-72-of-the-indian-constitution/ accessed 19th August 2023 at 10:55 am.

dons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence.

Regarding the exercise of the Presidential power of pardon during the pendency of appeal, the Indian Supreme court in the case of K. M. Nanavati v. State of Maharashtra (1961), held that

> "though it would be open to the President or Governor to grant pardon at any time, it ought not to be exercised after the convict has approached the appellate Court for proving his innocence, in which case it would be within the power of the appellate Court to suspend the execution of the sentence".

Curiously, in India the exercise of the President or Governor to grant pardon under Article 72 or Article 161 are open to judicial review provided the reason for rejecting or approving clemency is disclosed (Epuru Sudhakar v. Government of Andhra Pradesh (2006). This is to guard against decision that is irrational, arbitrary, or unreasonable. There is therefore the judicial review of legislative action, judicial review of judicial decisions and judicial review of administrative action[26]. It is submitted that the parameters within which judicial review can be exercised are as laid down in the case of (Tata Cellular v. Union of India, 1996). However, recently the Supreme Court of India had in the case of Mansukhlal Vithaldas Chauhan v. State of Gujarat (1997) held that courts do not have the power to correct the administrative decisions. It merely reviews how the decision was made and thus the decision cannot be challenged by anyone.

7.3. The United Kingdom Experience

In the United Kingdom, the power to grant pardon or reprieve is referred to as the royal prerogative of mercy exercisable by the King for England and Wales upon the advice of the Secretary of State for justice while the secretary of State for defence is responsible for Armed Forces. In Northern Ireland the duty is on the Secretary of State for Northern Ireland while in Scotland the responsibility vest on the Scottish ministers. In United Kingdom, pardon could take the form of remission, conditional pardons, or free pardons. In the United Kingdom, there is what is referred to as "**disregard application for conviction**" for offenders convicted for gender-related offences under the Policing and Crime Act (PCA, 2017). To qualify for the disregard, applicant must show that the other party was not under aged; that the offence has been abolished or repealed; and that in the current scheme of things assuming the sexual activity occurred today it will not constitute an offence[27]. However, the power of the King to grant mercy is now subjected to Judicial Review (R v Secretary of State for the Home Department ex p. Bentley, 1994; R (on the application of Shields) v Secretary of State for Justice, 2009). The introduction of the Criminal Cases Review Com-

[26]See Articles 13, 32, and 226, and Articles 53 and 154 of the Indian Constitution.

[27]https://www.gov.uk/government/publications/disregarding-convictions-for-decriminalised-sexual-offences/disregarding-convictions-for-decriminalised-sexual-off accessed 19th August 2023 at 20:10 pm.

mission (CCRC) in 1997 drastically reduced use of royal pardon, as there is now a mechanism to review possible miscarriages of justice and refer cases to the criminal appeal courts[28].

The processes for Royal pardon and criminal procedure in United Kingdom is encompassing. It starts with a petition from the convicted offender which petition must state clearly the reason why the offender feels entitled to a Royal pardon. Upon such a petition, a report of the judges who tried the offence is requested. What the judges reported very largely were the views they had formed at the trial, views influenced by the petitioner's witnesses and also no doubt more directly by his appearance, demeanour in the court room and previous criminal record. The petition and the report are routed to the monarch through the Secretary of the state for decision[29]. However, in the second half of the eighteenth century and into nineteenth century, the convictions and attitudes that supported that system and the law it enforced came increasingly under attack by a serious advocacy for abolition of capital punishment. At the same time, the political system and political structure that had sustained the active and personal royal power of pardon were similarly coming under attack. In the reconstructions that followed, the royal pardon ceases to play the central role in the administration of justice that it had for several centuries[30].

8. General State of Corruption in Nigeria

From available statistics Nigeria is ranked 150 out of 180 corrupt countries in the world according to Amnesty International 2022 report scoring only 24 points out of a possible 100[31]. Little wonder that a former Nigerian President Muhammadu Buhari in March 2015 had said that "*if Nigeria does not kill corruption, corruption will kill Nigeria*"[32]. Indeed Nigeria has not succeeded in killing corruption but rather corruption is killing Nigeria as it has become a pandemic. Corruption in Nigeria has attained unprecedented height that animals rather than humans are accused of corruption[33].

Termites have been alleged to have eaten up some documents of the Nigeria Social Insurance Trust Fund (NSITF) containing expenditures worth N17.1 billion containing details of spending by the Agency for year 2013[34]. In 2018, a sales clerk by name Philomena Chieshe was suspended after she told auditors that a snake had swallowed 36 million Naira proceeds from sale of scratch cards for the

[28]https://commonslibrary.parliament.uk/royal-prerogative-of-mercy-a-question-of-transparency/ accessed 20th August 2023 at 08:40 pm.
[29]Op cit at pgs. 14-18.
[30]*Op cit* at p. 22.
[31]https://punchng.com/nigeria-ranks-150-scores-24-on-corruption-index/ accessed 28th December 2023 at 08:35 am.
[32]https://www.vanguardngr.com/2015/03/if-we-dont-kill-corruption-it-will-kill-us-says-buhari/ accessed 28th December 2023 at 08:35 am.
[33]https://www.legit.ng/nigeria/1486540-termites-snake-animals-accused-swallowing-money/ accessed 28th December 2023 at 09:03 am.
[34]https://saharareporters.com/2022/08/29/snake-monkey-and-termites-how-much-money-wildlife-consume-nigeria-matthew-ma accessed 28th December 2023 at 09:09 am.

Joint Admissions and Matriculations Board (JAMB) in Benue State[35]. In 2019, a gorilla was accused by a finance officer in the zoo of swallowing N6.8 million in the Kano Zoological Gardens[36]. In February 2018, it was alleged by Senator Shehu Sani that the sum of N70 million given to the Northern Senators Forum was swallowed by monkeys at the leader's farm Senator Abdullahi Adamu who was accused of its embezzlement[37]. In 2022, former Accountant General of the Federation Ahmed Idris was alleged to have embezzled the sum of N109 Billion Naira before he was relieved of his duties. He was subsequently charged and an order for Interim forfeiture of assets made by the court[38]. As testament to the endorsement of corruption in Nigeria as a way of life is the recent grant of prerogative of mercy (Pardon) to two former Governors convicted of corruption in Nigeria by President Muhammadu Buhari administration even when they were yet to serve half of the jail terms and after eleven years was spent in their prosecution by the Commission (EFCC)[39].

9. Corruption and the Grant of Pardon in Nigeria

The news of the Presidential grant of pardon purportedly on health and age grounds by the National Council of State to Joshua Dariye[40] and Jolly Nyame[41] former State Governors of Plateau and Taraba State respectively who were serving terms in Nigerian Correctional Centres for conviction for the embezzlement of monies meant for the development of their States by the Economic and Financial Crimes Commission reverberated as a shock to Nigerians[42]. This is more curious particularly because the Government that granted the pardon ascended to power on the mantra of fight against corruption. It became anachronistic for a regime fighting corruption to grant pardon to persons convicted of corruption especially where their conviction has been affirmed by the highest court in the land being the Supreme Court. The body responsible for the grant of the pardon is the Nigerian Council of State. The body comprises the President, past Presidents, the Vice President, Senate President, Speaker of the House of Representatives, both serving and past Chief Justices of Nigeria, the Attorney-General of the

[35]https://thenationonlineng.net/termites-snake-other-animals-accused-of-swallowing-money/ accessed December 28th 2023 at 09:13 am.

[36]https://guardian.ng/news/gorilla-swallows-n6-8-million-in-kano-zoo/#:~:text=The%20money%20was%20generated%20from%20tourists%20who%E2%80%A6&text=A%20gorrilla accessed 28th December 2023 at 09:19 am.

[37]https://www.premiumtimesng.com/news/headlines/259430-monkey-carted-away-n70-million-senators-farm-house-shehu-sani.html?tztc=1accessed 28th December 2023 at 09:23 am.

[38]The motion for interim forfeiture is M/1149/2022 and the substantive criminal charge is in Charge No: FCT/HC/CR/299/2022. See https://www.premiumtimesng.com/news/headlines/571703-court-orders-forfeiture-of-former-accountant-general-ahmed-idris-900000-15-houses.html accessed January 02, 2024 at 7.15 pm.

[39]https://punchng.com/presidential-pardon-how-efcc-spent-11-years-millions-to-prosecute-dariye-nyame/ accessed December 30th 2023 at 9:35 pm.

[40]Governor Plateau State from 29 May 1999-18 May 2004; 18 November 2004-13 November 2006; 27 April 2007-29 May 2007.

[41]Governor of Taraba State from 29 May 1999-29 May 2007.

[42]https://www.premiumtimesng.com/news/headlines/523946-buhari-pardons-ex-governors-dariye-nyame-serving-jail-terms-for-corruption-157-others.html?tz accessed 4th November 2023.

Federation, all serving Governors, and the Minister of the Federal Capital Territory (FCT), Abuja. In reaching the above decision, the Council of State considered the recommendation of the twelve-member Presidential Advisory Committee on Prerogative of Mercy set up in August 2018 and headed by Minister of Justice and Attorney-General of the Federation, Abubakar Malami, SAN. The Committee was made by representatives of the three arms of Government.

The former Governor of Plateau State Joshua Dariye was convicted by the High Court of the Federal Capital Territory, Abuja in 2018 and sentenced to fourteen years in prison for "systematic looting" and "diverting public funds to the tune of N1.126 billion" after being found guilty on fifteen out of the twenty-three count charges preferred against him by the Economic and Financial Crimes Commission (EFCC). He appealed to the Court of Appeal and succeeded in having his prison term reduced from fourteen to ten years, which the Supreme Court of Nigeria affirmed in March 2021.

The former Governor of Taraba State Jolly Nyame was similarly found guilty on twenty-seven of the forty-one count charges of "money laundering, criminal breach of trust, and misappropriation of funds" to the tune of N1.64 billion brought against him by the Economic and Financial Crimes Commission. He was sentenced to fourteen years in prison in May 2018. He appealed to both the Court of Appeal and ultimately the Supreme Court and succeeded in reducing his sentence to twelve years in February 2020.

The writers are unable to fathom the depth of reasoning of the members of this body drawn from the three arms of Government to extend pardon to top Government officials convicted of corruption in a government where the President had said "if Nigeria does not kill corruption, corruption will kill Nigeria"[43]. This was even more surprising in that the government that granted the pardon incessantly criticised previous administration for permitting monumental corruption that summersaulted to grant pardon to former State Governors successfully prosecuted after years of tortious prosecution and found guilty of corruption to the tune of over N2 billion, among scores of corruption tainted politicians that could not be brought to justice. The grant of these pardons to persons convicted of corruption is a signal that the fight against corruption is a vindictive agenda foisted on political enemies and not to sanitize the country of corrupt leaders in a time where animals rather than human beings are now accused of corruption[44].

Another curious grant of pardon to a top corrupt political office holder was made on 13 March 2013, to former Governor of Bayelsa State Diepreye Alamieyeseigha who was surprisingly granted pardon having been convicted of corruption related offences. In defence of the grant, the former President Dr

[43]https://www.channelstv.com/2020/09/28/buhari-declares-open-national-summit-on-diminishing-corruption/#:~:text=%E2%80%9CAs%20I%20have%20often%20reminded,War%20Agai accessed 13th November 2023 at 18:00 pm.

[44]https://saharareporters.com/2022/08/29/snake-monkey-and-termites-how-much-money-wildlife-consume-nigeria-matthew-ma accessed 13th November 2023 at 20:33 pm.

Goodluck Jonathan whose administration granted the pardon said that it was part of the condition accepted by the Federal Government led by President Umaru Musa Yar' Adua in their negotiation with militant groups in the Niger Delta region in order to restore peace in the region so as to foster oil production in the Nigerian oil sector, that pardon must be granted to that former Governor of Bayelsa State Diepreye Alamieyeseigha. He said he was merely completing what the former President started but which could not be announced before he died[45].

Similarly, on 13 March 2023, the former Managing Director of the Bank of the North, Shettima Bulama was also granted pardon. He was convicted of fraud for misappropriating monies meant for the bank[46]. The researchers are of the informed view that it is absolutely unacceptable that those who committed economic crimes of such magnitude in a developing country endangering the lives of millions of Nigerians considered to be the poorest of the poor against public interest should be granted State pardon. This is a testament that the Nigerian Criminal Justice system has been sacrificed on the altar of political shenanigans and manoeuvrings. This is a resounding message that crime is rewarding and in fact a career in Nigeria. It shows most unfortunately that irrespective of the crime committed, once you have the political connection you can be pardoned and still be elected to leadership position.

10. Factors That Influence the Exercise of Power of Pardon

One of the major factors that influence the grant of pardon in Nigeria and in most countries is political considerations and alliance. The two former convicted governors who recently benefitted from the controversial grant of pardon in Nigeria are politically exposed persons who have their cronies in power and accordingly brokered their pardoned with relative ease with the attendant unwritten understanding for political alliance[47]. This particular consideration is not peculiar to Nigeria.

A second factor that could influence the exercise of the grant of pardon is the health condition of the convict. Where the convict is terminally ill, there is high possibility of the convict receiving clemency in order to access medical attention. This was one of the reasons allegedly given by the presidency for the grant of pardon to the former convicted governors[48].

A third factor may be the age of the convict. It was argued that the two convicted former Nigerian governors had their pardon approved as a result of their old age[49]. The old age reason is debatable as the former governors were in their

[45]https://www.premiumtimesng.com/news/top-news/296677-why-i-pardoned-ex-governor-alamieyeseigha-jonathan.html?tztc=1 accessed 13th November 2023 at 18:47 pm.

[46]https://www.vanguardngr.com/2013/03/alamieyeseigha-unpardonable-pardon/ accessed 13th November 2023 at 21:14 pm.

[47]https://www.thecable.ng/inequity-in-politics-of-presidential-pardon accessed December 30th 2023 at 8:23 pm.

[48]https://www.thecable.ng/inequity-in-politics-of-presidential-pardon accessed December 30th 2023 at 9:40 pm.

early sixties at the time of the grant of the pardon[50]. There is no law that prescribes the relevant age a convict must attain before he could qualify for the grant of pardon as the statutes and case law are silent on it. Consequently, the relevant age is at the discretion of the President or State Governor.

A forth factor could be whether the convict has shown sufficient remorse to activate the exercise of the power of pardon in his favour. The remorse could be in the form of an open letter to the public or the relevant authorities, or the victims of the crime. The state of remorse could also mean that he is willing to divest himself of all proceeds of the crime or any benefit the commission of the crime may have conferred on him and is willing to make restitution. It is our opinion that whether a convict has shown remorse is subjective and capable of manipulation by the relevant authorities to achieve the result.

11. Conclusion

In conclusion, the researchers state that certain categories of offences must be excluded from the operation of prerogative of mercy. Economic crimes, corruption related cases, fraud, capital offences, cybercrime related offences, election related offences, and sexual offences should be exempted from Pardon. They should be classified as unpardonable offences by our laws.

The Attorney-General of the Federation and Attorneys-General of the States should as a matter of urgency develop a prerogative of mercy manual wherein conditions for grant and or refusal are to be expressly spelt out. This will also list certain categories of offences that cannot be considered for pardon.

The composition of the members of the Presidential Advisory Committee on Prerogative of Mercy and by extension that of the State should be reconstituted to include some reputable Civil Society Organisations, renowned and upright clergymen and distinguished Nigerians with high repute and moral standing. The committee should not be made up of politicians only.

Application for prerogative of mercy and decision thereof must be given a time frame within which the application for mercy must be resolved. This leaves the fate of the convict in limbo and exposes them to cruelty. The severity of this state of affairs was emphasised by the Indian Supreme court in delays in (Jagdish v State of MP (2002).

It is recommended that political office holders must as a matter of urgency develop a roadmap towards combatting the evil surge of corruption in Nigeria. Persons convicted or connected with corruption related offences irrespective of how minute should not be allowed to be appointed to hold public office at whatever level of government irrespective of whether or not such persons are pardoned by the Federal or State government.

It is further recommended that anti-graft agencies such as Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices Cor-

[49]https://www.premiumtimesng.com/news/headlines/523946-buhari-pardons-ex-governors-dariye-nyame-serving-jail-terms-for-corruption-157-others.html accessed December 30th 2023 at 9:53 pm.
[50]*Ibid.*

ruption (ICPC) must as part of their mandate beam their searchlight without compromising standard on any aspirant to any political office or any appointee to such office at all levels of government in order to inhibit the appointment or the election of such persons by ensuring their disqualification or ineligibility to hold such public office.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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