

Original Paper

Pardons and Commutations: The Nigerian Experiences (Note 1)

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Abstract

The 1999 Constitution of the Federal Republic of Nigeria (as amended) distinctly separated the powers of the Federal Republic of Nigeria among the three arms of the government. It vested the legislative powers of the Federation in the National assembly (Note 3) the executive powers of the Federation in the President; (Note 4) and the judicial powers of the Federation in the Courts established for the Federation. (Note 5) There are some meeting points, however, in the exercise of these powers. For instance, the executive, in line with the provisions of the Constitution, may intervene in criminal matters during, after, or while awaiting adjudication by the Courts. The exercise of the executive powers of mercy popularly known in Nigeria as “the Prerogative of Mercy” (Note 6) is a typical example of the interface among the separated powers of government. I explored in this paper the challenges, abuses and prospects which arise in the exercise of the Constitutional Prerogative of Mercy in the Nigerian context. Most of my illustrations were drawn from the Presidential exercise of the two main forms of these powers: pardon and commutations. To position Nigeria to make the optimal use of these enormous powers of mercy arrogated to the executive, I made some preliminary recommendations in this paper. They include expanding the scope of the beneficiaries of the executive powers of mercy; as well as making the exercise of the powers transparent, accessible to the masses, and even justiciable.

Keywords

Pardon, Amnesty, Commutation, Respite, Remission

1. Explanation of Terms

1.1 Pardon

In the case of *Falae v Obasanjo (No 2)* (Note 7) the Court of Appeal described pardon as 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 on account of the offence.

A pardon is an act of grace by which the executive wipes away punishment, with or without conditions. Etymologically, it is derived from the Latin word *pardonere* (to freely give).

Pardon is authorized in the Nigerian Constitution. (Note 8)

1.2 Amnesty

Amnesty is a general pardon granted to a group or class of persons rather than to an individual person. There is no direct provision for amnesty in the Nigerian Constitution but being a form of pardon, it is deemed to have been derived from the constitutional provision on pardon. Etymologically, it is derived from the Greek word *amnestia* (forgetting). There is an interesting instance of amnesty in the case of *Minister of Internal Affairs & 2 others v Okoro & 69 other* (Note 9) in which President Obasanjo in the exercise of the Constitutional powers pursuant to section 175 on 4th January 2000 granted presidential amnesty or general pardon which resulted in the unconditional release of prisoners who have spent 20 years or more on death roll. Concomitantly, the death sentence was commuted to life imprisonment for condemned criminals who have spent a minimum of 10 years but not up to 20 years in prison. The Respondents in the instant Appeal who claimed to be beneficiaries of the said Presidential amnesty but who were yet to reap its benefits approached the Federal High Court Enugu. They sought an order of mandamus against the Appellants praying the Court to direct the calculation of condemned criminals on death roll who have spent 20 years and above in prison custody to start from the date of first detention in prison custody as against starting from the date of the conviction. The Appellants' main contention was that most of the Applicants at the trial court were convicted for offences created by section 319 of the State Criminal Code and that pardon may only be granted by the Governor of a State under section 212 of the Constitution while the President may only grant pardon for offences created by an Act of the National Assembly under section 175 of the 1999 Constitution. Another determinative element was that there was no Presidential order before the trial court calling for interpretation of the terms of such an order. The appeal was therefore allowed. The Court of Appeal held that the Respondents were not to benefit from the amnesty.

1.3 Commutation

Commutation refers to the reduction or shortening of a sentence. It is a substitution of a sentence originally imposed with a lesser or milder one. Commutation is provided for in the Nigerian Constitution in section 175(1)(c). (Note 10)

1.4 Respite

Respite simply refers to a temporary delay or suspension of punishment that leaves the sentence itself intact. Respite is provided for in the Nigerian Constitution in section 175((1) (b). (Note 11)

1.5 Remission

Remission refers to reduction of the amount of sentence, most often of financial obligation, without changing the character of the sentence. It is provided for in the Nigerian Constitution in section 175(1) (d). (Note 12)

2. Legal Framework for Prerogative of Mercy in Nigeria

The Nigerian Constitution is the direct source of the powers of the prerogative of mercy. These Constitutional powers vest the President (Note 13) and the Governor of a State (Note 14) with authority to grant pardon, commutations, and other forms of mercy. Regarding the President, section 175 of the Constitution reads as follows:

Section 175 –

(1) The President may -

- (a) grant any person concerned with or convicted of any offence created by an Act of the National Assembly a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either for an indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence;
- (c) substitute a less severe form of punishment for any punishment imposed on that person for such an offence; or
- (d) remit the whole or any part of any punishment imposed on that person for such an offence or of any penalty or forfeiture otherwise due to the State on account of such an offence.

(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.

Analysis of the above Constitutional provisions highlights the enormous powers so granted to the President. (Note 15) The President can grant pardon to any person or group of persons concerned with or convicted of any offence. The President can also lessen a sentence imposed by the Court or suspend the execution of the sentence.

3. The Rationale for the Exercise of Pardons, Commutations, and Other Forms of Executive Mercy in Nigeria

The Constitution does not provide the rationale for granting the powers of the Prerogative of Mercy to the executive. I proffer the following probable reasons can be proffered for arrogating to the executive the powers to intervene even on occasions when ordinarily the courts alone would have had the only and final say.

The constitutional power of the Prerogative of Mercy is a tacit recognition that the criminal justice system, being human, is susceptible to human errors and mistakes which the courts might not be able to correct. The executive is also human but can step in especially in those circumstances the Court cannot review itself or is *functus officio*.

There might be circumstances or subsequent developments which, after the passage of time, might make a judicial punishment or sentence no longer fit the crime or the convict. There might also be the

need on account of humanitarian reasons of age or illness for the strict letter of the law to be relaxed. Also, genuine social or political interest might call for justice to be tempered with mercy. In such cases, the executive may step in by exercising the powers of the Prerogative of Mercy.

4. The Effects of Commutations and Pardons

The effect of commutation is merely to reduce the original sentence or punishment to a lesser time or degree. A death sentence, for instance, may be commuted to life imprisonment; or, life imprisonment may be commuted to say, 10 years' imprisonment.

With regard to the effect of a pardon, the main holding is found in the judicial pronouncement in the popular case of *Falae v Obasanjo*. (Note 16) The main issue in the case was whether or not a pardon removes civil disabilities such as would constitute a bar to Obasanjo in standing for election for the office of a President. The court held that the effect of a pardon is to make the offender a new man, or *novus homo*, to acquit him of all corporal penalties and forfeiture annexed to the offence pardoned.

The implication of the above is that pardon clears the *pardonee* both of the guilt and the punishment imposed on him or her. So, despite Obasanjo's conviction for treason and sentence to life imprisonment by a military tribunal, he still qualified to campaign for and be elected President of Nigeria in 1999. (Note 17)

The Constitution also states that the *pardonee* having been made a *novus homo*, cannot be tried again for the pardoned offence. Section 36(10) reads,

No person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.

In the same vein, the Administration of Criminal Justice Act, 2015 corroborates this effect by providing that "a defendant against whom a charge or information is filed may plead that he has obtained a pardon for his offence." (Note 18)

5. The Exercise of the Prerogative of Mercy in Nigeria

5.1 Consultation with the Council of State

The Constitution clearly states that the President's exercise of the shall be after consultation with the Council of State. (Note 19) The tone of the constitutional provision on this consultation signifies that it is mandatory for the President to consult with the Council of State prior to granting the pardon or any other form of the prerogative of mercy. Consultation with the Council of State is, therefore, a condition precedent for the grant of any form of the Prerogative of Mercy pardon and failure to comply with such mandatory procedure may affect its validity. (Note 20) Any grant of pardon by the President without consultation with the Council of State would be unconstitutional and void. The same consideration is applicable to the State Governors who equally must consult with the Advisory Council of the State prior to granting a pardon or any other form of the Prerogative of Mercy duly established by the Law of the relevant State.

It however appears that it is not mandatory that the President must follow the advice of the Council of State. According to Nwabueze,

Although the President cannot exercise the power without consulting with the Council, he is however not bound by the outcome of the consultation proceedings. (Note 21)

However, section 175(3) of the Constitution which deals specifically with offences against the military demands the President shall be “acting in accordance with the advice of the Council of State.” Some authors have argued that the requirement to act in accordance with the Council’s advice is mandatory because the President is expressly mandated to act on the advice of that body. (Note 22)

The composition of the Council of State established pursuant to Section 153 of the Constitution, among other Federal Commissions and Councils, is as follows: (Note 23)

- a. The president, who shall be the Chairman
- b. The vice president, who shall be the Deputy Chairman
- c. All former Presidents of the Federation and all former Heads of the Government of the Federation
- d. All former Chief Justices of Nigeria
- e. The Senate President
- f. The Speaker of House of Representatives
- g. All the Governors of the State of the Federation
- h. The Attorney-General of the Federation

The powers arrogated to the Council of State specifically include the authority to advise the President in the exercise of his powers with respect to the prerogative of mercy. (Note 24) As laudable as the diversity of persons included in the membership of the Council may appear, one wonders about the correctness of the President being the chairman of a Council that is charged with advising the same President. It looks like one advising himself.

Another pertinent body with regard to the Prerogative of Mercy at the Federal level is the “**Committee on the Prerogative of Mercy**” with its Secretariat at the Federal Ministry of Justice, Federal Capital Territory, Abuja. This **Committee on the Prerogative of Mercy** considers applications for the grant of the Prerogative of Mercy and then reports to the Council of State which then advises the President. The legal framework for this procedure appears to be the Administration of Criminal Justice Act 2015. (Note 25)

5.2 Restrictions in the Exercise of the Prerogative of Mercy

Apart from the above observation that the President must consult with the Council of State prior to the grant or refusal of the Prerogative of Mercy, the following are other relevant restrictions affecting the exercise of the presidential mercy powers.

- a. There is an exception to the kind of offence open to the grant of the Prerogative of Mercy by the president or a governor. **Any punishment imposed under the Code of Conduct Tribunal for a**

violation by a public officer of any code of conduct relevant to their office is not amenable to the exercise of the Prerogative of Mercy. (Note 26)

b. The president can only grant pardon or other forms of Prerogative of Mercy with respect to offences of laws created by an Act of the National Assembly. (Note 27)

c. The Prerogative of Mercy cannot be applied with respect to violations of civil liabilities but only offences or crimes.

d. The Prerogative of Mercy cannot be applied with respect to prospective offences. If it were to be so, the grant of mercy would amount to giving the grantee a license to commit a crime.

e. The exercise of the Prerogative of Mercy must be subsequent to consultation with the Council of State or the Committee on the Prerogative of Mercy established by state law as already discussed above.

f. The beneficiary of a pardon or any other form of executive mercy must have been convicted and must have no pending appeal. In *Obidike v State* (Note 28) the court declined to recognize the pardon that had been granted the appellant while his appeal was pending. The appeal was dismissed and the appellant was even ordered to be re-arrested and executed in accordance with the judgment of the trial court. In *Solola v State* (Note 29) one of the three persons convicted of the murder of a poor infant hunch back was pardoned while there was a further appeal to the Supreme court after the Court of Appeal dismissed the appeal. The Supreme Court decided that the Prerogative of Mercy cannot be exercised in favour of an accused who has lodged a further appeal to the supreme court and until that appeal was finally determined, the Head of State or the Governor of a State cannot exercise his power of Prerogative of Mercy in favour of that person, pursuant to sections 175 or 212 of the 1999 Constitution, as the case may be. The shoddy and arbitrary way the Prerogative of Mercy was exercised in this case prompted one of the justices of the Supreme Court to remark that **“The rules as to grant of the prerogative of the mercy must be re-examined”**. (Note 30)

In *FRN v Achida & Anor*, (Note 31) it was decided that the Governor of a State cannot exercise his power of pardon where there had been no conviction as it is the exclusive preserve of the judiciary to try offenders and convict or exonerate them of offences alleged or charged, or as the circumstances deserve. It is however within the discretionary power of the executive thereafter to pardon, grant amnesty, clemency or reprieve a convict or even to commute his sentence. The Court of Appeal held, using these words:

Section 212 (1)(a) of the Constitution does not contemplate that an executive should constitute himself into the Attorney General who is empowered under section 211 of the Constitution to discontinue any criminal trial instituted by him before any court.

5.3 The Scope of the Beneficiaries of the Prerogative of Mercy

The scope of those who can benefit from the exercise of the Prerogative of Mercy in Nigeria appears to be controversial and unsettled. This stems from the Constitutional description of whom the President may pardon and under what conditions, namely:

The President may grant any person concerned with or convicted of any offence ... a pardon ... (Note 32)

Some, like Oamen, have interpreted the phrase, “**any person concerned with any offence**” to mean that even a person not yet under trial or not yet convicted may be granted a pardon under section 175 of the Constitution. (Note 33) However, a host of judicial decisions support the position that the Prerogative of Mercy by the President and Governor is restricted only to those who have been tried and convicted by a Court. Jurisprudential holdings provide some guidance in analyzing the scope of the above Constitutional phrase. For example, the Court of Appeal in *FRN v Achida & Anor* (Note 34) held that to contemplate the grant of pardon to an offender who is yet to undergo trial or to fully pass through the justice system to its full extent and be pronounced guilty of the crime for which he is standing trial yet presumed innocent, is to unnecessarily short-circuit the criminal process of trial anticipated by Sections 175 and 212 of the CFRN... Certainly Section 212(1) (a)(supra) does not contemplate that the executive would interfere with this process. It therefore amounts to an unusual and extra-judicial interference by the executive of the judicial function of courts, whose duty/function is to try offenders for crimes committed against the State, for pardon to be granted to accused persons still standing trial, and in particular, still presumed innocent.

5.4 Abuses in the Exercise of the Executive Powers of Clemency in Nigeria

Because there exist so few internal control systems to regulate the exercise of the Prerogative of Mercy similar to the requirement to consult with the Council, the exercise of this executive power in Nigeria continues to be fraught with periodic abuses real or imagined. These include allegations of inappropriate use of the grant of mercy to those who ought not to benefit from the exercise, to allegations of failure to grant the Prerogative of Mercy for those who should benefit from it. These abuses are often perceived in high profile corruption cases or cases involving politicians and people of means and influence. These abuses have been denounced by the public with calls for the reform or even abrogation of the system of Prerogative of Mercy in its entirety. An instance of a controversial pardon is the Prerogative of Mercy granted to Chief D.S.P. Alamiyesigha by then President Goodluck Jonathan in 2013. Chief Alamiyesigha, a former Governor of Bayelsa State, was convicted of several corruption charges. (Note 35) President Jonathan had served as Deputy Governor of Bayelsa State during the Chief's term as Governor. (Note 36)

Other controversial instances are the pardons granted by President Buhari in April 2022 to Senator Joshua Dariye, a former governor of Plateau State, and Rev Jolly Nyame, a former governor of Taraba State. Both were convicted and were serving jail terms for corruption, and both had unsuccessfully appealed to the Supreme Court. Joining the public's condemnation of the pardon, the Socio-Economic Rights and Accountability Project (SERAP) among others, officially urged the President to use to review and withdraw the pardon granted to the duo. (Note 37)

Apart from the perceived abuses arising from granting undeserved pardons, as a favour to powerful corrupt politicians and to those with connections and influence, another potential form of abuse is the

underuse of the prerogative of mercy. The executive makes mainly occasional and ceremonial use of the power on national anniversaries. Most ordinary people lack sufficient access to the bureaucratic process and hard-to-obtain forms required to apply for a consideration of Prerogative of Mercy by the president or a governor.

Further evidence of the abuses militating against a just exercise of this executive power is the undue influence suffered by the members of the body charged with advising or making recommendations to the executive. Former Attorney General of Oyo State, Adebayo Ojo Mutalubi, recalled being bombarded by inducements and even threats to influence him to have an undeserving convict pardoned. (Note 38)

5.5 The Minimal Exercise of the Powers of Mercy

If the scope of those to benefit from the exercise of the Prerogative of Mercy remains limited only to those who have been tried and convicted, as it is currently the practice, the majority of those being detained in Nigerian prisons, now called Correctional Centres, would be excluded. (Note 39)

Those awaiting trial remanded for detention in the Nigerian Correctional Centres outnumber those convicted and imprisoned serving definite terms. The official statistics of those detained in custodial centres [prisons] in Nigeria as of 17th April 2023 showed that the total Inmate Population is **74,872** out of which those tried and convicted were **22,933** (31%) while the remainder, **51,939** (69%) were merely detained, still awaiting trial. (Note 40) Because only those who have been imprisoned after conviction can be granted pardon or commutation by the executive, the vast greater percentage of those under detention awaiting trial in the over-congested custodial centres cannot be considered for executive mercy.

Due to the perennial problem of the Nigerian prison system's over congestion of its custodial centres, other extra-judicial channels that are available to address the plights of those under detention awaiting trial are also minimally used. Such channels are the powers granted to the Chief Justice of Nigeria or Chief Judge of the states to release from detention those awaiting trial. (Note 41) The circumstances for such release are where the detention of that person is manifestly unlawful; or when the person detained has been in custody, whether on remand or otherwise, for a period longer than the maximum period of imprisonment which the person detained could have served had he been convicted of the charged offence. Such release of course does not amount to pardon but merely a release from unlawful detention. In most cases, the Chief Judge would set a benchmark of considering those who have been under detention without trial for up to a certain number of years, sometimes up to four years. The constitutionality of this practice has been upheld in the case of *Edwin Iloegbunam & Ors v Richard Iloegbunam & Ors*. (Note 42) In that case, the Appellants were arraigned on a holding charge of attempted murder before the Magistrate's Court, Ogidi, Anambra State on 3 July 2000. For want of jurisdiction, the Magistrate Court refused the Applicants' application for bail and ordered that they be detained while awaiting trial. However, before they were properly charged with murder at the High Court the Chief Judge of Anambra State visited the Onitsha Prisons and ordered that the Appellants be released on bail. In making the order,

the Chief Judge did not pardon the murder suspects but merely released them from detention on bail. As soon as the Appellants regained their freedom the complainants in the murder case filed a motion *ex parte* at the Lagos judicial division of the Federal High Court asking that the Appellants be rearrested and held in prison custody. Their application was granted as prayed. Dissatisfied with the order the Appellants then approached the Court of Appeal for the restoration of their fundamental right to personal liberty. The Court of Appeal allowed the appeal pursuant to the Criminal Justice (Release from Custody) (Special Provisions) Act.

Other post-conviction mechanisms for early release of inmates at the custodial centres like parole (Note 43) and probation (Note 44) are by their nature limited to those who are already convicted and thus not available to those merely under detention awaiting trial. Official statistics of the Nigerian Correctional Service also show a very minimal use of these mechanisms. For instance, the official statistics as of 17th April 2023 of those on parole in the whole of Nigeria is seven while those on probation is only 14. (Note 45) The very minimal use of parole and probation surely has an impact on the demand for the Prerogative of Mercy which unfortunately is not readily available. Little wonder then, that Margaret Colgate Love rightly observed that:

History teaches that the demand for clemency increases when the legal system lacks other mechanisms for delivering individualized justice, recognizing changed circumstances and correcting errors and inequities. (Note 46)

In an effort to address over congestion of the custodial centres (prison) as well as the underuse of the power of the prerogative of mercy, the Nigerian Correctional Service Act, 2019 contains some provisions, but these – when actually applied - are equally restricted to individuals who are already convicted. Such provisions include:

- a. where an inmate sentenced to death has exhausted all legal procedures for appeal and a period of 10 years has elapsed without the execution of the sentence, the Chief Judge may commute the sentence of death to life imprisonment. (Note 47)
- b. Where the Custodial Centre has exceeded its capacity, the State Controller shall within a period not exceeding one week, notify the (a) Chief Judge of the State; (b) Attorney-General of the State; (c) Prerogative of Mercy Committee; (d) State Criminal Justice Committee; and (e) any other relevant body. (Note 48)
- c. Upon receipt of the notification referred to (*above*) in subsection (4), the notified body shall, within a period not exceeding three months, take necessary steps to rectify overcrowding. (Note 49)

6. Recommendations and Conclusion

From the foregoing discussions on Pardon and Commutations as well as other forms of executive mercy in Nigeria, we make the following preliminary recommendations in an effort to achieve a more functional and efficient exercise of these enormous powers vested in the President and Governors.

- a. The victims of crime, whether individuals or groups should be allowed input in the decision-making process in the grant of any form of mercy. This will enhance trust and confidence in the process. The welfare and sentiments of direct or extended victims ought equally to be taken into consideration.
- b. Trial courts should accord the practice of *allocutus* (Note 50) its due importance even in cases of a mandatory sentence as in capital offences where *allocutus* has other values apart from eliciting mitigation of sentence. The *allocutus* plea as well as the trial Judge's remarks on it are very relevant in making decisions on the application for the grant of mercy by the executive. The *allocutus* plea which thus offers the convict the opportunity to accept responsibility, express remorse, and apologize has enormous therapeutic value. (Note 51) The Administration of Criminal Justice Act (ACJA) even enjoins the Court to make recommendations for mercy. (Note 52) The plea for mercy made by the convict, along with other statements of fact and law, provides the ground and materials for the Judge to make recommendations to the executive for consideration for the grant of mercy.
- c. The entire process of granting pardons and commutations and other forms of mercy should be made more transparent and accessible. The current perception is that it is opaque and secretive. The guidelines or process of how to make application are not widely known by the masses. This openness may allay the fear that the powers of mercy are the exclusive reserve of the selected few with influence. Everyone is equal before the law and as such there should be no impression that the powers of mercy are an executive way of washing influential politicians clean of their corruption and impunity.
- d. As a matter of necessity, the scope of the exercise of the power of mercy by the executive should be expanded to allow those not yet convicted, especially those under detention awaiting trial in custodial centres so that they also might benefit from the exercise of the prerogative of mercy. Legislative intervention is urgently needed to achieve this.
- e. The President and the State Governors should give reasons for granting pardons, commutations and other forms of mercy. This is not a Constitutional requirement but ought to be made so. Of course, reasons given for granting the pardon or commutation or other forms of mercy will enhance the public's appreciation of the soundness and rightness of the grant. Requiring that reasons for the grant must be made public would become a check on the president or the governor to use executive power with caution knowing it is subject to the scrutiny of public opinion. Even section 312 of ACJA makes it mandatory for the court to give reasons for recommendation for mercy. More credence will be given to the exercise of the Prerogative of Mercy if facts surrounding the pardon or commutation are revealed and made public.
- f. To further check the executive from arbitrary and shady use of the power of mercy, there should also be legislative intervention to empower citizens to challenge the legality of any misuse of the executive power of mercy.

Notwithstanding the abuses and challenges in the exercise of the powers of mercy in Nigeria by the president and the governors, any revisions should be carefully considered with a goal of maintaining

justice and fairness, because, “the baby should not be thrown away in dirty water.” I believe that if these recommendations are placed into effect, the powers of mercy given to the president and the governors will complement and improve criminal justice in Nigeria.

Notes

Note 1. A modified version of a paper presented at the Ninth International CURE Conference on Human Rights and Criminal Justice Reform at The BOMA Nairobi Hotel, Nairobi, Kenya, on 2nd May 2023.

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Note 3. S 4(1); that of the legislative powers of a state is vested in the State House of Assembly as provided for in s 4(6) of the Constitution of the Federal Republic of Nigeria (as amended), henceforth “the Constitution”.

Note 4. S 5(1); the executive powers of a state is that of a state vested in the Governor as provided for in s 5(2) of the Constitution.

Note 5. S 6(1); that of a state is vested in the Courts established for a State.

Note 6. An umbrella term that covers such executive acts of mercy as pardon, commutation, amnesty, reprieve, remission as provided in ss 175 and 212 of the Constitution.

Note 7. (1999) 4 NWLR (Pt 599) 476.

Note 8. S 175(1)(a).

Note 9. (2003) LPELR – 7264 (CA).

Note 10. It provides that “the President may substitute a less severe form of punishment for any punishment imposed on that person for such an offence.”

Note 11. It provides that “the President may grant any person respite, either for an indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence.”

Note 12. It provides that “the President may remit the whole or any part of any punishment imposed on that person for such an offence or any penalty or forfeiture otherwise due to the State on account of such an offence.

Note 13. S 175.

Note 14. S 212.

Note 15. That of the Governor in respect of offences created by any Law of a State as provided for in s 212 is almost same with of the President except there is no equivalent of subsection 3 of s 175.

Note 16. (1999) 4 NWLR (pt 5999). Soon after Obasanjo was pardoned after his conviction by the then Head of State, Gen Abdul Salami Abubakar, Obasanjo contested for the office of the President of Nigeria. See also *Okongwu v State* (1986) 5NWLR (pt 44).

Note 17. S 137 of the Constitution, among other factors, provides that a person shall not be qualified for election to the office of President if he is under a sentence of imprisonment or fine for any offence

involving dishonesty or fraud (by whatever name called) or for any other offence imposed on him by any court or tribunal.

Note 18. S 277(1)(b).

Note 19. S 175 (2). In respect of the Governor, s 212 also demands consultation with such advisory council of the State on Prerogative of Mercy as may be established by the Law of the State. Lagos State Government, for instance, recently established the Advisory Council on the Prerogative of Mercy to through the Advisory Council on the Prerogative of Mercy (Establishment) Law, Cap. A7, Laws of Lagos State, 2015. The Governor of Lagos State, Mr Babajide Olusola Sanwo-Olu on the 16th of December 2019 inaugurated the Advisory Council on Prerogative of Mercy.

Note 20. Government of Ekiti State v Akinyemi (2011) 17 NWLR (pt 1276) 1145.

Note 21. BO Nwabueze, The Presidential Constitution of Nigeria (C. Hurst & Company, London 1981) 144.

Note 22. I Udofa, “The Abuse of Presidential Power of Pardon and the Need for Restraints” (2018) 9 Beijing Law Review 113.

Note 23. As contained in Part 1 of the Third Schedule of the Constitution.

Note 24. Third Schedule, Part 1, s 6(a)(ii).

Note 25. S 409.

Note 26. S18(7) of the Fifth Schedule, part 1 of the Constitution.

Note 27. S 175(1) of the Constitution; just as a State Governor on the other hand only empowered to deal with offences created by any Law of the State as in s 212(1) of the Constitution.

Note 28. (2001) 17 NWLR (pt743) CA. See also Isibor v State (2002) FWLR (pt 98)

Note 29. (2005) 11 NWLR (pt 937) 460.

Note 30. Belgore, JSC.

Note 31. (2018) LPELR-46065.

Note 32. S 175 (1) of the Constitution. S 212(1) has similar provision in respect of the Governor of a State.

Note 33. Philip Ebosetale Oamen holds this view and is very critical of some decisions of the court that hold otherwise like the Court of Appeal in the case of FRN V ACHIDA & ANOR (2018) LPER-46065. See generally his article “Grant of Presidential Pardon in the United States and Nigeria: posthumousness, corporateness and other matters” in Commonwealth Law Bulletin (2020) available at <<https://doi.org/10.1080/03050718.2020.1795899>> accessed last on 23 January 2023

Note 34. (2018) LPELR-46065.

Note 35. Alamiyeseigha v FRN (2006) 16 NWLR (Pt 1004).

Note 36. see ‘How Pardon was Granted to Alamiyeseigha, Others’ This Day Live (Lagos 14 March 2013).

<<https://www.thisdaylive.com/articles/how-pardon-was-granted-to-alamiyeseigha-others/142114/>>

accessed 20 April 2023; see also Yemi Adebawale, ‘US Condemns Presidential Pardon for

Alamieyeseigha’ This Day Live (Lagos 16 March 2013) <<https://www.thisdaylive.com/articles/us-condemns-presidential-pardon-foralamieyeseigha/142294/>> accessed 12 April 2023; Olusola Fabiyi and Olalekan Adetayo, ‘Outrage over presidential pardon for VIP ex-convicts’ Nigeria Punch (Lagos 13 March 2013) <<https://www.punchng.com/news/outrage-over-presidential-pardonfor-vip-ex-convicts/>> accessed 12 April 2023; Mike Ikhariale, ‘The law and politics of a pardon’ Nigeria Punch (Lagos 24 March 2013) <<https://www.punchng.com/columnists/trivia-constitutional/alamieyeseigha-the-law-and-politics-of-a-pardon/>> accessed 12 April 2023.

Note 37. Olasunkanmi Akoni, Anti-corruption: SERAP asks Buhari to withdraw pardon for Dariye, Nyame in Vanguard News, 17 April, 2022 available at <<https://www.vanguardngr.com/2022/04/anti-corruption-serap-asks-buhari-to-withdraw-pardon-for-dariye-nyame/>> accessed 12 April, 2023

Note 38. <https://oyoinsight.com/exercise-of-prerogative-of-mercy-is-not-a-tea-cup-party-adebayo-mutalubi-ojo/>

Note 39. The Nigerian Correctional Service Act, 2019 changed the nomenclature from Prison to Custodial Centres.

Note 40. https://corrections.gov.ng/statistics_summary accessed last on 26 April 2023.

Note 41. Criminal Justice (Release from Custody) Special Provisions Act, s 1.

Note 42. (2001) 47 WRN 72.

Note 43. S 468 of the Administration of Criminal Justice Act, 2015.

Note 44. Ss 453-459 of the Administration of Criminal Justice Act, 2015.

Note 45. https://corrections.gov.ng/non_cust_statistics_summary accessed last on 26 April 2023.

Note 46. Margaret Colgate Love (2010) The Twilight of the Pardon Power in Journal of Criminal Law and Criminology, vol 100, Issue 3, 1204.

Note 47. S 12(2)(c).

Note 48. S 12(4).

Note 49. S 12(7).

Note 50. Plea for mercy.

Note 51. See generally, Justin Ileka, (2019) “Allocutus in Mandatory Sentences: Case Comment on Edwin v State”, Chukwuemeka Odumegwu Ojukwu University Journal of Commercial and Property Law, Vol 2, No 1, pp. 1-9.

<<https://www.nigerianjournalonline.com/index.php/COOUJCPL/article/view/630>.

Note 52. S 312. It provides that “the court may, in any case in recording sentence, make a recommendation for mercy and shall give the reasons for its recommendation.”