RE-EXAMINING THE SCOPE AND LIMITS OF THE PREROGATIVE OF MERCY UNDER THE NIGERIAN CONSTITUTION: A CASE STUDY OF RECENT PRESIDENTIAL AND OSUN STATE PARDONS

***Ademola Elufisoye Elubode *Ademola Ikujuni**

Abstract

One of the most extensive discretionary powers granted to the Nigerian government is the prerogative of mercy, which is intended to address injustices, mitigate severe penalties, and uphold humanitarian principles within the criminal justice system. However, its use has often sparked controversy, especially when applied to infamous or politically linked criminals. With particular reference to the recent pardons granted by Governor Ademola Adeleke of Osun State and President Bola Ahmed Tinubu in October 2025, this essay re-examines the constitutional scope, procedural structure, and moral limits of Nigeria's prerogative of mercy. Based on a doctrinal examination of Sections 175 and 212 of the 1999 Constitution (as amended), pertinent court rulings, and a comparative analysis between India and South Africa, the study reveals that both acts of clemency highlight serious problems with Nigeria's compassion system, despite their apparent procedural compliance. These include a lack of clear standards, shoddy consultation procedures, and a lack of consideration for victims' rights. The results imply that moral responsibility and public opinion are now key considerations for determining whether executive pardons are legitimate. The paper argued that the prerogative of mercy must operate as a constitutional obligation rooted in justice, reason, and moral responsibility rather than as a political privilege. To rebuild public trust and guarantee a fair balance between compassion and justice in Nigeria's democracy, the paper ended by recommending extensive reform through legislative regulation, the dissemination of advisory recommendations, conditional pardons, and limited judicial scrutiny.

Keywords: Judicial Review, Prerogative of Mercy, Presidential Pardon, Executive Clemency

1. Introduction

One of the most significant executive powers in Nigeria's constitutional framework is the prerogative of mercy, which represents the fine line that separates compassion from the rule of law. Originally intended as a gesture of royal grace to lessen the severity of justice, it is a relic of monarchical tradition that was carried over from the British judicial system.[1] *Sections 175 and 212* of the 1999 Constitution (as modified) have domesticated the power in its current form, giving the President and State Governors the respective powers to pardon, commute sentences, or remit penalties. The justification for this authority is the understanding that mistakes, harsh penalties, and

[1]* **Ademola Elufisoye Elubode** LL.B (Hons) B.L LL.M (Ife), Lecturer, Department of Private and Property Law, Faculty of Law, Elizade University, Ilara-Mokin, Ondo State. E-mail: lukoyechambers@gmail.com; +2348084628449.

* **Ademola Ikujuni,** LL.B (Hons), BL, LL.M, M.Phil. (Ife), Notary Public, Lecturer, Faculty of Law, Elizade University, Ilara-Mokin, Ondo State. E-mail: ademolaikujuni2@gmail.com; +2348056501694.

R. A. Ngwoke, and S. B. Abayomi, 'An Appraisal of the Power of Pardon Under Nigerian Law: Lessons from Other Jurisdictions', *Beijing Law Review*, 13, 217-226, An Appraisal of the Power of Pardon under Nigerian Law: Lessons from Other Jurisdictions accessed 14th October 2025.

human weakness continues to exist even in a society that is based on the rule of law, and that this calls for a channel for pardon and reconciliation. Even if its goal is supposedly good, showing mercy in Nigeria has grown more contentious, especially when it comes to those with political ties or those convicted of horrible crimes.[2]

The use of the prerogative of mercy has caused a great deal of moral discomfort and public discussion in recent years. The most recent example was in October 2025, when President Bola Ahmed Tinubu pardoned a number of prisoners, including Maryam Sanda, who had been found guilty of her husband's murder and given a life sentence.[3] In a similar vein, Osun State Governor Ademola Adeleke pardoned scores of prisoners, some of whom had been found guilty of violent crimes, in December 2024 and again in October 2025.[4] Even if these presidential mercy actions may have complied with the Constitution's letter, they have sparked serious concerns about their compatibility with victims' rights, public morality, and the integrity of the criminal justice system. The resulting public conversation highlights the conflict between executive clemency's moral legitimacy and legality.[5]

The core constitutional conundrum at the centre of the dispute is that, despite its discretion and breadth, the prerogative of mercy lacks substantive accountability and procedural openness. Without requiring the revelation of the discussions or standards that inform such decisions, the Constitution only stipulates that the President or Governor must act "after consultation" with the Council of State or the Advisory Council on the Prerogative of Mercy.[6] As a result, the procedure is frequently cloaked in secrecy, which feeds public mistrust that mercy is being offered as a political tactic rather than as a humanitarian act.

The moral and democratic underpinnings of power are compromised by this opacity, particularly when the beneficiaries are people whose crimes deeply affront the public conscience. The question of whether presidential clemency in Nigeria still serves its rehabilitative function or has devolved into a distortion of justice is thus raised by the apparent abuse of this authority.[7]

Therefore, the absence of procedural protections and guiding principles in the exercise of the prerogative—rather than the prerogative itself—is the issue. There is scant proof that criteria like

---

[2] P. Nsabe, 'Tinubu's Mass Clemency: Between Justice, Mercy, and the Peril of Political Favouritism', (The Journal, 13th of October 2025), Tinubu's Mass Clemency: Between Justice, Mercy, and the Peril of Political Favouritism | The Journal accessed 14th October 2025.

[3] N. Ismail, 'Tinubu Grants Presidential Clemency to Maryam Sanda After Six Years in Prison', (Daily Post, 11th of October 2025), Tinubu grants presidential clemency to Maryam Sanda after six years in prison - Daily Post Nigeria accessed 14th October 2025.

[4] O. Oladejo, 'Christmas: Governor Adeleke Grants Pardon To 53 Convicts, Including Two Sentenced to Death for Stealing Fowl', (Business Day, 27th of December 2024), Christmas: Governor Adeleke grants pardon to 53 convicts, including two sentenced to death for stealing fowl - Businessday NG accessed 14th October 2025.

[5] S. Olumide, L. Sobechi, and A. Ochojila, 'Prerogative of Mercy: Criticisms, Outrage, Suspicion Trail Presidential Pardon of 175', (The Guardian, 13th of October 2025), Prerogative of mercy: Criticisms, outrage, suspicion trail presidential pardon of 175 accessed 14th October 2025.

[6] K. O. Mrabure, 'Contending Issues in The Exercise of Prerogative of Mercy by State Executives Under The Nigerian Law', *AJLHR* 4 (2) 2020**,** pp. 153-162.

[7] See (n5), *supra.*

rehabilitation, regret, or humanitarian justification are consistently applied when deciding who is eligible for a pardon.[8] Furthermore, the procedure is now open to executive discretion due to the lack of a legislative framework and judicial scrutiny. Although the President and Governors have the constitutional authority to pardon any criminal, including those found guilty of murder or corruption, the public's trust in the legal system and the institution of mercy is damaged when there is no clear explanation for the pardon.[9] This worry is best exemplified by the 2025 presidential and Osun State pardons, which, despite being legally justified, have been widely denounced as politically driven and ethically tone-deaf.[10]

In light of this, this essay aims to revisit the parameters, process, and extent of the prerogative of mercy under Nigerian law. It asks whether President Tinubu's and Governor Adeleke's recent acts of mercy align with the demands of moral accountability, procedural due process, and constitutional obligations. Comparative viewpoints from other jurisdictions, such as South Africa and India, where courts have established proportionality and rationality norms to limit executive power, are also incorporated into the study. The paper aims to illuminate the moral and legal aspects of executive clemency in Nigeria through a doctrinal analysis of constitutional texts, judicial rulings, and policy papers.

2. Conceptual and Theoretical Framework

The idea that justice must be balanced with compassion to be complete is the foundation of the constitutional power known as the prerogative of mercy. Its intellectual underpinning is the understanding that the state, as the source of justice, has a moral and legal obligation to address injustices brought about by inflexible court decisions and that judicial infallibility is not absolute. The prerogative of mercy functions as a constitutional protection and an executive prerogative in Nigeria, aiming to humanise the criminal justice system while maintaining the rule of law as the top priority.[11]

From a conceptual standpoint, the prerogative of compassion refers to the discretionary authority granted to the President and Governors to commute, reprieve, or pardon convicted criminals. In circumstances that deserve it, it acts as a post-judicial tool to achieve equity, rectify court errors, or provide humanitarian aid.[12] In the realm of justice, the prerogative of mercy is "an executive intervention, justified only by the higher demands of humanity and fairness," as noted by

[8] P. A. Bobai, and H. L. Haruna, 'The Exercise of The Prerogative of Mercy: Its Impact On The Fight Against Corruption In Nigeria', *International Journal of Legal Developments and Allied Issues,* Vol. 8 Issue 5, 2022, Paul-Hope-IJLDAI.pdf accessed 15th October 2025.

[9] P. I. Nwosu, 'The Controversy Over Presidential Pardons in Nigeria', (BarristerNG.com, 13th of October 2025), The controversy over Presidential pardons in Nigeria -By Paschal Ifeanyi Nwosu Esq - BarristerNG.com accessed 15th October 2025.

[10] A. Hakim, 'Tinubu's Presidential Pardons and The Abuse of Prerogative Power', (Within Nigeria, 13th of October 2025), Tinubu's presidential pardons and the abuse of prerogative power accessed 15th October 2025.

[11] See (n8), *supra.*

[12] *Ibid.*

Nwabueze.[13] It is intended to supplement judicial procedures rather than replace them in extraordinary situations where strict adherence to the law would clearly lead to injustice.

From a constitutional standpoint, the foundation for this authority is established by Sections 175 and 212 of the 1999 Constitution (as amended). A governor may use it "after consultation with the Advisory Council on the Prerogative of Mercy," whereas the president may do so "after consultation with the Council of State." These clauses highlight two crucial conceptual tenets: consultation and discretion. While consultation suggests that the decision must be informed by due process and institutional input rather than being made arbitrarily, discretion indicates that the decision is ultimately executive rather than judicial.[14] Therefore, it is anticipated that the practice of mercy will demonstrate a delicate balancing act between accountability and compassion.

Three main jurisprudential perspectives can theoretically be used to analyse the prerogative of mercy: (i) the constitutional theory of executive clemency, (ii) the rule of law theory, and (iii) the moral legitimacy theory.[15]

The prerogative of mercy is an incident of sovereignty, according to constitutional theory. This power was traditionally derived from monarchical prerogatives and is currently democratically entrusted to elected leaders. Although it influences judicial decisions, the authority is administrative rather than judicial. Its rationale is based on the idea that the state has the moral authority to punish an offender in the name of justice or national reconciliation after prosecuting them. The Supreme Court emphasised in *Lakanmi v Attorney-General (Western State)*[16] that, although the constitution recognises executive discretion, it must function within the parameters of lawfulness and constitutionalism. Therefore, notwithstanding the prerogative of mercy's breadth, it cannot be used to compromise the independence of the judiciary or the Constitution's primacy.

Unrestricted discretion is counterbalanced by the rule of law theory. No one is above the law, including the executive branch, according to Dicey's traditional definition. Therefore, even while the prerogative of mercy grants discretion, it does not shield the governor or president from responsibility. According to Nigerian academics like Akinola, the pardoning power runs the risk of turning into "executive impunity clothed in constitutional garb" if it is used without explanation or transparency.[17] Therefore, the rule of law requires that mercy be shown reasonably, after careful consideration and with a clear rationale based on the public interest. Comparative jurisprudence supports this strategy. For example, in the case of *President of the Republic of South Africa v. Hugo*,[18] the South African Constitutional Court ruled that the pardon power, while discretionary, is liable to constitutional challenge for irrationality or arbitrariness.

---

[13] I. Udofa, 'The Abuse of Presidential Power of Pardon and the Need for Restraints', *Beijing Law Review*, Vol. 9 No. 2, 2018, The Abuse of Presidential Power of Pardon and the Need for Restraints accessed 15th October 2025.

[14] T. Daka, 'Council of State Backs Presidential Clemency for 175 Inmates', (The Guardian, 9th of October 2025), Council of State backs presidential clemency for 175 inmates accessed 17th October 2025.

[15] See (n8), *supra.*

[16] (1971) 1 UILR 201 (SC).

[17] 'Prerogative Of Mercy: "Blame The Committee, Not The President"', (Casefileng.com, 13th of October 2025), Prerogative Of Mercy: "Blame The Committee, Not The President" -Richard Akinnola - Casefile Nigeria accessed 17th October 2025.

[18] 1997 (6) BCLR 708

The moral validity thesis places the right to mercy in the context of justice's social and ethical aspects. Moral duty and mercy as a virtue cannot be separated. Clemency becomes morally repugnant and socially unstable when it is given to criminals who exhibit no remorse or to politically exposed individuals found guilty of corruption.[19] The frequent pardons of well-known people in Nigeria have sparked public indignation and raised concerns about the moral character of the country's government. The main idea here is that legitimacy is derived from both moral and social acceptance, not only from legality.[20] Instead of sustaining elite impunity, a morally righteous act of charity should encourage restorative justice, rehabilitation, and reconciliation.

The connection between these views shows that the prerogative of mercy is a multifaceted tool that necessitates harmony between government, morality, and the law rather than being a simple constitutional abstraction. Its conceptual strength is its adaptability, but its potential for misuse makes it dangerous. Because of the separation of powers, Nigerian courts have historically been reluctant to challenge the legality of executive pardons. But contemporary constitutionalism acknowledges that judicial review can also involve determining whether due process, especially consultation, was actually followed. The transition from total discretion to accountable discretion is seen in this evolution.[21]

Accordingly, the theoretical and conceptual study shows a rising jurisprudential consensus that mercy, while based on compassion, must be applied in a way that respects the rule of law and is informed by the values of proportionality, transparency, and reason. A deliberative process that honours institutional counsel, reflects moral responsibility, and upholds public trust is what the constitutional framework envisions. Therefore, as long as each is used within its proper parameters, the conflict between mercy and justice is complimentary rather than antagonistic.[22]

In the end, Nigeria's prerogative of mercy needs to change from being a political tool to a moral and constitutional obligation. Whether it maintains justice for the offender and society as a whole will determine its validity. Despite appearing to be constitutional on the surface, the recent presidential and gubernatorial pardons expose structural flaws in consultation, openness, and moral justification.

3. The Constitutional and Statutory Basis of the Prerogative of Mercy in Nigeria

The constitutional basis of Nigeria's legal framework for presidential clemency is largely reinforced by federal and state-level administrative and advisory bodies. The prerogative of mercy is a constitutional tool intended to strike a balance between justice and compassion, not the product of governmental grace. This authority is specifically granted to the President and State Governors by the Constitution of the Federal Republic of Nigeria 1999[23] (as amended), subject to advisory consultation. Nigeria's federal nature is reflected in its two-tiered framework, which guarantees that both federal and state offenders can gain from a methodical and constitutionally governed mercy procedure.[24]

---

[19] See (n8), *supra.*

[20] See (n5), *supra.*

[21] See (n1), *supra.*

[22] See (n8), *supra.*

[23] See sections 175 & 212 of the CFRN 1999 (as amended) generally.

[24] *Ibid.*

3.1 Constitutional Provisions and Their Interpretation

Sections 175 and 212 provide the constitutional basis for the prerogative of mercy. Section 175 (1) stipulates:

> "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 of the execution of any punishment imposed on him for such an offence; (c) substitute a less severe form of punishment for any punishment imposed on that person; or (d) remit the whole or any part of any punishment imposed on that person or of any penalty or forfeiture otherwise due to the State on account of such an offence."

The required procedural condition that the President exercise this authority "after consultation with the Council of State" is added in Section 175 (2). Section 212, which echoes the federal clause but replaces the Council of State with the State Advisory Council on the Prerogative of Mercy, has the analogous provision for governors. These clauses uphold the constitutionally guaranteed prerogative of mercy and stipulate that its use must be collaborative rather than unilateral.[25]

While acknowledging the power's procedural restrictions, judicial interpretation of these clauses has continuously maintained the power's discretionary nature. The Supreme Court stressed that the prerogative of mercy must be used in good faith and not as a political ploy in *State v Ilori*,[26] describing it as "a constitutional discretion conferred on the executive arm of government." Likewise, in *Lakanmi v. Attorney-General (Western State)*,[27] the Court cautioned against executive actions that violate the Constitution's spirit even though they appear to be constitutional on paper. These statements suggest that even while clemency powers are extensive, they can still be subject to constitutional scrutiny if they are used arbitrarily or dishonestly.

3.2 Advisory Mechanisms and Institutional Checks

In order to ensure deliberation and institutional balance, the obligation of consultation offers a procedural protection. The President, Vice-President, all previous Presidents and Heads of State, all former Chief Justices of Nigeria, State Governors, and the Attorney-General of the Federation make up the Council of State.[28] Although it is not legally enforceable, its advising function adds a sense of group accountability to the mercy process. Before the President takes action, the Council is supposed to examine petitions, take into account suggestions made by the Presidential Advisory Committee on the Prerogative of Mercy (PACPM), and offer knowledgeable advice.[29]

The Advisory Council on the Prerogative of Mercy serves a similar purpose at the state level. State legislation or executive instruments frequently specify its membership, which normally consists of

---

[25] H. O. Sanni, 'Mercy or Madness? The Legality Of Pardoning Heinous Offenders Under Section 175 Of The 1999 Constitution', (Barristerng.com, 13th of October 2025), "Mercy Or Madness? The Legality of Pardoning Heinous Offenders Under Section 175 Of The 1999 Constitution" -By Hassan Olawale Sanni - BarristerNG.com accessed 20th October 2025.

[26] (1983) 1 SCNLR 94.

[27] See (n16), *supra.*

[28] See Section 153 (1)(b) CFRN 1999 (as amended).

[29] J. Nda-Isaiah, 'Federal Gov't Sets Up Advisory Committee on Prerogative of Mercy', Federal Gov't Sets Up Advisory Committee On Prerogative Of Mercy accessed 20th October 2025.

the Attorney-General, judges, and representatives of penal facilities, even though the Constitution does not specify its makeup.[30] Before any suggestion reaches the governor, these advisory committees serve to screen applications, maintain uniformity, and protect due process. In actuality, though, these committees frequently function with little openness and rarely publish their recommendations, which greatly contributes to public scepticism over the impartiality of mercy rulings.[31]

3.3 Procedural Dimensions and Administrative Practice

A petition by the convicted person, their family, or public interest organisations usually starts the pardoning procedure. In addition to reviewing the petition and running background checks, the advisory committee takes into account the public interest, the type of offence committed, the amount of time served, any indications of rehabilitation, the inmate's behaviour, and other relevant criteria. The President or Governor then makes the final decision after the committee sends its recommendations to the State Governor (in state cases) or the Council of State (in federal instances).[32]

The absence of legal regulations outlining the parameters and standards for mercy, however, continues to be a serious flaw. Nigeria only uses administrative discretion and convention, in contrast to countries like South Africa, where the Correctional Services Act 1998 lays out the requirements for pardons and remissions.[33] This has led to claims of prejudice and uneven applications, especially when political elites are involved. Both the 2013 pardon of Diepriye Alamieyeseigha, the former governor of Bayelsa State,[34] and the 2022 pardons of certain prominent politicians found guilty of corruption by former President Muhammadu Buhari drew harsh public criticism for what was seen as moral impropriety.

3.4 Federalism, Separation of Powers, and Constitutional Limits

The prerogative of compassion is envisioned in the Nigerian Constitution as an executive duty, subject to the norms of constitutionalism and separation of powers. The judiciary has the authority to examine whether the formalities were followed, even though it cannot challenge the President's or Governor's decision to pardon.[35] The courts in *Fawehinmi v President, Federal Republic of Nigeria*[36] emphasised that executive powers, however vast, are subject to judicial interpretation to prevent misuse. This illustrates how judicial supervision and executive discretion are balanced.

---

[30] See (n23), *supra.*

[31] W. D. Ominabo, 'The politics of state pardon and moral governance in Nigeria', (TheCable, 18th of October 2025), The politics of state pardon and moral governance in Nigeria | TheCable accessed 20th October 2025.

[32] See (n8), *supra.*

[33] *Ibid.*

[34] F. Owete, 'Real reasons Jonathan pardoned Alamieyeseigha – Ex-AGF Adoke', (Premium Times, 12th of September 2019), Real reasons Jonathan pardoned Alamieyeseigha – Ex-AGF Adoke accessed 20th October 2025.

[35] A. Kusamotu, 'Constitutional Boundaries: A Pardon Once Granted Cannot Be Reviewed', (TheCable, 19th of October 2025), Constitutional boundaries: A pardon once granted cannot be reviewed | TheCable accessed 20th October 2025.

[36] (2007) 14 NWLR (Pt. 1054) 275 (CA).

Furthermore, Nigeria's federal structure is highlighted by the dual structure of clemency powers, which gives each level of government the autonomy to pardon criminals under its purview. However, this separation also brings up constitutional and practical issues: Can a state governor grant a pardon to a criminal who has been found guilty under federal law? In *Attorney-General of Federation v Attorney-General of Abia State*,[37] the Supreme Court made it clear that the mercy power of each level of government is restricted to offences that are within its legislative purview. Therefore, a person convicted by a federal act, such as the Economic and Financial Crimes Commission (Establishment) Act, cannot be pardoned by a governor.[38]

3.5 Constitutional Purpose and Limits of Discretion

Although the constitutional rules grant discretion, the prerogative is not meant to reward loyalty or shield political associates. "To temper the rigidity of law with mercy, but not to frustrate the law itself," is how Nwabueze states that its ultimate goal is.[39] This suggests that the prerogative of mercy cannot be used to undermine accountability or undermine the goals of justice. It is expected of the president and governors to use this authority in a way that strengthens the governance's moral and legal credibility. Therefore, even while it is legally legal, pardoning a renowned or unrepentant offender, especially for political reasons, may violate the spirit of equality before the law outlined in the constitution and erode public trust in the legal system.

3.6 The Absence of Legislative Regulation

The lack of a thorough law governing the procedure is a notable aspect of Nigeria's mercy regime. There is no federal or national law that specifies precise standards for showing mercy, despite the fact that certain states have administrative guidelines.[40] This gap restricts public monitoring and grants the executive unrestricted discretion. A Prerogative of Mercy (Administration) Act has been demanded by academics on numerous occasions in order to establish eligibility requirements, formalise processes, and guarantee transparency.[41] In addition to enhancing institutional integrity, such legislation will bring Nigeria's system into compliance with global norms regarding accountability and transparency in executive clemency.

4. Evaluating the Procedural Practice and Contemporary Controversies

Despite having a constitutional foundation, Nigeria's prerogative of mercy has often been tainted by claims of political prejudice, a lack of transparency, and a disrespect for morality. The argument about the boundaries of executive discretion and the morality of granting clemency to dangerous or renowned convicts has been rekindled by the 2025 executive pardons issued by President Bola

[37] (2002) 6 NWLR (Pt. 763) 264 (SC).

[38] 'EFCC Challenges Pardon Granted By APC Governor To State Officials Who Allegedly Stole Millions' (Premium Times, 26th of September 2017), EFCC challenges pardon granted by APC governor to state officials who allegedly stole millions | Premium Times Nigeria accessed 20th October 2025.

[39] B. O. Nwabueze, *Constitutional Democracy in Africa* (Spectrum Books, 2003) 246.

[40] I. Inyang, 'Tinubu's Presidential Pardon Undergoing Review — Nigerian Govt Clarifies', (Daily Post, 16th of October 2025), Tinubu's presidential pardon undergoing review — Nigerian Govt clarifies - Daily Post Nigeria accessed 20th October 2025.

[41] See (n8), *supra.*

Ahmed Tinubu[42] and Governor Ademola Adeleke of Osun State. In light of Nigerian jurisprudence and comparative standards, this section critically assesses both activities, concentrating on their procedural compliance, constitutional validity, and moral consequences.

4.1 The 2025 Presidential Pardon by President Bola Ahmed Tinubu

Maryam Sanda, who was found guilty of killing her husband and given a death by hanging sentence that was later reduced to life in prison, was one of the inmates supposedly pardoned by President Bola Ahmed Tinubu in October 2025.[43] Sanda was granted clemency after serving for about six years. Official sources claim that the pardons came after discussions at the National Council of State meeting and recommendations made by the Presidential Advisory Committee on the Prerogative of Mercy (PACPM).[44]

In terms of procedure, the President seems to have complied with the Constitution's Section 175(2), which requires the Council of State to be consulted before using mercy. Formal compliance, however, is not always equivalent to substantive conformity. There are valid concerns regarding whether the consultation was purposeful or merely ceremonial given the PACPM's report's secrecy, the lack of evaluation criteria that are available to the public, and the absence of public justification for specific cases.[45]

The Supreme Court emphasised in *State v Ilori*[46] that the public interest must be pursued and executive discretion must be used with good intentions. The lack of transparency surrounding the presidential pardon raises the possibility that clemency was granted without any reasonable justification, especially in the case of a convicted murderer who had not completed a sizable portion of her sentence. One could argue that Nigerian courts could examine clemency decisions where there is obvious arbitrariness or moral impropriety, in accordance with the South African ruling in *President of the Republic of South Africa v Hugo*,[47] where the Constitutional Court subjected the President's pardon power to rationality review.

The pardon has been widely criticised for its morality. Given the severity of the crime, many Nigerians considered it an affront to justice and the value of human life. The moral consensus that mercy should not undermine accountability was mirrored in the public outcry.[48] There was little to no utilitarian defence of the power to address humanitarian needs or rectify injustices. Essentially, the decision failed the moral legitimacy and public acceptability standards, undermining public

---

[42] J. Otio, 'Tinubu Is Not Aware – Sources Reveal How Low-Level Officers Manipulated Presidential Pardon List', (NaijaNews.com, 22nd of October 2025), Tinubu Is Not Aware - Sources Reveal How Low-Level Officers Manipulated Presidential Pardon List | Naija News accessed 26th October 2025.

[43] E. Onwuka, 'Maryam Sanda Walks Free as Tinubu Grants Pardon to 175 Nigerians', Maryam Sanda Walks Free as Tinubu Grants Pardon to 175 Nigerians – accessed 26th October 2025.

[44] *Ibid.*

[45] R. Ozibo, 'CPPE Calls for Urgent Review of Nigeria's Presidential Pardon List', (Nairametrics, 20th of October 2025), CPPE calls for urgent review of Nigeria's presidential pardon list - Nairametrics accessed 26th October 2025.

[46] See (n26), *supra.*

[47] (1997) 4 SA 1 (CC).

[48] D. Isaac, 'SocialMediaTrends: Anger Trails Presidential Pardon for 'Husband Killer' Maryam Sanda', (RipplesNigeria, 12th of October 2025), SocialMediaTrends: Anger trails presidential pardon for 'husband killer' Maryam Sanda - Ripples Nigeria accessed 27th October 2025.

trust in the legal system even though the President operated within the bounds of his constitutional authority.[49]

4.2 The Osun State Pardon by Governor Ademola Adeleke

Under the state's prerogative of mercy, Osun State Governor Ademola Adeleke announced the release and commuting of sentences for 89 inmates between December 2024 and October 2025.[50] According to the governor's media office, the choices were made in accordance with Section 212 of the 1999 Constitution and the State Advisory Council's guidelines on the Prerogative of Mercy. Given that the Advisory Council was apparently consulted, Adeleke's actions seem to comply with constitutional standards in terms of procedure. However, there are issues with the standards the Council uses. Serious flaws in the assessment of rehabilitation and risk assessment prior to clemency are shown by the re-arrest of one of the released prisoners for a new armed robbery incident just weeks after his parole.[51] This implies that even while the procedure complied with the constitution, it might not have had the post-release monitoring and prudential rigour that a well-run compassion regime would have.

The perceived carelessness of the Osun pardons is the basis for the moral criticism. When mercy is given carelessly, it runs the risk of becoming a weapon of insecurity rather than justice. Clemency should benefit the victims, the community, and the offender from the standpoint of restorative justice. The validity of the pardon is weakened when society views the practice as jeopardising public safety or trivialising crime.[52] In this sense, the Osun instance illustrates the weakness of Nigeria's clemency structure, like the federal example.

4.3 Analytical Findings

It is clear from the case studies that although the Governor and the President both complied with the constitutional obligation of consultation, they did not exhibit substantive transparency or explain the standards by which pardons were granted. The integrity of the clemency process was questioned, and public trust in the legal system was damaged by this procedural compliance without transparency.[53] In addition, the pardons granted to well-known criminals, especially those

[49] H. Ojelu, 'Mercy on Trial: Lawyers Question Ethics of Tinubu's Pardon', (Vanguard, 23rd of October 2025), Mercy on trial: Lawyers question ethics of Tinubu's pardon - Vanguard News accessed 27th October 2025.

[50] F. Ojo, 'Full List: Gov. Adeleke Pardons 53 Convicts', Full List: Gov. Adeleke Pardons 53 Convicts - Radio Nigeria Ibadan Zonal Station accessed 27th October 2025.

[51] A. Soji-Ojo, 'A Week After Adeleke's Pardon, Ex-convict Rearrested for Stealing TV in Osun', (Newspeak, 22nd of January 2025), A week after Adeleke's pardon, ex-convict rearrested for stealing TV in Osun | Newspeakonline accessed 27th October 2025.

[52] L. C. Nnamdi, 'Strengthening the Practice of Restorative Justice in Nigeria', Policy Brief: Restorative Justice in Nigeria accessed 27th October 2025.

[53] C. Momoh, 'Tinubu's Presidential Pardon: What Informed Decision and Whose Interests Does It Serve?', Tinubu's Presidential Pardon: What Informed Decision and Whose Interests Does It Serve? accessed 28th October 2025.

found guilty of murder, went against the norms of justice, morality, and responsibility in society.[54]

Therefore, it is clear that Nigeria urgently needs to institutionalise and reform the prerogative of mercy. Executive discretion has been used inconsistently, opaquely, and ethically dubiously as a result of the lack of a formal or clearly defined framework. Although the prerogative is still constitutionally valid, the way it is being used has ethical and institutional flaws that, if left unchecked, might lead to continued abuse of authority and erode public confidence in the legal system.

5. Conclusion/Recommendations

In conclusion, Nigeria's clemency system has serious ethical and procedural problems that have been brought to light by the recent presidential and gubernatorial pardons.[55] Despite the fact that the President and Governor both acted in accordance with Sections 175 and 212 of the 1999 Constitution (as amended), the public's trust in the legal system has been undermined by the lack of clear guidelines, poor consultation, and disrespect for the opinions of victims. Even though legality is necessary, it is no longer enough in a constitutional democracy because moral and procedural purity are equally important for legitimacy.[56]

The prerogative of mercy must change from being a political privilege to a constitutional duty that is used equitably, sensibly, and sympathetically in order to regain credibility.[57] To achieve that change, the suggested reforms—public consultation, conditional pardons, judicial oversight, transparent reporting, and statutory codification—are essential first steps. In the end, mercy in government must be healed, not harmed; it must reflect justice rather than undermine it. Therefore, Nigeria's constant struggle is to find a sustainable balance between justice and compassion such that each act of mercy reinforces the legal and moral underpinnings of the rule of law rather than weakens them.

Despite being granted by the constitution, Nigeria's implementation of the prerogative of mercy has shown structural flaws that call for extensive adjustment.[58] Thus the following recommendations are made:

1. The creation of a legislative framework that precisely defines the standards, protocols, and moral bounds for granting mercy is the first and most important step. In order to inform both presidential and gubernatorial choices, such a statute should establish objective requirements, such as time served, proof of rehabilitation, medical or humanitarian reasons,

[54] I. Sunday, 'Tinubu's Presidential Pardon Triggers Public Outrage', (Daily Post, 14th of October 2025), Tinubu's presidential pardon triggers public outrage - Daily Post Nigeria accessed 28th October 2025.

[55] A. Isau, 'Maryam Sanda's Presidential Pardon: Mercy, Morality and the Meaning of Justice', Maryam Sanda's Presidential Pardon: Mercy, Morality and the Meaning of Justice accessed 28th October 2025.

[56] See (n25), *supra.*

[57] N. Egenuka, 'Politically-exposed Convicts: How Not To Pardon, Exercise Prerogative Of Mercy', (The Guardian, 18th of April 2024), Politically-exposed convicts: How not to pardon, exercise accessed 28th October 2025.

[58] See (n5), *supra.*

and feedback from victims or their families. This would guarantee that mercy functions according to the rules of justice rather than at the whim of the political system.

2. Second, the decision-making process must be transparent and accountable to the public. It should be legally required for advisory groups like the State Advisory Councils and the Presidential Advisory Committee on the Prerogative of Mercy (PACPM) to release summaries of their recommendations, with sensitive material redacted as needed. Adopting this technique in nations such as Canada and South Africa will boost public trust and show that the use of clemency is based on justice and reason. Additionally, enforcing probationary or conditional pardons, in which freed prisoners are monitored for a predetermined amount of time, would reduce the likelihood of reoffending and guarantee that the pardon is accompanied by true rehabilitation.
3. Thirdly, in order to avoid capricious or dishonest uses of discretion, the procedure ought to include judicial and parliamentary oversight procedures. Courts ought to have the authority to carry out limited rationality assessments in order to determine if the governor or president complied with procedural and constitutional requirements. The National Assembly and State Houses of Assembly should also have the authority to hold regular oversight hearings in order to make sure that executive mercy complies with the rule of law and the public interest. With these changes, a fair society would be established in which mercy enhances rather than diminishes justice.
4. Lastly, these reforms must be accompanied by institutional capacity building and public education. The restorative goal of clemency should be emphasised in legal education, civil society campaigning, and interagency cooperation. This is because it is a moral and humanitarian instrument for worthy cases, not a way out for the powerful. Nigeria has to move away from a pardoning model that is based on discretion and towards a restorative justice system that is based on moral legitimacy, accountability, and transparency. The prerogative of mercy can only return to its original function as a tool of justice balanced with compassion by means of such institutional recalibration.