



## Striking a Balance between the Execution of Sentence and Pardon Implementation in Nigeria: A Way Forward

Tawakaltu Queen Oyinloye<sup>1</sup>, Rita Abhavan Ngwoke<sup>2</sup>,  
Ugiomo Eruteya<sup>3</sup>

**Abstract:** This paper aims to find a middle ground between sentencing and pardoning as procedures within Nigeria's criminal justice system to enhance justice. As a contribution to the growing body of work challenging the perceived and actual disparities and increasing public outrage over recent high-profile pardons, this paper examines the historical precedent for tension between sentencing and executive pardon. Through a doctrinal research methodology, this paper discusses the Nigerian legal regimes on sentencing and pardoning and their major inconsistencies and absence of clear guidelines. Key findings in this paper suggest that the absence of adequate and transparent procedures in the matters of sentencing and pardoning results in whimsical decisions that are capable of undermining the credibility of the judiciary. The implications of this study are important for both the judicial and executive authorities, promoting changes to practices of both sentencing and pardoning so that they are dispensed fairly and equitably. This paper adds new knowledge to the current discourse on the need to achieve an equilibrium that can preserve judicial independence while making room for executive interference where necessary in the Nigerian criminal justice system.

**Keywords:** Sentencing; Pardoning; Judicial Independence; Criminal Justice; Public Trust

<sup>1</sup> PhD Student, College of Law, Igbinedion University, Address: Okada, Edo State, Nigeria, Igbinedion University, E-mail: tawakaltu.queen@iuokada.edu.ng.

<sup>2</sup> Associate Professor, College of Law, Igbinedion University, Address: Okada, Edo State, Nigeria, Corresponding author: okpeahior.rita@iuokada.edu.ng.

<sup>3</sup> Associate Professor, College of Law, Igbinedion University, Address: Okada, Edo State, Nigeria, E-mail: eruteya.ugiomio@iuokada.edu.ng.



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## 1. Introduction

The Nigerian criminal justice system may be described as a web of institutions, laws, and procedures intended for the preservation of law and order and for the protection of the rights of the people. Its very essence lies in the subtle relations between the mechanisms of sentencing and pardoning, which are distinguished as two key means to ensure and attain justice. Historically, sentencing is said to have four functions, which are punitive, preventive, reformative, and reparative (University of Minnesota, 2015, pp. 16–17; Watamura et al., 2022, p. 2). On the other hand, pardoning is an instrument of clemency that provides flexibility as and when it is exercised, given that the strict application of the law may sometimes lead to unfairness, and as a result, remedying such (Harvard Law Review, 2021, p. 2848; Udofa, 2018, p. 123). However, a major concern stems from the conflict between the execution of sentences and the implementation of pardon decisions. The conflict therefore existed as to whether the long-prevailing judicial justice system in Nigeria had to bow to the executives' exercise of the power of pardon (Ngwoke & Abayomi, 2022, p. 221). This has resulted in a distortion in the implementation of pardon decisions, where sometimes they may bring about the erosion of the judiciary's authority and create public dissatisfaction, especially in corrupt, politically connected, or human rights violation cases. To set things in context, the decision by the former president of Nigeria, Muhammadu Buhari, to grant pardons to former governors Jolly Nyame and Joshua Dariye in 2022 as reported by Punch Newspaper (2022), created public dissatisfaction in Nigeria (Ige, 2022; Kareem, 2022; Ozekhome, 2022). With this in view, this paper aims to identify how to harmonise the sentencing and pardoning decisions and procedures to enhance justice within the criminal justice system. Consequently, this paper seeks to examine applicable Nigerian laws regarding the process of sentencing and pardoning to furnish a workable solution that the Nigerian judiciary and other relevant institutions can embrace to enhance fairness, consistency, and ultimately public confidence in the justice system. The ultimate essence of this paper is to help strike the much-needed balance whereby punishment serves its role without going overboard while pardon decisions are implemented to prevent inequity, correct judicial errors, and strengthen social rehabilitation.

## **2. Conceptual Framework of Sentencing and Pardoning**

The concepts of sentencing and pardoning stem from legal and philosophical ideals that are used as a guide in any criminal justice system to ensure that the purpose of punishment and pardon are equitably served. The basic purpose of sentencing borders on the need to punish offenders as a reaction to criminal behaviour, which is informed by the objectives of retribution, deterrence, rehabilitation, and incapacitation (University of Minnesota, 2015, p. 17). On the other hand, pardon is best understood as the concept of forgiveness and mercy, which are the antithesis of the strictness and harshness of legal punishment (Campagna, 2021, p. 1099). These two are important aspects that help in promoting the rule of law and, at the same time, ensure that justice is served in a more humane justice system.

The theoretical basis for sentencing is rooted in retributive justice, which suggests that punishment should be commensurate to the offence committed to restore balance (Uduigwomen, 2005, p. 10). Deterrence, which focuses on preventing the occurrence of criminal behaviour, and rehabilitation, which is the reform of the offender to reintegrate them back into society, further strengthen this theoretical foundation. Another justification is incapacitation, which seeks to keep the public safe by ensuring and reducing the risk of other crimes in society by incarcerating offenders (United Nations Office on Drugs and Crime, 2019). Even though these objectives revolve around accountability, they can sometimes result in consequences considered severe or even unfair, particularly with severe sentencing. On the other hand, pardoning has its theoretical background in mercy, which provides a chance to mitigate the impact of punishment when it is considered severe or when new circumstances that were not previously considered appear. While retributive justice is largely based on the belief that the offender deserves to be punished for their wrongdoing, restorative justice aims at repairing the damage done by crime and includes the victim and the offender in the healing process (Ikpeze & Ezeh, 2021, p. 94). In the Nigerian context, the process of sentencing is rather punitive and is mainly based on the retributive model, especially in cases of serious crimes like murder or corruption. Even so, the principles of restorative justice are gradually being considered for application in other categories of offences, especially those that are less severe and where the offenders are juveniles or where there is the possibility of reconciliation between the victim and the offender. This is because overemphasis on retribution may result in neglecting the possibility of rehabilitating offenders, while unchecked restorative justice approaches may compromise the need for punishment or accountability alike.

Thus, mercy is particularly important when considering the legal and ethical perspectives because it helps to balance the strict execution of justice. Pardon is a clear example of this concept, where the state, by its executive authority, can grant mercy in cases where strict adherence to the imposed penalty would result in unfairness. Theories of mercy hold that the law be lenient enough to afford space for compassion in cases of remorse, rehabilitation, or the emergence of new evidence. The constitution of Nigeria recognises the president and governors of states as having the power to grant pardons through the exercise of the prerogative of mercy. While pardon is necessary to check on the power of the judiciary, it should not be granted in a manner that undermines the principle of the rule of law.

The Nigerian Constitution permits sentencing under laws such as the Penal Code, Criminal Code, and section 454(1) of the Administration of Criminal Justice Act of 2015 (ACJA, 2015) that define and regulate the discretion of the court on punishment. At the same time, the power to pardon is provided for in sections 175 and 212 of the 1999 Constitution of the Federal Republic of Nigeria, wherein the president and state governors are allowed to exercise pardon. These provisions depict the constitutional relationship and attempt to balance the powers between the judiciary, which has the responsibility of administering justice through the imposition of sentences, and the executive, which, through pardoning powers, can reduce the severity or unfairness of sentences. However, this balance is always delicate, and there are concerns that the use of executive power may undermine judicial decisions and erode the credibility of the justice system in the eyes of the populace.

A deeply concerning issue in any justice system, including the Nigerian justice system, is the relationship between judicial power to punish offenders and executive power to pardon them. This is because the judiciary must be impartial to prevent political pressure or other factors from influencing the decisions made. In any case, the executive's clemency powers can be seen as a mechanism for addressing judicial mistakes or situations when legal outcomes do not seem to match social or ethical expectations. This tension exists because the frequent use of pardon power or its use in an unreasonable manner may be viewed as an encroachment on the judicial branch's authority and thus a threat to the role of the judiciary in upholding the rule of law. Hence, the need for careful consideration and accountability on the part of the government when issuing pardons, while also ensuring that the process is not concealed from the public, cannot be overemphasized. As obtainable in the United States, the president has the authority to grant pardons; however, this is done with

the guidance of the Department of Justice's Office of the Pardon Attorney, which is responsible for considering applications for pardon (Office of the Pardon Attorney, 2015). In the United Kingdom, pardons are rather reserved, and most often, they are granted to persons who have been wrongfully convicted. This makes it possible to conclude that both systems focus on the importance of a clear process where the pardon is considered a last resort and not a usual interference with judicial decisions (The Governance of Britain, 2007, p. 15). From these models, Nigeria may adopt practises that help to avoid abusive use of pardon power and at the same time retain the ability to correct miscarriages of justice.

## **2. Sentencing Framework in Nigeria**

In Nigeria, the framework for sentencing is based on several legislative instruments, including the Penal Code and the Criminal Code (applicable in the Northern and Southern regions, respectively), and the Administration of Criminal Justice Act (ACJA) of 2015. These laws help in establishing the legal basis that defines the type and severity of punishments that can be imposed for criminal offences. The Penal and Criminal Codes delineate various crimes and their respective punishments, while the ACJA 2015 as stressed in Section 1(1) of the Act, aims to reform and modernise the criminal procedure, laying emphasis on the efficient management of criminal justice institutions, speedy dispensation of justice, protection of society from crimes, and protection of the rights and interests of the suspect, the defendant, and victims in Nigeria.

The Penal Code and the Criminal Code are the two principal pieces of legislation that govern the Nigerian legal system on sentencing. The Penal Code, which is based on Islamic law, is used in the nineteen northern states of Nigeria, whereas the Criminal Code, which has its roots in the English common law, governs sentencing in the seventeen southern states in the country. Both statutes articulate measures that span from monetary sanctions to imprisonment and even the death penalty in severe instances. The ACJA, which was enacted to address the challenges of Nigeria's criminal justice system, embody principles that are meant to promote justice, review obsolete provisions of the Penal and Criminal Codes to mirror the intention of the constitution, restore sanity to the degenerated Nigerian society, as well as ensure the consistency of the criminal justice system to align with societal changes, amongst others (Udombana, 2020, p. 51). The ACJA also gives the courts the discretion to pass sentences that are proportionate to the crime and that assist in the rehabilitation

of the offender, which is a reconsideration of both the Penal and Criminal Codes that focus on a purely punitive approach.

Judicial discretion is a major part of the sentencing process in Nigeria as a judge is to use his discretion in awarding the punishment that is appropriate in that case according to the law. This discretion as reflected and codified in Section 454 of the ACJA 2025 allows the judges to consider some factors during sentencing of the offence for instance nature of the offence and the character, antecedents, age, health or mental condition of the defendant charged, and extenuating circumstances under which the offence was committed and the circumstances of the offender. The aforementioned position is further reinforced by the Supreme Court in the case of *Mohammed v. Olawunmi*, (1992), where the court established that once a court of competent jurisdiction determines a finding of guilt in a criminal or quasi-criminal matter, a conviction is handed down, irrespective of the deferral of sentencing or its consequences. The determination of jail or monetary fine arises from the judge's discretion following a guilty verdict and logically following the conviction. The Supreme Court established six fundamental rules to assist the court in determining a reasonable, just, and equitable punishment. These recommendations, including the severity of the offence along with the aforementioned factors, are intended to inform judges of the anticipated penalties for specific categories of offences. While legislation offers several sentencing alternatives for certain offences, guidelines seek to steer the judge towards more precise measures that may be implemented. From another perspective, the liberal discretion afforded to judges may also result in inconsistent sentences for similar crimes. This is because while judicial discretion is important in making sure that the sentences are appropriate for each case, its exercise in a manner that is inconsistent across different cases brings about concerns regarding uniformity. To give a sense of proportion, the recent case of Sunday Ejoh, who bagged a six-month sentence for stealing three tubers of yam worth N3000 (Bamigbola, 2024), and that of Cletus Gandu, who was convicted and sentenced to prison for nine months for the theft of two tubers of yam, provide a clearer view of this stance (Premium Times Nigeria, 2024).

Along similar lines, there are a plethora of cases in the Nigerian legal system of how sentencing has resulted in severe consequences. More specifically, the causes of these cases may be rooted in the application of old laws or the nature of the discretion. Some of the most notable cases include situations where people were sentenced to disproportionately long terms of imprisonment for minor theft (as pointed out in the case of Ejoh and Gandu) or other non-violent offences, as in the

case of Bello Shehu and Ahmed Sagir, who were sentenced to six years in prison each for violating traffic rules (Sunday, 2024), whereas there are cases of politicians, like in the case of Dariye and Nyame, who were convicted for fraud and misappropriation of public funds to the tune of billions of naira, who either enjoy lenient sentences, having their jailed time shorten or granted pardon altogether, which attracted public outcry and demands for change. Meanwhile, Abdullahi, (2022, p. 66) posited in his research that, having been convicted under an Act of the National Assembly, the President and the Council of State did not err in granting presidential pardons to Nyame and Dariye. His justification was that the award was legitimately issued regardless of the purported intent involved. In essence, instances like this are compounded by the lack of proper sentencing guidelines, which could otherwise be prone to whimsical subjectivity and misuse of discretion. Inappropriate sentencing, be it verdicts that are lenient or those that are harsh, raises dust about the principles of justice and fuels the flames of the loss of public confidence in the legal system. To meet this ethical responsibility, Nigerian courts must intensify efforts to provide fair and clear sentencing markings.

### **3. Pardon Implementation in Nigeria**

Pardoning in Nigeria is a presidential prerogative as spelt out in the 1999 Constitution of the Federal Republic of Nigeria (as amended). According to Section 175(1) of the Constitution, the president has the power to:

- (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 period 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.

While according to Section 212(1), the governor of a state has similar powers to:

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

The aforementioned constitutional provisions grant extensive prerogative powers of pardon to the President and State Governors for federal and state offences, respectively. These sections form the legal basis for pardon in the executive branch, as a means to allow justice to be served while still having a way of alleviating harsh consequences in certain situations. This authority empowers the executive to handle situations where rigid application of the law may bring undesired or excessive consequences. However, the use of pardons, especially when not well-regulated, may have implications for the fairness and efficacy of the justice system. The Council of State, or advisory council on the prerogative of mercy, is a key participant in the process of pardoning. Responsible for advising the President and State Governors on matters of pardon, the Council is required to consider and review cases and make recommendations on whether a particular case should involve the granting of a pardon. It mainly serves the purpose of balancing the use of pardon power and ensuring that it does not exceed or erode established legal and ethical standards.

Despite that, the Council faces several practical challenges, including the sluggish pace of case assessments as evidenced in 2018, when the Presidential Advisory Committee on the Prerogative of Mercy was founded, but took several months to complete pardon applications, as the committee submitted its initial report in March 2020 and reconvened in September 2021 to consider many outstanding applications (Ige, 2022), noticeable inconsistency in the application of pardons (Udofa, 2018, p. 126), perceived political interference (Ngwoke & Abayomi, 2022, p. 218), minimal accountability for its recommendations (Ige, 2022), an overextension of executive power stemming from the Council's advisory capacity that can obscure the distinction between executive authority and judicial independence (Ngwoke & Abayomi, 2022, p. 222), and a lack of a clear or systematic means for determining the grounds for a pardon, thereby failing to adequately address criticisms regarding



its opacity. While the Constitution allows for executive pardon, it does not detail the procedure or standards for issuing pardons. This lack of specificity allows for discretion, which may be based on political motives, individual preferences, or other factors unrelated to the law or justice. The process is also not transparent, meaning that there is no one to monitor whether there is any favoritism or bias in the granting of pardons. This is because, without the needed transparency, it becomes hard to determine whether the pardons are being offered fairly or if there are other considerations like personal or political leanings.

Certain legal, ethical, and political conditions need to be considered when considering granting a pardon. From a legal standpoint, pardons should be exercised only when the legal procedures have been followed to the full extent and when there are undeniable facts indicating that there are clear indications of a miscarriage of justice or special circumstances that warrant leniency. In the United States, the Office of the Pardon Attorney, a division of the Department of Justice, is tasked with assessing petitions for presidential pardons. They evaluate, in accordance with Department of Justice guidelines, how the issuance of a pardon corresponds with overarching social norms and if it promotes justice or the public interest, ensuring that legal requirements are maintained prior to awarding a pardon (Foster, 2020, p. 1). In an ethical context, the pardon process and authority can be fundamental in addressing injustice or mitigating further harm and injustice, while taking into account the overarching public good and the necessity for deterrence.

Nevertheless, it is not always enough to consider just ethical perspective as focusing on the ethical perspective may be inadequate, primarily because arguments based on moral obligations or ethics are only valid and binding in conscience and according to natural justice, but they are not acknowledged by the law as sufficient to activate the mechanisms of justice. The cases of *Kabo Air Ltd v. Mohammed*, (2015, Pt. 1451) and *Attorney General, Federation v. Abubakar*, (2007, Pt. 1041) were the instances that established the aforementioned position. On the political front, pardons should not be given in a bid to curry favour with certain segments of the population or to free certain individuals with political influence from the consequences of their actions. However, the reality in Nigeria reveals that political consideration dominates the pardon process, and top-level politicians may be pardoned in shady circumstances. The pardon of individuals without consideration of the merits of the case undermines the credibility of the justice system. If pardons are perceived as a way of freeing the influential or the privileged rather than correcting injustice, it undermines the credibility of both the judiciary and the executive. It is possible that

citizens may begin to perceive the justice system as being influenced by the powerful few rather than as an equitable protector of rights. This is a threat to the rule of law and, if the trend persists, could have adverse effects on the stability of society due to the erosion of the people's confidence in the legal system.

Moreover, pardon also has the function of correcting judicial mistakes. Where there is an emergence of new evidence after a conviction has been made or where it is discovered that the legal process was marred with some irregularities, the granting of a pardon can be of the essence to those who have been unjustly convicted. This is especially the case in countries like Nigeria, where there are varying flaws across nearly all the systems upon which the country is run. This assertion is backed by a report from Transparency International, (2024), which indicates that Nigeria ranks 145th out of 180 countries in terms of corruption in the world. For instance, corruption of the judiciary, incompetent legal aid, and slow trial processes, often result in delivering wrong judgements. In this way, pardons act as a tool to fix these mistakes, thereby maintaining the credibility of the legal system and preventing the innocent from being punished.

While pardons can be used for the sake of social justice, they are also vulnerable to abuse. In certain instances, as confirmed with the cases of Senator Mohammed Danjuma Goje, a former Governor of Gombe State, the pardon granted were not intended to rectify an injustice stemming from their wrongful convictions but rather to exonerate them from the repercussions of their actions. Also, in 2013, opposition activists were outraged when President Goodluck Jonathan (2010-2015) granted clemency to his former superior and political patron, Diepreye Alamieyeseigha. Alamieyeseigha absconded after being accused of money laundering in London in 2005 and was subsequently convicted of embezzling public monies in Nigeria in 2007 (Obadare, 2022). This clarifies the potential misuse of the pardon authority, undermining the ideals of justice and enabling impunity, wherein certain persons are perceived as shielded from accountability.

So, even though the Constitution sets out a general plan for executive pardon, the Council and Advisory Council on the Prerogative of Mercy's lack of transparency, the chance of political interference, and operational inefficiencies pose major threats to the fairness and effectiveness of the pardon process and power. Just so that the confidence of the public in the justice system is strengthened, it is important to ensure that pardons are granted in a clear and consistent manner. The pardon system, when used appropriately, presents a mechanism through which judicial mistakes can be rectified and justice achieved. At its worst, it can provide leeway for the

reinforcement of prejudice and oppression, deepening disparities in the delivery of justice.

#### **4. The Tension Between Sentencing and Pardon**

Pardoning and sentencing in any given justice system are defined by certain goals that, at times, form the two extremes of the same spectrum, and therefore there is always tension between punishment, deterrence, rehabilitation, and mercy. Retribution and deterrence are the goals of sentencing, which require that the offender be punished accordingly. Simultaneously, it acts as a form of corrective measure, giving people an opportunity to change for the better. On the other hand, pardoning involves a show of mercy, acknowledging the possibility of reform and the necessity to forgive in some cases. It is therefore clear that there are two seemingly divergent goals when it comes to the system of justice wherein the judiciary imposes punishment through sentencing, while the executive relieves punishment through pardoning.

Although the aims of sentencing and pardoning are different, they are functionally related. As earlier established, sentencing offers the framework for the imposition of punishment, while pardons serve as a corrective measure where the justice system had perhaps imposed severe penalties or had not taken into consideration certain factors that could have merited leniency. A major concern that arises from frequent pardoning is that the independence and authority of the judiciary are more often than not at risk of being eroded. The judiciary, on the flip side, through the process of sentencing, reaffirms the doctrine of the rule of law and ensures that consequences of the violation of the law are meted out to any person who violates the law. However, if an executive pardon is granted too cheaply, it may be perceived that the judiciary's decisions are being overruled. This inconsistency can undermine judicial procedures and give the impression that justice can be bought, resulting in impunity and diminished confidence in the judiciary.

The manifestation of the effects of arbitrary pardons in Nigeria's justice system is most evidently seen in high-profile cases. This has been the case on several occasions where political stalwarts, bigwigs in the business world, or close associates of powerful individuals have been let off the hook. Such pardons are usually frowned upon by the public since they are viewed as promoting impunity and weakening the fight against corruption and crime. Some of the recent examples (as earlier mentioned) include pardons given to individuals who have been convicted of

embezzlement or fraud, and such issues have raised questions regarding the equity and openness of the Nigerian pardon system. Legal concerns over the abuse of pardons in politically charged cases also put into question the propriety of the executive's exercise of this authority.

In a number of politically motivated cases (inferring from the earlier cited ones, above), pardons have been seen as a way of reinforcing political loyalty or, more simply, as a way of protecting influential persons from accountability. This misuse not only shifts the focus from the intended purpose of the pardon but also has social and psychological implications for both the convicted persons and society. In the case of a person who was rightfully convicted, granting them a pardon can bring about uncertainty in (subsequent) sentencing outcomes because offenders may expect to be pardoned instead of receiving the legal consequences for their actions. This atmosphere of uncertainty can serve to defeat the effectiveness of sentencing and, in turn, the rehabilitative effects of punishment. The public also becomes considerably demoralised, and many people lose faith in the ability of the justice system to uphold its mandate, and could also give room to helping the public view the justice system as only favourable to the elites and not as an institution of justice.

Therefore, the conflict between sentencing and pardoning in Nigeria is a clear depiction of the conflict between justice and clemency. If granted cautiously, pardons are a useful tool to correct a miscarriage of justice; however, when pardon powers are abused, they undermine the rule of law, erode public trust, and introduce uncertainty into the process of justice. Thus, it becomes imperative to find a middle ground between these two functions so as to uphold the principles of justice.

## **5. Ethical Considerations in Balancing Sentence Execution and Pardon Implementations**

As already established in this paper, mercy and justice are two concepts that have been central to discussions on sentencing and pardon authority. Pardons are often viewed as an ethical way of addressing the shortcomings or even abuses of the legal system. The essence of pardon in a system where there are inconsistencies, especially when not all offences have their sentencing defined by appropriate laws or even flaws in judicial processes, is such that it cannot be overemphasized. That being said, the ethical rationale for pardon is only well-founded when it is exercised in such a way that it does not violate the principles of equity, transparency, and justice. Thus,

when used appropriately, pardons can reduce the damage or harm that results from the structural problems in the justice system.

The question of whether a state should prioritise the liberty of an individual over societal justice raises a major ethical concern. While pardoning an individual may be beneficial to that individual, particularly if they have been wrongfully accused or have changed for the better, it must be done with due consideration to the societal need for justice and accountability. A pardon that does not consider the gravity of the offence or the social imperative of retribution is not such that should be taken with levity as it threatens to undermine the ethical premise upon which the criminal justice system exists. Therefore, ethical pardon decisions have to consider the rights of the individual person as well as the rights of society in the matter of ensuring and upholding justice. However, the use of executive pardon raises the concern of paternalism, whereby the state assumes the role of deciding who deserves mercy and may at times act outside the absolute purview of the law or bypass the judicial system (Fox, 1999, p. 5). This creates a problem with the unchecked power of the executive branch of the government and the separation of power. There are instances when executive pardons may be viewed as going against the principles of democracy, particularly when they are granted in a selective or in a manner that could easily pass as being political, hence giving an impression of injustice and favoritism.

This is also because pardons have social implications for rehabilitation. From an ethical point of view, pardons help in the process of reintegration of an individual into society, as one can be forgiven for their misconduct and be given another opportunity to become a productive member of society (United Nations Office on Drugs and Crime, 2018, pp. 5–8). This will help the rehabilitation process by removing the social shame associated with it and thus allowing the individual to reintegrate into society. However, pardons that are issued without any reason or that are given to persons who have not been proven to have reformed defeat the very purpose of rehabilitation and undermine public confidence in the justice system. As such, it is only important to understand that there are certain ethical considerations when it comes to the balancing of sentence implementation and pardon. Pardons are a delicate tool that should be applied only when respecting the rights of the individual, the demand for justice in society, and democratic values without hindering the possibilities of the rehabilitation of offenders.

## 6. Sentencing and Pardon in Practice

In relation to sentencing and pardoning in Nigeria, inference from some Nigerian landmark cases of sentencing and pardoning practices reveals the tension and the need to strike a fine balance between judicial authority to serve justice, and executive authority to grant pardon. In the case of *Major Hamza Al-Mustapha v. The State*, (2013), the chief security officer to the late General Sani Abacha was found guilty of the murder of Kudirat Abiola and was therefore condemned to the death penalty by hanging. But the Court of Appeal in Lagos set aside the high court sentence, in effect, leading to his acquittal. It is an example of challenges faced in sentencing practices, especially in capital punishment cases in Nigeria, and how the discretion of the judge contributes to changes made in decisions initially made.

The death sentence statistics in Nigeria over the last decade reveal a concerning trend: 2010 (151), 2011 (72), 2012 (56), 2013 (141), 2014 (659), 2015 (171), 2016 (527), 2017 (621), 2018 (46), 2019 (54), 2020 (58) and 2023 (246) (Statista, 2022, 2024). Over the past decade, at least twelve Nigerian states, including Abia, Akwa Ibom, Anambra, Bauchi, Bayelsa, Cross River, Ebonyi, Edo, Enugu, Imo, Lagos, and Nasarawa states, have legalised kidnapping as a capital offence (Badejogbin, 2018, p. 554; Muntari et al., 2024; Umego, 2019, p. 5), while twelve more governments have implemented Shari'a penal laws that impose severe punishments, including death sentences for sexual offences (Human Rights Watch, 2004). Despite the infrequency of executions, courts have persistently enforced the required death sentence, increasing the population of death row convicts (Badejogbin, 2018, p. 576).

Since the decision in *Onuoha Kalu v The State*, (1998), numerous judicial and legislative reforms have been recorded. On one side, various cases have sought to re-examine the constitutionality of the death penalty, with some faltering, due to the precedent set in the case of *Onuoha Kalu v The State*, (1998). Numerous instances<sup>1</sup> exist where the ruling in *Onuoha Kalu v The State* has been utilised as a benchmark for judicial decisions towards the death penalty. Courts consistently impose this penalty, noting its deep-rooted presence in the Nigerian criminal justice system and asserting that they lack the discretion to modify sentences when the penalty is mandated (*Tanko v The State*, 2009, Part 1). The Nigerian sentencing practice has been characterized as having an addiction to capital punishment (Whitehead, 2015).

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<sup>1</sup> (*Adeniji v. State*, 2000; *Akinyemi v. State*, 1999; *Joseph Amoshima v. The State*, 2014; *Okoro v. State*, 1998; *Tanko v The State*, 2009)

While most of these decisions have attracted considerable public attention and put many proponents of sentencing in the public's eye, as a miscarriage of justice, they only exposed skepticism in the public for sentencing outcomes. Nigeria's dependence on strong penalties is seen in judicial sentencing patterns for grave offences, particularly those involving capital penalties. The court system reveals an incapacity to execute sentences promptly, raising ethical concerns over inhumane treatment, since convicts often remain on death row for extended periods (Amnesty International, 2006, p. 8). Such sentences are at times deemed necessary to deter major crimes; nonetheless, a growing controversy regarding their alignment with current human rights norms is establishing itself.

The case of former governor Diepreye Alamieyeseigha is noteworthy, as he was convicted on charges of corruption and money laundering yet received a pardon from President Goodluck Jonathan in 2013 (Cocks, 2013). The pardon was perceived as a derision of the government's efforts to combat corruption, interpreted as a politically charged manoeuvring intended to provoke widespread indignation. The pardon diminished public trust in the judiciary, simultaneously conveying a perplexing message that suggests the presence of boundaries regarding accountability and transparency, especially with those in government. This case points out the potential erosion of judicial authority when executive clemency is exercised arbitrarily or for political purposes.

Understanding lessons of other jurisdictions, including those of the United States and the United Kingdom, is therefore useful for Nigeria. The U.S. presidential pardons have also at some point triggered widespread outcry amongst its citizens, for instance, pardon granted to Richard Nixon, by President Gerald Ford after the Watergate scandal (National Constitution Center, 2024). However, the U.S. system maintains stringent procedures concerning pardons; the legal framework is designed to guarantee authentic pardons for trustworthy and law-abiding individuals while simultaneously deterring devious criminals and fraudsters. In the United Kingdom, the application of mercy is approached with caution, primarily utilised to rectify erroneous judicial decisions or to address urgent humanitarian circumstances with special consideration. These examples point out the inappropriateness of granting pardon powers in a random or arbitrary manner, emphasizing the necessity for transparency and external review of such decisions.

Ultimately, the experiences from Nigeria, as revealed through case studies and comparative insights into other legal systems, draw attention to the tensions while also suggesting ways to achieve a balance between sentencing and pardoning.

Nigeria stands to gain important perspectives into the reform of its pardon process by examining the practices of these jurisdictions. By embracing a more organised framework akin to that of the U.S. and U.K., we could effectively avert the misuse of pardon power, and thus encourage public trust in both the judiciary and the executive branches. The limitation of pardon authority to clear and predictable criteria, articulated in a manner accessible to the public, alongside judicial oversight of pardon determinations, has the potential to diminish the likelihood of arbitrary use of such power. This approach could transform pardons into a means of uncovering truth, addressing injustices, or promoting rehabilitation.

## **7. Institutional Challenges in Harmonising Sentence Execution and Pardons**

Nigeria's institutional challenges in harmonising sentence execution and pardons centre on the core relationship between the executive and judiciary. The judiciary is endowed with the power to sentence within the ambit of law, but the executive has the power to pardon as per the Constitution. Both institutions must cooperate to uphold justice with the balance so fine that they rely on and serve each other, but the tensions are insurmountable when pardons executed by executive branches seem to override or undercut judicial rulings. Prominent pardons in situations where such actions are perceived to challenge the rule of law, particularly when these pardons are issued without adequate justification, raise major issues regarding the integrity of both branches of government. Legal and institutional safeguards are necessary to prevent the abuse of pardon powers. Executive clemency power is given by the Nigerian Constitution in Sections 175 and 212, which grant the power but place no restrictions on its use. The Advisory Council on the Prerogative of Mercy is assigned to give recommendations to Presidents and Governors, but its operations are not transparent and accountable. The avenues for contesting or scrutinising pardon decisions are notably limited, allowing political considerations to overshadow legal rationality. By adding institutional safeguards like judicial review or parliamentary oversight to the pardon system, it can be made accountable, and pardons can be granted on the merits and not based on some personal or political interest. Another mechanism that could enhance the process of harmonising between the work of sentencing bodies and the pardon advisors is cooperation between those bodies. In practical terms, however, these institutions function independently of one another, which results in decisions that are often divergent from the original intent of the judiciary. For example, when a pardon is granted to someone convicted of a major



crime, it may undermine the judiciary's objectives of punishment and deterrence, consequently diminishing the efficacy of the justice system. In order to align the objectives of sentencing authorities, pardons must be utilised thoughtfully and in harmony with the overarching goals of the justice system. To facilitate this, the establishment of periodic formal consultation channels of operation with the Advisory Council needs to be considered.

Of major concern, is the opacity that continues to characterize the workings of the Advisory Council on the Prerogative of Mercy. As a result, it is often unclear what criteria were used to grant pardons, and how those decisions were reached are usually never explained to the public. This opaqueness contributes to public skepticism especially when pardons are granted in politically sensitive situations. For more accountability and to regain people's confidence, there should be changes that would bring major improvements in the pardon system. Reforms are needed to make the pardon process more transparent in order to boost accountability and restore public trust. But publicizing the Advisory Council's decisions, laying out the rationale for granted pardons, and clarifying the standards upon which these decisions are based would do much to eliminate the perception of favoritism or corruption. Another challenge that threatens the legitimacy of both the judiciary and the executive is political interference in the pardon system. The public has levelled accusations against the ladder of authority for granting pardons to high-profile persons, particularly to individuals with political connections, citing concerns about corruption and abuse of power (Udofa, 2018, p. 114). Besides abdicating the judicial role of dispensing justice to people, this also weakens the executive's credibility. The independence of the Advisory Council needs to be strengthened, and it should base its recommendations on legal and ethical considerations rather than political expediency so as to insulate the pardon process from political pressures.

There are serious and overarching issues which include congestion in prisons (Habib, 2024), long delay after which justice is delivered, and pervasive ill practices on modalities of imposing and implementing the sentences which make it even more ragging to harmonize the modalities of sentencing and pardoning in Nigeria. Overcrowded prisons put pressure on the executive to grant mass pardons to ease the crowding, but such pardons resolve nothing other than the temporary congestion. Even corruption in the penal system impacts the execution of sentences, as well as with monied individuals able to sway their treatment and, on occasion, secure early release, all of which make the public more sceptical of the law. Public sentiment, however, also plays a part in setting the discourse on sentencing and pardoning

(Ngwoke & Abayomi, 2022, p. 217). The one side calls for stronger sentencing in the case of serious crimes like corruption or violent crime. But cases of perceived injustice (wrong convictions and unfair sentences) give rise to demands for clemency. Striking the right balance between these conflicting demands is such that commands major institutional reengineering, necessitating useful reforms that transcend electoral and political considerations and limit the inclination towards extrajudicial remedies, all while prioritising principles of fairness, justice, and rehabilitation. Ethical and institutional challenges are also increased by human rights concerns, such as the use of torture, inhumane treatment, and the ongoing application of the death penalty in Nigeria. As the country faces international pressure over its punishment-orientated approach to crime, the use of executive discretion is a tool that could be used to fix some of these injustices. But if it (the pardon process) lacks proper reforms, it will further be seen as arbitrary and undermine its value as a corrective remedy for injustice in the justice system.

## **8. Legal and Institutional Reforms**

To overcome the problem characteristic of Nigeria's pardon system and sentencing, it is crucial to create an independent body to consider applications for a presidential pardon. This proposed body would work under the judiciary, thus eliminating political influence and dictating pardon decisions. It must be composed of members coming from different fields of the justice system; retired judges, academicians, lawyers, human rights activists, police, and prison personnel to have broad coverage. This form of organization or body would operate independently, free from political influences or interference from the executive branch as interference from these entities could diminish the credibility of the body in decision-making. This would, in turn, enhance public trust in the process. In par with this, there must also be an enhancement of the transparency and accountability of the existing Advisory Council on the Prerogative of Mercy. There is therefore a need for standardization for pardon as one of the major reforms. It should be possible for the public to know about these, and some of the factors may be time served, behavior during custody, and demonstrated rehabilitation efforts.

This way, looking at each case, the Advisory Council can guarantee that the criteria for decision-making are more or less the same, and therefore, a fair amount of politicization is ruled out. Additionally, in order to increase public confidence in the pardon process, the Council's decisions requiring the pardoning of individuals

should include a rationale. Additionally, reforms must be instituted within the justice system to ensure fairness and consistency in sentencing practices. Major reforms need to include the development and implementation of judicial training programs aimed at enhancing the understanding of proportionality in justice, which proves essential for achieving consistency in sentencing throughout the Nigerian courts. The broad discretion afforded to judges results in numerous inconsistencies, culminating in unequal sentencing for comparable offences. Equipping judges with enhanced decision-making tools and enforcing sentencing guidelines enables the judiciary to achieve more balanced and equitable sentencing outcomes. Additionally, the implementation of sentencing committees, similar to those in the United Kingdom, may promote uniformity within the judicial system. The councils would be responsible for evaluating sentences from different courts and establishing guidelines that serve as benchmarks for a range of offences. These reforms are aimed to tackle issues related to sentencing leniency or severity, promoting proportionality while upholding the autonomy of the judiciary. Furthermore, sentencing councils are essential in encouraging equity, as they unite legal experts to consistently evaluate and enhance sentencing practices. The proposed reforms aim to harmonise justice, fairness, and rehabilitation, enhancing the transparency, consistency, and effectiveness of both the pardon system and the sentencing framework. By establishing an independent authority to oversee pardons and implementing clearer sentencing guidelines, Nigeria's criminal justice system can enhance public trust and reinforce the rule of law.

## **9. Conclusion**

Long-term reform of the Nigerian criminal justice system requires that the fault lines of justice and pardon be bridged to put them together. Sentencing and pardoning respective roles are different yet interdependent, and a turn here is to combine these while maintaining both fairness and accountability. Proportionate sentencing recognizes the rule of due process and acknowledges the limits of that rule; namely, that mercy can, in some cases, mark appropriate correction to the judicial process where sentencing may have been overhasty or where a conviction should not have been made without due regard. This balance enhances the effectiveness of the criminal justice system in our society since it seeks to ensure that justice is done while giving humanity a chance for the nurturing of a different approach to handling criminals and a more humane justice system that effectively strikes a balance between punishment and rehabilitation. The enduring aspiration for transforming

Nigeria's criminal justice system centres on establishing a framework that embodies justice and fairness while maintaining the confidence of the public. Establishing a more equitable and transparent system necessitates addressing challenges like capricious pardon decisions and discrepancies in sentencing. The implementation of these legal reforms, including the establishment of an independent entity to manage pardon applications and the introduction of clearer sentencing guidelines, are essential from the outset. In such a scenario, executive clemency would be guaranteed through a framework of transparency and accountability, while the enhancement of judicial training on the principles of sentencing proportionality would be prioritized. The principles of fairness within a criminal justice system, the emphasis on rehabilitation, and the cultivation of public trust in the rule of law are essential not only for maintaining the integrity of legal frameworks but also for fostering social cohesion. A system that harmonizes punitive measures with opportunities for rehabilitation not only aligns with global best practices but also reflects the evolving needs of Nigerian society. The processes of sentencing and pardoning must embody justice and transparency, paying attention on rehabilitation rather than merely emphasizing retribution, to effectively restore public confidence in the system. The reform of Nigeria's criminal justice system necessitates a profound commitment to both justice and mercy. The enactment of reforms within the sentencing and pardoning framework that promote enhanced transparency and foster compassionate perspectives will be beneficial to the establishment of legal integrity, while embracing the humanity that the system is designed to protect. To sustain people's trust in the system, it is fundamental to align justice and pardon, allowing them to coexist harmoniously. This approach upholds fairness, promotes rehabilitation, and fosters the public's trust.

### **Recommendations**

The fine balance between sentencing and pardoning in Nigeria's criminal justice system is thus anchored on the following recommendations:

1. Establish guidelines defining the criteria and process for sentencing and pardoning. This will reduce arbitrary decision-making by judges and executives while ensuring consistency and transparency.
2. Reinforce the judiciary's independence to safeguard it from political influences. Such a situation can be gotten rid of by way of legislative reforms clearly delineating

the powers of the executive and judiciary, ensuring that pardons do not whittle down judicial authority.

3. An independent body should be created to consider pardon applications, which is akin to what is obtainable with the Office of Pardon Attorney in the United States. This body should be based on established criteria and should make recommendations on the grounds of accountability and public confidence in the process.
4. Sponsor and conduct campaigns to educate the public about sentencing and pardon as the parts of execution of justice. Greater awareness of these processes allows them to be better understood and accepted, increasing trust in the legal system.
5. The necessary assistance should be available to judges, legal practitioners, members of the Council of State, and other stakeholders with needed training on the best practices in sentencing and pardoning. This will help them hone the skills to make decisions that are consistent with the principles of justice.
6. Encourage solutions based on restorative justice, that is, rehabilitation rather than solely punitive approaches. It could be community service or mediation between the victim and the offender, which can help reduce recidivism and help the entire societal reintegration.

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