

# THE EXERCISE OF THE PREROGATIVE OF MERCY: ITS IMPACT ON THE FIGHT AGAINST CORRUPTION IN NIGERIA

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## ABSTRACT

The prerogative of mercy is a constitutional power vested on the President of the Federal Republic of Nigeria and the Governors of the states. The essence of the power is to protect citizens against possible miscarriage of justice occasioned by wrongful conviction or sentence. Regrettably, in recent times the power has become a veritable tool in the hands of the President and the Governors to promote and achieve personal and selfish aspirations. Political, ethnic, religious and other primordial considerations are usually the factors behind the exercise of the power. The pardon granted to some convicted political office holders of corruption charges in the exercise of the prerogative of mercy in recent times speaks volumes. Of course this trajectory is adversely affecting the fight against corruption in Nigeria. This paper intends to examine the exercise of the power and how it is impacting on the fight against corruption in Nigeria. The paper recommends creating an exception to exclude the exercise of the power in corruption cases; or in the alternative the exercise of the power should be subject to the approval of two third majority members of the National Assembly in the case of the President and two-third majority of the members of the State House of Assembly in case of a Governor amongst others. The paper used doctrinal method to collate materials.

**Keywords:** Prerogative, Mercy, Impact, Fight, Corruption

## INTRODUCTION

The Constitution of the Federal Republic of Nigeria 1999<sup>i</sup> empowers the President of the Federal Republic of Nigeria and the Governors of the states to exercise the prerogative of mercy on federal and state offences respectively.<sup>ii</sup> There is no gainsaying the fact that the cancerous monster called corruption has eaten deep into the fabric of the Nigeria's system. According to Transparency International, Nigeria, ranked 154 out of 180 countries surveyed, falling back five places from the rank of 149 in 2020 placing it in the position of the second most corrupt country in West Africa.<sup>iii</sup> Against this backdrop, overtime the country has been in the fight against corruption through the police and various anti-corruption agencies, namely the Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices and other related Offences Commission (ICPC), Code of Conduct Bureau (CCB) etc. It will be counterproductive and of course inhibit the fight against corruption, if after expending enormous time, energy and financial resources to prosecute and secure conviction of politically exposed persons and are later pardoned or released from incarceration on the pretext of the exercise of prerogative of mercy for selfish reasons. The power is to be exercise devoid of political, religious, ethnic and regional considerations. However, the exercise of the power in recent times leaves much to be desired. The recently pardon granted the former Governors of Plateau and Taraba states, Joshua Dariye and Jolly Nyame amongst others elicited angry reactions from vast majority of Nigerians, as the action has the propensity of adversely affecting the fight against corruption. It may be interesting to note that the Kuje Correctional Center jail break that happened on the 5 July 2022, which led to the escape of over 150 inmates including persons connected with the dreaded Boko Haram sect in Nigeria is attributable to the President's exercise of prerogative of mercy. Members of the dreaded sect felt it was an injustice to have their fellow members incarcerated while some persons have enjoyed the President's powers to order their release under the exercise of the prerogative of mercy.<sup>iv</sup> On how to address the ugly trend is what this paper seeks to achieve. This paper is divided into six parts namely part one contains the introduction; part two considers the concept of the prerogative of mercy; part three examines the concept of corruption; part four look at the fight against corruption in Nigeria; part five examines the impact of the exercise of prerogative of mercy on the fight against corruption and part six concludes the paper and states the recommendations.

## THE CONCEPT OF THE PREROGATIVE OF MERCY

Prerogative of mercy otherwise known as pardon, executive clemency or royal prerogative<sup>v</sup>, has been defined by the Black's Law Dictionary<sup>vi</sup> as 'The discretionary power of a supreme authority, such as a state governor, national president, or sovereign, to commute death sentence, change the method of execution or issue a pardon'. In same the vein, it defined pardon as 'The act or an instance of officially nullifying punishment or other legal consequences of a crime'.<sup>vii</sup> The court in *Falae v Obasanjo*<sup>viii</sup> described pardon thus:

A pardon is an act of grace by the suitable authority that mitigates or suppresses the penalty required by law for the offence and restores the rights and privileges forfeited by the offence. A pardon has the impact of making the offender, a fresh person (novus homo), acquitting him of all the corporal punishments and forfeiture attached to the pardoned crime.

Similarly, in *United States v Wilson*<sup>ix</sup> it was also described as 'an act of grace, proceeding from the power entrusted with the execution of the laws which exempts the individuals, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed. It is the private, though official act of the executive.'

It is pertinent to have a brief history of the concept of prerogative of mercy in order to appreciate how it found its way into the Nigerian jurisprudence. In the ancient Greek history, the power of clemency which is akin to the power of prerogative of mercy lies with the people. Hence, for anyone to enjoy clemency, the process has to be supported by a petition signed in a secret pool by 6000 people approving same. Considering the difficulty in securing this large figure, clemency was most enjoyed by popular individuals such as athletes, orators or other influential figures. In the Roman history however, the power of clemency was used for political reason to gain popularity rather than for the purpose of justice.<sup>x</sup> An example was the exercise of the power by Pontus Pilate where Barabbas was released instead of Jesus.<sup>xi</sup> In contemporary period, the British and the American systems also have practised the concept of prerogative of mercy. Under the British system, the practice derived its root from the practice of the Roman Empire. This power at Common Law was initially exercised at the discretion of the crown without any interference from any quarters, judicial or otherwise. The power can be exercised either as a pre-trial or as a post-conviction instrument. However, based on current custom and

statutes, the power is now exercised by the Constitutional Monarch on the advice of the Home Secretary. And the decision of the Home Secretary on the exercise of the power can sometimes be challenged by way of judicial review.<sup>xii</sup> Under the American Constitution the powers of the president to grant pardon is enshrined under Article II of the Constitution which provides that the President shall have power to grant reprieves and pardons except in cases of impeachment.<sup>xiii</sup> In interpreting these powers, the courts have interpreted it giving the President far reaching powers to grant pardons upon absolute or conditional terms. This power can be exercised before trial or after conviction.

The concept of prerogative of mercy was introduced in Nigeria as a result of British colonization which brought in common law principles and statutes of general application to become part of our legal system. The power was recognised in the 1963 Republican Constitution and the 1979 Constitution of the Federal Republic of Nigeria.<sup>xiv</sup> The power is provided under sections 175 and 212 of the 1999 Constitution as amended which empower the President and the Governor of the states to exercise the power respectively. For ease of reference, the provision of section 175 is reproduced as follows:

- (1) The President may-
  - (a) grant any person concerned with or convicted of any offence created by an Act of the National Assembly a pardon, either free or subject to lawful conditions;
  - (b) grant to a person a respite either for an indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence;
  - (c) substitute a less severe form of punishment 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 any penalty or forfeiture otherwise due to the State on account of such an offence;
- (2) The powers of the President under subsection (1) of this section shall be exercised by him after consultation with the Council of State.
- (3) The President, acting in accordance with the advice of the Council of State, may exercise his powers under sub-section (1)

of this section in relation to persons concerned with offences against the army, naval or air force law or convicted or sentenced by a court-martial.

There have been arguments as to whether the provisions of this section intended the power to be exercised as a pre-trial or post-conviction instrument. A plethora of decisions of the court<sup>xv</sup> in this regard seem to favour the power as a post-conviction instrument and not otherwise. Similarly, there have been arguments as to the justification for the exercise of this power which operates as a form of interference with the judicial process by the executive arm in a Constitution that clearly recognises separation of powers amongst the various arms of government. In attempting to justify the exercise of the power of prerogative of mercy, Mrabure<sup>xvi</sup> opined that the judiciary is not infallible or insulated from making mistakes. Thus, the exercise of this power is available as an instrument to redress a wrongful conviction and therefore serve the end of justice. He noted further that where the conviction is right, there could exist the possibility of the imposed punishment to be excessive in the circumstance. This position was also canvassed by Ekwenze<sup>xvii</sup> where he stated that in the circumstance where there is a wrongful conviction or excessive punishment and there is no window for further appeal, the exercise of the power of prerogative of mercy therefore serves as a check and balance on the powers of the judiciary. He further opined that it could be exercised in furtherance of the public policy of the government. In this case, the primary aim may not be the pardon of the offender but as an act of public policy to achieve a greater good. He gave an example that in the event of an insurrection or uprising, the exercise of this power can bring tranquillity and peace.<sup>xviii</sup>

The implication of the exercise of prerogative of mercy on a beneficiary is such that it blots the guilt of the person and puts him in the state he was before the conviction.<sup>xix</sup> The United States of American Supreme Court expressed this succinctly thus:

A pardon reaches both the punishment prescribed for the offence and the guilt of the offender; and when the pardon is full; it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching; if granted after conviction, it removes



the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity.<sup>xx</sup>

## THE CONCEPT OF CORRUPTION

The concept of corruption is multidimensional and of course covers a wide range of issues which makes it a herculean task to give an all-encompassing definition. Rendtorff defined it as ‘controversial, illegal, and unethical because it is an act that goes against or challenges established and well-defined conceptions and laws of justice’.<sup>xxi</sup> He added further that corruption ‘attacks the fundamental political and social structures of a society’.<sup>xxii</sup> Similarly, Moyosore, in laying credence to the fact that corruption does not have a universally accepted definition compiled a variety of view on the concept of corruption. He stated that corruption can be seen or viewed as the perversion of public affairs for private advantage.<sup>xxiii</sup> Corruption also includes conducts such as misappropriation of public funds and resources for private gains.<sup>xxiv</sup> Perversion of public affairs for private advancement comes under the purview of corruption. Situations such as outright bribery, kickbacks, misappropriation, misapplication or the use of one’s position or rank to gain undue advantage over others and illegal acquisition of wealth by public officers for personal gratification and aggrandisement is also seen as corruption.<sup>xxv</sup> Ibrahim<sup>xxvi</sup> on his part defined corruption thus:

A deviation from normal duties of a public officer for private pecuniary or status gain. Such violation of duties or rule include bribery (use of reward to perfect the judgment of a person in the position of trust) nepotism (appointment by ascription rather than by merit) and misappropriation of public resources for private use.

In the same vein, the World Bank defined corruption as follows:

The abuse of public office for private gains. Public office is abused for private gain when an official accepts, solicits, or extorts a bribe. It is also abused when private agents actively offer bribes to circumvent public policies and processes for

competitive advantage and profit. Public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism, the theft of state assets or the diversion of state resources.<sup>xxvii</sup>

Moyosore, further identify some of the causes of corruption to include, weak institutions of government, lukewarm attitude of the enforcers of the law, cultural factors, poor reward system, low remuneration of public servants, bureaucratic bottle necks amongst others. He noted that most government institutions are weak in terms of effectively combating the menace of corruption and this affects the law enforcement side of tackling corruption cases. Where corruption cases are not effectively and decisively dealt with, there will be no deterrence for those who nurse such intentions. The problem of poor remuneration for public servants has been a perennial problem in Nigeria. The incessant case of Academic Staff Union of Universities (ASUU) industrial action is evidence of the struggle of government workers for better working conditions. Where people cannot meet their legitimate needs from the services they render, the probability to engage in corrupt practices to meet these needs become heightened.<sup>xxviii</sup> The negative effects of corruption on the society are numerous. According to Moyosore,<sup>xxix</sup> the effects of corruption on the society includes mass unemployment, poverty, decreased productivity, reduction in the quality of goods and services, reduced economic growth, negative impact on human rights of the citizens, political decay, to mention but a few. On the effects of corruption on the electoral process and good governance, Aiyede<sup>xxx</sup> expressed his opinion in the following words:

Corruption poses a serious development challenge. In the political realm, it undermines democracy and good governance by flouting or even subverting formal processes. Corruption in elections and in legislative bodies reduces accountability and distorts representation in policymaking; corruption in the judiciary compromises the rule of law; and corruption in public administration results in the unfair and inefficient provision of services. More generally, corruption erodes the institutional capacity of government as procedures are disregarded, resources are siphoned off, and public

offices are bought and sold. Thus, corruption undermines the legitimacy of government and democratic values of trust and tolerance.

## **FIGHT AGAINST CORRUPTION IN NIGERIA**

Nigeria from the pre-colonial era has been battling the cancerous monster called corruption till date. The question has to whether all the efforts put in place to fight the hydra-headed monster is yielding any meaningful impact is begging for answer. The indicators in the country reveal that the phenomenon of corruption is exacerbating by the day as there appears to be no political will to face this issue head on. Moyosore<sup>xxxi</sup> noted that the problem of corruption in Nigeria can be traced back to neglect of the indigenous system of administration of justice which was replaced by indirect rule and the appointment of unknown individuals with questionable characters to man the consular court system which was a creation of the colonial government. These undeserving individuals became intoxicated with power, began to abuse same in the discharge of their duties by amassing wealth through bribery and corruption.

After independence, Nigeria witnessed a couple of coups d'état which led to the takeover of democratically elected governments by the military. The major reason adduced for each of the incursion is corruption in government. Regrettably, the military regimes have themselves been accused of institutionalizing corruption as the sudden affluence of ex-military officers, some serving military officers, their relatives and associates in the regimes cannot be logically explained. The case of corruption and stealing of public funds linked to the former head of state, late General Sani Abacha popularly referred to as 'Abacha loot' which is still being recovered several years after his death is an irrefutable fact in this regard.<sup>xxxii</sup>

Some of the efforts of successive administrations, civilian and military include the promulgation of Corrupt Practice Decree, 1975; the Public Officer (Investigation of Assets) Decree No.5, 1976; the establishment of the Code of Conduct Bureau and Tribunal as provided for under the 1979 Constitution of the Federal Republic of Nigeria; the Shehu Shagari's Ethical Revolution (1976-83); the War Against Indiscipline by Muhammadu Buhari/Tunde Idiagbon regime (1984-1985); the establishment of the National Committee on Corruption and other Economic Crimes (NCCEC) by the Babangida's administration amongst others. Recall that



after the restoration of democratic government in 1999, the Olusegun Obasanjo's administration in its bid to fight corruption in furtherance of the provision of section 15 of the 1999 Constitution as amended established the Independent Corrupt Practices and other Related Offences Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC) via enabling Acts.<sup>xxxiii</sup> The responsibility of ICPC under the Act<sup>xxxiv</sup> are as follows:

- Where reasonable grounds exist for suspecting that any person has conspired to commit or has attempted to commit or has committed an offence under this Act or any other law prohibiting corruption, to receive and investigate any report of the conspiracy to commit, attempt to commit or the commission of such offence and, in appropriate cases, prosecute the offenders;
- To examine the practices, systems and procedures of public bodies and where in the opinion of the Commission, such practices, systems or procedures aid or facilitate fraud or corruption, to direct and supervise their review of them;
- To instruct, advise and assist any officer, agency, or parastatals on ways by which fraud or corruption may be eliminated or minimized by such officer, agency, or parastatals;
- To advise heads of public bodies of any changes in practice, systems or procedures compatible with the effective discharge of the duties of public bodies as the Commission thinks fit to reduce the likelihood or incidence of bribery, corruption and related offences;
- To educate the public on and against bribery, corruption and related offences.
- To enlist and foster public support in combating corruption.

Sequel to the responsibilities of ICPC as provided under its enabling Act, there have been several investigations by the ICPC but the outcomes have not been encouraging. Some of the instances includes, allegation of illegal operation of oil wells by the some top officials of the NNPC which led to the loss of about 140 billion of the nation's revenue to private pockets; allegation of extortion of foreigners by immigration officials namely Prince Okoro and Ozodulukwe Emmanuel, these two officers were discharged and acquitted by the High Court; allegation of demanding and receiving of bribe by Hon. Justice Garba Abdullahi of the Kano State High Court, he was also discharged and acquitted and the report of late Prince Audu Abubakar, a former governor of Kogi State, who despite clear evidence of involvement in corrupt practice by the acquisition of properties in the US and UK while still in office as governor, denied same and claimed those properties were purchased before his assumption of

office as governor. These and many reports of corrupt practices on political office holders and politically exposed persons have never culminated in any meaningful indictment and conviction of the alleged offenders.<sup>xxxv</sup>

The Economic and Financial Crimes Commission<sup>xxxvi</sup> as an anti-corruption agency also came on stream under the administration of President Olusegun Obasanjo with the sole responsibility of combating financial crimes through investigation and prosecution of offenders before competent courts. The Commission has been involved in the investigation of financial crimes in financial institutions, Advance Fee Fraud, money laundering, computer credit fraud, cybercrimes, employment scams, issuance of dud cheques amongst others.<sup>xxxvii</sup> The Commission was involved in the case of former governor of Bayelsa State, D.S.P Alamiyeseigha who was arrested in London in 2005, tried and convicted of money laundering charges in Nigeria.<sup>xxxviii</sup> Undoubtedly, the Commission has been in the fore front of the fight against financial corruption in the country since its inception till date. However, whether the activities of the Commission have translated into having a corruption free country is a pertinent question begging for answer.

## **THE IMPACT OF THE EXERCISE OF PREROGATIVE OF MERCY ON THE FIGHT AGAINST CORRUPTION**

As earlier observed, the exercise of the power of prerogative of mercy has been justified under several grounds including seeking to redress injustice where the option of appeal may not be available and on grounds of public policy aimed at achieving the greater good for the society. It needless to state that corruption in all its ramifications poses a serious danger and existential threats to the survival of any sane society. To analyse the implications of the impact of the exercise of the prerogative of mercy on the fight against corruption in Nigeria, we shall look at some instances of corruption related cases where the power was exercised.

The case involving a former House of Representative member and speaker in 1999 where he was accused of being in possession of a fake National Youth Service Corp (NYSC) certificate and a University degree purportedly acquired from the University of Toronto, Canada is a good example in this regard. He was charged with the offences of forgery, altering and perjury, which he pleaded guilty and was summarily tried. Before his conviction and sentencing, he apologised

for his wrongful conduct. Amazedly, in 2002, in the exercise of the power of prerogative of mercy, President Olusegun Obasanjo granted him pardon which many considered to be a case of abuse of the power of prerogative of mercy<sup>xxxix</sup> as same in the opinion of the citizenry was considered to have been exercised on the grounds of political party affiliation and not strictly on the grounds of justice. Similarly, the case involving former Governor of Bayelsa State (D.S.P Alameyeseigha) is also illustrative. He was first arrested in London over money laundering charges. His attempt to object to his trial by making a plea of immunity from criminal prosecution being a serving governor in Nigeria was rejected by the court on the ground that the immunity clause in the Nigerian Constitution did not avail him in London. Reports<sup>xl</sup> had it that he escaped from London dressed as a woman. He was however re-arrested in Nigeria, impeached, and tried on six count offences involving corrupt practices and money laundering charges. Upon arraignment before the Federal High Court sitting at Lagos, he pleaded guilty, consequently he was convicted and sentenced to two years imprisonment on each count of the offences for which he was charged and several of his properties confiscated and forfeited to the government of Bayelsa State. Nigerians were taken aback, when President Goodluck Jonathan in the exercise of the power of prerogative of mercy in 2013 granted him pardon.<sup>xli</sup> Again, several commentators have considered the exercise of this power in the circumstance to be a case of abuse of power considering the relationship between the Alameyeseigha and President Goodluck Jonathan who had served as Deputy Governor under him. The case of Jolly Nyame and Joshua Dariye, Governors of Taraba and Plateau States respectively between the periods of 1999-2007 is another good example. They were both arrested and charged for offences relating to receiving gratification, obtaining public funds, criminal breach of trust, gratification and other corrupt practices over the sums of 1.6 billion and 1.16 billion naira respectively. In the year 2018 they were both convicted and sentenced to various terms of imprisonment ranging from 12-14 years, forfeiture of certain assets and fines. They both appealed up to the Supreme Court where their sentences were upheld<sup>xlii</sup>, though with slight reductions in the sentences. To the chagrin of most Nigerians, in April 2022, they were both among those granted pardon by President Muhammadu Buhari in the exercise of his powers of prerogative of mercy.<sup>xliii</sup> Again, this action was widely condemned as both persons under consideration joined the ruling All Progressive Congress (APC) shortly before their convictions and sentencing.<sup>xliv</sup>

Evaluating the circumstances of the above scenarios, it is difficult to justify the exercise of the prerogative of mercy in favour of the beneficiaries. Can it be said that there was a wrongful conviction in any of these cases? If same was done in furtherance of a public policy, can it be said that this power was exercised for the greater good? In the scenarios above, the answer will definitely be in the negative. While we concede that the President or Governor in exercising the power of prerogative of mercy is not under legal obligation to give reasons, we can however argue that this power being a constitutional one must be exercised in furtherance of other constitutional provisions to avoid abuse. Section 15 of the 1999 Constitution as amended provides that the government shall strive to stamp out corruption in all its ramifications and several legal instruments<sup>xlvi</sup> have been enacted to assist in the fight against corruption with the aim of eradicating corruption which has become endemic in Nigeria and also to curtail the abuse of power. It is therefore a disservice to the fight against corruption to have persons convicted of corruption related cases being pardoned through the exercise of the prerogative of mercy. As earlier noted one of the strong campaign points of the All Progressives Congress (APC) in 2015 and reiterated in 2019 was the promise to stamp out corruption which it claimed that the former administrations were not serious about considering all indices of measuring same. It was rather shocking for Nigerians to hear the then party chairman of the APC Comrade Adams Oshiomole during the campaigns of 2019 election in Edo State while encouraging people to defect and join the APC was quoted to have said ‘once you join the APC, your sins are forgiven’<sup>xlvi</sup>. The statement was made in the presence of the President and nothing was said to counter same. The People’s Democratic Party (PDP) and other analysts reacted to this call as an invitation for criminals and treasury looter to find a safe sanctuary in the party and the President Buhari’s fight against corruption is mere lip service.<sup>xlvi</sup> Considering the recent exercise of the power of prerogative of mercy in favour of Dariye and Nyame, it is our humble opinion that the fight against corruption by this administration is to a large extent compromised. Considering the adversarial nature of criminal trials in Nigeria which places the burden of establishing the guilt of the accused beyond reasonable doubt on the prosecution<sup>xlvi</sup>, the devastating effects of corruption on the health, educational, security and general welfare of the average Nigerian, it is an insult to the sensibilities of Nigerians, a waste of judicial resources and a great disservice to the nation for persons linked with corruption to enjoy the exercise of the grant of pardon in their favour. Furthermore, the inference that can be safely drawn is that the grant of pardon under these circumstances means the government is not serious and of



course the absence of a political will to fight the menace of corruption which has almost brought the nation to its knees.

In criminal administration of justice, one of the major aims of sentencing is deterrence. The punishment for offences needs to be such that those considering committing such offences must think twice in considering its repercussions. Oyelade and Kuteyi<sup>xlix</sup>, posited that punishment ought to be aimed at disablement, deterrence, rehabilitation or reformation. These considerations as listed ought to be taken into account for the good of society. In Daher's case<sup>l</sup>, the court in sentencing a 19-year-old for the offence of illegal importation of drugs observed thus:

If a young man such as the appellant is given six months suspended sentence, back he goes from whence he came and the news spreads like wild fire amongst the students. 'Well, this is not a bad way trying to get money because if it comes off you have made a nice outfit and had a good holiday, and if it does not come off you will just be sent home again; on the other hand, if it is known among potential offenders in the Lebanon and elsewhere that if they are caught attempting to smuggle drugs into this country, they will be severely dealt with, there may be a remarkable lack of enthusiasm for enterprises of this kind and great difficulties put in the way of people who run this filthy trade.

Similarly, in the case of *Obasi vs State*<sup>li</sup>, in upholding the sentence of the appellant by the trial court, thereby dismissing the appeal, Agube (JCA) had this to say:

I only wish to add that the appellant and his confederates deserve to be hanged for their dastardly act of murdering Agbaeze Kalu Ukariwo and Itum Okoroafor in such a gruesome manner, so as to serve as a deterrent to others of their ilk who would dare take the laws into their hands by unleashing such inhumanity and terror on innocent citizens of this country on the instigation of any person no matter how highly placed. They deserve to die for their indiscretion in harkening to the voice of Enachioken (chief



of Abriba) who unleashed them like barbarians on his perceived enemies in this 21<sup>st</sup> Century. May God bless their souls!!<sup>lii</sup>

It is our humble opinion that the fact that politically exposed persons can engage in acts of corruption and then by political and other affiliations be granted pardon on whatever grounds will not serve as a deterrent to others who are currently engaging in the acts of corruption. It appears the exercise of the power of prerogative of mercy in this instance is an incentive for doing wrong. There is no hardship being experienced in the country that is not traceable to corrupt practices as those to whom Nigerians have entrusted with powers to see to their welfare have turned the treasury into their personal pockets where they fleece the wealth of the country. Poor funding of our health and educational institutions which has led to needless deaths for common ailments and incessant strike action by the workers, poor electricity generation which in turn affects cost of production as those in the sector resort to alternative sources. All these and more had made life difficult for Nigerians while those in political offices can afford to fly in and out of the country for medical treatments, send their children out of the country for their education, purchase foreign goods and the likes. After all these, such a person is accused of corruption related offences, investigated, prosecuted before a court of competent jurisdiction, convicted and sentenced after a long trial that would have gulped another chunk of the nation's precious time and resources but then, a pardon will be granted to such a person. This at best can be described as an abuse of powers of the President in this regard. This is made possible because the exercise of the prerogative of mercy by the President is without check by the other arms of government.

The impact of the exercise of the power of prerogative of mercy by the President or the Governors on the fight against corruption ranges from promoting lack of trust for the government by the citizens, apathy on the part of law enforcement and prosecuting agencies in giving their best to identify and prosecute offenders, no deterrence to prevent potential corrupt persons, poor ranking among comity of nations in terms of corruption perception index<sup>liii</sup> and host of other devastating effects in the country.

## CONCLUSION AND RECOMMENDATIONS

The exercise of the power of prerogative of mercy has been an age long discretionary power granted to a supreme leader in favour of convicts or persons that have been sentenced to death, various terms of imprisonment or imposed with a fine, which when exercised exonerates the beneficiary from the consequences of actions either in absolute or conditional terms. This power is provided under sections 175 and 212 of the 1999 Constitution as amended in relation to the President of the Federal Republic of Nigeria and the Governors respectively. The power is meant for the good of the society; however, it has been abused overtime and of course negatively affecting the fight against corruption in Nigeria. The exercise of the power seems to encourage those with corrupt tendencies to perpetuate same, because it is usually exercise based on nepotism, favouritism, party affiliation, godfatherism and the likes. Also, the fact that there is no check and balance to the power of the President or Governor as the case maybe in the exercise of the power of the prerogative of mercy makes it susceptible to abuse as has been seen by successive governments. In view of the above, the following recommendations are made:

1. The Constitution should be amended to create an exception to the exercise of the power of prerogative of mercy to exclude corruption related cases for public office holders as the offences for which such persons have been convicted affect the entire society and the offender has acted contrary to the oath of office he took to uphold the Constitution and thereby betrayed the trust and confidence reposed in him.
2. Alternatively, the Constitution should be amended to provide for the approval of two third majority of the members of the National Assembly and State House of Assembly as the case may be for the exercise of the power in corruption related cases as this would serve as the needed deterrent to persons with corruption tendencies considering the difficulty in obtaining such approval.
3. Instead of the Council of State or the advisory council of a state as the advisory body, the Constitution should be amended to provide for an advisory body that would compose of seven retired Justices of the Supreme Court and Court of Appeal at the federal level and five retired Justices of a State Judiciary at the state level of impeccable integrity to consider the plea for mercy and make recommendation to the President and Governor respectively on verifiable criteria of change and remorsefulness and of course

other factors which should be for the greater good of society and not to promote and achieve personal and selfish aspirations.

## ENDNOTES

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<sup>i</sup> Referred to as the 1999 Constitution as amended.

<sup>ii</sup> Sections 175 and 212 of the 1999 Constitution as amended

<sup>iii</sup> Kunle Sanni, 'Again, Nigeria drops in Latest Corruption Ranking' <<https://www.premiumtimesng.com/news/top-news/507715-again-nigeria-drops-in-tis-latest-corruption-ranking.html>> accessed on 25 June 2022.

<sup>iv</sup> Edokwe, B, 'Boko Haram said Comrades shouldn't be in Prison after Buhari Pardoned Political Cronies Jailed for Stealing Billion- Official' 8 July 8 2022.< <https://barristerng.com/boko-haram-said-comrades-shouldnt-be-in-prison-after-buhari-pardoned-political-cronies-jailed-for-stealing-billions-officials/>> accessed 9 July 2022.

<sup>v</sup> K. O Mrabure, 'Contending Issues in the Exercise of the Prerogative of Mercy by State Executives under the Nigerian Law' *African Journal of Law and Human Rights* [2020] 4 (20) 153. <<https://ezenwaohaetorc.org/journal/index.php/AJLHR/article/view/1023/1026>> accessed 9 July 2022.

<sup>vi</sup> Bryan A. Garner, (ed.) *Black's Law Dictionary* (9<sup>th</sup> Edition West Publishing Co., 2009) 1301.

<sup>vii</sup> *Ibid*, 1221.

<sup>viii</sup> (No. 2) (1999) 4 NWLR (Pt. 599) 476.

<sup>ix</sup> 32 U.S (7 pet) 150 at 161.

<sup>x</sup> Rita Abhavan Ngwoke and Sogunle B. Abayomi, 'An Appraisal of the Power of Pardon under Nigerian Law: Lessons from other Jurisdictions'. *Beijing Law Review* [2022] 13 217-218 <<https://doi.org/10.4236/blr.2022.132014> > accessed 9 July 2022.

<sup>xi</sup> See Matthew 27:15-26.

<sup>xii</sup> Rita Abhavan Ngwoke and Sogunle B. Abayomi, (n. 10) 219

<sup>xiii</sup> K O Mrabure (n. 5) 154.

<sup>xiv</sup> *Ibid*.

<sup>xv</sup> *Olu Falae v. Obasanjo* (No. 2) (1999) 4 NWLR (Pt. 599) 476, 495; *Solola & Anor.v. The State* (2005)11 NWLR (pt.937) 460.

<sup>xvi</sup> K O Mrabure (n. 5) 156.

<sup>xvii</sup> Ekwenze Solomon 'Presidential Pardon and Prerogative of Mercy: A Necessary National Soothing Balm for Social Justice' ( June 19, 2014) 1-23 < <https://dx.doi.org/10.2139/ssrn.2541929> > accessed 9 July 2022.

<sup>xviii</sup> *Ibid*.

<sup>xix</sup> *Falae v. Obasanjo* (No.2) (1999) 4 NWLR (Pt.599) 476 at 495.

<sup>xx</sup> Ex Parte Garland 71 US333 (1866)381.

<sup>xxi</sup> Jacob Dahl Rendtorff, 'The Concept of Corruption: Moral and Political Perspectives' in : Agata Stachwicz-Stanusch, (ed) *Organizational Immunity to Corruption: Building Theoretical and Research Foundations*: (Information Age Publishing Inc, 2010), 112-117.

<sup>xxii</sup> *Ibid*, 112.

<sup>xxiii</sup> Shuaib Olarewaju Moyosore, 'Corruption in Nigeria: Causes, Effects and Probable Solutions' *Journal of Political Science and Leadership Research* [2015] 1(8) 22.

<sup>xxiv</sup> *Ibid*.

<sup>xxv</sup> *Ibid*, 23-24.

<sup>xxvi</sup> A Ibrahim, 'Accountability and Transparency in Nigeria Civil Service' (Being a seminar paper presented at the National Conference on Public Administration and Good Governance in Nigeria, held in Kongo Conference Hotel, Zaria, March 2004) 12.

<sup>xxvii</sup> Cited in Raimi, L. and Suara , I.B. and Fadipe, A.O., 'The Role of Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices and Other Related Offences Commission (ICPC) at

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<sup>xxviii</sup> Shuaib Olarewaju Moyosore (n.22) 28-29

<sup>xxix</sup> Ibid, 30

<sup>xxx</sup> Emmanuel Remi Aiyede, 'The Role of INEC, ICPC and EFCC in Combating Political Corruption' in Victor A. O. Adetula (ed), *Money and Politics in Nigeria* (Petra Digital Press 2008) 41.

<sup>xxxi</sup> Shuaib Olarewaju Moyosore (n.23) 25

<sup>xxxii</sup> Kunle Sani, 'UK Govt Recovers \$ 23m Abacha Loot'. *Premium Times* (6 May 2022) <<https://www.premiumtimesng.com/news/top-news/527969-uk-govt-recovers-23m-abacha-loot.html> > accessed 23 August 2022.

<sup>xxxiii</sup> Corrupt Practices and other Related Offences Act, Cap. C31, Laws of the Federation of Nigeria 2004 and Economic and Financial Crimes Commission (Establishment) Act, Cap E 1, Laws of the Federation of Nigeria 2004, referred to as the Corrupt Practices and other Related Offences Act and Economic and Financial Crimes Commission (Establishment) Act respectively.

<sup>xxxiv</sup> Section 6(a-f) of the Corrupt Practices and other Related Offences Act.

<sup>xxxv</sup> Raimi, L. and Suara, I.B. and Fadipe, A.O. (n. 27) 114-119.

<sup>xxxvi</sup> Economic and Financial Crimes Commission (Establishment) Act, 2004.

<sup>xxxvii</sup> Emmanuel Remi Aiyede, (n. 30) 49. See also section 6 (a)-(q) of the Economic and Financial Commission (Establishment) Act, 2004.

<sup>xxxviii</sup> Emmanuel Remi Aiyede, (n. 30).49-50

<sup>xxxix</sup> K O Mrabure (n. 5) 159.

<sup>xl</sup> Rory Carroll, 'Nigerian State Governor dresses up to escape £ 1.8M Charges in UK'. <<https://www.theguardian.com/world/2005/nov/23/hearfrica05.development>>. ( 25 November 2005) accessed 11 July 2022.

<sup>xli</sup> K O Mrabure (n.5) 159.

<sup>xlii</sup> Onochie B.C. 'Supreme Court affirms Nyame's Conviction' < <https://guardian.ng/news/supreme-court-affirms-nyame-s-conviction>> (07 February 2020) accessed 11 July 2022.

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<sup>xliv</sup> Corrupt Practices and other Related Offence Act, 2004; Economic and Financial Commission (Establishment) Act, 2004, Money Laundering (Prohibition) Act, 2004 etc.

<sup>xlvi</sup> Success Nwogu and Theophilus Onojeghen. and Peter Adekunle, 'ICYMI: Oshiomole: Once you join the APC, your Sins are forgiven' <<https://punchng.com/oshiomhole-once-you-join-the-apc-your-sins-are-forgiven/> > (2019) accessed 12 July 2022.

<sup>xlvi</sup> Nwafor Sunday, 'Once you join APC, your sins are forgiven' Oshiomole says as PDP lambasts him' (18 January 2019)< <https://www.vanguardngr.com/2019/01/once-you-join-apc-your-sins-are-forgiven-oshiomhole-says-as-pdp-lambasts-him/> >accessed 12 July 2022.

<sup>xlviii</sup> Section 131(1) and section 135 (1) and (3) of the Evidence Act, 2011.

<sup>xlix</sup> Oyelade, O.S. and Kuteyi, O.S, 'An Examination of the Principles of Sentencing in Criminal Trials in Nigeria' *Journal of Private and Comparative Law, Ahmadu Bello University* (2006) 1 (2) 89.

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<sup>lii</sup> Ibid, 244-245.

<sup>liii</sup> Ewepu, G.Ozuanu, B.and Precious J., 'Nigerian drops 5 Places to Rank 154 on Corruption Perception Index' (25 January 2022) < <https://www.vanguardngr.com/2022/01/Nigeria-ranks-154-on-corruption-perception-index-cislac-ti/amp/>> accessed 25 July 2022.