

**EXECUTIVE CLEMENCY AND VICTIMS' RIGHTS IN NIGERIA:
REASSESSING THE BALANCE BETWEEN MERCY AND JUSTICE UNDER
SECTIONS 175 AND 212 OF THE CONSTITUTION**

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Abstract

Prerogative of mercy represents one of the most ancient and enduring expressions of sovereign power. In Nigeria, it is constitutionally vested in the President and State Governors under Sections 175 and 212 of the Constitution of the Federal Republic of Nigeria 1999. Intended as a humanitarian safeguard to temper the rigidity of law, this executive power allows for pardon, reprieve, remission, or commutation of sentence. Yet, its exercise has often generated moral and constitutional controversy. The Nigerian clemency process, largely opaque and discretionary, has consistently excluded victims of crime—those most directly affected by its outcomes. This paper interrogates the tension between executive clemency and victims' rights, focusing on whether Nigeria's constitutional and institutional framework adequately balances mercy with justice. Drawing on retributive, restorative, and utilitarian theories of justice, the paper argues that the prerogative of mercy, when exercised without transparency, fairness, or victim consultation, undermines public confidence and perpetuates secondary victimisation. Through doctrinal analysis and comparative insights from jurisdictions such as South Africa, India, and Canada, the study demonstrates that clemency can coexist with balancing of victims' rights when grounded in procedural fairness and restorative engagement. It concludes with reform proposals aimed at aligning Nigeria's clemency system with contemporary human rights and restorative justice standards.

Keywords: Victims' rights; Prerogative Of Mercy; Executive Clemency; Restorative Justice; Constitutional Law; Public Interest; S 175 & 212 Of Nigeria Constitution.

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1.0 Introduction

The prerogative of mercy stands at the crossroads of law, morality, and politics. Its purpose, historically and constitutionally, is to mitigate the harshness of legal sanctions where continued punishment offends justice, compassion, or public interest.⁶⁵ In Nigeria, this power is codified in Sections 175 and 212 of the Constitution of the Federal Republic of Nigeria 1999 granting the President and State Governors authority to pardon, commute, or remit sentences.⁶⁶

Despite its benevolent rationale, the exercise of clemency has provoked controversy, particularly where it appears to favour politically connected offenders or disregard the plight of victims.⁶⁷ Clemency decisions are often made without public disclosure or clear criteria, thereby raising fundamental questions about transparency, equality before the law, and the moral legitimacy of mercy.⁶⁸ The exclusion of victims—the primary stakeholders in the justice process—further compounds this dilemma, as their interests, emotions, and rights to closure remain unacknowledged in decisions that profoundly affect their sense of justice.

Under the Nigerian constitutional arrangement, the power of mercy is absolute and discretionary. The President and Governors are merely required to —consultl the Council of State or Advisory Committees on the Prerogative of Mercy, whose recommendations are non-binding.⁶⁹ In practice, this framework prioritises executive grace over participatory justice. The opacity surrounding clemency decisions has undermined public trust, particularly when pardons are perceived as rewards for political loyalty rather than expressions of compassion or fairness.⁷⁰

From a human rights perspective, this structure sits uneasily with Nigeria's international obligations under instruments such as the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights (ICCPR), and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985).

⁶⁵ W Blackstone, *Commentaries on the Laws of England*, vol 4 (Clarendon Press 1769) 397.

⁶⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 175–212.

⁶⁷ E A Ekhatior, 'Accountability in the Exercise of Executive Clemency in Nigeria' (2021) *Nigerian Journal of Public Law* 45.

⁶⁸ CLEEN Foundation, *Victims' Rights and Criminal Justice in Nigeria* (Lagos 2019) 54.

⁶⁹ Constitution (n 2) ss 175(2), 212(2).

⁷⁰ 'Tinubu Grants Clemency to 82 Inmates and 17 Posthumous Pardons' *Premium Times* (Abuja, 12 April 2025).

These instruments collectively recognise victims as central participants in justice processes and affirm their right to dignity, information, and participation.⁷¹ By contrast, Nigeria's clemency practice treats victims as silent spectators, thereby breaching both procedural justice and the evolving global norm of victim-sensitive governance.

This paper reassesses the constitutional and moral balance between mercy and justice in Nigeria, particularly as it pertains to victims' rights. It adopts a multidisciplinary approach—combining legal doctrinal analysis, comparative jurisprudence, and restorative justice theory—to explore how executive discretion can be reconciled with victims' dignity and public accountability. The paper proceeds from the premise that mercy, though essential to a humane justice system, must be constrained by fairness, transparency, and inclusivity.

Accordingly, the discussion unfolds across six parts. Following this introduction, Part Two conceptualises executive clemency and situates it within justice theory. Part Three analyses the constitutional framework governing clemency under Sections 175 and 212, identifying key doctrinal and institutional weaknesses. Part Four examines the exclusion of victims in Nigerian clemency practice and its implications for justice and human rights. Part Five draws comparative lessons from South Africa, India, and Canada, while Part Six proposes a reform model for a transparent and victim-inclusive clemency system. The paper concludes that unless Nigeria's mercy powers are recalibrated to recognise victims and uphold public confidence, clemency will remain an instrument of political expediency rather than justice.

2.0 Conceptual Foundations and Theoretical Perspectives on Clemency, Justice, and Victims' Rights

The concept of executive clemency is deeply rooted in the moral philosophy of justice and the political theory of sovereignty. Historically, the prerogative of mercy emerged as an attribute of sovereign authority, representing the monarch's divine right to temper the rigidity of law with compassion.⁷² Under English common law, this power functioned as a corrective mechanism, enabling the Crown to pardon offences or remit sentences where

⁷¹ United Nations General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (A/RES/40/34, 1985); African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217.

⁷² *Ibid* (n 1) p 397

strict justice would produce injustice.⁷³ Nigeria inherited this framework through colonial transposition, embedding it in successive constitutions, including the 1963, 1979, and 1999 Constitutions.⁷⁴

At its core, clemency embodies the moral idea that justice without mercy risks cruelty. Yet, unchecked mercy may equally erode the rule of law.⁷⁵ This duality—between compassion and order—has generated centuries of jurisprudential debate. Mercy is distinct from forgiveness or amnesty; while forgiveness involves moral absolution by the victim, clemency is a public act by the State to restore harmony within the legal system.⁷⁶

2.1 Retributive Justice and the Limits of Mercy

Retributive justice, derived from Kantian ethics and classical moral philosophy, views punishment as a moral necessity.⁷⁷ Kant posited that —the undeserved evil which anyone does to another is to be regarded as inflicted on himself.¶⁷⁸ In this perspective, justice demands proportional punishment, not leniency. Mercy, if exercised arbitrarily, can distort the moral symmetry between crime and retribution, undermining deterrence and equality before the law.⁷⁹

Under a retributive lens, the prerogative of mercy raises constitutional concerns about fairness and accountability. If the State punishes in the name of the people, it must also pardon in accordance with the people’s sense of justice.⁸⁰ The exclusion of victims from clemency decisions thus violates the very principle that punishment—and forgiveness—derive their legitimacy from public morality.

Nonetheless, retributive justice does not preclude mercy. As Aquinas observed, —justice without mercy is cruelty, but mercy without justice is dissolution.¶⁸¹ A system that allows no room for compassion risks dehumanising both offenders and the justice process itself.

⁷³ *Ex parte Phillip* (1843) 2 QB 248.

⁷⁴ Constitution of the Federal Republic of Nigeria 1963; Constitution of the Federal Republic of Nigeria 1979; Constitution of the Federal Republic of Nigeria 1999.

⁷⁵ M Nussbaum, *Political Emotions: Why Love Matters for Justice* (Harvard University Press 2013) 289.

⁷⁶ D Tutu, *No Future Without Forgiveness* (Rider 1999) 113.

⁷⁷ I Kant, *The Metaphysics of Morals* (1797, tr Mary Gregor, Cambridge University Press 1996) 104.

⁷⁸ *Ibid.*

⁷⁹ A von Hirsch, *Censure and Sanctions* (Clarendon Press 1993) 25.

⁸⁰ J Finnis, *Natural Law and Natural Rights* (Clarendon Press 1980) 277.

⁸¹ T Aquinas, *Summa Theologica* (1265–1274) II–II, Q 30, Art 4.

Hence, even within retributive theory, mercy must operate as an exception justified by fairness, remorse, or rehabilitation—not political expediency.

2.2 Utilitarian Justifications for Clemency

Utilitarian theory, developed by Jeremy Bentham and refined by John Stuart Mill, interprets clemency as an instrument of collective welfare.⁸² Bentham argued that punishment is only justified insofar as it prevents greater harm; if punishment ceases to serve a social purpose, mercy becomes rational.⁸³ Clemency thus serves the utilitarian function of reducing human suffering, facilitating reintegration, and promoting the greatest happiness of the greatest number.⁸⁴

In the Nigerian context, utilitarianism can justify clemency for humanitarian reasons—such as terminal illness, advanced age, or rehabilitation of long-term convicts.⁸⁵ However, when mercy serves political rather than social utility, it ceases to align with Benthamite reasoning.⁸⁶ The frequent pardon of politically exposed persons convicted of corruption, for instance, produces public outrage and weakens deterrence, undermining both justice and social utility.¹⁶

2.3 Restorative Justice and Victim Participation

Restorative justice represents a paradigm shift in modern legal thought, moving away from punishment toward healing and community reconciliation. It emphasises dialogue, restitution, and the moral reintegration of both victims and offenders.⁸⁷ According to Howard Zehr, the pioneer of restorative theory, —crime is not merely a violation of law but a violation of relationships.¶⁸⁸

Restorative justice provides a critical framework for rethinking the prerogative of mercy in Nigeria. Rather than an elite privilege, clemency can function as a restorative tool when victims participate in the process and offenders demonstrate genuine remorse.⁸⁹ This aligns

⁸² J Bentham, *An Introduction to the Principles of Morals and Legislation* (1789) ch 1.

⁸³ Ibid 52

⁸⁴ JS Mill, *Utilitarianism* (Parker, Son & Bourn 1863) 47

⁸⁵ E A Ekhatior, ‘Accountability in the Exercise of Executive Clemency in Nigeria’ (2021) *Nigerian Journal of Public Law* 45, 53

⁸⁶ Ibid

⁸⁷ Ibid (n 3)

⁸⁸ H Zehr, *The Little Book of Restorative Justice* (Good Books 2002) 22.

⁸⁹ Ibid 35.

with the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), which mandates that victims should be treated with compassion and be allowed to present their views and concerns at appropriate stages of the justice process.⁹⁰

Nigeria's exclusion of victims from clemency proceedings therefore contradicts international best practice. In restorative terms, mercy must be relational—it must repair the harm done to victims while recognising the offender's humanity.⁹¹ The absence of victim participation perpetuates secondary victimisation, undermining the legitimacy of both mercy and justice.⁹²

2.4 The Moral Economy of Mercy

Beyond legal frameworks, mercy embodies what political theorists call a —moral economy— a balancing of compassion, justice, and public interest.⁹³ Nussbaum argues that mercy, properly understood, is not irrational sentiment but an expression of moral intelligence that recognises human vulnerability.⁹⁴ A transparent and participatory clemency process thus becomes a test of a state's moral character. In this moral economy, victims' rights play a central role. Excluding victims from clemency proceedings delegitimises mercy as a public good and transforms it into an act of private grace.⁹⁵ A rights-based approach demands that clemency decisions consider the voices of those harmed, balancing forgiveness with accountability. This transformation from sovereign prerogative to participatory justice is the hallmark of modern constitutionalism.⁹⁶

3.0 The Constitutional and Legal Framework of Clemency under Sections 175 and 212 of the 1999 Constitution

The constitutional architecture of executive clemency in Nigeria establishes the legal foundation upon which mercy is exercised. Sections 175 and 212 of the Constitution of the Federal Republic of Nigeria 1999 confer this power respectively on the President and State Governors.⁹⁷ These provisions are virtually identical in wording and scope, reflecting the

⁹⁰ United Nations General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (A/RES/40/34, 1985).

⁹¹ Zehr (n 24) 44.

⁹² Ibid 47.

⁹³ Nussbaum (n 11) 295.

⁹⁴ Ibid 310.

⁹⁵ CLEEN Foundation (n 4) 58.

⁹⁶ Rawls J, *A Theory of Justice* (Harvard University Press 1971) 364.

⁹⁷ CFRN 1999 ss 175–212.

federal nature of Nigeria's political system. Both sections authorise the executive to —grant any person concerned with or convicted of any offence created by an Act of the National Assembly [or State Law] a pardon, reprieve, respite, remission, or commutation of sentence.⁹⁸

3.1 Constitutional Basis and Executive Discretion

Section 175(1) vests the prerogative of mercy in the President and requires that it be exercised —after consultation with the Council of State.⁹⁹ Similarly, Section 212(1) empowers State Governors to act —on the advice of the Advisory Council on the Prerogative of Mercy.¹⁰⁰ However, neither provision defines what constitutes —consultation or —advice,¹⁰¹ nor do they impose any procedural obligations on the executive. The advisory process is thus largely discretionary, allowing the President or Governors to accept or disregard recommendations without justification.¹⁰¹

This absence of procedural clarity has generated a constitutional vacuum that permits arbitrary exercises of mercy. While the intention may have been to preserve flexibility for humanitarian purposes, the result has been unchecked executive power.¹⁰² The courts have historically treated clemency as a political prerogative beyond judicial review, citing the separation of powers.¹⁰³ In *Lakanmi v Attorney-General (Western State)*, the Supreme Court held that the exercise of mercy was an act of state policy not ordinarily justiciable.¹⁰⁴

However, as the Nigerian democratic system matures, the unaccountable nature of this power increasingly conflicts with principles of constitutionalism, transparency, and fairness.¹⁰⁵ In a modern constitutional democracy, executive powers—no matter how benevolent—must be exercised within the parameters of legality, rationality, and proportionality.¹⁰⁶

⁹⁸ *ibid* s 175(1).

⁹⁹ *ibid* s 175(2).

¹⁰⁰ *ibid* s 212(2).

¹⁰¹ CLEEN Foundation, *Victims' Rights and Criminal Justice in Nigeria* (Lagos 2019) 55.

¹⁰² *Ibid* (n 21) p 48

¹⁰³ *Lakanmi v Attorney-General (Western State)* (1971) 1 UILR 201 (SC).

¹⁰⁴ *Ibid*

¹⁰⁵ J Finnis, *Natural Law and Natural Rights* (Clarendon Press 1980) 282.

¹⁰⁶ *Governor of Lagos State v Ojukwu* (1986) 1 NWLR (Pt 18) 621

3.2 The Role of Advisory Bodies

The Council of State and Advisory Councils on the Prerogative of Mercy are designed to provide institutional oversight.¹⁰⁷ Under Section 153(1)(b) of the Constitution, the Council of State comprises former Presidents, Chief Justices, and key national figures.¹⁰⁸ In theory, this collective wisdom should ensure informed, ethical, and impartial clemency recommendations. In practice, however, these bodies function with limited transparency, seldom publishing their criteria or minutes.¹⁰⁹

At the state level, Advisory Councils often exist only in name. In some states, Governors have exercised mercy without convening the council or following any formal process, contrary to constitutional spirit.¹¹⁰ This undermines both the legality and credibility of clemency decisions.

Moreover, there is no statutory requirement for the inclusion of victims, civil society, or human rights institutions in these councils.¹¹¹ The exclusion of such voices perpetuates an offender-centred approach, contrary to restorative justice and participatory governance principles as evident in the case of Mariam Sanda.¹¹²

3.3 Judicial Attitudes toward Clemency Powers

Judicial pronouncements on clemency in Nigeria reveal a deferential attitude to executive discretion. In *Duruaku v Nwoke*, the Supreme Court reaffirmed that the prerogative of mercy, being constitutionally conferred, is not subject to judicial review except in cases of procedural irregularity or bad faith.¹¹³ While this view aligns with the British constitutional tradition of non-justiciability of mercy, it neglects the contemporary global shift toward accountable governance.¹¹⁴

In contrast, other jurisdictions have embraced a limited judicial review of clemency. In *Epuru Sudhakar v Government of Andhra Pradesh*, the Indian Supreme Court held that mercy powers could be reviewed for arbitrariness, discrimination, or violation of

¹⁰⁷ Constitution (n 1) s 153(1)(b).

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid* (n 37) 56.

¹¹⁰ *Ibid* 57.

¹¹¹ *Ibid* 58.

¹¹² *Ibid* (n 24) 35.; wife of Sanda (the lady who killed her husband) in the recent clemency list

¹¹³ (2015) 3 NWLR (Pt 1445) 379 (SC).

¹¹⁴ *Ex parte Phillip* (1843) 2 QB 248.

fundamental rights.¹¹⁵ Similarly, the South African Constitutional Court in *Minister of Justice v Chonco* recognised that clemency, as a public power, must conform to the Constitution and the rule of law.¹¹⁶ These precedents illustrate that mercy and accountability are not mutually exclusive.

Nigeria's strict non-justiciability doctrine has allowed questionable exercises of clemency to escape scrutiny. A case in point is the 2013 presidential pardon granted to a former governor convicted of corruption, which sparked nationwide condemnation.¹¹⁷ Despite widespread criticism, no judicial review was available, leaving victims and citizens without recourse. This highlights the need to reconceptualise mercy as a public trust subject to the same standards of fairness and rationality as other executive functions.¹¹⁸

4.0 Statutory Innovations: The Administration of Criminal Justice Act (ACJA) 2015

Although the constitutional provisions are skeletal, the Administration of Criminal Justice Act 2015 (ACJA) introduces limited procedural innovations. Section 312 empowers trial courts to make recommendations for mercy at sentencing where mitigating circumstances exist.¹¹⁹ This provision bridges the judicial and executive domains by allowing courts to recognise humanitarian factors while leaving final discretion to the executive. However, it remains merely advisory and does not address victims' participation.¹²⁰ Furthermore, the ACJA does not impose any obligation on the executive to respond to such judicial recommendations or to consider victim perspectives.¹²¹ In effect, while the Act modernises criminal procedure, it does little to democratise clemency.

4.1 The Human Rights Dimension of Clemency

Clemency decisions inevitably implicate human rights considerations—particularly the rights of victims to dignity, participation, and justice. The African Charter on Human and Peoples' Rights (ratified and domesticated in Nigeria by the African Charter (Ratification and Enforcement) Act) guarantees the right to fair hearing and the right to be treated with

¹¹⁵ (2006) 8 SCC 161.

¹¹⁶ [2010] ZACC 28.

¹¹⁷ 'Jonathan's Controversial Pardon' *Vanguard*, (Lagos, 13 March 2013). p.17

¹¹⁸ Ekhaton (n 21) 52.

¹¹⁹ Administration of Criminal Justice Act 2015 (Nigeria), s 312

¹²⁰ Ibid.

¹²¹ Ibid.

respect for human dignity.¹²² Similarly, the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power calls for state mechanisms that allow victims to express their views during justice processes.¹²³

By excluding victims, Nigeria's clemency framework violates these principles and contributes to what has been termed —secondary victimisation.¹²⁴ Victims not only suffer from the initial crime but also from a system that disregards their voices in decisions affecting offenders' punishment. This exclusion conflicts with Nigeria's obligations under international human rights law and undermines restorative justice goals.¹²⁵

4.2 Transparency and the Public Interest

The opacity of clemency decisions undermines the moral legitimacy of mercy. As Osunyikanmi observes, public outrage following high-profile pardons indicates that citizens perceive clemency as —a political favour rather than a moral correction.¹²⁶ Transparency is thus essential for maintaining trust in state institutions.

Comparatively, Canada's clemency process under the Corrections and Conditional Release Act 1992 provides for publication of clemency criteria and reasons for decisions, ensuring accountability.¹²⁷ South Africa's constitutional model requires that all executive powers, including pardon, comply with legality and transparency.¹²⁸ Nigeria's lack of reporting or publication requirements stands in stark contrast to these standards, perpetuating public suspicion and eroding confidence in justice.¹²⁹

4.3 Victims' Exclusion and the Justice Deficit in Nigeria's Clemency System

The prerogative of mercy in Nigeria has evolved within a framework that privileges state discretion and offender rehabilitation but neglects the rights and experiences of victims.¹³⁰ Victims of crime—those who endure physical, emotional, or economic harm—are almost

¹²² African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, arts 5–7

¹²³ Ibid.

¹²⁴ CLEEN Foundation (n 4) 59.

¹²⁵ Zehr (n 11) 47.

¹²⁶ Osunyikanmi AO, 'Executive Clemency and Public Morality in Nigeria' (2024) *African Journal of Law and Society* 118, 121.

¹²⁷ Corrections and Conditional Release Act 1992 (Canada), ss 132–133.

¹²⁸ *Minister of Justice v Chonco* [2010] ZACC 28.

¹²⁹ Ekhaton (n 24) 54.

¹³⁰ Ibid (n 4) 55

entirely absent from the structures and processes governing executive clemency.¹³¹ The Constitution makes no reference to victims' participation, and neither the Council of State nor the Advisory Councils on the Prerogative of Mercy include mechanisms for consultation or representation.¹³²

This exclusion reflects the inherited colonial legal tradition in which crime was conceived as an offence against the sovereign, not against individual victims.¹³³ Consequently, criminal proceedings became state-centred and retributive, marginalising those who had suffered direct harm. The exercise of clemency—intended to humanise justice—has paradoxically extended this marginalisation, as victims are denied voice, recognition, or even notification when offenders are pardoned or sentences commuted.¹³⁴

4.4 The Human Rights Dimension of Victim Exclusion

The exclusion of victims from Nigeria's clemency process conflicts with international human rights norms. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) affirms that victims are entitled to access justice, restitution, and to express their views during proceedings.¹³⁵ Article 5 of the African Charter on Human and Peoples' Rights guarantees the right to dignity, while Article 7 ensures the right to a fair hearing and to participate in judicial processes.¹³⁶

By denying victims procedural participation, Nigeria breaches its obligations under these instruments and under the domesticated African Charter (Ratification and Enforcement) Act.¹³⁷ The African Commission on Human and Peoples' Rights has consistently affirmed that states must not only punish offenders but also recognise the suffering and participatory rights of victims.¹³⁸ In *Serac and Another v Nigeria*, the African Commission held that the Nigerian government violated the rights of the Ogoni people by failing to protect them from harm and by denying access to justice and remedy.¹³⁹ Though not a clemency case, the decision underscored the principle that state actions which disregard victims' dignity or

¹³¹ Ibid

¹³² Ibid (n 2) ss 175–212.

¹³³ Ibid (n 1) 398.

¹³⁴ Ibid (n 12) 113.

¹³⁵ Ibid

¹³⁶ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, arts 5–7

¹³⁷ African Charter (Ratification and Enforcement) Act, Cap A9 LFN 2004.

¹³⁸ *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006).

¹³⁹ (2001) AHRLR 60 (ACHPR 2001)

deny redress are inconsistent with human rights obligations. By extension, clemency granted without regard to victims' rights similarly undermines Nigeria's constitutional and treaty commitments.

4.5 Secondary Victimization and the Psychological Consequences of Mercy

Secondary victimisation refers to the trauma victims suffer as a result of their treatment by the justice system.¹⁴⁰ When clemency is granted without notice, consultation, or explanation, victims experience renewed feelings of helplessness, anger, and alienation.¹⁴¹ The act of mercy, intended as compassion, becomes a reminder of their powerlessness within the legal order. Psychological studies and victimology literature suggest that recognition plays a critical role in recovery.¹⁴² When victims are publicly acknowledged and included in justice processes, they experience validation and closure.¹⁴³ Conversely, when offenders are pardoned in secret or celebrated politically, victims perceive the state as complicit in their suffering.¹⁴⁴ In Nigeria, these effects are compounded by a history of elite impunity. Clemency has often been extended to politically exposed persons convicted of corruption, reinforcing a sense that justice is selective.¹⁴⁵ For victims of public corruption—citizens deprived of development, security, or economic opportunity—such decisions deepen collective trauma and public cynicism.¹⁴⁶ The result is a justice system that not only fails to heal but actively reproduces injustice.

4.6 The Political Economy of Clemency and the Marginalisation of Public Interest

Clemency in Nigeria is not exercised in a political vacuum. It reflects broader dynamics of power, patronage, and political economy.¹⁴⁷ The prerogative of mercy, as currently practised, functions less as an instrument of restorative justice and more as a political tool. Successive governments have used it to reward loyalty, appease constituencies, or project an image of benevolence.¹⁴⁸

¹⁴⁰ Ibid (n 21) 44

¹⁴¹ Ibid

¹⁴² J Shapland and others, 'Restorative Justice in Practice' (2006) *British Journal of Criminology* 46(3) 291.

¹⁴³ ibid 297

¹⁴⁴ Ibid 298.

¹⁴⁵ Ibid (n 21) 53

¹⁴⁶ Osunyikanmi AO, 'Executive Clemency and Public Morality in Nigeria' (2024) *African Journal of Law and Society* 118, 122.

¹⁴⁷ Ibid 124.

¹⁴⁸ Ibid 126.

High-profile examples abound. In 2013, President Goodluck Jonathan granted a controversial pardon to a former state governor convicted of embezzlement, citing humanitarian reasons.¹⁴⁹ In 2025, President Bola Ahmed Tinubu extended clemency to over eighty inmates and granted posthumous pardons to national figures, including the late Major General Mamman Vatsa and nationalist Herbert Macaulay.¹⁵⁰ While some of these acts carried symbolic or reconciliatory value, others reignited public debate about fairness, equality before the law, and the invisibility of victims.¹⁵¹

From a public interest perspective, clemency must reconcile two competing moral imperatives: the need for compassion and the need for justice.¹⁵² Where political considerations dominate, the balance tilts towards impunity. The absence of procedural transparency—no published reasons, no clear criteria, no victim consultation—means the public cannot assess whether clemency serves justice or expediency.¹⁵³ As Osunyikanmi observes, the Nigerian experience demonstrates that —mercy divorced from justice degenerates into favouritism, thereby eroding the rule of law.¹⁵⁴ A mercy system that disregards victims and the wider citizenry loses its moral legitimacy, even when constitutionally valid.

4.7 Comparative Insights on Victim Inclusion

Globally, several jurisdictions have integrated victims' rights into post-conviction and clemency procedures. In Canada, the Corrections and Conditional Release Act 1992 allows victims to submit written or oral statements during parole and pardon considerations.¹⁵⁵ In South Africa, the Promotion of National Unity and Reconciliation Act 1995 established the Truth and Reconciliation Commission (TRC), which provided a forum for victims to confront offenders and participate in restorative processes.¹⁵⁶

¹⁴⁹ 'Jonathan's Controversial Pardon' *Vanguard* (Lagos, 13 March 2013).

¹⁵⁰ 'Tinubu Grants Clemency to 82 Inmates and 17 Posthumous Pardons' *Premium Times* (Abuja, 12 April 2025).

¹⁵¹ *ibid*

¹⁵² J Rawls, *A Theory of Justice* (Harvard University Press 1971) 364.

¹⁵³ CLEEN Foundation (n 6) 59.

¹⁵⁴ Corrections and Conditional Release Act 1992 (Canada), ss 132–133.

¹⁵⁵ *Ibid*

¹⁵⁶ Promotion of National Unity and Reconciliation Act 1995 (South Africa), s 19

India's Supreme Court has similarly held that clemency must conform to constitutional values of fairness and non-arbitrariness.¹⁵⁷ In *Epuru Sudhakar v Government of Andhra Pradesh*, the Court emphasised that mercy powers cannot be exercised in a manner that disregards victims' interests or undermines public morality.¹⁵⁸ These comparative experiences reveal that mercy can be democratised without diminishing executive discretion.¹⁵⁹

Nigeria's constitutional silence on victims' participation contrasts sharply with these approaches.¹⁶⁰ Although the Advisory Councils on the Prerogative of Mercy could theoretically include victims' representatives or human rights institutions, there is no legal requirement or precedent for such inclusion.¹⁶¹ The consequence is a mercy system devoid of public oversight and disconnected from the lived experiences of those it purports to heal.

4.8 Restorative Justice as a Framework for Reform

Restorative justice provides a normative framework for integrating victims into the clemency process.¹⁶² It emphasises recognition, dialogue, and accountability—values consistent with constitutional democracy.¹⁶³ Rather than viewing mercy as an executive privilege, restorative justice reimagines it as a shared moral process between the offender, the victim, and the community.¹⁶⁴ If properly institutionalised, clemency in Nigeria could function as a restorative mechanism, facilitating reconciliation and rehabilitation while preserving victims' dignity.¹⁶⁵ This would require procedural innovations, such as victim notification, opportunities for written submissions, and public disclosure of reasons for clemency.¹⁶⁶ Such measures would not curtail executive discretion but would anchor mercy within the ethical framework of justice and human rights.¹⁶⁷

¹⁵⁷ *Kehar Singh v Union of India* (1989) 1 SCC 204 (SC)

¹⁵⁸ (2006) 8 SCC 161

¹⁵⁹ *Ibid.*

¹⁶⁰ CFRN (n 2)

¹⁶¹ *ibid* s 212(2)

¹⁶² Zehr (n 21) 35

¹⁶³ *Ibid* 40.

¹⁶⁴ *Ibid* (n 11) 310.

¹⁶⁵ *ibid*

¹⁶⁶ CLEEN Foundation (n 4) 60

¹⁶⁷ Ekhtator (n 11) 54.

Above all, the exclusion of victims from Nigeria's clemency system represents a justice deficit that undermines both constitutional morality and social cohesion.¹⁶⁸ A victim-sensitive approach to mercy—grounded in transparency, participation, and compassion—would transform the prerogative of mercy from a relic of sovereign power into an instrument of restorative democracy.¹⁶⁹

5.0 Comparative Lessons and Reform Proposals

The growing emphasis on victims' rights within criminal justice has transformed how societies view mercy, punishment, and accountability.¹⁷⁰ Whereas the traditional view located clemency within the exclusive prerogative of sovereigns, contemporary constitutional democracies treat it as a public trust, to be exercised in accordance with the rule of law, human rights, and the broader public interest.¹⁷¹ A comparative analysis of South Africa, India, and Canada provides valuable insights for Nigeria on how to balance mercy and justice through transparency, participation, and institutional safeguards.

5.1 South Africa: Constitutionalism and Accountability in Clemency

South Africa's clemency system operates under Section 84(2)(j) of the Constitution of the Republic of South Africa 1996, which vests in the President the power —to pardon or reprieve offenders and remit fines, penalties or forfeitures.¹⁷² Although the wording appears broad, the exercise of this power is subject to constitutional principles of legality, transparency, and fairness. In *Minister of Justice and Constitutional Development v Chonco*, the Constitutional Court held that the President's clemency powers, while discretionary, must conform to the constitutional requirement of rationality.¹⁷³ The Court reasoned that since the power of pardon affects legal rights, it cannot be exercised arbitrarily or capriciously.¹⁷⁴ This approach transforms clemency from a purely political act into one that is judicially reviewable when it violates constitutional norms.

South Africa's post-apartheid transition also demonstrates how clemency can serve restorative, rather than purely retributive, goals. The Promotion of National Unity and

¹⁶⁸ Zehr (n 21) 47

¹⁶⁹ Rawls (n 88) 370

¹⁷⁰ *ibid*

¹⁷¹ *Ibid* (n103) 52

¹⁷² Constitution of the Republic of South Africa 1996, s 84(2)(j).

¹⁷³ [2010] ZACC 28.

¹⁷⁴ *Ibid* 43.

Reconciliation Act 1995 established the Truth and Reconciliation Commission (TRC), which conditioned amnesty on full disclosure of politically motivated crimes and allowed victims to participate in hearings.¹⁷⁵ Victims could narrate their experiences, confront perpetrators, and seek symbolic closure.¹⁷⁶ Although not without criticism, the TRC model integrated forgiveness, truth, and justice within a participatory framework.¹⁷⁷ The lesson for Nigeria is that mercy must be grounded in accountability and victim recognition. The inclusion of victims and civil society representatives in clemency advisory councils would enhance legitimacy and foster reconciliation.¹⁷⁸

5.2 India: Judicial Oversight and the Rule of Law

India's constitutional framework for clemency, contained in Articles 72 and 161 of the Constitution of India 1950, mirrors Nigeria's Sections 175 and 212.¹⁷⁹ However, Indian jurisprudence has evolved toward a more accountable exercise of mercy. The Supreme Court has repeatedly held that while the President and Governors possess wide discretion, their decisions are subject to judicial review for arbitrariness, mala fides, or violation of constitutional rights.¹⁸⁰

In *Kehar Singh v Union of India*, the Court affirmed that the President's clemency power is not beyond judicial scrutiny and must be exercised on relevant considerations.¹⁸¹ Later, in *Epuru Sudhakar v Government of Andhra Pradesh*, the Court quashed a gubernatorial pardon granted for political reasons, holding that mercy cannot be a vehicle for partisan favouritism.¹⁸²

Indian law also emphasises transparency in the mercy process. Petitioners must submit written applications, and reasons for denial or approval must be recorded.¹⁸³ In some states, victim input is solicited during remission or commutation proceedings.¹⁸⁴ These procedural safeguards anchor clemency within the broader constitutional principles of equality, fairness, and justice. For Nigeria, adopting judicial review of mercy decisions would not

¹⁷⁵ Promotion of National Unity and Reconciliation Act 1995 (South Africa), s 19.

¹⁷⁶ D Tutu, *No Future Without Forgiveness* (Rider 1999) 112.

¹⁷⁷ *ibid* 119.

¹⁷⁸ CLEEN Foundation 60

¹⁷⁹ Constitution of India 1950, arts 72, 161.

¹⁸⁰ *Kehar Singh v Union of India* (1989) 1 SCC 204 (SC).

¹⁸¹ *Ibid* 29

¹⁸² (2006) 8 SCC 161 (SC).

¹⁸³ *ibid*

¹⁸⁴ A K Sengupta, 'Mercy Jurisprudence in India' (2018) *Indian Law Review* 4(2) 145

undermine executive authority but rather ensure accountability consistent with democratic governance.¹⁸⁵ It would also create an avenue for victims to challenge arbitrary pardons that disregard their suffering or the public interest.

5.3 Canada: Institutionalised Transparency and Victim Participation

Canada's model of clemency exemplifies procedural transparency and sensitivity to victims' rights. Under Sections 132–133 of the Corrections and Conditional Release Act 1992, the Parole Board of Canada administers the royal prerogative of mercy.¹⁸⁶ Applicants must demonstrate exceptional circumstances such as innocence, injustice, or humanitarian grounds.¹⁸⁷ The Canadian framework provides for written reasons, published guidelines, and opportunities for victims to submit impact statements.¹⁸⁸ Victims may attend parole or clemency hearings, receive notification of decisions, and access records concerning the offender's release.¹⁸⁹ This approach ensures that mercy operates within a participatory and rights-based framework.

Furthermore, clemency statistics and decisions are periodically reviewed by Parliament and civil society watchdogs.¹⁹⁰ Transparency thus functions as a safeguard against political abuse and strengthens public confidence in the justice system.¹⁹¹

Nigeria could adapt these mechanisms by mandating publication of clemency decisions and establishing an independent secretariat under the Presidential Advisory Committee on the Prerogative of Mercy.¹⁹² Including victims or their advocates in this structure would align with international human rights standards and Nigeria's constitutional commitment to dignity and justice.¹⁹³

5.4 Towards a Victim-Sensitive Clemency Inclined Framework in Nigeria

A reformed Nigerian clemency system should integrate three core principles: transparency, participation, and restorative justice.¹⁹⁴ Transparency demands the publication of clear

¹⁸⁵ Ibid.

¹⁸⁶ Corrections and Conditional Release Act 1992 (Canada), ss 132–133

¹⁸⁷ Ibid

¹⁸⁸ *ibid* s 133(2).

¹⁸⁹ Parole Board of Canada, *Annual Report 2022–23* (Ottawa 2023)

¹⁹⁰ Ibid 14

¹⁹¹ Ibid 17.

¹⁹² CFRN s 175(2).

¹⁹³ Ibid (n 73)

¹⁹⁴ H Zehr, *The Little Book of Restorative Justice* (Good Books 2002) 35.

criteria for clemency, open hearings for high-profile cases, and disclosure of reasons for each decision.¹⁹⁵ Participation requires that victims be recognised as stakeholders entitled to be heard and notified.¹⁹⁶ Restorative justice ensures that clemency promotes healing, not political expediency.¹⁹⁷ In operational terms, these principles could be institutionalised through legislative reform of Sections 175 and 212 to include procedural obligations.¹⁹⁸ The Presidential Advisory Committee on the Prerogative of Mercy should be restructured to include representatives of the National Human Rights Commission, civil society, and victim associations.¹⁹⁹

In addition, digital publication of clemency statistics and decisions would enhance transparency, allowing citizens to assess whether mercy serves justice or impunity.²⁰⁰ The integration of restorative processes—such as mediated encounters or symbolic restitution—could also reconcile victims and offenders, consistent with constitutional values.²⁰¹ Ultimately, the objective is not to abolish mercy but to humanise it—to transform it from a unilateral act of sovereign grace into a participatory instrument of justice and reconciliation.²⁰²

6.0 Conclusion

The prerogative of mercy, though a vital instrument of compassion within Nigeria's constitutional framework, has increasingly revealed tensions between executive discretion, justice, and victims' rights.²⁰³ Sections 175 and 212 of the *1999 Constitution* grant wide latitude to the President and State Governors, but the absence of procedural safeguards, victim participation, and accountability mechanisms has reduced this power to a largely political instrument.²⁰⁴ In its current form, the exercise of mercy often overlooks the human

¹⁹⁵ *ibid* 42

¹⁹⁶ *Ibid* 47.

¹⁹⁷ *Ibid* (n 73) 314.

¹⁹⁸ *Constitution* (n 128) ss 175–212.

¹⁹⁹ CLEEN Foundation (n 4) 61.

²⁰⁰ Ekhaton (n 11) 53.

²⁰¹ Zehr (n 32) 50.

²⁰² Rawls (n 73) 370

²⁰³ *Ibid* (n 11) 45.

²⁰⁴ CFRN (n 2).

suffering of victims, undermines public confidence in justice, and erodes the moral legitimacy of governance.²⁰⁵

To reconcile and balance mercy with justice, Nigeria must reform its clemency framework to reflect transparency, participation, and restorative values.²⁰⁶ Integrating victims' voices—through notification, consultation, and written submissions which would restore dignity and balance to the process.²⁰⁷ Limited judicial review, publication of reasons, and parliamentary oversight, as seen in jurisdictions like South Africa, India, and Canada, would further ensure that clemency operates as a public trust rather than a tool of political convenience.²⁰⁸ Ultimately, mercy must not negate justice but complement it.²⁰⁹ When exercised transparently and inclusively, the prerogative of mercy can embody the highest ideals of humanity and constitutional democracy.²¹⁰ Reimagined through the lens of victims' rights and public accountability, it can transform from a relic of sovereign grace into an engine of restorative justice and social healing.²¹¹

²⁰⁵ Osunyikanmi AO, 'Executive Clemency and Public Morality in Nigeria' (2024) *African Journal of Law and Society* 118.

²⁰⁶ H Zehr, *The Little Book of Restorative Justice* (Good Books 2002) 44.

²⁰⁷ CLEEN Foundation, *Victims' Rights and Criminal Justice in Nigeria* (Lagos 2019) 59.

²⁰⁸ *Minister of Justice v Chonco* [2010] ZACC 28; *Epuru Sudhakar v Government of Andhra Pradesh* (2006) 8 SCC 161.

²⁰⁹ J Rawls, *A Theory of Justice* (Harvard University Press 1971) 364.

²¹⁰ D Tutu, *No Future Without Forgiveness* (Rider 1999) 112.

²¹¹ Zehr (n 142) 49.