

THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015: WHITHER CLEMENCY? SILENCE OR OMISSION?

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ABSTRACT

This article examines whether the silence of the Administration of Criminal Justice Act 2015 on executive clemency constitutes a constitutional necessity or a normative gap in Nigeria's criminal justice reform. While the Act modernises criminal procedure up to sentencing and introduces non-custodial and parole mechanisms, it provides no procedural interface with the prerogative of mercy under sections 175 and 212 of the Constitution. Using doctrinal analysis and limited comparative evaluation, the article argues that although substantive mercy discretion is constitutionally vested in the executive, procedural regulation of mercy processes is constitutionally permissible. The absence of such procedural structuring weakens transparency and coherence in post-conviction justice. The article proposes limited statutory reforms aimed at harmonising clemency with constitutional principles and restorative justice objectives.

Keywords: ACJA 2015, clemency, prerogative of mercy, criminal justice reform, Nigeria.

1. INTRODUCTION

The Administration of Criminal Justice Act 2015 was enacted by President Goodluck Jonathan who signed the act into law on May 14, 2015². It marked a significant turning point in Nigeria's criminal justice³. The Act was enacted to replace the Criminal Procedure Act (CPA) and Criminal Procedure Code (CPC), harmonising criminal procedure in federal courts and the

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² Yemi Akinseye-George, *ACJA 2015/ACJLs Principles, Innovations & Prospects* (Nigerian Bar Association 2015) <https://www.nms.ng/files/PIP.pdf> accessed [Jan 7th 2026]

³ Yunus Abdulqayum Kehinde, 'Ten Years of ACJA: Evaluating the Impact of the Administration of Criminal Justice Act 2015 In Nigeria' (September 26, 2025).

Federal Capital Territory⁴. The aim of the Act is to ensure speedy dispensation of justice, protect the rights of suspects and defendants, and promote efficient criminal adjudication⁵.

The ACJA is silent on the subject of clemency or prerogative of mercy despite its enactment progress⁶. Clemency is vested in the President and State Governors and this is a critical post-conviction procedure that is capable of correcting miscarriages of justice, reducing harsh sentences and considering humanitarian factors⁷. There is no expression or reference to clemency within the ACJA. The silence of the ACJA on clemency raises questions whether it is a deliberate legislative omission, or a gap in Nigeria's criminal justice reform structure in our mind.

This article examines the implications of this silence within constitutional, doctrinal, and policy structures of the country.

2. METHODOLOGY

This article adopts a doctrinal research methodology. It involves textual interpretation of the Administration of Criminal Justice Act 2015 and section 175 and 212 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The study analyses Nigerian judicial decisions on prerogative of mercy, administrative law principles relating to discretion and separation of powers doctrine. A limited comparative method is adopted. South Africa and the United Kingdom are selected as comparator jurisdictions due to their constitutional recognition of executive pardon powers with structured legal systems. The comparative analysis is not descriptive but evaluative, aimed at identifying whether procedural regulation of mercy is compatible with constitutional executive discretion.

⁴M Omachi & A Sule 'The Administration of Criminal Justice Act, 2015: Pathway to A Reformed Criminal Justice System in Nigeria' (2023) *ABUAD Law Journal* 7.

⁵ HURLAWS 'The Role Of The Administration Of Criminal Justice Act In The Speedy Dispensation Of Justice In Nigeria' (2019).

⁶DJ Ayinde 'An Appraisal of the Legal Framework on Parole in Nigeria' (2022) *PER / PELJ* 2022(25).

⁷B Orubebe 'A Comparative Analysis Of The Presidential Power Of Clemency In Nigeria And The Us: A Case For The Exclusion Of Corruption Convictions' (2021).

3. CLEMENCY AND THE PREROGATIVE OF MERCY

Clemency is the executive power to grant relief from punishment imposed by the courts. It encompasses pardon, commutation, reprieve, remission, and amnesty⁸. In Nigeria, this power is constitutionally recognised as the prerogative of mercy⁹.

The prerogative of mercy is traditionally justified on the grounds that the law, though just, may operate harshly in individual cases¹⁰. Clemency therefore functions as a “safety valve” in the criminal justice system¹¹. Unlike judicial review, clemency is discretionary and often informed by humanitarian, political, or public interest considerations¹².

4. CONSTITUTIONAL STRUCTURE OF CLEMENCY IN NIGERIA

Clemency in Nigeria is found in sections 175¹³ and 212¹⁴ of the 1999 Constitution (as amended). Section 175 confers the President with powers to grant pardons in respect of federal offences, while section 212 confers similar powers on State Governors.

The Council of State or State Advisory Council on Prerogative of Mercy are consulted before these powers are exercisable¹⁵. Importantly, the Constitution does not subject the exercise of clemency to judicial oversight, reinforcing its discretionary nature¹⁶.

5. THE ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015: OBJECTIVES AND SCOPE

One of the objective of ACJA is to modernise criminal procedure by promoting efficiency, protecting human rights, and reducing prison congestion¹⁷. Key innovations include restrictions

⁸P Larkin ‘Guiding Presidential Clemency Decision-making’ (2019) *SSRN Electronic Journal*.

⁹ Constitution of Federal Republic of Nigeria 1999 Section 175

¹⁰H Okorie ‘Prerogative Of Mercy In Nigeria And The Concept Of Justice For The Victim Of The Crime’ (2025) *International Journal of Social Science Research and Anthropology*.

¹¹P Larkin ‘Revitalizing the Clemency Process’ (2016) 39 *SSRN Electronic Journal*, (3): 833-916.

¹²*Ibid* cit 10

¹³ Constitution of the Federal Republic of Nigeria 1999 (as amended) sections 175

¹⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended) sections 212

¹⁵I Udofa ‘The Abuse of Presidential Power of Pardon and the Need for Restraints’ (2018) 09 *Beijing Law Review*, (2). 113-131.

¹⁶AO Hamza, B Muritala-Abdulrasheed, AAina-Pelemo, R Funsho & W Oluwabusayo ‘Constitutional Perspectives of the Trial of Judges Within the Context of Judicial Independence in Nigeria’ (2025) 7 (30): 124-144.

¹⁷CA Omaka & C Agom & M Nwocha & O Constance & S Agwu ‘Administration of Criminal Justice Act 2015: Its Relevance To The Law Clinics In Nigeria’ *Journal of Commonwealth Law and Legal Education*.

on arrest in lieu, electronic recording of confessions, plea bargaining, non-custodial sentencing, and timelines for criminal trials.

The Act also extensively regulates pre-trial, trial, sentencing stages and certain post-sentencing correctional mechanisms¹⁸. However, it does not regulate post-conviction executive interventions such as clemency¹⁹.

6. SEPARATION OF POWERS AND THE PROCEDURALISATION OF MERCY

The core doctrinal issue is whether statutory structuring of clemency procedure would violate separation of powers.

A distinction must be drawn between:

(a) Substantive Mercy Discretion

The ultimate decision whether to grant pardon or commutation.

(b) Procedural Regulation

The manner in which mercy applications are processed.

The Constitution vests substantive discretion in the executive. However, it does not expressly immunise procedural processes from legislative structuring.

Administrative law principles recognise that discretion may be regulated procedurally without being substantively controlled. Requirements such as:

- i. Transparent application processes,
- ii. Advisory review standards,
- iii. Record-keeping,
- iv. Publication duties,

The question therefore is not whether the legislature may control mercy decisions. It cannot. The question is whether it may regulate how those decisions are processed. The constitutional text does not prohibit such regulation.

¹⁸N Mukhtar, S Ibe, O Umah, T Oke, M Abdulkadir, C Odaghara, I Mukhtar, D Ashonibare, O Elendu, N Maduafor, S Agwu & U Abdulrahman 'Administration of Criminal Justice Pre-Trial Manual For Law Clinics' (2021)

¹⁹Alabi E 'Sentencing And The Administration Of Criminal Justice In Nigeria' (2024)

The ACJA already regulates judicial discretion in plea bargaining and sentencing. It structures how courts exercise discretion without dictating individual outcomes. Analogously, procedural structuring of mercy would not necessarily infringe executive authority.

7. SILENCE OF THE ACJA ON CLEMENCY: LEGISLATIVE CHOICE OR OVERSIGHT?

There is no provision of clemency in the ACJA²⁰. This may be seen in two ways. First, it may represent a deliberate legislative decision to avoid making constitutional executive powers disrupted. Secondly, it may constitute an oversight that weakens the coherence of criminal justice reform.

Given that the ACJA already regulates plea bargaining and sentencing areas traditionally within judicial discretion, the argument that clemency lies beyond its scope appears unconvincing²¹. The silence of the Act arguably reflects a missed opportunity to provide procedural safeguards and transparency in mercy processes²².

8. JUDICIAL ATTITUDES TOWARDS CLEMENCY IN NIGERIA

Nigerian courts have consistently held that clemency is an executive function not subject to judicial review²³. In *Solola v State*, the Supreme Court affirmed that the prerogative of mercy is a constitutional power exercisable at the discretion of the executive²⁴.

However, judicial restraint has also contributed to opacity in mercy administration, as courts rarely interrogate procedural fairness or equality in the exercise of clemency powers²⁵.

Comparative Perspectives on Human Rights and Post-Conviction Justice

²⁰Oamen P 'Revisiting the Power of Pardon in Pre-Conviction Cases: A Critique of Federal Republic of Nigeria v Achida & Anor' (2021) *SSRN Electronic Journal. The Appellate Review*, 4 (1): 17-32.

²¹O Kemi and K Omodanisi 'Assessing the Implication of Plea Bargaining under ACJA, 2015 in Nigeria's Anti-corruption Crusade: Lessons from Kenya' (January 4, 2024). 22 *Asian Research Journal of Arts & Social Sciences*, (1): 13-29.

²²N.O Obiaraeri 'Examination of the Appropriate Stages for Grant Of Prerogative Of Mercy By The President In Nigeria' (2021) 2 *MSI Journal of Arts, Law and Justice* (10): 1-13.

²³ Ibid

²⁴*Solola v. State* (2005) 11 NWLR (pt. 937) p. 460.

²⁵S Abayomi 'Judicial Interpretation of the Presidential Power of Pardon in Nigeria' (2021) *Africa Journal of Comparative Constitutional Law*. 2021. 23-40.

In jurisdictions such as the United Kingdom and South Africa, clemency powers are increasingly subject to procedural norms and transparency requirements. In South Africa, for example, courts have recognised that the exercise of pardon powers must align with constitutional values of fairness and rationality²⁶. South Africa's Constitution recognises presidential pardon powers. However, its constitutional jurisprudence subjects executive action to principles of rationality and legality. In United Kingdom, the prerogative of mercy historically operated as an unfettered royal discretion. Modern administrative law, however, recognises that prerogative powers may be subject to procedural fairness and rationality review.

This demonstrates that constitutional vesting does not automatically render executive action immune from procedural scrutiny.

These comparative experiences demonstrate that statutory criminal justice frameworks can coexist with executive clemency powers without constitutional conflict.

In human rights, clemency plays an important role particularly for death row inmates, elderly prisoners, and victims of wrongful conviction. The absence of a structured post-conviction mercy under the ACJA weakens protections for vulnerable prisoners.

International human rights instruments, including the International Covenant on Civil and Political Rights, recognise the right of condemned persons to seek pardon or commutation²⁷.

9. CLEMENCY, POLITICS, AND ALLEGATIONS OF ABUSE

There have been many instances of presidential pardons in Nigeria. Some of the cases were criticised and characterised as instances of executive abuse of power and high-handedness, while others were found to be just and worthy. But the most contentious use of the presidential pardon power in the nation is still President Goodluck Jonathan's pardon of Chief D.S.P. Alamieyesigha, a former governor of Bayelsa State who was found guilty of multiple corruption offences²⁸.

In Nigeria, the exercise of clemency has often been criticised for lack of transparency and politicisation. Allegations of favouritism and corruption undermine public confidence in the justice system. The ACJA's silence allows these practices to persist without statutory checks.

²⁶M Phorego 'Promoting Administrative Justice For Presidential Pardons In South Africa' (2024) *Obiter* 45.

²⁷J Temperman 'The International Covenant on Civil and Political Rights and the Right to be Protected against Incitement' (2019) 7 *Journal of Law, Religion and State*, (1): 89-103.

²⁸I Udofa 'The Abuse of Presidential Power of Pardon and the Need for Restraints' 9 *Beijing Law Review*, 113-131.

10. CLEMENCY AND RESTORATIVE JUSTICE

Restorative justice refers to “an approach to justice that seeks to repair harm by providing an opportunity for those harmed and those who take responsibility for the harm to communicate about and address their needs in the aftermath of a crime”²⁹.

Restorative Justice is used as avenues for victims, offenders, and communities affected by a crime to communicate (directly or indirectly) about the causes, circumstances, and impact of that crime, and to address their related needs. It is also based on an understanding that crime is a violation of people and relationships and is based on principles of respect, compassion and inclusivity. It encourages meaningful engagement and accountability and provides an opportunity for healing, reparation and reintegration³⁰.

Modern criminal justice emphasises restorative justice. Clemency, when properly structured, can promote reconciliation, rehabilitation, and reintegration. The ACJA’s failure to integrate clemency into its restorative justice objective creates an avoidable problem.

11. IMPLICATIONS FOR PRISON DECONGESTION

One of the ACJA’s objectives is to reduce prison congestion. Clemency could serve as a powerful tool for decongestion, particularly for minor or humanitarian cases.

One of the reasons advanced for the congestion of Nigerian prisons is the delay in the administration of the Nigerian criminal justice system. For instance, there is delay by NPF to complete investigations on time, which makes legal proceedings delayed too. The delay in the trial of defendants/suspects due to congestion in the courts ultimately results in the congestion of the correctional facilities. Both the CPA and the CPC as relics of colonial legislation do not conform to present realities and need to be reviewed. The provisions of both laws focuses more on the protection of the accused person than on the objective of ‘restorative justice and the protection of the larger society’³¹

²⁹Federal-Provincial-Territorial Ministers Responsible for Justice and Public Safety (2018). *Principles and Guidelines for Restorative Practice in the Criminal Matters*.

³⁰ Ibid cit33

³¹A Ibrahim ‘Decongestion of Nigerian prisons: An examination of the role of the Nigerian police in the application of the holding-charge procedure in relation to pre-trial detainees’ (2019) 19 *African Human Rights Law Journal* 779-792

The lack of statutory linkage between the ACJA and clemency undermines this objective.

The discretionary nature of clemency does not preclude accountability. Statutory guidelines could enhance transparency without infringing executive authority. The ACJA could have provided procedural standards for mercy applications.

12. FINDINGS

The ACJA contains no procedural interface with clemency. The Act is silent on applications, criteria, timelines, or publication of mercy decisions.

Constitutional text does not prohibit procedural regulation. Sections 175 and 212 protect substantive discretion but do not forbid procedural structuring.

The Absence of structure contributes to opacity

Without statutory guidance:

- i. Advisory councils operate without uniform standards;
- ii. Decisions lack transparency;
- iii. Public confidence is undermined.

Parole does not replace clemency. Parole is a statutory correctional release mechanism. Clemency is a constitutional executive power. They are distinct in foundation and function.

The ACJA's recognition of parole does not eliminate the relevance of clemency.

Is Clemency Implied Within The Acja Framework?

Although not expressly mentioned, some argue that clemency is implicitly accommodated within the ACJA's sentencing and non-custodial provisions. However, implication cannot substitute for explicit legal safeguards. Parole was recently recognised in Nigeria, to replace clemency. Parole is a new correctional measure in the Nigerian penal system. Before 2015 inmates could be released before the expiration of their terms of imprisonment only if they were granted pardons by the governor of a state or by the president. However, this has changed with the coming into force of the Administration of Criminal Justice Act of 2015 (ACJA). The ACJA empowers

courts, upon the recommendation of the comptroller-general of the Nigerian Correctional Service, to release inmates on parole. ACJA does not make provision for medical parole³².

Theoretical Perspectives on Clemency and Criminal Justice Reform

From a legal perspective, clemency illustrates the conflict between justice and mercy. While advocates of natural law theory see clemency as a necessary moral remedy, positivists in law frequently see it as an anomaly. The ACJA aligns more with positivist efficiency than moral discretion.

Legislative Drafting and Reform Gaps

The lack of clemency provisions highlights more general issues with Nigerian legislative drafting, where constitutional coordination is frequently disregarded. A holistic criminal justice reform must integrate all stages of justice, including post-conviction relief.

The Role of Advisory Councils on Prerogative of Mercy

Although constitutionally recognised, Advisory Councils often operate without clear statutory guidelines. The ACJA could have provided procedural synergy with these councils.

Should Clemency Be Codified Under the ACJA?

Codification does not mean usurpation. Rather, it entails providing procedural clarity, timelines, and transparency. Comparative practice supports this approach.²²

Policy Recommendations

1. Amendment of the ACJA to include a post-conviction chapter addressing clemency procedures.
2. Statutory guidelines for Advisory Councils on Prerogative of Mercy.
3. Mandatory publication of clemency decisions to promote transparency.
4. Integration of clemency into prison decongestion strategies.
5. Human rights-based assessment of mercy applications.

³²DJ Ayinde "An Appraisal of the Legal Framework on Parole in Nigeria" PER / PELJ 2022(25).

Conclusion

Nigeria's criminal justice system has undergone progressive reform thanks to the Administration of Criminal Justice Act of 2015. Its silence on clemency, however, represents a substantial procedural and normative gap. Clemency is still a crucial part of holistic justice, even though it is constitutionally granted to the executive. It is neither normatively desirable nor constitutionally necessary for the ACJA to exclude clemency. Legislative reform that addresses this silence would improve transparency, fortify post-conviction justice, and bring Nigeria's criminal justice system into compliance with international norms and constitutional principles.