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PARDON AND NOLLE PROSEQUI WITHIN THE CONTEXT OF WAR AGAINST ECONOMIC AND FINANCIAL CRIMES IN NIGERIA: A CRITIQUE

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Abstract
This article seeks to appraise the effects of pardon or prerogative of mercy and nolle prosequi in the war against corruption, economic and financial crimes in Nigeria. The research methodology adopted is the doctrinal research approach; it relied on primary and secondary sources of law like the Constitution of the Federal Republic of Nigeria 1999 (as altered), Economic and Financial Crimes Commission (Establishment) Act 2004 and judicial authorities. It was found inter alia that prerogative of mercy and nolle prosequi pose a serious challenge to the fight against corruption, economic and financial crimes in Nigeria. The recommendation of this article includes that due to the emergency situation of corruption, economic and financial crimes in Nigeria, the relevant section of the Constitution conferring power to exercise prerogative of mercy and power to enter nolle prosequi should be amended with a sunset provision allowing its application on corruption, economic and financial crimes related matters only at such time that Nigeria will make the first ten in the list of Transparency International Corruption Perception Index.

Keywords: *Economic, Financial, Corruption, Prerogative of Mercy, Nolle prosequi.*

1.0. Introduction

Economic and financial crimes which corruption is part of have not only become ubiquitous, but a major caterpillar and obstruction to the collective survival of Nigeria to a point that if not eradicated, it may eradicate Nigeria.[1] Economic and financial crimes are no longer an exception in Nigeria and this has greatly impacted negatively on its human rights compliance potentials.

Corruption has always thrived or blossomed in situations of bad governance, inefficiency and ineffectiveness of systems and institutions, mismanagement of public and other corporate affairs, absence of separation of powers, dictatorship, the disregard for human rights, constitutionalism, secret handling of public affairs, ignorance about citizens' rights and managers' responsibilities, public cynicism, and the lack of identification by the citizenry with the government; corruption as a

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[1] S O Eli, 'Legal Assessment of Novel Tasks of Regulatory Institutions in the Fight against Corruption, Economic and Financial Crimes In Nigeria' 2 (4) 2022, *Journal of Law and Policy* RSU; 105, <https://www.peerreviewedjournal.com.ng/journal-of-law-and-policy/>; S O Eli, 'Selective Investigation and Prosecution in the Fight against Economic And Financial Crimes In Nigeria' in Ogwezzy M C and ors (eds), *Law and Good Governance in Nigeria: A Text in Honour of Rt. Hon. Mohammed Umaru Bago* (Zubic Infinity Concept 2022) 456.

consequence of these factors became prominent in the military regime when Nigeria went to as far as number one spot in the most corrupt states under international law.[2]

Corruption which is an aspect of economic and financial crimes,[3] has been argued to be an offence where it is difficult to file a complaint to the appropriate authority because it is a victimless offence, especially in a situation where both the complainant who may be the giver of the bribe and the suspect who is the receiver is criminally responsible for the crime, and this inevitably clogs on the complaint frequency of the offence of corruption. A follow up to this is the fact that the offence will be reported only when the receiver of the bribe failed to execute the deal for which the bribe was given to him.[4]

However, it can be safely assumed that most of the corrupt dealings were actually successful since corruption would not flourish otherwise. It must then follow that only a small fraction of the deal fail to be successful, and are therefore, reported.[5] It must be noted that despite the position above, corruption is victim's offence and the general public is the victim or those deprived or whose opportunities had become limited because of the said corrupt act.

The public's lack of faith in the institutions responsible for fighting corruption, especially the Nigerian Police, Independent Corrupt Practices and Other Related Offences Commission (ICPC) and Economic and Financial Crimes Commission (EFCC) and the perception that these bodies are themselves corrupt has largely led to the notion that why report corruption to corruption? This perception is made worse by the fact that a person likely to be convicted for economic and financial crime may actually have the charge dropped against him; and the fact that an actual convict of an economic and financial crimes related offence may be set free by the President or Governor, as the case may be.

Transparency International (TI) argues that "the global trend of weakening justice systems is reducing accountability for public officials, which allows corruption to thrive."[6] According to the Chairman of Transparency International, Francois Valerian, Corruption will continue to increase until justice systems can punish wrong doings and keep governments in check; when justice is for sale or there is political interference in the justice system, it is the people that suffer. He called on leaders to invest in and ensure the independence of the institution that upholds the law and tackles corruption, as it is time to end impunity and corruption.[7]

The scope of this article in terms of period covers the period of 2004 to 2024. In terms of the geographical area covered, the whole of Nigeria, although, the article also made references to the Constitution of the Federal Republic of Nigeria 1999 (as altered), and judicial precedents. The subject matter covered is prerogative of mercy, *nolle prosequi*, political interference, and economic and

[2] A A Adeyemi, 'Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice' (The Nigerian Country Paper for the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, held at Bangkok, Thailand, 19-25 April, 1995) 23.
[3] Economic and Financial Crimes Commission (Establishment) Act 2004 (EFCCA 2004), s 46.
[4] (n2).
[5] (n2), 36.
[6] <https://www.transparency.org/en/cpi> accessed 21 August 2024.
[7] (n6).

financial crimes. However, before we become effective in the examination, it becomes imperative to clarify on the concepts and legal framework.

2.0. Conceptual Framework

It is germane to clarify on the major concepts of this article. These concepts include: economic and financial crimes, pardon (prerogative of mercy), *nolle prosequi*, sunset clause or provision and Transparency International Corruption Perception Index 2023.

2.1. Economic and Financial Crimes

Economic crimes means any form of non-violent criminal activity committed by an individual or group with the sole objectives of earning wealth illegally, offence of which is defined in an existing law regulating the economic activities of government and its institutions. Accordingly, financial crimes can be defined as all forms of crime defined by a written law where either the giving, receiving or theft of money is involved whether it is in public, private or religious capacity, whether the perpetrator is a public, civil or private servant, whether the money involved belongs to the public, private or religious sector and whether the act was done personally or through a proxy.[8] Economic and financial crimes include all the crimes listed in the definition section of the EFCCA 2004 and more.[9]

2.2. Pardon

Pardon is the discretionary power of the President, Governor or any authority vested with such power to commute a death sentence, change the form of execution, or issue a prerogative of mercy.[10] It is the limited power of a chief executive to forgive a convicted person, especially a person convicted of a capital offence.[11] Pardon means "the act or an instance of officially nullifying punishment or other legal consequences of a crime, usually granted by the chief executive of a government."[12] Pardon could be conditional, absolute or partial.[13] When it is conditional, it only becomes effective when the defendant fulfils a specified condition precedent and could be revoked when the wrongdoer does certain act.[14] A pardon is however partial, when it only exonerates the convict from some of, not all of the offences convicted.[15] An example of a partial pardon is where a person convicted for money laundering, official corruption, stealing, criminal breach of trust and murder receives pardon for the offences of money laundering, official corruption, stealing and criminal breach of trust in exclusion to that of murder; in such a situation, the person will be said to have received partial pardon.

2.3. Nolle Prosequi

Nolle Prosequi is a Latin and a legal term meaning "we shall no longer prosecute" "be unwilling to pursue", or any distinction with the same meaning.[16] *Nolle Prosequi* is a legal notification from the

[8] S O Eli, 'Legal Assessment of Novel Tasks of Regulatory Institutions in the Fight against Corruption, Economic And Financial Crimes In Nigeria' 2 (4) 2022, *Journal of Law and Policy* RSU; 107. <https://www.peerreviewedjournal.com.ng/journal-of-law-and-policy/>; S O Eli, 'An Appraisal of the Role of Regulatory Institutions in the Fight against Corruption And Financial Crimes In Nigeria' 7 2022, *University of Port Harcourt Journal of Private Law;* 105.
[9] (n3).
[10] B A Garner (ed), *Black's Law Dictionary* (9 edn, Thomson Reuters 2009) 1301.
[11] *Ibid*.
[12] (n10) 1221.
[13] (n12).
[14] (n12).
[15] (n12).
[16] <https://study.com/learn/lesson/what-is-nolle-prosequi.html> accessed 19 August 2024.

office of the Attorney General to Court that a criminal prosecution has been abandoned, which will result to the discharge of the defendant.[17] It has also been described as "a formal notice of abandonment by plaintiff or prosecutor of all or part of a suit or action."[18] It has been stated that *nolle prosequi* applies mainly as a legal notice filed in court that the prosecutor intends not to continue with the prosecution of the charge and that it applies to both civil and criminal cases, except in the United States of America where it applies mainly in the criminal justice system.[19]

In Nigeria, however, *Nolle Prosequi* can only be entered in criminal cases by the Attorney-General himself or through any officer in his chambers expressly authorised in writing to do so, and the same must be done with regards to public policy, interest of justice and the need to avoid abuse of legal processes. In Nigeria, *Nolle Prosequi* is not the same with the withdrawal of case by the prosecution and they have different implications. It has been argued that in all instances, *nolle prosequi* operates as a discharge and not an acquittal, whereas withdrawal by the prosecution is a procedural power that can be exercised by any prosecutorial institution, and if exercised at any stage when the defence has opened his case, it is an acquittal; otherwise if withdrawn at a stage before defence, it is a mere discharge, except the Court thinks otherwise to order an acquittal.[20] The consent of the Court is not necessary for a *nolle prosequi* to be entered as the same is entirely within the discretion of the Attorney General.[21] In the case of *Attorney General of Kaduna State* v *Hassan*,[22]it was *held inter alia* that the powers of the Attorney General to enter a *nolle prosequi* cannot be exercised by the Solicitor-General or any other person but must be exercised personally by him. Therefore, the Solicitor-General could not have exercised such powers during the time there was no Attorney-General. In the case of *State* v *Chukwura*,[23] the court refused an oral application by the state counsel to discontinue a proceeding. In the case of *State* v *Ilori*[24] it was held that the power of the Attorney to enter a *nolle prosequi* is not subject to interrogation by the Court or any authority and that the regard to public interest is merely directory and not mandatory.

2.4. Sunset Clause or Provision

The Sunset Provision or Clause is a clause in a statute, regulation or similar piece of legislation that provides for an automatic repeal of the entire or sections of a law once a specific date is reached.[25] Once the sunset provision date is reached, the pieces of legislation mentioned in the clause are rendered void.[26] If the government wishes to extend the length of time for which the law in question will be in effect, it can push back the sunset provision date any time before it is reached.

[17] (n10) 1147; *Clarke* v *Attorney-General of Lagos* (1986) 1 QLRN 119.
[18]<https://www.google.com/search?q=nolle+prosequi&oq=noll&aqs=chrome.1.69i57j0i271l2.3821j0j1&sourceid=chrome&ie=UTF-8> accessed 19 August 2024.
[19] (n16).
[20] ACJA 2015, s 108.
[21] *State* v *Ilori* (1983) 2 SC 155.
[22] [1985] 2 NWLR (Pt 2) 487.
[23] [1964] NMLR 64.
[24] (n21).
[25] <https://dictionary.cambridge.org/dictionary/english/sunset-clause> accessed 21 August 2024.
[26] (n25).

2.5. Transparency International Corruption Perception Index 2023.

Transparency International (TI), the global corruption monitoring institution released a report called the Corruption Perception Index (CPI) for 2023 that reveals that corruption is thriving across the world.[27] On a scale of 0 (extremely corrupt) to 100 (not at all corrupt), it ranks 180 governments and nations under international law.[28] There was no such thing as a perfect score, and over two-thirds of countries across the globe scored less than 50 out of 100, which is an indication that they have serious corruption problems.[29]

Despite the improvement achieved during the administration of Goodluck Ebele Jonathan in the war against corruption with a view to improve its corruption ranking, Nigeria currently is one of the most corrupt states under international law. Nigeria ranked 145 out of 180 Countries surveyed for corruption with a score of twenty five percent upward move from the previous year,[30] although, it is still a backslid from the rank of 144 in 2018 with a score of twenty seven percent and 146 in 2019 with a score of twenty six percent, at least it earned more scores in 2019 with rank 146 than it did in 2023 with rank 145 most corrupt country.[31] In Nigeria, a reinvigorated effort to combat economic and financial crimes and develop more open public institutions is urgently required. Those who get away with economic and financial crimes, which include corruption, must not be allowed to go scot free. The best 10 states as rated by Transparency International in relation to zero tolerance for corruption are as follows: Denmark, Finland, New Zealand, Norway, Singapore, Sweden, Switzerland, the Netherlands, Germany and Luxembourg.[32]

It is germane to note that a lot still has to be undertaken in order to rid Nigeria of corruption or at least bring the same to the barest minimum. As the giant of Africa, being Number 145 with four others of 180 most corrupt with about 25 per cent score which is a less than average score, is not just good enough. This is notwithstanding the current Economic and Financial Crimes Commission (Establishment) Act 2004 (EFCCA), the Independent Corrupt Practices and other related offences Act 2000 (ICPA), the Nigerian Financial Intelligence Unit Act 2018 (NFIUA), the Money Laundering (Prevention and Prohibition) Act 2022 (MLA) and the Proceeds of Crime (Recovery and Management) Act 2022 (PCRMA) regime.

Unfortunately, instead of the relevant authorities to make concerted efforts towards ensuring that this corruption perception issue becomes a thing of the past and that Nigeria fares better in future indexes by minimising the challenges posed to the war against economic and financial crimes in Nigeria as well as strengthening the relevant institutions, they prefer to dispute the reputable Transparency International reports instead of further focusing on enforcing the existing anti graft laws and improving on areas where challenges have been indentified, as well as strengthening the relevant institutions responsible in fighting corruption, economic and financial crimes. It has been argued that the tendency to attack TI whenever CPI for the year is published instead of focusing on taking steps to get better, suggests a clear

[27] (n6).
[28] (n6).
[29] (n6).
[30] (n6).
[31] Transparency International, 'Corruption Perceptions Index 2018'<https://www.transparency.org/country/NGA> accessed 6 December 2019; #cpi2019, <www.transparency.org/cpi.> accessed 20 August 2020.
[32] (n6).

absence of genuine political will and commitment to actually combat corruption, economic and financial crimes in Nigeria.[33]

3.0. Legal Framework

It is imperative to summarily discuss the basic legal framework of this article. These basic legal frameworks include: Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999) [as altered], The Administration of Criminal Justice Act 2015 (ACJA 2015) and the Rivers State Administration of Justice Law 2015 (RSACJL 2015) and the Economic and Financial Crimes Commission (Establishment) Act 2004 (EFCCA 2004).

3.1. Constitution of the Federal Republic of Nigeria 1999 (as altered)

The CFRN 1999 is the basic legal framework in the fight against corruption, economic and financial crimes in Nigeria. It is the basic legal framework because the Constitution is Supreme,[34] and if any law is inconsistent with its provisions, the Constitution shall prevail and that other law shall to the extent of the said contradiction be annulled.[35] To buttress the importance of the anti corruption fight in Nigeria, the Government were urged to begin and wage a thorough war against inherent corruption in Nigeria, it was expressly provided that "the State shall abolish all corrupt practices and abuse of power."[36] And it has been held that the reason for the said constitutional provision is that desperate malady deserves desperate remedy.[37]

Accordingly, a public officer is generally prohibited from accepting gifts or benefits of any kind for acts or omission in the performance of his duties, except from family and friends as custom permits; although, there is an unqualified prohibition of bribery of public officers and abuse of office.[38] A political office holder and public officer holding the office of a Permanent Secretary or head of any public corporation, university, or other organization is prohibited from accepting loans except from a government, its agencies, a bank, building society or legally recognised financial institutions; and the head of public corporation or of a university can only accept benefits from any company contractor, or businessman, or the nominee or agent of such person where its rules and regulations permit such.[39]

The CFRN 1999 also provides to the effect that public officers immediately after taking oath of office shall declare their assets and except the contrary is proven, deems subsequent assets acquired that is not commensurate to the earnings of a public officer to have been acquired in breach of the code of conduct, and corruption of office and liable to seizure or forfeiture; and it also establishes the Code of Conduct Tribunal (CBT).[40]

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[33] A A Adeyemi, 'Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice' (The Nigerian Country Paper for the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, held at Bangkok, Thailand, 19-25 April, 1995) 18.
[34] CFRN 1999, s 1 (1).
[35] (n34) s 1 (3).
[36] (n34) s 15 (5).
[37] *Kalu* v *FRN* [2014] 1 NWLR (pt 1389) 479.
[38] (n34) 5th sch, pt 1, paras 6 (1) (2) (3), 8, 9.
[39] (n34) 5th sch, pt 1, para 7 (a) (b), cf *Ekeremor Local Government Council* v *Omien* [2022] 4 NWLR (Pt 1819) 129 SC, 149, Paras D-H.
[40] (n34) 5th sch, pt 1, paras 15, 18 (2) (c).

Accordingly, the Attorney-General of the Federation and the Attorney-General of the State is empowered by the Constitution to commence and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any Act of the National Assembly or Law of the House of Assembly of a State;[41] to take over and continue any such criminal proceedings that may have been commenced by any other authority or person;[42] and to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.[43] The powers conferred upon the Attorney-General of the Federation or Attorney General of the State to commence, takeover and discontinue criminal proceedings may be exercised by him in person or through officers of his department.[44] In exercising his powers under this section, the Attorney-General of the Federation shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process.[45]

Furthermore, the President or Governor as the case may be may grant any person concerned with or convicted of any offence created by an Act of the National Assembly a pardon, either fully or subject to lawful conditions;[46] grant to any 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;[47]substitute a less severe form of punishment for any punishment imposed on that person for such an offence;[48] or remit the whole or any part of any punishment imposed on that person for such an offence or of any penalty or forfeiture otherwise due to the State on account of such an offence.[49]

The power to pardon of the President shall be exercised by him after consultation with the Council of State,[50] and on the advice of the Council of State, the President may exercise his powers to grant pardon in relation to persons concerned with offences against the army, naval or air-force law or convicted or sentenced by a court-martial.[51] The powers of the Governor for prerogative of mercy is to be exercised by him after consultation with such advisory council of the state on prerogative of mercy as may be established by law of the State.[52]

3.2. Administration of Criminal Justice Act 2015 and Rivers State Administration of Criminal Justice Law 2015

The Administration of Criminal Justice Act 2015 (ACJA 2015) and the Rivers State Administration of Justice Law 2015 (RSACJL 2015) respectively, provides that in any criminal proceedings for an offence created by an Act of the National Assembly[53] or for an offence against a law of the State,[54] and at any

[41] CFRN 1999, s 174 (1) (a); s 211 (1) (a).
[42] (n41) s 174 (1) (b); s 211 (1) (b).
[43] *Ibid* s 174 (1) (c); s 211 (1) (c).
[44] *Ibid* s 174 (2); s 211 (2).
[45] *Ibid* s 174 (3); s 211 (3).
[46] CFRN 1999, s 175 (1) (a); s 212 (1) (a).
[47] *Ibid* s 175 (1) (b); s 212 (1) (b).
[48] *Ibid* s 175 (1) (c); s 212 (1) (c).
[49] *Ibid* s 175 (1) (d); s 212 (1) (d).
[50] *Ibid* s 175 (2).
[51] (n46) s 175 (3).
[52] CFRN 1999, s 212 (2).
[53] ACJA 2015, s 107 (1).
[54] RSACJL 2015, s 107 (1).

stage of the trial before the final decision, the Attorney General of the Federation or of a State as the case may be, may discontinue the proceedings either by stating in Court or informing the Court in writing that he intends not to continue with the proceedings, whereupon the Defendant shall immediately be discharged, and it shall not act as a bar to subsequent proceedings.[55] It is submitted that notwithstanding the said provision above, the defendant should be acquitted where the *nolle prosequi* is entered at the defence stage.

3.3. Economic and Financial Crimes Commission (Establishment) Act 2004.

The EFCCA 2004 defines economic and financial crimes as the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic, drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange, malpractice including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, amongst others.[56]

4.0. Legal Examination of Pardon and *Nolle Prosequi* within the Context of Economic and Financial Crimes in Nigeria

Prerogative of mercy or the power of the president of the Federal Republic of Nigeria or Governor of a state to grant pardon[57] is a major challenge in the war against economic and financial crimes in Nigeria. The effect of prerogative of mercy when granted by the President or Governor as the case may be, in economic and financial crimes related cases, will definitely lead to the convict given a clean slate, except it is a partial prerogative of mercy.

The nature and extent of prerogative of mercy has been amplified in the judicial process in Nigeria to establish the fact that it is an override of the Apex Court. In the case of *Okeke* v *State*,[58]it was held inter alia that the power to recommend mercy for convicted person resides on the committee on prerogative of mercy; it is to the body, not the court that a convicted person, if he so desires, may direct his application for consideration. However, in *Ofuadorho* v *State*,[59] it was held that the court may recommend prerogative of mercy in capital punishment cases to the Governor. The Court Per Aka'ahs, J.S.C. went on to hold as follows: "… since the appellant did not injure PW2 with the said gun it is hereby recommended to the Governor of Delta State to exercise his prerogative of mercy and commute the death sentence to a term of 21 years to take effect from the date he was convicted and sentenced by the High Court to death that is 25 July, 2012."[60]

[55] ACJA 2015, s 107 (1); RSACJL 2015, s 107 (1).
[56] (n3).
[57] CFRN 1999, ss 175 (1), 212 (1); EFCCA 2004, s 23.
[58] [2003] 15 NWLR (Pt 842) 25, 105-106, paras H-A.
[59] [2019] 1 NWLR (Pt 1654) 538.
[60] Ibid. 552, para B-C.

Accordingly, the Supreme Court in the case of *Malari* v *Leigh*,[61] held that by virtue of *section* 235 of the CFRN 1999 (as altered), without prejudice to the powers of the President or of the Governor of a State with respect to the prerogative of mercy, no appeal shall lie to anybody or person from any determination of the Supreme Court. In the same way, the Supreme Court held in the case of *A.P.C.* v *Enwerem*,[62] that without prejudice to the powers of prerogative of mercy of the President and the Governor of a State, the decision of the court is binding on all courts and is not subject to review by any other court or persons.

Most recently, the Supreme Court restated in the case of *Adegbola* v *Idowu*[63] that by virtue of *section* 235 of the Constitution of the Federal Republic of Nigeria, 1999 (as altered), without prejudice to the powers of the President or of the Governor of a State with respect to prerogative of mercy, no appeal lies to any other body or person from any determination of the Supreme Court. In other words, the Supreme Court cannot sit on appeal over its own judgment because the provision of the section gives a stamp of finality to any decision of the court; more so, there is no constitutional provision that enables the Supreme Court to review its judgment.[64] Indeed, there can be no appeal questioning a decision of the Supreme Court to itself or to anybody or person as there must be finality to litigation. Therefore, the Supreme Court has no jurisdiction to grant any application challenging the correctness of its judgment.[65]

In view of the forgoing, the question is, how can a nation serious in the fight against economic and financial crimes which corruption is part of allow pardon to extend to economic and financial crimes related cases? No country serious in eradicating corruption extends pardon to persons convicted of the offence of corruption, economic and financial crimes. More so, that they were adamant in taking advantage of plea bargain provisions during trial to show that they are really remorseful, even though plea bargain poses its own major challenge in the fight against corruption in Nigeria. The first high profile case on corruption, economic and financial crimes in Nigeria where presidential pardon was exercised by former President Goodluck Jonathan in relation to the former Governor of Bayelsa State, Chief D.S.P. *Alamieyeseigha* and recently by General *Mohammadu Buhari* in respect to former Governors of Plateau state and Taraba state, Joshua *Dariye* and Rev. Jolly *Nyame*, respectively; all of whom were ex convicts for corruption and financial crimes related offences.

Furthermore, the malady affects the public in that the said persons who are granted this prerogative of mercy or pardon often venture back into politics; with a corrupt electoral process gain access into public offices and the circle of corruption continues. The global impact is that the CPI which places Nigeria amongst the most corrupt countries or states in the world impacts the global view of Nigeria by foreign countries, states and investors. The economic effect of the corruption further leads the state, Nigeria downwards the development slope. It therefore becomes necessary to also ensure that such persons though pardoned, should not be allowed to run or vie for any political position or appointment.

[61] [2019] 3 NWLR (Pt. 1659) 332, 348, paras G-H; *A.N.P.P.* v *Goni* [2012] 7 NWLR (Pt. 1298) 147, 203, paras F-G.
[62] [2022] 15 NWLR (Pt 1853) 389, 410, paras A-B.
[63][2023] 12 NWLR (Pt 1898) 321; *Cardoso* v *Daniel* [1986] 2 NWLR (Pt 20) 1.
[64] (n63).
[65] (n63).

Accordingly, given the epidemic and endemic nature of corruption, economic and financial crimes in Nigeria, it has now become a national emergency and emergency situation requires desperate and unconventional measures. It is hereby submitted that the relevant section of the Constitution conferring prerogative of mercy should be amended with a sunset clause allowing the exercise of prerogative of mercy on corruption, economic and financial crimes related matters only at such time that Nigeria will make the first ten in the list of Transparency International Corruption Perception Index. At this point, it would have returned from the point of an emergency. In the alternative, prerogative of mercy should be outrightly restricted from applying to corruption, economic and financial crimes related criminal cases.

On the other hand, the common law doctrine of *nolle prosequi* which presupposes the power of the Attorney-General of the Federation or of the State to discontinue ongoing criminal prosecution also finds prominence in our jurisprudence.[66] The effect of *nolle prosequi* when entered in economic and financial crimes related cases will definitely lead to a discharge of the defendant. Contrary to the idea that the resultant effect of *nolle prosequi* in all cases is a mere discharge, it is submitted that the effect of *nolle prosequi* is an acquittal of the defendant if entered when the Defendant has already opened his defence, rested his case on that of the prosecution or filed a no case submission, especially if it is likely to succeed.

To underscore the nature of *nolle prosequi* in the judicial process in Nigeria, in the case of *Audu* v *Attorney-General of the Federation*,[67] where a *nolle prosequi* was filed by the Attorney-General of Kogi State, it was held that at any stage of any criminal proceedings before judgment, the Attorney-General of a State or the Attorney-General of the Federation may enter a *nolle prosequi*, either by stating in court or filing appropriate process, to inform the court that the State intends that the proceedings abate; once this is brought to the notice of the presiding Judge, the accused person shall be discharged immediately from the charge the *nolle prosequi* was filed or entered and the charge struck out since the charge seizes to be in existence from the date the *nolle prosequi* was filed. Similarly, in the case of *Olagunju* v *Federal Republic of Nigeria*,[68] it was held *inter alia* that the Attorney- General has the power to enter a *nolle prosequi*, at any stage before judgment is delivered in any such criminal proceedings instituted or undertaken by him or any other authority or person; that the Attorney-General of the Federation or the EFCC has the power to undertake such criminal prosecutions with the Attorney-General having the upper hand in taking over the prosecution and continuing or discontinuing with the prosecution by entering a *nolle prosequi*.[69]

Accordingly, as stated above, the power of the Attorney General to enter a *nolle prosequi* cannot be questioned by the court[70] and the consideration of public interest, interest of justice and need to avoid the abuse of legal process has been held to be discretionary, and not mandatory;[71] the question is, how

[66] CFRN 1999, ss 174, 211.
[67] [2013] 8 NWLR (Pt 1355) 175, 203-204.
[68] [2018] 10 NWLR (Pt 1627) 272, 281-282, para H-A, C-D; *Pharma Deko Plc* v *N.S.I.T.F.M.B.* [2011] 5 NWLR (Pt 1241) 431; *Federal Republic of Nigeria* v *Adewunmi* [2007] 10 NWLR (Pt. 1042) 399; *Nyame* v *Federal Republic of Nigeria* [2007] 7 NWLR (Pt 1193) 344.
[69] (n68).
[70] (n21).
[71] (n21).

can a nation serious in the war against economic and financial crimes which corruption is part of, allow such discretionary power to extend to corruption related cases? That, to say the least, is unsustainable and should be discarded.

It may be argued that the notion of selective investigation and prosecution by the anti corruption institutions,[72] can be founded and finds justification in the power and/or discretion of the state to choose which case to prosecute, investigate and discontinue. However, should that continue to stand giving the fact that corruption has now become a national emergency and embarrassment? It is submitted that corruption, economic and financial crimes should be excluded from the class of offences where this discretionary power of the Attorney-General to enter *nolle prosequi* can apply indefinitely, or that there should be a sunset provision to the effect that it shall not be applicable until such time that Nigeria reaches the first ten in Transparency International (TI) Corruption Perception Index (CPI).

Accordingly, political interference occurs in a situation where the ruling party or president or governor as the case may be intercepts an ongoing investigation or prosecution or refuses to commence it at all due to the political lining of the suspect or defendant as the case maybe. This occurs in many ways, and is most exemplified when politicians in Nigeria defect from one political party to the ruling party in order to be excluded from investigation and/or prosecution.

It may be argued that the said political interference can be justified from the power of the Attorney General to enter *nolle prosequi* or the power of the state to chose whom or whom not to prosecute, however, given the Singapore experience of addressing political interference related issues before it could make progress,[73] this should not be allowed to stand. Political interference presupposes discrimination in relation to public affairs and no egalitarian society or a society aspiring for egalitarianism should allow such to continue. It is submitted that by the time the office of the Attorney General is separated from the office of the minister of justice and/or when corruption, economic and financial crimes related offences shall be excluded from offences where *nolle prosequi* can be entered until such time that Nigeria reaches the first ten in TI CPI, the challenge of political interference would be addressed to a very large extent.

5.0. Conclusions

This article addressed the effects of prerogative of mercy and *nolle prosequi* in the current war against economic and financial crimes in Nigeria. It was strongly contended that giving the critical situation that Nigeria finds itself as regards negative economic development and human rights due to the devastating effects of corruption, economic and financial crimes, it comes extremely imperative to exclude or suspend the application of *nolle prosequi* and prerogative of mercy otherwise known as pardon on economic and financial crimes related cases.

[72] (n1) 459-465.

[73] V Lim, 'An overview of Singapore's Anti-Corruption Strategy and the role of the CPIB in Fighting Corruption' < https://www.unafei.or.jp> accessed 17 January 2022; J S T Quah, 'Curbing Corruption in a One-Party Dominant System: Learning from Singapore's Experience' in Ting Gong and Stephen k. Ma (eds), *Preventing Corruption in Asia: Institutional Design and Policy Capacity* (Routledge 2009) 9.

6.0 Summary of Findings

It was found among other things that no country serious in eradicating economic and financial crimes extends pardon to persons convicted of the offence of corruption, economic and financial crimes. It was also found that *nolle prosequi* which ordinarily ought to be exercised dispassionately in the interest of justice, the public interest and the need to prevent abuse of legal process, has now become one of the avenues of political interference, if not political interference itself, in economic and financial crimes in Nigeria, given the fact that the Attorney Generals are now more or less politicians.

6.0. Recommendations

The recommendation of this article includes that given the epidemic and endemic nature of corruption, economic and financial crimes in Nigeria, it has now become a national emergency and emergency situation requires desperate and unconventional measures. Therefore, the relevant *sections* 175 and 212 of the Constitution of the Federal Republic of Nigeria 1999 (as altered) conferring prerogative of mercy should be amended with a sunset clause allowing the exercise of prerogative of mercy on corruption, economic and financial crimes related matters only at such time that Nigeria will make the first ten in the Transparency International Corruption Perception Index. At this point, it would have returned from the point of an emergency. In the alternative, prerogative of mercy should be outrightly restricted from applying to corruption, economic and financial crimes related criminal cases.

It was also recommended that *sections* 174 and 211 of the Constitution of the Federal Republic of Nigeria 1999 (as altered) conferring the power of *nolle prosequi* on the Attorney General should be amended with a sunset clause allowing the exercise of such powers on economic and financial crimes related matters only at such time that Nigeria will make the first ten in the Transparency International Corruption Perception Index. At this point, it would have returned from the point of an emergency. In the alternative, the power of *nolle prosequi* should be outrightly restricted from applying to corruption, economic and financial crimes related criminal cases.