NIU Journal of Legal Studies

Nexus International University, Uganda.

Published in September, 2026

ISSN: 3007-1860 (Print)

ISSN: 3007-1879 (Online)

Published by:

Nexus International University,
Kampala, Uganda.

NIU Journal of Legal Studies Copyright©2026
Nexus International University ISSN: *3007-1860;* 12(3): 3

Editorial

This issue of NIU *Journal of Legal Studies* touches on the Issues such as Criminal Policy for Malicious Complaints, Legal Consequences of State Pardons, Access to Medical Records Under Nigerian Law and so on.

One of the papers, in this edition, highlights the precise distinction established by the Court of Cassation between release due to insufficient evidence and proven malicious intent, which warrants prosecution. It further emphasizes the right of the aggrieved party to compensation and concludes by stressing the need to enforce the legal oath and expand investigative procedures to curb malicious reports

By comparing the pardon processes of South Africa, India and the United States, another paper shows how a rational, transparent and fair standards framework has become increasingly a component of pardon systems in modern democracies. The paper concludes by presenting a blue print of legislative and institutional changes which include the enactment of a Prerogative of Mercy (Regulatory and Procedural) Act, an independent statutory Advisory Board and the codification of mandatory criteria for the restoration of public trust, respect to victims' rights and tame monarchical executive mercy in Nigeria.

In sum, this issue of *NIU Journal of Legal Studies* features many empirical and theoretical based articles which can be of great benefit to every reader.

Professor Oyetola O. Oniwide

Nexus International University,
P.O. Box 70773,
Kampala, Uganda.

editor@niujournals.ac.ug

September, 2026.

NIU Journal of Legal Studies Copyright©2026
Nexus International University ISSN: *3007-1860;* 12(3): 5-9

Criminal Policy for Malicious Complaints: A Comparative Study between Iraqi and French Legislation

BATOOL IBRAHIM ABDULRAHMAN
College of Agriculture, Kirkuk University, Iraq
batoolibrahim@uokirkuk.edu.iq

ASEEN AHMED FAKHRI
College of Physical Education and Sports Sciences, Kirkuk University, Iraq

Abstract. This article focuses on how to balance the constitutionally guaranteed right to litigation with protecting individuals and the judiciary from malicious abuse. Through an analysis of procedural texts and judicial applications in Iraqi legislation, it becomes clear that the effectiveness of this approach depends primarily on scrutinizing reports during the preliminary investigation phase and activating the role of the investigating judge before resorting to coercive measures. The study also highlights the precise distinction established by the Court of Cassation between release due to insufficient evidence and proven malicious intent, which warrants prosecution. It further emphasizes the right of the aggrieved party to compensation and concludes by stressing the need to enforce the legal oath and expand investigative procedures to curb malicious reports.

Keywords: Criminal policy, malicious complaint, preliminary investigation, discriminatory judiciary, compensation.

1. Introduction

Judicial protection is one of the most important pillars of the rule of law and institutions. The constitutional and legislative systems in modern societies guarantee all individuals the right to access justice and to report crimes and criminal offenses to the appropriate authorities. However, this legitimate constitutional right can be distorted from its noble purpose if some use it with malicious intent and for revenge. In such cases, the right to litigation is transformed from a means of protecting rights into a tool for harming others and overwhelming judicial and administrative authorities with false reports.

Hence, the research problem lies in the disparity of criminal policy between contemporary legislations in addressing the phenomenon of malicious complaints or false reports. How did the Iraqi legislator and the French legislator succeed in managing a delicate equation that balances between not intimidating individuals and encouraging them to report crimes to protect society on the one hand, and deterring the malicious complainant and protecting the innocent from the evils of false accusations and the confiscation of their freedoms on the other?

This research article addresses the subject through two main sections. The first section is devoted to studying the theoretical basis of malicious complaints and the criminal policy governing them, while the second section is devoted to procedural mechanisms and judicial applications in Iraqi and French legislation, based on the comparative analytical approach and the judicial rulings issued by the Iraqi Federal Court of Cassation and the French Court of Cassation.

Section One

The theoretical basis for malicious complaints and the criminal policy governing them.

This section is divided into two sub-sections. The first sub-section deals with the concept of malicious complaint and distinguishes it from related concepts. The second sub-section explains its criminal structure and legal elements.

Sub-Section One

The Concept of Malicious Complaint, and its Distinction from Related Concepts.

Understanding the nature of a malicious complaint requires deconstructing the legal concepts that have framed it in jurisprudence and legislation. It then necessitates drawing the lines between it and other forms of exercising rights, both to protect the right to report crimes and to prevent abuse and arbitrary use of judicial procedures.

Branch One: The Concept of Malicious Complaint in Jurisprudence and Advanced French Legislation

First, the concept of malicious complaint in Iraqi legislation and jurisprudence. The Iraqi legislator did not provide a comprehensive definition of the term "malicious complaint" in the amended Iraqi Penal Code No. 111 of 1969. Rather, it chose to criminalize the physical act of making a false report in Article (243). Iraqi criminal jurisprudence defines it as "a false claim based on bad faith, presented by the complainant before investigative authorities or courts, with full knowledge of the accused's innocence, with the intent to harm his person, property, or position.

Second: The concept in French legislation and jurisprudence. The French legislator moved towards adopting a more precise and meaningful term, calling it "the crime of false reporting" in Article (226-10) of the French Penal Code. French jurisprudence defines it as "the voluntary reporting to a judicial or administrative body with disciplinary authority of an incident that could lead to the imposition of criminal or administrative penalties on a specific person, with the reporter's certain knowledge of the falsity of this incident at the time of submitting the report.

Branch Two: Discrimination against malicious complaints, regarding what is suspected.

Criminal policy requires striking a balance between protecting individuals' right to report crimes and preventing the abuse or misuse of this procedural right. To achieve this balance, legal scholars and the judiciary distinguish between malicious complaints and similar forms of complaint.

First: The right to due process. Access to the courts is a constitutionally guaranteed right.

The difference between this right and a malicious complaint lies in the element of good faith. A decision to close an investigation or to acquit does not necessarily mean that the complaint was malicious, as long as the complainant acted based on a reasonable belief. In contrast, malicious criminal intent requires absolute bad faith and certain knowledge of the falsity of the accusation.

Second: False information. A person may report an incident that later proves to be false due to misjudgment or suspicion. In this case, there is no liability because there is no criminal intent. This is unlike a malicious complaint, which involves certain knowledge of the falsity of the incident and gross misrepresentation of the facts.

Third: The crime of defamation. This differs in its nature, as a malicious complaint requires submitting the report to an official body (judicial or administrative) with the authority to investigate or impose punishment.

In contrast, the crime of defamation is committed by publicly disparaging the incident before the public without requiring its submission to an official body.

Sub-section two

Manifestations of criminal policy in the face of malicious complaints

Criminal policy in addressing malicious complaints manifests itself through two branches: the first focuses on defining the legal grounds for preventing the over-criminalization of the right to litigation, while the second focuses on imposing penalties sufficient to deter malicious complainants.

Branch one: The criminal structure and legal elements.

First: The material element (slander and attribution) of a malicious complaint is based on providing information or a complaint that includes attributing a false criminal act to a specific person, and it is required that the report be directed to a judicial or administrative body that has the authority to take legal action against the person complained about.

Second: The mental element (criminal intent). The mental element requires the presence of general intent, which is the perpetrator's knowledge of the falsity of the report and their will to submit it, in addition to specific intent, which is the intention to harbor malice and harm others. This intent is negated if the complainant believed in good faith that their report was true.

Branch two: Punitive policy and measures of confrontation and deterrence.

Modern criminal policy is embodied in its delicate balance between deterring malicious complainants and protecting the guaranteed right of individuals to litigation, through the adoption of graduated penal sanctions and the coordination of civil compensation to redress the harm.

First: Comparative Criminal Penalties (Iraqi and French Legislation).

The Iraqi and French legislators agreed to criminalize this act, but they differed in the nature and extent of the punishment. In Iraqi legislation, Article (243) of the Iraqi Penal Code criminalizes providing false information and imposes a punishment that reaches the maximum limit for the alleged crime, provided that it does not exceed temporary imprisonment for a maximum of ten years, even if the falsely attributed incident warrants the death penalty or life imprisonment.

On the other hand, French legislation adopts a strict judicial stance towards false reporting in accordance with Article (226-10) of the French Penal Code, which stipulates a prison sentence of up to 5 years and a fine of 45,000 euros, directing criminal policy towards protecting the justice system and individuals once a final decision is issued to reject the charge or close the case.

Second: the procedural and civil mechanisms for protecting the affected party.

Criminal policy was not limited to punitive deterrence; it also enabled the victim to claim civil compensation for material and moral damages resulting from a malicious complaint. This was based on the general rules of tort liability stipulated in Articles 202 and 204 of the Iraqi Civil Code, in addition to the principle of prohibiting the abuse of the right to litigation, as stipulated in Article 7 of the same law.

This principle is equivalent in comparative legislation to Article 361 of the French Code of Civil Procedure. Furthermore, legal opinions have tended to strengthen the principle of prior prevention by activating the legal oath during the preliminary investigation stage and reviewing rehabilitation rulings to limit the exploitation of procedural loopholes.

Section two

Procedural mechanisms and judicial applications of criminal policy.

The effectiveness of criminal policy depends on the procedural mechanisms and judicial applications implemented in practice. To highlight the practical dimensions of this topic, this section is divided into two parts. The first part deals with procedural safeguards during the preliminary investigation stage, while the second part addresses judicial applications and proving bad faith before the Court of Cassation.

Sub-Section One

Criminal procedural safeguards in the preliminary investigation stage

The preliminary investigation stage constitutes the first line of defense against malicious complaints, as it is the responsibility of the investigating authorities to scrutinize the reports to ensure their seriousness before taking any action that affects the freedom of the accused, through two main branches:

Branch One: The investigating judge's authority to review the complaint and conduct investigations

The provisions of the Iraqi Code of Criminal Procedure No. 23 of 1971, as amended, grant judges' discretionary power to verify the accuracy of information before hastily issuing an arrest warrant or summons. Sound criminal policy at this stage requires not relying solely on the complainant's statement, but rather tasking judicial officers with conducting swift and thorough investigations that reveal the seriousness of the report or uncover any suspicion of malicious or retaliatory intent.

Branch two: Activating the legal oath as a deterrent standard.

On the other hand, criminal jurisprudence emphasizes the importance of administering a legal oath before recording the complainant's statement in detail, especially in cases lacking physical evidence and relying entirely on oral testimony. This step places the complainant directly under criminal liability and serves as a procedural deterrent, limiting the inundation of the judicial system with malicious reports.

Sub-Section Two

Judicial applications and legal adaptation of compensation for damages

Criminal policy is embodied in the rulings of the discriminatory judiciary, which sets precise standards for proving malicious intent on the one hand, and paving the way for the victim to obtain his rights on the other. We will address this in the following two branches:

First branch: Trends in the Iraqi-French Court of Cassation in proving malicious intent.

The Iraqi Court of Cassation and the French Court of Cassation did not stop at simply issuing a ruling that there was "no grounds for prosecution" or releasing the accused due to insufficient evidence. Rather, they considered that this alone was not enough to prove the malicious intent behind the complaint. Therefore, the Federal Court of Cassation, in agreement with the French Court of Cassation, requires conclusive proof of bad faith and the invalidity of the accusation. The Federal Court of Cassation ruled that civil compensation is due for a malicious complaint, according to Articles 7 and 202 of the Iraqi Civil Code, whenever the invalidity of the accusation is proven and a final decision is issued to dismiss the case. This is consistent with the directive of the French Court of Cassation, which stipulates that an unfair complaint must include an element of bad faith, which is proven upon reporting, in order to prevent hesitation in reporting crimes.

Second branch: Criminal Consequences and Compensation for Malicious Complaints.

Filing a malicious complaint has two legal consequences. The first is a criminal consequence, which is the initiation of criminal proceedings against the false complainant, based on the provisions of Article (243) of the Iraqi Penal Code and its equivalent in Article (226-10) of the French Penal Code. The second is a civil consequence that arises after the criminal judgment becomes an acquittal or a final decision is issued to dismiss the case, as the aggrieved party has the right to claim compensation for the material and moral damages resulting from the malicious complaint, based on the provisions of Article (202) of the Iraqi Civil Code and Article 91 of the French Code of Criminal Procedure.

Conclusion

In conclusion, this research shows that criminal policy in dealing with malicious complaints seeks to achieve a delicate balance between preserving the constitutionally guaranteed right to litigation and preventing the exploitation of the courts to harm others. Based on the above, we have reached a number of conclusions and proposals.

First: Conclusions.

1. Protecting individuals from the negative effects of malicious complaints depends on the extent to which the judge's authority to investigate and scrutinize reports before making coercive decisions is activated.

2. The Iraqi Federal Court of Cassation clearly distinguished between releasing the accused due to insufficient evidence and proving the malicious nature of the complaint and its connection to the complainant's bad faith.

3. Civil compensation is a means of redressing moral and material damages, but it remains conditional on the issuance of a final criminal judgment proving that the report was false or malicious.

Second: Proposals.

1. We suggest that the Iraqi legislator activate a procedural provision that requires the complainant to take the legal oath when recording his statements in minutes and reports that rely solely on oral attribution.

2. We suggest urging investigating judges not to rush into issuing arrest or detention orders unless investigations confirm the accuracy of the information and its freedom from suspicion of revenge.

3. We propose to expedite the filing of a criminal case against the malicious complainant based on Article (243) of the Iraqi Penal Code No. (111) of 1969, as soon as his bad intention is proven, in order to deter anyone who tries to exploit the justice system unlawfully.

References

First: Arabic Books.

Ibn Manzur, Abu al-Fadl Jamal al-Din, Lisan al-Arab, Dar Sader, Beirut.

Second: Legal books.

1. Ahmed Fathi Sorour, The Mediator in Penal Law - General Section, Dar Al-Nahda Al-Arabiya, Cairo
2. Saeed Hasaballah, Explanation of the Code of Criminal Procedure, Dar Al-Hikma Printing House, Baghdad, 2015.
3. Dhari Khalil Mahmoud, False Reporting and the Crime of False Informing, A Comparative Study, Baghdad.
4. Ali Hussein Muhammad Al-Janabi, Criminal Policy in Deterring the Malicious Complainant, Dar Kutub, Baghdad, 2024.
5. Fakhri Abdul Razzaq Al-Hadithi, Explanation of the Penal Code - Special Section, Dar Al-Kutub Press, Baghdad.
6. Maher Abdul Shweish Al-Durra, Provisions of the Penal Code - Special Section, Dar Al-Hikma, Baghdad, 2018.

Third: Constitutions.

1- Constitution of the Republic of Iraq for the year 2005.

Fourth: Laws.

1- The French Press Law of July 29, 1881
2- The Iraqi Civil Code No. 40 of 1951, as amended.
3- The Iraqi Penal Code No. (111) of 1969, as amended.
4- The Iraqi Code of Criminal Procedure No. (23) of 1971, as amended.
5- The French Code of Civil Procedure issued by Decree No. (75/1123) dated 5/12/1975, as amended.
6- The Iraqi Judicial Organization Law No. (160) of 1979, as amended.
7- The French Penal Code, as amended by Law No. 769-2010 of July 9, 2010.

Fifth: Scientific Journals and Periodicals

1- The Judiciary Journal, Iraqi Bar Association, Bar Association Press, Baghdad, Issue 1, 2019. The Judicial Bulletin, Media Office of the Supreme Judicial Council, Baghdad, Issue 6, 2020.

Sixth: Judicial Decisions and Applications

1- Decision of the Iraqi Federal Court of Cassation, Criminal Division, Decision No. 184/Criminal Division/2018, dated March 12, 2018.
2- Decision of the Iraqi Federal Court of Cassation, Expanded Panel, Decision No.: 512/Expanded Panel/2020, dated 6/24/2020.

Seventh: Foreign books (Foreign Sources)

1- Jean Pradel, Droit pénal général, Éditions Cujas, Paris (Jean Pradel - Criminal Law)
2- Wilfrid Jeandidier, Droit pénal spécial, Dalloz, Paris. (Wilfrid Jeandidier - Special Criminal Law).

NIU Journal of Legal Studies Copyright©2026
Nexus International University ISSN: *3007-1860;* 12(3): 11-17

Beyond the Stroke of a Pen: The Legal Consequences of Pardons in Nigerian and American Jurisdictions

SOGUNLE BENJAMIN ABAYOMI
Olabisi Onabanjo University, Ago-Iwoye, Ogun State, Nigeria

NAT OFO, UGIOMO ERUTEYA
Igbinedion University, Okada, Edo State, Nigeria

Abstract. The executive power of pardon, deeply rooted in constitutional traditions like Section 175 of the Nigerian 1999 Constitution and Article II of the United States of American constitution transcends simple sentence mitigation. While historically designed as an equitable safety valve to temper justice rigidity, promote public safety, among many others, the exercise of pardon power/executive clemency increasingly challenges the separation of powers and judicial finality frameworks. This paper analyses how the "stroke of a pen" impacts civil rights restoration and criminal records, among others. The paper contrasts the unrestricted scope of federal clemency in the United States with Nigeria's advisory model via the Council of State. The paper further scrutinizes the legal fiction established in *Ex parte Garland* - that a pardon blots out guilt - against contemporary jurisprudence where historical convictions persist despite the restoration of civic privileges. Finally, the paper concludes that historical conviction embedded within state law enforcement archives can still be factored in by sentencing courts as an aggravating circumstance for sentencing enhancement during subsequent criminal prosecutions.

1. Introduction

The executive prerogative of mercy, which in modern constitutional democracies is expressed only in the pardon of the president, is one of the most potent and interesting survivals of the absolute sovereignty of the past. In the past, the pardon power was understood within the context of the monarchy as an expression of God's divine favor and grace, and as a means of mitigating the harshness of the early criminal laws. This prerogative, as put by the English jurist William Blackstone, was a "fountain of mercy" and the King "may always (when) circumstances call for it", may take into consideration "exceptions of equity" and show "the most compassionate lenity of his disposition" when "his benign and tender regard" for those who suffer from a "privileged situation" deems it "just" to provide relief.

This monarchical tool did not suddenly vanish as states changed from absolute monarchies to constitutional republics, but rather was deliberately transferred into current constitutional systems. The framers of the two supreme laws of the land in both Federal Republic of Nigeria and the United States of America considered an executive clemency mechanism an essential safety valve. It was felt that it was necessary to set right "natural" mistakes made by the courts; to compensate for "moral rehabilitation" which was long overdue; and to offer a means for social healing and reconciliation in the event of civil strife or political changes.

However, in modern constitutional practice, the use of this power often goes beyond its classic, textbook purpose and renders itself to be active and engaged at a highly volatile and contested nexus between constitutional law, partisan politics, and institutional ethics. The benefits of a president's clemency extend much further than the "stroke of the pen". A pardon is not simply an end to a prison term - it precipitates significant institutional, civil and legal changes. It changes the civic identity of the recipient, interferes with existing criminal records and makes the separation of powers in a democratic state a pressing matter. To understand the post - pardon reality, some deep-dive work is required to be done on how administrative mercy affects the finality of judicial decisions.

2. Constitutional Frameworks of Pardon or Prerogative of Mercy or Clemency

The constitutional authority for the exercise of executive clemency in the Federal Republic of Nigeria is explicitly anchored in Sections 175[1] and 212[2] of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)[3]. Section 175 provides:

(1) The President may -

(a) grant any person concerned with or convicted of an offence created by an Act of the National Assembly a pardon, either free or subject to lawful conditions;

(b) grant to any person a respite, either for an indefinite or a specific period of the execution of any punishment imposed on that person for such an offence;

(c) substitute a less severe form of punishment for any punishment imposed on that person for such an offence;

(d) remit the whole or any part of such 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.

One thing that sets the Nigerian model apart from an absolute executive is the institutional safeguards against the exercise of the sovereign power. Section 175(2) requires the president to act on the powers under this section only after consulting the Council of State.

The constitutionally stipulated requirement for consultation is a requirement that has been carefully separated from the obligation to obey by Nigerian jurisprudence. The President, as the ultimate decision maker, has no obligation to follow the advice of the Council of State as the case in *FRN v Achida*[4] demonstrates. However, a pardon which is announced without reference to the Council of State is a breach of a mandatory condition precedent in the Constitution and therefore is ultra vires, null and void.

Also, Section 175 does not apply to state charges. There is also a sub-national level parallel architecture with Section 212 of the Constitution[5] giving equivalent powers to State Governors, who consult the State Advisory Council on the prerogative of Mercy. This division of structure ensures that federal government does not overreach into state prosecuted crimes, thus creating a clear jurisdictional limit in Nigeria's Federal system.

Unlike the Nigeria model of structurally checked executive with consultation on the results of checks, Article II, Section 2, Clause 1 of the United States Constitution is marked by near unlimited executive autonomy.[6] The United States Constitution gives the president the power to grant reprieves and pardons for offences against the United States, except in Cases of Impeachment, in Article II, Section 2, Clause 2. It should be emphasized that the simplicity of this clause highlights its broad scope. By virtue of the royal prerogative commonly used in England this power has been held to be an inherent executive attribute of the President. The U.S. President is not required by the Constitution to consult with any council, cabinet or legislative body before issuing a pardon, unlike the Nigerian President. The Department of Justice has an Office of the Pardon Attorney to consider clemency applications based on administrative guidelines, but those guidelines are administrative and do not have any legal effect on the President.[7] A Pardon Attorney is not required, and the President can issue a pardon without his help through a simple executive order.

It should also be emphasized that there are dual and absolute restrictions on the U.S. presidential pardon as expressed in the text. Firstly, the authority is limited to "Offences against the United States", which are federal offences, and the President has no constitutional authority of pardon over people who are convicted of state offences which are the responsibility of state governors. Second, it is clear that the pardon power cannot be exercised in Cases of Impeachment. This restriction prevents the heads of executive power shielding civil officers from removal and disqualification by the legislature.

3. Comparative Analysis: Unilateralism vs. Advisory Consultation.

The United States has a model of pure Executive unilateralism. Congress may not limit, amend or audit the exercise of the pardon power by the President, as the Supreme Court of the United States explained in

[1]Constitution of the Federal Republic of Nigeria 1999 (as amended), s 175.

[2]Constitution of the Federal Republic of Nigeria 1999 (as amended), s 212.

[3]Constitution of the Federal Republic of Nigeria 1999 (as amended).

[4]*Federal Republic of Nigeria v Achida* (2018) LPELR-46132 (CA).

[5]Constitution of the Federal Republic of Nigeria 1999 (as amended).

[6] US Const art II, § 2, cl 1.

[7]J Crouch, *The Presidential Pardon Power*(University Press of Kansas 2009) 44.

United States vs Klein.[8] This is a framework that emphasizes rapid and unobstructed executive decision making and treats the president as a constitutional player who can ensure equity without bureaucratic delay.

By contrast Nigeria's model is a reflection of a deep-rooted fear of the possessor of unchecked power. The Nigerian Constitution seeks to force consensus-seeking through the institutionalization of the Council of State as an advisory filter, through the wisdom of the heads of all three branches of government, either at the time or from the past. The Council's role is not a legal one and their contributions are advisory, but in structure there is a political and bureaucratic face to the process in the Council which is entirely lacking in the United States. Consequently, while in the United States of America, the President is not required to consult the Council, there is a constitutional assembly in Nigeria that must be consulted before the President can give an absolute pardon in a highly controversial case, and the assembly is composed of diverse members to act as an institutional check on arbitrariness, granted at nighttime.

In the United States, the final case on jurisprudential ground is the post-Civil War decision of *Ex parte Garland.*[9] In Garland, the U.S. Supreme Court faced a law passed by Congress which prohibited those who had supported the Confederacy from practicing law in federal Courts. One of those pardoned by President Andrew Johnson, A.H. Garland, challenged the statute. In the course of this opinion, Justice Field established a broad rule on the legal implications of pardon that can be found in the following text:

A pardon reaches both the punishment prescribed for the offence and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as he were a new man and gives him a new credit and capacity. [10]

In other words, the *Garland* doctrine established that a presidential pardon completely obliterates both the penalty and the legal guilt, acting as a total erasure of the conviction's legal memory. [11]
Also, in *Carlisle v United States*[12], the court had this to say about the effect of pardon:
It is true, the pardon and amnesty cannot alter the actual fact that aid and comfort were given by the claimants, but they forever close the eyes of the court to the perception of the fact as an element in the judgment, no rights of third parties having intervened….All have agreed that the pardon not only releases the offender from the punishment prescribed for the offence, but that it obliterates in legal contemplation the offence itself.[13]

That's the centerpiece of American clemency law, and the Garland case is still the mainstay of that principle, in which the pardon power is protected from legislative erosion. However, in cases like *Burdick v United States*[14] and *Biddle v Perovich* the courts backed away from the principle enunciated in the above two cases that a pardon serves as a remission of guilt. In the second instance the court said that a pardon does not result in the removal of guilt. As Justice Holmes says:
A pardon in our days is not a private act of grace from an individual happening to possess power. It is a part of the constitutional scheme. When granted, it is the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgment fixed.[15]

The court here made the point that a pardon is not for the guilt but is to be used to lessen or modify a penalty. The idea behind this is that a pardon eradicates not the entire guilt of the person receiving it.
Toeing a similar path, the Supreme Court observed in Burdick that the 'the grace of a pardon, though good its intention, may be only in pretense or seeming; ….involving consequences of even greater disgrace than those from which it purports to relieve." Moreover, the court recognized the "imputation of guilt" in the acceptance of a pardon; that is, by accepting a pardon, there is an "imputation of guilt. A pardon does not erase the historical or legal fact of the conviction, but rather recognizes its validity.

[8] *United States v Klein*80 US (13 Wall) 128 (1871).
[9] *Ex parte Garland*71 US (4 Wall) 338 (1866).
[10] *Ex parte Garland*71 US (4 Wall) 338 (1866) 380–81.
[11] WH Humbert,*The Pardoning Power of the President*(American Council on Public Affairs 1941) 67.
[12] *Carlisle v United States*83 US 147 (1873).
[13] Carlisle (n 13) 151.
[14] *Burdick v United States*236 US 79 (1915).
[15] *Biddle v Perovich*274 US 480 (1927) 486; see also OS Buchanan, '*The Nature of a Pardon under the United States Constitution*' (1929) 39 Ohio State Law Journal 36.

A pardon cannot take away a forfeiture, therefore, in the Nigeria case of *Falae v Obasanjo*[16], the then Musdapher JCA (now Justice Abu-Salli) had this to say about the legal effect of a pardon:

In my view, under Nigerian law there is no distinction between "pardon" and "full pardon". A pardon is an act of grace by the appropriate authority which mitigates or obliterates the punishment the law demands for the offence and restores the rights and the privileges on account of the offence. The effect of a pardon is to make the offender a new man, or *novus homo,* to acquit him of all corporal penalties and forfeiture annexed to the offence pardoned.

But in the earlier case of *Okongwu v State,* the same court held that the effect of a free pardon is 'to remove all pain, penalties and punishments whatsoever that from the said conviction may arise' but not the conviction itself.[17]

It is clear from the above that the impact of a legal pardon is not as straight-forward as a casual reader may imagine. The *Garland* and *Obasanjo* courts would say that a pardon eradicates the guilt of any crime. But *Burdick* and *Okongwu* figured a pardon is just a forgiveness from punishment of a crime. There are many questions that need to be considered here. First, does pardon erase a crime or does it only take the punishment for a crime? Secondly, does a conviction still exist after the pardon? Ironically, any answer provided to any of these questions is bound to trigger a number of other troubling questions.

4. Deconstructing *Garland* and *Falae*

The jurisprudential limits of clemency were put to the test in *Falae v Obasanjo* in Nigeria.[18] The case was brought up following the 1999 presidential election where Chief Olu Falae challenged the election of General Olusegun Obasanjo. One of the main arguments in the petition was that Obasanjo was constitutionally barred from running for President as he had been convicted of treasonable felony by the military tribunal during the Abacha era. Obasanjo responded with a full pardon accorded him by the transitional Head of State, Gen. Abdulsalami Abubakar, in the interim constitutions that preceded the 1999 Constitution. The Court of Appeal had to now clarify the exact meaning of that pardon in terms of Obasanjo's civil and political rights. The court held that a full pardon virtually cancelled out the effects of the conviction and restored the person so pardoned to his civil status, including the right to run for office.

The Nigerian and the American courts in *Okongwu* and *Burdick* respectively, however, took a more pragmatic approach, unlike *Garland*'s sweeping poetic language which claimed to "blot out guilt" from existence. The courts decided that the disqualification was extinguished, but the facts of a previous conviction still stood and the Judicial records did not. This separation between the restoration of civic capacity and the erasure of historical truth, which began to crystallize in the United States with the cases of *Biddle v Perovich*[19] and *Burdick v United States*[20], and scholarly and judicial attitudes in Nigeria, set the stage for the contemporary debate about the realities of the post-exoneration in the two jurisdictions.

Scholarly and judicial opinions in modern times do not support the view that pardon blots out all guilt for the underlying offence. In one of his essays in the Harvard Law Review, Professor Samuel Williston questioned the Garland notion of a pardon as he wrote:

Everybody knows that the word "pardon" naturally connotes guilt as a matter of English. Everybody also knows that the vast majority of pardoned convicts were in fact guilty; and when it is said in the eye of the law they are innocent as if they had never committed an offence, the natural rejoinder is, then the eyesight of the law is very bad.[21]

In the same way, in *Knote v United States*[22], the Supreme Court of the United States attacked the absolute conception of mercy, calling it a legal fiction. According to the court, the idea of a presidential order that in essence rewrites history and makes a convicted felon an immaculate innocent is a fiction of the law. Rejecting the view that pardon wipes away all guilt from its recipient, the Supreme Court stressed thus:

Pardon does not make amend for the past. It affords no relief for what has been suffered by the offender in his person by imprisonment, forced labour, or otherwise; it does not give compensation for what has been done or suffered, nor does it impose upon the government any obligation to give it. The offence being established by judicial proceedings, that which had been done or suffered while they were in force is presumed to have been rightfully done and justly suffered, and no satisfaction for it can be required.

[16]*Falae v Obasanjo (No 2)*(1999) 4 NWLR (Pt 599) 420.
[17]*Okongwu v State*(1986) 5 NWLR (Pt 44) 721.

[18] *Falae v Obasanjo (No 2)*(1999) 4 NWLR (Pt 599) 476.
[19]*Biddle v Perovich*274 US 480 (1927).
[20]*Burdick v United States*236 US 79 (1915).
[21]Samuel Williston, '*Does a Pardon Blot out Guilt?*' (1915) 28 Harv L Rev 647, 653; see also*United States v Noonan*906 F 2d 952, 958–59 (3d Cir 1990).
[22]*Knote v United States*95 US 149 (1877).

Another good reason for accepting the position of the courts in *Burdick* and *Okongwu* is premised on the doctrine of separation of powers. The separation of powers has been the subject of several decisions by the Courts of Nigeria[23] and the United States of America specifically in the context of pardoning power. No doubt, it is the intention of the constitutions of the two jurisdictions under reference that each of the great coordinates of departments of government - the Legislature, the Judiciary and the Executive- shall be, in its sphere, independent of others. The presidential pardon power is an important aspect of this system of checks and balances. The pardoning power is a power to curb the power of the judiciary as it allows the president to make a pardon for any person who has been convicted of a federal offense, it is trite that the other powers of government should not encroach on the power of the president. Hence, if the arguments of Garlant and Obasanjo that pardon eradicates guilt, and the fact of conviction is accepted as law, that would equate to the executive taking over judicial power, running counter to the balancing effect of a pardon, and creating a power in the executive which itself must be quickly neutralized. The rejection of the expansive view of the blotting out doctrine is therefore laudable. It's an illusory legal fantasy and is not practicable.

It is therefore necessary to consider some other related issues that are fundamental to the proper understanding of the consequences attached to the position taken above that a pardon obliterates the guilt and not the fact of conviction.

5. The Legal Status of Criminal Records and Expungement in Both Jurisdictions

It is noteworthy that there is a major difference between the judicial or administrative act of expungement and the executive act of pardon in the United States and Nigeria. A presidential pardon does not necessarily result in the expungement or sealing of a criminal record in the United States.[24] The Department of Justice's Office of the Pardon Attorney clearly states in its information to recipients that their criminal history files will still report the conviction along with the executive pardon decree.[25] Therefore, the crime for which one is pardoned, and a description of the pardon, will remain listed if a background check is performed on the pardoned person. There could be employment challenges in this area as barriers could be raised with respect to a person's suitability.[26] If the recipient "qualifies" for separate, statutory record eradication or sealing provisions, those provisions are not typically available for serious federal felony convictions. This conviction remains an historical fact that can be retrieved by law enforcement authorities, academics, and employers.

A similar situation exists in Nigeria, but is underpinned by a much more diverse statutory framework. A presidential pardon under Section 175 will not be an expungement order. The point is, though the Nigeria Administration of Criminal Justice Act[27] seeks to institutionalize and centralize the collection and biometric tracking of data of criminals, it fails to provide provisions on mechanisms or protocols for the expungement of those records once a person has serviced his sentence. So, there is a dearth of a single, all-encompassing federal statute in Nigeria to expunge adult criminal records. The Nigerian Police Force Central Criminal Records Registry[28] archives Criminal records. The President's pardon would have to go to the Ministry of Justice for the official gazette to be passed to the police to change the person's file. The record is not erased on the model, or physically destroyed. The entry is changed to show that a pardon was issued, and that the conviction will still be available in state intelligence records. Thus, clearing a criminal record in Nigeria relies primarily on executive discretion vide executive clemency. Going by the decision of the Supreme Court in *Falae v Obasanjo*[29] that a pardon extinguishes conviction and blots out the effect of guilt, a pardon operates as an expungement of criminal record. The problem here however is that the a radically opposed decision of the same court in Okongwu v State still subsists and was neither brought to the attention of the court nor overruled in *Falae v Obasanjo*[30]. In *Okongwu v State*[31], the Supreme Court had earlier held that the effect of a free pardon is 'to remove all pain, penalties and punishments whatsoever that from the said conviction may arise' but not the conviction itself.

[23]See*Solola v The State* (2005) 11 NWLR (Pt 937) 460; *FRN v Achida* (2018) LPELR-46065 (CA).
[24]United States Department of Justice, *Effects of a Pardon* (Office of the Pardon Attorney 2021) 3.
[25]ibid 4.
[26]Congressional Research Service, *The President's Pardon Power and Legal Effects on Collateral Consequences*, R44571 (2015).
[27]Administration of Criminal Justice Act 2015, s 16.
[28]Police Act 2020, s 67.
[29]*Falae v Obasanjo (No 2)* (1999) 4 NWLR (Pt 599) 420.
[30]*Falae v Obasanjo (No 2)* (1999) 4 NWLR (Pt 599) 420.
[31]*Okongwu v State* (1986) 5 NWLR (Pt 44) 721.

6. Civic Restoration: Voting Rights, Gun Ownership, and Professional Licensure

The fundamental purpose of a full pardon is to eliminate the civil disabilities that are attached to a criminal conviction, which are sometimes referred to as "collateral consequences[32]. In the United States, a federal pardon restores important civil rights — the right to vote in federal elections, serve on a federal jury and hold a federal public office[33].

But the return of other privileges is quite complicated. Generally, a federal pardon will restore the right to possess a gun, unless the pardon paper explicitly denies it, under the Gun Control Act of 1968[34]. Professional licensing boards (e.g., the state bar, medical boards, or financial regulatory boards) are, on the other hand, independent and autonomous entities[35].. A pardon does not remove the statutory requirement of having good moral character, and the licensing board may still take into account the conduct underlying the conviction in determining whether the individual has good moral character[36].

A pardon in Nigeria has constitutional repercussions. The 1999 Constitution bans disqualification of persons convicted of dishonesty or fraud from contesting National Assembly or presidential elections for a ten-year period from the date of their conviction[37]. As the Court of Appeal had ruled in *Falae v Obasanjo*, the 10-year disqualification period is automatically nullified upon the issuance of a full pardon and the disenfranchised person will be granted the full political rights to vie for any public office.

In addition, a pardon in Nigeria re-enables basic civil freedoms such as being appointed to civil boards or being awarded state honours. It is submitted here, however, that like the American system, a pardon is not a licence for professional organisations like the Legal Practitioners Disciplinary Committee (LPDC) or the Medical and Dental Council of Nigeria (MDCN) to reinstate a debarred professional[38]. In this context, the decision of Judge Schwelb in *re Abrams*[39] is encouraged to the Nigerian courts. Judge Swchwelb said:

Suppose that an alcoholic surgeon performs an operation while intoxicated. He botches the surgery. The patient dies. The surgeon is convicted of manslaughter and is sentenced to imprisonment. The president grants him a full and unconditional pardon. According to Abrams, the surgeon now has the right, as a result of the pardon, to continue to operate on other patients, without any interference from the medical licensing authority………this is altogether unacceptable and even irrational.[40]

Another possible explanation for this stance is that these regulatory agencies have different statutory jurisdictions and may be able to deal with the pardon as irrelevant to their investigation of the moral character of the practitioner. It is confirmed by the very strong arguments of Prof. Samuel Williston in the following statement:

If the mere conviction involves certain disqualifications which will not follow from the commission of the crime without conviction, the pardon removes such disqualifications. On the other hand, if character is a necessary qualification and the commission of the crime would disqualify even though there had been no criminal prosecution for the crime, the fact that the criminal has been convicted and pardoned does not make him any more eligible.[41]

7. The Use of Pardoned Convictions for Sentence Enhancement

Perhaps the clearest indicator that a pardon does not "blot out guilt" is the capacity of courts to utilize a pardoned conviction to increase the punishment for a subsequent crime.[42] The Supreme Court in the United States squarely faced this question in *Carlesi v New York.*[43] The court determined that although a person may have been acquitted once, due to a presidential pardon, for a federal crime, a state court could still consider such past conviction for a different crime, committed at a later date, under a "habitual offender" or "three strikes" provision in a state statute[44]. The court concluded that a second time use of a past conviction for sentence enhancement is not punishment for the offense that has been already

[32]NV Demleitner, 'Preventing Internal Exile: The Need for Restrictions on Collateral Sanctions' (1999) 11 Federal Sentencing Reporter 169, 171.
[33]*Knote v United States*95 US 149 (1877).
[34]Gun Control Act 1968, 18 USC § 921(a)(20).
[35]*In re Ring*401 SE 2d 279 (Ga 1991).
[36]*Page v Watson*192 So 205 (Fla 1938).
[37]Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 66(1)(h), 137(1)(e).
[38]Legal Practitioners Act Cap L11 LFN 2004 (as amended), s 11.
[39]*Re Abrams*689 A 2d 6 (DC 1997) (en banc) 19.
[40]*Re Abrams*689 A 2d 6 (DC 1997) (en banc) 19.
[41]Williston (n 22) 653.
[42]Samuel Williston, '*Does a Pardon Blot out Guilt?*' (1915) 28 Harv L Rev 647, 653.
[43]*Carlesi v New York*233 US 51 (1914).
[44]ibid 57.

forgiven, but rather is serving as context of the individual's chronic criminal behavior.[45]

Under statutory interpretation the jurisprudential basis of sentence enhancement after pardon is not as developed in Nigeria. Section 311 of the Administration of Criminal Justice Act (ACJA)[46] requires a sentencing court to take into account the character and criminal history of the defendant. If a defendant has a previous conviction that has been subsequently discharged, and he commits a second crime, then the prosecution may introduce evidence of the previous crime. But given the Supreme Court's ruling in *Falae v Obasanjo*[47] that the consequences of a pardon is to make the offender a new man (*novus homo*) therefore acquitting him of all corporal penalties and forfeiture attached to the offence for which he was being prosecuted, it is hard to see how a pardon conviction can be used to enhance his punishment for another subsequent offence, except the Supreme Court desires to be guided by its earlier judgment in *Okongwu v State.*[48] If the Supreme court sticks with its decision in *Falae v Obasanjo*[49], however, it could take the view that taking into consideration a prior conviction for an offence committed by the same offender against the laws of the Federal Republic of Nigeria despite a pardon is tantamount to a punishment for such prior crime which would make the act of the state void because it destroys or circumscribe the effect of the pardon granted under the constitution. However, it is submitted that sticking with its decision in Okongwu v State is a better option for the Supreme Court. What this means is that by so doing the court is not seeking to make the pardoned offence an aggravating circumstance to be considered when it comes to the second offence, but rather it is making the conduct which is the basis of the pardoned offence itself an aggravating circumstance.

8. Conclusion

The paper has examined the legal, constitutional and institutional implications of the executive prerogative of mercy in the Federal Republic of Nigeria and United States of America. The analysis confirms that the expression of a presidential pardon is far from a 'stroke of a pen' and tends to create an immediate disarray within the administration of justice and the separation of powers of the Constitution. This paper, which engages with classic jurisprudence, notably *Ex parte Garland* in the United States and *Falae v Obasanjo* in Nigeria, through systematic breaking down of the legal myth of a complete blot-out of historical guilt by a full pardon. In both common law systems, it is recognized as an effective way of terminating the continuous execution of punishment and reaffirming important civil rights, it should not, and cannot, be an automatic expungement order. Even years after the historic conviction, it is still a factor that can be fairly considered by sentencing courts in later criminal prosecutions as aggravating factors that warrant sentence enhancement, and a factor that should be easily retrievable from state law enforcement records.

[45]*United States v McMurtrey*949 F 2d 403 (8th Cir 1991).
[46]Administration of Criminal Justice Act 2015, s 311.
[47]*Falae v Obasanjo (No 2)* (1999) 4 NWLR (Pt 599) 420.
[48]*Okongwu v State* (1986) 5 NWLR (Pt 44) 721.
[49]*Falae v Obasanjo (No 2)* (1999) 4 NWLR (Pt 599) 420.

NIU Journal of Legal Studies Copyright©2026
Nexus International University ISSN: *3007-1860;* 12(3): 19-26

Medical Records Under Nigerian Law: A Critical Appraisal of Patient Autonomy, Privacy, Confidentiality, Data Protection and Access to Justice

ERIC EFE UGHUMIAKPOR, FLORA EJIRO AGHOGHO
Faculty of Law, Dennis Osadebay University, Asaba, Delta State, Nigeria

OGHENEMINE STEPHEN ONORIOSE
Special Assistant to the Honourable Attorney General and Commissioner of Justice, Delta State, Nigeria

Abstract. Medical records are simultaneously instruments of clinical care, repositories of sensitive personal information, evidence of treatment, and potential evidence in medical-negligence proceedings. Their accessibility therefore implicates patient autonomy, informed decision-making, continuity of care, privacy, confidentiality, data protection and access to justice. Nigerian law does not, however, provide a single and comprehensive statutory regime governing patients' access to medical records. Relevant norms are dispersed across the Constitution of the Federal Republic of Nigeria 1999 (as amended), the National Health Act 2014, the Patients' Bill of Rights, the Nigeria Data Protection Act 2023 (NDPA), the Freedom of Information Act 2011, the Evidence Act 2011, professional ethical rules and the common law. This article critically examines the interaction of these regimes and argues that Nigerian law now recognises a substantive, though procedurally incomplete, right of patients to access personal health information. The article distinguishes custody of the physical record from legal interests in the information it contains; analyses confidentiality, therapeutic privilege, third-party information, minors, persons lacking capacity, deceased patients and electronic records; and considers the evidentiary significance of access in negligence litigation. Comparative lessons are drawn principally from the United Kingdom's subject-access framework. The article concludes that the principal Nigerian deficit is not the absence of a right but its fragmentation and weak procedural enforcement. It proposes a unified statutory regime providing for inspection, copies, explanation, correction, secure electronic portability, prescribed response periods, proportionate fees, reasons for refusal, redaction and independent review.

Keywords: Medical records; patient autonomy; privacy; confidentiality; data protection; patient rights; medical negligence; access to justice.

1. Introduction

The modern law of healthcare has moved progressively from paternalism towards autonomy, participation and respect for the dignity of the patient (Pellegrino and Thomasma, 1988). A patient is no longer properly understood as a passive recipient of professional decisions. Meaningful autonomy requires access to sufficient information to understand a diagnosis, evaluate treatment options, obtain a second opinion and participate in decisions affecting bodily integrity. Access to medical records is a practical expression of that transformation.

Medical records may contain medical history, examination notes, diagnoses, laboratory and radiological results, prescriptions, operative and anesthetic notes, nursing observations, consent forms, referral letters, discharge summaries and electronic communications generated during treatment. They therefore have a dual character. On one hand, they are operational documents required for safe and continuous healthcare. On the other, they are repositories of information about an identifiable individual and may become critical evidence in disputes concerning treatment.

The practical importance of access is considerable. A patient may require records to transfer care, obtain a second opinion, understand treatment, correct inaccurate information, make an insurance claim, establish entitlement to benefits, investigate suspected malpractice or institute proceedings. The evidentiary dimension is particularly significant in Nigeria because much of the documentary material necessary to reconstruct treatment is ordinarily held by the healthcare institution. In *Ojo v Gharoro* (2006), the Supreme Court demonstrated the evidentiary difficulty confronting a claimant in a medical-negligence action, including the importance of appropriate medical evidence. The case involved a surgical operation following which a broken needle was discovered in the patient's abdomen. Although the Court ultimately rejected the negligence claim, the case illustrates the informational imbalance between a patient and an institution possessing the records of treatment.
At the same time, health information is among the most private categories of personal information. Disclosure to unauthorised persons may expose patients to stigma, discrimination, embarrassment or other harm (Stauch et al, 2012).

The legal question is consequently not whether access or confidentiality should prevail absolutely. Rather, the law must determine how a patient's right to know information concerning the patient can coexist with the duty to protect that information from inappropriate disclosure.

Nigerian law now contains several important building blocks. Section 34 of the Constitution protects human dignity, while section 37 protects privacy. Sections 23 and 25–29 of the National Health Act 2014 address information, health records, confidentiality and record security. The Patients' Bill of Rights expressly recognises timely access to detailed and accurate medical records and separately recognises privacy and confidentiality. The NDPA (Nigerian Data Protection Act) establishes data-subject rights of access, rectification and portability and expressly treats health status as sensitive personal data. The Evidence Act 2011 regulates the evidentiary use of documents, including electronically generated evidence, while professional regulation reinforces confidentiality.

The central problem one may observe is fragmentation. A patient should not have to construct a right of access by combining provisions from several statutes and a policy document, while the healthcare institution remains uncertain about the precise procedure, deadline, permissible fee, grounds for refusal and mechanism of review. This article therefore asks whether Nigerian law presently provides an enforceable right of access to medical records; what limits may legitimately qualify that right; and what reforms are required to produce a coherent patient-centred regime.

The article adopts a doctrinal and comparative methodology, analysing Nigerian legislation, constitutional provisions, cases, professional and institutional materials and scholarship, with comparative reference to the United Kingdom. It argues that Nigerian law has crossed the threshold from institutional discretion to legal entitlement but lacks the procedural architecture required to make that entitlement reliably effective.

2. Medical Records: Concept, Scope and Legal Character

There is no single exhaustive statutory definition of "medical record" in Nigerian law. Medical record is the legal documentation of all relevant clinical data and his historically paper based (Kristopher et al, 2011). In functional terms, a medical record should encompass information created or maintained in connection with the diagnosis, treatment, management or care of an identifiable patient, irrespective of whether it is held on paper or electronically. This includes registration information, medical history, examination findings, diagnoses, laboratory results, radiological images and reports, prescriptions, medication histories, operative and anaesthetic records, nursing notes, consent documentation, referrals, discharge summaries and relevant electronic communications.

The broader statutory expression "health record" is important because it prevents the law from becoming tied to the traditional physical hospital file. The growth of electronic health records introduces questions of interoperability, authentication, cybersecurity, auditability, retention and evidentiary integrity. Nigerian scholarship has identified accessibility, confidentiality, security and control as central legal concerns arising from electronic medical records (Ihekoronye et al., 2024). The legal framework should therefore be medium-neutral: a patient's right should attach to the information and not depend upon whether the information is stored in a cabinet, server, cloud environment or interoperable health-information system.

The question of ownership also requires conceptual care. It is tempting to ask whether the record belongs to the patient, physician or hospital. That framing obscures the more useful distinction between custody of the record and rights in the information contained in it. A health establishment may have legitimate reasons to retain the original record for continuity of care, professional regulation, audit, statutory retention and litigation. That custodial responsibility does not logically confer an unrestricted power to withhold the patient's personal health information.

The NDPA reinforces this distinction. Its data-subject framework focuses on personal data and the obligations of controllers and processors rather than proprietary ownership of the physical medium. A hospital may therefore remain custodian of an original record while the patient exercises a right to obtain personal data contained in the record. This approach is also consistent with the work of Abimbola and Olugasa (2021), who emphasise that the legal significance of patient records extends beyond physical custody to questions of confidentiality, access and use.

3. Constitutional and Human-Rights Foundations

Section 37 of the Constitution guarantees privacy as well as other regional and global regimes (African Charter on Human and Poeples', 1981). Although medical records are not expressly named, the constitutional value of privacy encompasses intensely personal health information. Privacy here protects the patient against unjustified intrusion by third parties; it should not be converted into a basis for withholding personal information from the person to whom it relates.

Section 34, guaranteeing human dignity, provides an additional foundation. In *Okekearu v Tanko* (2002), the Supreme Court's treatment of consent demonstrated that professional authority over a patient's body is not unlimited. Although the case did not concern records, its autonomy-based reasoning supports the view that patients are rights-bearing participants in healthcare and require access to information necessary for meaningful participation.

4. The National Health Act 2014

The National Health Act (NHA) is central to the Nigerian framework, but its provisions must be read carefully because not every provision concerning health records creates a direct procedure for obtaining the complete file.

Section 23 requires healthcare providers to give users relevant information concerning health status and treatment, including diagnostic procedures, treatment options, benefits, risks, costs and consequences, and the right to refuse services. Information should, where possible, be communicated in a language and manner appropriate to the patient's literacy. Section 23 therefore supplies a strong autonomy-based foundation for access to health information.

Section 25 requires the person in charge of a health establishment to ensure that an appropriate health record is created and available at the establishment for every user. Section 26 establishes confidentiality, subject to specified exceptions such as written consent, court order or legal requirement, requests concerning minors and persons unable to consent, and serious threats to public health. Its proper function is to regulate disclosure to others; it should not be read as a blanket prohibition on disclosure to the patient.

Section 27, despite its heading "Access to health records", principally regulates disclosure by health workers and providers to other persons, providers or establishments where necessary for a legitimate purpose within their duties and in the user's interest. It does not itself prescribe a comprehensive patient subject-access procedure. Section 28 regulates professional access for treatment and authorised study, teaching or research. Section 29 requires measures against unauthorised access, copying, alteration and interference with health records.

The combined effect is important: Nigerian law requires health information to be generated and preserved, protects it from unauthorised disclosure and interference, and recognises lawful sharing. The major deficiency is procedural. The NHA does not comprehensively prescribe how a patient requests a copy, the deadline, permissible fees, reasons for refusal, redaction or independent review.

5. Patients' Bill of Rights

The Patients' Bill of Rights (PBoR), launched in 2018, provides one of the clearest policy formulations of the patient's entitlement. Among its twelve rights are the right to relevant information in a language and 8manner the patient understands; the right to timely access to detailed and accurate medical records and available services; and the right to privacy and confidentiality of medical records. These rights are not unique to Nigeria, they are in similar terms also provided for under global health regimes, such as the World Medical Association's Declaration of Lisbon on the Rights of the Patient (2015) and the rights of Patients: The Basic ACLU Guide to Patient Rights (published by the American Civil Liberties Union). Of these rights are:

- Obtain from his physician complete and current information regarding his diagnosis, treatment, and prognosis in terms the patient can understand.
- Receive from his physician information necessary to give informed consent prior to the start of any procedure and/or treatment, where medically significant alternatives exist, the patient has the right to such information.
- Every consideration of privacy concerning his own medical-care program.
- Expect that all communications and records pertaining to his care will be treated as confidential.
- Expect that, within its capacity, a hospital must make reasonable response to the request of a patient for services or for transfer to another facility when medically permissible.
- Obtain information as to any relationship of the hospital to other health-care and educational institutions as far as his care is concerned.
- Be advised if the hospital proposes to engage in or perform human experimentation affecting his care or treatment.

The significance of the PBoR lies in its combination of access and confidentiality. It rejects the false assumption that these values are contradictory. A patient must be able to obtain personal information in order to exercise autonomy, while the same information must be protected from unauthorised disclosure. The PBoR therefore provides an interpretive bridge between the autonomy and privacy dimensions of medical law.

Its principal weakness is procedural. The PBoR does not prescribe a complete application mechanism, response period, fee structure, redaction rules, electronic delivery, correction procedure or independent review. It is therefore an important interpretive guide, but not a substitute for legislation.

6. Nigeria Data Protection Act 2023: The Strongest Modern Access Right

The NDPA substantially changes the analysis. A patient is not merely a user of health services but a data subject whose health information is personal data processed by healthcare institutions. Section 34 recognises data-subject access and related rights, section 38 addresses portability, and section 65 expressly includes health status within sensitive personal data.

The importance of section 34 is that access is framed as a right rather than an administrative courtesy. The Nigeria Data Protection Commission (NDPC) describes sections 34–38 as providing rights including access, rectification, restriction and portability and operates a Data Subject Access Request mechanism. Its published procedure states that it endeavours to respond promptly and, in any event, within 30 days of a written request and necessary information (Nigeria Data Protection Commission [NDPC], 2026).
Access does not mean that every physical page must automatically be supplied without review. Records may contain protected third-party information. The better view is that the patient should receive meaningful access to personal health information concerning the patient, with proportionate redaction where necessary.

The NDPA also strengthens rectification. A patient should be able to challenge an incorrect allergy, medication, blood group or factual history. Rectification should not, however, become a power to rewrite professional clinical judgment. Where disagreement concerns clinical opinion, the patient's contrary statement may be appended while the original entry and audit trail are preserved.
Section 38 makes portability particularly relevant to healthcare. Secure transfer of personal data can facilitate referrals, second opinions, emergency treatment and continuity of care. Its practical success will depend on interoperability, authentication and cybersecurity.

The NDPA does not resolve every healthcare-specific issue, but it provides the strongest contemporary statutory basis for treating patient access as a legal entitlement.

7. Confidentiality, Privacy and Professional Ethics

Confidentiality is indispensable to effective healthcare because patients must be able to disclose sensitive information without fear of inappropriate exposure (Gillion, 1986). Nigerian scholarship identifies confidentiality as foundational to the doctor-patient relationship and recognises that lawful disclosure may arise through consent, legislation, court order or public interest (Ibitoye, 2018).

The Code of Medical Ethics in Nigeria reinforces professional duties concerning confidentiality and medical information. Confidentiality should be understood primarily as a duty owed for the patient's protection, not as an institutional privilege against the patient. In electronic systems, confidentiality also requires access controls, authentication, audit logs, secure backups and staff training.

8. Medical Records and Access to Justice

Access to records has a direct relationship with the ability to obtain legal redress. A patient considering medical-negligence proceedings may need the record to reconstruct treatment, obtain independent medical advice, identify relevant practitioners, formulate pleadings and instruct counsel.

Ojo v Gharoro (2006) is instructive. The Supreme Court rejected the appellant's negligence claim and emphasised the need for appropriate expert evidence in a complex medical case. The decision illustrates why a patient requires access to the documentary foundation needed to investigate a claim. Where the healthcare institution controls much of that material and can prevent access, informational asymmetry may become a practical barrier to justice.

The Evidence Act 2011 adds another layer and dimension. Medical records may become evidence in civil, criminal or regulatory proceedings, while electronic records raise questions of authenticity, reliability, certification and statutory requirements applicable to electronically generated evidence. Access and admissibility must nevertheless remain distinct. Potential evidentiary objections do not justify blanket denial of access.

The principle of equality of arms is therefore relevant. A healthcare institution should not simultaneously control the principal documentary evidence of treatment and possess an unrestricted power to prevent the patient from obtainin8g it. This does not require surrender of originals or protected third-party material; it requires meaningful access to information reasonably necessary to understand and, where appropriate, challenge treatment.

9. Special Categories of Access

We interrogate some peculiar cases of access to medical record as it relates to minors, persons lacking capacity, deceased persons, third party access, and therapeutic privileges. In the case of a minor, section 26 (2)(b)(i) of the NHA (National Health Act) contemplates disclosure to a parent or guardian in specified circumstances. This becomes a corollary to access to medical records. We share the view, that a legal regime should avoid assuming that parental authority always means unrestricted access to every aspect of an adolescent's health information (Family Law Reform Act, 1969). Reproductive and sexual health, mental-health treatment and abuse-related records may require a more nuanced approach based on age, capacity, best interests and applicable confidentiality rules.

On the other hand, subject to section 27 and as an exception to section 26(1), section 26 (2)(b)(ii) of the NHA (National Health Act) provide for the case of a person who is otherwise unable to grant consent upon the request of a guardian or representative. We submit that, where an adult cannot or do not have the capacity of exercise of the right of access or consent personally, access through a verified guardian or lawful representative may be necessary. The representative's authority should however be proportionate to the purpose for which access is sought and exercised consistently with the patient's interests (Mental Capacity Act, 2005).

On the issue of access to medical records after death, the Hippocratic Oath binds a doctor to keep medical confidences after death, but it is not clear even in jurisdiction such as the UK, whether there is any legal obligation to so do, after the death of the person to whom the duty is owed. The common law is not clear on the issue either. Some statute confirm that confidentiality does not apply to deceased persons (Data Protection Act, 1998, 2018) and some do (the Access to Health Record Act, 1990). As a corollary to the unsettled issue of confidentiality of medical record after death in the UK, the Nigerian law, takes same part on the issue of access to medical record upon the death of a patient, albeit through a more unclear path. There is need for Nigerian law to provide a clearer path to the issue. Surely, legitimate interests may arise in estate administration, medical-negligence or wrongful-death claims, insurance, cause-of-death inquiries and hereditary medical history. A statute should therefore, identify eligible applicants and relevant purposes, while giving substantial weight to the known wishes of the deceased.

Third party access become also apposite, records may contain information supplied by relatives, donor information or information about another patient. Where the patient's information can be separated from protected third-party material, redaction should ordinarily be preferred to wholesale refusal, evince in the case *of Re C* (*A Minor*) (*Evidence: Confidential Information*) and its likes.

On therapeutic privileges, we submit that, a limited therapeutic restriction may be justified where immediate disclosure presents a specific and demonstrable serious risk as evince from *Re B (Minor) Wardship: Sterilisation* (1988). However, it should not become a broad paternalistic doctrine (Pellegrino and Thomasma, 1988). Restrictions should be documented, consideration should be placed on partial or mediated disclosure and should remain subject to review.

10. Timeliness, Fees, Explanation and Form of Access

A right exercised only after prolonged delay may become practically meaningless where records are needed for continuing treatment, a second opinion, insurance or impending litigation. The PBoR's requirement of timely access and the NDPC's (Nigerian Data Protection Commission) 30-day administrative benchmark provide useful starting points. A healthcare regime should establish an ordinary maximum period and expedited procedures for urgent clinical and litigation-related requests.

Fees should not deter access. Electronic access should ordinarily be free where practicable, while reasonable reproduction costs may be charged for paper copies. Meaningful access also requires explanation where necessary because records contain technical abbreviations and specialised terminology (Stauch et al, 2012). This follows the information-based autonomy reflected in section 23 of the NHA and the PBoR.

Patients should be able to receive records securely in electronic form where available. Identity verification, secure transmission and safeguards against unintended disclosure must accompany electronic delivery.

11. Grounds for Refusal and Proportionality

A comprehensive access regime should enumerate limited grounds for refusal, including an unauthorised request, disclosure prohibited by law, protected third-party information, a narrowly defined therapeutic risk, or another lawful and proportionate restriction. Even where a ground applies, complete refusal should not be automatic (Stauch et al, 2012).

Redaction, partial disclosure, delayed or mediated disclosure should be preferred where they can protect the relevant interest while preserving access. Any refusal should be written, specific and reviewable, identifying the information withheld, legal basis, possibility of partial access and route of challenge.

12. Comparative Perspective: Lessons from the United Kingdom

The United Kingdom illustrates the value of a structured subject-access framework (Stauch et al, 2012). Its contemporary data-protection regime generally gives individuals a right to obtain a copy of personal information subject to defined exemptions (Data Protection Act, 2018); and (the Access to Health Record Act, 1990). Under article 15 of the UK GDPA, a data subject generally has the right to obtain confirmation as to whether personal data concerning him or her are being process and, where applicable, access to that data. The DPA (Data Protection Act) supplements this framework and provide certain exceptions, in which disclosure of health information would be likely to cause serious harm to the physical and mental health of the patient or another person (DPA, 2018).

The Information Commissioner's Office states that subject access requests ordinarily attract a response within one month and that information should be supplied in an accessible form (ICO, 2025).

The General Medical Council (GMC) expressly recognizes that patients have rights to access their own health records and requires doctors to assist patients in exercising that right.

An important analytical of the UK system is that access is treated principally as a legal entitlement rather than as a matter dependent upon the Doctor's or Institutional discretion, this approach promotes patient autonomy and informational self-determination. The UK framework is equally more operationally developed. NHS (National Health Service) guidance identifies the organisation responsible for the records and provide established procedures for making request.

Equally, privacy in the UK has a particular stronger human rights foundation than Nigeria through Article 8 of the European Convention on Human Right, incorporated into domestic law by the Human Rights Act 1998. Article 8 protects respect for private and family life, and health information falls within the sphere of protected personal information. Article 5 of the GDPR (General Data Protection Regulation) identify the seven principles at the heart of data protection in the UK, some of these include the positive obligation to deal with personal information fairly and lawfully, as well as that it should be relevant and limited to the purpose for which it was collected, which is integrated into the UK health care system. The UK system apparently connects information rights with access to justice than that of the Nigerian system.

The lesson for Nigeria is procedural: legislation should identify applicants, verification, deadlines, lawful restrictions, fees, delivery methods and review mechanisms.

13. Critical Evaluation of the Nigerian Framework

The Nigerian framework has substantial strengths. The NHA requires creation and preservation of records, protects confidentiality, regulates lawful disclosure and requires security. Section 23 supports informational autonomy. The PBoR recognises timely access to detailed and accurate records. The NDPA supplies access, rectification and portability, while the Constitution and professional regulation reinforce privacy, dignity and confidentiality.

The weaknesses are fragmentation, uncertainty about custody and information rights, absence of a comprehensive access procedure, inadequate rules for therapeutic privilege and deceased patients, and insufficient healthcare-specific regulation of electronic portability. There is also an enforcement problem: patients may lack knowledge, hospitals may lack standard procedures, and litigation may be costly or slow.

14. Proposed Framework for Reform

Nigeria should enact a dedicated Medical Records Access and Health Information Act, or comprehensively amend the NHA while coordinating it with the NDPA. The legislation should:
(a) state that every competent patient has a right to access personal health information held by public or private providers, without ownership of the physical file;
(b) provide a simple written or electronic request procedure with proportionate identity verification;
(c) establish ordinary and expedited response periods;
(d) regulate fees, favouring free electronic access and reasonable reproduction charges;
(e) codify proportionate restrictions, preferring redaction or partial disclosure to blanket refusal;
(f) provide correction of factual inaccuracies and a mechanism for recording disagreement with clinical opinions without destroying the audit trail;
(g) recognise secure electronic access and portability and promote interoperable standards;
(h) provide rules for minors, persons lacking capacity and deceased patients; and
(i) require written reasons for refusal, internal review and rapid external review through an appropriate regulatory or tribunal mechanism.

15. Conclusion

The legal position in Nigeria has developed beyond the proposition that medical records are simply hospital property or that access is a matter of administrative grace. The NHA establishes duties to provide health information, create and preserve health records, protect confidentiality and secure records. The PBoR expressly recognises timely access to detailed and accurate medical records. The NDPA adds a contemporary and enforceable data-subject framework that strengthens access, rectification and portability, while the Constitution supplies important privacy and dignity values.

The principal weakness is therefore not the total absence of a right but the absence of a coherent procedure for exercising it. Nigerian law should distinguish clearly between institutional custody of original records and the patient's legal interest in personal health information. Confidentiality should protect patients from unauthorised third-party disclosure, not prevent patients from accessing their own information. Restrictions should be narrow, proportionate and reviewable.

Access to medical records is ultimately about more than obtaining a file. It enables patients to understand, participate, verify, correct, transfer and, where necessary, challenge healthcare decisions, as buttress in *Mclnerney v MacDonald* (1992). It also reduces informational inequality in medical-negligence litigation and strengthens access to justice. A unified statutory regime, integrated with the NDPA and supported by clear professional and administrative standards, would transform these dispersed rights into a predictable and enforceable component of Nigerian healthcare law.

References

Abimbola, O., & Olugasa, O. (2021). Patients' rights to their medical records in Nigeria. *Carnelian Journal of Law & Politics*, 2(1).

Abioye, A. (2021). An exposition of the legal issues in the management of health records in Nigeria. *African Journal of Educational Management,* 12(2), 25–34.

Access to Health Records Act 1990 (UK).

African Charter on Human and Peoples Right, 1981

Anas, G.J. (2004). *The rights of Patients: The Authoritative ACLU guide to the rights of patient*. South Illinois University Press.
Chief M. A. Inegbedion v. Dr Selo-Ojemen & Ors. (2013) JELR 46227 (SC).
Constitution of the Federal Republic of Nigeria 1999 (as amended).
Data Protection Act, 2018 (UK)
Department of Health and Social Care. (2025) Guidance handbook to the NHS Contitution for England.
Dr Rom Okekearu v. Danjuma Tanko. (2002) JELR 44538 (SC).
Evidence Act 2011.
Family Law Reform Act, 1969 (UK)
Federal Ministry of Health. (2018). Patients' Bill of Rights.
Freedom of Information Act 2011.
Gillion, R, (1986). *Philosophical Medical Ethics*. Chichester: John Wiley.
Human Right Act, 1998
Ibitoye, T. R. (2018). *The medico-legal principle of confidentiality in doctor-patient relationships in Nigeria*. University of Ibadan Repository.
Ihekoronye, et al. (2024). Legal considerations for electronic medical records in Nigeria. *Law and Social Justice Review*, 5(3).
Information Commissioner's Office. (2025). A guide to subject access. https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/subject-access-requests/a-guide-to-subject-access/
Kristopher et al., (2011). Telepsychiatry in Juvenile Justice Settings. *Child and Adolescent Psychiatric Clinics of North America*, 20(1) 113-123
Mclnerney v MacDonald (1992) 2 SCR 138
Medical and Dental Council of Nigeria. (2008). Code of Medical Ethics in Nigeria.
Mental Capacity Act, 2005 (UK)
National Health Act 2014.
Nigeria Data Protection Act 2023.
Nigeria Data Protection Commission. (2026). Data Subject Access Request Form. https://forms.ndpc.gov.ng/dsar-request/
Nwakamma, I (2022). Whose rights are being violated when receiving HIV and sexual and reproductive health services in Nigeria? *BMC Health Services Research.* https://doi.org/10.1186/S12913-022-08624-9
Ojo v. Gharoro & Ors. (2006) JELR 56140 (SC).
Pellegrino, E.D & Thomasma, D.C. (1988). *For the Patients Good: The Restoration of Beneficience in Health Care*. Oxford: OUP
Re B (Minor) Wardship Sterilisation (1988) AC 199.
Re C (A Minor) Evidence Conference (1991) 7 BMLR 138
Stauch et al., (2012) *Test, Cases and Materials on Medical Law and Ethics*. 4th Edn. Routledge
UK General Data Protection Regulation, 2021
World Medical Association. (2015). WMA Declaration of Lisbon on the Rights of the Patient.

NIU Journal of Legal Studies Copyright©2026
Nexus International University ISSN: *3007-1860;* 12(3): 27-43

Oil Theft in the Nigeria Oil and Gas Industry: Towards Timely Prosecution of Perpetrators

DANDY CHIDIEBERE NWAOGU, FOLARIN DIMOWO
University of Benin, Benin City, Nigeria

Abstract. Crude oil theft has in recent years become a major cause of challenge to the Nigerian government owing to the various negative impacts of the menace within the Niger-Delta Region of the country. The obvious effects of oil theft in the Nigerian nation state includes the loss of economic revenue, environmental hazards, and well as threats to the international oil companies. This article traces the historical background of oil theft in Nigeria together with the overall effects and challenges on both the government and residents of the areas where oil theft activities are carried out. The paper critically examines the Nigerian legal and institutional framework for combatting oil theft focusing on both constitutional provisions, the Petroleum Industry Act 2021, criminal law legislations and other subsidiary regulatory frameworks. The paper maintains that despite the availability of legal frameworks criminalizing oil theft, the act continues unabated and this is owing to the weak and ineffective enforcement thus leading to limited prosecution of perpetrators. The paper concludes that it is the will power on the part of the Nigerian government coupled with other factors like strict enforcement of legislations, attention and development of the Niger-Delta Region, prompt arrest and prosecution of identified perpetrators and decisive action from government that would help to bring oil theft to a quick end.

Keywords: Oil Theft; Niger-Delta Region, Arrest and Prosecution; Legal framework, Negative Impact.

1. Historic Perspective of Oil Theft in the Nigerian Oil and Gas Industry

The history of oil theft in Nigeria reveals the country's broader political and economic antecedent, since the discovery of oil at Oloibiri, in today's Bayelsa State, as far back as 1956 and the start of commercial production in 1958, Nigeria has transformed into an oil rich dependent state. However, centralization of oil revenues under federal control through laws like the Petroleum Industry Act 2021 and Section 44(3) of the 1999 Constitution as amended excluded local communities from benefiting directly from the resources beneath their land.[1] And thereby vesting all mineral resources found anywhere in the country on the Federal Government of Nigeria.

Oil theft in Nigeria was first recorded between (1960s–1980s) when it started as a survival strategy among the marginalized people of Niger Delta, who depended on resource deposit in their environment for survival, engaged in rudimentary pipeline tapping and artisanal refining. This subsistence-level activity provided local energy and moderate income, often justified as compensation for long-standing neglect by the Nigerian government.[2]

In the early 1990s, oil theft in Nigeria became militarized. Widespread poverty, environmental devastation, and political repression under military rule fueled insurgency in the Niger Delta. Militants in the region began large-scale, organized bunkering operations, targeting pipelines as symbols of state exploitation. The illicit trade expanded beyond local consumption into regional black markets, financing insurgent movements and deepening insecurity.[3]

In recent years, oil theft became institutionalization and internationalization with sophisticated bunkering methods, rampant falsification of shipping documents, and high-level collusion among politicians, security operatives, and oil industry together with insiders turning oil theft into a multi-billion-dollar enterprise. Nigeria soon started losing over 150,000 barrels of crude daily to theft.[4]

From the 2010s onward, oil theft became a trade became deeply rooted in Nigeria's political economy despite the Amnesty Programme which was meant to put an end to the ugly incidence, oil theft persisted taking various shapes and involving former militants, local refiners, and transnational actors. There emerged thousands of illegal oil refineries proliferated across the Niger Delta, providing livelihoods with products, but then causing severe environmental degradation. Available report show that stolen Nigerian crude reached markets in Asia and Europe, highlighting the global scope of the illicit trade.[5]

Today, however, oil theft has a lot of negative effects on the Nigerian economy, Nigeria losses up to $2 billion annually to the activities of perpetrators. What began as a form of local resistance has evolved into a globalized criminal enterprise sustained by weak governance, poverty, and international complicity. To address this menace, there is the need for more than adequate, policing, it thus requires the act of tackling the deep structural inequalities and governmental corruption which make oil theft an ugly feature of Nigeria's economy.[6]

2. Negative Impact of Oil Theft on the Nigerian Economy

Oil theft has become a serious and major crisis that continues to undermine Nigeria's economic development, political stability, as well as the nation's social well-being. As Africa's frontline oil producer and a key member of the Organization of Petroleum Exporting Countries (OPEC), Nigeria's economy depends heavily on petroleum exports as its primary means of foreign exchange and government revenue. However, the large-scale theft and illegal bunkering of crude oil have significantly reduced the nation's economic potential benefits. The effects of this criminal enterprise are visible in lost government revenue, reduced foreign investment, thus leading to infrastructural decay, corruption, environmental degradation, and growing insecurity.

Loss of Government Revenue

The most immediate and devastating impact of oil theft is the huge loss of government revenue. Nigeria derives nearly 80–90 percent of its foreign exchange earnings and about half of its total government income from oil exports. When crude oil is stolen, the government loses vital revenue which otherwise could have been used for national development.[7] According to reports by the Nigeria Extractive Industries Transparency Initiative (NEITI), the country loses between $1 billion and $2 billion annually due to crude oil theft and vandalism. [8]This heavy loss creates severe fiscal stress, and thus hinders the government's ability to make the following available for its citizen's education, healthcare, infrastructure, and social welfare programs, and by extension widens the budget deficit. Owing to this fact, the government resorts to heavy borrowing from foreign countries to the fill revenue gaps, thereby leading to an unsustainable debt burden and reduced fiscal independence. This unending cycle of revenue loss, borrowing, and corruption further weakens Nigeria's macroeconomic stability.[9]

Reduction in Oil and Gas Production and Export Earnings

Oil theft reasonably interrupts production and damages important oil and gas installations, leading to an obvious reduction in output and export earnings. When oil and gas pipelines are destroyed or illegally extracted, production must be stopped for repairs, which reduces the overall volume available for export. Thus, Nigeria's oil and gas production has frequently fallen below its OPEC quota due to theft-connected disruptions. [10]This reduction in export volume directly affects the inflow of foreign exchange, leading to shortages of dollars in the financial market. Consequently, the value of the naira depreciates, inflation rises, and the cost of imported goods including fuel soars. The Nigerian government also loses its ability to stabilize the economy through the Central Bank's monetary interventions.[11]Therefore, oil theft not only reduces immediate export income but also creates long-term macroeconomic instability that affects the standard of living of ordinary Nigerians.

Serious Discouragement for Investors and Capital loss

Oil theft and the insecurity surrounding oil facilities serve as a serious discouragement to both domestic and foreign investors. Frequent pipeline vandalism, sabotage, and illegal refining make the operating environment unsafe and frightening for oil companies. Oil firms put in huge sums of money on repairing damaged pipelines, hiring private security outfits, and paying higher insurance premiums. On the long run, these huge financial make business operations less profitable, prompting many multinational oil companies to divest from Nigeria's onshore operations.[12] Major companies such as Shell, Chevron, and Total have sold off significant assets and shifted focus to offshore fields or other African countries with lower security risks. The exit of these investor's results in job losses, reduced technological transfer, and fewer opportunities for local content participation. All of these put together results to huge economic loss for the country.[13]

Corruption

Oil theft gives rise to systemic corruption and lack of integrity in Nigeria's political and security institutions. The illegal business of crude oil is often facilitated by complex networks involving political elites, senior military officers, community leaders, and oil industry insiders. These individuals compromise their offices to shield illegal operations and thereafter partake in the proceeds therefrom. This institutional corruption makes it very hard to enforce extant legislations or bring offenders to book. The profits or gains of stolen oil are most times laundered through offshore accounts, this further shows the lack of transparency in the Nigerian financial system. As corruption increases, the rule of law is weakened, and citizens of the country loses trust in government institutions. These weak institutions and lack of enforcement as it were, enables oil theft to thrive.[14]

Environmental Impact

Aside from the economic losses, oil theft is a major cause of environmental degradation, particularly within the Niger Delta region, the primary location for illegal refining in Nigeria. Pipeline destruction and oil spillage cause devastating effects by destroying farmlands, pollution of water body, and pollution of the air with toxic chemicals. The environmental degradation impacts on fishing, farming, and other traditional means of livelihood, compelling local inhabitants into poverty and dependence on illegal refining as a survival strategy. The destruction of ecosystems also has long-term impact on food security and public health. In addition, the cost of cleaning up polluted region drains government resources that could have been invested in human capital development. Thus, oil theft not only impoverishes communities but also perpetuates the cycle of environmental injustice and underdevelopment in oil-producing areas.[15]

Impact on National Security and Energy Supply

Oil theft fuels insecurity and violence in Nigeria's oil-producing regions. The huge financial profits generated from the illegal trade are often used to finance militant groups, arms trafficking, and criminal networks. These groups attack pipelines, kidnap oil workers, and engage in piracy, posing significant threats to national security. The multiplication of illegal refineries also hinders energy stability, as they divert crude oil meant for official refineries, leading to scarcity of petroleum products and periodic fuel scarcity across the country. Moreover, the loss of energy security reduces productivity in other sectors of the economy, including transportation and the manufacturing sector.[16] The negative effect of oil theft on the Nigerian economy is somehow deeply rooted in the failure of administration of government. It drains public revenue, discourages investment, weakens the naira, fosters corruption, devastates the environment, and undermines national security.

To address issues of oil theft in Nigeria, there is the need for a comprehensive reform to deal with corruption, enthrone transparency in the oil sector, empower local communities, and diversify the economy beyond oil dependence. Only through strong political will, institutional accountability, and inclusive economic governance can Nigeria overcome this scourge and secure a sustainable future.

3. Oil Theft in Nigeria: Rationales and Perpetrators

Oil theft in Nigeria has evolved into a systemic challenge that is both a symptom and a driver of structural problems in the country's oil and gas sector. While the term "oil theft" might evoke images of pipeline tapping and clandestine bunkering in the Niger Delta, the reality is far broader encompassing metering fraud, illegal storage, unauthorized export, and even collusion within the regulatory and oil-company apparatus. Between 2009 and 2020, Nigeria reportedly lost about 619.7 million barrels of crude oil valued at US $46.16 billion.[17] Understanding the rationales behind these thefts and the profile of the perpetrator is critical if legal scholars, policy makers, regulatory agencies and legislators (such as yourself working in a legislative research role) are to craft meaningful responses that go beyond superficial enforcement. This essay will examine in depth the economic, institutional, socio-political and technological rationales, and then map the spectrum of actors involved in oil theft in Nigeria.

One of the primary rationales for oil theft is economic: crude oil and refined petroleum products represent high-value commodities and therefore offer very high profit margins. For individuals, communities and networks in regions where alternative livelihoods are weak, the theft of oil can become an economic lifeline. This is especially true in many parts of the Niger Delta where environmental degradation, declining fisheries/agriculture and unemployment prevail. A technical report of illegal bunkering in Igbomatoru Community (Bayelsa) shows how locals describe "we were eating, drinking, breathing oil" because of the constant leaks and siphoning around their communities.[18] The economic impact of crude oil theft in Nigeria is both profound and multifaceted. In macroeconomic terms, the losses to the nation are staggering. According to the Nigeria Extractive Industries Transparency Initiative (NEITI), the country lost approximately 13.5 million barrels of crude oil in 2022 alone, representing a value of about US $3.3 billion due to theft and sabotage. Similarly, in 2023, the Speaker of the House of Representatives estimated that industrial-scale theft resulted in annual losses of N1.29 trillion, underscoring the magnitude of the fiscal drain on government resources.[19]

The economic rationale underpinning this illicit activity is multilayered. At the individual or community level, crude oil theft provides immediate financial gain through illegal tapping, refining, and sale of petroleum products. However, the consequences extend well beyond the direct beneficiaries. Structurally, oil theft creates a persistent "leakage" in state revenue, reducing funds available for public investment, infrastructure development, and social services, while simultaneously increasing fiscal pressure on the government to meet its obligations.[20]

Moreover, the incentives for engaging in crude oil theft are further exacerbated by the perceived enforcement risk. Where regulatory oversight is weak, surveillance is limited, or penalties are inconsistently applied, the potential profit from theft often outweighs the anticipated legal or financial consequences. This risk-reward calculation drives the persistence of illegal operations and underscores the importance of robust enforcement, regulatory oversight, and systemic reforms aimed at reducing opportunities for diversion and deterring participation in oil theft.[21]

The second major rationale is institutional: weak oversight, poor monitoring, inadequate infrastructure, and corruption. According to a UNU-WIDER working paper, theft and diversion in Nigeria may amount to up to a fifth of daily crude production, due to illegal bunkering, metering malpractices, smuggling and falsification. Crude oil theft in Nigeria is exacerbated by profound institutional vulnerabilities, which create persistent opportunities for illegal operations. For instance, in June 2024, the Nigerian National Petroleum Company Limited (NNPCL) recorded 400 incidents of oil theft in a single week, comprising 165 illegal refineries, 69 illegal connections, and 15 cases of pipeline vandalism. Such figures underscore the scale and frequency of theft, highlighting systemic weaknesses in surveillance, monitoring, and enforcement.[22]These vulnerabilities facilitate theft in several ways.

First, they allow illegal pipeline taps to remain undetected for substantial periods, providing criminals with the time and cover to siphon crude oil with minimal risk of interruption.[23]

Second, there are opportunities for insider collusion, including individuals within oil companies, regulatory bodies, and security agencies. Evidence of such collusion was uncovered in June 2024, when surveillance operatives discovered bunkering camps in Bayelsa containing identity cards belonging to a legitimate security firm contracted by an oil company, suggesting internal facilitation of illegal operations.[24]
Third, the penal and prosecutorial framework remains weak, with unclear sanctions and inconsistent enforcement. Advocacy groups, including the Socio-Economic Rights and Accountability Project (SERAP), have repeatedly urged authorities to identify and prosecute perpetrators, including complicit security personnel, to restore accountability.[25]

Consequently, institutional weakness is not merely a facilitator of crude oil theft but forms a structural rationale for its persistence. The combination of inadequate oversight, opportunities for collusion, and limited enforcement skews the risk-return calculus in favor of thieves. In such an environment, the potential financial gain from illegal tapping or refining substantially outweighs the likelihood of detection or sanction, perpetuating cycles of theft and complicity across the petroleum sector.

The third rationale is socio-political. The Niger Delta region has long been marked by economic exclusion, environmental damage from oil operations, weak infrastructure, and a sense of marginalization. This creates fertile ground for oil theft as an expression of grievance, an alternative economy, or even insurgency funding. The article by DW notes that some thieves are suspected members of militant groups and that authorities have even awarded pipeline-protection contracts to ex-militants to try to reduce theft a controversial but revealing step. [26] Beyond economic and institutional factors, social and security considerations also drive crude oil theft in Nigeria. In some instances, theft is motivated by a perceived sense of injustice: host communities may view the diversion or appropriation of oil as a means of reclaiming resources extracted from their territories without commensurate benefits.[27] This perception is particularly acute in regions of the Niger Delta, where decades of oil production have often coincided with environmental degradation, limited local development, and marginalization.
Crude oil theft also finances militant groups or insurgent economies, creating a nexus between illegal

extraction and organized criminality. Revenues generated from illicit bunkering, pipeline tapping, and oil diversion frequently support armed actors, fueling local conflicts and complicating security operations in the region.[28]

The broader consequences of theft and related pipeline vandalism extend beyond revenue loss to regional security and environmental stability. As highlighted by the Speaker of the House of Representatives, these activities result in substantial economic losses, environmental disasters, and heightened social instability. Such outcomes underscore that oil theft is not merely a fiscal problem but a multifaceted threat that intersects with governance, security, and community welfare, making its control both an economic and strategic imperative.[29]

A fourth rationale underpinning crude oil theft in Nigeria lies in the technological and market mechanics that make the crime both feasible and highly profitable. Advances in pipeline tapping techniques have enabled increasingly sophisticated forms of illegal extraction, including clandestine hook-ups, submerged pipelines, and concealed manifold systems that are difficult to detect. In one widely reported instance, authorities uncovered an illegal connection running from a major export terminal into the sea that had reportedly operated undetected for nearly nine years, underscoring the scale of technical penetration achievable by oil theft networks.[30]

Stolen crude is frequently processed through illegal refining operations, where it is transported by boats or trucks to makeshift facilities and refined using rudimentary "cooking ovens," metal drums, and improvised distillation units. These operations convert crude into products such as diesel and kerosene for local sale, significantly lowering entry barriers into the illicit petroleum market. The scale of this activity is substantial: in November 2024 alone, security forces reportedly dismantled dozens of illegal bunkering sites and recovered over a million litres of stolen crude alongside tens of thousands of liters of refined products.[31]

Beyond domestic consumption, oil theft is sustained by cross-border smuggling networks and illicit export markets, which provide ready outlets for stolen crude and refined products. These underground markets often supply jurisdictions where fuel prices are higher or regulatory oversight is weaker, enhancing profit margins. Relatedly, pricing arbitrage created by domestic subsidy regimes, price controls, and disparities between local and international petroleum prices further incentivizes diversion from lawful supply chains into illegal markets.[32]

Oil theft is not always overtly criminal in appearance. In many cases, it is facilitated through masked legal transactions, including undocumented domestic liftings, falsified shipping records, and metering fraud. As empirical studies have noted, diversion and inaccurate measurement are as significant as outright theft in accounting for crude oil losses. Together, these operational techniques and market dynamics substantially lower the risks and costs of theft while amplifying returns, thereby reinforcing the attractiveness and persistence of crude oil theft within Nigeria's petroleum economy.[33]

Oil theft in Nigeria is not a monolithic act. It involves a wide range of actors with different functions, motives and levels of organization. Below is an expanded typology of perpetrators.

Local Artisanal Operators / Community Based Actors

Local Artisanal Operators and Community-Based Actors represent a significant segment of crude oil theft in Nigeria. These actors are typically individuals or small groups drawn from oil-producing communities who engage in low-capital operations, often using rudimentary tools and equipment such as drums and makeshift "cooking ovens" to siphon crude from pipelines. The stolen crude is then transported via small boats or trucks to local refining sites and subsequently sold within local markets. Their operations are largely informed by intimate knowledge of the terrain, pipeline networks, and community structures, which facilitates both concealment and efficiency.[34]

Motivations for participation in these activities are frequently rooted in economic necessity. In regions such as Bayelsa, studies including the Igbomatoru survey, have documented substantial local involvement in bunkering camps, often leading to severe environmental degradation and social disruption. [35]While each individual operation may be modest in scale compared to organized syndicates, the cumulative impact of multiple artisanal operations across oil-producing areas is considerable, contributing meaningfully to aggregate losses and localised environmental harm.

Thus, community-based actors, though operating on a small scale, form an integral component of the broader crude oil theft ecosystem, reflecting both the socio-economic drivers of the crime and the challenges inherent in policing dispersed, low-capital operations in remote oil-producing regions.

Organized Criminal Networks / Syndicates

Organized Criminal Networks or Syndicates constitute the most sophisticated and high-impact actors in Nigeria's crude oil theft ecosystem. Unlike local artisanal operators, these groups coordinate operations across multiple sites and stages of the supply chain, including extraction, refining, storage, transportation, and sale. Their logistical capacity often includes access to vessels, barges, secure storage tanks, and road transport networks, allowing them to move large volumes of stolen crude both domestically and, in some cases, internationally.[36]

Syndicates frequently operate across state boundaries, and some maintain formal or informal relationships with insiders within oil companies or regulatory bodies, providing protection, logistical support, or intelligence to facilitate illicit activities. Evidence of the scale and reach of these networks can be found in reports from the Pipeline Infrastructure Nigeria Limited (PINL), which in 2024 dismantled over 500 bunkering flashpoints across several states, including Cross River, Abia, and Rivers. Such findings illustrate the extensive coordination and operational capacity of syndicates.[37]

The significance of these networks lies in their sheer scale: they can divert tens of thousands of barrels of crude per day, far exceeding the cumulative output of artisanal operations. Their activities not only cause substantial economic losses to the state but also exacerbate environmental degradation, fuel regional insecurity, and undermine governance structures within the petroleum sector. Understanding and targeting these syndicates, therefore, requires multi-agency cooperation, intelligence-led enforcement, and rigorous regulatory oversight.

Militant or Armed Factions

In the Niger Delta, militant groups have historically played a significant role in crude oil theft and pipeline vandalism, often using these activities both to fund operations and as a means of political leverage. Unlike purely economic actors, these groups operate within a hybrid framework, blending criminal activity with political objectives rooted in local grievances over resource control, environmental degradation, and perceived marginalisation.[38]

Militant actors frequently use force or the threat of force to secure pipelines, impose "tolls" on extraction operations, or protect illegal refining sites. Their involvement transforms crude oil theft from a purely economic crime into a security challenge, as their tactics include intimidation, armed enforcement, and sabotage, which can endanger personnel, local communities, and infrastructure. Evidence of this entanglement is seen in government contracts for pipeline security that engage ex-militants, illustrating the complex relationship between state actors and groups formerly involved in oil-related militancy.[39]

While the intensity of militant attacks has decreased in recent years, the structural presence of these groups remains significant. Their networks and knowledge of local terrain continue to facilitate theft and illegal operations, making them a persistent factor in the security calculus of the Nigerian petroleum sector. Addressing this dimension of oil theft therefore requires strategies that combine law enforcement, community engagement, and security sector reform to dismantle the residual power of these hybrid actors.[40]

Insiders / Colluding Officials / Oil-Company Employees

A critical yet often under-emphasized category of actors in Nigeria's crude oil theft ecosystem consists of insiders within oil companies, regulatory bodies, and security agencies, including private contractors tasked with pipeline monitoring. These actors play a pivotal role in enabling theft by providing unauthorized access, falsifying documentation, ignoring irregularities, or actively colluding with external perpetrators. Their involvement transforms oil theft from a simple illicit extraction into a sophisticated, organized operation that is significantly harder to detect and prosecute.[41]

Documented evidence highlights the extent of insider facilitation. For instance, surveillance operatives uncovered bunkering camps in Bayelsa where identity cards belonging to a legitimate surveillance company contracted by an oil firm were present on site, suggesting complicity of personnel tasked with oversight.[42] Advocacy groups, including the Socio-Economic Rights and Accountability Project (SERAP), have urged the authorities to publicly identify and prosecute not only the external thieves but also the insiders and security officials who enable large-scale operations.[43]

The significance of insider facilitation lies in its capacity to circumvent security protocols, manipulate operational records, and obscure detection. Without such collusion, large-scale oil theft would be far more difficult, if not impossible, to execute. As such, corruption and insider collusion are central to understanding the perpetrator profile and the structural vulnerabilities that allow organized theft networks to thrive. Effective enforcement strategies, therefore, must include stringent oversight of personnel, transparency mechanisms, and accountability measures to address the role of insiders in sustaining the illicit economy.

Exporters, Smugglers, and Buyers (Domestic & International)

The chain of crude oil theft does not conclude with extraction or refining; the route to market is a critical component in sustaining the illicit trade. A range of actors including domestic and international buyers, smugglers, and exporters play a pivotal role by purchasing stolen crude or refined products and facilitating their movement across borders. These actors create demand and profit incentives, effectively perpetuating the cycle of theft.

Evidence suggests that weak law enforcement and regulatory gaps enable stolen crude to reach foreign refineries, highlighting the international dimension of the problem. Studies, including the UNU WIDER research, document sophisticated methods employed by these actors, such as smuggling, tanker hijacking, and masked exports, all of which obscure the illicit origin of the products.[44]

The involvement of these actors is essential to the viability of crude oil theft. Without a ready market for stolen products, the economic rationale for theft diminishes significantly. However, their participation also increases the complexity of enforcement. International transactions, cross-border transportation, and foreign-based buyers necessitate cooperation with neighboring states, adherence to mutual legal assistance frameworks, and intelligence sharing to disrupt the supply chain. Thus, the market stage represents a critical node in the ecosystem of crude oil theft, linking domestic criminal activity with transnational networks and highlighting the need for coordinated domestic and international enforcement strategies.

1. Constitutional Provisions: Section 44(3) of the 1999 Constitution on Resource Ownership

Resource ownership lies at the heart of Nigeria's political economy, federal structure, and legal response to crude oil theft. The constitutional foundation of petroleum governance is Section 44(3) of the 1999 Constitution, which vests ownership and control of all mineral resources, including crude oil and natural gas, exclusively in the Federal Government. This provision is central to understanding crude oil theft, as it defines petroleum resources as property of the state rather than of individuals, communities, or federating units.[45]

Section 44(3) provides that all minerals, mineral oils, and natural gas in, under, or upon any land in Nigeria, including its territorial waters and Exclusive Economic Zone, vest in the Government of the Federation and shall be managed as prescribed by the National Assembly. This provision performs three key legal functions. First, it confers exclusive ownership of petroleum resources on the Federal Government, excluding states, landowners, and host communities from proprietary claims. [46]Second, it places petroleum governance within the exclusive legislative competence of the National Assembly. Third, it establishes a constitutional basis for criminalization, since any unauthorized interference with crude oil constitutes theft from the Nigerian state.[47]

The provision reflects Nigeria's historical approach to resource control. Colonial legislation, notably the Minerals Ordinance of 1914, vested mineral ownership in the Crown. After independence, this model was retained and strengthened, particularly under military decrees that placed all petroleum resources under federal control. These arrangements were ultimately constitutionalized in Section 44(3).[48] The Land Use Act 1978 further reinforced this structure by vesting land in state governors while preserving federal ownership of subsurface minerals.[49]

Judicial interpretation has consistently affirmed this constitutional arrangement. In *FRN v Osahon*[50], the Supreme Court held that the Federal High Court has exclusive jurisdiction over matters relating to petroleum resources under Section 251(1)(n) of the Constitution, thereby confirming that prosecutions for oil theft fall within federal jurisdiction. Similarly, in the *Resource Control* case,[51] the Supreme Court affirmed federal ownership of offshore petroleum resources by limiting the seaward boundaries of littoral states to the low-water mark. These decisions entrench federal dominance over petroleum resources and reinforce crude oil theft as an offence against the Federation.

Section 44(3) has direct implications for the prosecution of crude oil theft. Acts such as illegal bunkering, pipeline vandalism, artisanal refining, and unauthorized export are treated not as private property disputes but as acts of economic sabotage against the Nigerian state. This constitutional logic underpins statutory offences under laws such as the Miscellaneous Offences Act, the Petroleum Production and Distribution (Anti-Sabotage) Act 1975, and the Petroleum Industry Act 2021.[52]

Despite its legal clarity, Section 44(3) remains deeply contested. By centralizing resource ownership, it denies oil-producing states and communities any constitutional claim to petroleum resources, intensifying resource control debates in the Niger Delta. Although the Constitution provides for revenue derivation to producing states, critics argue that the existing allocation is inadequate given the environmental degradation and socio-economic costs borne by host communities[53]. Scholars further contend that the provision departs from principles of true federalism by concentrating economic power at the center, a dynamic often linked to militancy, sabotage, and illegal refining.[54]

In sum, Section 44(3) constitutes the bedrock of Nigeria's legal framework on crude oil ownership and theft. It enables the Federal Government to legislate, regulate, and criminalize unauthorized dealings in petroleum resources, thereby framing crude oil theft as a crime against the state. At the same time, its centralization of resource control continues to generate tensions with profound implications for federalism, security, and social justice in Nigeria's oil-producing regions.

4. Legal Framework for Combatting on Crude Oil Theft

Petroleum Industry Act (PIA) 2021

The Petroleum Industry Act (PIA) 2021 represents a decisive shift in Nigeria's legal response to crude oil theft, a problem that has long undermined national revenue, environmental sustainability, and investor confidence. One of the core objectives of the Act was to consolidate fragmented petroleum laws and introduce stronger regulatory, enforcement, and accountability mechanisms to curb theft, sabotage, and systemic leakages within the sector.[55]

Central to this framework is the empowerment of the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) with enhanced investigatory and enforcement powers. The Act authorizes the Commission to conduct surveillance, inspections, and inquiries into upstream petroleum operations suspected of illegality. It may enter facilities, examine or seize records, and collaborate with law enforcement agencies to arrest offenders. Obstruction of these powers attracts substantial fines or imprisonment, marking a deliberate shift toward deterrence and the criminalization of regulatory non-compliance.[56]

The PIA also addresses crude oil theft through improved measurement and export controls. By vesting the NUPRC with exclusive responsibility for certifying the quality and quantity of crude oil exports and regulating terminal operations, the Act targets long-standing vulnerabilities arising from under-declaration and manipulated export figures. This centralization of measurement oversight is aimed at closing revenue leakages that previously flourished due to regulatory fragmentation and weak accountability.[57]

Further, the Act resolves jurisdictional ambiguities by classifying integrated upstream and midstream facilities as upstream operations, thereby placing them squarely under the regulatory authority of the NUPRC[58]. This clarification eliminates enforcement gaps that criminal networks previously exploited under the guise of overlapping regulatory mandates.

One of the most controversial anti-theft measures is the Host Community Development Trust Fund regime, which links community benefits to the protection of petroleum infrastructure. Where vandalism or sabotage occurs, host communities may forfeit entitlements under the trust fund to the extent necessary to repair damage.[59] While intended to incentivize community participation in infrastructure protection, this provision has been criticized for unfairly burdening communities that lack the capacity to confront organized criminal actors.[60]

Beyond regulatory measures, the PIA establishes comprehensive criminal sanctions for petroleum-related offences, including crude oil theft, illegal refining, false reporting, unauthorized operations, and obstruction of regulatory officers. Penalties range from fines and imprisonment to forfeiture of petroleum products and related assets, reinforcing the treatment of oil theft as a serious economic crime.[61]

In sum, the Petroleum Industry Act 2021 adopts a multi-layered legal strategy against crude oil theft by strengthening regulatory enforcement, ensuring transparency in measurement and exports, clarifying institutional jurisdiction, and introducing community-linked accountability. While the Act provides a robust statutory framework, its effectiveness ultimately depends on sustained political will, institutional capacity, and genuine collaboration between regulators, security agencies, host communities, and industry actors. Without effective implementation, the PIA's anti-theft provisions risk remaining aspirational rather than transformative.

Criminal Code and Penal Code Provisions

Crude oil theft in Nigeria constitutes not only a regulatory infraction under petroleum-specific legislation but also a serious criminal offence under the country's general criminal law. The Criminal Code Act, applicable in Southern Nigeria, and the Penal Code, applicable in Northern Nigeria, provide the foundational legal framework for prosecuting acts of theft, sabotage, and conspiracy associated with crude oil theft. These provisions are particularly relevant given the organized, transboundary, and collaborative nature of oil theft operations.[62]

Under the Criminal Code Act, stealing is defined as the fraudulent taking or conversion of anything capable of being stolen. Once crude oil is extracted or in transit through pipelines, vessels, or terminals, it qualifies as property capable of being stolen. Consequently, unauthorized pipeline tapping, illegal bunkering, and diversion of crude oil fall squarely within the offence of stealing, [63]punishable by terms of imprisonment that may extend to seven years depending on aggravating circumstances.[64]

The Penal Code contains parallel provisions. It defines theft as the dishonest taking of movable property without consent[65] and prescribes penalties including imprisonment or fines[66]. Given that petroleum pipelines traverse both northern and southern regions, these provisions ensure uniform criminal liability for crude oil theft across Nigeria's legal jurisdictions.

Sabotage of petroleum infrastructure is also criminalized under both codes. The Criminal Code punishes willful and unlawful destruction of property, with harsher penalties where public or government property is involved. Pipeline vandalisation and damage to oil installations therefore constitute serious offences. Similarly, the Penal Code criminalizes mischief involving destruction or alteration of property with intent to cause loss or damage, particularly where public safety or infrastructure is endangered. In the petroleum context, sabotage includes deliberate pipeline ruptures, damage to wellheads, and interference with export facilities.

Both codes further recognize conspiracy as an independent offence. Given that crude oil theft is typically perpetrated through organized criminal networks involving multiple actors, conspiracy provisions are crucial. An agreement to commit theft or sabotage is punishable even where the substantive offence is not completed, reflecting the law's intention to target the collaborative nature of oil theft.

Collectively, these provisions demonstrate that crude oil theft is firmly situated within Nigeria's criminal law framework as a serious offence against property, public infrastructure, and national security. However, despite clear statutory foundations, enforcement has remained weak due to corruption, limited investigative capacity, and a tendency to treat oil theft as a regulatory rather than criminal matter. Strengthening the application of the Criminal Code and Penal Code alongside petroleum-specific legislation is therefore essential to deter offenders and dismantle organized oil theft networks.

Miscellaneous Offences Act (MOA) and Crude Oil Theft

The Miscellaneous Offences Act (MOA) constitutes one of Nigeria's strongest criminal law responses to crude oil theft. Enacted to address serious economic and public-order offences, the Act complements petroleum-specific legislation such as the Petroleum Industry Act (PIA) 2021, as well as the general criminal law under the Criminal Code and Penal Code.

The MOA makes it a crime of any unauthorized dealing in crude oil or petroleum products, including importing, exporting, selling, distributing, or otherwise trading without lawful authority. Given the highly regulated nature of the petroleum sector, any transaction conducted outside the licensing framework established by petroleum laws constitutes a criminal offence. The Act prescribes life imprisonment for unlawful dealing in petroleum products,[67]
The Act also targets sabotage and interference with petroleum infrastructure. It criminalizes the tampering with, or damage to, oil pipelines and installations—conduct commonly associated with illegal bunkering and crude oil siphoning. This offence likewise attracts life imprisonment, underscoring the legal protection afforded to petroleum infrastructure as a critical national asset. Beyond economic loss, such acts frequently result in environmental degradation and threats to public safety, further justifying the severity of the sanction.[68]

The Nigerian Security and Civil Defense Corps (NSCDC) Act and Crude Oil Theft

Nigeria's oil and gas sector has long suffered from crude oil theft, illegal bunkering, and pipeline vandalism. Recognizing that police and military efforts alone were insufficient, the legislature established the Nigerian Security and Civil Defense Corps (NSCDC) under the NSCDC (Amendment) Act 2007 to protect critical national infrastructure, particularly petroleum pipelines, refineries, and depots, and to arrest and prosecute offenders. [69]

The Act empowers the Corps to safeguard petroleum infrastructure through physical security, surveillance, and deployment of personnel, often in collaboration with the Nigerian National Petroleum Company Limited (NNPC Ltd).[70] The Act further authorizes the NSCDC to arrest with or without a warrant, investigate, and institute legal proceedings in the name of the Attorney-General of the Federation against persons involved in vandalism, oil bunkering, or illegal dealings in petroleum products. [71]The Act also mandates collaboration with other security agencies, including the Navy, Police, and EFCC, facilitating joint operations against organized oil theft perpetrators.[72]

The Act further provides for specialized units, such as Anti-Vandalism Units, responsible for patrolling pipelines, detecting illegal tapping points, and dismantling makeshift refineries, particularly in remote areas of the Niger Delta[73]. Unlike the MOA or EFCC Act, which primarily focus on prosecution, the NSCDC Act emphasizes preventive security and deterrence, acknowledging that crude oil theft is a specialized crime requiring dedicated expertise.[74]

Other Laws and Regulatory Policies on Crude Oil Theft in Nigeria

Crude oil theft in Nigeria remains one of the major economic, security, and environmental challenges, thus, the under discussed

DPR/NUPRC Regulations

For decades, the Department of Petroleum Resources (DPR) served as Nigeria's principal regulator of petroleum operations. Following reforms under the Petroleum Industry Act (PIA) 2021, regulatory oversight was divided between the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA). Despite this institutional transition, DPR-issued subsidiary regulations remain binding and continue to provide operational guidelines critical to combating crude oil theft.[75]

The Oil and Gas Pipelines Regulations 1995 establish conditions for the construction, operation, and maintenance of pipelines and related infrastructure. These regulations place legal duties on operators to maintain pipeline integrity, conduct regular surveillance, and report any damage or breaches. Given that pipeline tapping and vandalism constitute the primary methods of illegal crude extraction, these provisions directly reduce opportunities for theft while providing a basis for enforcement actions against negligent operators.[76]

The Petroleum (Drilling and Production) Regulations 1969, as amended, require accurate record-keeping of crude oil production, transport, and lifting. This legal obligation is particularly significant because theft frequently occurs through misdeclaration or diversion of oil volumes at different stages of the value chain. By mandating detailed and verifiable reporting, the regulations enable regulators to detect discrepancies and trace theft, providing a robust audit trail for investigations and prosecutions.[77]

Under the PIA 2021, the NUPRC also issued the Host Community Development Regulations 2022, operationalizing the creation of Host Community Development Trusts. These regulations require oil companies to allocate a portion of operating expenditure to host communities, addressing long-standing socio-economic grievances that have often led to sabotage or collusion with oil thieves. By linking community benefits to infrastructure security, the regulations incentivise local participation in protecting pipelines and installations, thereby mitigating one of the root causes of oil theft.[78]

Additionally, the NUPRC Crude Oil Measurement Guidelines 2021 provide precise standards for metering and accounting at every stage from wellhead to export. By standardizing measurement and reporting practices, these guidelines reduce the likelihood of manipulation, misappropriation, or underreporting of crude oil, ensuring that any unexplained losses are detectable. Accurate measurement also enhances transparency in export operations and facilitates international oversight, which is crucial for preventing cross-border diversion of petroleum products.[79]

Collectively, these DPR/NUPRC regulations and guidelines form the preventive and corrective arm of Nigeria's anti-oil theft framework. They complement criminal statutes by imposing operational obligations on operators, providing monitoring standards for regulators, and incentivizing host communities to act against theft and sabotage. In doing so, subsidiary legislation bridges the gap between law and practice, translating statutory prohibitions into enforceable rules and procedures that are essential to securing the nation's petroleum resources.[80]

Environmental Guidelines for Oil Operations (EGASPIN)

The Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN), first introduced by the Department of Petroleum Resources (DPR) in 1991 and most recently revised in 2018, establish comprehensive environmental and operational standards for oil and gas operations. These guidelines cover pollution control, oil spill prevention, waste management, decommissioning of facilities, and general operational integrity. While primarily designed for environmental protection, EGASPIN also indirectly mitigates crude oil theft, as theft and pipeline vandalism are leading causes of spills and environmental degradation in the Niger Delta.[81]

Under EGASPIN, oil operators are legally required to report all oil spills promptly and provide detailed accounts of their causes. This requirement ensures that incidents arising from theft or sabotage cannot be misrepresented as operational accidents, allowing regulatory authorities to investigate and attribute responsibility. Similarly, provisions on periodic environmental audits mandate operators to submit comprehensive reports on environmental performance and operational integrity[82]. These audits not only monitor compliance but also create an evidentiary trail for identifying and prosecuting theft-related activities.

EGASPIN further prescribes strict standards for the decommissioning and abandonment of oil facilities. Poorly maintained or abandoned pipelines and flow stations are often exploited by criminal networks for illegal tapping or artisanal refining. By enforcing proper decommissioning procedures, EGASPIN closes such loopholes and reduces opportunities for theft. In addition, its rules on waste management and the prohibition of unauthorized discharges prevent operators from masking theft-induced losses as waste or flaring, reinforcing transparency in operations.[83]

Collectively, EGASPIN integrates environmental compliance with operational oversight, ensuring that oil companies maintain accountability not only for ecological protection but also for the integrity of petroleum infrastructure. In practice, this linkage creates a preventive mechanism against crude oil theft, as environmental monitoring, spill reporting, and audit requirements serve as tools for detecting and documenting illegal extraction or sabotage. While not a punitive statute, EGASPIN complements criminal and regulatory laws—such as the Miscellaneous Offences Act, the Petroleum Industry Act 2021, and NUPRC regulations—by embedding operational accountability into environmental compliance, thereby indirectly strengthening Nigeria's legal and regulatory response to crude oil theft.

The NOSDRA Act and Guidelines

The National Oil Spill Detection and Response Agency (NOSDRA) Act 2006 established NOSDRA as the principal body for oil spill preparedness, detection, and response. While primarily environmental, its functions intersect directly with combating crude oil theft, as pipeline vandalism and illegal bunkering—the main methods of theft—are major causes of spills. The Act requires operators to report spills within 24 hours, with fines of ₦500,000 per day for non-compliance, ensuring theft-related spills cannot be concealed. NOSDRA also supervises containment and clean-up operations, generating technical evidence that can be used by security agencies for prosecution.[84]

Notably, the Act imposes strict liability on operators for spills, though liability may be avoided if theft or sabotage by third parties is proven. This provision brings crude oil theft into the regulatory framework, enabling operators to document and report theft-related vandalism. Additionally, the Act mandates a National Oil Spill Contingency Plan (NOSCP) to coordinate responses among NOSDRA, oil companies, and security agencies, allowing rapid intervention to limit both environmental damage and theft losses.[85]

Combined with DPR/NUPRC regulations and EGASPIN, NOSDRA forms part of a multi-layered system that addresses crude oil theft through prevention, detection, and accountability. Regulatory oversight, environmental compliance, and spill investigations together create the technical and evidentiary backbone for criminal prosecutions under statutes such as the MOA and EFCC Act, making subsidiary legislation essential to Nigeria's broader legal regime against oil theft.

International Legal Framework on Crude Oil Theft

Oil theft in Nigeria is not just a domestic concern; it has significant international dimensions due to the cross-border movement of petroleum products, the involvement of transnational criminal networks, and the global economic and security implications of illicit oil trade. Consequently, addressing crude oil theft requires compliance with international legal standards and robust cooperation mechanisms, which complement Nigeria's domestic legal and regulatory frameworks.

At the international level, United Nations conventions are available for combatting the menace. The UN Convention against Transnational Organized Crime (UNTOC, 2000) obliges states to criminalize participation in organized criminal groups[86], money laundering, [87]and illicit trafficking[88]. Since oil theft in Nigeria often involves syndicates operating across borders, UNTOC provides a legal basis for mutual legal assistance, joint investigations, extradition of offenders, and coordinated prosecution strategies. Similarly, the UN Convention against Corruption (UNCAC, 2003) recognizes that theft of national resources is closely linked with bribery,[89] corruption, and illicit enrichment.[90] UNCAC obliges states to adopt preventive measures, criminalize illicit financial gain, and facilitate international cooperation in asset recovery—provisions that are directly applicable to cases where proceeds from oil theft are laundered through foreign financial institutions or invested overseas. In practice, these conventions enable Nigerian authorities to collaborate with international counterparts in tracking illicit financial flows, recovering stolen revenues, and prosecuting actors who exploit cross-border networks.[91]

International maritime law also has direct relevance to Nigeria's fight against oil theft, particularly in offshore environments. The United Nations Convention on the Law of the Sea (UNCLOS, 1982) grants coastal states sovereignty and enforcement jurisdiction over their territorial waters and Exclusive Economic Zones (EEZs), thereby empowering Nigeria to regulate, monitor, and secure offshore petroleum infrastructure. Pipelines, drilling platforms, and storage facilities located in these maritime zones are legally protected under UNCLOS, providing a basis for prosecution against theft, sabotage, or unauthorized extraction[92]. Additionally, International Maritime Organization (IMO) conventions, including MARPOL, indirectly support the detection of crude oil theft by mandating strict reporting and monitoring of oil spills and discharges. Since pipeline tapping and illegal bunkering are common causes of spills, compliance with IMO requirements provides regulators and security agencies with evidence of illicit activity, creating accountability mechanisms that expose theft or sabotage.[93]

Financial and trade standards constitute another essential layer of the international framework. Financial Action Task Force (FATF) Recommendations offer comprehensive guidelines on preventing money laundering, terrorist financing, and abuse of international financial systems. Because proceeds of stolen crude oil are often laundered through both domestic and international banking channels, FATF standards assist Nigeria in detecting suspicious transactions, tracing illicit financial flows, and coordinating with other jurisdictions. Similarly, the World Customs Organization (WCO) frameworks facilitate regulation of the import and export of petroleum products, enhance monitoring of smuggling, and provide procedural mechanisms for identifying illegally traded crude. Through such measures, these financial and trade instruments ensure that theft is addressed not only as a criminal act but also as an economic and systemic risk to national and global markets.[94]

Regional legal frameworks further strengthen the international response. Within West Africa, the Economic Community of West African States (ECOWAS) has adopted protocols on maritime safety, security, and anti-smuggling, which promote collaboration among member states in addressing crude oil theft, piracy, and transnational smuggling networks. On a continental scale, African Union (AU) conventions, particularly the AU Convention on Combating Corruption and illicit exploitation of resources, encourage member states to criminalize theft and corruption in the petroleum sector, harmonize legal measures, and cooperate in asset recovery. [95]These regional mechanisms are particularly important for Nigeria, given that stolen crude oil often transits neighboring countries or is laundered through regional networks.

The international legal framework also provides practical enforcement and evidentiary benefits. Compliance with UNCAC and FATF enables Nigerian authorities to identify the financial trail of stolen petroleum and freeze or seize assets abroad. UNCLOS and IMO conventions facilitate monitoring of offshore installations and pipelines, enhancing surveillance and detection of unauthorized extraction. Regional cooperation through ECOWAS and AU frameworks ensures coordinated patrols, intelligence sharing, and prosecution of transnational syndicates, reducing the opportunities for criminals to exploit jurisdictional gaps.[96]

For Nigeria, these instruments provide multiple advantages: enhancing mutual legal assistance and extradition for cross-border oil theft cases; enabling alignment of domestic legislation with international standards for investigating illicit financial flows; strengthening maritime security and surveillance of offshore installations; and facilitating regional collaboration to prevent smuggling and prosecute organized syndicates. They also complement domestic statutes such as the Miscellaneous Offences Act (MOA), EFCC Act, NSCDC Act, and Petroleum Industry Act 2021, which focus primarily on substantive criminal liability, regulatory oversight, and infrastructure protection.[97]

5. Challenges in Combating Crude Oil Theft in Nigeria

Despite the existence of robust legal frameworks such as the Petroleum Industry Act (PIA) 2021, the Miscellaneous Offences Act (MOA), the NSCDC Act, and subsidiary regulations like NUPRC guidelines, EGASPIN, and the NOSDRA Act, crude oil theft remains pervasive in Nigeria. The persistence of this menace reflects not only the technical sophistication of theft operations but also systemic, institutional, and socio-economic obstacles that undermine enforcement and prosecution. These challenges span regulatory, operational, institutional, and socio-political dimensions.

Weak Institutional Capacity

A recurring challenge is the inadequate capacity of regulatory and enforcement agencies. The Nigerian Upstream Petroleum Regulatory Commission (NUPRC), NSCDC, often face shortages of trained personnel, modern surveillance equipment, and technical infrastructure required to monitor pipelines, terminals, and refineries effectively. While statutes vest agencies with broad powers of inspection, arrest, and prosecution, these powers are often underutilized due to limited manpower, insufficient funding, and logistical constraints, particularly in the challenging terrain of the Niger Delta. For instance, pipeline surveillance is hampered by the swampy, remote geography of theft-prone areas, allowing sophisticated syndicates to operate with impunity.[98]
Overlapping Jurisdiction and Regulatory Fragmentation

Nigeria's petroleum sector is characterized by a complex and multiple regulatory agencies tasked with overlapping responsibilities. The NSCDC, NUPRC, NMDPRA, EFCC, and traditional security agencies such as the Nigerian Navy and Police all have mandates related to oil infrastructure protection, anti-bunkering operations, and revenue monitoring. While coordination exists in theory, in practice, overlapping jurisdiction often creates gaps, delays enforcement, and encourages inter-agency turf wars, which oil theft networks exploit. Historical disputes over regulatory competence have allowed perpetrators to operate in legal grey areas, undermining statutory deterrence.[99]

Corruption and Conspiracy

Corruption as it were, remains one of the most significant impediments to combating oil theft. Criminal networks often operate with insider assistance, including but not limited to company employees, transport operators, and sometimes security personnel. Bribery and collusion enable syndicates to bypass checkpoints, manipulate measurement systems, and conceal illegal operations. Moreover, enforcement officers themselves may be compromised, leading to selective investigations or non-prosecution. This entrenched culture of impunity has historically weakened the impact of punitive statutes, despite severe penalties under the PIA, MOA, or EFCC Act.[100]

Technical Challenges

Oil theft in Nigeria has evolved into a highly technical crime. Sophisticated pipeline tapping, illegal refining, and use of mobile storage and transport vessels make detection and monitoring extremely difficult. Regulatory provisions such as NUPRC Crude Oil Measurement Guidelines 2021 aim to ensure accurate accounting, but implementing real-time monitoring across extensive pipeline networks is technologically demanding and resource-intensive. Theft often occurs faster than detection, and evidence collection is frequently delayed, complicating subsequent prosecution.[101]

Legal and Procedural Constraints

Even where offences are detected, the prosecution process faces numerous hurdles. Court backlogs, inadequate legal documentation, and the difficulty of securing technical and forensic evidence delay trials. Discrepancies in criminal procedure between State and Federal High Courts and between statutory instruments (e.g., MOA vs PIA) can also complicate case management. Furthermore, cross-border aspects of theft—such as smuggling to neighboring countries—require mutual legal assistance treaties (MLATs) and international cooperation, which can be slow and bureaucratically cumbersome.

Conclusion

Oil theft in Nigeria is a multidimensional problem that goes to the heart of the country's economic life and environmental integrity. As shown in this paper, oil theft is deeply embedded in Nigeria's historical experience of centralized resource control, socio-economic marginalization of host communities, weak regulatory oversight, and entrenched corruption. Its evolution from artisanal survival activity into an organized, transnational criminal enterprise reflects the failure of governance structures to equitably manage petroleum resources and enforce accountability across the oil and gas value chain.

The analysis of Nigeria's legal framework reveals that the problem is not an absence of law. From the constitutional vesting of petroleum resources in the Federal Government under Section 44(3) of the 1999 Constitution, to the stringent criminal sanctions imposed by the Miscellaneous Offences Act, the EFCC Act, and the Petroleum Industry Act 2021, Nigeria possesses an extensive statutory arsenal capable of addressing oil theft. Subsidiary legislation, regulatory guidelines, and environmental regimes further strengthen this framework by providing operational standards for monitoring, detection, and accountability. However, the persistence of oil theft underscores a critical gap between legal design and legal effectiveness.

Institutional fragmentation, overlapping mandates, weak prosecutorial coordination, and insider collusion have significantly undermined enforcement. Security-focused responses, while necessary, have proven insufficient when deployed in isolation. Similarly, community-linked accountability mechanisms under the Petroleum Industry Act, though innovative, risk exacerbating injustice if implemented without addressing power asymmetries between host communities and organized criminal networks. The involvement of political elites, security operatives, oil company insiders, and transnational buyers highlights that oil theft is sustained not only by local actors but by a complex ecosystem of beneficiaries operating across domestic and international spaces.

Therefore, this paper argues that an effective response to crude oil theft must be holistic and reform-oriented. Legal enforcement must be integrated with financial crime investigation, asset recovery, and prompt prosecution of perpetrators together with severe punishment for persons found guilty of crude oil theft in Nigeria. Conclusively, Effective laws and effective legal enforcement coupled with adequate and prompt punishment of perpetrators would serve as clear deterrence for prospective oil theft perpetrators in Nigeria.

Endnotes

[1] *June 1956 – Discovery of Oil in Nigeria, Oloibiri, Bayelsa State* (ClassNotes.ng, Primary 5 History Lesson), available at: https://classnotes.ng/lesson/june-1956-discovery-of-oil-in-nigeria-oloibiri-bayelsa-state/ November 2nd 2025

[2] Goddey Wilson, 'The Nigerian State and Oil Theft in the Niger Delta Region of Nigeria' (2014) 16(1) *Journal of Sustainable Development in Africa* 69–81

[3] Ibid

[4] Odalonu Happy Boris, 'The Upsurge of Oil Theft and Illegal Bunkering in the Niger Delta Region of Nigeria: Is There a Way Out?' (2015) 6(3) *Mediterranean Journal of Social Sciences* 563,

[5] Mezie-Okoye, 'The Political Economy of Artisanal Refining in the Niger Delta' (2025) 8(2) *Sapientia Global Journal of Arts, Humanities and Development Studies (SGOJAHDS)*

[6] Ibid

[7] Bieh et al, 'Crude Oil Theft, Roles of Traditional Leaders and Development Implications in Nigeria: The Niger Delta Experience' (2023) 6(1) *International Journal of Advanced Research in Public Policy, Administration and Development Strategies (IJARPPADS)*

[8] Oluebube Christopher Offor, 'Oil Wealth and Illicit Financial Flows in Nigeria's Petroleum Sector'(2023) 3(1) *Journal Of Academics Stand Against Poverty* 17-36

[9] Ibid

[10] Henry A & Mohammed S.U, 'Oil Pipelines Vandalism and Oil Theft: Security Threat to Nigerian Economy and Environment' (2023) 03 (01) Journal of Environmental Law & Policy 170-188

[11] Omodero, C. O., & Dandago, K. I, 'Oil revenue, exchange rate and inflation: Evidence from Nigeria' (2019) *9*(5), *International Journal of Energy Economics and Policy* 361–367.

[12] Akindoyo, O. A, 'Insecurity and foreign direct investment in Nigeria's oil sector' (2025) 3(3) *Kashere Journal of Politics and International Relations.*

[13] TotalEnergies completes Bonga oilfield divestment off Nigeria. *S&P Global Energy*. November 25, 2025. Available at: https://www.spglobal.com/energy/en/news-research/latest-news/crude-oil/112525-totalenergies-completes-bonga-oilfield-divestment-off-nigeria accessed November 4th 2025

[14] Sunny-Hart, B, 'Corruption in the Nigerian Oil and Gas Sector: The Role of the Judiciary in the Criminal Justice System' (2025) 16 *Beijing Law Review*

[15] Moses Obenade & Gordon Tami Amangabara, *Perspective: The Environmental Implications of Oil Theft and Artisanal Refining in the Niger Delta Region* (2014) 1(2) *Asian Review of Environmental and Earth Sciences* 25–29,

[16] Fie David Dan-Woniowei & Fidelis A. E. Paki, 'Crude Oil Theft, Illegal Bunkering and Pipeline Vandalism in Nigeria's Niger Delta: Effects and National Responses to Curb the Menace' (2024) 5(19) *Journal of Global Social Sciences* 69–84,

[17] OD Michael, *The Ecological and Economic Toll of Oil Theft in Nigeria: A Case in Ecocide and Stagnation* (9 October 2025) SSRN Scholarly Paper No 5674404, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5674404 accessed November 7th 2025

[18] *Economic Losses through Oil Theft in Nigeria: A 4-Year (2019–2022) Assessment* (2023) *European Modern Studies Journal* (Vol 8 No 6) 941–953, available at: https://lorojournals.com/index.php/emsj/article/view/941 accessed November 7th 2025

[19] Ibid

[20] Dimkpa et al, 'Economic Losses through Oil Theft in Nigeria: A 4-Year' (2023) 7(3) *European Modern Studies Journal* 68–76,

[21] Awodezi

[22] Akndoyo

[23] Ibid

[24] Ibid

[25] Ibid

[26] Olorunsemi Akin Akindoyo, 'The Shadow of Sabotage: Unraveling the Insecurity Threats Impacting Oil Operations in Ondo and Delta States of Nigeria ' (2025) 3(3) *Kashere Journal Of Politics And International Relations* 2025

[27] Collins H Wizor & Elekwachi Wali, 'Crude Oil Theft in the Niger Delta: The Oil Companies and Host Communities Conundrum' (2020) 7(1) *International Journal of Research and Scientific Innovation* 22–32

[28] Jonah Rexer, *Black Market Crude: Organized Crime and Environmental Externalities in Nigeria's Oil Sector* (5 March 2019) Kleinman Center for Energy Policy, University of Pennsylvania, available at: https://kleinmanenergy.upenn.edu/research/publications/black-market-crude-organized-crime-and-environmental-externalities-in-nigerias-oil-sector/ November 7th 2025

[29] Onisodumeya Elemchukwu James & Christian Ozimede, 'Impact of Sabotage, Oil Theft and Illegal Oil Bunkering Activities on the Nigerian Environment and Economy' (2023) *Journal of Agriculture, Environmental Resources and Management* 876–888

[30] Sylvester Efe Owhojeta, *Surveying of Oil Theft Activities in Wetlands Nigeria – A Case Study of Niger Delta Region* (Presented at the FIG Working Week 2024, *Your World, Our World: Resilient Environment and Sustainable Resource Management for All*, Accra, Ghana, 19–24 May 2024) (Paper No 12640), available at: http://www.fig.net/resources/proceedings/fig_proceedings/fig2024/ppt/ts05f/TS05F_owhojeta_12640_ppt.pdf accessed November 7th 2025

[31] n(21)

[32] Oluwole Ojewale, *State Collusion Perpetuates Oil Smuggling Across Nigeria-Cameroon Borders* (26 March 2021) *ENACT Observer*, available at: https://enactafrica.org/enact-observer/state-collusion-perpetuates-oil-smuggling-across-nigeria-cameroon-borders November 7th 2025

[33] Ibid

[34] Justin Eduviere Agheyisi, *Artisanal Oil Refineries or Kpo-fire: A New Dimension of Petro-Insurgency in Nigeria's Oil-Producing Niger Delta Region?* (29 June 2023) *SSRC – Kujenga Amani* (Social Science Research Council), available at: https://kujenga-amani.ssrc.org/2023/06/29/artisanal-oil-refineries-or-kpo-fire-a-new-dimension-of-petro-insurgency-in-nigerias-oil-producing-niger-delta-region/ November 7th 2025

[35] Raimi Lasisi, 'Illegal Oil Bunkering in Nigeria's Niger Delta Region: Prevalence and Consequences' (2023) 4(1) *International Journal of Advanced Research in Global Politics, Governance and Management* 1–16

[36] Balogun W A & Adesanya O P 'A Sea of Troubles": Oil Theft, Crude Economy and the Business of Organised Energy Crime in the Gulf of Guinea' (2022) *African Journal of Stability and Development* 1–36

[37] Ibid

[38] Damilola Olalekan Ogunlola, Nigeria's Oil and Gas Sector: Understanding the Niger Delta Militant Problem (Submitted to the Institute of Graduate Studies and Research in partial fulfillment of the requirements for the degree of Master of Arts of International Relations, Eastern Mediterranean University July 2020 Gazimağusa, North Cyprus)

[39] Oronto Douglas et al, 'Oil and Militancy in the Niger Delta: Terrorist Threat or Another Colombia*?* (Institute of International Studies Working Paper No 4, University of California, Berkeley, 2004), available at: https://geography.berkeley.edu/sites/default/files/4-douglasvonokonta.pdf accessed November 8th 2025

[40] Osaretin Osho Akinola, 'From Resource Control to Oil Theft: Evolving Crime in the Niger-Delta and the Nigeria Police Force's Role in Mitigation and Enforcement' (2025) 6(1) *OCHENDO: An African Journal of Innovative Studies* 1–13.

[41] Goodnews Osah, 'The Milking of the Nigerian State: Interrogating the Rising Threat of Crude Oil Theft' (2020) *International Journal of Social Sciences and Humanities Review* (IJSSHR) 605

[42] Emmanuel Addeh, 'NNPC-Backed Surveillance Operation Uncovers Illegal Oil Bunkering Camps in Bayelsa State' *THISDAY* (28 June 2024) https://www.thisdaylive.com/2024/06/28/nnpc-backed-surveillance-operation-uncovers-illegal-oil-bunkering-camps-in-bayelsa-state/ accessed November 8th 2025

[43] Ibid

[44] Ibid

[45] Sonia Okiti, Smart Okpara and Tonye Krukrubo 'Between Mineral Rights and Land Tenure: Navigating Land Acquisition in Nigeria's Oil and Gas Sector' Aluko & Oyebode (Insight, July 2025) https://www.aluko-oyebode.com/insights/land-acquisition-in-oil-and-gas-operations-nigeria/ November 8th 2025

[46] O K Edu, 'Ownership of Oil and Gas in Nigeria: Matters Arising' (2007) *The Constitution* 7(1) 62–75 https://doi.org/10.10520/AJA15955753_175 accessed 2 February 2026

[47] N 51

[48] Ugwu Dave Ude, 'A Critical History of Resource Control in Nigeria' (2019) 9(1) *International Journal of Development Strategies in Humanities, Management and Social Sciences*
[49] Section 1 of the Land Use Act 1978
[50] (2006) 5 NWLR (Pt. 973) 309 (SC)
[51] (2002) 6 NWLR (Pt. 764) 542 (SC)
[52] Opeyemi Oni, 'Oil Theft and Energy Transition Strategy: Comprehensive Roadmap for Revenue Protection, Security Reform, and Sustainable Energy Transformation' (2025) 5(6) *International Journal of Humanities Social Science and Management* 407–413
[53] Favour Ngozi Eke, 'Ownership of Oil and Correlative Rights of Land Owners in Nigeria' (2022) 9(1) *Rivers State University Journal of Public Law* 1–17
[54] Chuks Cletus Egugbo, 'Federalism and the Agitation for Restructuring in Nigeria' (2025) 5(5) *AKSU Journal of Administration and Corporate Governance* 41–50
[55] KPMG Advisory Services, *Petroleum Industry Act (PIA) 2021 – A Game Changer?* (KPMG in Nigeria, August 2021) https://assets.kpmg.com/content/dam/kpmg/ng/pdf/tax/petroleum-industry-act-(pia)-2021-a-game-changer.pdf accessed Noivember 10th 2025
[56] Section 6(1) Petroleum Industry Act (PIA) 2021
[57] Section 7(ee) Petroleum Industry Act (PIA) 2021
[58] Section 8(d) Petroleum Industry Act (PIA) 2021

[59] Section 244(2) Petroleum Industry Act (PIA) 2021
[60] (Section 256) Petroleum Industry Act (PIA) 2021
[61] Taiwo Adebola Ogunleye, 'Establishing Oil Theft and Other Related Crimes Tribunal for Speedy Trial: Legal Issues and Challenges' (2016) 21(4) *IOSR Journal of Humanities and Social Science* 20–27
[62] Ibid
[63] Section 382 Criminal Code
[64] Section 390(2), 390(3)-(9) Criminal Code
[65] Section 286 The Penal Code
[66] Section 287 The Penal Code
[67] Section 1(17) of the Miscellaneous Offences Act (Cap M17 LFN 2004)
[68] Ibid
[69] Section 3(1)(f) The Nigerian Security and Civil Defence Corps (NSCDC) Act
[70] Section 3(1)(e) of the Nigeria Security and Civil Defence Corps (Amendment) Act
[71] Section 3(1)(f) of the Nigeria Security and Civil Defence Corps (Amendment) Act
[72] Section 4(2)(b) of the Nigeria Security and Civil Defence Corps (Amendment) Act 2007
[75] Nigerian Upstream Petroleum Regulatory Commission, *Crude Theft: DPR's Tracking System to the Rescue* (22 April2019) https://www.nuprc.gov.ng/crude-theft-dprs-tracking-system-to-the-rescue/ accessed November 12th 2025
[76] Oil and Gas Pipeline Regulations, S.1. 14 of 1995
[77] Nigerian *Petroleum (Drilling and Production) Regulations, 1969* (L.N. 69 of 1969)
[78] Ibid
[79] S.I. No. 40 of 2022 NUPRC Crude Oil Measurement Guidelines 2021
[80] Dayo Ayeyemi, 'Oil theft: NUPRC sets up regulatory framework to address revenue loss' *Tribune Online Nigeria (17 July 2023) https://tribuneonlineng.com/oil-theft-nuprc-sets-up-regulatory-framework-to-address-revenue-loss/ accessed* November 12th 2025
[81] Department of Petroleum Resources, Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (3rd edn, DPR 2018) https://www.scribd.com/document/533874232/DPR-EGASPIN-2018 accessed November 12th 2025
[82] Ibid
[83] Damilola S Olawuyi and Zibima Tubodenyefa, Review of the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (OGEES Institute/Oxfam/IUCN 2019) *https://iucn.org/sites/default/files/content/documents/2019/review_of_the_environmental_guidelines_and_standards_for_the_petroleum_industry_in_nigeria.pdf accessed* November 12th 2025
[84] Sections 5-7 NOSDRA Act 2006 (Act No. 15)
[85] Nnedimma Ezenwa-Ohaeto, B.E. Ewulum & Ejike Okaphor, 'An Appraisal Of The Impact Of The National Oil Spill Detection And Response Agency On Environmental Pollution In Nigeria'(2024) 20 *AJCAL* 48-62
[86] Article 2/5) The UN Convention against Transnational Organized Crime (UNTOC, 2000
[87] Article 7), The UN Convention against Transnational Organized Crime (UNTOC, 2000
[88] Article 8) The UN Convention against Transnational Organized Crime (UNTOC, 2000
[89] Articles 15-16 The UN Convention against Transnational Organized Crime (UNTOC, 2000
[90] Article 20 The UN Convention against Transnational Organized Crime (UNTOC, 2000
[91] n (22)
[92] Articles 56, 60, and 73 of UNCLOS
[93] MARPOL 73/78 (Annex I) mandates oil spill/discharge reporting (Regulations 17, 20),
[94] Abiola J O 'Anti-Money Laundering in Developing Economy: A PEST Analysis of Nigerian Situation' *(2014) 3(6) Review of Public Administration and Management 1–9*
[95] Chibuike et al, 'ECOWAS Protocol on Free Movement of Persons and Cross-Border Dimensions

of Armed Banditry in Nigeria' (2023) 11(2) *Covenant University Journal of Politics & International Affairs*

[96] n (22)

[97] Ibid

[98] n(67)

[99] Peter Uzoho, *'Operators Seek Alignment Between NUPRC, NMDPRA in Oil Regulation' THISDAYLIVE (Abuja, 19 April 2023)* https://www.thisdaylive.com/2023/04/19/operators-seek-alignment-between-nuprc-nmdpra-in-oil-regulation/ accessed November 20th 2025

[100] Betty Sunny-Hart, 'Corruption in the Nigerian Oil and Gas Sector: The Role of the Judiciary in the Criminal Justice System*' (2025) 16 Beijing Law Review 1065–1086*

[101] Goddey Wilson, 'The Nigerian State and Oil Theft in the Niger Delta Region of Nigeria' (2014) 16 *Journal of Sustainable Development in Africa* 59

NIU Journal of Legal Studies Copyright©2026
Nexus International University ISSN: *3007-1860;* 12(3): 45-53

Taming Executive Mercy: The Imperative for Regulatory Guidelines in Nigeria's Constitutional Pardoning Regime

BENJAMIN ABAYOMI SOGUNLE
Olabisi Onabanjo University, Ago-Iwoye, Ogun State, Nigeria

NAT OFO, UGIOMO ERUTEYA
Igbinedion University, Okada, Edo State, Nigeria

Abstract. The prerogative of mercy is an old constitutional bulwark. It's intended to be law that's firm yet fair and kind. Under the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended), this power is given to the President and the State Governors under sections 175 and 212 of the constitution respectively. But this comprehensive power is unconstrained by objective statutory standards, administrative procedures or procedural precautions. As a result, the regime is today a vehicle for political patronage, isolation of elites and politicization of the criminal justice system. This paper will discuss the institutional weaknesses of the unchecked executive mercy system in Nigeria. It draws on certain tenets of modern constitutionalism, the rule of law and separation of powers to examine a form of clemency which is exercised without restraint and of which the high-profile pardons for politically exposed persons convicted of grand corruption provides a case in point. This paper, by comparing the pardon processes of South Africa, India and the United States, shows how a rational, transparent and fair standards framework has become increasingly a component of pardon systems in modern democracies. The paper concludes by presenting a blue print of legislative and institutional changes which include the enactment of a Prerogative of Mercy (Regulatory and Procedural) Act, an independent statutory Advisory Board and the codification of mandatory criteria for the restoration of public trust, respect to victims' rights and tame monarchical executive mercy in Nigeria.

Keywords: Executive Mercy, Constitutional Law, Section 175, Rule of Law, Judicial Review, Political Corruption, Nigeria.

1. Introduction

Executive clemency, or the prerogative of mercy, as it has been traditionally understood, is a strange concept in modern constitutional democracy[1]. It is a formal and official disruption of the criminal justice process. It allows an executive official to overrule, cancel or lessen the final judgment of a court. The pardon was traditionally understood as an expression of pure sovereign grace[2], and acted upon to correct judicial error, to offer mercy to those who were sentenced too severely, or to further the general interest of the state at times of national emergency[3] or transitional justice. In Nigeria, this sovereign remnant is enshrined in the country's highest law. The President of the Federal Republic of Nigeria is granted authority to pardon anyone found guilty for an offence under a federal law, either free or subject to lawful conditions, in Section 175 of the Constitution[4]. Section 212 is an expansion of this

[1] See Jonathan T Menitove, 'The Problematic Presidential Pardon: A Proposal for Reforming Federal Clemency' (2009) 3 Harv L & Pol'y Rev 447, 449; Schick v Reed, 419 US 256, 260–61 (1974) (tracing the President's pardon power to the English sovereign).

[2] See Kathleen Dean Moore, 'Pardon for Good and Sufficient Reasons' (1993) 27 U Rich L Rev 281, 282.
[3] See Burdick v United States, 236 US 79, 95.
[4] Constitution of the Federal Republic of Nigeria 1999 (as amended) s 175.

generous endowment into the sub-national sphere, giving State Governors similar authority over state crimes. For the purpose of emphasis, Section 175 of the Nigerian Constitution provides:

(1) The President may -
(a) grant any person concerned with or convicted of an offence created by an Act of the National Assembly a pardon, either free or subject to lawful conditions;
(b) grant to any person a respite, either for an indefinite or a specific period of the execution of any punishment imposed on that person for such an offence;
(c) substitute a less severe form of punishment for any punishment imposed on that person for such an offence;
(d) remit the whole or any part of such 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.

The text is structured so that the President must seek the advice of the Council of State, and Governors at the sub-national level, must seek the advice of a State Advisory Council on the Prerogative of Mercy[5]. Thus, section 175(2) provides that the President must consult with the Council of State before exercising the prerogative of mercy. Importantly, but not always, the constitutionally provided text is usually interpreted to mean that these bodies are advisory only. The final authority of decisions has remained authoritative, subjective and very centralized in the person of the President or Governor, as the case may be.[6]

Of course, when it is realized that one of the underlying justifications for pardon is to enhance. The justice enhancing aspects of this power obviously demands that the benign prerogative of mercy be as little fettered as possible so that exceptions in favour of 'unfortunate guilt could be made; otherwise, justice would wear a countenance too sanguinary and cruel'. [7] In the words of Hamilton:
There may be many instances where, though a man offends against the letter of the law, yet peculiar circumstances in his case may entitle him to mercy. It is impossible for any general law to foresee and provide for all possible cases that may arise; and therefore, an inflexible adherence to it, in every instance, might frequently be the cause of very grave injustice. For this reason, such a power ought to exist somewhere; and where could it be more properly vested, than in a man who had received such strong proofs of his possessing the highest confidence of the people?[8]

The principal argument for vesting the power to pardon in the President alone is that in seasons of insurrection, a well-timed offer of pardon to the rebels could be essential to the preservation of government, aside from the fact that shrewd use of the power might prevent a civil war.[9]

However, the real problem with this regime is there aren't any specific and clear and enforceable limits. The constitution confers the power, but does not specify the criteria upon which that power may be exercised, the time limits under which it may be exercised, or the minimum standards on which it may be determined to be eligible. The executive has no statutory obligations to listen to victims of crime and to make independent rehabilitation assessments, or to articulate the legal and moral imperatives supporting a grant of clemency[10]. This institutional hole has systematically turned a tool for "divine-like" compassion into "political self-preservation" and "elite capture" . This paper looks at this structural deformity. It states that the unchecked power of the executive is a fundamental attack on the bedrock of the Nigerian state which is based on the rule of law, separation of powers and the Nigerian constitution's provision to fight systemic corruption as provided in Section 15(5) of the Constitution. The paper begins by outlining the theoretical foundations and philosophical conflicts at the heart of the concept of clemency. Further, it examines the constitutional/organisational structure of Sections 175 and 212 and provides a critical review of the current abuse of this power in Nigeria. A cross-jurisdictional comparative study is further attempted. Also, the paper goes on to develop a normative base for change. Finally, the paper

[5] Constitution of the Federal Republic of Nigeria 1999 (as amended) s 212(2).
[6] Constitution of the Federal Republic of Nigeria 1999 (as amended) s 175(2).

[7] See Address by James Iredall, North Carolina Ratifying Convention (July 28, 1788) reprinted in 4 The Founders' Constitution 17 (P. Kurland & R. Lerner ed. 1987)

[8] The Federalist No. 74, 639 (A . Hamilton) (C. Rossiter ed. 1961).
[9] See The Federalist No. 74, 447-449 (A. Hamilton) (C. Rossiter ed. 1961)
[10] See Kathleen Dean Moore, 'Pardon for Good and Sufficient Reasons' (1993) 27 U Rich L Rev 281, 283.

concludes with recommendations for action in order to tame the monstrous nature of the power.

2. Theoretical Foundations and Philosophical Tensions of Executive Mercy

The background to the prerogative of mercy needs to be understood in its historical and philosophical context. This idea has been rooted in the traditional English common law concept of the royal prerogative. The rulers of England thought of the king as the fountain of justice and the only one to execute the laws[11]. All offenses were considered acts against the King's peace and the King had an inalienable right to pardon any violation of his peace. Mercy was an unparliamentary mode of absolute sovereignty, outside of any formal judicial framework[12]. When democratic constitutionalism arrived, some politicians found it hard to make this monarchical relic mesh with democratic governance. Taking a swipe at the exercise of pardon power, Cesare Beccaria[13], the famous Italian writer, strongly advocated for the total elimination of the pardon power. Beccaria argued that the power of pardon is superfluous and that the laws are cruel or incorrect because it adds a random element to the law. For Beccaria the clemency was a systemic acknowledgment of judicial failure and therefore was a way of undermining the deterrent effect of the criminal law by signaling that political influence can elude penal consequences.

On the other hand, Baron de Montesquieu[14] and John Locke[15] argued that the usefulness of clemency is warranted, but in different theoretical paradigms. Locke developed the concept of "executive prerogative": a power given to "the executive" to act according to discretion for the public good, without the prescription of the law, and sometimes even against the prescription of the law. Because of this universal applicability, Locke knew that general laws would be blind to the specifics, the idiosyncrasies, of human action. The legislature cannot anticipate all contingencies. Thus, the executive has to keep an equal safeguard to avoid the danger of absolute injustice (*summum jus summa injuria*[16]).

This places a permanent conflict between the two fundamental principles of a constitutional democracy: . . .The concept of the Rule of Law and Separation of powers. A.V. Dicey's[17] postulations on the rule of law is that the rule of law prevails over arbitrary power. It demands that all the actions of the government are predictable, uniform and standardized. If the executive clemency decree, instead of upholding a conviction, is without any open, objective, and reviewable process, then it creates an environment of caprice. It is a clear indication that the law is not the most important thing, but the perception of the executive, which is above the legislation and above the formality of the judiciary.

2.1 Separation of Powers

In the classical sense of *Trias Politica*[18], the judiciary would interpret and apply the law to particular controversies, the legislature would create the laws, and the executive would enforce them[19]. A court engaging in a full public trial, evaluating evidence in accordance with strict constitutional standards, and issuing a criminal conviction is exercising its proper judicial core power as provided under Section 6 of the Constitution[20] . The pardon in essence vacates or nullifies that judicial determination. Lamenting about the monstrosity and deleterious consequences of this power, Edmund G. Brown, one time Governor of California, quipped:

[11] William Blackstone, Commentaries on the Laws of England (Clarendon Press 1765–1769).
[12] See Jonathan T Menitove, 'The Problematic Presidential Pardon: A Proposal for Reforming Federal Clemency' (2009) 3 Harv L & Pol'y Rev 447.
[13] Cesare Beccaria, An Essay on Crimes and Punishments (W C Little & Co, new edn, 1872) 158–59.

[14] See generally K Moore, Pardons: Justice, Mercy, and the Public Interest (1989) 15–54; Charles de Secondat Montesquieu, The Spirit of the Laws (17th edn, Anne M Cohler and others eds, Cambridge University Press 1989).
[15] John Locke, Second Treatise of Government (C B Macpherson ed, Hackett Publishing 1980).

[16] 'Summum jus, summa injuria' means that extreme justice may result in extreme injustice.
[17] AV Dicey, Introduction to the Study of the Law of the Constitution (10th edn, Macmillan Education 1959) 183.
[18] See Charles de Secondat Montesquieu, The Spirit of the Laws (17th edn, Anne M Cohler and others eds, Cambridge University Press 1989).
[19] See Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 4–6.

[20] See A-G, Cross River State v FRN (2019) 10 NWLR (Pt 1681) 401 (SC); Inuwa v Gov, Gombe State (2020) 5 NWLR (Pt 1708) 306 (SC); Friday v Gov, Ondo State (2022) 16 NWLR (Pt 1857) 585; A-G, Abia State v A-G, Fed (2022) 16 NWLR (Pt 1856) 205 (SC).

The longer I live, the larger loom those ….. decisions about justice and mercy that I had to make as governor. They didn't make me feel godlike then: far from it; I felt just the opposite. It was an awesome, ultimate power over the lives of others that no person or government should have, or crave. And looking back over their names and files now, despite the horrible crimes and the catalogue of human weaknesses they comprise, I realized that each decision took something out of me that nothing - not family, or work or hope for the future- has ever been able to replace.

In other words, when the power is exercised in the arbitrary way, the executive becomes thieves of judicial authority and makes the process of the trial a mere rehearsal which may be easily annulled by a stroke of the executive pen. So the modern question is not whether prerogative of mercy should be banished altogether, but how it is to be domesticated in the constitution. The power should be democratized from being a privilege of "grace" to being a function, rational and accountable instrument of administration.

3. The Constitutional and Institutional Matrix of Clemency in Nigeria

3.1 Textual Analysis of Sections 175 and 212 of the 1999 Constitution.

In Nigeria, the basic source of the pardoning power is the Constitution. Section 175(1) provides:

The President may—(a) grant any person concerned with or convicted of any offence created by an Act of National Assembly a pardon, either free or subject to lawful conditions;(b) 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;(c) substitute a less severe form of punishment for any punishment imposed on that person for such an offence; or(d) remit the whole or any part of any punishment imposed on that person for such an offence or of any penalty or forfeiture otherwise due to the State on account of such an offence.

Under subsection (2) of this section, a procedural requirement is added, meaning that the powers held by the President under subsection (1) of this section shall be exercised after consulting with the Council of State. At the sub-national level, Section 212(1) and (2) is word-by-word the same in terms of authority granted, with the exception that the Council of State is replaced by a State Advisory Council on the Prerogative of Mercy.

3.2 The Illusory Guardrails: The Council of State and Advisory Councils

At first glance, it looks as though there is a "meaningful constitutional check" (Council of State or State Advisory Councils). But a deeper study of the constitution shows that these bodies have little teeth in them. The composition of the Council of State[21] includes the President (Chairman), the Vice-President, all former Presidents and Head of States, all former Chief Justices of Nigeria, the President of the Senate, Speaker of the House of Representatives and all State Governors. It's a very politic, cumbersome and elite body. It lacks the institutional specialism, time and investigative powers to scrutinize the thousands of petitions for clemency that come out of Nigeria's overcrowded correctional facilities. Second and more fundamentally, the jurisprudence of the Constitution of the Federal Republic of Nigeria removes these bodies of any real power because the word "consultation" has been interpreted by the court to mean nothing more than a consultation, thus depriving these bodies of any real power. In *Federal Republic of Nigeria v Dingyadi* [22]. and in a long string of precedents[23], the courts had made it abundantly clear that the obligation to consult does not impose an obligation to obey or follow the advice given. The Court of Appeal in this case held that the word "shall" in section 212(2) connotes compulsion and that 'consultation' with the Advisory Council is mandatory before the Governor exercises the power of pardon. The Court explained that the purpose of consultation is to guide and guard the exercise of the power and to protect it from arbitrariness, impunity, abuse and political aggrandizement. The consultation must precede the exercise of the power, but compliance with the Council's advice is not mandatory. Therefore, the Council of State is only an advisory body. The President may lawfully call the Council, hear the Counselors and their unanimous disapproval of a proposed pardon, and sign the pardon immediately at the end of the

[21] See Constitution of the Federal Republic of Nigeria 1999 (as amended), Third Schedule, Part I.
[22] FRN v Dingyadi (2018) LPELR-46061 (CA) 33–54.
[23] See FRN v Achida (2018) LPELR-46065 (CA) 98–100; Sanda v COP (2025) LPELR-82714 (SC); PDP v INEC (1999) LPELR-24856 (SC) 37–38.

meeting. The constitution provides no requirement that the council's advice be placed in writing or that it be made public or that the President explain his or her reasons for not following the council's advice.

3.3 The Judicial Approach to Executive Mercy in Nigeria

The Nigerian courts have in the past been very deferential to the prerogative of mercy. The general position of the courts is that the use of Sections 175 and 212 is a non-justiciable political issue. In *Falae v Obasanjo*, though the core holding in the case centered on the legal effect of a pardon, the reasonable deduction from the reasoning of the Court of Appeal Justices in the light of surrounding circumstances, is that a bad or self-serving executive motive does not invalidate a lawful constitutional power to grant a pardon since it falls within absolute executive discretion[24]. Such a hands-off attitude leaves no accountability at all. The absence of a law by the legislature to check it, the lame duck status of the Councils, and the unwillingness of the judiciary to look at it, leaves the prerogative of mercy as a royal prerogative that is unchecked within a constitutional democracy.

4. A Critical Appraisal of Contemporary Abuse of the Pardon Power in Nigeria

The structural vulnerabilities of Sections 175 and 212 are not merely theoretical anxieties; they have manifested in profound, systemic distortions of the Nigerian criminal justice and anti-corruption ecosystems.

4.1 Elite Capture and the Subversion of Anti-Corruption Campaigns

The greatest aberration in the Nigerian pardoning system is the systematic hijacking by politically exposed persons. Nigeria's biggest governance problem is grand corruption, which the government has supposedly been fighting through its special statutory bodies including the Economic and Financial Crimes Commission (EFCC)[25], the Independent Corrupt Practices and Other Related Offences Commission (ICPC)[26], etc. The use of the executive's prerogative of mercy to pardon high-profile political figures that have been convicted after spending years fighting court cases that has cost millions of Naira is a direct challenge to the mandate of the state. In April 2022, the federal executive granted pardon to the former governor of Plateau State, Joshua Dariye and his Taraba State counterpart, Jolly Nyame, respectively. The two have been investigated, prosecuted and convicted by their respective state treasuries and their convictions confirmed by the Supreme Court of Nigeria for embezzling billions of naira from their respective treasuries [27]. The state's argument, which was loosely based on the terms of "ill health" and "age," was criticized by civil society, judges, and international observers. The pardons completely lacked transparency: No public medical boards verified the terminal nature of their illnesses. They were neither provided with an explanation of why they cannot be met within the specialized setting of the Nigerian Correctional Service nor provided with a definition of a specialized facility. None of the reasons given justified that these were the ones chosen for higher importance than thousands of destitute old and terminally ill prisoners who were in pre-trial custody or were incarcerated for minor crimes. This results in a "dual-track justice system" that sets harsh, inflexible punishment for the poor and provides a parallel system of executive grace for those who are politically connected: to protect them from the rigors of the law.

4.2 The Complete Erasure of Victims' Rights

The current system of amnesty in Nigeria is based on a strictly bilateral one, i.e. amnesty is a transaction between the state executive and the convicted individual. In this matrix, the person who is the victim of the crime is completely removed. Unlike the common law, granting a pardon in Nigeria extends a pardon to wipe out the guilt of the offence altogether, bringing the individual back to the legal status he held before the crime was committed[28]. The comprehensive erasure takes place without notifying the victims, without setting up restitution mechanisms and without considering the

[24] Falae v Obasanjo (No 2) (1999) 4 NWLR (Pt 599) 476.
[25] Economic and Financial Crimes Commission (Establishment) Act 2004.
[26] Independent Corrupt Practices and Other Related Offences Act 2000, Cap C31, Laws of the Federation of Nigeria 2004.
[27] Dariye v FRN (2015) 10 NWLR (Pt 1467) 325; Jolly Tevoru Nyame v FRN (2011) 6 E-WRN 1 (SC).
[28] Falae v Obasanjo (No 2) (1999) 4 NWLR (Pt 599) 476.

psychological or financial impacts on the victims or their surviving families of the pardon. It is an unilateral erasure, contrary to the basic principles of restorative justice and engenders public cynicism over the state's ability to keep its citizens safe.

5. Comparative Jurisprudence: The Global Shift Toward Regulated Clemency

We need to look at jurisdictions that have a common constitutional heritage with Nigeria but have managed to tame executive discretion in other ways to show that it is not only legally possible, but also would be universally accepted as a good model to emulate.

5.1 South Africa: Rationality and Constitutional Review

South Africa offers perhaps the most innovative (and progressive) model of executive clemency under a constitutional democracy. Section 84(1) and (2)(j) of the Constitution[29] provides:
Section 84(1): The President has the powers entrusted by the Constitution and the Legislation including those necessary to perform the functions of Head of State and head of the national executive.
(2) The President is responsible for-
(j) pardoning or reprieving offenders and remitting any fines, penalties or forfeitures.

It follows that here; the President also has a discretionary power to grant pardons. The text does not make any explicit restriction as in Nigeria. But the South African Constitutional Court has always been unwilling to recognize this power as an act of a sovereign which cannot be reviewed. The Constitutional Court in *President of the Republic of South Africa v Hugo[30],* held that the pardon power is an executive prerogative, but it is subject to judicial review to ensure compliance with the Constitution in certain situations. This qualification was expressed in the following words by the court:

We conclude therefore that some aspects of the exercise of Royal Prerogative are amenable to the judicial process. We do not think that it is necessary for us to say more than this in the instant case. It will be for other courts to decide on a case-by-case basis whether the matter in question is reviewable or not.

Concluding, the South African court observed that in contemporary English law, the exercise of a prerogative of power may be reviewed if, and to the extent that, the subject matter thereof is amenable to judicial review.
Supporting the position that the law in South Africa today is that pardon decisions are now subject to judicial review, the Constitutional Court in *Albutt v Centre for the Study of violence and Reconciliation*[31] takes the view that:
it is by now axiomatic that the exercise of all public power must comply with the constitution, which is the Supreme law, and the doctrine of legality, which is part of the rule of law…More recently, and in the context of Section 84(2)(j), we held that although there is no right to be pardoned, an applicant seeking pardon has a right to have his application considered and decided upon rationally, in good faith, and in accordance with the principle of legality. It follows therefore that the exercise of the power to grant pardon must be rationally related to the purpose sought to be achieved by the exercise of it.

Above all, the court ruled that the participation of the victim is a necessary procedural condition} in the consideration of pardon by the executive in the case of such offences. The executive cannot listen to the one side of the story to make a rational decision on clemency, said the Chief Justice. The pardon cannot include victims of crime, because if it does, it is procedurally irrational, and will be declared unconstitutional by the courts.

5.2 India: Judicial Review of Article 72

The President can pardon, remit, reprieve and respite punishment as per article 72 of the Constitution of India[32]. The executive has long maintained the absolute nature of this power, which couldn't be challenged by the judiciary. But the Supreme Court of India struck down this assertion in a series of audacious constitutional decisions. In *Epuru Sudhakar v Government of Andhra Pradesh*[33], the court held that the clemency powers vested with the

[29] Constitution of the Republic of South Africa 1996.
[30] President of the Republic of South Africa v Hugo [1997] ZACC 4; 1997 (4) SA 1 (CC); 1997 (6) BCLR 708 (CC).
[31] Albutt v Centre for the Study of Violence and Reconciliation [2010] ZACC 4; 2010 (3) SA 293 (CC).
[32] Constitution of India 1950, art 72(1).
[33] Epuru Sudhakar v Government of Andhra Pradesh (2006) 8 SCC 161; see also Maru Ram v Union of India AIR 1980 SC 2147.

governor and the President under Article 161 and Article 72 respectively fall under the purview of review by the judiciary. And as such the power of the executive authorities cannot be exercised arbitrarily by them. The Supreme Court went further to say that in the exercise of the powers, there should not be any kind of mala fide intentions of the authorities. It concluded by stating that the basis of consideration while granting such a pardon/remission should not be extraneous in nature. In other words, the Supreme Court of India has imposed a rigorous standard of judicial scrutiny on executive clemency under articles 72 and 161. The court enumerates clear tests for the courts below to test the pardon before it can be set aside: When the order is passed without application of mind; When the order is manifestly *mala fide* (in bad faith); When the order is passed on wholly extraneous or irrelevant considerations; When the order is arbitrary. As a matter of fact, in *Epuru Sudhaka v Government of Andhra Pradesh*, the court expressly struck down a pardon granted to a political activist, which it held had been tainted by partisan political motives and that relevant material relating to the convict's past criminal actions had been deliberately excluded from the executive's report. Judicial review is an essential brake on political corruption of the clemency power as evidenced in the Indian model.

5.3 The United States: The Administrative Office of the Pardon Attorney

The US Presidential pardon power in Article II, section 2 is textually wide, and the internal administrative structure of the federal government has been finely engineered to make it difficult to abuse[34]. However, as a practical matter, the exercise of the power today is subject only to the constraints that each chief executive has chosen or imposed upon himself[35]. Now, the United States Department of Justice has an Office of the Pardon Attorney (OPA), which is governed by a comprehensive codified set of administrative rules. These rules set forth clear, objective guidelines: A petitioner for a pardon must wait at least five years after his release from confinement before applying; A comprehensive background investigation is conducted by the Federal Bureau of Investigation (FBI). The OPA, however, uses specific criteria which are set out in writing: The post-conviction conduct, character and reputation of the petitioner; The seriousness of the offence and its relative recency; The extent of responsibility taken and evidence of any genuine rehabilitation by the petitioner. The US President does have ultimate constitutional power to override these requirements (as was the case with controversial late-term presidential pardons[36]), but the power of the OPA ensures that the vast majority of clemency applications are filtered through an objective, merit-based and highly institutionalized process. This is a departure from Nigeria's convoluted and opaque system.

6. Deconstructing the Reform Agenda

This paper proposes a three-pronged legislative and institutional intervention.

6.1 Legislative Intervention: Act of Parliament on the Prerogative of Mercy

The National Assembly has been constitutionally endowed with an express mandate[37] in section 4(2) of the 1999 Constitution to make laws for the peace, order and good government of the Federation. The legislature cannot abrogate the President's final power as stated in section 175, but it can—and must—provide a Prerogative of Mercy (Procedural and Regulatory) Act as a necessary legal pathway that must be followed. This law should establish formally the procedure, the criteria and the responsibilities of the executive for the granting of a pardon to be considered and announced. A parallel bill to control the powers of the State Governors under section 212 should be introduced in all of the 36 State Houses of Assembly. The pathway provided by the Indian Supreme Court in Epuru Sudhaka v Govt of Andrha Pradesh is apposite here.

6.2 Institutional Restructuring: An Independent Statutory Advisory Board

What is needed is a permanent, specialist institutional body, rather than the current Council of State. The proposed Act should create the Federal Clemency and Rehabilitation Board. To immunize this board from total executive capture, its

[34] United States Constitution art II, § 2.
[35] Daniel T Kobil, 'Quality of Mercy Strained: Wrestling the Pardoning Power from the King' (1991) 69 Tex L Rev 569, 601.
[36] See Jonathan Peterson and Lisa Getter, 'Clinton Pardons Raise Questions of Timing, Motive' (Los Angeles Times, 28 January 2001) A1.
[37] See Constitution of the Federal Republic of Nigeria 1999 (as amended) s 4(2).

composition must be strictly diversified by statute to include: Retired Justices of the Supreme Court or Court of Appeal, representatives from the Nigerian Bar Association (NBA), specialized criminologists and penal experts from academia.\item Representatives from the Nigerian Correctional Service, Independent civil society actors specializing in human rights and criminal justice reform\end{itemize}The Board would have its own permanent secretariat. It would be given the authority to consider all rehabilitation and medical incapacitation petitions, to undertake investigations of such claims independently, and to hold public hearings if needed. These recommendations would be made formally and in writing to the President by the Board on the basis of facts.

6.3 Codification of Core Substantive Criteria

The proposed Regulatory Act should eliminate subjectivity by setting out clear and mandatory standards for eligibility to, say, be granted clemency. Minimum Time Served Thresholds should be included in these criteria. There shall be no pardon granted upon petition to the trial court, except in the case of undivided terms of confinement in any jail or prison, when the petitioner has served not less than one-third of the term of imprisonment, (or when the petitioner has served in jail or prison one-third of the time for which he was imprisoned) such exceptions as may be necessary in cases of extraordinary and verifiable emergency.

6.4 Exhaustion of Judicial Remedies

Clemency should never be invoked to interfere with current trials and appeals. An application must not be valid if the convict has not exhausted all the avenues of appeal in the constitution up to the Supreme Court or if the statutory time-limit for appeal has expired.

6.5 Standardized Medical Verification

If requests for clemency are based on ill health or old age, it must be supported by a detailed report from an independent, multi-disciplinary Medical Board appointed by the Medical and Dental Council of Nigeria (MDCN) and totally outside the executive's entourage of doctors.

6.6 Mandatory Victim Impact Assessments

The Board shall be statutorily required to conduct investigations and formally notify the victim(s) or surviving families of the crime. Those who are harmed should be provided with a mandatory 60-day timeframe within which to provide written statements or be allowed to testify orally about the effects a possible pardon may have on their safety and well-being.

6.7 Publicity and the Obligation to Provide Reasons

All recommendations of the Board and final decisions of the President shall be accompanied by a written statement of reasons which shall be public documents. The statement needs to specify the reasons behind the decision according to the law, morality, or humanitarian principles. The documents should be published systematically in the National Gazette.

6.8 The Role of the Judiciary: Asserting Justiciability

It is the duty of the judiciary in Nigeria to be bold and reform its constitutional jurisprudence. In view of the models and precedents set by South Africa and India, the Supreme Court of Nigeria should expressly rule that the act of granting pardon is an executive act but the way and the process of granting pardon is fully justiciable. The courts are endowed with the power in the Constitution, under section 6(6)(b), to review, invalidate and quash this executive lawlessness, if the executive commits it without following statutory procedures or on the basis of corrupt or fraudulent misrepresentations.

7. Conclusion and Recommendations

The prerogative of mercy is a constitutional need but as it is practiced in Nigeria, it is an autocratic anachronism. Nigeria has made sections 175 and 212 completely unguided by objective law, a situation that has encouraged impunity for the ruling class and forgotten the victim of crime. Nigeria's democratic experience has to keep going further, and it is not an option to have any power of the executive that is absolute and unchallengeable. The prerogative of mercy cannot be tamed by setting out clear regulatory rules that would not diminish the power of the executive. Instead, it makes mercy fit into the requirements of the modern constitutionalism, whereby reason, justice and the public good are the criteria by which it should be exercised. To this end, the country should strive to achieve institutionalized justice right by updating the existing Criminal Justice Administration laws to provide that the consultation of victims be a condition precedent for executive clemency consideration; and Judicial Overlap. Also, the National Assembly should work towards the actualization of the doctrine of judicial override by introducing the National Clemency and Rehabilitation Board (NCRB) whose members will be experts and independent of the executive branch and which will be given security of tenure, and whose overall duties shall include the implementation of the principle of Judicial override in the consideration of executive clemency. Additionally, there must be complete transparency in that the application for clemency must be promptly digitized and published immediately and made open access all over the country in a separate National Mercy file which must be created.