

**LAW, ETHICS AND
GOOD GOVERNANCE:**

ESSAYS IN HONOUR OF

**CHIEF GODWIN
KANU AGABI**

CON, SAN, FNIALS

**LAW, ETHICS AND GOOD GOVERNANCE:
SELECTED ESSAYS IN HONOUR OF CHIEF
GODWIN KANU AGABI, CON, SAN, FNIALS**

Edited by

Professor Peter Terkaa Akper, *OFR, SAN*

@ 2026

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording or otherwise or stored in any retrieval system of any nature, without the written permission of the copyright holder.

*Published in 2026 by
Central Planning Committee
Kanu Agabi@80, c/o Secretariat
Plot989, Edwin Umezeoke Street,
Wuye. Abuja*

*Printed by Lyn Corporate Media, Abuja
E-mail: olufiyin2@gmail.com
Tel: 08036127419*

ISBN: 978-978-67-1051-8

Editorial Committee

Asiwaju Adegboyega Solomon Awomolo, <i>SAN, FNIALS</i>	<i>Chairman</i>
Professor Peter Terkaa Akper, <i>OFR, SAN</i>	<i>Editor-in-Chief</i>
Professor Ernest Ojukwu, <i>SAN</i>	<i>Deputy Editor</i>
Olanrewaju Akinsola, <i>SAN</i>	<i>Editorial Secretary</i>
Mr. Jubrin S. Okutepa, <i>SAN</i>	<i>Member</i>
Professor Akinseye -George, <i>SAN, FNIALS</i>	<i>Member</i>
Mr. Oyetola Muyiwa Atoyebi, <i>SAN, FCI Arb (UK)</i>	<i>Member</i>
Prof. Theodore Maiyaki, <i>SAN</i>	<i>Member</i>
Ikani Kanu Agabi, <i>SAN</i>	<i>Member</i>
Funmi Quadri, <i>SAN</i>	<i>Member</i>

Table of Contents

The Role of the Attorney-General in Governance: A Highlight on Chief Kanu Godwin Agabi's Career as Attorney-General of the Federation & Minister of Justice

Prof. Yemi Akinseye-George, SAN, FNIALS..... 1

Free, Prior, and Informed Consent (FPIC) In Mining Deals in Africa: A Myth or Achievable Standard for Indigenous Communities?

Joe-Kyari Gadzama, OFR, SAN, Life Bencher, FNIALS, C.Arb 24..... 24

Constitutional Justiciability of the Right to Health in Nigeria: Limits, Prospects, and the Case for Judicial Activism

Prof. Peter Terkaa Akper, OFR, SAN 50

From Unfamiliarity to Competence:

The Role of the Judiciary in Advancing Privacy and Data Protection Rights in Nigeria

Hon. Justice Abiodun A Akinyemi, JCA..... 66

Pre-Action Notice: An Impediment to the Right of Access to Court

Agada Elachi, SAN & Grace Ehusani..... 76

Dissection of Issues of Piracy on the High Seas in the Niger Delta Region of Nigeria

Prof. Omoniyi Bukola Akinola 104

Artificial Intelligence, Professional Ethics and the Administration of Criminal Justice in Nigeria: Evidential, Prosecutorial and Regulatory Challenges

Grace Perpetual Dafiel, PhD 125

Repositioning Conciliation Under the Arbitration and Mediation Act, 2023: Poles Apart or Pillars Within?

Prof. Omoniyi Bukola Akinola 157

Implications of Weak Dispute Resolution Mechanisms on Investor Confidence
in Nigeria: Issues, Challenges and Recommendations for Nigeria's Automotive
Industry

Usman O. Sule, SAN, FICMC, FCI Arb (UK)..... 180

The Mandatory Death Penalty: An Impediment on The Judiciary

Agada Elachi, SAN..... 190

Roles, Obligations and Emerging Opportunities for Legal Practitioners Under
the New Tax Regime

Ahmed Adeniyi Raji, SAN, FCI Arb (UK)..... 209

Admissibility of Technological Evidence in Civic Right Claims

Ikeazor Ajovi Akaraiwe, SAN..... 125

Between Justice and Compromise: Is Mediation Quietly Rewriting the Rule of
Law?

Ifeoma Geraldine Konwea..... 241

The Constitutional Paradox of The Attorney-General in Nigeria: Reconciling
Political Accountability with Prosecutorial Independence

Mohammed Amali; Nansat S. Omoarebu & Uduakobong J. Obot..... 267

Challenges of Achieving Credible Elections and Ensuring Electoral Integrity
in Nigeria

Professor Alphonsus Okoh Alubo, SAN 289

List of Contributors

1. Prof. Yemi Akinseye-George, *SAN, FNIALS*
2. Joe-Kyari Gadzama, *OFR, SAN, Life Bencher, FNIALS, C.Arb*
3. Prof. Peter Terkaa Akper, *OFR, SAN*
4. Abiodun A Akinyemi, *JCA*
5. Agada Elachi & Grace Ehusani
6. Omoniyi Bukola Akinola
7. Grace Perpetual Dafiell, PhD
8. Omoniyi Bukola Akinola
9. Usman O. Sule, *SAN, FICMC, FCI Arb (UK)*
10. Agada Elachi, *SAN*
11. Ahmed Adeniyi Raji, *SAN, FCI Arb (UK)*
12. Ikeazor Ajovi Akaraiwe, *SAN*
13. Ifeoma Geraldine Konwea
14. Mohammed Amali; Nansat S. Omoarebu & Uduakobong J. Obot
15. Professor Alphonsus Okoh Alubo, *SAN*

Chapter 14

THE CONSTITUTIONAL PARADOX OF THE ATTORNEY-GENERAL IN NIGERIA: RECONCILING POLITICAL ACCOUNTABILITY WITH PROSECUTORIAL INDEPENDENCE

By

Mohammed Amali,^{*}
Nansat S Omoarebu,^{}**
Uduakobong J Obot^{*}**

Abstract

The office of the Attorney-General occupies a unique constitutional position in Nigeria, serving simultaneously as the chief law officer of the Federation or a State and a political appointee within the executive branch. This dual character has generated persistent tensions between the demands of political accountability and the imperative of prosecutorial independence, particularly in the exercise of the Attorney-General's constitutional powers to institute, undertake, take over, and discontinue criminal proceedings. While political accountability ensures democratic oversight of executive action, the broad prosecutorial discretion vested in the Attorney-General raises concerns regarding selective prosecution, abuse of process, and executive interference in the administration of criminal justice. This chapter critically examines the constitutional and jurisprudential foundations of the Attorney-General's office in Nigeria, interrogating the extent to which its current institutional design adequately safeguards the rule of law and the impartial administration of justice. Drawing on constitutional provisions, judicial

-
- ^{*} LLB (Univ. of Maiduguri), BL, LLM (Univ. of Huddersfield, UK), PHD (Univ. of Huddersfield, UK), f. CIFIAN, Senior Research Fellow, National Institute for Legislative and Democratic Studies, (National Assembly), amalimoh@yahoo.com; +2348036091751; Orcid: <https://orcid.org/0000-0001-5967-6273>.
- ^{**} LLB (Univ. of Jos), BL, LLM (Univ. of Benin), PhD (In view) Research Officer, National Institute for Legislative and Democratic Studies (National Assembly), gunatnansat@gmail.com.
- ^{***} LLB (Univ. of Calabar), BL, LLM (In View), Senior Research Officer, National Institute for Legislative and Democratic Studies (National Assembly), ledyu33@gmail.com.

decisions, comparative perspectives from selected common law jurisdictions, and established principles of prosecutorial independence, the chapter argues that the constitutional fusion of political and prosecutorial functions creates an inherent paradox that has undermined public confidence in the criminal justice system. It contends that while complete insulation of the Attorney-General from political oversight may neither be feasible nor constitutionally desirable, clearer legal safeguards and institutional reforms are necessary to reconcile democratic accountability with the independence required for fair and impartial prosecution. The chapter concludes by proposing reforms aimed at strengthening prosecutorial autonomy while preserving legitimate mechanisms of constitutional and democratic accountability, thereby promoting greater integrity, transparency, and public trust in Nigeria's criminal justice system.

Keywords: Attorney-General, Political Accountability, Prosecutorial Discretion, Prosecutorial Independence, Rule of Law.

1. Introduction

The office of the Attorney-General (AG) ranks as one of the most commanding institutions within any democratic setting. Vested with the responsibility of safeguarding the interest of the public, ensuring that criminal justice is properly administered, and upholding the rule of law, the office of the AG goes beyond a mere executive position. The office serves the dual role of being the Government's chief legal adviser, and the custodian of extensive prosecutorial powers on behalf of the State. This duality of responsibility places the AG at the tricky intersection between law, public administration, and politics because the office requires the AG to reconcile conflicting constitutional objectives that are not always easily synchronised.

By the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as altered), the relevance and significance of the office of the AG is enshrined in sections 150 and 174. While section 150 establishes the office of the AG as the Chief Law Officer of the Federation, section 174 gives exclusive powers to the AG to institute, undertake, take over, and discontinue criminal proceedings in respect of federal offences. There are equivalent powers conferred upon the AGs of all the states.¹

These provisions underline the confidence reposed in the office because the efficient administration of criminal justice requires an officer that can

¹ Constitution of the Federal Republic of Nigeria, 1999, ss 195 and 211.

exercise prosecutorial discretion in the interest of the public. In exercising these powers however, a constitutional dilemma emerges. Being an appointee of the President of Nigeria or a State Governor as the case may be, the AG is a member of the Executive Council, and as such, expected to advance the legal and policy objectives of the government, while also being politically accountable for the discharge of executive responsibilities. Simultaneously, the Constitution demands that prosecutorial powers inherent to the office are exercised in accordance with the tenets of justice, in the interest of the public, and for prevention of the abuse of legal processes.² These obligations require objectivity, impartiality, and adherence to the rule of law even where prosecutorial decisions may be at variance with the political priorities or interests of the government. Instructively, the AG is expected to serve in two constitutional roles that may in certain instances, trigger conflicting institutional expectations. This conflict is what this Chapter describes as the 'constitutional paradox of the Attorney-General.'

The paradox does not negate the possibility of the coexistence of political accountability and prosecutorial authority, but rather prompts an inquest into whether a political office holder (the AG) who simultaneously exercises prosecutorial discretion can be independent of political considerations. The accountability of members of the Executive to elected governments is sacrosanct, but so also is the fact that the legitimacy of a criminal justice system is very much dependent on the perception of the public that prosecutorial decisions are made fairly, impartially, and without partisan motivation.³ Scholars have argued that because prosecutorial discretion is extensive and often insulated from judicial review, its legitimacy depends on the public perception that it is exercised fairly, objectively, and in the interests of justice.⁴ In the absence of a good balance between these competing constitutional values, the confidence in both the administration of justice and constitutional governance is therefore severely undermined.

The paradox has become increasingly pronounced within contemporary Nigerian constitutional discourse, with allegations of selective prosecution, controversies surrounding the prosecution of high-profile cases, and seemingly politically motivated criminal proceedings intensifying public debate about the independence of prosecutorial decision-making. Irrespective of the justifications or otherwise of these perceptions, what is most important to note is the constitutional reality that the confidence of the public in the

² *Ibid.* s 174(3).

³ Bennett L Gershman, 'Prosecutorial Decision-Making and Discretion in the Charging Function' (2011) 62(129) L.J. Hastings <<https://repository.uclawsf.edu/>> accessed 13 July 2026.

⁴ *Ibid.*

administration of criminal justice is dependent upon the demonstrable impartiality of those that are institutionally entrusted with prosecutorial authority.⁵ The bone of contention therefore, is not only whether an AG lawfully exercises the prosecutorial discretions that the office grants, but whether the institutional architecture of the office grants sufficient protection of that discretion from actual or perceived political influence. It is important to note that this challenge is not unique to Nigeria, as various constitutional democracies have had to adopt varying institutional arrangements in order to reconcile the connection between political accountability and prosecutorial independence.⁶ Although models may differ in design and operation, a common theme is the constitutional objective of the preservation of the integrity of the criminal justice system, and at the same time, maintaining appropriate democratic accountability.

This chapter argues that the Constitution of the Federal Republic of Nigeria does not create an irreconcilable conflict between prosecutorial independence and political accountability, but rather that the constitutional paradox is because the institutional safeguards that are expedient for the preservation of prosecutorial impartiality have not evolved at a pace commensurate to the evolving demands of democratic accountability, constitutional governance, and public expectations of transparency. As such, while the AG being a member of the Executive Council is not in any way anomalous, or inherently incompatible with prosecutorial independence, greater institutional measures must be put in place to ensure that prosecutorial discretion is not only exercised, but perceived to be exercised according to the dictates of the rule of law, and also devoid of political interference.

The Chapter is divided into five parts. Part 1 is the Introduction. Parts 2 and 3 discuss the Theoretical Foundations and the Nigerian Constitutional Framework, respectively, while Part 4 analyses Comparative Practices from other jurisdictions on the subject. Part 5 is the Conclusion, and it synthesises the Findings and Recommendations of the Chapter.

-
- 5 American Bar Association, 'Prosecution Function' (Standard, 2017), <https://www.americanbar.org/groups/criminal_justice/resources/standards/prosecution-function/> accessed 20 July 2026.
- 6 Guiseppe Di Federico, 'Prosecutorial Independence and the Democratic Requirement of Accountability in Italy: Analysis of a Deviant Case in a Comparative Perspective' (1998) 38 *British Journal of Criminology*, 371.

2. Theoretical Foundations of Prosecutorial Independence and Political Accountability

In order to fully understand the paradox that surrounds the office of the AG, it is imperative to examine the theoretical principles that underpin prosecutorial independence and political accountability. It is trite that the Constitution of the Federal Republic of Nigeria vests extensive prosecutorial powers on the AG, but the manner in which those powers are exercised depends not only on the manner in which such powers are exercised, but also on constitutional underpinnings. It is therefore imperative to reconcile the two constitutional ideals that appear, somewhat superficially, to pull in opposite directions. On one hand, democratic governance entails political accountability for executive action, while on the other hand, the rule of law requires criminal prosecutions to be undertaken impartially, objectively, and without indiscriminate political influence. This Chapter examines constitutional and jurisprudential foundations of those conflicting and competing principles, demonstrating that the constitutional dilemma is not whether politics and prosecution can coexist, but rather whether the mechanisms that may enhance such coexistence without compromising the tenets of justice exist.

2.1 Prosecutorial Independence as an Element of the Rule of Law

The rule of law is one of the defining features of a constitutional democracy.⁷ Fundamentally, the principle of rule of law emphasizes that public power must be governed not by arbitrary political will, but by law.⁸ Accordingly, criminal prosecution being one of the most coercive powers of the State must be exercised according to the tenets of the law, and not by partisan or personal considerations. Prosecutorial independence is derived from this understanding of the rule of law, and it entails that the powers of the AG must be exercised exclusively in accordance with legal considerations. The classic statement of prosecutorial independence is from Sir Hartley Shawcross, the then Attorney-General of England and Wales, who explained to the House of Commons in 1951 that although the Attorney-General may consult Cabinet Colleagues, the decision whether to prosecute or discontinue proceedings must be taken independently and on proper legal grounds.⁹ Prosecutorial independence

7 AV Dicey, *Introduction to the Study of the Law of the Constitution*, (10th edn, 1959); Joseph Raz, 'The Rule of Law and its Virtue', in *The Authority of Law: Essays on Law and Morality* (2nd edn, Oxford University Press, 2009).

8 *Ibid.*

9 Osita Mba, 'Judicial Review of the Prosecutorial Powers of the Attorney-General in Wales and England: An imperative of rule of law' (2010) 2 Oxford University Comparative Law Forum

2. Theoretical Foundations of Prosecutorial Independence and Political Accountability

In order to fully understand the paradox that surrounds the office of the AG, it is imperative to examine the theoretical principles that underpin prosecutorial independence and political accountability. It is trite that the Constitution of the Federal Republic of Nigeria vests extensive prosecutorial powers on the AG, but the manner in which those powers are exercised depends not only on the manner in which such powers are exercised, but also on constitutional underpinnings. It is therefore imperative to reconcile the two constitutional ideals that appear, somewhat superficially, to pull in opposite directions. On one hand, democratic governance entails political accountability for executive action, while on the other hand, the rule of law requires criminal prosecutions to be undertaken impartially, objectively, and without indiscriminate political influence. This Chapter examines constitutional and jurisprudential foundations of those conflicting and competing principles, demonstrating that the constitutional dilemma is not whether politics and prosecution can coexist, but rather whether the mechanisms that may enhance such coexistence without compromising the tenets of justice exist.

2.1 Prosecutorial Independence as an Element of the Rule of Law

The rule of law is one of the defining features of a constitutional democracy.⁷ Fundamentally, the principle of rule of law emphasizes that public power must be governed not by arbitrary political will, but by law.⁸ Accordingly, criminal prosecution being one of the most coercive powers of the State must be exercised according to the tenets of the law, and not by partisan or personal considerations. Prosecutorial independence is derived from this understanding of the rule of law, and it entails that the powers of the AG must be exercised exclusively in accordance with legal considerations. The classic statement of prosecutorial independence is from Sir Hartley Shawcross, the then Attorney-General of England and Wales, who explained to the House of Commons in 1951 that although the Attorney-General may consult Cabinet Colleagues, the decision whether to prosecute or discontinue proceedings must be taken independently and on proper legal grounds.⁹ Prosecutorial independence

7 AV Dicey, *Introduction to the Study of the Law of the Constitution*, (10th edn, 1959); Joseph Raz, 'The Rule of Law and its Virtue', in *The Authority of Law: Essays on Law and Morality* (2nd edn, Oxford University Press, 2009).

8 *Ibid.*

9 Osita Mba, 'Judicial Review of the Prosecutorial Powers of the Attorney-General in Wales and England: An imperative of rule of law' (2010) 2 Oxford University Comparative Law Forum

however, does not mean that prosecutors are immune from being oversighted or held accountable, rather it entails that they are free from any form of influence that is capable of infringing upon the impartial administration of criminal justice.¹⁰ Instructively, prosecutorial independence does not only protect the prosecutor, but protects the credibility, integrity, and legitimacy of the criminal justice system itself.

There is an increasing constitutional relevance to this principle because prosecutorial discretion involves choices that have direct impact on individual liberty, public confidence, and the legitimacy of government. Consequently, where prosecutions seemingly target political opponents or protect political allies, the criminal justice system risks being perceived to being an instrument of partisan interests. Prosecutorial independence therefore operates as a fundamental safeguard against the arbitrariness of government and the selective application of the law.¹¹

2.2 Prosecutorial Discretion and the Public Interest

In modern criminal justice systems, it is trite that not every alleged offence should automatically result in prosecution.¹² Prosecutorial discretion is the legal doctrine that gives prosecutors broad powers to decide whether to file criminal charges after weighing factors such as available evidence, the seriousness of the crime, the likelihood of conviction, mitigating factors, and broader public interest considerations.¹³ In the case of *Bordenkircher v. Hayes* (1978)¹⁴, the Supreme Court of the United States of America clarified this position when it stated that “so long as the prosecutor has probable cause to believe that the accused committed an offence defined by statute, the decision whether or not to prosecute, and what charge to bring before grand jury, generally rests in the prosecutor’s discretion.”

The indispensability of this principle to the efficient administration of criminal justice is apparent because it enables prosecutorial authorities to allocate limited public resources effectively, ensures that criminal proceedings actually serve the interests of justice, and helps in the avoidance of oppressive

<<https://ouclf.law.ox.ac.uk/2026/03/19/judicial-review-of-the-prosecutorial-powers-of-the-attorney-general-in-england-and-wales-and-nigeria-an-imperative-of-the-rule-of-law/>> accessed 10 July 2026.

10 Bruce A Green and Rebecca Roiphe, ‘Who Should Police Politicization of the DOJ?’ (2020) 35 Notre Dame Journal of Law, Ethics & Policy, 671.

11 Neil Hawke, *Prosecutors and their Independence* (Oxford University Press, 2021).

12 Andrew Ashworth, *Principles of Criminal Law* (9th edn., Oxford University Press, 2022).

13 Martin L Friedland, *The Law of Criminal Investigation and Prosecution* (University of Toronto Press, 1973)

14 (1978) 434 U.S. 357.

prosecutions. Where exercised without transparent institutional safeguards or transparent principles however, this breadth of prosecutorial discretion also creates the possibility of arbitrariness, inconsistency, and abuse.¹⁵ Of significant importance is the concept of public interest because it empowers and constrains prosecutorial decision-making simultaneously. While prosecutors must consider broader societal interests that go beyond the wishes of accused persons or complainants, the interest of the public cannot be conflated with the political leanings of the government of the day. A proper understanding of public interest means the impartial and consistent application of the law in a manner that enhances equality before the law, justice, and the confidence of the public in legal institutions.¹⁶ Fundamentally, prosecutorial discretion must be guided by legal principles, and not political considerations.

2.3 Political Accountability and the Constitutional Position of the Attorney-General

In most constitutional democracies, the AG occupies an inherent political office being an appointee of the Executive as its principal legal adviser. The reality of the office is that governments require authoritative legal advice that helps in the formulation of policies, litigation, and ensuring that all actions of the executive are taken in line with constitutional and statutory requirements. Political accountability is therefore incidental to the office of the AG, but not incompatible with it, because the AG participates actively in decision-making mechanisms of the government, thereby being accountable to the elected political leadership.

Nevertheless, the AG's prosecutorial responsibilities are fundamentally different from the advisory functions of the office because while legal advice to government may reflect the policy objectives of the executive, prosecutorial decisions require a higher degree of institutional neutrality because they have a direct effect on the constitutional rights and liberty of individuals.¹⁷ As such, notwithstanding the AG being politically accountable to the executive, prosecutorial decisions must not be influenced by partisan considerations and political calculations.¹⁸

It is therefore settled that the AG should be politically accountable, but the constitutional challenge is whether there are proper mechanisms in place to

15 See United Nations, Guidelines on the Role of Prosecutors (1990); International Association of Prosecutors, Standards of Professional Responsibility (1999).

16 Neil Hawke, *Prosecutors and Their Independence* (Oxford University Press, 2021).

17 Tom Bingham, 'The Rule of Law' (2010) 50 (6) *The British Journal of Criminology*, 1202-1205.

18 *Ibid.*

prevent that political accountability from morphing into politically motivated motives over prosecutorial decision-making.

2.4 Reconciling Politics with Prosecutorial Independence

Politics and prosecution relate in a way that has generated significant constitutional debates in many democratic jurisdictions. Arguments have been advanced that prosecutorial authority should be exercised by independent institutions that are entirely insulated from political office.¹⁹ The proponents of this position hold that in order to preserve public confidence and prevent political manipulation of criminal prosecution, a complete institutional independence of the office of the AG is necessary. Another school of thought believes that some measure of democratic accountability is inevitable and desirable because prosecutorial authority inevitably possesses a public policy dimension.²⁰ They base this position on the fact that decisions regarding the allocation of prosecutorial resources, enforcement priorities, and responses to emerging forms of criminality often involve policy considerations that are addressed within the executive branch of government.²¹ The objective under this approach therefore is not only about eliminating political accountability, but in ensuring that political accountability does not undermine prosecutorial impartiality.

Nevertheless, a more balanced approach lies between these competing positions. This is to the effect that a complete political insulation, or an unrestricted executive control does not adequately depict the constitutional role of the AG.²² Total independence can weaken democratic accountability for prosecutorial policy, and at the same time, excessive executive influence can erode equality before the law, and the confidence of the public in criminal justice. It is therefore imperative that the Constitution establishes institutional arrangements that serve the dual purpose of preserving prosecutorial independence in individual cases, while also maintaining democratic accountability for broader prosecutorial policy and administration.

19 Council of Europe Committee of Ministers, 'Recommendation Rec (2000)19 on the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System' (6 October 2000).

<<https://www.refworld.org/legal/resolution/coeministers/2000/31721>> accessed 12 July 2026.

20 AW Bradley, KD Ewing, CJS Knight, *Constitutional and Administrative Law* (18th edn. Pearson, 2022).

21 *Ibid.*

22 *Ibid.*

2.5 The Constitutional Paradox

From the foregoing analysis, it is evident that political accountability and prosecutorial independence are not contradictory constitutional values. Rather they advance shared objectives. While political accountability promotes democratic legitimacy, prosecutorial independence safeguards the unbiased administration of justice and the protection of the rule of law. The reason for the paradox in Nigeria is that these principles intersect within a single constitutional office with the dual responsibility of criminal prosecution, and executive governance. Accordingly, the crux of the issue is not whether the AG should serve the dual purpose of being a political office-holder and the chief prosecutor, because the practice in many constitutional democracies shows that such a fusion of powers is possible and legitimate.²³ Rather the more pertinent question is whether there are sufficient safeguards against arbitrary use of prosecutorial discretion irrespective of the AG's political responsibilities. This theoretical framework provides an avenue for the assessment of Nigeria's current constitutional arrangement. Consequently, the inquest evolves from abstract constitutional theory to the practical operation of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) by assessing whether its allocation of prosecutorial powers to the AG successfully reconciles political accountability with prosecutorial independence, or whether the constitutional paradox remains unresolved.

3. The Nigerian Constitutional Framework: Resolving or Reinforcing the Constitutional Paradox

After establishing in the preceding Part of this Chapter that prosecutorial independence and political accountability are not mutually exclusive constitutional principles, a natural question that emanates from that is whether the Constitution of the Federal Republic of Nigeria successfully provides a balance between the competing imperatives within the office of the AG. In order to answer this question, an assessment of the constitutional architecture that governs the office of the AG, the scope of its prosecutorial powers, and the safeguards that are in place to regulate the exercise of prosecutorial discretion is necessary. Notwithstanding express recognition by the Constitution of the need for prosecution to be undertaken in the interest of the public, in the interest of justice, and to prevent the abuse of legal processes, this Part argues that these safeguards are largely normative in character, providing limited institutional protection against actual or perceived political influence. Consequently, the Nigerian constitutional framework both affirms, and to some degree, deepens the constitutional paradox that was identified in the preceding part.

23 Canada, the UK, Kenya, and the Republic of South Africa for instance.

2.5 The Constitutional Paradox

From the foregoing analysis, it is evident that political accountability and prosecutorial independence are not contradictory constitutional values. Rather they advance shared objectives. While political accountability promotes democratic legitimacy, prosecutorial independence safeguards the unbiased administration of justice and the protection of the rule of law. The reason for the paradox in Nigeria is that these principles intersect within a single constitutional office with the dual responsibility of criminal prosecution, and executive governance. Accordingly, the crux of the issue is not whether the AG should serve the dual purpose of being a political office-holder and the chief prosecutor, because the practice in many constitutional democracies shows that such a fusion of powers is possible and legitimate.²³ Rather the more pertinent question is whether there are sufficient safeguards against arbitrary use of prosecutorial discretion irrespective of the AG's political responsibilities. This theoretical framework provides an avenue for the assessment of Nigeria's current constitutional arrangement. Consequently, the inquest evolves from abstract constitutional theory to the practical operation of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) by assessing whether its allocation of prosecutorial powers to the AG successfully reconciles political accountability with prosecutorial independence, or whether the constitutional paradox remains unresolved.

3. The Nigerian Constitutional Framework: Resolving or Reinforcing the Constitutional Paradox

After establishing in the preceding Part of this Chapter that prosecutorial independence and political accountability are not mutually exclusive constitutional principles, a natural question that emanates from that is whether the Constitution of the Federal Republic of Nigeria successfully provides a balance between the competing imperatives within the office of the AG. In order to answer this question, an assessment of the constitutional architecture that governs the office of the AG, the scope of its prosecutorial powers, and the safeguards that are in place to regulate the exercise of prosecutorial discretion is necessary. Notwithstanding express recognition by the Constitution of the need for prosecution to be undertaken in the interest of the public, in the interest of justice, and to prevent the abuse of legal processes, this Part argues that these safeguards are largely normative in character, providing limited institutional protection against actual or perceived political influence. Consequently, the Nigerian constitutional framework both affirms, and to some degree, deepens the constitutional paradox that was identified in the preceding part.

23 Canada, the UK, Kenya, and the Republic of South Africa for instance.

3.1 The Constitutional Status of the Attorney-General

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) establishes the offices of the AG of the Federation,²⁴ and the AGs of States.²⁵ An Attorney-General of the Federation serves as the chief law officer of the Federation while an Attorneys-General of States serve the same purpose in their respective states.²⁶ As already established in this Chapter, and by constitutional design, the AGs are members of their respective executive councils, and participate fully in the formulation and implementation of government policies. This constitutional configuration is a traditional common law model that was inherited from the United Kingdom wherein the AG performs both legal and political functions.²⁷ A consequence of the responsibilities of the office is a close interactive relationship with the executive and the reinforcement of democratic accountability. This same constitutional configuration however, situates the AG at the pinnacle of prosecutorial hierarchy, and it is this convergence of political and prosecutorial responsibilities within the same office that gives rise to the central paradox that is being examined in this chapter.

3.2 Prosecutorial Powers under Sections 174 and 211 of the CFRN, 1999 (as amended)

The CFRN confers upon the Attorney-General of the Federation (AGF), the power to institute and undertake criminal proceedings against any person before any court of law in respect of offences created by or under an Act of the National Assembly.²⁸ The AGF may also take over criminal proceedings that have been instituted by another authority or person, and may discontinue such proceedings at any stage before the delivery of judgment.²⁹ This is done through the exercise of the power that is referred to as *nolle-prosequi*. Such corresponding powers are vested in Attorneys-General of all the States of the Federation in relation to offences created under State law.³⁰ These powers are broad, and ensure coherence in criminal prosecutions, thereby enabling the AG to prevent duplicative or oppressive proceedings, while also permitting interventions (discontinuance) in instances where the ends of justice are not likely to be served by prosecutions. The authority to discontinue criminal proceedings in

24 The Constitution of the Federal Republic of Nigeria, 1999, s 150.

25 *Ibid.* s 195.

26 *Ibid.* ss 150 and 195.

27 Neil Parpworth, *Constitutional and Administrative Law* 11th edn., Oxford University Press, 2023).

28 The Constitution of the Federal Republic of Nigeria, 1999, s 174(1).

29 *Ibid.* s 174(2).

30 *Ibid.* s 211 (1)(b)(c).

particular, reflects the recognition that justice is not invariably served by pursuing every prosecution to its conclusion.

This analysis notwithstanding, the breadth of the powers of the AG triggers concerns about accountability because the constitutional powers of the AG of *nolle-prosequi* can fundamentally affect individual liberty, political stability, and public confidence. As such, apart from legal authority, exercising prosecutorial discretion demands institutional mechanisms that are capable of ensuring impartiality, and preventing abuse.

3.3 Constitutional Safeguards Governing Prosecutorial Discretion

The prosecutorial powers that the CFRN grants the AG is not entirely unfettered because in exercising those prosecutorial powers, both the AGF and AGs of States are required to have regard to the interest of the public, the interests of justice, and to prevent abuse of legal processes.³¹ These directives explicitly enshrined in the Constitution are the key safeguards that regulate prosecutorial decision-making. Public interest entails that prosecutions must promote societal confidence in the administration of justice, that the interests of justice require fairness to victims, accused persons and society alike, while the prevention of abuse of legal process must ensure that criminal proceedings are not employed for oppressive or improper purposes. By including these principles, the framers of the Constitution recognise the need for prosecutorial discretion to be exercised according to objective constitutional standards, as against personal or political interference.

Importantly, Nigerian courts have repeatedly stressed that prosecutorial discretion is not absolute. In the case of *State v Ilori*,³² the Supreme Court recognised the broad powers of the AG but emphasized that the office is a public trust that must be exercised in good faith, and in the public interest, not arbitrarily. Similarly, the Supreme Court in the case of *FRN v Osahon*,³³ reiterated the breadth of prosecutorial discretion, but again emphasized that the power must remain consistent with constitutional tenets. This notwithstanding, the constitutional measures that should have helped in achieving this are expressed in open-textured and broad language, with the Constitution failing to explicitly define what public interest means. The Constitution does not also prescribe objective criteria for determining when a prosecution should be instituted or discontinued, neither does it establish procedures requiring the Attorney-General to publicly justify the exercise of prosecutorial discretion in controversial cases. Consequently, the efficiency or effectiveness of these

³¹ *Ibid.* s 174(3) for the AGF, and *ibid.* s 211(3) for State AGs.

³² (1983) 1 SCNLR, 94.

³³ (2006) 55 NWLR (Pt 973) 361.

measures depend fundamentally upon the judgment, constitutional fidelity, and integrity of the office-holder. Instructively, while the Constitution imposes normative obligations, the provisions are severely limited by lack of institutional safeguards against actual or perceived political interferences.

3.3 *Nolle Prosequi: A Constitutional Necessity or Vulnerability?*

There is hardly an aspect of the prosecutorial authority of the office of the AG that has generated as much constitutional debate as its power to discontinue criminal proceedings. The power of *nolle-prosequi* is an important constitutional that enables the AG to terminate proceedings that have seemingly become oppressive, legally unsustainable, or contrary to the interests of the public. It is thus a key mechanism for the correction of prosecutorial errors that can occasion a miscarriage of justice. Conversely, the power has attracted persistent criticism especially the ones that involve Politically Exposed persons (PEPs), or matters that have significant public interest, with such usually triggering allegations of prosecutorial discretion being exercised to advance partisan interests, or to protect political allies.

There have been such instances in Nigeria, and one of the leading examples in discussions on the need to constrain prosecutorial discretion is the decision of the then AGF, Abubakar Malami to discontinue the prosecution of Danjuma Goje who was the former Governor of Gombe State. Goje was facing multiple corruption charges brought by the Economic and Financial Crimes Commission (EFCC). However, upon taking over the prosecution of the case from the EFCC, the office of the AGF announced to court that it was withdrawing the charges against the former Governor. This drew severe criticism from public commentators who alleged that the withdrawal of the case was an abuse of prosecutorial discretion on the part of the AGF.³⁴ It must be noted that even in instances where such allegations are unsubstantiated, in the absence of transparent procedures or publicly articulated reasons to the contrary, the confidence of the public in the impartiality of prosecutorial-decision making may be severely eroded. In the aforementioned case, the EFCC made the reason for the withdrawal of the case by the office of the AGF known, but the reasons did not go beyond the fact that the AGF has the powers to do so.

The constitutional challenge therefore is evident in the absence of efficient robust institutional mechanisms governing the exercise of *nolle-prosequi*, rather than with the existence of the power itself. The implication is that a

34 *Federal Republic of Nigeria v Danjuma Goje*, Charge No. FHC/ABJ/CR/268/ 2011; Danjuma Goje, 'Danjuma Goje and the Abuse of Nolle-Prosequi' (4 July 2017) <<https://www.thisdaylive.com/2019/07/06/goje-and-the-abuse-of-nolle-prosequi/>> accessed 7 July 2026.

constitutional power that has been intended to promote justice may inadvertently diminish the confidence of the public if adequate transparency and accountability measures are not entrenched.

3.4 Judicial Oversight and the Limits of Constitutional Control

The importance of the role of the Nigerian judiciary in performing the constitutional role of ensuring that prosecutorial powers are exercised within constitutional limits cannot be overstated. Consistently, courts have recognised that the prosecutorial discretionary powers of the AG although extensive, are not completely immune from constitutional scrutiny, especially where evidence of bad faith, abuse of process, or conducts that breach the constitution abound.³⁵ Nevertheless, the intervention of the judiciary in prosecutorial decision-making remains constrained by the constitutional recognition that prosecutorial discretion is primarily an executive function.³⁶ As such, there is an implicit reluctance on the part of courts in the determination of the appropriateness of the initiation or discontinuance of criminal proceedings to substitute their own judgment for that of the AG.³⁷ This judicial restraint is testament to the respect that the courts have for constitutional allocation of powers, but at the same time, it limits the capacity of judicial review to operate as a comprehensive measure against political influence.

Consequently, the fundamental limitations to prosecutorial discretion are convention, professional ethics, and political accountability, rather than intensive judicial subversion. These mechanisms may perform useful functions, but their efficiency and effectiveness are dependent upon institutional culture and the commitment of constitutional actors to sustain the rule of law.

3.5 Reassessing the Nigerian Constitutional Framework

Holistically examining the CFRN reveals attempts to reconcile prosecutorial independence with political accountability by immersing in a politically accountable officer, extensive prosecutorial powers, while simultaneously directing that those powers are exercised in accordance with the interests of justice, public interest, and the prevention of the abuse of legal processes. However, the way the Constitution is framed situates considerably greater emphasis on the existence of prosecutorial powers rather than the institutional measures that are necessary to enhance their impartial exercise. Relevant constitutional directives although normatively significant, are largely dependent upon the AG's commitment to constitutional values. The

35 *Mohammed Bello Adoke v Federal Republic of Nigeria* (2017) 18 NWLR (Pt 1596) 1.

36 (n 33)

37 *State v Ilori* (1983) 1 SCNLR, 94.

Constitution also provides very limited structural protection against actual or perceived political influence.

Consequently, the paradox is only partially resolved because despite the Constitution successfully establishing both prosecutorial independence and political accountability as governing principles, it does not resolve the institutional question of how these principles should interact in practice. This gulf between constitutional aspiration and constitutional reality is where many of the contemporary controversies that surround the office of the AG emerge. The next part of this chapter, therefore, provides a critical examination of how this constitutional paradox has been reflected in practice, while also considering whether comparative constitutional experience presents more efficient measures for the reconciliation of politics with prosecutorial independence.

4. The Constitutional Paradox in Practice: Comparative Perspectives and Prospects for Reform

Analysing the practice from other jurisdictions is never meant to advocate the wholesale transposition of those models into the Nigerian legal system, rather, it is within the context of this Chapter, to identify constitutional principles and institutional safeguards that are capable of informing the continued development of Nigeria's prosecutorial architecture.

4.1 The Constitutional Paradox in Contemporary Nigerian Practice

Over the years, the practical operation of the office of the AG has triggered significant debate, with public controversies surrounding the institution and its constitutionally entrenched powers, thereby frequently raising questions regarding the extent to which prosecutorial discretion in Nigeria is exercised independent of political considerations. This discourse has been replete with allegations of selective prosecutions, inconsistent prosecutorial priorities, and executive influence in high profile criminal prosecutions involving Politically Exposed Persons.³⁸ These allegations whether substantiated or not, have contributed to a perception that in certain instances, prosecutorial decision-making may be influenced not by the merits of the case, but politically-motivated considerations.³⁹

An instructive instance is the case of Danladi Umar, the former Chairman of the Nigerian Code of Conduct Tribunal who while in office, allegedly physically assaulted a security guard on the 29th of March, 2021 in Abuja.⁴⁰

38 (n 33)

39 *Ibid.*

40 This Day, 'Danladi Umar's Gross Misconduct' (20 August, 2019) <<https://www.thisdaylive.com/2021/04/06/danladi-umars-gross-misconduct/>> accessed 12 July 2026.

Despite the incident being caught on camera, and Mr Danladi not denying that the incident took place, no action was taken against him. The failure to institute criminal proceedings against him following this widely publicized incident attracted considerable criticism from civil society organisations, legal commentators, and the media. These groups opined that the absence of prosecution reflected a culture of impunity and also raised concerns about the selective enforcement of the criminal law, particularly when contrasted with vigorous prosecution of other public officials.⁴¹ Another incident that generated public ire was the prosecution of the then Chief Justice of Nigeria, Walter Onoghen before the Code of Conduct Tribunal. The Nigerian Bar Association, the International Commission of Jurists, and several other bodies questioned the timing and procedure of the prosecution, arguing that it created a perception of political motivation, and posed a threat to judicial independence.⁴² These two cases (with the latter one especially not being exactly within the prosecutorial powers of the AG), only serve to buttress the point that political motivations may be viewed by the public as the motivation to some prosecutions.

Similarly of equal contention has been the exercise of the constitutional power of *nolle prosequi* because despite the power being a fundamental prosecutorial tool against unjust prosecutions, exercising it especially in politically sensitive matters has often generated public censure regarding the impartiality or otherwise of prosecutorial discretion.⁴³ In the absence of explicit constitutional safeguards or statutory obligations requiring the AG to provide detailed public reasons for his actions in exercising the power as is the practice in Nigeria, even decisions taken in good faith may be viewed with suspicion where transparency is lacking. The paradox is further evinced by the relationship between the AGF and specialized prosecutorial agencies such as the Economic and Financial Crimes Commission (EFCC), the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and other law enforcement bodies that possess prosecutorial authority. Notwithstanding that these agencies are specific with their roles in anti-corruption and law enforcement functions, the AGF still retains supervisory powers over federal

41 The Guardian, 'A2justice calls for removal of CCT Chairman over assault on security guard', (6 April, 2021) <<https://guardian.ng/features/law/a2justice-calls-for-removal-of-cct-chairman-over-assault-on-security-guard/>> accessed 13 July 2026.

42 UN Human Rights Office of the High Commissioner, 'Nigeria: Judicial Independence under threat, warns UN Human Rights Expert' (11 February, 2019). <<https://share.google/A62cwA70nqG0Tv6k>>; <<https://www.premiumtimesng.com/news/headlines/308039-onnoghens-suspension-coup-against-judiciary-unacceptable-nba.html?tztc=1>> accessed 12 July 2026.

43 *Ibid.*

prosecutions. This has often generated institutional uncertainty regarding prosecutorial autonomy, executive oversight, and accountability.

The presence of these practical challenges does not in any way, shape, or form establish that the constitutional framework has failed. They only show that when broad constitutional powers are exercised without attendant institutional safeguards that promote transparency and accountability, they risk creating both actual and perceived threats to public perceptions of prosecutorial independence. This is because in constitutional democracies, public confidence is enhanced by the existence of institutional arrangements that visibly protect impartial decision-making, and by lawful exercise of power.

4.2 Comparative Perspectives

4.2.1 The United Kingdom (UK)

In the UK, the AG is a political office-holder and member of the government, being one of the Crown's principal legal advisers, and serving as a government Minister. The office has long-standing constitutional history and performs functions that are broadly comparable to, even if not identical, to those of the AG in Nigeria. Nevertheless, by the evolution of constitutional conventions, the political responsibilities of the AG have been distinguished from prosecutorial decision-making.⁴⁴ As a result, day-to-day prosecutions are usually conducted independently by the Crown Prosecution Services, with the AG only exercising limited supervisory responsibilities.⁴⁵ Consequently, despite the AG being politically accountable to the Parliament, prosecutorial decisions are expected to be made independently of partisan considerations.⁴⁶ The United Kingdom thus seeks to preserve public confidence in the prosecutorial process through a combination of transparent decision-making, published prosecutorial policies, and parliamentary accountability, all of which reinforce the perception and reality of prosecutorial impartiality.⁴⁷

The key take-away from the UK model is that political accountability and prosecutorial independence can co-exist where institutional practices and

44 UK Parliament, 'Attorney-General Reform, House of Lords Debates' (21 July 2009) <<https://hansard.parliament.uk/Lords/2009-07-21/debates/09072147000428/Attorney-GeneralReform>> accessed 26 July 2026.

45 Claire Brader, 'The Roles of the Lord Chancellor and the Law Officers: Lords Committee report' (20 June 2023) <<https://lordslibrary.parliament.uk/roles-of-the-lord-chancellor-and-the-law-officers-lords-committee-report/>> accessed 13 July 2026.

46 John Edwards, *The Law Officers of the Crown: A Study of the Offices of the Attorney-General and Solicitor-General of England, with an Account of the Office of the Director of Public Prosecutions of England* (Sweet & Maxwell, 1964).

47 *Ibid.*

constitutional conventions explicitly delineate the boundaries of executive influence.

4.2.2 Canada

In Canada, the office of the AG is retained within the Executive but with strong recognition of constitutional necessity of prosecutorial independence. There is in existence, the Public Prosecution Service established by the Director of Public Prosecutions Act⁴⁸ which significantly reduces direct political involvement in routine prosecutorial decisions. This is achieved by the Service assigning responsibility for federal prosecutions to an independent Director of Public Prosecutions.⁴⁹ In an instance where the AG considers it expedient to assume conduct of a prosecution or to issue directives, such directives are transparent and publicly documented in the Canada gazette.⁵⁰ This preserves democratic accountability and discourages arbitrary political intervention. Towards achieving these principles, the Supreme Court of Canada in the case of *Alberta v. Krieger*⁵¹ held that "it is a constitutional principle in this country that the Attorney-General must act independently of partisan concerns when supervising prosecutorial decisions."

A key take-away from the Canadian experience is that in order to achieve prosecutorial independence, a complete exclusion of the AG from prosecutorial oversight is not necessary. What rather suffices is the entrenchment of procedural safeguards that ensure that any intervention is exceptional, constitutionally accountable, and transparent.

4.2.3 The Republic of South Africa

As another instructive model, the Constitution of South Africa establishes the National Prosecuting Authority, headed by the National Director of Public Prosecutions.⁵² This provision is given further effect by the National Prosecuting Authority Act, 1998 which establishes the structure, powers, and functions of the National Prosecuting Authority.⁵³ There is an express requirement in the Constitution of the Republic of South Africa that prosecutorial functions must be exercised without fear, favor or prejudice.⁵⁴ Although the Minister responsible for justice still maintains oversight

48 Statutes of Canada 2006, s 3-15.

49 Director of Public Prosecutions Act, 2006, s 3(3).

50 Ibid, s 15.

51 (2002) 3 SCC 372.

52 Constitution of the Republic of South Africa, 1996, s 179(1).

53 National Prosecuting Authority Act, 1998, s 2.

54 Ibid, s 179(4).

responsibilities, prosecutorial decisions are institutionally insulated from political interference.⁵⁵

There is a profound emphasis in South African constitutional jurisprudence that prosecutorial independence is an essential part of the rule of law and constitutional democracy. This was exemplified in the case of *Corruption Watch NPC and Others v. President of the Republic of South Africa and Others*⁵⁶, regarded as one of South Africa's leading constitutional decisions on the independence of prosecutorial institutions. The Constitutional Court in this case, reinforced that the Executive cannot exercise powers over the National Director of Public Prosecutions in ways that create incentives or pressures capable of undermining impartial criminal prosecutions. This strengthened the constitutional principle that the National Prosecuting Authority must operate free from improper political influence because prosecutorial independence is a constitutional imperative derived from sections 179(4) and 165 of the Constitution of the Republic of South Africa. Simultaneously, prosecutorial authorities are accountable through statutory regulation, judicial review, and parliamentary oversight.⁵⁷

The key take-away from the South African experience is that where there is a balanced institutional arrangement, independence and accountability must not be mutually exclusive constitutional values.

4.2.4 Kenya

Kenya has within the African context, undertaken the most notable constitutional reforms, with the Constitution of Kenya's establishment of the Office of the Director of Public Prosecutions as an independent constitutional office, separate from the AG.⁵⁸ The AG is the principal legal adviser to the government but prosecutorial authority is vested in, and exercised independently, by the Director of Public Prosecutions (DPP).⁵⁹ In the exercise of these prosecutorial powers, the DPP is expressly prohibited from acting under the directives or control of any person or authority. Specifically, the Constitution provides that "the Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal

55 See *Democratic Alliance v President of the Republic of South Africa*, (2021) SCA (2022) 1 SA 417.

56 (2018) SACR 442 (CC).

57 National Prosecuting Authority Act, 1998, s 33.

58 Articles 156, and 157(1) of the Constitution of Kenya, 2010 establishes the Offices of the Attorney-General, and the Director of Public Prosecutions, respectively.

59 Constitution of Kenya, 2010, art. 157(10)

proceedings and, in the existence of his or her powers or functions, shall not be under the direction or control of any person or authority."⁶⁰

This provision underscores the constitutional independence of the Director of Public Prosecutions by insulating prosecutorial decision-making from political, executive, or other external influence. It ensures that prosecutorial decisions are based solely on the law, the available evidence, and also, public interest. This institutional safeguard strengthens public confidence in the administration of criminal justice, reinforces the rule of law, promotes impartiality, and reduces the risk of selective or politically-motivated prosecutions, while simultaneously preserving the accountability of the Director of Public Prosecutions within the broader constitutional framework. The key take-away from the Kenyan experience is that an institutional recognition that separates the advisory and prosecutorial functions can enhance the confidence of the public in criminal justice, and at the same time still preserve the important role of the AG within government.

4.3 Towards a Principled Resolution of the Constitutional Paradox

The analysis from the four jurisdictions reinforces the central thesis of this chapter that the constitutional paradox prevalent with the office of the AG in Nigeria is not as a result of any inherent incompatibility of political accountability and prosecutorial independence. Rather, it is the result of the institutional mechanisms that are necessary to preserve the integrity of prosecutorial discretion being comparatively underdeveloped. The comparative experiences also demonstrate that the exercising authority of prosecutorial powers is not the sole determinant for constitutional legitimacy, rather, that can be attained by institutional safeguards that regulate the exercise of the power. These insights provide a principled foundation for reconsidering the Nigerian constitutional framework.

For Nigeria therefore, the choice should not be between political accountability and prosecutorial independence. The more fitting constitutional objective should be the establishment of an institutional framework that reinforces both values instead of undermining one another. This may be achieved through greater transparency in prosecutorial decision-making, clearer prosecutorial guidelines, strengthened institutional safeguards, enhanced parliamentary and judicial accountability, and a clearer functional distinction between the Attorney-General's political responsibilities and the exercise of prosecutorial discretion.

60 *Ibid.* art. 157(6).

5. Findings, Recommendations, and Conclusion

5.1 Findings

In the light of the preceding analysis, this Chapter makes the following findings: The Chapter finds that the office of the Attorney-General embodies an inherent constitutional paradox because the Constitution presents a simultaneous requirement for the AG to function as a politically accountable member of the Executive, and at the same time, operate as an impartial constitutional officer entrusted with the independent exercise of prosecutorial discretion. These dual responsibilities are not inherently incompatible, but still inexorably triggers institutional conflict.

Another finding of the Chapter is that despite the recognition in the Constitution of the Federal Republic of Nigeria of prosecutorial independence as a constitutional value, it fails to provide comprehensive structural safeguards for the protection of this value. Although sections of the Constitution require prosecutorial powers being exercised in the public interest, in the interest of justice, and for the prevention of the abuse of powers, the directives are fundamentally normative, depending solely upon the integrity and constitutional fidelity of the AG in office at any point in time.

The Chapter further finds that the enormous prosecutorial powers of the AG, particularly the power of *nolle-prosequi* exposes the office to the allegations of political influence, but the Constitution does not provide sufficiently robust institutional mechanisms to regulate the exercise of those powers.

The Chapter equally finds that contemporary prosecutorial practice has revealed an evolving gap between constitutional aspirations and public perception. Allegations of bias, selective prosecution, and politically sensitive discontinuance of criminal proceedings whether justified or not, weakens public confidence in the impartiality of prosecutorial decision-making.

The final finding of this Chapter is that political accountability and prosecutorial independence can coexist where supported by appropriate institutional safeguards. This has been gleaned from the comparative study of the four jurisdictions discussed in this Chapter where countries such as the UK, Canada, South Africa, and Canada despite adopting varying constitutional models, all incorporate mechanisms that enhance transparency, accountability, and operational independence in prosecutorial decision-making. This has shown that the adequacy of safeguards governing the exercise of prosecutorial authority can surmount the challenge of the political character of the office of the AG.

5.2 Recommendations

Flowing from the foregoing findings, the Chapter makes the following recommendations:

The Chapter recommends the enactment of a comprehensive statutory framework that governs the exercise of prosecutorial discretion. This legislation should explicitly articulate clear prosecutorial principles, establish an objective benchmark for the institution and discontinuance of criminal prosecutions, and set out the guiding principles on the interpretation of the constitutional concepts of public interest, interest of justice, and the prevention of abuse of the legal process.

The Chapter also recommends for the entrenchment of a system where the AG is mandated to publish comprehensive prosecutorial guidelines applicable to all federal prosecutions. This would enhance transparency, promote transparency, foster consistency, and advance the sort of predictability of prosecutorial decision-making that would strengthen public confidence in the fairness of the criminal justice system.

A further recommendation of this Chapter is that the power of *nolle-prosequi* in matters of significant public and national interest should be accompanied by written reasons, subject only to genuine constraints regarding matters that affect national security, ongoing investigations, or for reasons of witness protection. This should not unduly fetter the constitutional discretion of the AG, but greater transparency would promote accountability and curb public perceptions of political interference and bias.

The Chapter additionally recommends for the strengthening of institutional safeguards in order to reinforce the independence of prosecutorial decision-making. Without necessarily eroding the prosecutorial powers of the AG, legislation may be enacted to enhance the autonomy of the Director of Public Prosecutions, clarify the relationship between the AG and specialised prosecution agencies, and insulating individual prosecutorial decisions from improper political influence.

This Chapter also recommends that Nigerian courts should while exercising judicial review where appropriate, reinforce constitutional principles of fairness, legality, equality before the law, and accountability while at the same time keeping the constitutional discretion vested in the AG sacrosanct. This would enhance constitutional jurisprudence that emphasizes that prosecutorial discretion is a public trust, and not a political prerogative. Finally, this Chapter recommends that careful study of comparative constitutional experiences should inform future institutional reforms, with Nigeria not necessarily transposing foreign models wholesale, but by imbibing relevant practices in line with contextual realities and idiosyncrasies. Principles such as published prosecutorial policies, and clearly outlined accountability

mechanisms as was gleaned from the experiences from other jurisdictions in the Chapter would provide valuable guidance for strengthening the legitimacy of prosecutorial governance within the Nigerian constitutional framework.

5.3 Conclusion

By virtue of the extensive prosecutorial powers vested upon the office of the Attorney-General by the Constitution of the Federal Republic of Nigeria to serve in the unique role of being both the chief legal adviser of the government, and the custodian of the public interest in the administration of criminal justice, the office is one of the most consequential institutions within Nigeria's constitutional architecture. The duality of the role places the office at the tricky intersection of justice and politics, thus creating a constitutional paradox that demands careful institutional management, and not simplistic institutional solutions. This chapter has argued that the paradox does not arise because the Attorney-General is a political office-holder, because political accountability is an indispensable feature of constitutional democracy, and the Attorney-General's membership of the Executive is consistent with long-established constitutional traditions.