

## AMNESTY OPTION AS THE ROAD MAP TO NATIONAL PEACE AND SECURITY IN NIGERIA: THE MORAL AND SOCIO-LEGAL DIVERGENCES

*Brown E. Umukoro \**

### **Abstract**

*Amnesty practice appears to have gradually crept into the Nigerian constitutional law practice, though without any direct constitutional backing. This conclusion is premised on the amnesty option adopted by the Federal Government of Nigeria in handling the Niger Delta militants as well as the clamour by a few persons for the offer of amnesty to the Boko Haram sect and option of forgiveness and reconciliation adopted by the Oputa Panel. It has been identified that amnesty practice most time is premised on factors which may be socio-economic, political, environmental, etc, which factors most of the times constitute an affront on the legal demand for penal justice. The paper therefore reveals that the executive practice of amnesty in the manner it was approached by the Federal Government and may be repeated in the future lacks sufficient constitutional back up. It further reveals that the said amnesty may not debar the beneficiaries from criminal prosecution at international law. While conceding that the social considerations for the practice of amnesty is of overriding status if placed against the demand for penal justice, it is suggested that the constitutional provision being relied upon for the grant of amnesty in Nigeria be beefed up to avoid future constitutional conundrum.*

---

\* Esq., LL.M, Lecturer, Faculty of Law, Delta State University, Oleh Campus, Nigeria.

## **Introduction**

Whether it is referred to as amnesty, pardon or period of grace the deal between the Federal Government of Nigeria and the militants in the Niger Delta by which the latter submitted their arms and were reintegrated into the society without criminal prosecution has come and gone, yet the ripples of the transaction still live with us.

As a measure to foster national peace especially in the riverine areas of Nigeria, the Federal Republic of Nigeria, in the wake of heightened militancy and criminality by group of youths in the south, for the first time, considered alternatives to the use of force pushing aside the machinery of criminal justice system. The Government, accordingly, in 2009 granted 60 days period of grace starting from August 6, 2009 to all willing militants in the Niger Delta to embrace amnesty, surrender their weapons and renounce militancy.<sup>1</sup>

This offer came as the last hope on the issue of peace in the Niger Delta and the “first step in the government’s quest to find a lasting solution to the lingering crises in the oil producing Niger Delta region.”<sup>2</sup> Before the end of the 60 days, militants had started coming out from the creeks in hundreds with boatload of assorted arms. In response to this, the Federal Government set up 27 rehabilitation camps in the Niger Delta to receive militants who availed themselves of the amnesty package.<sup>3</sup>

Judging against the background that the militants have occasioned several losses both to human lives in the Niger Delta region and to

---

<sup>1</sup> See, AFP News: Amnesty for Nigeria Militants to start August 6, available at [www.zimbo.com/AFTP+news/articles](http://www.zimbo.com/AFTP+news/articles), visited 03/09/09.

<sup>2</sup> Afrique en ligne; “Nigeria: More Oil Militants embrace Nigeria Amnesty” available at [www.afriquejet.com/news/africa-new/nigeria](http://www.afriquejet.com/news/africa-new/nigeria).

<sup>3</sup> See, Gilbert da Coasta, “Nigeria Amnesty Plan Facing Critical Challenges” available at [www.voanews.com/english/2009-08/31](http://www.voanews.com/english/2009-08/31) visited 03/09/09. Whether these camps are functional or not is a discussion for another day. Though, amnesty officials were reported to have said that 5,000 ex-militants witnessed the handover of more than 50 assorted weapons, 100,000 rounds of ammunition and 14 gun boats in Bayelsa State. See Gilbert da Coasta: “Nigeria Amnesty Official Hails Program as Success” available at [www.voanews.com/english/2009-08-24-voas35.ctm](http://www.voanews.com/english/2009-08-24-voas35.ctm). visited 03/09/09.

the economy of the federation through acts of vandalization of oil pipelines, bombing, hostage taking of national and international oil and non-oil workers (all being criminal in nature), it became somewhat worrisome and a platform for controversies why the option of amnesty and not justice.

Again, during the tenure of President Goodluck Jonathan was another level of insurgency, this time at the Northern part of Nigeria by the Boko Haram sect killing and maiming through incessant bomb blast with the major aim of distabilzing the government of Nigeria until the country is completely overtaken as Islamic state. This group having also defiled every attempt to pacify them, the federal government was once again called upon to embrace the option of amnesty as a panacea for peace. Though this option was allegedly turned down by the group, it has become apparent that Nigeria has gradually developed the culture of amnesty as an acceptable means for securing national peace and security.

Amnesty, some have argued, is declared mostly to achieve legitimate goals which the country deems of overriding importance, such as peace, truth, or reconciliation, while sometimes for the sole purpose of immunity.<sup>4</sup> This paper therefore seeks to examine the concept of amnesty as an alternative formula for ensuring national peace and security as well as it attempts to defeat justice. The paper also analyzes the concept as it is applied in the United States and the possible legal restrictions which the practice of amnesty may face both in Nigeria and at international law.

### **The Concept of Amnesty**

Amnesty have been regarded and often frowned upon, especially if it relates to grant of pardon for crimes deemed to be international

---

<sup>4</sup> See, Eric Blumenson, "The Challenge of a Global Standard of Justice; Peace, Pluralism and Punishment at the International Criminal Court" (2006) 44 *Columbia Journal of Transnational Law*, p. 803

crimes and for which states are bound to prosecute (or to which States are duty bound to extradite the offenders). Nonetheless, amnesties are widely used, and are likely to remain so.<sup>5</sup>

Amnesty is from the Greek word *amnestia* meaning ‘oblivion.’<sup>6</sup> It is a legislative or executive act by which a state restores those who may have been guilty of an offence against it to the position of innocence.<sup>7</sup> While amnesty is an act of effacing and forgetting past offences, ‘pardon’ is normally given after conviction and exempts the criminal from further punishment. The term ‘amnesty’ as correctly observed is not mentioned in the Constitution of the Federal Republic of Nigeria, 1999 or any of the Nigerian<sup>8</sup> Constitution in the past.

### **Background to Practice of Amnesty in Nigeria**

From the comparative standpoint, amnesty is not one of Nigeria’s legal or political culture or behaviour until recently.<sup>9</sup> On the

---

<sup>5</sup> See, Jeremy Sarkin, “The Necessity and Challenges of Truth and Reconciliation Commission in Rwanda”, (1999) Human Right Quarterly, 667.

<sup>6</sup> See, Wikipedia, the Free Encyclopedia available at <http://en.wikipedia.org/wiki/amnesty>.

<sup>7</sup> *Id.* It obliterates all legal remembrance of the offence.

<sup>8</sup> See, the report of the Presidential Panel on Amnesty and Disarmament of Militants in the Niger Delta, Abuja, 4<sup>th</sup> June, 2009, p.11. (Hereafter referred to as amnesty report). The amnesty was granted pursuant to Amnesty Proclamation made pursuant to Section 175 of the 1999 Constitution of the Federal Republic of Nigeria, 1999. See, Federal Republic of Nigeria Official Gazette, Abuja, Nigeria No. 45 Vol. 9 of 26<sup>th</sup> June, 2009 also available at [http://www.nigerdeltaamnesty.com/amnesty\\_proclamation\\_gazetted.aspx](http://www.nigerdeltaamnesty.com/amnesty_proclamation_gazetted.aspx).

Section 175 of the 199 Constitution, however, provides for ‘pardon’. The terms ‘amnesty’ and ‘pardon’ as they interrelate shall be extensively discussed hereafter. See, also King, E.O., “Prerogative of Mercy: Presidential Amnesty to Niger Delta Militants as A Case Study, (2009) *Jolac Readings in Law*, Vol. I, No., 1 pp. 88-89

<sup>9</sup> Amnesty has been widely used in some other countries from time immemorial for different purposes. These include the Napoleon’s amnesty of March 13, 1815, the Prussian amnesty of August 10, 1840, the generally proclaimed amnesty by Emperor Franz Josef 1 of Austria in 1857, the general amnesty granted by President of the United States, Andrew Johnson, after the America

assumption of office by President Olusegun Obasanjo in 1999, after a protracted military rule, there arose a strong desire for political reform in Nigeria. In June 1999, the Human Rights Violation Investigation Commission popularly known as “Oputa Panel” was inaugurated to investigate human rights abuses committed from January 1, 1994 till the beginning of the term of President Obasanjo which started on May 29, 1999.<sup>10</sup> The commission’s mandate was to review the past and to prevent and forestall future violations. The term of reference of the commission gave way to the option of forgiveness and reconciliation. As was observed by the Commission in its report:<sup>11</sup>

To forgive and reconcile is not necessarily to deny justice. We should not confuse or conflict justice with prosecution and with criminal or retributive justice. Viewed in the broader perspective of legal theory or jurisprudence as well as moral and political philosophy, reconciliation represents not the antithesis but the triumph of justice... To manage the transaction successfully and to consolidate it may require that we sacrifice criminal justice for the higher moral imperative of reconciliation and to avoid the trauma, anguish and pain prosecution will give rise to.

---

Civil War (1861-1865), the 1745 Jacobite rising in Great Britain, etc. See, Wikipedia, the Free Encyclopedia, *supra* note 6.

<sup>10</sup> See, generally, Sonny Onyebula, “The Human Rights Situation in Nigeria since the Democratic Dispensation” (Dev. Policy Mgt. Network Bulletin Vol. XIII, No. 3 Sept. 2001 pp 14-16), available at <http://www.unpan.i.un.org/intradoc/groups/public/documents/idep/unpan004219.pdf>; see, also, Amnesty International: “Nigeria, Time for Justice and Accountability”, London, UK International Secretariat, 2000, available at <http://www.amnesty.org/en/libRARY/info/AFR44/014/2000>.

<sup>11</sup> See, the Synoptic overview of the Conclusion and Recommendation of the Oputa Panel Report, May 2002, available at <http://www.dawodu.com/oputal.pdf>, last visited on September, 16, 2009.

Though no particular person was expressly granted amnesty or given pardon on basis of the Oputa's report, the report ignited the behavior of forgiveness by the Nigerian Government of certain offenders with a view to reconciling this group of people with the entire society at large. It was therefore not surprising when the Federal Government of Nigeria in a widely circulated and reported newsflash offered amnesty to the militants in the Niger Delta as a strategy for ending the protracted Niger Delta Dilemma.<sup>12</sup>

### **Argument for and against Amnesty**

The reason for adopting amnesty approach by any government is predicated on a variety of factors which may range from political, social, economic to environmental. In each of these considerations, there are always both sides of the divide. The major pre-occupation in this research, anyway, is the social argument for amnesty as against the demand for penal justice which is a major component of the criminal justice system.

### ***Social Considerations***

- i. Insecurity:** One of the major social reasons for the amnesty programme offered to the Niger Delta militants and for the proposal to extend same to the Boko Haram is to guarantee security. According to Udegbumam,<sup>13</sup> “[t]he socio-economic context was ... characterized by deficit in security in the region and other parts of Nigeria especially in the neighbouring south eastern states. There was increase in hostage-taking and kidnapping of people from various works (sic) of life.” Lack of security is a serious social threat to any society. It has been observed that:

---

<sup>12</sup> See, Amnesty Report, *supra*, footnote 8, p. 6.

<sup>13</sup> KWC, Udegbumam, “Repositioning Nigeria’s Amnesty Programme for Conflict Transformation and Post-Conflict Peace-Building in the Niger Delta Region of Nigeria” (2013) 2/1 *Singaporean Journal of Business Economics, and Management Studies* p.48

The pattern of insecurity in Nigeria has been regionalised: militia groups' insurgency in the north, kidnapers in the eastern and southern part of the country, ritual killing in the west, political and non-political calculated assassinations across the nation. The regionalised structure of insecurity has also given rise to regional unlegislated security formation in the country in a bid to curtail the alarming rate of insecurity. The frequent occurrence of bomb explosions, orchestrated by the acclaimed religious extremists in the northern part of the country, has assumed a worrisome dimension. An estimated number of about 2,000 lives have been lost to bomb explosion from 2010 till date. According to security information released by Crime Guard, a security monitoring group, between March and December 2012, there were a total of 153 successful explosions in the country which claimed several lives.<sup>14</sup>

To underscore the position which security concerns occupy in Nigeria, one may simply consider what has now been known as security vote in every annual national and states' budget in Nigeria, a vote which itself has turned an easy source of financial misappropriation in Nigeria.

Arguing in favour of amnesty on ground of insecurity in Nigeria is therefore of immense persuasion with sufficient weight and merit. This argument for amnesty gained prominence as a result of the outcome of the Niger Delta Amnesty Programme which provided the region with the requisite peaceful environment for the usual economic growth it was known for. It was actually on this premise

---

<sup>14</sup> See "The Cost and Effect of Security in Nigeria" available at <http://www.myfinancialintelligence.com/professional-services/cost-and-effect-insecurity-nigeria> last visited on 14th May, 2017

that some became comfortable in suggesting that same olive branch be extended to the Boko Haram sect.

**ii. Reintegration:** The option of amnesty in some cases is based on the understanding that bringing citizens into compliance with law is more important than punishing them for past offences.<sup>15</sup> It therefore offers an escape from expensive prosecution especially where the number of offenders is very large. Most importantly, it prompts violators who would have ordinarily eluded the authorities to submit to the authorities to promote reconciliation between offenders and the society.<sup>16</sup> It has been said that one of the frequent reasons for amnesty is the need to get people to turn in contraband as in the case of China's gun restriction<sup>17</sup> and, to a large extent, the case of the amnesty granted to the militants in the Niger Delta. This is so as the Nigerian amnesty deal was followed by a comprehensive procedure for recovering arms, ammunitions, explosives and allied equipment from militants and for rehabilitating the offenders.<sup>18</sup> It was reported that the Federal Government "selected local and offshore training centres that will provide training opportunities in the areas of vocational skills and formal education,"<sup>19</sup> it was further reported that "a total of 150 courses ... [were] identified to be undertaken by the repentant militants ... [and] that the government has designed a programme that will ensure that selected training institutions incorporate entrepreneurial training in the various courses to

---

<sup>15</sup> See Wikipedia, the Free Encylopedia, *supra* 6 note.

<sup>16</sup> *Id*

<sup>17</sup> In 2006, China issued a deadline for people to hand over any illegal firearms as part of national wide crackdown on illegal possession of arms. This was as a result of rise in crime wave in some areas of China. See "China Sets Gun Amnesty Deadline, BBC news Asia-pacific, available at <http://.news.bbc.co.uk/2/hi/asia-pacific/5151002stm>.

<sup>18</sup> See, Amnesty Report, *supra* note p.20

<sup>19</sup> See Ex-militant Leaders in Last Batch of Rehabilitation available in <http://nigeriang.com/newstoday/ex-militant-leaders-in-last-batch-of-rehabilitation/3476/> last visited 14<sup>th</sup> May, 2017.

enable the participants to be self-employed.”<sup>20</sup> The report added that “more than 1,140 participants from the first batch already allocated to the vocational training centres will commence training at those centres on August 20 [2010]”

### ***Legal Considerations***

On the other hand, amnesty has also raised the question of legal justice. For instance, the question arose from the Uganda government’s offer of amnesty by refraining from prosecuting Joseph Kony alleged to have committed war crime hoping that same would stop further bloodshed.<sup>21</sup> It is believed that such practice of impunity can give the impression that those who commit atrocities can walk away scot-free by requesting the government to grant amnesty to them as a basis for stopping further lawlessness. According to Naqvi “criminal prosecution of those accused of committing war crimes is a fundamental aspect of a victim’s right to justice.”<sup>22</sup> However, it is a general legal altruism that there is remedial justice as there in retributive justice. While retributive justice focuses on punishment of the offender, remedial justice is characterized as the legal means to recover a right or to prevent or obtain redress for a wrong.<sup>23</sup>

For the retributivist, justice must be done for justice sake and this implies a duty to prosecute and punish offenders notwithstanding the consequences.<sup>24</sup> The question therefore is: does justice always demand prosecution? Obviously, this cannot be. The “obligation to

---

<sup>20</sup> Id.

<sup>21</sup> See, Wikipedia, the Free Encyclopedia; *supra* note 6.

<sup>22</sup> See, Yasmin Naqvi, “Amnesty for War Crimes: Defining the Limits of International Recognition” (2003)85/841 *International Review of the Red Cross*, p.583

<sup>23</sup> See, Avouch K. and Vejarano B. “Truth and Reconciliation Commission: A Review Essay and Annotated Biography”, (2002) *The Online Journal of Peace and Conflict Resolution*, Vol. 4, No. 2, pp. 34-75

<sup>24</sup> See Blumenson *supra* note 4, p.834.

do justice is not identical to and does not always entail, a simple duty to prosecute and punish.”<sup>25</sup> According to Blumenson,<sup>26</sup>

the essential duty of a state... is to recognize and repudiate the crime, and stand in solidarity with the victim. Criminal punishment is ordinarily an effective means of achieving this, sometimes other instruments<sup>27</sup> may be as well.

This proposition suggests that though every criminal deserves punishment, every criminal must not necessarily receive punishment. Herbert Morris<sup>28</sup> does not see it this way. According to him “a criminal deserves and must receive punishment in order to redress the unjust advantage over law-abiding citizens he acquired by his crime.”

### **Constitutionality of the Practice of Amnesty in Nigeria**

The constitution of the Federal Republic of Nigeria, 1999 makes no provision regarding amnesty. The notwithstanding, the Federal Government of Nigeria has placed much premium on section 175 (1) of the said Constitution in exercising its power for the grant of amnesty to the militants in the Niger Delta.<sup>29</sup>

Section 175 (1) of the Nigerian Constitution provides thus:

The president may

---

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Some of these other instruments may include reconciliation and forgiveness as was intended to be achieved from the Oputa’s panel and from the Truth and Reconciliation Commission in South Africa.

<sup>28</sup> See, Herbert Morris, on Guilt and Innocence: Essays in Legal Philosophy and Psychology (1976) cited in Eric Blumenson, *supra* note 4, p.834. Morris feels that since criminals benefit from the protection of the criminal laws, they should also suffer the burden of self restraint.

<sup>29</sup> See, Amnesty report, *supra* note 4 p. 11.

- a) Grant any person concerned with or convicted of any offence created by an Act of the National Assembly a person, 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 punishment imposed on that person for such an offences or of any penalty or for forfeiture otherwise due to the state account of such an offence.

The power of the President with respect to section 175 (1) above shall be exercised by the President himself after consultation with the Council of State.<sup>30</sup>

It was strongly argued that this section of the Nigerian Constitution highlighted above does not empower the president to grant amnesty but only to pardon a criminal after his conviction.<sup>31</sup> According to Akpo Mudiaga-Odje:

It is our respectful view, therefore, that Mr. President lacks the quo warranto to even grant the blanket amnesty he purported to exercise... if the reverse or the contrary is the case, then it would mean that Mr. President could even pardon before the sentence and

---

<sup>30</sup> For the composition of the Council of State, see part 1 to the 3<sup>rd</sup> Schedule of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The Council of State vis-à-vis other Federal Executive Bodies is established by section 153 of the said Constitution. The powers of the Council of State are majorly advisory. See item 6 of part 1 to the 3<sup>rd</sup> Schedule of the Constitution. Note that a similar provision to section 175 (1) is set out in section 212 of the same Constitution *mutatis mutandis* with respect to the power of the governors to grant pardon.

<sup>31</sup> See, Akpo-Mudiaga-Odje, “Without Sentence or Conviction, President has no Power of Amnesty” Guardian, Sunday, April 19, 2009.

conviction and thereafter substitute a lesser punishment for the person contrary to the higher one provided by law. That will certainly lead to an infraction of the executive into the exclusive territory of the judiciary as created by section 6 of the Constitution.<sup>32</sup>

Akpo Mudiaga-Odje queries the use of section 175 to give freedom to individuals who never stood trial anywhere let alone conviction. The writer thinks that section 175(1) of the Constitution is wider than the argument of Mudiaga-Odje. The import of the section is that the President may grant pardon to two categories of people. They are:

1. “any person concerned with”, and
2. Any person “convicted of”  
... any offence

Assuming that the exercise of the power to grant pardon as the President did in respect to the Niger Delta militants is not supported under the phrase “convicted of” what about under the phrase “any person concerned with”? a proper interpretation of section 175 (1) (a) of the Constitution should give vent to the proposition that the President has power to grant pardon to any person who is concerned with any offence or has been convicted of any offence created by the National Assembly. The question which should arise from section 175(1) of the Constitution is: whether amnesty which was granted by Mr. President has the same function as ‘pardon’ since the term ‘amnesty’ is not mentioned in the section. The Court of Appeal have been faced with this question previously explained the term ‘pardon’ as follows:

In exhibit 11, the Head of State granted General Olusegun pardon. The word used under section

---

<sup>32</sup> *Id.* Mudiaga-Odje in support of his contention cites *Okongwu v. State* (1986)’’ 5 NWLR (pt.44) 748 at 749 paras F-D, per Ogundare; JCA (as he then was).

161(1)<sup>33</sup> and exhibit 11 is pardon and in this context pardon may be with or without any conditions. It is clear from Exhibit 11 that the pardon granted to the 1<sup>st</sup> Respondent was not made subject to any conditions. In my view, under the Nigerian Law a ‘pardon’ and ‘full pardon’ have no distraction. 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 forfeited on account of the offence.<sup>34</sup>

The court went further to state that:

The effect of a pardon is to make the offender a new man (*novus homo*), to acquit him of all corporal penalties and forfeiture annexed to the offence pardoned. I am of the view that by virtue of the pardon contained in Exhibit 11, the disqualification the 1<sup>st</sup> respondent was to suffer because of conviction, has been wiped out. His full civil right and liberties are fully restored and accordingly he has not been caught by the provision of section 13(1) of the Decree.<sup>35</sup>

It ought to follow therefore from the above that once a pardon is granted whether to a “pardon concerned with” or “convicted of” an offence, the effect is that the offender is made a new man and in the case of “person concerned with” which may include the Niger Delta Militants, he cannot be arrested, detained or prosecuted for such

---

<sup>33</sup> Section 161(1) of the 1979 Constitution is *impari materia* with section 175(1) of the 1999 Constitution.

<sup>34</sup> See, *Falae v. Obasanjo* (No. 2) (1999) 4NWLR (pt. 599) 475, paras C-F, per Musdapher, JCA (as he then was).

<sup>35</sup> *Id.*

offence again. In the case of a person already convicted, his full civil rights and liberties are restored.<sup>36</sup>

Having regard to the effect of the term “pardon” as adumbrated in *Falae v. Obasanjo*<sup>37</sup> it is undeniable that the two terms i.e. ‘amnesty’ and ‘pardon’ are similar as both have same function.<sup>38</sup>

It is in this vein that the Black Law Dictionary expounds the concept of ‘pardon’ to include ‘amnesty’. It states:

Included in the concept of pardon is “amnesty”, which is similar in all respect to a full pardon, insofar, as when it is granted both the crime and the punishment are abrogated, however, unlike pardons, an amnesty usually refers to a class of individuals irrespective of individual situation.<sup>39</sup>

It does appear therefore that the users of the term “pardon” in the context in which it is being discussed have always intended that it would include amnesty.

### **The United States as a Case Study**

Section 2 of Article II of the Constitution of the United States provides for the granting of reprieves and pardon without the use of the word “amnesty” as follows:

---

<sup>36</sup> The case of *Okongwu v. State* (1985)5NWLR (pt. 44) 741 on when pardon is usually granted is with all humility, a misdirection of law having regards to section 161(1) of the 1979 Constitution (now section 175(1) of the 1999 constitution. Ogundare, JCA (as he then was) at page 750, paras A-H of the aforesaid case stated that; “... pardon is usually granted where convict (a) has exhausted all his legal right of appeal or (b) has no intention of exercising such rights or (c) where he is wrongfully convicted and is afterwards pardoned upon the ground of his innocence”. This decision did not take into cognizance the phrase “person concerned with” of section 161(1) of the 1979 constitution (now section 175(1) of the 1999 constitution)

<sup>37</sup> Supra note 34, p. 495

<sup>38</sup> See Black Law Dictionary (6<sup>th</sup> edition).

<sup>39</sup> *Id.*

The President... shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.<sup>40</sup>

The term ‘reprieve’ has been defined as an official order concealing a death sentence.<sup>41</sup> A reprieve does not embrace all the component of “amnesty” hence the United States Constitution expressly provides for both reprieve and pardon conjunctively to demonstrate the intention of the draftsman. The government of United States has granted several amnesties under the cover of section 2 of the United States Constitution even though the word “amnesty” does not exist in the said section.

In 1902 for instance, the United States President, Theodore Roosevelt, declared peace in the Philippines and placed the Islands under civil control and extended general amnesty to the Philippines who have been in rebellion.<sup>42</sup> In his amnesty proclamation, he stated as follows:

Whereas many of the inhabitants of the Philippine archipelago were in insurrection against the authority and sovereignty of the kingdom of Spain and divers times from, 1896, until the cession of the archipelago by that kingdom to the United States of America, and since such cession many persons have, until recently, resisted the authority and sovereignty of the United States; and whereas, the insurrection against the authority and sovereignty of the United States is now at an end and peace has been established in all parts of the archipelago,... during the course of the insurrection against the kingdom of Spain and the government of United States person engaged therein, or those in sympathy with and abetting them committed many acts in violation of the acts of

---

<sup>40</sup> See the Constitution of the United State. See the text of US Constitution at <http://topics.law.cornell.edu/constitution>

<sup>41</sup> See, BBC English Dictionary, Rex Charles & Patrick, 1992.

<sup>42</sup> Los Angeles Times, July 4, 1902.

civilized warfare, but as believed that such acts were committed in ignorance of those laws, and under orders issued by the civil and military insurrectionary leaders; and whereas it is deemed to be wise and humane, in accordance with the beneficial purposes of the government of the United States toward Philippine people and conducive to peace, order and loyalty among them that doer of such acts who have not already suffered punishment shall not be held criminally responsible, but shall be relieved from punishment for participation in these insurrection, and for unlawful acts committed during the course thereof, by a general amnesty and pardon.

It is worthy of note that the proclamation of the United States above did not mention reprieve for the person involved have not been convicted. It is submitted that systematically the use of the word ‘amnesty has always involved a situation having to do with a group of offenders who have not been convicted. Where a single offender is involved, or where the offender or offenders have been convicted (as in Nigeria) the appropriate word is “pardon.”<sup>43</sup> From the foregoing, the reliance of the President of the Federal Republic of Nigeria on section 175(1) of the 1999 Constitution for the proclamation of amnesty in the Niger Delta region is not out of place; though much is desired from the drafters of the Constitution with respect to the said section. A section conferring such an enormous power on an individual ought to have been more explicit especially as it was intended to apply to a category of persons concerned with an offence, (an obtuse phrase which does not immediately reveal the intention of the draftsmen). This is to avoid the constitutional debate which surrounded the powers of the President as exercised by him

---

<sup>43</sup> The Black Law Dictionary, (6<sup>th</sup> edition) in expounding the word ‘pardon’ states that ‘general pardon’ is “one granted to all the persons participating in a given criminal or treasonable offence (general political), or to all offender of a given class... but ‘amnesty’ is the more appropriate term for this.”

under section 175(1) of the Constitution in the proclamation of amnesty to the Niger Delta militants.

### **International Legal Constraint on the Practice of Amnesty**

In international law, amnesties are usually in respect of war crimes and other international crimes.<sup>44</sup> An international crime does not necessarily mean that the crime must be committed against the territory of another state.<sup>45</sup> A crime assumes an international character based on its intensity. Thus, the grant of amnesty over such offences could raise the issue of whether or not such amnesty is recognizable by international court or tribunal. Thus, in order to determine whether an amnesty proclamation is justified under international law, certain criteria have been itemized:

Nagvi<sup>46</sup> summarized them as follows:

1. The amnesty must be prescribed and limited to achieving certain objectives, in particular the objective of securing peace and initiating or furthering reconciliation.

---

<sup>44</sup> See generally R. Slye, 'The Legitimate Amnesty under International Law and General Principles of Anglo-American Law: Is a Legitimate Amnesty Possible?' (2003) 43 *Vanderbilt Journal of International Law* 173; D.Cassel, 'Lessons From the Americas: Guidelines for International Response to Amnesties for Atrocities' (1996) 59 *Law and Contemporary Problems* 197; K. Henrard, 'The Viability of National Amnesties in View of the Increasing Recognition of Individual Criminal Responsibility at International Law' (1987) 8 *Michigan Yearbook of International Legal Studies* 595.

<sup>45</sup> Thus, the Appeal Chambers of the tribunal on war crimes in former Yugoslavia in the case of Tadic, case No. IT-94-1-AR 72,35, stated that "armed conflict exists whenever there is a resort to armed forces between states or protracted violence between government authorities and organized armed groups or between such groups within a state." On the discussion on internal and international armed conflict, see generally, Brown E. Umukoro, *Internal Armed Conflict; The Legal Status of Irregular Fighters at International Humanitarian Law* (Unpublished LL.M Thesis, University of Benin, Benin City, 2006) pp.5-13.

<sup>46</sup> See Yasmin Nagvi, *supra* note pp. 616-617. The criteria stated above evolved from state practice and decision of national and international courts. *Id.*

2. The amnesty must be accompanied by other accountability measures such as truth commission, investigatory bodies, or instruction;
3. The amnesty is not self-proclaimed, i.e. it is the result of negotiation between the outgoing and incoming regimes or of a peace deal brokered by international parties, such as the United Nations; and
4. The amnesty only applies to lower ranking members of armed forces or groups or those considered “last responsible” for the perpetration of international crimes.

Nagvi, opines further that; “attempts to exonerate persons accused of war crimes which do not fit into the above criteria, or which otherwise fail to conform to the fundamental principles of international law, should not in principle be accorded recognition by domestic or international law.”

While all the criteria above will not apply to amnesty over domestic offences, it is argued that every amnesty must be accompanied by some accountability measures like truth commission. Where an amnesty proclamation passes these tests, international law will warmly recognize same. This is so as “international law as a legal regime needs to accord with political realities in order to remain relevant, but should always be interpreted in a manner consistent with its rationale.”<sup>47</sup>

International law therefore recognized limited amnesty for war crimes in order not to frustrate genuine attempts by nation-state to secure peace or initiate the process of reconciliation, which is contrary to the retributivist standpoint of justice.<sup>48</sup>

---

<sup>47</sup> *Id.*

<sup>48</sup> This argument was used by the Constitutional Court of South Africa to justify the broad amnesty granted under the promotion of National Duty and Reconciliation Act 34 of 1995. See *The Azanian People Organisation*

While the option of amnesty in Nigeria is welcome for what is worth, it must be observed that no form of accountability measure was put in place during the Niger Delta amnesty to accompany the programme. In the light of the foregoing, can it be said that the amnesty deal of Federal Government debars prosecution of the ex-militants at international law? If an aggrieved member of the society or any non-government organization decides to prosecute the ex-militants at international court, can the amnesty of Mr. President rob the international court of jurisdiction?

It is undeniable that Nigerian courts have lost jurisdiction over the ex-militants from the moment they were granted amnesty. However, international courts are not in the same way bound to honour an amnesty proclamation of a State as a matter of course. Granted that international law now recognizes an individual's right of action at international tribunal, any individuals or non-governmental organization can present a communication on behalf of an aggrieved member of the society whose human rights have been grossly abuse and for which no domestic court is ready to give redress because of amnesty. This is in recognition of the fact that the activities of the militants before the amnesty involved car bombing, kidnapping, hostage taking, vandalization of public and private property, etc.<sup>49</sup> It

---

*(AZAPO) v. The President of the Republic of South Africa & Ors.*, Case CCT 17/96, (South Africa), 1996 pp. 683-685.

<sup>49</sup> For crimes giving rise to grave breaches of the Geneva conventions, torture, and crimes against internationally protection persons, states are under obligation to bring the perpetrators before their own court or to submit to its competent authority for the purpose of prosecution. See generally the Geneva Convention 1 for the Amelioration of the wounded and Sick in Armed Forces in the Field, 75 UNTS 311, 1949, art 49; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, Art 50, Geneva Convention III Relating to the Treatment of Prisoners of Wars, Art 129; Convention on the Prevention punishment of Crime Against Internationally Protected Persons, Including Diplomatic Agents, 1035UNTS 85 (1984) etc. Offences created by these conventions are more or less also recognized at customary international humanitarian law thereby clothing these offences with universal jurisdiction.

is submitted that hostage taking especially in the manner in which it was targeted against foreign oil workers in the Niger Delta amounted to war against humanity, a crime recognized and punishable by the International Crime Court.<sup>50</sup> According to William Burke-White,

“In their extra ordinary broad scope, blanket amnesties grant impunity for any and all crimes. Included in such grants are serious and systematic crimes against human life, such as genocide, torture, war crime, and crime against humanity. By enacting blanket amnesty legislation, Chile, Argentina, Peru and Sri Lanka, among others, violated fundamental norms of international law.<sup>51</sup>

On 7 July 1999, the Revolutionary United Front (RUF) and the government of Sierra Leone signed a peace agreement in Lome, Togo (Lome Agreement).<sup>52</sup> Article IX of the Lome Agreement made broad concessions to the RUF including, among other things, a blanket amnesty in order to calm the decade-long civil war. The amnesty granted unconditional and free pardon to all participants in the conflict. The United Nations Special Representative for Sierra

---

Thus, any amnesty which is not justified at international law proclaimed to prevent prosecution of these crimes will amount to a breach of international legal obligation. See, William W. Burke-White, “Protecting the Minority: A place for Impunity” An Illustrated Survey of Amnesty Legislation, Its Conformity with International Legal Obligations, and its Potential as Tool for Minority Reconciliation” (2000) *Journal of Ethnopolitics and Minority Issues in Europe*, p 47 available at <http://www.ecmi.de/~jemie/download/JE'MIE03Burke-White30-07-01.pdf>

<sup>50</sup> Article 7 (1) of the Rome Statute of the ICC provides, “For the purpose of this statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any deprivation of physical liberty (of any group of people) in violation of Fundamental rules of international law.” See, [http://www.icc-cpi-int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE940A655EB30E16/0/Rome\\_Statute\\_English.pdf](http://www.icc-cpi-int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE940A655EB30E16/0/Rome_Statute_English.pdf). for the text of the Rome statute.

<sup>51</sup> See William W. Burke-White, *supra* note 49, p. 47.

<sup>52</sup> See, Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone of 7 July 1999, Lome, UN Doc. S/1999/777.

Leone appended a disclaimer to the agreement, stating that the amnesty provision therein would not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violation of international humanitarian law.<sup>53</sup> Article 10 of the Statute<sup>54</sup> accordingly declares: “An amnesty granted to any person falling within the jurisdiction of the Special Court in respect of the crimes referred to in article 2 to 4 of the present Statute shall not be a bar to prosecution.”

From the foregoing, the limit of the function of amnesty at international law, is unambiguous. In considering whether amnesty to any group of people bars further prosecution at international law, the major consideration is the nature of crimes which the amnesty is intended to pardon.

## Conclusion

Societies emerging from political struggle and civil unrest associated with gross violations of human rights and humanitarian law have always been faced with the question of how to deal with the atrocities committed thereon in a way to put the past behind them. The amnesty granted to the Niger Delta militants and the subtle massage of forgiveness and reconciliation of the Oputa panel as well as the pockets of clamour for amnesty for the Boko Haram sect demonstrate that the culture of amnesty has finally crept into the Nigerian Political system though without sufficient legal foundation.

---

<sup>53</sup> See Seventh Report of the Secretary-General on the United Nations Mission in Sierra Leone, UN Doc. S/1990/836, 30 July 1999, para. 7.

<sup>54</sup> See the Statute of the Special Court for Sierra Leone, enclosure to the Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, UN Doc. S/2000/915, 4 October 2000. See, generally, Simon M. Meisenberg, “Legality of Amnesties in International Humanitarian Law: The Lome Amnesty Decision of the Special Court in Sierra Leone” (2004) 856 *International Review of the Red Cross* pp. 837-851, also available at <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/692F82>; Carsten Stahn, “United Nations Peace Building, Amnesties and Alternative Forms of Justice: A change of Practice? (2002) 84/85 *International Review of the Red Cross*, pp. 191-205.

It is suggested that a comprehensive legal document be put in place on the issue of how the President is to realize the objective of section 175(1) of the Constitution without distractive disputations<sup>55</sup> and without running foul of its international legal obligations whenever there is need to adopt the option of amnesty again.

---

<sup>55</sup> For instance, immediately the amnesty came to an end, 232 members of the Asari Dokubo-led Niger Delta Peoples Volunteer Force (NDPVF) filed a class action before the Abuja Federal High Court to void the amnesty granted by President Umaru Yar'Adua to the militants. In the suit, the plaintiffs are seeking inter alia a declaration that “the 1<sup>st</sup> Defendant (that is, the president of the Federal Republic of Nigeria), does not have the powers to grant pardon to a person under section 175 of the Constitution of the Federal Republic of Nigeria, 1999, without specifying the particular offence created by an Act of the National Assembly, which the person is concerned with or has been convicted of, and for which he is granting pardon. “See, Emma Amaize & Ise-Oluwa Ige, Nigeria: Amnesty-Asari-Dokubo Sues FG available at <http://allafrica.com/stories/200910060226.html>., a report on this suit.