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Abdullah Al Faruque

The Law and Policies on Affirmative Action: Rhetoric and Reality

Naim Ahmed

Safeguarding the Rights of Domestic Workers: Existing Laws and Ways to Move Forward

S.M. Olikooba and J.O. Olatoke

Appraising the Constitutionality and Justification for the use of Amnesty in Tackling Terrorism in Nigeria

Khaleda Parven

Forensic Use of DNA Information in the Justice Delivery System of Bangladesh: Human Rights and Privacy Challenges

Rumana Islam

Role of Good Faith in Interpreting Fair and Equitable Treatment (FET) Standard in Arbitral Practice

Nuara Choudhury

The Immodest Truth: An Evaluation of the Measures Taken to Combat Sexual Harassment in Bangladesh

K.M. Shazzad Mohashin

Corporate Social Responsibility: A Human Rights Perspective



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APPRAISING THE CONSTITUTIONALITY AND JUSTIFICATION FOR THE USE OF AMNESTY IN TACKLING TERRORISM IN NIGERIA

S.M. Olokooba and J.O. Olatoke *

ABSTRACT

Violent agitations which have taken terror dimensions are now a major concern for both the Nigerian government as well as the international community. Initially, it was the agitators from the southern part of the country where crude oil is produced, and now, the 'Boko Haram' sect from the Northern part of the country. To seek out a lasting solution to the senseless killing, the Nigerian president recently set up a committee, to work out a modality for the amnesty for the 'Boko Haram' terrorist sect as it was done for the Niger-Delta militants in the past. The major thrust of this paper therefore, is to appraise the constitutionality and justification for the use of amnesty in tackling terrorism in Nigeria. In doing this, the Nigerian constitutional provisions that relate to pardon are interpreted, analysed and applied to the government action on the programme. From the analysis, the study discovers that, granting amnesty though justified but it is unconstitutional because the Nigerian president fails to satisfy the constitutional requirement for such programme. To make the programme constitutional, the paper recommends an amendment to the Nigerian constitution as regard prerogative of mercy to include amnesty or the president should approach the National Assembly to enact new law permitting him to grant amnesty as a way of tackling terrorism in Nigeria.

Keywords: Amnesty, Terrorism, 'Boko Haram', Constitutionality, Justification.

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INTRODUCTION

The act of terrorism is increasingly becoming widespread criminal violence in different countries of the world and each of them has its own unique way of perpetrating the act. While some terrorists take to bombing and hijacking of airlines, some make use of device such as air missiles¹. In Nigeria, the common strategies used by terrorists are, kidnapping,² abduction³, bombings of multinational oil pipelines installations,⁴ churches⁵, destruction of property and government institutions⁶, killing of citizens,⁷ attacking of media Houses⁸ and Institutions of learning.⁹

¹ Abimbola J.O. and Adesote S.A., "Domestic Terrorism and 'Boko Haram' Insurgency in Nigeria, Issues and Trends: A Historical Discourse", 4 (2012) *Journal of Arts and Contemporary Society*, pp. 11-29, at p.15.

² As it occurred on 9/2/2013 when *Boko Haram* sect kidnapped 7 French family and series of kidnapping carried out by the Movement for the Emancipation of Niger Delta between 2006 till today especially on 10/1/2006, 18/2/2006, 11/5/2006, 3/10/2006, 1/10/2007, 1/5/2007, 3/5/2007, 8/7/2007, 21/1/2009, 16/4/2009, 12/1/2012, 11/4/2012 where both foreigner and Nigerian alike were among the victims. For details, see, the *Punch* Correspondent report "Oil Vessel Bombed" the *Punch* (Nigeria), July 17, 2011 at p.4, see a similar report titled, "Bomb Blast Again", the *Punch* (Nigeria), February 20, 2012, at pp.1,5, see also B. Leke, "Boko Haram, Ansaru Target Lagos, Others" *Punch* (Nigeria), February 23, 2013, at pp.1,5, Issa A. "Soldiers other killed in JTF Boko-Haram Clash", *Guardian* (Nigeria), March 12, 2012, at p.2, Taiwo, A., "Boko Haram Storms Fertiliser Market for Bombs", *Tribune* (Nigeria), January 3, 2012, at p.4, and J. Duku "Boko-Haram Kills 7 students, Two Teachers" *The Nation* (Nigeria), June 18, 2013, at pp.1,4,60. Similarly, see, "Boko-Haram beheaded Informant", at <<http://pmnewsnigeria.com/2013/03/06/boko-haram-beheaded-informant>> (Last visited on June 6, 2013), see also, "Boko-Haram Posts Video of Kidnapped French Family" at <<http://pmnewsnigeria.com/2013/02/25/boko-haram-posts-video-of-kidnapped-french-family>> (Last visited on June 6, 2013), Wikipedia "Boko-Haram" at <http://en.wikipedia.org/wiki/Boko_Haram> (Last visited on June 6, 2013).

³ On 8/3/2012 An Halian, and a Briton who were expatriate staff of Stabilim Visioni Construction firm were abducted by *Boko Haram* splitter Group JAMBS and were later killed, the Movement for the Emancipation of Niger Delta also carried out similar act on 17 and 20/12/2012.

⁴ The Movement for the Emancipation of Niger Delta bombed an oil pipe lay barge LB300 on 25/5/2007 and on the 15/6/2013, bombed fuel tankers in Federal Capital Territory, Abuja.

⁵ Bombing of St. Theresa's Catholic Church, Mandala on 25/12/2011 where close to 50 people died, Bombing of Church of Christ in Nigeria Jos where 2 died and

Terrorists' attacks have resulted in the killings of thousands of innocent Nigerians as well as foreigners and it has compounded the already bad economy of the country. Ethnic rancour, religious conflicts and other acts of terrorism were manifested in Nigeria. Today, increasing violence is becoming a characteristics hallmark of group relations in the country¹⁰ and terrorism now contributes to insecurity and high level of criminality in Nigeria.

over 38 were injured on 26/2/2012, bomb blast near the Christ Embassy Church Suleja on 19/2/2012, bombing of the Military base church where 11 people died on 26/12/2012, recently, on 16/6/2013, despite the state of emergency declared in Borno, Adamawa and Yobe 4 churches were attacked by *Boko Haram* sect in Borno state and a reverend father was killed on 16/6/2013

⁶ Attacks on police stations in Bauchi on 26/7/09, 1/4/2011, Bauchi Prison on 7/9/2010, Bombing of police station in Maiduguri on 11/10/2010, 7/6/2011, Bombing of Poling Centre in Maiduguri on 9/4/2011, Attack on prison in Yola on 22/4/2011, Army Barrack on 29/5/2011, Bombing of Police Headquarters Abuja 16/6/2011, Bombing of UN office in Abuja where about 34 people died on 16/8/2011, Army Headquarters, Kaduna on 8/2/2012, Koton Karfi prison on 15/2/2012.

⁷ *Boko- Haram* attack in Jos killing 8 people on 24/12/2010, another attack on Christmas eve in Jos, attack on mammy market Abuja on 31/12/2010, Bomb explosion in Maiduguri on 24/4/2011, Killing at a joint bar in Maiduguri on 26/6/2011, Bomb explosion in Jalingo on 30/4/2012, Killing of Brother to Shehu of Bornu on 31/5/2011, bomb explosion killed 9 and injured 3 in kano in December, 2012 and recently the killing of 12 police men by the Movement for the Emancipation of Niger Delta by along Azuzuama waterways in southern Ijaw Bayelsa state in 5/4/2013. See, *Tribune* (Nigeria), December 4, 2012, at pp. 4, 12 and *The Nation* (Nigeria), April 4, 2013, p.4

⁸ *This Day, Sun and Moment* Newspaper Houses attacked on 26/4/2012

⁹ Attack on Bayero University Kano on 29/4/2012 where students and lecturers were killed. 7 pupils and 2 teachers of Government Day Secondary School were killed in another attack by *Boko-Haram* sect on the 17/6/2013 in Maiduguri. See *The Nation* (Nigeria), June 18, 2013 at p.2. Similarly, 29 pupils of Government Secondary School, Mamudo, Yobe state were killed on June 6, 2013, see *Punch* (Nigeria), July 7, 2013, at p.2.

¹⁰ E., John, "Youth Violence and Democratic Governance in Nigeria 1999-2009", in Tella N.S. *et.al.*, *Law and National, Security in the Fourth Republic* (eds.), Lapai, IBB University, 2010, pp. 133-153, at p. 133; A. Makwemoisa, "Youth Existence and the Conditions of Exclusion and Underdevelopment in Nigeria", in Udu Y. (ed.), *The Dialectics of Cultural Development: Special focus on Nigeria*, 4 (2002), *Journal of Cultural Studies*, No.1, pp. 117-135 at p.133

The spate of bomb blast, kidnapping, pipeline vandalism and other forms of criminal acts in various parts of the country are emerging trends of domestic terrorism in Nigeria.¹¹ The present terrorist activities in Nigeria are estimated to have cost 3,600 lives since 2009 when Nigeria returned to democratic governance.¹² The transition in 1999 from military rule to civilian rule has seen a dramatic increase in the acts of violence and proliferation of militant insurgencies across Nigeria rather than peaceful democratic dividend.

Although, armed violence predates 1999, but there has been an increase in the number, diffusion, and sophistication of acts of violence.¹³ Paradoxically, the transition to democratic rule seems to have militarised Nigerian society¹⁴ and is greatly threatened the corporate existence of the country.¹⁵ Unfortunately this situation has now produced heroes in the context of political thug, assassination, militancy and ethnic massacre. Some relatively impoverished youth have gravitated into religious fundamentalism with network stretching across Africa and Saudi Arabia¹⁶

Security concerns in Nigeria are threatening to the state and citizens. This perhaps has often raised tempers and comments from citizens and foreigners alike, alleging, what to them may constitute crises

¹¹ Abimbola, J.O *et.al supra* note 1, at p. 11.

¹² See, Rupert C., "Boko Haram Could Face War Crime Charge", available at <<http://www.nigeriamasterweb.com/paperfrmes.html>> (Last visited on May 19, 2012)

¹³ A. Agbaje, Adigun A., Larry D., & Ebere O. *Nigeria's Struggle for Democracy and Good Governance*, (eds.), University Press, Ibadan, 2004, pp.48-68, at p. 52.

¹⁴ Abubakar, D. "Identity, Citizenship and the Crisis of Democracy in Nigeria" A Paper Presented at the Annual Meeting of the International Studies Association (Town and Country Resort and Convention Centre. San Diego, California, USA), also available at http://www.allacademic.com/meta/p99206_index.html, (Last visited on April 20, 2009); Mashood O.O., "Conflict and Democratic Impasse in the Fourth Republic in Nigeria", in *supra* note 10, pp.182-190, at p. 183; Adebani W. "Democracy and Violence: The Challenge of Communal Clashes" in Agbaje A. *et.al*, *supra* note 13, at p. 46.

¹⁵ Ginifer, J., Ismail O., "Armed Violence and Poverty in Nigeria", 2005, Human Right Watch; see also, *supra* note 14, at p. 183.

¹⁶ Akeem, A. A., "Integrating Traditional Modern Conflict Management Strategies Processes", Centre for Peace and Strategic Studies, University of Ilorin, 2010, pp. 261-282, at p. 264.

without credible solutions and as a result, project Nigeria as a country with insurmountable security concerns.¹⁷

Today in Nigeria, what we have is proliferation of militant ethnic and religious movements collectively referred to as militias and terrorists. Notable amongst these groups are *Oodu* Peoples' Congress (OPC) in the West, *Bakassi* Boys, *Egbesu* Boys of Africa (EBA) Movement for the Actualization of the Sovereign state of Biafra (MASSOB) in the South-East, Niger Delta peoples' Volunteer Force (NDPVF), Movement for Emancipation of the Niger Delta (MEND) in the South-South. In the Northern part of the country, it was the *Maitasine* militant group in the 80s but now it is the dreaded *Jamaatu Ablis-sunna hiddaawati-waliihad* otherwise known as the *Boko Haram* and *Jama'atu Ansarul Muslimina fi-Biladis Sudan* (JAMBS) the latest splitter group from the *Boko Haram* sect. The activities of these groups posed considerable economic, social, human and political threats to democratic rule and peaceful co-existence of Nigerians. Their activity also posed a serious threat to the rule of law considering the fact that, Nigerian constitution outlaws any activities which may threaten public order and peaceful coexistence among Nigeria's multi-ethnic population¹⁸.

According to Audu,¹⁹ a general look at the activities of the members of these ethnic and religious groups shows that they sometimes not only usurp the law enforcement functions of the police, but also wear provocative uniforms, and openly brandish offensive weapons without any authorization. Accordingly:

[t]heir activities therefore seriously violate general laws that were made for ensuring due processes in law enforcement and criminal justice administration and for preserving public order and peace in the Nigerian society.

This article is based on review of published literatures and other media sources. The prevailing circumstances of unfriendly atmosphere and resource constraints deterred the use of questionnaire administration and interviews with the actors in the field for this study. However, in spite of these limitations, we are optimistic that they were

¹⁷ Tella, N.S and Reuben B.Z., "Appraisal of Security and Justice as Development", in Tella N.S. *et al.*, *Law and National Security in the Fourth Republic* (eds.), Lapai, IBB University, 2010, pp. 1-9, at pp. 1-2.

¹⁸ See, section 6 Public Act Cap. 382 Laws of the Federation 1999

¹⁹ Audu, J. A., "An Assessment of National Security in the Fourth Republic", 1999 – 2007" in Tella N.S. *et al* (eds.) *supra*, note 10, Lapai, IBB University, 2010, pp.22-37 at p.27

not sufficient to derail the good intentions of the paper, particularly with resort to search for academic journals, published news paper reports, article and technical papers. On-line materials sourced from the internet proved very relevant and helpful in this regard. This article is structured into six sections.

The next section discusses the conceptual frame work of the study. Section three discusses historical Background of terrorism in Nigeria while section four focuses the constitutionality and justification of the federal government amnesty programme for the Nigeria terrorists. Section five is on the limitation in the use of amnesty to tackle terrorism in Nigeria. The final section concludes the paper with some recommendations on the justification of the programme and what need to be done to make the programme constitutional.

CONCEPTUAL FRAMEWORK AND OPERATIONAL DEFINITION OF TERMS

In consideration of the concept at hand one must note that there are some key words which meaning is to be ascertained from the beginning. The words are "Amnesty", "Constitutionality", "Justification", "Terrorism", "*Boko Haram*".

Amnesty in this work is a pardon extended by the federal government of Nigeria to the terrorists groups in the country. "Constitutionality" on the other hand is quality or state of doing things according to the laid down provision(s) in the Nigerian Constitution. "Justification" is the extent to which an act appeals to common sense, moral and equity. "Terrorism" is the use of threat of action designed to influence the government or intimidate the public in order to advance a political, religious or ideological cause. *Boko Haram* in this study is the newly formed Islamic base terrorist group that sees Western Educational system as forbidden.

HISTORICAL BACKGROUND OF TERRORISM IN NIGERIA

An attempt to go down too deep into historical background of terrorism and what led to the amnesty programme will take more than the space available for this work and at the same time might be capable of overshadowing the purport of this discussion. However, in order to have a firm grasp of the topic and what led to the birth of the concept of amnesty, a brief historical background is of essence.

The Nigerian historical past have a long history of insecurity and violence which includes 1916 tax resistance against the colonial administration²⁰, the riots and disorderliness in Sapele and Warri in 1927 and the Aba Women Riot of 1929²¹. It is evident that violence and insecurity in Nigeria predates her independence in 1960.²² After independence, Nigeria became a federation where each federation embarked on separate developmental course.²³ Practically therefore, there seems not to be unity in the Nigerian federation and this has precipitated various forms of incessant and or sporadic ethno-religious conflicts over the years. Agitation by the youth from different part of the country is now at the apex level and great challenges to the peaceful co-existence of the Nigeria as a nation.

The *modus operandi* of the terrorists in the southern-part of Nigeria are vandalisation of the country's oil pipeline, kidnapping of the oil companies expatriate, killing and maiming the innocent citizen. Similarly, in the Northern part of the country, killing and maiming especially in the public places, places of worship and institutions of learning is very rife. Recently, the United State of America placed a bounty of \$7m for any information that may lead to the arrest of Abubakar Shekau, the *Boko Haram* sect leader in Nigeria.²⁴ All these terrorist acts, do not only constitute a great threat to the nation's democracy, national stability and security but also consistently and stubbornly throw up the issue of the national question in Nigeria²⁵

²⁰ Olokooba, S.M., *A Legal Analysis of the Taxation of Banking Business in Nigeria (1990-2010)*, A Ph.D. Thesis, (Unpublished), Faculty of Law, University of Ilorin, Nigeria, 2013, pp.1-305 at p.40

²¹ An attempt to impose tax on women by the colonialist was what caused the riot.

²² Uwah, P.U., *Youth, State Failure and Insecurity in Anambra State, Nigeria, 1919 – 2010*, An M.A. Research Project (Unpublished), Centre for Peace and Strategic Studies (CPSS), University of Ilorin, Nigeria, 2012, pp.1-210 at p. 20

²³ Oscar, E.U., "The Federal Government's Amnesty Programme in the Niger-Delta: An Appraisal", 11 (2013) *Journal of Administrative Sciences*, No. 21, Turkey, Onsekiz Mart University, pp. 179-203, at p. 180.

²⁴ Olalekan, A. and Emma, A., "US put \$7m bounty on *Boko Haram* leader Shekau", *Punch News paper* (Nigeria), June 04, 2013, also available at <<http://www.nigeriamasterweb.com/paperfrnes.htm/>> (Last visited on June 4, 2013).

²⁵ Ikelegbe, A.O., "Civil Society and Alternative Approaches to Conflict Management in Nigeria", in Imobighe T.A., *Civil Society, Ethnic Nationalism and*

TERRORISM IN THE SOUTHERN PART OF NIGERIA

In the pre and early independence Nigeria, cash crops like cocoa, Rubber and the likes formed the base of Nigeria Gross Domestic index. This however changed with the discovery of crude oil in the early 80's in some part of the country later known as the Niger-Delta region. Even though this crude oil is now what forms the base of Nigeria Gross Domestic income,²⁶ it is also the major cause of conflict and terrorism in the southern part of the country.

The history of oil in Niger-Delta is traced to 1908 when Bituman Corporation, (a German company) discovered traces of oil at Araromi in the present day Ondo State of Nigeria. This Pioneering exploration was brief due to the World War 1 (1914-1918).²⁷ After been awarded the right to explored oil with the enactment of Mineral oil Ordinance No. 17, 1914, Shell started exploration in Nigeria and made its first oil discovery at Olobiri in the present Bayelsa State in 1956. Further oil deposits were discovered in Oso field in Eastern Delta. Since the discovery of oil, Nigeria has effectively emerged as a mono-cultural economy depending on oil sales for its survival²⁸. Nigeria is heavily dependent on the oil sector which accounts for 95% of its export revenues²⁹.

The Niger-Delta is en-mashed in various forms of communal and resource conflicts. According to the resident coordinator of the United Nations system in Nigeria Alberic Kacou, the Delta is a place of frustrated expectations and deep-rooted mistrust".³⁰ Niger Delta is also a place "generally restive, with pockets of insurrection and armed rebellion."³¹

Conflict Management in Nigeria, (ed.), Ibadan: Spectrum Books Limited, 2003, pp. 36-37, at p.37.

²⁶ Olatoke, J.O. and Olokooba S.M., "An Examination of the Constitutionality of the Amnesty Programme in the Niger-Delta Region of the Federal Republic of Nigeria", 5 (2012) *Journal of Law, Policy and Globalisation*, pp. 22-30, at p. 23.

²⁷ "Crude oil crisis in Nigeria", available on line, <<http://nigeriadaily.Blogspot.com/2009/10/crude-oil-crisis-in-Nigeria.htm/>>(Last visited on January 4, 2013)

²⁸ Kareem, R.O. *et.al.* "Global Financial Crises and its Effect on Nigeria's Oil Revenue", 14 (2012) *Journal of Sustainable Development in Africa*, No. 14, pp. 121-140, at p. 133.

²⁹ "Oil Reserves in Nigeria", available online at <<http://en-wiki Pedia.org/wiki/oil-reserves-in-Nigeria>> (Last visited on December 12, 2012)

³⁰ Ibanga, I., "Niger Delta as Albatross", *The Punch* (Nigeria), May 30, 2008, at p. 46;alsoavailableat<https://www.google.com.ng/?gws_rd=cr#fp=eb6b3c684d

The last phase of Niger-Delta agitation which began in 1998 to the present day was marked with the emergence of terror strategies which included, outright confrontation, violent, pipeline vandalism, bombing of oil installation, armed resistance against the agents of the Nigerian state and the transnational oil companies operating in the region, kidnapping and hostage taking³². This has constituted a major national security treat. In fact, before the adoption of amnesty programme by the late president, Alhaji Umar Yar'Adua in 2010, as a positive measure to put on end to domestic terrorism in the region, the region has remained the most dangerous zone to live in the country.³³ As time goes by, the Niger-Delta militants became more violent on the oil companies and their expatriate staff. They also involve themselves in oil bunkering and violent attack against the Nigerian navy, Nigeria Army and other security agencies responsible for the security of oil pipelines.

The last straw that breaks the camel's back before the inception of the amnesty programme was the sudden unbearable going down of oil revenue which did not go well with the government to the extent that more than one million barrels a day of Nigeria oil production as a result of militant attacks that led to Nigeria losing her position as Africa's biggest oil producer to Angola³⁴. The resultant affects of this loss is felt seriously by the government, hence, the need for solution to this menace that almost turns the country to bizarre. This is what gave birth to the first amnesty programme in August 2009 which was to all

6bfc64&q=Ibanga+I+NIGER+DELTA+ALBATROS >(Last visited on June 4, 2013), see also Oscar E.U, *supra* note 23, pp. 179-203, at p. 181.

³² Ikelegbe, A.O., "The Economy of Conflict in the Oil Rich Niger-Delta Region of Nigeria", 14 (2005) *Nordic Journal of African Studies*, No. 2, pp. 208-234, also available at <<http://www.njas.helsinki.fi/pdf/files/vol14num2/ikelegbe.pdf>> (Last visited on June 6, 2013). see also Oscar E.U, *supra* note 23, Turkey, Onsekiz Mart University, pp.179-203 at p.181

³³ Ogbogboo, C.B.N., *The Niger Delta and the Resource Control Conflict*, 1960-1995, A Ph.D. Thesis (Unpublished), Institute of African Studies, University of Ibadan 2004 cited in Abimbola J.O. *et.al supra* note 1, pp. 11-29, at p. 15.

³⁴ Adesote, S.A., "Government Response to Niger Delta Agitation", paper presented at Postgraduate Class, Department of History, University of Ibadan 2010, cited in Abimbola J.O. *et.al supra* note 1, pp. 11-29, at p. 16.

³⁵ See, "No Longer King of African Crude Oil" <www.nigeriancuriosity.com/.../no-longer-king-of-african-crude.html> (Last visited on November 4, 2012)

militants that surrendered their weapons voluntarily in the southern part of Nigeria especially, Niger-Delta.

TERRORISM IN THE NORTHERN PART OF NIGERIA

Prior to 2002 when religious terrorism became pronounced in the Northern part of Nigeria, there were only some mild Islamic fundamentalist in that part of the country. Notably among them were, the *Jamatu Izala Bidia Wa'qamati Sunah* (the society of removal of innovation and re-establishment of the prophetic *sunah*). This sect was founded in 1978 in Jos, plateau state of Nigeria. Sheik Ibrahim Al Zakzaky also founded a similar group known as the Shite Movement around that time. However, the first act of terrorism experienced in the Northern part of Nigeria was the *Maitatsine* sectarian in the 1980s. After that, the northern part of Nigeria was peaceful until lately when the *Jama'atu Ahlis Suna Lidda'awati walJihad*³⁵ popularly called *Boko-Haram* "sect insurgency started.

Emergence as a radical fundamental Islamic sect, the *Boko-Haram* came to the limelight after the killing of their leader, the late Muhmmmed Yussuf by the security operative in Maiduguri. Though the group had been in existence, but they were confined to their mosque at *Angwa Doki* Millionaire quarters where their preaching outlet was situated and later their mosque named *Ibn Taimiyya Masjid*. According to Ahmad Salkida³⁶

It was in *Ibn Taimiyya Masjid* that late Yusuf together with his hard-line top lieutenant Abubakar Shekau³⁷ alias '*Darul Taubid*' began to build an imaginary sate within a state. Together they set up *Laginas* (departments), they had a cabinet, the *Shura*, the *Hisbah* (security), the brigade guards, a military wing, a large farm, an effective micro finance scheme, and late Yusuf played the role of a judge in settling disputes, each state had an *Amir* (leader) including *Amirs* in Chad and Niger that gave accounts of their stewardship to Yusuf directly.

³⁵ Literally means, "People that are committed to the propagation of the prophetic teachings and the holy war".

³⁶ Ahmad Salkida, "Genesis and Consequences of *Boko-Haram* Crises", available at <<http://kanooline.com/smf/index.php?topic=5429.o;wap2>> (Last visited on July 1, 2013)

³⁷ Abubakar Shekau is now the current leader of the *Boko-Harram* Sect in Nigeria.

Due to the secretive nature of the operation of the *Boko-Haram* group at the formative stage of the sect, the actual year of establishment of the sect is engulfed in controversies, while some opined that it was founded in 1995 under the name *Shaabba*, Muslim Youth Organisation³⁸, others were of the opinion that the group came in to existence in the early part of 2000/2001³⁹. One thing that is however certain is that it was the entry of the slain Mallam Muhammed Yussuf that radicalized the group and opened it to foreign collaboration, especially with the *Al-Qaeda* in Islamic Maghreb⁴⁰. The large and committed followers of the *Boko-Haram* sect are the *Almajiris* (the *Quranic* trainees). The mission of the sect was to establish an Islamic state where Orthodox Islam is practiced. Orthodox Islam according to him (Yusuf, leader of the sect) frowns at Western education and working in the civil service because it is sinful. Hence, for their aim to be achieved, all institutions represented by government including security agencies like police, military and other uniformed personnel should be crushed.⁴¹

Having gone through the brief historical background of terrorism in Nigeria, the question that calls for our consideration now is, did the amnesty earlier granted to the Niger Delta terrorists group and the recently proposed amnesty for the *Boko-Haram* sect falls in line with the provision of the Nigerian Constitution? Is there any provision of the law that empowers the president to carry out such policy? Is such action justifiable and what are the legal implications?

CONSTITUTIONALITY AND JUSTIFICATION OF TACKLING TERRORISM WITH AMNESTY PROGRAMME IN NIGERIA

Before embarking on amnesty programme, Nigeria Government has explored series of options in tackling terrorism. Notably amongst these

³⁸ Abimbola, J.O. *et.al Supra* note 1, pp. 11-29, at p. 17; see also, Danjibo, N.D., "Islamic Fundamentalism and Sectarian Violence: The *Maitatsine* and *Boko-Haram*" Crises in Northern Nigeria", *Peace and Conflict Studies Paper Series*, University Press, Ibadan, 2009, pp. 1-21, at p. 11. Also available at http://www.ifranigeria.org/IMG/pdf/N_D_DANJIBO_Islamic_Fundamentalism_and_Sectarian_Violence_The_Maitatsine_and_Boko_Haram_Crises_in_Northern_Nigeria.pdf (Last visited on July 1, 2013)

³⁹ *Sunday Tribune* (Nigeria), February 12, 2012, at p. 3.

⁴⁰ *Supra* note 1, pp. 11-29, at p. 17.

⁴¹ *Ibid*, at p. 19; see also, *Tell Magazine* (Nigeria), August 10, 2009, at p. 34.

options were the use of military assault on the terrorists⁴² and the involvement of international community in the effort to counter terrorism in the country.⁴³

The word “amnesty” is not known to the Nigerian laws, what we have in the Nigerian constitution is “prerogative of mercy”⁴⁴. The first amnesty granted in Nigeria was by the late president Umar Yar’Adua and it was given to the militants who were ready to voluntarily surrender their arms in the Niger-Delta. The programme started sometimes in August 2009 and was to last for 60 days under the then president Umar Yar’adua but the legacy continue by his successor, the incumbent president, President Goodluck Ebelle Jonathan.⁴⁵

Amnesty according to Bryan⁴⁶ is a pardon extended by the government to a group or class of person usually for political offence the act of a sovereign power officially forgiving certain classes of persons who are subject to trial but have not yet being convicted.

In other words, amnesty, is a parson for offences granted by an Act of parliament which is originated by the crown.⁴⁷

⁴² This was used largely in the Niger Delta before the amnesty programme in 2009. Same was used on *Boko Haram* some of the on strength paid off and arms and ammunitions discovered, the most recent was the discovered in Kano State by the military task force from the *Hexbollah* group. Available at <http://tribune.com.2013/en/news/item/13722.hexbollah.more-weapons-uncovered> (Last visited on June 6, 2013); see also, “11 killed as JTF, *Boko Haram* Clash in Okene”, *Nigerian Pilot* (Nigeria), April 1, 2012, at p. 2.

⁴³ For example in April, 2013, the US high-power delegation from American Embassy in Nigeria paid the ministry of interior a visit to discuss counter-terrorism and way us will help Nigeria especially on boarder terrorism; see, Joshua Odeyemi “USA to Help Nigeria Tackle Terrorism”, *Daily Trust* (Nigeria), April 30, 2013. Similar Request on info *Shariah* on counter-terrorism was made to the US in November, 2012 by the Nigerian government. Recently, the US government has place a financial reward of \$23m bounties for information that could lead to the arrest of Terrorists leaders across the globe. Out of this amount, & 7m was place on Abubakar Shekau the leader of the Nigeria *Boko Haram*.

⁴⁴ See section 175 Constitution of the Federal Republic of Nigeria (1999) as amended.

⁴⁵ *Supra* note 26, pp. 22-30, at p. 24.

⁴⁶ Bryan, A.G.(ed.), *Black’s Law Dictionary*, (7th edition), West Group, St. Paul, Minn, Co.,USA, 1999, pp. 1-1738, at p. 306.

⁴⁷ Sheila, B., *Osborn’s Concise Law Dictionary*, (9th edition), London: Sweet and Maxwell, 2001, pp. 1-466 at p. 29.

From the above definition, amnesty is synonymous to state pardon but for an offender that have been tried but is yet to be convicted. Invariably the deductible meaning here is that, before one could qualify to be giving amnesty, one must have been arrested, arraigned and waiting for his/her, conviction.

CONSTITUTIONALITY OF AMNESTY PROGRAMME IN TACKLING TERRORISM IN NIGERIA

Amnesty is not provided for in our constitution⁴⁸ what the constitution provides for is Prerogative of Mercy⁴⁹. The Prerogative of mercy has been accepted in our jurisprudence and the courts of law by the judicial power conferred on them. The judicial meaning of “prerogative of mercy” as contained in section 175 Constitution of the Federal Republic of Nigeria, 1999” is the constitutional power vested on the president or governor of a state to pardon an offender who has been arrested, tried and convicted or about to. In *Obidike v. State*⁵⁰, the Court of Appeal per Olagunju J.C.A. recognised prerogative of mercy as:

[t]he power of the president of this country under section 161 of the constitution of the Federal Republic of Nigeria, 1979 to grant pardon to a convicted person or grant a respite or remission of punishment among others. This similar power were vested in a state governor by section 192 of the same constitution in respect of conviction of any offence created by any law of a state on terms identical with section 161 thereof.

From the above judicial interpretation of the prerogative of mercy, what the constitution contemplates is pardon to someone who has been convicted of an offence or crime or someone who is related thereto. The phrase “any person concerned with” in section 175 of the 1999 constitution might lead to hold the view that the phrase could accommodate the militants in the various creeks at the Niger Delta region or the *Boko-Haram* Sect members. However, this view might not hold water going by the rule of interpretation of statute in the maxim of *Ejusdem Generis* Rule meaning of the same kind or put in simple form where a particular class goes with a general word, the

⁴⁸ This position was amplified in the case of *Nig Plc. v. F.B.I.R* (2010) 2 NWLR (pt. 1179) 561 at 579 Para a – d and, *N.U.E.E. v. B.P.E* (2010) 7 NWLR (pt. 1193) 538 at 570 – 571 Para F; 570 a – c

⁴⁹ Which is enshrined under SECTION 161 and 192 of 1979 Constitution, now section 175 and 212 (1999) Constitution of the Federal Republic of Nigeria (as amended)

⁵⁰ Reported in (2001) 7 NWLR (pt. 743) 601 at 639 paras. G – H; 640 PARA E – F

particular class is taken to be comprehensive and the general word as referring to matter *ejusdem* gave is with such class. Therefore, the general phrase "any person concerned with" must be read with a particular class of people "convicted of any offence". Meaning, what is later mentioned must be of the same kind with the former. For that, this paper humbly submits that either the Niger Delta militant or the *Boko-haram* sect members, who are yet to be convicted of any offence, cannot fit into the provision⁵¹. If the Nigerian government is contemplating a constitutional pardon, all the insurgents should first be arrested, prosecuted, and when they are about to be convicted or after conviction, then the government can come in to "forgive or excuse" their crime⁵². This is more reasonable and logical because as far as the activities of the Nigerian terrorists are concern, they have already committed crime against humanity.

The word pardon has received judicial interpretations in many of the Nigerian court decisions⁵³, however almost in all, the definition given to pardon:

...[i]s an act of grace by the appropriate authority which mitigated or obliterate the punishment the law demands for the offence and restores the rights and the privileges forfeited on account to the offence...the effect of a pardon is to make the offender a new man, to acquit him of all corpora penalties and forfeiture annexed to the offence pardoned⁵⁴.

A critical view of the definitions denotes that a pardon is an official act and it given after an offence has been committed. Similarly, we also hold the view that while both prerogative of mercy and Amnesty are pardon in nature, the legal implication of both is different.

The Black Law Dictionary⁵⁵ further differentiated Amnesty from the general pardon referred to in the Nigerian constitution by stating that, unlike an ordinary pardon, amnesty is addressed to crimes against state sovereignty that is, to political offences with respect to which

⁵¹ Supra note 26, pp. 22-30, at pp. 25-26.

⁵² This aptly fit into the general definition of pardon; see, Hornby A.S., *Oxford Advanced Learners Dictionary of Current English*, Oxford University Press, London, 2004, pp.1-1406, at p. 841.

⁵³ See, *Ojukwu v Obasanjo* (2004) FWLR, (pt. 222), at 1666, *F.R.N. v. Ifekwu* (2003) 15 NWLR (pt. 842) at 113 and *Jammal Steel Structure v A.C.B.* (1973) ALL NLR, at 823

⁵⁴ Per MUSDAPHER (JCA as he then was) in *Falae v Obasanjo* when the issue of Olusegun Obasajo's qualification to contest for president came before the court in 2009 because he (Obasanjo) was just released from prison through pardon then.

⁵⁵ Supra note 46, at p. 1137.

forgiveness is received and which is more expedient for the public welfare than prosecution.

Having known what amnesty stands for and the connotation of prerogative of mercy, can it be said that prerogative of mercy contemplated by the Constitution is the same or could incorporate amnesty since both means pardon? The court when looking at the applicability of the prerogative of mercy by the president in *Amanchukwu v Federal Republic of Nigeria*⁵⁶ per Udow- Azogu (JCA) held inter alia that:

...[b]y virtue of section 175 (i) of the CFRN 1999, the president has power in consultation with council of state to grant a pardon to any person convicted of any offence or to remit the whole or any part of any imposed on that person for such an offence there is need for the president to exercise his powers of reprieved through the attorney General of the Federation in favour of the convicts

The Supreme Court of Nigeria also states further some situation where the president or the governor as the case may be cannot exercise the power of prerogative of mercy in *Solola v. The State*⁵⁷ per Edozie (JSC) thus:

a person convicted of murder and sentences to death by a High Court and whose appeal is dismissed by the Court of Appeal is deemed to have lodged a further appeal to the Supreme Court and until that appeal is finally determined the head of state or the governor of a state cannot pursuant to section 175 and 212 of the CFRN 1999 as the case may be exercise his power of prerogative of mercy in favour of that person. In the same vein such person cannot be executed before his appeal is disposed of.

From the provisions of Sections 175 and 212 of the Constitution the following conditions/situation must exist before there could be prerogative of mercy;

- a) The person to be granted prerogative of mercy must have been convicted of an offence.
- b) The president or the governor must have consulted the council of state or the advisory council of state as the case may be;
- c) The prerogative of mercy cannot be granted to a person under trial not yet convicted or convicted, appealed to the court of appeal and his conviction confirmed but the appeal is still before the Supreme Court,
- d) Such person granted pardon here is immune from re-prosecution as same was held by the court in *Ibori v F.R.N*⁵⁸ to amount to double jeopardy.

⁵⁶ Reported in (No. 2) (1999) 4 NWLR (pt. 599)479 at 495.

⁵⁷ Reported in (2007)6 NWLR (Pt.1029)1 at 24

⁵⁸ Reported in (2009) 3 NWLR) (pt 1127) at 94

The conditions prudent for amnesty are:

- (i) People concerned must be a group or community not individual;
- (ii) They must have committed a political offence and subject to trial but have not yet being convicted;
- (iii) Such group once granted pardon cannot be re- prosecuted.

A perusal of the two concepts in the face of the constitution will reveal that amnesty can never be the same as prerogative of mercy. More importantly in relation to discuss at hand, the amnesty granted to the different groups in the creeks of the Niger Delta and the *Boko-Haram* sect did not meet the condition precedent for granting amnesty assuming without conceding that it was even provided for in the constitution. The group of people granted the amnesty have not been shown to have committed political offence and more importantly, they are presumed to be innocent until contrary is proved⁵⁹.

In *C.O.P. v. Tobin*⁶⁰ the court held that any person accused of criminal offence is presumed innocent until the contrary is proved. One interesting thing about Amnesty is that majority of the people granted Amnesty have not been accused of any offence not to talk of standing trial before any court or convicted by any court of competent jurisdiction.

The purport of the analysis so far is that one can safely conclude that the amnesty programme in Nigeria is unconstitutional on the following 2 (two) grounds:

- (a) The programme is against the presumption of innocence enshrined against these set of people because they can never be pardoned unless there is an offence and such person is being tried or convicted by court of competent jurisdiction contrary to the situation in this case where majority of the militants and sects have not been arrested but just came out voluntarily to enjoy amnesty while the implication of the amnesty granted to them is that they are guilty of a political offence but received pardon from the presidency. This leaves so many questions unanswered such as.
 - (i) Were these people formally accused of any offence?
 - (ii) Which court is trying them for the offence if any?
 - (iii) Which court convicted them?

⁵⁹ *Supra* note 26, at p. 27.

⁶⁰ Reported in (2005) 11 NWLR (pt.932)640 at 488.

- (b) The power of the president under section 175 of the constitution to grant pardon does not extend to power to grant amnesty and there is no other provision in the constitution or in any existing Federal Enactment empowering the president to grant such pardon.

From the feature of condition precedent for Amnesty which have earlier been highlighted earlier in this work *vis-a-vis* the prerogative of mercy contemplated by the constitution, more so when the rule of interpretation of the statute will defeat whatever disguise the programme may be called, by the rule of *Ejusdem generis* the phrase concerned could not extend to include militant or sect not arrested and tried for an offence and not yet convicted as contemplated by the constitution. In the same vein *exclusio unis* rule of interpretation applies that the express mention of a thing, is to the exclusion of other not mentioned. In ascertaining this, marginal note of that particular section would be brought to play as it has been settled that marginal note and heading can be referred to in the construction of statutes to resolve any ensuring doubt as held in *Schroder v. Major*⁶¹ and was later re-affirmed by the Apex Court in cases like, *N.T.C. Ltd v. Agunannee*⁶², *Ethuwa v. O.S.I.E.C.*,⁶³ *Ogbunniya v. Okudo*,⁶⁴ *PDP v. INEC*,⁶⁵ *Osahon v. FRN*⁶⁶. The marginal notes in the section cannot by extension mean amnesty because express mention of “prerogative of mercy” is the exclusion of the word ‘amnesty’ which is a distinct concept on its own⁶⁷. Where then did the president derive the right to grant amnesty to the Niger Delta Militant and the *Boko-Haram* sect when same is not covered by the constitution or any law in existence? Since there is none, such programme is simply unconstitutional.

⁶¹ (2009) 10 NWLR (Pt. 1148) at 62

⁶² (1995) 5 NWLR (pt 397) 541 at 574 – 575 Paras H – A

⁶³ (2006) 18 NWLR (pt 1012) 544 at 568 – 569 Paras H _ C,

⁶⁴ (1976) 6 – 9 SC. at 32

⁶⁵ (1999) 11 NWLR (PT 626) at 2000

⁶⁶ (2003) 16 NWLR (pt 845) at 89

⁶⁷ This was the decision in *Obidike v. The State*, reported in (1989) 2 NWLR (pt. 101) 1 at 18 Para A

JUSTIFICATION FOR THE USE OF AMNESTY PROGRAMME IN TACKLING TERRORISM IN NIGERIA

The issue of amnesty especially to the *Boko Haram*; the latest terrorist group in Nigeria is currently generating lots of controversies. While some are in support, others are against it. According to the opponents, extending amnesty to the *Boko Haram* is a waste of time since the group itself are not willing to accept it⁶⁸ The opponent further argued that, since *Boko Haram* sect never made their demand clear, they are like ordinary 'ghost', and an amnesty cannot be extended to "ghost"⁶⁹ some other opponents argued that the *Boko Haram* terrorist group are only entitles to a qualified amnesty⁷⁰, while some even threatened retaliation if *Boko Haram* are granted amnesty.⁷¹

The proponents comprising mostly the Northern Elders, *Emirs*, a former Head of state and a former governor from the western part of the country opined that just like the case of Niger-Delta, amnesty will bring the insurgency that has so far claimed over 3000 lives to a conclusive end.

⁶⁸ See, "Shekau, *Boko Haram* Leader Slams Amnesty Offer", at <http://pmnewsnigeria.com/2013/04/11/shekau-boko-haram-leader-slams-amnesty-offer>. (Last visited on April 11, 2013); see also, the statement of Manaidi Dagogo Jack, the Rivers state chairman of the Conference of Nigeria Political Parties in "*Boko Haram: The Amnesty Debate*", at <<http://pmnewsnigeria.com/2013/04/10/boko-haram-amnesty-debate>> (Last visited on April 11, 2013)

⁶⁹ Jonathan Rejects Amnesty Calls for *Boko Haram*, available at <http://pmnewsnigeria.com/2012/03/07/Jonathan-rejects-amnesty-calls-for-Boko-Haram> / (Last visited on March 11, 2013); see also, *The Punch* (Nigeria) March 7, 2013, at p. 2.; The statement of Manaidi Dagogo Jack, the Rivers state chairman of the conference of Nigeria political parties in "*Boko Haram: The Amnesty Debate*", at <<http://pmnewsnigeria.com/2013/04/10/boko-haram-amnesty-debate>> (Last visited on April 11, 2013)

⁷⁰ See, "South East CAN opposes Amnesty to *Boko Haram*", available at <<http://www.nigeriamasterweb.com/paperfrmes.html>> (Last visited on April 15, 13); see also, Faith Yahaya "*Boko-Haram* The Youth group gives FG condition for reconciliation", available at, <http://www.nigeriamasterweb.com/paperfrmes.html> (Last visited on April 17, 2013)

⁷¹ See, Idowu Samuel *et.al* "We'll Bomb Mosques, Hajj Camps from May, 31-MEND to Avenge killing of Christians by *Boko Haram*" available at "<http://www.nigeriamasterweb.com/paperfrmes.html>" / (Last visited on April 15, 2013).

According to Alhaji Muhammed Sa'ad Abubakar, the *Emir* of Sokoto ⁷² "the types of amnesty that ended ⁷³ militants' unrest in the Niger Delta will be suitable for the North". According to him initiating a restoration and rehabilitation programme that would integrate the terrorists into the larger society will pave way for dialogues rather than engaging them in an endless war. ⁷⁴ This is the same position canvassed by Retired Gen. Buhari, he buttress his position by referring to the clemency earlier extended to Niger Delta militants by the administration of late Umar Yar'Adua and held that "whatever will bring peace to the society, we should do it" ⁷⁵. In his own opinion Asiwaju Bola Tinubu ⁷⁶ argued that the amnesty should only be extended to the members of the terrorist group that "has no blood in their hand" ⁷⁷.

Considering these controversies couple with the unconstitutionality of the amnesty programme, one need to ask, is there any justification for using amnesty to tackle terrorism in Nigeria?

Justice according to Hornby ⁷⁸ is fair treatment of people and the quality of being fair or reasonable. Further on justice, Suleiman ⁷⁹ opined that justice according to law is achieved when the following conditions are fulfilled.

⁷² Sokoto is the Islamic Caliphate Headquarter in Nigeria. The Emir is also the president General Nigerian Supreme Council for Islamic Affairs.

⁷³ In actual fact, militant and terrorists act in the Niger Delta have not stopped, cases of kidnapping and bombing of oil tankers continues in that part of the country, the latest being the bombing of fuel tankers on 15/6/13 at the Federal Capital Territory, Abuja by MEND.

⁷⁴ Ayorinde O.A "Sultan Advocated Amnesty for *Boko Haram*", available at [http://pmnewsnigeria.com/2013/03/05/sultan-advocates -amnesty-for-Boko haram](http://pmnewsnigeria.com/2013/03/05/sultan-advocates-amnesty-for-Boko-haram) (Last visited on March 11, 2013)

⁷⁵ See, Earnest Nwokolo, "Buhari Backs Amnesty for *Boko Haram*", at [http://www. Nigeriamasterweb](http://www.Nigeriamasterweb) (Last visited on April 4, 2013)

⁷⁶ Former governor of Lagos State, the largest commercial city in Africa.

⁷⁷ "*Boko Haram: The Amnesty Debate*", at <http://pmnewsnigeria.com/2013/04/10/boko-haram-the-amnesty-debate/> (Last visited on April 11, 2013)

⁷⁸ Hornby, A.S., *Oxford Advanced Learners Dictionary of Current English*, (6th edition), Oxford University Press, New York, 2000, pp. 1-1406, at p. 648.

⁷⁹ Sulaiman, I.O., *Lecture Notes on Legal Methods*, Becon Printing and Books Publishers, Kaduna, 2001, pp. 1-143, at pp. 18-19.

1. There should be rule of law⁸⁰
2. Such written rules guiding social behavior must have general application⁸¹
3. Cases should be decided by the courts⁸²

To some philosophers, justice is equity. To them "justice is the virtue that renders to each his/her own". And to each his/her own according to Daniel⁸³ is the elementary manifestation of the order regarding character of moral and political existence.

Justice to some generations conveyed revenge⁸⁴ while to other generation; retribution was the ideal type of justice⁸⁵ However, according to Plato justice has been attained once every man has been given his due⁸⁶.

In the modern jurisprudence, the concept of "justice" has shifted greatly from 'revenge' to more of liberty, equality, dignity and most importantly "the desire to be able to justify one's actions to others on grounds that they could not reasonably be rejected."⁸⁷ The function of justice according to Bryan⁸⁸

... [i]s to provide a rational basis for agreement among people who do not simply look and think from the point of view of their own interest but seek to take due account of interest of all. Justice, on this concept, is what can be justified to everyone....

⁸⁰ Section 36 (12) constitution of the federal Republic of Nigeria (1999) see also the case of *Aoko vs Fagbemi* (1961), ALL NLR at 400 where the court held that it is unconstitutional and a rule of arbitrariness to punish a person for an offence which is not a written one at the time of commission.

⁸¹ A Law made for a particular individual or for particular case is unjust. See section 42 (1) a and b, (2) of the Constitution of the Federal Republic of Nigeria (1999)

⁸² In doing this the court should apply the general law without fear or favour Daniel notion was common, with the Greek and the Romans

⁸³ Daniel, M.C., *Theory of Justice*, at p. 44, cited in Kayode E. "Anatomy of Justice", a Faculty Lecture Series, delivered at the Faculty of Law, Ogun State University, Nigeria, 2004, pp1-35 at p.5

⁸⁴ This notion was common, with the Greek and the Romans

⁸⁵ See, Exodus 21:23-25

⁸⁶ Kayode, E. "Anatomy of Justice " a Faculty Lecture Series, delivered at the Faculty of Law, Ogun State University, Nigeria, pp.1-35 at p.7

⁸⁷ *Supra* note 46, at p. 869.

⁸⁸ *Ibid*

In the contemporary globe, justice is a virtue among the lot, and now a cornerstone of human togetherness.⁸⁹ Applying this to the current imbroglio in Nigeria, can the action of the president not be said to be justified? The major consideration for this to our mind is, if the amnesty will guarantee peace and togetherness in Nigeria, then the president action is justified? Since justice is more of morality, if the action of president Goodluck is morally upright, then, it is justified. Since justice according to some jurisprudential schools of thought is believed to be a social contract⁹⁰ and legal equality of human being⁹¹ the president is morally obliged to wanting to extend the olive hand earlier extended to the Niger-Delta terrorist by his predecessor, the late president Umar Yar'adua, and this will certainly guarantee equality. Most importantly, since the use of force has been a constant failure in tackling terrorism in Nigeria⁹² couple with some levels of success recorded by the late president in the Niger-Delta through amnesty, this paper therefore posits that, experimenting on the use of amnesty programme in tackling terrorism in Nigeria is socially and morally justified. A similar experience in the Irish republic validates the viability of this option. According to the Irish Ambassador to Nigeria:

*... [a]fter failure of armed campaign of over 30 years battle with IRA Irish Republican Army, an Irish Republican Revolutionary Military Organization, Irish government resolved to dialogue with the group when military actions were not yielding results. And that it was after dialogue that the IRA members were granted amnesty and since then we have been enjoying peace.*⁹³

LIMITATION TO THE USE OF AMNESTY IN TACKLING TERRORISM

A major limitation in extending amnesty to the terrorists is that such can encourage proliferation of groups and encouragement of further terrorism. In 1999 when the case of terrorism started in a larger scale in Nigeria, the only group known then was the Ijaw Youth Council (IYC) later other

⁸⁹ Olokooba, S.M., "Theories and Concepts of Justice Revisited: A jurisprudential Appraisal of its Applicability in Nigeria, 1999-2007", in Tella N.S. and Reuben B.Z., *Law & National Security in the Fourth Republic*, (eds.)Lapai, IBB University, 2010, pp. 62-74, at p. 62.

⁹⁰ Locke, J., *Two Treaties of Government*, Cambridge, 1970, at p. 64.

⁹¹ Daramola, F., *Basic Jurisprudence*, Rahamat Press, Ilorin, 1995, pp.1268, at p. 160.

⁹² See, the report on devastating effect of the use of force on Boko Haram at <<http://www.nigeriamasterweb.com/paperfrmes.htm/>> (Last visited on May 19, 2012)

⁹³ "How we used Amnesty to Tackle IRA Terrorists Irish Ambassador", *Daily Trust* (Nigeria), May 18, 2013, at p. 4.

groups like Egbesu Boys, the Niger Delta Peoples Volunteer Force, the Movement for the Emancipation of the Niger Delta (MEND), Niger Delta Vigilante and Niger Delta Liberation Force not long afterward joined the fold. The proliferation syndrome has also entered the fold of the Islamic terrorist groups in Nigeria. The group that started the insurgency was the *Jamaatu Ahlis-sunna liddaawati walljihad* otherwise known as *Boko-Haram* but a splitter group *Jamaa'tu Ansarul Muslimma fi-bilads Sudan* (JAMBS) now also operates in Nigeria⁹⁴.

Another limitation is that, amnesty programme may not be a lasting solution. This is so because since the programme itself is unconstitutional, it lacks legal backing for its operation. All what the president is doing is just a show of care on moral and equitable ground. Another president may come tomorrow and prosecute all the terrorists that have been granted amnesty if he so wish. An action that is likely to regenerate and escalate the problem. In fact, members of *Boko Haram* and other groups and entities if judged to have committed widespread or systematic attacks against a civilian population, including on grounds such as religion or ethnicity could be found guilty of crimes against humanity.⁹⁵ This is so because any deliberate acts by the terrorist in whatever name leading to population 'chasing' on grounds of religion or ethnicity amount to a crime against humanity⁹⁶.

Furthermore, the unending kidnapping, killing⁹⁷ and oil pipe vandalism⁹⁸ by some section of Niger – Delta shows that, the amnesty given to the former Niger-Delta terrorists is not a success after all, but a mere gilded pacification campaign⁹⁹. Similarly, the chains of killings¹⁰⁰ with

⁹⁴ It was JAMBS that attacked Mali bound two-bus load lorry of Nigerian soldier on 19/1/2013 killing 2 of the soldiers

⁹⁵ Rupert C., "*Boko Haram* Could Face War Crime Charge" available at <<http://www.nigeriamasterweb.com/paperfrmes.html>> (Last visited on May 19, 2012).

⁹⁶ *Ibid.*

⁹⁷ Recently, 12 Police men were killed in Bayelsa State by a group of MEND, *The Guardian* (Nigeria), June 2, 2013, at pp. 24-25.

⁹⁸ On the 13th April, 2013 MEND further destroyed Shell Petroleum facilities in Nembe Bayelsa State

⁹⁹ Hinshaw "Nigerians Former Oil Bandits now Collect Government cash", *Wall street journal*, August 22, 2012, at www.wsj.com/article/SB100014240 (Last visited on August 24, 2012); see also, *supra* note 22, pp. 179-203, at p. 184.

¹⁰⁰ Despite the declaration of the state of emergency in Borno state, it was reported that the *Boko-Harram* sect still attacked a secondary school where 7

impunity by the *Bokko-Haram* despite the declaration of state of emergency shows that amnesty is just a way of rewarding the terrorists for violence they perpetrated against Nigeria. Not surprising Mr. Brister¹⁰¹ advised that due to the problematic nature of amnesty, instead of going amnesty way, Nigeria,

... [s]hould study how Britain handles Northern Ireland case, Russia in Chechnya, Sri-Lanka against the ITTE and India government against Sikh Separatist terrorist in Punjab etc.

He gave this advice because according to him:

Problem with terrorist is that the groups are actually not ideological and they do it for a variety of reasons: Generally, it is only small hard core fanatics who are probably incapable of any kind of rehabilitation or reintegration into society.¹⁰²

Considering the fact that, the Movement for the Emancipation of the Niger Delta who were earlier granted amnesty in 2009 have resumed bombing of oil installations and kidnapping¹⁰³ and despite the state of emergency declared in Borno, Yobe and Adamawa states couple with the proscription of *Boko-Haram* sect, which still did not deter them from operate with impunity killing and bombing schools and other targets at every available opportunity,¹⁰⁴ the above statement is a factual statement; what then is the way forward?

students and 2 teachers were killed on June 17, 2013, see Duku J “*Boko-Harram kills 7 Students, two Teachers*”, *the Nation* (Nigeria) June 18, 2013, pp.1,4,60. There was also gun duel between the security operatives and the sect in Yobe on June 17, 2013 despite the state of emergency in the state too. See the detail in James B “*JTF, Bokko-Harram in 5 Hours Clash in Yobe*”, the *Nigerian Tribune* (Nigeria), June 18, 2013, at p.6. Similarly, on July 6, 2013, despite the state of emergency in Yobe state Nigeria, the *Boko Harram* sect attacked Government Secondary School Mamudo and killed 29 pupils of the school. See details in Adelani A *et.al*, “*Bokko-Harram kills 29 pupils in Yobe*,” the *Sunday Punch* (Nigeria), July 7, 2013 at p.2.

¹⁰¹ Brister is a terrorist expert at Wake Forest University Wiston-Salen, North Cardina USA

¹⁰² Brister, “Why Amnesty is Complicated Anti-Terrorism Option”, *The Guardian* (Nigeria), June 2, 2013, at pp. 4, 24-25.

¹⁰³ “We’ll Bomb Fuel Tankers-MEND”, *The Sun* (Nigeria), June 16, 2013, at p. 2.

¹⁰⁴ “Gunmen Attack 4 Churches in Borno, Kill Pastor, 2 others”, *Tribune* (Nigeria), June 17, 2013, at p.8. Recently, on August 21, 2013, some *Boko-Haram* members attacked two communities in Borno state, killed 2 policemen and 4 others. For details, see Kingsley *et.al*, “Insurgents kill two policemen, four othes in Borno Communities”, *Vangurd* (Nigeria), August 22, 2013, p.1

CONCLUSION AND RECOMMENDATIONS

Though the federal government amnesty programme was designed to give way for peace, security and public welfare of Nigerians but since the mechanism of the programme failed to follow the laid down procedure under the Nigerian laws, it is unconstitutional. Amnesty does not have any basis and foundation in the Nigerian constitution, it is unconstitutional. What is provided for in the Nigeria constitution is prerogative of mercy which can only be given after the offender might have be tried and convicted of a certain offence. In conclusion, even though both the prerogative of mercy and amnesty ordinarily mean pardon, the legal implications of the two are not the same.

Be that as it may and having established in this discussion that the amnesty programme in Nigeria as presently constituted is unconstitutional though justified, we deem it fit to offer the following recommendations for better execution that may give legal effect to the programme if the Nigerian president is keen at making amnesty that will effectively and legally check terrorism in Nigeria.

1. The Nigerian president should approach the National Assembly to make law permitting him to grant amnesty to the Nigerian terrorists and other militants groups who are willing to voluntarily make peace. Making of this law will either be in form of new enactment or expansion of the existing provision on prerogative of mercy to include amnesty
2. The section that has to do with "trial and conviction" before pardon needed to be amended.
3. The victims of the crisis should be adequately compensated. This will reflect equitable treatment of Nigerian citizens and it will show the federal government as an impartial government.
4. Nigeria citizens are to be security conscious and ready to give useful information to police on insurgents.
5. For a lasting solution, the Nigerian, government should embark on programmes that will be of direct benefit to the citizens. Government should focus, programmes like
 - a. Provision of basic and free education up to the university level. These will curb the menace of *almajiris* who are the readymade instrument for suicide bomber of the *Boko Haram* and foot soldier of the Niger-Delta militants.
 - b. Provision of essential needs like shelter and employment
 - c. Make sure that the oil companies are socially responsible to the citizen and environment.
 - d. Government should strength the rule of law, step impurity, improve firearms regulation; the government should have a policy to stop stealing and selling in the international market, stolen crude oil which precede and sustain the illicit arm trade¹⁰⁵.
 - e. Government should also strengthened Nigeria boarder security to guard again the influx of illegal immigrant and cross-border link of the terrorist groups.

¹⁰⁵ *Supra* note 26, pp. 22-30, at p. 29.