

An Examination of the Constitutionality of the Amnesty Programme in the Niger Delta Region of the Federal Republic of Nigeria

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Abstract

The collapse of social values, failure of leadership, and neglect of the youth is now a current problem in Nigeria. This vice now increases the spate of unemployment, abject poverty; illiteracy, frustrations and the resurgence of many militant and terrorist groups in different part of the country. This work examines the Amnesty granted by the Federal; Republic of Nigeria to the Militants disturbing the oil production and vandalizing many oil pipelines in South-South region of the country vis-a-vis the provisions of the constitution and draws a legal opinion whether going by the constitution the Amnesty programme is not unconstitutional or null and void. The paper further examine if Amnesty is the lasting solution to the problem in the region considering the unabated activities of the militants despite the amnesty programme. In the final analysis, the paper posited that since amnesty programme is yet to be passing into law, it is unconstitutional. For it to be constitutional, there is a need for the presidency to approach the National Assembly to make law permitting the president to grant Amnesty to the militants and other related groups who are willing to voluntarily make peace.

Keywords: Constitutionality, Amnesty, Niger Delta Region.

1. Introduction

On may 29 1999, Nigeria entered into its fourth republic with pomp and pageantry and with hopes of establishing a peaceful democratic polity. Unfortunately, since then, ethnic, religious, geo-ethnic, youth violent acts and others have punctuated the political process and rendered extremely fragile the security of persons, groups and their properties. Increasingly, violence is becoming a characteristic hallmark of group relations in the country (John, 2010). Formation of militias became the order of the day, and the unemployed and underemployed youth embarked on range of violent activities in search for livelihood. This situation has produced heroes in the context of political thug, assassination, militancy, and ethnic massacre. Some relatively impoverished youth have gravitated into religious fundamentalism with networks stretching across Africa and Saudi Arabia in case of Islam and to England and the US in the case of Patencostal Christianity (Akeem, 2010). In the South- West, we have the OOdua People's Congress, while in the North; we have the Arewa People's Congress and also Bokko Haram sect. In the South-East, we have the Movement for the actualization of Sovereign State of Biafra (MASSOB) and in the South-South; we have the Niger Delta Libration Force and Movement for the Emancipation of Niger Delta (MEND). The Movement for the

Emancipation of Niger Delta (MEND) is the major militant group that spearheaded the actualization of the amnesty programme in the entire southern part of Nigeria with the Federal Government.

The Niger delta region are the geographical area of the defunct 'Western Ijaw Division in (Western Nigeria) and the Rivers provinces but excluding Ahoada and Port Harcourt in (Eastern Nigeria)(Nigeria Year Book, 1959: 41, Willink's Report, 1958: 3-8 and Ambily, 2010)' the Division and Provinces have become the present Rivers, Bayelsa and Delta States(Etekepe, 2009: 1-2.) After independence, the Nigerian state altered and redefined it at the time of promulgation of Oil Minerals Producing Areas Development Commission (OMPADEC) decree in 1993 and the Niger Delta Development Commission (NDDC) Act in 2000. While OMPADEC'S definition made the region synonymous with the south-south geo-political zone (Bayelsa, Rivers, Delta, Edo, Akwa-Ibom and Cross River states) due to the geographical contiguity, the NNDC Act equated the region with oil production.(2010: 319-320).

Apart from Bokko Haram which is a religious sect, other militias are purely ethno-geographical and regional groups fighting for either the emancipation of people and or mineral resources in different regions of the country. In a bid to pacify these militias especially, the militant in the oil producing region of Nigeria, the late president Alhaji Umar Musa YarAdua, initiated the amnesty programme. Though the programme was well received and applauded both with and outside Nigeria, but the legality of the programme which is the concern of this paper has never been addressed. This paper therefore examines the constitutionality or otherwise of the Amnesty Programme of the Federal Government of Nigeria in the Niger Delta Region of the Country vis-à-vis the provision of the Constitution of the Federal republic of Nigeria on such programme. The position of the paper is arrived at from the constitutional provisions and courts judgment on amnesty and other related issues in Nigeria.

2. Historical Background

Let it be emphasized that an attempt to go down too deep into the historical background of what led to 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, it is pertinent to look into brief historical background of the concept of the discussion at hand in order to have full idea of where we are coming from so that one can appreciate what led to the birth of this concept.

Before now, Nigeria was known for her prowess in export of cash crops as Cocoa, Rubber and the likes which forms the base of Nigeria Gross Domestic Index than when Agriculture was of great value, little wonder when the then Federal Government under the rulership of former president, Chief Olusegun Obasanjo Introduced operation Feed The Nation which intended to improve the lives of the People through agriculture.

However, the story of the nation changes with the discovery of crude Oil in early 80's in some part of the countries later known as Niger Delta Region. The crude Oil is now what forms the base of Nigeria Gross Domestic income and this is a fact that has been accepted. It is also this discovery of Oil that brings Nigeria to have recognized name in Organisation of Petroleum Export Countries and attracts many foreign nation to us for whatever reason. The People of the South-South and some part of South-East now believed that the discovery of the Oil should be a boost to their economy and Social Development. Therefore, much expectation is on this proceeds from the oil and expect much from the government in taking care of their welfare because it is believed that majority of their land is water logged

where the crude oil is refined which makes them not to have a good drinkable water, their land fertility and fishing expeditions has been destroyed by Oil spillage as such, they have little space to cultivate for agriculture. They also expect returns from the multinational Company, who is using this land to put many social amenities that could make life meaningful for them.

Nevertheless, it seems that both the Government either at the State or the Federal are not committed to these demands of the people of Niger Delta and even some of the multinational companies are not helping the matter. This is what aggravated some Niger Delta people to come together to form a group for self actualization of the dream of this region such as the Movement for Emancipation of Niger Delta under the leadership of Mr. Joshua and Late Okiti (before his death), the Ijaw Republic Assembly, the Group lead by Assari Dokkibo and the likes.

As time goes by, these groups became more violent on the Oil companies and many of the leaders of these group have become millionaire over night through the kidnapping of some of the expatriate of these Oil companies for payment of their ransom not only that, they also involve themselves in Oil bunkering and violent attack against the Nigerian Navy, Nigerian Army and Security agencies responding to the security of the Oil pipelines. The effect of all these attack is definitely telling on the government who has solely relied on this crude oil as our major income.

The last straw that breaks the camel's back before the inception of this 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 Angola. The resultant effect of this loss is felt seriously by the government hence, the need for the solution to this menace that almost turns the country in bizarre. This is what gave birth to the Amnesty extended/ granted to all militants that surrendered their weapon voluntarily.

It is on record that the programme started sometimes in August, 2009 and was to last for 60days under the then late President Umar Musa Yar'adua but the legacy continue by his successor, the incumbent President, President Goodluck Ebelle Jonathan. The programme covers about 8,000 to 10,000 militants but up till the time of writing this paper, there had been no official report through the programme but one thing that is certain is that the Federal Government has budgeted about \$63million for the rehabilitation and reintegration of these thousands of militant which covers their allowances and running of the programmes for the period of 2 months. Each of the militants is expected to receive \$135 a month plus \$100 a month for food.

On the other hand, it need be pointed out here that this amnesty is not the first measure to curb the menace, for example in 2004 the Federal Government made attempt to buy over some of the militants leaders like Ateke Tom and Asari Dokubo by paying them \$2,000 for each of the 360 AK – 47 they surrender to the government. Despite this move, it was reported later that Mr. Tom was quoted as saying that he only turned in small fraction of his arms meaning the deal failed resulting in the increase of the activities of the militants. Similarly, the Rivers State Government (one of the Niger Delta State) and one of the states with high deposit of Crude Oil made attempt to curb the activities of these militants in 2007 by making offer of showering thousands of Dollars on the militants who denounce violence. Though one could not ascertain how much was spent during this period, but the programme ended in tatters.

2.1. Definition of Terms

In dispassionate consideration of the concept at hand one must note that there are 3 (three) key words which meaning are to be ascertained from the beginning, they are “Constitutionality”, “Amnesty” and “Niger Delta Region”.

According to (Bryan 1999: 306), constitutionality is defined as:

the quality or state of being constitutional” and “Proper under the constitution.

“Amnesty” on the other hand is defined in Black’s Law (1999: 83) as

A pardon extended by the government to a group or class of persons 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 word, amnesty, is a pardon for offences granted by an Act of Parliament which is originated by the Crown (Sheila, 2001: 29)

The Niger Delta region are the geographical area of the defunct ‘Western Ijaw Division in (Western Nigeria) and the Rivers provinces but excluding Ahoada and Port-Harcourt in (Eastern Nigeria)

Having made the definition of the terms in this work, the question that calls for our consideration is did the Amnesty granted to the militant in the Niger Delta area falls in line with the provision of the constitution or better still is it proper in the face of the constitution or is there any provision of the law that empowers the president to carry out such policy and what is the legal implication of the programme?

3. The Constitutionality or Otherwise Of the Amnesty Programme in Nigeria

Going by the provision in section 1, 1999 Constitution of the Federal Republic of Nigeria, the constitution is the highest law of the land and is supreme over any person or authority including the President. Amnesty as was held by the court 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 is not provided for in our constitution which is the ground norms or the laws of our land., what the constitution provides for is prerogative of Mercy. The Prerogative of mercy has been accepted in our jurisprudence and the courts of law by the judicial power conferred on them have given a judicial meaning of what is “prerogative of mercy as contained in section 175 Constitution of the Federal republic of Nigeria, 1999.” In *Obidike v. State*, reported in (2001) 7 NWLR (pt. 743) 601 at 639 paras G – H; 640 PARA E – F the court of Appeal recognized prerogative of mercy as provided for under SECTION 161 and 192 1979 Constitution, now section 175 and 212 (1999) Constitution where *OLAGUNJU J.C.A* (of blessed memory) opined as follows:

This court is not unmindful of the power of the president of his 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 other this similar powers were vested in a state governor by section 192 of the self same constitution in respect of conviction of any offence created by any law of a state on terms identical with section 161 thereof. The parallelism of the powers described in the marginal note of each section as prerogative of mercy.

From the above judicial interpretation of the prerogative of mercy by the president or governor of a state, what the constitution contemplate is pardon to someone who has been convicted of an offence or crime or someone who is related thereto section 175 of the 1999 constitution provides thus: the Phrase “ any person concerned with” might be issue or interest and concern that one might tend to hold the view that the phrase could accommodate the militants in the various creeks at the Niger Delta region. 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 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 motioned must be of the same kind with the former therefore, the militant, who are yet to be convicted of any offence, cannot fit in into the provision. Perhaps it is necessary to look at both general and legal meaning of “pardon”

According to Black Dictionary (2) “pardon” is the act or instance of officially nullifying punishment or other legal consequences of a crime, in jiffy, pardon is “to forgive” or “excuse” (Hornby 2002:841). Similarly, the concept of pardon has received judicial interpretation in the Nigerian Courts in *Ojukwu v Obasanjo* (2004) FWLR, (pt 222) 1666, F.R.N. v. *Ifekwu* (2003) 15 NWLR (PT. 842)113; *Jammal Steel Structure v A.C.B.* (1973) ALL NLR 823 and *Falae v Obasanjo* where MUSDAPHER (JCA as he then was) opined as follows:

A pardon is 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 pardoned.

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. Black Law Dictionary (1999: 1137) has also differentiated Amnesty from the general pardon referred to in 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 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* reported in (No.2) (1999) 4 NWLR (pt. 599)479 at 495 where Udow- Azogu (JCA) held inter alia that:

...by 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* reported in (2007)6 NWLR (Pt.1029)1 at 24) when Edozie (JSC) held thus:

a person convicted of murder and sentenced 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* (2009) 3 NWLR (pt 1127) 94 to amount to double jeopardy.

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 been 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 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 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 they are presumed to be innocent until contrary is proved.

In *C.O.P. V. TOBIN* reported in (2005) 11 NWLR (pt.932)640 at 488, the court held that any person accused of criminal offence is presumed innocent until the contrary is proved. One interesting thing about this Amnesty is that majority of the people granted Amnesty have not been accused of any offence not to talk of standing trial before any 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 have not been arrested by 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?
- (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 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 is 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* (2009) 10 NWLR (Pt. 1148)62 and what later re- affirmed by the Apex Court in cases like, *N.T.C. Ltd v. Agunannee* (1995) 5 NWLR (pt397) 541 at 574 – 575 Paras H – A, *Ethuwa v. O.S.I.E.C/* (2006) 18 NWLR (pt 1012) 544 at 568 – 569 Paras H _ C, *Ogbunniya v. Okudo* (1976) 6 – 9 sc. 32; *PDP v. INEC* (1999)11 NWLR (PT 626)at 200; *Osahon V. FRN* (2003)16 NWLR (pt 845)89. The marginal notes in the section simply say prerogative of mercy as confirmed in the judicial authority of *Obidike v. The State*, reported in (1989)2 NWLR (pt.101) 1 at 18 Para A 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 own. Where then did the president derive the right to grant amnesty to the Niger Delta Militant when same is not covered by the constitution or any law in existence?

The implication of the amnesty without the provision of such is that the ex-militant could still be arrested and arraigned before the court of competent jurisdiction for whatsoever offence they might have committed before now and they will not be covered by section 36 (10) of the constitution because what is unconstitutional cannot be covered by the constitution there is no basis upon which section 36 (10) of the constitution could operate as you cannot place something on nothing and expect it to stand.

Therefore it is submitted that there are other ways of achieving the same purpose by the Federal Government. That is, instead of the Federal Government granting amnesty, it ought to have made use of the power of the Attorney General of the Federation under the constitution to enter *Nolle prosequere* as was done for Henry Okah, the MEND’s leader not minding the fact that *Nolle prosequere* can only be granted a discharge not total acquittal in which case they can still be arrested and it can never be a pardon so as to act as *estoppel* under section 36 (1) of the constitution. Therefore, the

exercise of that power cannot amount to pardon contemplated by the constitution or legal pardon in the real sense of it. Otherwise, a new government might come after the present administration and might not want to concede what the present government has done and may want to prosecute these militants which might look like a foul play on the part of the government against the militant, the effect is that nation might be starting from what it's trying to curb.

4. The way forward

Having established in this discussion that the Amnesty programme in Nigeria as presently constituted is unconstitutional, it is not enough to stop or pause there but I deem it fit to offer the following recommendation in the interest of the continuity.

- (1) There is a need for the presidency if keen at making this programme a continuous one to approach the National Assembly to make law permitting the president to grant Amnesty to the militants and other related groups who are willing to voluntarily make peace.
- (2) The amnesty programme seems to be channelled towards some group of the Niger Delta region but, we will like to suggest that the presidency should focus on the programme that will make life better and more meaningful for these people such as:
 - (a) Provision of federal Infrastructures and institutions
 - (b) Availability of basic needs
 - (c) Make sure that the oil companies are socially responsible to them
 - (d) The oil companies should have respect for their ecology and the likes. If these could be put together laws will be comfortable for them and nobody will even think of causing violent or carrying arms against the interest of the entire nation.
 - (e) Government should strengthen the rule of law, stop impunity, 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 trade.
- (3) As suggested by Kuku(2012), the Federal government should look into the possibility of encouraging the full exploitation of the solid minerals potentials of other state, especially as it affect oil exploration around the lake Chad basin...encourage industrialisation, address ecological problems e.t.c.

5. Conclusion

In landing safely at the stone of legality of this talked and analyzed amnesty, I note that the programme to me does not have any basis and foundation in our constitution though might be right but unconstitutional and without any legal backing as such the result which might water makes these people to lose their confidence in the government which is against the process of Democracy order where it will fail See *Olotu v. Itodo* 1 (2010) 18 NWLR (pt. 1225)545 at 579 – 580 Para H - A where MOHAMMED (JSC) points this note of certain warning and admonition on what to do in democratic process that:

...we need to strengthen the confidence of our people in our democratic... We must learn to always do the right thing no matter what else, we will fail in the process.”

It is the above way that makes me believe that for the presidency to strengthen the confidence of the people especially that of Niger Delta militant there is need to do the right thing with the law of the land so that it will not

back fire later in the future. Since it is the interest and expectation of many patriotic Nigeria that the problem of militants in the Niger Delta regime be shown. However, it must be pointed out here that the amnesty programme lift may arouse question unanswered which there will be no enough space to analyze in this work and the limitation of scope of this work such question as:

- (a) What is the future of these militant after the 2 months programme?
- (b) Is two months enough to resettle and reintegrate these militants back to the society?
- (c) Is the programme a lasting solution to problem of the militant in the regime?
- (d) What happens to the guns and weapons surrendered by the militants? How many or what is the number of the weapons, the where about of these weapon, their functional status, what the government intends to do with them are issue of great security concern to the nation so that what happens after the civil war in early 70s will not befall the fiction against where Armed Robbery became rampant as a result of serious circulation of arms in the society and the one retained by Ex- war men.

It is our hope that the government will take advantage of this new and legalizes the programme by backing it with an enactment otherwise no matter how good the intention or the ground the progamme is, it is unconstitutional.

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