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CONTENTS

Page

AMNESTY, SECURITY, PEACE AND JUSTICE: FINDING THE MIDDLE ROAD
K.M.W. Owolabi & M.A. La-Kadri

1

AN APPRAISAL OF THE NIGERIAN OIL AND GAS INDUSTRY CONTENT DEVELOPMENT ACT, 2010 IN THE CONTEXT OF WTO'S AGREEMENTS ON TRADE RELATED INVESTMENT MEASURES (TRIMS) AND GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)
P.I. Onuh

17

CRITICAL HISTORICAL PERSPECTIVES ON THE RELATIONSHIP BETWEEN INTERNATIONAL HUMANITARIAN LAW AND ISLAM
A. J. Suleiman

30

DETERMINING LIABILITY IN WRONGFUL AUTOMATED TELLER (ATM) TRANSACTIONS IN NIGERIA
U. S. Bebeji

41

UNDERSTANDING RIGHT TO REPRODUCTIVE SELF DETERMINATION UNDER INTERNATIONAL HUMAN RIGHTS LAW
A.M. Madaki

57

GENDER ROLES IN THE UPBRINGING OF CHILDREN UNDER ISLAMIC LAW: CONTEMPORARY CHALLENGES IN NIGERIA
N.M. Abdulraheem

71

JUDICIAL CORRUPTION: IMPACT ON ECONOMIC DEVELOPMENT
C.A. Ejeh And N. Ejeh

88

THE IMPERATIVE OF TEACHING LEGAL RESEARCH: TOWARDS ENHANCING ORIGINALITY IN ACADEMIC WRITING
K.M. Danladi

99

PLEA BARGAIN: A PANACEA FOR ECONOMIC AND FINANCIAL CRIMES IN NIGERIA
A.A. Adewumi

104

A REFLECTION OF RECEIVERSHIP AND INCOME TAX ENFORCEMENT OF TAX LIABILITY IN NIGERIA
O.C. Nwachukwu

119

REVIEW OF THE PARIS AGREEMENT:- THE HEART OF THE POST – 2020 INTERNATIONAL LEGAL REGIME ON CLIMATE CHANGE AND ITS IMPLICATIONS FOR SUSTAINABLE DEVELOPMENT GOALS AND THE ENERGY SECTOR
M.T. Ladan

128

A NORMATIVE ANALYSIS OF THE RIGHTS OF THE ELDERLY TO SOCIAL SECURITY AND DEVELOPMENT IN INTERNATIONAL HUMAN RIGHTS LAW AND SHARI'AH
A.O.A. Adebayo and W.O. Egbewole

169

JURISDICTION CONFLICT BETWEEN THE INVESTMENT AND SECURITIES TRIBUNAL AND THE FEDERAL HIGH COURT
V.C. Madu

175

THE RIGHT OF MUSLIM WOMEN IN WESTERN COUNTRIES TO WEAR HIJAB: HOW REALISTIC AND EFFECTIVE
I.Z. Olanrewaju and A.S.A. Tijani

195

AN APPRAISAL OF THE CHALLENGES FACING THE NIGERIAN COPYRIGHT COMMISSION IN THE DISCHARGE OF ITS LEGAL MANDATE
Z.A. Haruna

211

RETHINKING THE MICRO AND MACRO ECONOMIC CONVERGENCE CRITERIA FOR THE ECO IN THE WEST AFRICAN COMMON CURRENCY PROJECT
Maiyaki Theodore Bala

222

CONTENTS

Title Page	i
Copyright Page	ii
Contents	iii
Editorial Advisers	v
Editorial Board Members	v
Annual Subscription Rates	v
Editorial	vi
Note To Contributions	vii
AMNESTY, SECURITY, PEACE AND JUSTICE: FINDING THE MIDDLE ROAD	
<i>K.M.W Owolabi & M.A. La-Kadri</i>	1
AN APPRAISAL OF THE NIGERIAN OIL AND GAS INDUSTRY CONTENT DEVELOPMENT ACT, 2010 IN THE CONTEXT OF WTO'S AGREEMENTS ON TRADE RELATED INVESTMENT MEASURES (TRIMS) AND GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)	
<i>P.I Onuh</i>	17
CRITICAL HISTORICAL PERSPECTIVES ON THE RELATIONSHIP BETWEEN INTERNATIONAL HUMANITARIAN LAW AND ISLAM	
<i>A.J. Suleiman</i>	30
DETERMINING LIABILITY IN WRONGFUL AUTOMATED TELLER (ATM) TRANSACTIONS IN NIGERIA	
<i>U.S. Bebeji</i>	41
UNDERSTANDING RIGHT TO REPRODUCTIVE SELF DETERMINATION UNDER INTERNATIONAL HUMAN RIGHTS LAW	
<i>A.M. Madaki</i>	57
GENDER ROLES IN THE UPBRINGING OF CHILDREN UNDER ISLAMIC LAW: CONTEMPORARY CHALLENGES IN NIGERIA	
<i>N.M. Abdulraheem</i>	71

AMNESTY, SECURITY, PEACE AND JUSTICE: FINDING THE MIDDLE ROAD

By

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ABSTRACT

The crisis afflicting the country range from leadership crisis, bitter and rancorous politics, unprecedented criminality and attendant insecurity, Boko Haram insurgency, kidnapping, ritual killings, human trafficking and economic crimes. The question is: Justice or peace? Basically, that is what it boils down to. Since the beginning of the offensive by insurgents in Nigeria, there has been widespread debate about how to bring the bloody onslaught to an end. In the last administration, it seemed as if the government struggled in trying to get an upper hand in the conflict with the insurgents. Now that the new government (Buhari's Administration) is in place, the problem of how to extinguish this threat has risen to the fore of the government's urgent policy. Talk of the administration possibility offering amnesty to the insurgents in return for them to lay down their arms litters the air. However, with so many divergent voices lending themselves to the debate of whether the particular strategy developed along the lines of amnesty is appropriate, given the surrounding circumstances. The general objective of this paper is to access the impacts, challenges and sustainability of the amnesty programme and the political settlements leading to it, as a strategy of conflict resolution and peace building at the sub-national level. The study attempts to critically interrogate the content and methods of the Amnesty on the basis of issues of inclusiveness, equity, justice and impacts on violence mitigation, conflict resolution and peace-building, and national-building and national stability.

1.1 Introduction

There is no doubt, the section of the insurgents and other extremists that ignite this conundrum are a mob of ignorant, depraved, erroneous, wicked and misguided zealots who have committed the most vile, heinous, evil and immoral crimes against innocent people, women and children. Under any structure or belief system, there has to be retribution. In any country of the world, criminal prosecution of those accused of committing crimes is a fundamental aspect of victim's right to justice. However, sometimes the concept of remedial justice for victims often has to be balanced against the need to deal effectively and

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progressively with the atrocities and not provoke or maintain further violence. In such circumstance, a restorative justice approach incorporating amnesty, focusing on the normative rather than the punitive objectives of the criminal law, may be the more appropriate mode.

From time immemorial, amnesty has been employed as a means of promoting settlement and advancing reconciliation in societies that have emerged from repression. But even though it is a tool that was historically often utilized in conflict resolution, it was never entirely viewed as the best option; only a necessary one.

1.2 Definitions and Conceptualization

The four keywords of the topic of this paper are: Amnesty, Security, Peace and Justice are indispensable and unrelenting in the vital roles they play in the socio-political life of a Nation, Nigeria being not an exception. Whilst we may claim to be fairly familiar with the serial usage of the words Security, Peace and Justice in our daily lives, the same however, cannot be said of 'Amnesty.' It is however important at this junction to offer some definitions to the above terms.

Amnesty is severally defined thus as the act of a sovereign power officially forgiving certain classes of persons who are subject to trial but have yet been convicted."¹

Amnesties are chiefly exercised towards associations of political criminals. Famous world's earliest Amnesties include: Napoleon's Amnesty of March 13, 1815²; Prussian amnesty of August 10, 1840; The general Amnesty proclaimed by the emperor Franz Josef I of Austria in 1857; The general Amnesty granted by the President of the United State, Andrew Johnson, after the American Civil War (1861-1865) in 1868; the French Amnesty of 1905. It is pertinent to note that Amnesty presupposes that a person has not been convicted for an offence.

The effect of amnesty are immediate release of all political prisoners; right of political exiles to return; relinquishment of civil and political rights; reinstatement in their jobs of persons dismissed for political reasons and right of victims of inhuman treatment or their families to compensation.³

Security is a form requirement to maintain the survival of the state through the use of economic power, diplomacy, power projection and political power. Accordingly, in order to possess national security, a nation needs to possess economic security, energy security, environmental security etc. Security threats however, involve not only conventional foes such as other nation-states but also non-state actors such as violent non-state actors, narcotic cartels, multinational corporations and non-governmental organizations; some authorities include natural disasters and events causing severe environmental damage in this category.

The word 'Peace' on the other hand means a state of quiet or tranquility; freedom from disturbance or agitation; applicable to society, to individuals, or to the

¹ Bryan A. Gardner (Ed) (2009). *Black's law Dictionary* (9th ed.) St. Paul, MN: West, p.99

² From which thirteen eminent persons were amnestied.

³ Mr Louis Joinet, *Study on Amnesty Laws and their Role in the Safeguard and Promotion of Human Rights Preliminary Report*. United Nations Economic and Social Council E/CN.4/Sub.2/1985/16, 21st June 1985

temper of the mind. It could also mean freedom from war with a foreign nation; freedom from internal commotion.

Justice is defined by the relationship that exists between individual and the state, and justice means that the state treats every person equally and seeks to resolve disputes on the basis of the facts and compared to objective criteria rather than subjective determination. Justice in the broadest sense is fairness. Justice occurs when the distribution of political power and economic opportunity is as uniform as possible or when the social and political system is such that they tend toward a just distribution even if it is not achieved. Justice is clearly an ideal, and ideals are to be sought but may not be achievable.

1.2.1 Amnesty

Amnesty, right from time immemorial, has been employed as a political leverage, to attract parties to negotiate peace agreement in times of conflict and turmoil as it is the case in the Nigeria of today. The need for security and stability, in the short term in form of a cease fire, sanctions the adoption of Amnesty at the expense of Justice. Admittedly, questions of Justice and human rights are often stumbling blocks, further entangling the negotiation process and rendering the peace process vulnerable to further potential points of disagreement and contention. Therefore, Amnesty is often a pragmatic solution to ending conflict if exercised in the interest of the people at large.

1.2.2 Recognition of Amnesties in International Law

It would be noted that the application of amnesty by a State in some situations, transcends domestic crimes into the sphere of international law. This happens where the offence for which immunity against prosecution is provided are so atrocious that they deeply shock the conscience of humanity and are regarded as being of concern to the international community as a whole. The principles of conventional international law and treatise⁴ impose significant obligations on States to requiring the prosecution of atrocious crimes. This is because violations against humanity endanger the value of the global community

The offer of amnesty for some of the most heinous of crimes thus undeniably appears contradictory on the very face of it, to these principles of international law. On the other hand, international law does not expressly exclude amnesties. This raises the question of the legality of granting amnesties under international law and whether can be given *de facto* or *de jure* recognition internationally.

Article 4 of Convention on the Prevention and Punishment for crime of Genocide, ⁵provides that perpetrators of the offence of genocide must be punished by States parties. The States are obliged to put in place necessary legislation to give effect to the provisions of the Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in the Convention.⁶

⁴ The General Convention of 1949, the Genocide Convention, the Convention on the Non-Applicability of Statutory Limitations to War Crimes against Humanity, the Apartheid Convention, the Torture Convention, and the Rome Statute.

⁵ Adopted by Resolution 260 (III) A of the United Nations General Assembly on December 1948

⁶ Article 5 of Convention on the Prevention and Punishment for crime of Genocide

Based on the mandatory system of universal jurisdiction over grave breaches⁷ of the Geneva Conventions, there remains an obligation to extradite and prosecute in situations where there have been grave breaches of human rights violations and State parties are unable to absolve themselves or any other state from liability that is incurred in this respect. This *prima facie* means that State parties cannot through their own national legislations or actions, condone grant amnesties for offences that fall within the definition of grave breaches as provided under the Geneva Conventions and there is a positive obligations on the other parties not to recognize such amnesties granted.

A similar obligation to prosecute persons who have violated the rights of others, especially through torture and other forms of cruel treatment is contained in the Final Declaration and Programme of Action of the 1993 World Conference on Human Rights (Vienna Declaration)⁸ where it states that: "States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law"

The emergence of an International prosecution system consisting of the International Criminal Court as well as various international tribunals has also been a strong point in support of the argument that immunities from prosecution for international crimes are not recognized. The non recognition of amnesties in relation to international crimes has been explicitly stated in various decisions of international tribunals, helping to consolidate a network of case law that can be said to aid the development of international customary law jurisprudence on the concept of amnesty.

In 2009, the Court of Appeals Chambers of the Special Court for Sierra Leone in the appeal case of the *Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao*⁹ ruled that amnesties granted to persons of the warring factions in the Sierra Leone in spite of the 1999 Lome Peace accord brokered between the Sierra Leone government and the Revolution United Front which contained an amnesty provision pardoning all rebel forces and their collaborators for acts committed during the war was not a bar to prosecutions as amnesty did not apply to war crimes, crimes against humanity and other serious violations of international humanitarian law. It was argued that the prosecutions of certain international crimes are recognized as *juscogens*; meaning that due to the importance of the value it protects, the principle of punishment for heinous crimes, enjoys a higher rank in the international hierarchy than the treaty law and even ordinary customary rules. The implication of this is that the principle cannot be derogated from by States through international treaties or local or special custom, not endowed with the same normative force.

⁷ Offences amounting to grave breaches of the General Conventions and its Protocol has been identified as including willful killing, torture on in human treatment, willful causing of great suffering or serious injury to body or health, willful serious violation of the laws and customs of war. See Article 50/51/130/147 ICRC Commentary on the General Conventions and Article 85, Protocol Additional to the General Conventions of 12th August 1949 and Relating to the Protection of Victims of International Conflict.

⁸ Part II, Para. 60, UN Doc. A/ Conf.157/23 [www.unhcr/huridoca.nsf/\(symbol\)/a.conf.157.23.en](http://www.unhcr/huridoca.nsf/(symbol)/a.conf.157.23.en) accessed on 15/7/2016

⁹ Special Court for Sierra Leone, SCSL-2004-15-AR72 (E), Decision on Challenges to Jurisdiction: Lome Accord Amnesty (Appeals Chamber, 13th March 2004) hereinafter Lome Decision

The decision of the Special Court of Sierra Leone is regarded as a very important decision in relation to the position of amnesty in international law because, it appears to be the first decision in which it was categorized stated that amnesty was not a bar to all international crimes before international tribunals or foreign courts.

The International Criminal Tribunal for Yugoslavia took a similar approach in Prosecutor *Anto v. Furundzija*,¹⁰ in relation to the crime of torture. The Court concluded that any national measure to undermine the principle of *juscogens* in international law such as amnesty would not be accorded international legal recognition. Though article 6 (5) of the Additional Protocol¹¹ provides that: "At the end of hostilities, the authorities in power shall endeavor to grant the broadest possible amnesty to persons who have participated in the armed conflict".

However the provisions of Article 6(5) of the Additional Protocol has been cited severally especially by national courts as a justification for the recognition of amnesty for crimes against humanity in international law. In the Salvadoran case of Guevara Portillo for example, which involved the death of American soldiers traveling in a helicopter which was shot down by the Salvadoran guerilla forces, the *Frente Farabundo marti para la liberacion Nacional* (FMLN), the Criminal Chamber of the Supreme Court justified its ruling that Salvadoran amnesty granted to the FMLN was valid under international law on its interpretation of the aforementioned Article, emphasizing that amnesty was necessary for reconstruction as it was part of the negotiated peace accords.

One can argue that the above decision of Salvadoran court was inappropriate. The rules of Interpretation in the Vienna Convention¹² on the Law of Treaties, direct State Parties to interpret provisions in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. One of the objectives of the Additional Protocol as stated in its preamble is to 'ensure better protection for victims of non- international armed conflicts. If Article 6(5) were to allow amnesties which prevent the prosecution of grievous atrocities against humanity, during armed conflict, it would no doubt be inconsistent with the main objectives of the Protocol.

Although international treaties and Conventions mentioned above places an obligation on States parties to prosecute offender who commit heinous crimes, none of these treaties discourages the offering of any form of amnesty. This is the reason for the need of states to protect their sovereignty and the grant of amnesties by States are usually applied to accommodate peculiar circumstances which threaten the peace or stability of a nation and an attempt to handle the situation otherwise might prove disastrous to the economic or political survival of the State,¹³ or lead to the perpetuation of more crimes against humanity. To this end, some States have enacted laws that make the grant of amnesties in,

¹⁰ Judgment of the Trial Chamber ICTY, 10th December 1998, paras 151-157

¹¹ Protocol Additional to the Geneva Conventions of 12th August 1949, and relating to the Protection of Non-International Armed Conflicts (Protocol II), 8 June 1977.

¹² 1969 Vienna Convention on the Law of Treaties, Art. 31(1)

¹³ In South Africa, Amnesty was granted for politically motivated crimes during the Apartheid regime under the "Amnesty of Truth" programme by the Promotion of National Unity and Reconciliation Act of 1995.

particular situations provided for, legal. Navqi makes a valid point when he argues that if all amnesties are to be considered as invalid and not accorded recognition in international law, an important tool used for preventing and even ending civil wars or aiding the process of reconciliation in particular States might be severally hampered, thereby risking the provocation or elongation of a threat to peace and security.¹⁴

1.2.3 Legal Provisions for Amnesty in Nigeria: Contradiction between Amnesty and Pardon

Whether or not amnesty is constitutional in Nigeria is still a matter of controversy. A few sees amnesty as the same as pardon while a divergent view is to the effect that amnesty differs from pardon.

The main difference between Amnesty and Pardon is that the former is granted to persons who though have committed crimes, but have not been tried and convicted of the crimes, while the latter is extended to convicts.¹⁵ The aim of amnesty is to forget a crime which has been committed while the aim of the pardon is to exempt the person on which it is granted from the punishment prescribed by law.¹⁶ In both cases, the grantee cannot be re-prosecuted for the same offence.

Another difference between amnesty and pardon is the time when both are granted. Amnesty may be granted either before judgment or afterwards, and it is in general given to whole classes of criminals or supposed criminals, for the purpose of restoring tranquility in the States.¹⁷ Amnesty is usually granted before any trial takes place, hence before conviction while pardon is given to a person who is guilty and has been convicted of an offence.

Pardon, in contradistinction to amnesty, presupposes conviction¹⁸. The effect of pardon is to make the offender a new man (*novushomo*), to acquit him of all corporal penalties and forfeitures annexed to the offence pardoned.¹⁹ The power to grant pardon is conferred on the president in section 175 of the 1999 Constitution as amended, which provides as follows:

- (1) The president may-
 - (a) Grant any person concerned with or convicted of any offence created by an Act of the National Assembly a pardon, either free or subject to lawful conditions;
 - (b) Grant to any person a respite, either for an indefinite or for a specified period of the execution of any punishment imposed on that person for such an offence;

¹⁴ Naqvi Y, 'Amnesty for the War Crimes: Defining the Limits of International Recognition IRRC (2003) Vol.85 pgs 583-588.

¹⁵ Federal Republic of Nigeria v. Henry Okah (unreported Charge No: FHC/J/78C/2008).

¹⁶ John Bouvier, *A Law Dictionary*, Adapted to the Constitution and Laws of the United State (USA 1856)

¹⁷ Olatoke O, *An Examination of the Constitutionality of the Amnesty Programme in the Niger Delta Region of the Federal Republic of Nigeria*, 27

¹⁸ Isibor v. State(2002) SCNJ 162 at 177 where the government pardoned 646 inmates from detention.

¹⁹ Falae v. Obasanjo(1999) 4 NWLR(pt. 599) 476 at 495

- (c) Substitute a less severe form of punishment for any punishment imposed on that person for such an offence; or
- (d) Remit the whole or any part of any punishment imposed on that person for such an offence or of any penalty or forfeiture otherwise due to the state on account of such an offence.

(2) The powers of the President under subsection (1) of this section shall be exercised by him after consultation with the Council of State."

Similar power is also conferred on the Governor of a state in respect of any offence created by any law of a state by section 212 of the Constitution. Thus, the Governor of a state cannot grant Pardon in respect of any federal offence which means an offence contrary to an Act of the National Assembly or any law having effect as if so enacted²⁰.

However, whereby the tenor of an Act of the National Assembly it is meant to operate as a state law, then the Governor shall have the power to grant pardon in such circumstance. In such a case, the law is deemed to be a state law and the offence, a state offence²¹. The legal effect of pardon is as contained in section 36(10) of the 1999 Constitution which provides as follows: "No person who shows that he has been pardoned for a criminal offence shall again be tried for that offence."

According to section 175(1) (a), a prerogative of mercy can be granted to any person concerned with or convicted of any offence created by an Act of the National Assembly. Hence conviction is precondition for prerogative of mercy to be granted therefore it cannot be granted to a person under trial or conviction under appeal before competent court. The Supreme Court held per Ogunbare in *OKongwu v. State*²² that: "Pardon is usually granted where a convict has exhausted all his legal rights of appeal; has no intention of exercising such right; where he is wrongfully convicted and is afterwards pardoned upon the ground of his innocence".

In the case of Capital offences, where the Minister designated to advise the President on the exercise of prerogative of mercy decides to recommend that the sentence should be commuted or that the offender should be otherwise pardoned or reprieved, he shall issue an order, one copy of which shall be sent to the superintendent or other officer in charge of the prison in which the offender is confined, and another copy of which shall be sent to the Sheriff, directing that the execution be not proceeded with, and, as the case may be, that the offender be imprisoned in accordance with the recommendation, or that the offender be released, subject in either case to such conditions, if any, as may be specified.²³

The question, therefore, is can the power of the president to grant pardon as provided in section 175 of the Constitution be extended to the President's power

²⁰ Section 286(3) of the 1999 Constitution as amended.

²¹ *Emelogu v. State* (1988) 2 NWLR (pt. 87) 524

²² 19860 % NWLR [Pt 44] 741 at 750, paras G-H

²³ Section 371 of Criminal Procedure Act

to grant Amnesty? It has been opined that under the Nigerian Criminal Jurisprudence, this category of pardon (Amnesty) can only be granted by the Attorney-General through the process of *nolle prosequi*²⁴. By exercising this power, the state automatically discontinues the prosecution of a person standing trial. This was the constitutional mechanism the federal government employed in the case of Mr. Henry Okah, MEND's leader.²⁵ Okah was arrested in Angola and deported to Nigeria in February 2008, and charged with 62 counts of treason, terrorism, illegal possession of firearms and arms trafficking, faced with the death penalty. The trial which began in April 2008 was held in private, because President Umar Musa Ya'radua said it would 'jeopardized national security.' In July 2009, Okah's lawyer announced that he accepted an amnesty, which had been offered by the Nigerian government to any rebel willing to lay down their arms, in a bid to end attacks on the oil industry.

The power of *nolleprosequi* both for the Federal and State's Attorneys- General is provided for in sections 174 and 211 of the 1999 Constitution respectively. One line of argument is that, it is clear from *section 175 of the constitution* that the President may only exercise his prerogative of mercy in relation to a person who must have committed or been convicted of an offence by a Court of competent jurisdiction and not otherwise, and that a person cannot be said to have committed or been convicted of an offence if he has not been found guilty of that offence by a court of competent jurisdiction. This is because every person charged with committing an offence is presumed innocent until his accusers establish his guilt.²⁶

On the contrary, the power of the President to grant Amnesty cannot be likened to the power of the Attorney- General to discontinue an action as they are two different powers exercisable by different authorities. Hence, premising the power of the President to grant Amnesty on section 174 of the Constitution as amended is wrong. However, the distinctions between Amnesty and pardon are difficult to apply in many countries in the common law tradition for the following reasons;

First, Amnesty is rarely resorted to and few conventions exist as regards it. Second, granting an individual pardon may, in removing the effects of conviction, have the effects as far- reaching as those of Amnesty since they (Amnesty and Pardon) both restore the culprit to an initial position before the commission of the offence. The United States Supreme Court once went so far as to say that the distinction between Amnesty and Pardon is one rather of philosophical interest than of legal importance²⁷. In view of this, the power of the President to grant Amnesty will be hinged on section 175 of the 1999 Constitution as amended.

However, many countries have given amnesty a legal basis and constitutional backing. Clearly, there is no legislative backing for the grant of amnesty under Nigerian law.

²⁴ Thetidenewsonline.com 2009/08/28.

²⁵ Henry Okah is the assumed Nigerian guerrilla leader of the Movement for the Emancipation of the Niger Delta (MEND).

²⁶ Section 36(5) of the 1999 constitution as amended.

²⁷ *Knote v. United States*, 95 U.S. 149 (1877)

1.2.4 The Place of Amnesty in Human Rights Discourse

Individual criminal accountability for serious crimes under International law is the basis of a global human rights community. Amnesties covering ordinary offences are distinguished from amnesties covering political offences. In the field of human rights, amnesty for ordinary offences is an expression of the relatively broad power of civil society to grant every citizen the right of oblivion, if only to facilitate his reintegration into society.

According to international principles particularly the general principles of law laid down in Article 38 of the statute of the International Court of Justice, amnesty laws which have the effect of erasing crimes of the utmost gravity are incompatible with International Humanitarian Law, and that the legal consequences of any such amnesty fall under the general doctrine of violation of human rights. Perpetrators of serious human rights violation are to be held accountable. The spokesperson for the UN Office of the High Commissioner for Human Rights (OHCHR), Rupert Colville, while briefing journalists in Geneva, said that the Commission has held that perpetrators of serious human rights violations, including Boko Haram elements and members of the security forces, are held accountable, noting that amnesties are not granted to anyone responsible for very serious violations.²⁸

The International Covenant on Civil and Political Rights, of which Article 15 (2) provides that 'nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.'

However, a decision on Dec. 10, 2012 by the Costa Rica based Inter-American Court of Human Rights ordered a reversal of the amnesty law, raising the possibility that crimes committed during the civil war may be prosecuted after all. The ruling effectively, though not explicitly, calls for overturning the 1993 amnesty that followed the civil war, which ended with a U.N brokered agreement in 1992. The court's rulings are binding for states that recognize its jurisdiction, but the judicial body that operates under the auspices of the Organization of American States has no enforcement powers.²⁹ The Salvadoran government of President Mauricio Funes, of the disarmed FMLN, immediately issued a statement saying it would abide by the decision. 'The Salvadoran state, beginning with the government, has recognized these and other cases, has opened dialogue with the victims, and undertaken efforts to abide by the sentences and recommendations of the courts and the Inter- American Court of Human Rights,' the Salvadoran Foreign Ministry stated in a press release. However, to date no official move has been made to set aside the amnesty law.

Human rights laws, both international and domestic are premised on civil, social, economic, cultural and political rights of individuals. A grant of amnesty that infringes on these rights will not be justifiable as it will contradict human rights

²⁸ Don't Grant Amnesty to Boko Haram-UN warns FG (May 5th, 2013) <http://oodera.com/2013/05/05/don't-grant-amnesty-to-boko-haram-un-warns-fg/> accessed on 15th September 2016

²⁹ John McPhaul, Will El Salvador end Amnesty? (tico times.net Online newspaper Costa Rica, Friday, March 22, 2013) <http://www.ticotimes.net/Region/Will-El-Salvador-end-amnesty-Friday-March-22-2013> accessed on 28th October 2016

precepts. Due to the fact that granting amnesty for international crimes goes against international law jurisprudence, some countries have enacted amnesty laws that exclude the grant of amnesty for crimes against humanity. For example, the German Democratic Republican Law of 25 September 1979 excluded crimes against peace and humanity from amnesty. The same applies to Hungary in Decree law of 3 April 1985. Also in Belgium, persons having participated in German Army activities during the Second World War are excluded from any amnesty.

Persons guilty of crimes against humanity cannot be considered as political refugees or be granted territorial asylum. States are invited to adopt all necessary domestic measures, legislative or otherwise, with a view to making possible the extradition of persons guilty of crimes against humanity and to ensure that statutory or other limitations shall not apply to the prosecution and punishment of such crimes.

1.3 Aftermath of the Nigerian Civil War

At the end of the thirty month Nigerian bloody civil war in January 1970, the Military head of state, General Yakubu Gowon proclaimed no "Victor no Vanquished" situation even though the Biafran troops were battered to surrender to the federal troops. A general Amnesty was offered to all the Biafran soldiers and civilians who played active roles in the civil war to achieve peace. As a follow up to heal the wounds of the civil war, the federal Government launched the famous "Rs" to wit: Rehabilitation, Reconciliation and Reconstruction to win back the confidence of the Igbos' as Nigerians in the federation. The sum of #20 was given to every Easterner in exchange for the old Nigerian currency in their possession.

All these measures were designed to reintegrate the Igbos' into the Nigerian Family within the shortest time possible and the objectives were achieved. The question was not the attainment of Justice but peaceful co-existence between the Igbos' and the rest Nigerians. Within a period of one year after the war, the Igbos' had moved out of their devastated war ravaged home lands to other parts of the Country to settle down. Amnesty made the quick integration of the Igbos' into Nigeria possible.

The sincerity in the implementation of the Amnesty by the federal Government brought about a quick reconciliation between the Igbos' and the rest Nigerians which stands out as unprecedented in wars. Despite our penchant for voicing our opinion when it comes to national failures, we suddenly become reticent when it comes to recognizing our national accomplishments. The tone of reconciliation was set in motion when on January 15, 1970, at Dadan Barracks after a brutal thirty months civil war, former colleagues and combatants who engaged each other in bitter warfare for two and half years embraced each other with uncommon friendly speech and warmth. A foreign commentator had this to say about the near miraculous reconciliation feat achieved by General Yakubu Gowon's Government after the civil war thus:

When the war ended, the Igbo grimly expected that their defeat would be followed by their wholesale massacre. However the leader of the victorious army

refused to proclaim victory, declared a general amnesty for all those who fought against him, invited members of the defeated side to join his administration, refused to conduct trials of, or execute the defeated, and refused to award medals to his own soldiers who had fought the war for years. He even allowed some members of the enemy's army to join his own army. For their part, Igbo quietly accepted their new fate in a united Nigeria, went back to their farms and businesses, and rebuilt their destroyed homes without any thoughts of sabotage or guerilla warfare. All this happened without a United Nations resolution or peacekeeping force, international peace plans and conferences, or the protracted years long negotiations that it normally takes to resolve modern conflicts. Nigerians decided for themselves that they had seen enough bloodshed and that they wanted a war free future for their children. The war also ironically dissolved some of the negative stereotypes the combatants held about each other, and enhanced their mutual respect for each other. The Igbo won admiration from the federal side for the tenacity, iron will, and incredible improvisation with which they fought the war. The federal side won the Igbo's respect for their magnanimity in victory. Although pockets of bitterness remain (particularly over the emotional issue of properties abandoned by Ndiigbo who fled for their safety, but which were illegally appropriated by other communities), it is undoubted that Nigeria's remarkable reconciliation is rivaled in the modern era only by black South Africans' forgiveness of their former oppressors. Forty-two years after United Nations resolutions called for them to cease hostilities, the Israelis and Arabs are still at each other's throats. Fourteen years after the Rwandan civil war, the government is still carrying out war crimes trials. However, a remarkably sober pragmatism rose from the blood, fire and ashes of the Nigerian civil war. It taught the combatants an unforgettable lesson in the evils of ethnic rivalry. The bitter memory of the war means that Nigeria stumbles through and survives the sorts of crises that cause war and disintegration in other countries, such as June 12, Sharia, military coups, ethnic violence, and resource control."³⁰

1.4 Niger Delta Militants' Challenge

The word Amnesty gained popularity in Nigeria when the late President Musa Yar'adua granted Amnesty to the Niger Delta Militants on assumption of office in 2007. Before then, the Niger Delta Militants had started their peaceful agitation and demand for resource control and a fair share in the oil revenue

³⁰ Max Sioliun, 'Nigeria's Post-civil War Reconciliation', Monday, January 19, 2009.

accruing from the region with much justification. The innocuous agitation and demand later turned into a bloody armed conflict between the militants and security forces code named Joint Task Force(JTF) deployed by the Federal Government to route out the militants . The militants later resorted to destruction of oil pipelines, kidnapping of foreign oil workers for ransom and oil bunkering. Its later became obvious to the realistic Government of Musa Yar'adua that use of force was not a solution especially as the revenue accruing from crude oil exploration and exportation started to dwindle drastically. It must also be added here that the well armed and daring Militants fought the Joint Task Force to a standstill. It was mainly for the above reasons that the federal Government offered the Militants Amnesty which they accepted. The Amnesty was being implemented and some measure of peace and stability pervaded the Niger Delta Region.

The amnesty program for the Niger Delta militants had three objectives and deliverables which were as follows: disarmament phase took place between 6th August 2009 and 4th October 2009 and include the collection of biometric data, demobilization. Rehabilitation phase to last 6-12 months and to include the provision of , among other things, counseling and career guidance for the participants. Furthermore a reintegration phase to last up to five years and to include the provision of, among other things, training and microcredit for the participants.³¹

Considering the enormous financial and material resources expended to achieve the relative peace in the Delta Region, it is unarguable that Amnesty as applied to the Delta Militants who are known to have committed various and serious crimes is not conterminous with Justice. The author's contention is that the militants adopted unlawful strategies to attempt to achieve an otherwise a lawful and just course. What appears apparent is that Amnesty has been used to buy relative peace at the expense of Justice in the Delta Region.

1.5 Niger Delta Avengers(NDA)

While Nigerian soldiers battle Boko Haram militants in the north, a new group has emerged from the southern swamplands, threatening to wage war on the world's largest oil companies. The group calls itself the Niger Delta Avengers, and it has claimed responsibility for a spate of recent attacks and bombing on oil pipelines and terminals in Nigeria's southern region. The Niger Delta Avengers emerged in February, 2016 after claiming responsibility for an attack on the underwater pipeline run by Shell, forcing the oil giant to halt its 250,000 barrel by day Forcadosterminal for weeks.

These attacks showed a level of sophistication and technical expertise, raising speculation that the new group consists of formal members of the long-running and powerful rebel group Movement for the Emancipation of the Niger Delta (MEND). MENDwrecked havoc on the six states in the Niger Delta from 2006-2009, costing the nation roughly one-third of its oil production, until

³¹ Nigerian Government Amnesty Program for Niger Delta Militants, Particularly with respect to the movement for Emancipation of the Niger Delta (MEND)2009- 2011) available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=country&category=&publisher=IRBc&type=&coi=NGA&rid=&docid=50740a192&skip=0>).

then President Umar Musa Ya'Adua offered a multimillion-dollar amnesty program that had thousands of rebels agree to lay down their arms in exchange for an unconditional pardon and stipend.

When President Buhari took office in May, 2015, extended amnesty program for two years. The President then reduced funding for amnesty program by 70%, and intend of phasing it out entirely by 2018. As a result the Government is faced with the possibility of a revived insurgency in the south while facing Islamic militant group Boko Haram, which has killed and displace millions of people in the north in the past seven years. The Government however, should be concerned that they have a group that seems quite capable to strike targets in defiance of Nigeria's naval capacities. Though, answering to the requests of this group called Niger Delta Avengers, would mean a signal that violence is a tool of political engagement and that could be disastrous for the nation. At the same time starting negotiations would be quite difficult, because the demands of the group have been quite significant and unattainable. The group asked for instance, removal of all foreign companies working in the region, for access of greater state patronage in the form of revenues derived from the oil industry.

However, one may argue that the political reform is equally needed. The Government will have to reform the political architecture of the country. There are elements of the civil society who have been calling for decentralization. The Government has to create a situation where communities have greater autonomy, greater say, over the management of their own resources.

1.6 Current Major Threat to Peace and Security in Nigeria

The current major threat to peace and Security in Nigeria is the Boko Haram insurgency. It is a Jihadist militant organization based in the Northeast of Nigeria and North Cameroon. It is a movement which strongly opposes man-made laws and westernization. Founded by Mohammed Yusuf in 2001³², the organization seeks to establish sharia law in the country.

The group conducted its operations more or less peacefully during the first seven years of its existence. That changed in 2009 when the Nigerian government launched an investigation into the group's activities following reports that its members were arming themselves. When the government came into action, several members of the group were arrested in Bauchi, sparking deadly clashes with Nigerian Security forces which led to deaths of an estimated 700 people. The group's founder and then leader, Mohammed Yusuf, was killed during this time while in police custody³³.

After the killing of Mohammed Yusuf, the group carried out its first terrorist attack in Borno in January 2011. On 14th May 2013, about two weeks after the constitution of the Amnesty committee, President Goodluck Jonathan declared a state of emergency in Borno, Yobe and Adamawa in a bid to fight the activities of Boko Haram. Also on 17th May 2013, Nigerian armed forces' shelling in Borno resulted in at least 21 deaths. A curfew was imposed in Maiduguri as the military used air strikes and shillings to target Boko Haram strongholds. The Nigerian state imposed a blockade on the traditional base of Maiduguri in Borno

³² Boko Haram: Rocking the Nigerian boat. <http://www.france24.com>

³³ <http://news.bbc.co.uk>.

in order to re-establish Nigeria's territorial integrity.³⁴ It resulted in the killing of four people. Since then, the violence has escalated in terms of both frequency and intensity. By early 2016, Boko Haram was responsible for over thousands deaths³⁵.

Boko Haram is therefore considered a major potential terrorist threat affecting Nigeria and other countries, and US officials believe it is potentially allied with the Al-Qaeda. US African Command (AFRICOM), Commander General Carter F. Ham Stated in September 2011 that three (3) African terrorist groups- Al-Shabaab of Somalia , Al-Qaeda across the Sahel region, and Boko-Haram have very explicitly and publicly forced an intent to target westerners and US specifically, and that he was concerned with the voiced intent of the three organization to more closely collaborate and synchronize their efforts.³⁶

In order to find a solution to this menace, the Federal Government on 17th April 2013 set up a 26-man panel to consider the matter and make appropriate recommendations. The President urged Boko Haram members to surrender their arms and embrace the amnesty options, as the committee worked on the option of dialogue for a peaceful resolution. This has been criticized by scholars and also by various opinion on the matter.³⁷

Hence, the significant impact is that *Boko Haram* insurgency had discouraged Foreign Direct Investment (FDI) in Nigeria. Investors over the world are afraid of coming to do business in Nigeria. Countries on daily basis warn their citizens to stay off Nigeria. This is a very bad signal to economic growth and development. With the *Boko Haram* insurgency, the economic future of Nigeria is bleak. Also the country is also experience serious setbacks at the political level of governance. The *Boko Haram* to a large extent has paralyzed government institutions and has also created an atmosphere of suspicion and distrust among the political class, which is not healthy for our nascent democracy. Furthermore, it has hindered government performance in North- East geopolitical zone of Nigeria in particular and the country in general.

The attacks have also deepened religious and regional fault lines reversing some of the countries hard won gains in building national unity and stability. It assaults on Christians and churches and it declared goal of establishing an Islamic state across the north are not shared by most Muslims but have strained inter-faith relations across the country. The serious security challenges posed has resulted to the denial of the fundamental human rights of Nigerians due to the vicious attacks by members of *Boko Haram*, particularly in some parts of the north where they have virtually taken over.

³⁴ <http://www.aljazeera.com/news/news/africa/2013/05/201351511443243570.html>

³⁵ Nossiter Adam "In Nigeria a Deadly Group's rage has local Roots" (25 Feb 2012)

³⁶ Mojeed, Musikilu: Eric Schmitt (26 December 2011) " Nigeria Arrests Two in blast that killed 26 in Church" <http://www.nytimes.com>.

³⁷ The Christian Association of Nigeria (CAN) has called on the Federal Government to disband immediately, the Presidential Committee on dialogue and peaceful resolution of security challenges in the North, 19 Northern States and the Federal Capital Territory (FCT) for Incompetent and lack of sincerity

1.7 Finding the Middle Road

The practice of forgiveness in processes of conflict resolution and post- conflict justice is confronted by two sets of serious criticisms. First, scholars and practitioners have questioned whether or not the fundamentally interpersonal practice of forgiveness can be readily and legitimately transposed to broader social political contexts. Second, questions are also been raised concerning the potential for forgiveness, particularly when associated with Amnesties, to jeopardize and even circumvent the application of justice in post- conflict contexts.³⁸

Supporters argue that forgiveness is not only possible but necessary in politics and, by drawing a distinction between Amnesty and forgiveness, and restorative and retributive forms of justice, that forgiveness/ Amnesty contributes to the achievement of the restorative justice.

The author agrees in part with the above proposition. Amnesty in an ideologically driven insurgency cannot douse tensions. However, it could be the first step towards achieving short-term stability that could become a springboard for long term solutions like focused law enforcement. Furthermore, the threat of indictment in National Courts can harden rebel's or leader's grip on power, seemingly with the effect of protracting Human Rights violations indefinitely. Indicted leaders have everything to risk through a peace agreement, and find more security in conflict and prolonging their time in power. Amnesty can remove such fear and loosen leaders' clench on power, speeding up the peace process.

Conversely, securing justice for the sake of justice is a prime argument against adopting Amnesty. Acknowledging the past and venting grievances through justice are inseparable components of building sustainable peace. In the absence of Justice, further conflict and Human Rights Violations can be possible. Amnesty may merely postpone the eruption of discontent, regurgitating old conflict into the future. If human right abusers are free persecution under Amnesty and even retain some power through negotiations for peace, then it is possible that these same people could hold positions of authority. The long term effect of Amnesty for serious crimes can be demonstrated in the Sierra Leone example. In 1999, the revolutionary front leader, Foday Sankoh (responsible for brutal crimes including mutilations, murder and rape) received an Amnesty and was rewarded with the post of Vice President and control of a Government Commission in exchanged for signing the Lome peace agreement ,which was intended to end Sierra Leone's ongoing conflict. Sakoh later attacked both government forces and UN peacekeepers, taking hundreds of them hostage. The revived conflict was not declared over until more than two years later³⁹.

In view of the above, it has been stated that granting Amnesty to insurgents with totalitarian agenda is political suicide⁴⁰. Before the imposition of the state of emergency on Adamawa, Borno, and Yobe states, the three states that emerged

³⁸ Dr. Renee Jeffery; *Forgiveness, Amnesty and Justice: the Case of lord's resistance Army in Northern Uganda*.

³⁹ 2006 'Uganda: No Amnesty for Atrocities' in Human Rights watch Report available at <http://www.lcnw.org/document/HRW-Uganda-pressrelease-no-amnesty>, 27 July 2006.

⁴⁰ Allafrikan.com, Vanguard June 2013.

from the old Gongola state had become the hot bed of insurgency, spearheaded by the *Boko-Haram* sect. The orgy of violence in those states had become a threat to sovereignty of a country, and direct challenge to the authority and power of the federal government, as the insurgents had vowed to topple the democratic order by the use of force to enthrone a theocratic state, based on Sharia jurisprudence.

What is however becoming increasingly clear is that conventional methods of solving the security ache are not working; the more the security forces under the auspices of the Joint Task Force apply force, the more the insurgency escalates in frequency and temerity. Northern leaders have also woken up to that same sad reality and a very distinguished delegation of them that goes by the name Northern Elders Forum met with the President Jonathan specifically on the need to change strategy for containing *Boko-Haram* which he later conceded to. That is, force cannot stop the insurgency. Hence, the Amnesty option has been described as nothing but the devil's alternative, since leaving it to linger will mean more death and embracing Amnesty would mean the dead and the maimed asking, where is justice? ⁴¹

1.8 Conclusion

In conclusion, the theory of Utilitarianism propounded by Jeremy Bentham states that the law should seek to promote the interest of the greatest number of people. With greatest sympathy and empathy to those who have lost their lives as a result of the insurgency, the lives of almost one hundred and fifty Million Nigerians should not be sacrificed for the sake of justice. Hence, the creation of a presidential committee on dialogue and peaceful resolution of security challenges in the north is a pragmatic approach toward solving this problem. The author hopes that this insurgency should come to an end without any further loss of lives. Any initiative that the Government eventually applies in regards to amnesty for terrorists should ideally balance the demand for justice against the need for peace and reconciliation. And while the lack of amnesty for the insurgents can provide accountability and amnesty can provide stability, the attainment of both at this very point in time is almost impossible. Therefore as we continue to unravel this morbid, dark drama that the insurgents have visited upon us, we can be certain that the choice is not about which group of criminals deserve amnesty and which do not. It's not about a perverse allegiance to ethnicity or religion. It is about what we are willing to sacrifice; justice for the cause of peace or peace for the cause of justice?

⁴¹ Mefor, a forensic psychologist based in Abuja, Punch, April 15 2013 p.27.