

**THE JURISPRUDENCE OF AMNESTY IN NIGERIA
VIS-À-VIS NIGERIA'S INTERNATIONAL OBLIGATIONS***

Abstract

From 2009 till date, the word 'amnesty' had been a household cliché in Nigeria. The aspirations of government to use amnesty to pacify dissident groups within the country had raised a lot of concerns and controversies. Also, in most instances, the word 'amnesty' is used interchangeably with 'pardon' to mean the same thing, thereby, leading to jurisprudential misconceptions. Also, it is within the purview of public concerns that the resort to amnesty appeared to have been misused in Nigeria. It was based on these developments that this work had its roots. Therefore, this work is concerned with x-raying the fundamental concepts of amnesty and pardon, wherein the distinction between the two concepts will be observed. Equally, the work established that there are certain cases that will qualify for amnesty and pardon. Thus, the work identified certain types of pardon and amnesty recognized under the Nigerian law. Apart from that, the work established that the exercise of the power to grant amnesty or pardon must be based on due process. It is not an act of executive discretion. Using the paradigm of international law and domestic legal system, the work found that Nigeria is wanting in the area of compliance with laws and lack of transparency when granting amnesty or pardon. In the course of this work, the writers deployed the use of books, statutes, journals, statistics and periodicals. The work concluded by suggesting the enactment of a special law on the issue of amnesty and pardon in Nigeria to curb arbitrariness in the exercise of power.

Keywords: Amnesty, International Obligation, Nigeria, Jurisprudence

1. Introduction

In 2009, the steps taken by the Nigerian Government towards Niger-Delta Militants was lauded as a progressive step.¹ However, in 2013, the decision by the Federal Government of Nigeria to grant amnesty to the dreaded Islamic sect, Boko Haram attracted different reactions. While some people opposed the amnesty, others are supported it.² This trend still continues even after 2013 as amnesty granted to Boko Haram members have been a subject of debate. In the course of the debate between the proponents and the opponents of amnesty for Boko Haram, many misunderstandings have ensued regarding the concept of amnesty. The misunderstanding is so great that it has engulfed many lettered Nigerians. It is this background that gave birth to this work. This work is structured into six parts. The first is concerned with conceptual clarifications such as definition of terms, origin of amnesty as well as examination of the types/classification of amnesty. In the second part of this work, the relationships that exist between amnesty and other allied concepts are treated. Instances of Nigeria's domestic

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¹ On 16th May 2013, the Nigerian Government set up Presidential Amnesty Committee on Boko Haram headed by Minister of Special Duties, Tanimu Turaki. See John Campbell, '*Nigeria's President Launches Amnesty Committee for Boko Haram*', Council on Foreign Relations, 25 April, 2013, @<https://www.cfr.org/blog/Nigeria>, accessed on 7 April 2020. Again, on the April 2, 2018, President Buhari also offered Amnesty to Boko Haram. See Ruby Leo, '*Nigeria: Army Asks Boko Haram to Embrace Amnesty*' 30 March, 2018 @<https://allafrica.com>, accessed on the 7 April, 2020.

² It will be noted that most Nigerians oppose the Amnesty for Boko Haram as well as the United Nations. However, the Northern Elders and the Supreme Council for Islamic Affairs and some Nigerians support the amnesty if it will bring the desired peace. In an online poll conducted by Premium Times, on 16 May 2013, the polls took place over three weeks. Majority of the 923 Respondents rejected the amnesty. 7 to 10 Nigerians rejected the amnesty for three different reasons. 4 out of 7 (42% of voters) said the sect should be punished for the crime they committed. 2 of the 7 who rejected the amnesty (17% of voters) said Government should compensate the victims. 1 out of the 7 (12% of the total respondents) based their rejection of the sect's stand i.e. they want to Islamize Nigeria. Also, 15% of Respondents care less about what the Government does. They just want the Government to provide security. However, 15% of the Respondents supported the plan of the amnesty saying it will lead to peace. This view is in consonance with the stand of Northern Elders Forum and Nigerian Supreme Council for Islamic Affairs. See '*Nigerians Reject Amnesty For Boko Haram*' by Amina Mohammed, Premium Times, 16th May 2013 at <https://www.premiumtimesng.com> accessed on 20th February, 2020. In his Chatham House Declaration, February, 27, 2015, Nigeria's Opposition Presidential Candidate, General (Rtd.) Muhammadu Buhari renounced amnesty to Boko Haram. In his words, '...granting amnesty to Boko Haram will be unfair to the system'. While on the other hand, on the 7th of March, 2013 the Sultan of Sokoto, Alhaji Sa'ad Abubakar called for 'total and unconditional amnesty to Boko Haram.' See Abubakar Sidi Usman, '*Amnesty for Boko Haram: What's Good for the Goose is Sauce for the Gander!*' PremiumTimes, 2013 @<https://www.premiumtimesng.com>, accessed on 20th February, 2020.

laws that provides for amnesty, are examined in the third part of this work. In the fourth part of this work, the writers discussed the dilemma of the Federal Government as to the basis on which it should justify granting amnesty to dissidents? The final part of this work deals with recommendations on certain measures that will bolster the justifiable usage of amnesty in our legal system. Therefore, the ultimate goal of this work is to clarify the misconceptions surrounding the concept of amnesty. Equally, the work is aimed at exploring the legitimate factors the Nigeria government should consider vis-à-vis its obligation towards international law/community; when granting amnesty to members of Boko Haram. Also, this work seeks to provide an objective assessment that will give insight to the jurisprudence of amnesty. Thus, it is the hope of the writers that the work will be of great benefit to the public.

2. Conceptual Clarifications of Terms

Amnesty simply means the decision by government to allow offenders to go free and not enforce the usual punishment for crime against them. It is a general pardon for a crime. It is also an act of authority by which pardon is granted to large groups of individuals. Etymologically,³ the word amnesty is derived from the Greek word ‘*amnestia*’ or ‘*amnestos*’ meaning forgetting. The word *amnestia* is further reflected into the discipline of psychology to mean amnesia – loss of memory. It is from this ground that amnesty shares common root with *amnestia*. Jurisprudence is the study of the philosophy of law. It is the scientific and systematic study and analysis of law and legal system.⁴ It is also the study of the nature, scope, functions, relevance, purpose, efficacy, and reform of the law. It also referred to as the study of a legal concepts, doctrines, norms, and institutions of various legal systems.⁵ Obligations refer to the responsibility of a state to perform a particular act because it has undertaken the legal obligation to do so. It is moral and legal responsibility imposed by a law over a state to do certain things.⁶ It refers to the duty a state ought to perform because it undertakes by law to do so. International Law refers to the body of global treaties, conventions and principles that governs members of international community. It also refers to the body of rules and practices which governs the relationship among sovereign states and international institutions.⁷

3. Origin, Types and Classifications of Amnesty

Historically, references to amnesty and pardon abound in ancient civilizations such as the Babylonian Code of Hammurabi, Persians Edicts and Hebrew Laws. In Ancient Babylon when a new King accedes to a throne, he would declare a *Misharaum*.⁸ This is an order discharging debtor from legal bonds having both civil and criminal characters. This practice probably influenced the Persian civilization. This is evident in the Bible when Cyrus in his first year of ascension to the throne, decreed that all captives Jews (former under Babylon) should return to Jerusalem and build the Temple of God. The Hebrew laws made references to amnesty through the Jubilee law;⁹ where debtors are discharged from repayment by creditors. The first amnesty in history is attributed to Thrasylbulus in ancient Greece (In 403 B.C.E.).¹⁰ Thrasylbulus an Athenian General and Democrat led a war against the Oligarchic Thirty Tyrants of Sparta. After the defeat of the Spartans at the battle of Phyle, Thrasylbulus gave amnesty to all the dissidents but expressly excluded the Thirty Tyrants.¹¹ In American history, in 1795 George Washington granted conditional amnesty to those who participated in the Whiskey Rebellion (caused by the unpopular tax on liquor) in exchange for their signature on Oath for loyalty.¹² Other instances of amnesty includes Napoleon Amnesty of 1802,¹³ French Amnesty of 1905, Gerard Ford pardon for Richard Nixon in Watergate

³.Etymology is an aspect of humanity that studies the origin of words.

⁴.Nchi Suleiman, *The Nigerian Law Dictionary*, (Jos: Green World Publishing Co. Ltd, 2000) at 299

⁵.Ladan Muhammed, *Introduction to Jurisprudence Classical and Islamic*, (Lagos: Malthouse Press Ltd, 2006) at 1

⁶. Nchi Suleiman, Op.Cit. at 378.

⁷. Ibid at 280.

⁸.See ‘Amnesty and Pardon-Historical Overview-Power’, Century, Law and Civil-JRank at <https://www.global.oup.com> accessed on March 15, 2020. See also these books of the Holy Bible; (a) II Chronicles 36:20-23 and (b) Ezra 1:1-4

⁹. See ‘Amnesty and Pardon –Historical Overview’, Loc.Cit.

¹⁰.Ibid.

¹¹.See ‘Amnesty-Further Readings-Presidents,Granted,War,and Lincoln-Jrank Articles’

@<https://law.j.rank.org>>pages>Amn...<accessed on March 15,2020>

¹². Ibid

¹³.See Decree on E’migre 1802-NapoleonSeries@<https://www.napoleon-series.org> accessed on March 15, 2020.

Scandal,¹⁴ and the consideration of amnesty for perpetrators of apartheid regime by South African Truth and Reconciliation Committee of 1995.¹⁵

There are three types of amnesty namely (a) political (b) statutory and (c) judicial amnesty. Political amnesty is usually employed after political crises, war, revolution and upheavals to bring about reconciliation, re-union and reintegration. For example, George Washington granted conditional amnesty in 1795 to those who participated in Whiskey Rebellion. Illegal immigrants in U.S were granted amnesty by U.S Government under Ronald Reagan. The scope of amnesty covered all illegal immigrants who entered U.S before 1st January, 1986, under the Immigration Reform and Control Act 1986.¹⁶ A perfect example of political amnesty in Nigeria was experienced after the Biafra war. After the Nigerian Civil War, the Federal Government of Nigeria declared 'No victor, No vanquished' policy. This was followed by the subsequent 'Three Rs policies' of Rehabilitation, Reconstruction and Reconciliation.¹⁷ The grant of pardon to late Odumegwu Ojukwu by former President Shehu Shagari was also aimed at political reconciliation.¹⁸ The same Government of Shagari granted General Yakubu Gowon pardon to return to Nigeria from Britain, where he took Asylum when he was alleged to have abetted in the coup that killed General Murtala Mohammed in 1976.¹⁹ Statutory amnesty refers to a situation where a particular legislation empowers a governing authority to pardon an offender. For example, Article II S.22 of the Constitution of U.S. provides that a President can grant reprieves and pardons for offenses in the United States, except in cases of impeachment. In Nigeria section 175 and section 210 of the Constitution, empowers both the President and the Governors of the 36 states to grant prerogative of mercy to offenders for crimes defined within the laws of the Federation and the States respectively. Judicial amnesty is the power of the court to alter the position of a punishment fixed by a law. This is evinced in the instances of mitigation after sentencing, *allocutus*, commutation and discretionary power. Also, the judiciary can grant amnesty to Awaiting Trial Persons (ATP). For example, Section 1(i) of the Criminal Justice (Release from Custody) Special Provisions Act²⁰ empowers the Chief Judges of the 36 states of Nigeria to release persons who have been detained for a long time without trial. This is aimed at prison decongestion. Equally, Section 281 Administration of Criminal Justice Act, 2015 provides that where a charge is proved but due to the character, age, health or mental condition of the suspect/accused charged, the court may release the offender on probation. The Court may order (a) dismissing the charge (b) discharging the offender conditionally on entering of recognizance to be of good behavior. This paradigm of amnesty is spurred by the doctrine of excuse in criminal jurisprudence.²¹

Classification of amnesty is relevant because it enables one to know the stages that are involved in granting amnesty. This is of particular importance to the study of our adjectival law. Thus, amnesty could be classified as (a) pre-trial amnesty (b) inter-trial amnesty and (c) post-trial amnesty. Pre-trial amnesty normally takes place before the trial of the suspect. For example, where an Investigating Police Officer finds out that there is no evidence to charge the suspect, he will merely dismiss that matter and warn the suspect. It is a common trend exhibited by other Law enforcement agencies in Nigeria, as act of leniency. This practice becomes rationalize especially, where there is dearth of evidence during investigations.²² Inter Trial Amnesty occurs amidst trial. Here the accused is discharged by court for lack of evidence or lack of diligent prosecution. The power of *nolle prosequi* by Attorneys-General of the Federation and the State in this instance is very important. The power of Attorney General to terminate criminal proceedings at any stage, extend both to pre-trial and inter-trial stages but not post-

14. See 'Amnesty and Pardon-Historical Overview-Power' Loc. Cit.

15. Mamdani Mahmoud, 'Amnesty or Impunity? A preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC)', Vol.32, NO.3/4, ETHICS, (Autumn-Winter, 2002), 33-35.

16. See 'Amnesty and Pardon –Historical Overview', Loc. Cit

17. Souillon Max, 'Oil, Politics and Violence :Nigeria Military Coup Culture(1976)', (New York: Algora Publishing,, 2009) at 186-187

18. 'A Reagan Legacy: Amnesty For Illegal Immigrants', July 4, 2010 @ www.npr.org <accessed on April 7, 2020>

19. Abdallah N. M., 'Nigeria: Exclusive-How Ojukwu Got His Pardon, By Shinkafi,' Daily Trust, November 28, 2011 @ allafrika.com <accessed on April 5, 2020>

20. CAP 30, LFN, 2004

21. To be excused from liabilities means that even though the accused person committed the wrongful act, he will not be punished because he belongs to certain class of person exempted from liability. See Sanford H. Kadish, 'Excusing Crime' 75 Cal, L.Rev 257, 1985 available @ https://scholarship.lawberkeley.edu/californialawreview/vol175/1851/ii

22. 'Pardon, Amnesty and Impunity in Nigeria'. A paper delivered by Femi Falana, SAN, at the training of the stakeholders and implementers of Stop Impunity organized by STOP NOW CAMPAIGN from May 2-3, 2013 in Lagos.

trial. This is because of the doctrine of separation of power which limits the authority of the Attorneys-General within the precinct of pre-trial and inter-trial amnesty. To do otherwise will amount to abuse of the power of *nolle prosequi* under sections 174 and 221 of the Constitution. Post-trial amnesty is granted after the full trial of the accused person. His status as convict has been confirmed by the judiciary. At this stage, the exercise of amnesty during pre-trial or inter-trial stages will not avail him. However, post-trial amnesty is an exclusive gesture of the top executives; the President and the Governors.²³ From the above exposition on the types and classifications of amnesty, it is expedient to explore further and see whether the legal philosophy of amnesty enjoys the patronage of our domestic laws. This will lead us to the next arm of this paper on available of legislation on amnesty in Nigeria.

4. Legislations on Amnesty in Nigeria

It is true that there is no specific legislation that is tagged as Amnesty Act/Law in Nigeria. However, certain legislations in Nigeria provides for amnesty and its allied concepts. Some of these laws that shall be discussed include: (a) The Constitution of the Federal Republic of Nigeria 1999 (b) Administration of Criminal Justice Act 2015 (c) Criminal Justice (Release from Custody) Act.

The Constitution

The Constitutional provision in Nigeria empowered two categories of person to exercise amnesty (in the form of prerogative of mercy or its alternatives). These persons are (a) The President (b) The Governors and (c) By liberal rendition, the Attorneys- General of the Federation and the States.

The President

Section 175 (1) of the 1999 Constitution of the Federal Republic of Nigeria provides that: ‘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’. The above provision is not an absolute exercise by the President but it is done subject to lawful conditions. The phrase ‘lawful condition’ is further explained in subsection 2 of S.175 to mean ‘after consultation with the Council of the States.’ This means, the power to grant pardon by the President must be done after consultation with council of state. Similarly, it is also the position of Nigerian law that an instrument of pardon must state on its face that it was done after due consultation with the Advisory Council of Prerogative of Mercy.²⁴ Thus, granting of pardon or amnesty must be by due process as contemplated by the Nigerian Constitution. Failure to do so will render that exercise void because it is cardinal in Nigeria’s jurisprudence that once a statute provides a way of doing a thing that procedure must be complied with.²⁵ Equally, the provision of S.175 (i) of the Constitution shows that there are two categories of people that may be entitled to amnesty: (a) *those concerned with an offence* and (b) *those convicted for an offence*. Those concerned with an offence are people whose case is at the preliminary stages of investigation or undergoing trial. Those convicted for an offence, refer to those who have been tried, found guilty and punished accordingly. The previous expositions show that the President may grant amnesty before, during or after trial of any suspect or convict. The nature of the offence does not matter, because according to the Constitution the scope of pardon is ‘any offence’ and the recipients are ‘those concerned with the offence’ and ‘those convicted of the offence’. Additionally, it is obvious that the Constitution further provides for amnesty for those who committed offences against Nigerian Army. This is seen in the luminous provision of section 175 (3) of the 1999 Constitution which provides for power of the President to grant amnesty to those who committed offence against the Nigerian Army.

The Governor

The provision of section 212 (1) of the Constitution shows that the Governors of the 36 States of the Federation enjoy the same power as that of the President of Nigeria. However, their power of prerogative of mercy is restricted only to offences created by laws of the State. Thus, where an offence has a federal flavor, the Governor of a State lacks the authority to grant pardon for that offence. In the same vein, the Governor of a State cannot pardon convictions on federal offence or convictions from other States. Further, the constitutional power of the executive to grant amnesty is beyond the control of the judiciary. No court has the power of judicial review on any ground or to question the motive of the executive in granting amnesty. However, it is pertinent to note that in Nigeria, the amnesty granted by the executive cannot take place when the trial is on appeal. The reason is that the verdict of the lower court has determined the fate of the accused (now as convict). Therefore, the status of the matter at the appellate jurisdiction (either Court of Appeal or Supreme Court) surpassed the grant of pardon, until the final

23. Sections 175 and 210 CFRN, 1999, as amended.

24. *FRN v ACHIDA & ANOR.* (2018) LPELR-46065(CA)

25. *Nnabunde v. GNG* (W/AT) (2010) N.W.L.R.(Pt.1216)

determination by the superior Appellate Court. To do so will amount to fusion of power as well as intrusion into the independence of the judiciary by the executive arm of government.

The Attorney- General of the Federation and the States

The power of the Attorney General of the Federation and the State in granting amnesty is not expressly spelt out in the Constitution. It is by liberal inference that one can say that the Attorneys-General have powers to exercise Amnesty. Their exercise of amnesty/pardon is at the preliminary stage or during trial. This is in form of power *nolle prosequi* which enabled them to discontinue at any stage before judgment is delivered any such criminal proceedings instituted by them or any other authority or persons. These provisions aptly suit the instances of pre-trial or inter-trial amnesty, but it does not exceed after judgment. *Nolle prosequi* metamorphoses into pre-trial or inter-trial amnesty because the effect of *nolle prosequi* is discharged and not acquittal. It is a ministerial prerogative of mercy by the Attorneys-General. It is a sort of transient amnesty because the beneficiary could be re-arrested when the need arises.

Judiciary

The judiciary also exercises the power to grant amnesty in certain instances. These instances are reflected under the Administration of Criminal Justice Act, 2015 and Criminal Justice (Release from Custody) Special Provision Act.²⁶

Under the Administration of Criminal Justice Act, 2015, it is provided that²⁷ where a person is found guilty, but due to the character of health or mental condition of the suspect/accused charged, the court may refer the offender on probation and order (a) Discharging the charge or (b) Discharging the offender conditionally on entering recognizance to be of good behaviors. Also, the judiciary exercise amnesty through the Criminal Justice (Release from Custody) Special Provision Act. This law empowers only the Chief Justice of Nigeria and Chief Judges of the 36 States of Nigeria (including FCT). It is equally limited in its scope of application because it applies only to Awaiting Trial Persons (ATP). It is a paradigm of pre-trial amnesty. Section 1 of the Criminal Justice (Release from Custody) Special Provision Act, empowers the Chief Judges of the 36 States to release persons awaiting trial. This power is exercised in case of unlawful detention and when the accused person has been in prison custody for an unduly long period.

5. Relationship between Amnesty and Other Allied Concepts

This aspect of the discourse is spurred by the need to cure the common misconception that amnesty, pardon, parole and other allied concepts mean the same thing. In extending the frontiers of knowledge, this work seeks to clarify on the similarities and differences between amnesty, pardon and parole.

Amnesty and Pardon: Similarities

The relationship (in terms of similarities) between amnesty and pardon is seen in the effect. Once a person has been pardoned, his original sin is forgiven.²⁸ The person pardoned is now a new creature.²⁹ Again both amnesty and pardon are power bestowed on supreme authorities of nations to forgive offenders. Further, both pardon and amnesty are complete forgiveness of offences/offenders. It is a total absolution of offences/offenders.

Amnesty and Pardon: Differences

The differences between amnesty and pardon are outlined below:

- (a) Amnesty may be granted at pre-trial or during trial to forgive suspects/accused persons. However, pardon is awarded to convicts. Thus, amnesty could be given before judgment, while pardon could only be given after judgment.³⁰
- (b) In pardon, the criminal record of an individual is not wiped out as the court has already convicted him but in amnesty, the criminal record of the person is not accessible because his trial was not concluded.

26.CAP. 79, LFN, 2004

27.Section 281 of the Administration of Criminal Justice Act,2015.

28.*Falaye v Obasanjo* (1999) 6NWLR (Pt.606) 283

29.Supra

30.In the Unreported case of *Federal Republic of Nigeria v Henry Okah* (Unreported Charge NO: FHC/J78C/2008).The learned trial judge disagreed with the former Attorney-General of the Federation, Mike Aondaokaa,(SAN) when he said they had granted pardon to the accused person on trial; but agreed with Femi Falana (SAN) who maintained the accused person had been granted amnesty and not pardon. Consequently, the judge struck out the treason charge against the accused person.

- (c) Amnesty is mostly granted to groups of persons but pardon is to individuals.³¹
- (d) Often, amnesty when used interchangeably with pardon, is extended to individuals on the losing side of war or revolution. For instance, citizens of the Confederacy during American Civil War were told that the cession would be forgotten if they took an Oath of allegiance to the U.S. under President Andrew Jackson. Further, the South African Truth and Reconciliation Committee, 1995 considered request for amnesty from prosecution of perpetrators who have committed acts of violence under the system of Apartheid.
- (e) In terms of origin, amnesty is derived from Greek word ‘*Amnestos*’ meaning forgotten, on the other hand, Pardon originated from Latin word ‘*pardonare*’ meaning to grant freely.

Relationship between Pardon/Amnesty and Parole

Parole is a provisional release of a prisoner who agrees to certain conditions prior to the completion of the maximum sentence period in prison. The relationship between pardon and parole is slim. Also, in both procedures (pardon and parole) the criminal record of the prisoners is still extant. Again, both parole and pardon are post trial act of clemency (absolution) by Government.³²

5. Amnesty to Boko Haram: Can it be justified?

Despite the gruesome crime committed by the dreaded Islamist sect- the Boko Harm, some Nigerians still canvas for amnesty to Boko Haram. For example, some Nigerians were happy at the onset when they learned of the proposed amnesty. Their joy turns out to be short-lived when the dreaded sect turned down the amnesty offer and launched series of attacks killing innocent Nigerians. To exacerbate it, they launched a dissident flag in Borno, Yobe and Adamawa State. This made the President to declare state of emergency on the three States on the 14th of May, 2013.³³ The occupation of Bama, Gwoza and Konduga and, the declaration of Caliphate by the sect is another ill-omen towards the prospect of amnesty. The above brief background resuscitated the continuation of the argument by many Nigerians as to whether or not Boko Haram members are still entitled to amnesty, even amidst military confrontation with Government forces. It is factual that most Nigerians being pacifist will like amnesty to be granted to Boko Haram; for the sake of peace. For those that opposed the amnesty are inspired by emotions, rationale, sound scholarship and international reputations. Before harmonizing these conflicting views into a confluence of conclusion on; whether or not there is legitimacy in giving amnesty to Boko Haram, the following issues are very pertinent:

- (a) The status of Boko Haram as recipient of amnesty vis-à-vis their offence.
- (b) The attitude of Boko Haram towards the offer amnesty.
- (c) The gravity of the offence.
- (d) Are the recent steps for granting amnesty in accordance with due process and transparency?
- (e) The effects of the amnesty on the reputation of Nigeria and its international obligation.
- (f) And the types of precedent that it will lay.

The Status of Boko Haram as the recipient of Amnesty

One thing that was uncertain prior to 2011 was the status of Boko Haram. They claimed to be Islamic sect but the Nigeria Supreme Council of Islamic Affairs (NSCIA) denounced them.³⁴ Are they opposition political parties? The answer is No. The identity of Boko Haram is of very crucial consideration to Nigeria Government in granting them a justified amnesty. However, on November, 14 2014 U.S Departments of State designated Boko Haram as Foreign Terror Organization.³⁵ Thus, it is now certain that the status of Boko Haram is that there are terrorist group. A further question is whether Boko Haram sect is among the internationally categorized set of persons that are beneficiaries of amnesty? To answer this question, reference is made to Amnesty Law Data Base is essential.

31. Gilbert Law Summaries Pocket Size Law Dictionary, (Harcourt Brace Legal and Professional Publications Inc., 1997) P.14

32. Ibid

33. This made President Goodluck to rescind his earlier call for amnesty to want Boko Haram, because amnesty cannot be declared to unidentified people ‘that are operating under a veil.’ See, ‘Nigeria’s President rejects Boko Haram Amnesty call- BBC News’ @ <https://www.bbc.com/news/Nigeria-s...> <accessed on the April 27, 2020>

34. The National Supreme Court of Islamic Affairs and Anambra State Chapter disown members of Boko Haram that they are not Muslims unless they stop bloodshed. See Leadership Newspaper, May 9, 2013.

35. ‘Foreign Terror Organisations: Boko Haram-Refworld’ @ <https://www.refworld.org/docid...> <accessed on April 2, 2020>

According to Amnesty Law Data Base³⁶ the categories of persons that can benefit from amnesty are (a) Prisoners, (including Awaiting Trial Person), (b) Political prisoners, (c) Political offenders in treason sedition, insurgents and (d) Individuals who acted for the state in official capacity when they committed the crime e.g. vigilante, pro-government militias. Also, the second categories of recipients include political opponents such as (a) armed insurgents who are fighting to overthrow a central government. (b) Resistant fighters. (c) refugees e.g. those who fled violence or conscription, (d) political dissidents and (e) members of an insurgent group operating outside the borders of the state and foreign nations. From the above praxes, it is evident that the identity of Boko Haram as insurgent may qualify them to benefit for amnesty. However, it is posited that the designation of Boko Haram by the U.S³⁷ as 'Terrorist group' will act as *Achilles Heels* to deprive them among the status of person deserving amnesty.

The Attitude of Boko Haram towards the Offer of Amnesty

The offer of amnesty is not an independent exercise. It is an act of negotiation between two parties. Thus, mutual consensus of the parties is sacrosanct. In Nigeria the offer of amnesty by the Federal Government (amidst criticisms) to Boko Haram, did not yield positive result, instead the sect continued with the terrorist and barbaric activities. There are three (3) major steps that are involved in granting amnesty. These are (a) Time limits given to the dissident to surrender (b) Surrendering of weapons and (c) Oath of allegiance or repentance. These requirements were not complied with by Nigerian Government. Also, Boko Haram sect did not reciprocate the gesture shown to them; rather they continued their nefarious acts of killing innocent citizens. The attitude of Boko Haram's is zilch of any positive response, towards the amnesty intended by the Government of Nigeria.

The Gravity of the Offence

The Boko Haram sect might have been entitled to be classified among those that will benefit from amnesty. However, amnesty does not apply to offences such as crimes against humanity, genocide, war crimes, torture and disappearances. The evil acts of Boko Haram amount to crime against humanity and other allied forbidden international felony. The office of the prosecutor of International Criminal Court in 2010 had opened a preliminary investigation and had concluded that there is a reasonable basis to believe that Boko Haram had committed crimes against humanity. In the light of these developments, Mr. Daniel Bekele,³⁸ the African Director of Human Right Watch who was in Nigeria amplified the provision of Geneva Convention when he said: 'The international law provides for the prosecution of crimes against humanity and prohibit amnesty towards it.'³⁹

Are the steps taken for Granting Pardon accord with Due Process and Transparency?

The procedure for grant of pardon to beneficiaries requires due process and transparency. It is not power exercised exclusively by either the President or the Governor because section 175 (2) provides that 'the power of the President under subsection (1) of this section shall be exercised by him after consultation with the Council of States.' The import of this provision is that the President must consult the Council of States before granting pardon to amnesty. It further means that a meeting with Council of States is a condition precedent to the grant of pardon in Nigeria and failure to do so may affect the validity of the exercise.⁴⁰ It appears that there was no consultation with the Council of States before amnesty was granted to Boko Haram in Nigeria under Buhari led Federal Government. Also, the recognized protocol for granting amnesty such as ceasefire, surrendering of arms and Oath of Allegiance were not observed before granting amnesty to Boko Haram. For example, while Boko Haram members were enjoying amnesty, Boko Haram continued to wreak havoc on Nigerians.⁴¹ This means that the sect

36. This site was created by Louise Mallinder as part of her doctoral research (2003-2006) from *University of Ulster, Transitional Justice Institute Northern Ireland*. The data was designed to collect and compare data on Amnesty Laws of Over 180 countries that have been introduced since Second War.

37. The tagging of Boko Haram by US Department of State during the visit of Hillary Clinton generated a lot of controversy. the Nigerian Government consolidates the American position recently by proscribing and declaring Boko Haram, when he visited Yobe State, in 2014. See 'Nigeria's President Rejects Boko Haram Amnesty call-BBC News' @<https://www.bbc.com/news/Nigeria-s-...> <accessed on April 27, 2020>

38. The Nation Newspaper, July 2, 2013

39. This accords with the Practice Relating to Rule 159 of ICRC. Section B specifically deals with provisions of various states prohibiting amnesty for war crimes including acts of terrorism during armed conflicts. @ihl-databases.icrc.org/customary-ihl/eng/doc accessed on April 3rd, 2020.

40. *Govt. of Ekiti State v Akinyemi* (2011) 17 NWLR (Pt. 1276)

41. See 'In the News: Boko Haram Proves it is Still a Threat' March, 2020 @<https://www.thehumanitarian.org> <accessed on April 3, 2020>

has not surrendered its weapons. This led to the condemnation of the exercise as faulty, misplaced and devoid of transparency.⁴²

The Grant of Amnesty to Boko Haram and its Effects on Nigeria's International Obligations

This section of discourse is a paradigm of conflict between Monist theorist and Dualist theorist under International Law. The Monist Theorists believed that in its international relations, the municipal law of a nation is supreme over any international law, but where there is conflict between the two, the municipal law prevails. However, the Dualist Theorists believe that international law is subject to municipal law. This means that for international instruments to be applicable, it must be enacted into the municipal law. The convergence of dualists and monists theories in Nigeria in this case is that firstly, the monist theorist in this context reflects the position of the Nigeria Constitution which appears to empower the President to grant amnesty/pardon to Boko Haram. The Dualist theory reflects itself in this context by seeing the power of President/ Governors under the Nigerian Constitution to grant amnesty conflicts with *jus cogens*. In maintaining a peculiar legal position, whether Nigeria should grant amnesty or not to Boko Haram, the following questions need to be resolved (a) is the offence pardonable within a civilized international norm? (b) is the Nigerian Government bound by any international convention not to grant Amnesty to Boko Haram (c) is the Nigerian Government under any responsibility to protect its citizens against the barbarism of Boko Haram? The first arm of this question had been dealt with in other parts of this paper, that is, the Rome statutes prohibit pardon for offence which constitutes crimes against humanity. For example, *jus cogens*, crimes cannot be amnestied under international law.⁴³ The universal outcry against grant of amnesty to terrorist is eminently pronounced by international authorities. For example, Cherif Bassiouni, maintained that 'For the four *jus cogens* of genocide, war crimes, crime against humanity and torture, there should be no general amnesty'⁴⁴ The former United Nations Secretary General, Kofi Anan also supported the position that *jus cogens* crimes are not subject to the grant of amnesty.⁴⁵ Incidentally, in the case of Boko Haram, the ICC⁴⁶ concluded that the acts amount to crime against humanity and that it should be exempted from pardon.

Further, the Nigerian Government is obliged to be bound by the Geneva Convention. This is because the Nigerian Government domesticated the Geneva Convention of 1966 under CAP 62 LFN 1990. The law prohibits crime against humanity. Also, the Nigerian Government is a signatory to the Rome Statute (ICC statutes). Hence, based on the status of Nigeria, with the domestication of the Geneva Convention and as a signatory to the Rome statutes implies that (a) Nigeria is statute bound not to grant Boko Haram amnesty and that the Nigerian Government is bound to comply with the Rome statutes. This is because of the doctrine of *Pacta Sunt Servanda*⁴⁷-meaning that parties to any international instrument are bound by it. Another implication of granting amnesty to Boko Haram will be that Nigerian municipal law is invoked to violate international law. This is contrary to Vienna Convention on Law of Treaties which provides that,⁴⁸ a party cannot invoke its municipals law to violate international norm (like crime against humanity). This is what Nigerian Government is trying to do (granting Amnesty/Pardon) to Boko Haram members. This will defy its international obligation/commitment towards Rome statute. Therefore, Nigeria should not invoke its constitution to play the politics of amnesty with international criminals. The position of the Nigerian Constitution on granting pardon should not be extended to Boko Haram members because of their status as terrorists. In the case of former dictator Augustino Pinochet of Chile, who after committing series of crimes against humanity on Britain, France, Belgium and Spanish citizens; decided to enact a municipal law to grant amnesty to immune him from prosecution. The Pinochet's case influenced the framing of Rome statutes

42.The release of 1,400 terrorist suspects by Nigerian Government has been censured as 'unfair reward for vicious murderers' by the Widows of The Slain Nigerian Army. In the same fate sectional groups in Nigeria as well as ex-servicemen were of the opinions that Boko Haram should be punished like any other groups. See Orji Sunday, 'Nigeria's Controversial Boko Haram Amnesty', March 3,2020@www.insideover.com/terrorism/Nigeria<accessed on April,2020>

43.Kaja Phillip Apuuli, 'Amnesty and international Law: The case of The Lord's Resistance Army of Northern Uganda', AJCR|2005|2

44.Bassiouni1996:63-74 culled from Kasaija Phillip Apuulin,Ibid

45.Ibid.

46.This position becomes credible when the Federal Government agreed when the Federal Government agreed on August 1, 2013 to hand over Boko Haram suspects to ICC.

47.Article 26(1) of Vienna Convention On Law of Treaties provides that parties are bound to comply with the provision of any statute they have signed at the international level.

48.Articles 27 and 46 of Vienna Convention on Law of Treaties.

and amnesty laws in other countries of the world.⁴⁹ Therefore, if the Nigerian Government grants amnesty to Boko Haram, it will amount to flagrant disobedience of international law. This will give an impression to the world that Nigeria is not complying with its international obligations, in terms of enforcements of laws. Also, granting of amnesty on the pretext of pacifying the dreaded sect, will classify Nigeria as not living with the doctrine of Responsibility to Protect (R2P), but politicizing crime against humanity under the guise of conflict resolution. These may affect the prospects of Nigeria's prospects in international relations. The ratification,⁵⁰ of bilateral agreement between Nigeria and the U.K. and Niger Republic in Combating Terrorism; may reverse the tide of diplomacy if Nigeria grants amnesty to Boko Haram.

Amnesty to Boko Haram as bad Precedent

The grant of Amnesty to Boko Haram will definitely bequeath a bad precedent both within the precincts of politics and law. In realms of politics, it will amount to politicization and regionalization of crimes. This is because the history of crimes and upheavals abound in Nigeria from Boro Revolution,⁵¹ Biafran Civil War, Odua People's Congress (OPC), Niger Delta Militants and recently Boko Haram members. Nigerians had been treating these upheavals (a *Frankenstein Monster* that may consume it) with soft gloves. Critical analysis into these developments shows the regionalization of crime. For example, the Biafran Revolutionaries of Eastern Nigeria since 1966 up to now is still extant. The Oduduwa People Congress of Yoruba (Western Nigeria) is still a voice in the politics of upheaval. Niger Delta Militants with duplicity on amnesty were once elevated to the same status with our Marine and Police in guarding and protection of Oil pipelines. Perhaps that is why Boko Haram members are saying it is the turn of the North to be heard in the realm of criminality, since Amnesty is in store (a reward for breaking the law). Thus, some elements in Northern Nigeria disguised its crises in religious fervor with political mask, and justified the fact that men have more conviction to kill in the name of religion than patriotism. The question the above exposition will spur is; who knows where the next volcanoes of criminality will erupt? Since the Nigerian Government has abundant amnesty to solidify any criminal volcano to molten magma. In the Nigeria legal system, judicial precedents are primary sources of law. This means that whatever decision is reached by court after evaluating the facts of a case that decision automatically becomes a law. It will be disastrous to experience a situation where a Nigerian court will deliver a verdict enforcing amnesty as a right to criminals like Boko Haram. Doing so will be equal to reward for breaking the law.

The Effects of the Amnesty on the Reputation of Nigeria in the Eyes of International Community

The grant of amnesty to Boko Haram will portray Nigeria as one of those countries that breaches its international legal obligations. By granting amnesty to Boko Harm, Nigeria is violating customary international law and condoning crimes against *jus cogens*. Allied with this is the fact that Nigeria violates the provisions of Rome Statutes when it condones crime against humanity by granting amnesty to Boko Haram. It further, portrays Nigeria a violator of the provisions of Vienna Convention on Laws of Treaties, 1963. By granting amnesty, the international community might believe that it is obvious that Nigerian government is not militarily committed towards combating insurgency. The indecision by the government to take proactive measure is also viewed as one of the reasons why Boko Haram persists in Nigeria. This is due to the political controversy showing nexus between the sects and some politicians. Equally related to this is the fact that military strategy and the weapons used in the fight where termed as outdated.⁵² Also, it makes Nigeria to be an unsafe haven for business and international relations. As a result, many foreign countries may not become interested in investing in Nigeria. It also portrays Nigeria as one of the flash points of global insecurity.⁵³

⁴⁹Argentine Congress in August, 2003 annulled Crime Against Humanity. Also, the Spanish Government is inspired by the Argentine Congress to use annulment of Amnesty as an excuse to block extradition. See Stacy Johns 'Ripple Effects of Pinochett's Case', Human Rights Brief, VOL.2,ISSUE 3,Pp-36-38.

⁵⁰.In 2013, Nigerian Government ratifies a bilateral agreement with UK and Niger Republic.

⁵¹.This was a military insurrection led by Major Isaac Boro who wanted to carve Niger Delta out of Nigeria. It was known as the Boro Revolution. The revolution was the Precursor of the present day movement for the emancipation of Niger Delta (MEND)

⁵²See 'Experts Say Nigeria Must Change its Strategy to Defeat Boko Haram' @www.dw.com <accessed on April 3, 2020>Also see Max Siolloun,'Can Boko Haram Be Defeated?', The New York Times, @https://www.newyorktimes,.com<accessedonApril3,2020>

⁵³.AdebowaleAdeyemi-Suenu, 'Terror and Insecurity: The Impact of Boko Haram Crisis on Nigeria's External Image' International Letters of Social and Humanistic Sciences (43) 27-34,2015@www.https:www.ssoar.info<accessed on April 4,2020>

6. Conclusion and Recommendations

The beauty of sound scholarship is not solely restricted to critical exposition. The extension of that beauty become more progressive to human developments when certain views are opined as panacea for the challenges incurred during an academic exercise of this nature. Consequently, this work highlights certain recommendations as the way forward. These recommendations are examined in the subsequent paragraphs. The first point is that the Nigerian Government should strive to legislate on a special law to be termed as 'Nigerian Amnesty Act.' The law should state the categories of persons and the nature of the offences that are pardonable. It should take special consideration for internationally forbidden crimes. This is because in Nigeria's jurisprudence, primacy is usually given to special legislation over general laws.⁵⁴The exception is where such specific legislation conflicts with the Nigerian Constitution.⁵⁵ Closely related to the above, is that the grant of pardon should be classified as (a) conditional and (b) unconditional. The conditional pardon should assume the same status with parole. After the convict shows repentance during a long period of conditional amnesty, then he can be upgraded to the status of an unconditional or final pardon. This will check the abuse of pardon/amnesty-where some convicts may end up coming back to prison after few months of pardon. Furthermore, the Nigerian Government should strive to be honest and loyal towards its international obligation. The Government should fulfill its international responsibility whenever the need arises (such as the recent terrorist attacks). The Government should try such offenders. Lastly, it is important to note that the integrity of a nation at the international realm is determined by the generality of its commitment and co-operation towards international norms and values. The politicization of crimes like terrorism and abuse of human rights by the Nigerian Government will not project the image of this country as reputable nation in international politics. Hence, the Nigerian Government should purge itself of its domestic impurities before nursing the ambition of ascending into the realm of international politics.

⁵⁴.See *Martin Schroeder & CO v. Major & CO. (Nigeria) Ltd* (1989) JELR 45318 and *FBN LTD & ANORV Maiwada &Ors* (2012)JELR56747.

⁵⁵.Section1 (2) and (3) of the Constitutions provides for the supremacy of the Nigerian Constitution and where there is conflict between Constitution and any other law, the constitution shall prevail.