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AMNESTY PROGRAMME IN NIGERIA: ANY NEED FOR LEGAL FRAMEWORK?

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ABSTRACT

This paper researches on the need for a legal framework for the Amnesty Programme which was declared for the Niger Delta militants. The concerns of the Niger Delta militants included the development of the area, clean-up of spills and the address of the degradation from oil production. They also agitated for an effective local content policy in the oil and gas industry. The violence conspicuously depleted the revenue of the Nigerian Government which mainly depends on the crude oil for revenue. After test running several models to resolve the conflict, the Nigerian Government introduced the Amnesty Programme for the militants. The policy underpinning the Amnesty Programme was the process of disarmament, demobilization and reintegration (DDR) for individuals and promises of infrastructural development for the region. The objective of this paper is to assess how the lack of the legal framework has affected the viability and sustainability of the programme. It is found in the course of this research that although there

is the Amnesty Bill which was duly passed by the National Assembly to provide a legal framework for the programme, it has not seen the light of the day as the Nigerian President is yet to assent to the Bill. This paper adopted the doctrinal research methodology in its analysis. The primary and secondary sources of materials for the analysis included the Nigerian Constitution, legislation, journal articles and internet materials. It is concluded that the Amnesty Programme does not have a legal framework for its functionality. This has affected the realisation of the main essence which was to include the resolution of the Niger Delta crisis. This paper made several recommendations including the suggestion for the enactment of a legal framework in this regard and to amend the Nigerian Constitution to expressly provide for amnesty in Nigeria.

1.1 INTRODUCTION

The Nigerian economy is mostly dependent on revenue derived from crude oil production from the States that make up the Niger Delta region of Nigeria. Oil production has been sustained in commercial quantities since the discovery of Oil in Oloibiri at the present day Bayelsa State in the year 1956.⁷⁴⁹ The other sectors of the economy has, however, made contributions in this regard but they are not in any way close to the enormous contributions from oil production. Oil production in Nigeria began slowly until the discovery of oil in commercial quantities. During the colonial rule in Nigeria, laws were enacted to regulate oil production, including the Mineral Oil Ordinance of 1914.⁷⁵⁰ The grant of oil exploration licence to Shell D'Arcy, a subsidiary of Royal Dutch Shell Group in 1973 revolutionised the oil production industry in Nigeria. Since then, production of oil has been the main financier of the Nigerian budgetary expenditure and economy.⁷⁵¹

Crude oil production in the Niger Delta area of Nigeria has left the States that make up the area to be unsustainable in development and environment. The area that is usually regarded as the hen that lays the golden egg is exploited and the revenue is rather applied to develop other areas and to enrich very few pockets of influential elites rather than address the concerns of the area. One of the vital issues of concern

⁷⁴⁹ D Oluwagbemi, 'Genesis of the Nigeria Oil Industry' (2001) 5(3) *Journal of Finance and Investment Law* 369; M Onuegbulam, 'Restorative Justice Intervention in the Repression of Crime in Oil and Gas Production in Nigeria' (2018) 9 (2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 167.

⁷⁵⁰ *Ibid* 370.

⁷⁵¹ *Ibid*.

for the Niger Delta from oil production is the massive environmental pollution and degradation that results from the production. The area which is rich of innumerable natural resources and ecosystem is bedeviled with quantum cases of oil spillages and gas flaring.

The Niger Delta response was not belligerent from the beginning. Peaceful agitations, including writing of letters and articles, to raise concerns for the region fell on deaf ears from the Nigerian government and the multinational oil companies operating in the area.⁷⁵² The end result was a full blown internal armed conflict in the area. The youths of the area constituted themselves into ethnic militant groups and engaged in violent acts of destruction of oil installations, kidnapping of expatriates and vandalism (oil bunkering).⁷⁵³

Agitation arose for self-determination and complete control of mineral resources.⁷⁵⁴ The crisis became full blown and affected the daily production of crude oil and also the revenue to the Nigerian government. It has been noted thus,

Till date, the ownership, management of oil resources and the distribution of accruing revenues have instigated more acrimony than development to Nigeria and is the fundamental reason why the host-communities (in the Niger Delta) have been restive. Essentially, the host-communities argue that because they are a minority in the complex federalism, they unfairly bear the detrimental impacts of oil exploitation without commensurate benefits. To register their discontent with the status quo; that is, their exclusion from the oil industry generally, the host communities have resulted to various forms of protests-peaceful and violent-over the years. In the last decade, militant expressions of violence characterized the protests against the oil industry exploited by oil-

⁷⁵² International Crisis Group, 'Curbing Violence in Nigeria (111): Revisiting the Niger Delta' (2015) *Crisis Group Africa Report No. 231*. Available at: www.crisisgroup.org. Accessed on 07 February 2020.

⁷⁵³ R Dode, 'Nigeria' Niger Delta Militancy and the Amnesty Policy: Beyond the Amnesty' (2015) 3 (3) *Global Journal of Politics and Law Research*, 97; C Ezeocha, *Consequences of the Niger Delta Amnesty Programme Implementation on Nigeria's Upstream Petroleum Industry* (PhD Dissertation, Walden University 2016).

⁷⁵⁴ V Ushie, 'Nigeria's Amnesty Programme as a Peace-building infrastructure: a Silver Bullet' (2013) 8 (1) *Journal of Peacebuilding and Development* 31.

multinational corporations (OMNCs) and the Federal Government (FG).⁷⁵⁵

It should be noted that despite the fact that the above article was written since the year 2013, the points made therein are still relevant today. The activities of the militants had great toll on the revenue of government from the production of oil and also disrupted the activities of the multinational oil companies.⁷⁵⁶ However, after several years of militancy and reduced oil production in the Niger Delta region, the Federal Government opted to pursue an alternative to its failed security option by initiating the Amnesty Programme.

The Amnesty Programme had a lot of training and development for the youth and the repentant militants. Under the Amnesty Programme, some of the Niger Delta youths were sponsored to acquire technical skills or get education of their choice as a substitute for them to surrender their arms and weapons and allow for peace in the region.

The Amnesty Programme was designed to be temporary solution to the problems of the Niger Delta. The Nigeria Oil and Gas Industry Content Development Act and the efforts at ensuring the address of the enormous environmental degradation of the Niger Delta environment were meant to be the permanent solution to the problem of the area.

Sadly, the amnesty policy was not backed up with a viable legal framework except the constitutional provision that enables the President to pardon criminals. It was meant to be a short term political solution to the crisis in the region which had tremendous negative impact on the Nigerian economy. The rule of law as a catalyst for socio-economic development stands out. The Amnesty policy succeeded in bringing peace to the area but it failed to address the root causes of the crisis in the first place. The failure herein cannot further from the lack of a comprehensive legal framework to make provisions for the Amnesty Programme.

The Amnesty Programme was introduced to address the crisis that permeated in the Niger Delta region. The effect of which had negative effect on the oil revenue accruable to the Nigerian Federal Government because at the height of the crisis oil production dropped drastically. Significantly, the crisis had its root causes in environmental pollution from oil production, lack of effective local content in the oil and gas industry, security challenges, infrastructural decadence and lack of

⁷⁵⁵ R Ako and O Omiunu, 'Amnesty in the Niger Delta: Vertical Movement Towards Self-Determination or Lateral Policy Shift?' (2013) 1 (1) *Afe Babalola University: Journal of Sustainable Development Law and Policy* 87.

⁷⁵⁶ O Ubhenin, 'The Federal Government's Amnesty Programme in the Niger-Delta: An Appraisal' (2013) 11 (21) *Yonetim Bilimleri Dergisi* 181.

participation by the members of the local communities in the activities of the oil and gas production. However, the Amnesty Programme was designed as an interim political solution without any concrete legal framework in support. The problem for this research herein, is how effective the Amnesty Programme has been in addressing the problems that generated into crisis in the region. Alternatively, there is need to assess the role of the law in ensuring the effectiveness of the programme.

1.2 CONCEPTUAL CLARIFICATIONS

1.2.1 Amnesty

The term “Amnesty” is said to be a political tool of compromise and reunion granted by a sovereign to individuals that have committed acts against the state, usually treasonable offences and/or rebellion.⁷⁵⁷ According to O’Shea, amnesty amounts to immunity in law from either criminal or civil legal consequences, or from both, for wrongs committed in the past.⁷⁵⁸

Amnesty is derived from a Greek word *amnestia* meaning forgetfulness. It is therefore defined as a grant of general pardon or as a general pardon granted by a government especially for political offences.⁷⁵⁹ In International Law, Amnesty is defined as the act of effacing and forgetting past offences granted by the government to persons who have been guilty of neglect or crime.⁷⁶⁰ The philosophy behind the design of amnesty is to alleviate internal pressure, protect state agents from prosecution, promote peace and reconciliation, respond to international pressure, provide reparations, encourage exiles to return and adhering to religious or cultural traditions.⁷⁶¹

1.2.2 Amnesty Programme

The Amnesty Programme is the programme geared towards the bestowment of Amnesty on individuals whose actions in the past have constituted a breach of the provisions of the law. According to Ajibola, the Amnesty Programme

⁷⁵⁷ Ako and Omiunu (n7) 95.

⁷⁵⁸ A O’Shea, *Amnesty for Crime in International Law and Practice* (Brill Academic Publishers, Leiden 2002) 1.

⁷⁵⁹ V Isumonah, ‘The Obasanjo Administration and the Management of Niger Delta Conflicts in Nigeria’ (2003) 1 *African Journal of Peace and Conflict Studies* 210-225.

⁷⁶⁰ C Obi and S Rustad, ‘Conclusion: Amnesty and Post-Amnesty Peace, Is the Window of Opportunity Closing for the Niger Delta?’ in C Obi and S Rustad (eds.) *Oil and Insurgency in the Niger Delta: Managing the Complex Politics of Petro-Violence* (London: Zed Books, 2011) 204.

⁷⁶¹ O’Shea (n10) 12.

is made up of four components, namely, the environmental, petroleum, infrastructural and demobilization, disarmament, and reintegration (DDR) components. The DDR component has direct bearing on the successful rehabilitation of armed youths in the region. DDR refers to the process of demilitarizing official and unofficial armed groups and rightsizing state security services and by assisting former combatants to reintegrate into civilian life. It is used to consolidate peace and promote stability within conflict-affected communities.⁷⁶²

1.2.3 Development

“Development” has been variously defined. *The Oxford Advanced Learners Dictionary* sees development in terms of the unfolding and "bringing out of the latent capabilities" of anything.⁷⁶³ It is seen as "a state in which anything is in vigorous life or action".⁷⁶⁴ It is stated that the term “development” involves the “progressive unfolding of the potentials contained in something so that it could reach a well - grown condition, a state in which that thing is in vigorous life or action”.⁷⁶⁵

1.2.4 Niger Delta

According to Usman the Niger Delta area can be described as follows,

The Delta area is a vast plain of alluvial deposits washed down the Niger and Benue rivers stretching over 20,000km. It is composed of four ecological zones: coastal barrier islands, mangroves, fresh water shrimp forests, and lowland rainforests. The heavy rainfall recorded annually (ranging between 3000-4500mm) coupled with the topography of the area, which is composed of low, flat terrain and poorly

⁷⁶² I Ajibola, ‘Nigeria’s Amnesty Programme: the Role of Empowerment in Achieving Peace and Development in Post-Conflict Niger Delta’ (2015) *SAGE Open*, 2. Available at: <http://www.uk.sagepub.com/aboutus/openaccess.htm>. Accessed on 07 February 2020.

⁷⁶³ A Hornby, *Oxford Advanced Learner’s Dictionary of Current English* (7th edn. Oxford University Press, Oxford 2005) 562.

⁷⁶⁴ I Dele, A Achimugu and Z Kankara, ‘The Federal Government Amnesty Programme in Nigeria: an Appraisal’ (2017) 6 (1&2) *RONPE: Review of Nigerian Political Economy* 150.

⁷⁶⁵ *Ibid.*

drained soil, caused severe seasonal flooding... A stable characteristic of the ecosystem in the area requires a dynamic equilibrium between flooding, erosion and sediment deposition, which has been significantly altered by the construction of dams on the River Niger over the years.⁷⁶⁶

The above highlights the highs and lows of the ecosystem of the Niger Delta. However, the work failed to identify the number of States that make up the Niger Delta area. These States are: Akwa Ibom, Cross River, Bayelsa, Delta, Edo, Rivers, Imo, Abia and Ondo States. According to Ikimi, the Niger Delta area of Nigeria is at present the hub of oil exploration and production and as such, environmental damage particularly oil spillage has been enormous.⁷⁶⁷

1.3 The Concept of Amnesty and its Imperative

A lot of literature has been written on the concept of Amnesty Programme in Nigeria. According to Ajibola,

The Amnesty Programme for the Niger Delta derived from the recommendations of the Presidential Panel of Amnesty and Disarmament of militants in the Niger Delta. The panel was set up on May 5, 2009, to implement the recommendations made by the NTDC regarding the granting of amnesty to Niger Delta militants. Subsequently, President Umaru Yar'adua on June 25, 2009, made a proclamation on the Amnesty for the Niger Delta militants.⁷⁶⁸

The work cited above did not expressly identify the concept of amnesty, except where it stated to the effect that the Amnesty Programme is made up of four components to wit: the environmental, petroleum, infrastructural, and demobilization, disarmament and reintegration (DDR) components. The DDR component has direct bearing on the successful rehabilitation of armed youths of the Niger Delta.⁷⁶⁹

⁷⁶⁶ N Usman, 'The Environmental and Socio-Economic Impact of Oil Development in the Niger Delta Region of Nigeria – An Appraisal' (2005) 1 (1) *Bayero University of Kano Journal of Comparative Law* 152.

⁷⁶⁷ I Ikimi, 'The Law, the Courts and the Challenges of Environmental Protection in Nigeria' (2014) 6 *Justice Journal* 410.

⁷⁶⁸ Ajibola (n14) 1-11.

⁷⁶⁹ *Ibid* 2.

The events that culminated into the grant of the Amnesty Programme in Nigeria are well outlined in the work of Ushie.⁷⁷⁰ In her work she noted that the resources from the Niger Delta has been the main stay of the Nigerian economy but the Niger Delta itself has been plagued by simmering grievances that blossomed over time into a popular insurgency against the Nigerian State and the Multinational Oil Companies (MOCs). Indigenous communities of the Niger Delta have been adversely affected by the oil production, exploration and extraction, with destruction of local livelihoods and severe environmental pollution. Nigerian military rulers at the time deployed the use of force to suppress dissent in the oil producing communities.⁷⁷¹ It has been observed that the militarization of the Niger Delta paradoxically facilitated the entrenchment of a lucrative ‘conflict economy’ which extends from kidnapping oil workers for ransom, to crude oil theft or bunkering and the criminal activities of urban confraternity groups and local warlords.⁷⁷² At the height of the Niger Delta militant struggle in 2006, the Nigerian State suffered severe disruptions to oil activities and significant revenue losses. It is against this socio-economic backdrop that the Amnesty Programme was introduced in 2009, in a bid to address the Niger Delta crisis.

The Amnesty is similar to pardon in all respects in so far as when it is granted both the crime and punishment are abrogated. However, unlike pardon, amnesty usually refers to a class of individual irrespective of individual situations. It has however been noted that amnesty is the abolition and forgetfulness of the offense; pardon is forgiveness.⁷⁷³ On the nature of amnesty to forgive person who ordinarily should be held liable for their criminal acts or conducts, it is observed that previous attempts to forgive Niger Delta militants in 2004 and 2007 were plagued by poor implementation. Cash for arms deals, which purportedly involved the exchange of arms for cash payments, did not make a dent on the conflict, and only aided more stockpiling of weapons by armed groups, ironically funded by cash transfers from the Nigerian State.⁷⁷⁴

⁷⁷⁰ Ushie (n6) 30-44.

⁷⁷¹ R Eberlein, ‘On the Road to the State’s Perdition? Authority and Sovereignty in the Niger Delta, Nigeria’ (2006) 44 (4) *Journal of Modern African Studies* 573-596; K Omeje, *High Stakes and Stakeholders: Oil Conflict and Security in Nigeria* (Ashgate, Aldershot, United Kingdom 2006); M Watts, ‘The Sinister Political Life of Community: Economies of Violence and Governable Spaces in the Niger Delta, Nigerian’ (2004) *Niger Delta Economies of Violence Working Paper No. 3*, Institute of International Studies, University of California.

⁷⁷² D V Kemedi, ‘Community Conflicts in the Niger Delta: Petro-weapon or Policy Failure?’ (2005) *Berkeley Workshop on Environmental Politics Working Paper, University of California*; A Ikelegbe, ‘The Economy of Conflicts in the Niger Delta Region of Nigeria’ (2005) 14 (2) *Nordic Journal of African Studies* 208-234; A Ikelegbe, *Oil, Resource Conflicts and the Post Conflict Transition in the Niger Delta Region: Beyond the Amnesty* (CPED Monograph Series No. 3, Benin City 2010) 6.

⁷⁷³ H C Black, *Black’s Law Dictionary* (6th edn. West Publishing Co., St. Paul, Minnesota 1990) 82-83.

⁷⁷⁴ Ushie (n6) 35.

Aghedo⁷⁷⁵ in his work provides another perspective to the concept of the Amnesty Programme which is similar to the position held by the other writers which is that the Amnesty Programme was implemented as a last option at peacebuilding to arrest the escalating violence in the Niger Delta.⁷⁷⁶ The aim was to prevent the escalation and recurrence of armed conflicts.⁷⁷⁷ This paper agrees with these perspectives to the extent that the Nigerian Government did not immediately introduce the Amnesty Programme from the beginning but had resorted to the use of force which failed woefully.

Ubhenin⁷⁷⁸ in his work states that amnesty was resorted to as a means to end the militancy, negate future recurrence and create the enabling environment needed to address the root causes and impacts. It relied majorly on the tripartite principles of disarmament, demobilization and reintegration (DDR) model to achieve its immediate goals, namely immediate cessation of violence and preventing reoccurrence.⁷⁷⁹ Achieving this goal was essential to the government's top priority to revive the upstream petroleum sector and restore the revenue stream which was critical to protecting their Nigerian economy from total collapse.⁷⁸⁰ This paper also agrees with the position maintained by Ubhenin as stated above.

The Amnesty Programme in adopting the DDR model was to ensure that once the conflict is curtailed, it does not reoccur by mopping up the arms in circulation.⁷⁸¹ This was the aim which has not been achieved in reality. The amnesty was offered on the condition that militants renounce all violence and surrender their weapons to government. The disarmament and demobilization objectives of the programme were accomplished in the early period of the announcement of the programme. It is reported that many of the militants surrendered their weapons and registered at the disarmament

⁷⁷⁵ I Aghedo, 'Winning the War, Losing the Peace: Amnesty and the Challenges of Post-Conflict Peace-Building in the Niger Delta, Nigeria' (2013) 48 (3) *Journal of Asian and African Studies* 267-280.

⁷⁷⁶ L Etemiko, 'International Dimension of the Niger Delta Crisis: an insight into Nigeria's Foreign Policy Challenges' (2012) 4 (3) *Journal of Alternative Perspective in the Social Sciences* 577-593.

⁷⁷⁷ C I Ezeocha, 'Consequences of the Niger Delta Amnesty Programme Implementation on Nigeria's Upstream Petroleum Industry' (2016) *Walden Dissertations and Doctoral Studies Collection*. <https://scholarworks.waldenu.edu/dissertations> accessed on 20 January 2023.

⁷⁷⁸ O E Ubhenin, 'The Federal Government's Amnesty Programme in the Niger Delta: An Appraisal' (2013) 11 (21) *Journal of Administrative Sciences* 179-203.

⁷⁷⁹ O Oluduro and O F Oluduro, 'Nigeria: in search of sustainable peace in the Niger Delta through the Amnesty Programme' (2012) 5 (7) *Journal of Sustainable Development*, 48-51; S Thei, 'The Paradox of Corporate Social Responsibility: the Case of Shell in Nigeria' (2013) *Academic*, 22.

⁷⁸⁰ V Egwemi, 'From Militancy to Amnesty: Some Thoughts on President Yar'Adua's Approach to the Niger Delta Crisis' (2011) 2 (3) *Current Research Journal of Economic Theory* 131-141.

⁷⁸¹ O Ojeleye, 'The Application of Demobilization, Disarmament and Reintegration (DDR) at the Sub-National Level in the Niger Delta' (2011) 13 (2) *Civil Wars* 141-156.

centres.⁷⁸² The ex-militants were then sent to vocational institutions locally and internationally to acquire skills that would help fast track their integration into civil society. The weapons surrendered were secured by the relevant agencies of government to prevent their getting into the wrong hands for reuse to commit acts of violence and criminality in the Niger Delta.

Reintegration is the last and ongoing phase of the DDR model. The sustenance of short and medium term post-militancy peace and security depended very much on the successful implementation of the reintegration component of the DDR model. The aim of the reintegration component of the Amnesty Programme was to ensure that the ex-militants are rehabilitated and provided with alternate skills and means of livelihood that makes relapse into militancy unappealing. The reintegration aspect involved the training and education of the militants to make them useful and productive in the society. By this, some were enrolled in universities and other institutions while some learnt one technique or the other.⁷⁸³

The imperative of the Amnesty Programme of the Niger Delta was to restore peace to the Niger Delta. This peace was to allow for optimal production of oil in the region. It is reported that the Amnesty Programme was suggested and implemented at the height of restiveness and conflict in the Niger Delta which made revenue from oil production to plummet. This was very worrisome to the Nigerian government because revenue from oil is the main source of revenue for the Nigerian government. This postulation is confirmed in the work of Touitou and Ojunta⁷⁸⁴ and Dode.⁷⁸⁵ It is therefore suggested that this attitude of government towards its revenue account for the nonchalant posture toward the development of the Region after the return of peace to the area.⁷⁸⁶ According to Ajibola,⁷⁸⁷ who gave out questionnaires to respondents on a variety of issues bothering on the conflict and amnesty in the region noted that,

⁷⁸² S O Ogege, 'Amnesty Initiative and the Dilemma of Sustainable Development in the Niger Delta region of Nigeria' (2011) 4 (4) *Journal of Sustainable Development* 249-258; C I Nwagboso, 'Security Challenges and Economy of the Nigerian State (2007-2011)' (2012) 2 (6) *American International Journal of Contemporary Research* 244-258. http://www.aijcnrnet.com/journals/vol_2_No_6_June_2012/28.pdf. accessed on 20 January 2023.

⁷⁸³ T C Touitou and L Ojunta, 'Sustainability of Post Amnesty Programme in Niger Delta, Nigeria. Using Public Relations Proactive Strategy' (2016) 2 (1) *International Journal of International Relations, Media and Mass Communication Studies* 80 – 95.

⁷⁸⁴ *Ibid.*

⁷⁸⁵ R O Dode, 'Nigeria's Niger Delta Military and the Amnesty Policy: Beyond the Amnesty' (2015) 3 (3) *Global Journal of Politics and Law Research* 96-104.

⁷⁸⁶ N Nwogwugwu and A K Kupoluyi, 'Fiscal Federalism and Resource Control in Nigeria' (2015) 6 (4) *IOSR Journal of Economics and Finance* 21-26.

⁷⁸⁷ Ajibola (n14) 10.

“Respondents also alleged that core developmental issues in the region, which led to the aggravation of conflict, have not been addressed”.⁷⁸⁸

It should be noted that despite the aims, ideals and objectives of the Amnesty Programme, it has not been able to restore peace fully to the Niger Delta area of Nigeria as pockets of militancy and violence continue to be recorded in the area. New groups have emerged to retake the area back to the dark days.⁷⁸⁹ However, what is experienced today is much better than what it was before the events that culminated to the declaration of the Amnesty Programme. This is not to mean that the area is now a sanctuary of peace and tranquillity. The failure of Government to follow up on the restored peace to ensure effective clean up and development of the area have given some people the justification to take up to militancy, kidnapping and violence in the area. Even the ex-militants have threatened violence on several occasions.⁷⁹⁰

1.3.1 Niger Delta Amnesty Programme under Goodluck Jonathan Administration

The Amnesty Programme was introduced by former President Yar'Adua but he did not live to the end of his four year tenure. His administration was inherited by his deputy, and successor, former President Goodluck Jonathan. The latter continued to execute and perform the obligations of the Federal Government *vis-à-vis* the Amnesty Programme for the Niger Delta militants. According to Wodu,⁷⁹¹ the programme was continued even beyond the tenure of President Goodluck Jonathan by his successor, President Muhammadu Buhari.

Ugwu and Moko⁷⁹² write on the Amnesty Programme of President Goodluck Jonathan. However, the Amnesty Programme analysed therein is the one that was made for Boko Haram terrorists to bring peace to the Northern part of Nigeria and not the Amnesty Programme for the Niger Delta of Nigeria.

The Amnesty Programme for the Boko Haram terrorists was aimed at ensuring the return of peace to the Northern part of Nigeria as was witnessed in the Niger Delta region upon the declaration of the 2009 Amnesty Programme for the Niger Delta

⁷⁸⁸ *Ibid.*

⁷⁸⁹ A Ajodo-Adebanjoko, ‘Towards ending conflict and insecurity in the Niger Delta region’ (2017) 17 (1) *African Journal on Conflict Resolution* 1.

⁷⁹⁰ E Amaize, ‘Again, Ex-Militants Give FG 21-Day Ultimatum to Tackle N’Delta Crisis’ (2022) Vanguard Newspaper Online of 28 September, 2022. <https://www.vanguardngr.com/2022/09/again-ex-militants-give-fg-21-day-ultimatum-to-tackle-ndelta-crisis/> accessed on 20 January 2023.

⁷⁹¹ N Wodu, ‘Aftermath of the Presidential Amnesty Programme: Implications for Peace and Security in the Niger Delta’ (2018) www.ndpifoundation.org/wp-content/uploads/2018/09/Analysis-Aftermath-of-the-Presidential-Amnesty-Programme.pdf accessed on 20 January 2023.

⁷⁹² U Ugwu and F Moko, ‘Post-Conflict Amnesty Policies of President Goodluck Jonathan in Nigeria: Role of History and Failure of Wrong Philosophies’ (2014) 1 (7) *Advances in Social Sciences Research Journal* 145-171.

militants. At that time, it was thought out that the same result can be achieved with the Boko Haram terrorists.

The Amnesty Programme of President Goodluck Jonathan for the Niger Delta region was more of a continuation and completion of the Amnesty Programme which was announced by President Yar'Adua. However, of the three stages of the DDR of the Programme, President Jonathan superintended over the reintegration stage of the Programme.⁷⁹³ This point is well enunciated in the work of Wodu.⁷⁹⁴

It is noted that it is the success of the Amnesty Programme in bringing peace into the Niger Delta that prompted President Jonathan to announce a second Presidential Amnesty in Nigeria for the Boko Haram. Peace returned to the Niger Delta as incidences of militant groups operation became minimized and oil production activities return to normal. The second amnesty was heavily criticized by scholars and jurists.⁷⁹⁵ According to Owonikoko⁷⁹⁶ the grant of Amnesty Programme to Boko Haram cannot be equated to the amnesty granted to the militants of the Niger Delta who had genuine cause to resort to violence unlike the members of Boko Haram. This is so because the reason for the Boko Haram conflict cannot be equated with the genuine grievances of the Niger Delta people.⁷⁹⁷ The environmental catastrophe experienced by the inhabitants of the Niger Delta from the activities of the oil production is clear and the fact that the proceeds from the oil production were not channeled for the development of the region justified the conflict within the Niger Delta.⁷⁹⁸ The Boko Haram conflict is mainly anchored on religious extremism which ideals is but an aberration of the constitutionally guaranteed right to freedom of religion. According to Akinrefon⁷⁹⁹ who quoted the communique of Nigerian Military Widows Association, granting Amnesty to captured Boko Haram members is wicked because upon their release they continue to cause untold devastation across the country and that previously captured and released members have been found to continue in their nefarious activities. They went on to state that the Niger Delta militants were destroying pipelines during their uprising against the neglect of Niger Delta but not

⁷⁹³ A Ikelegbe and N Umukoro, *The Amnesty Programme and the Resolution of the Niger Delta Crisis: Progress, Challenges and Prognosis* (Centre for Population and Environmental Development, Benin 2016).

⁷⁹⁴ Wodu (n43) 4.

⁷⁹⁵ Ugwu and Moko (n44) 146.

⁷⁹⁶ S B Owonikoko, 'Amnesty for Boko Haram Members: Lessons from the Amnesty Programme for Militants in the Niger Delta region' (2020) 49 (4) *Africa Insight* 39-54.

⁷⁹⁷ D Akinrefon, 'Granting Amnesty to Boko Haram Kingpins Wicked – SMBLF' (2020) Vanguard Newspaper online of 31 January 2020. <https://www.vanguardngr.com/2020/01/granting-amnesty-to-boko-haram-kingpins-wicked-smbLf/> accessed on 20 January 2023.

⁷⁹⁸ Ushie (n6) 31.

⁷⁹⁹ Akinrefon (n49) 2.

spreading terror among innocent civilians or beheading human beings like Boko Haram.⁸⁰⁰

1.3.2 The Policy and Regulation of Amnesty Programme in Nigeria

The policy of the Presidential Amnesty Programme was basically a political tool to ensure the return of peace in the Niger Delta where the bulk of the revenue of the Nigerian Federation was sourced from. The Amnesty Programme was anchored on the policy of disarmament, demobilization and reintegration.⁸⁰¹ The Amnesty Programme for the militants operating in the Niger Delta was announced by the Nigerian former President Umaru Musa Yar'Adua with a condition that the militants will renounce militancy within 60 days of its declaration. He granted the amnesty in accordance with section 175 of the Nigerian Constitution. A Presidential Panel on Amnesty and Disarmament of Militants in the Niger Delta was then set up to manage the process of disarmament. The militants were expected to demobilize and surrender their arms at designated centers to pave way for rehabilitation and reintegration.

It is worth reintegrating the point that although the Nigerian President at the time relied on the provision of section 175 of the Constitution of the Federal Republic of Nigeria in declaring the said Presidential Amnesty Programme for the Niger Delta Militants, subsequent analysis by scholars⁸⁰² have revealed that the said section 175 of the Nigerian Constitution is incapable of regulating the Amnesty Programme.⁸⁰³ This is because the provision of section 175 of the Nigerian Constitution is concerned with the grant of pardon which is different from concept of Amnesty. The implication here is that the Presidential Amnesty Programme was not backed up by law and accordingly it was not regulated by any known law as none was enacted before or after the announcement of the programme to regulate the programme and the one that was passed by the Nigerian National Assembly is yet to be assented to by the Nigerian President.⁸⁰⁴

It should however be observed that the Nigerian President as the Chief Executive of the Country has law-making powers. According to Udofa, "The President's duties are not all purely executive in nature; he is also intimately associated, by constitution and custom, with the legislative process, and he may,

⁸⁰⁰ *Ibid.*

⁸⁰¹ O E Ubhenin, 'The Federal Government's Amnesty Programme in the Niger-Delta: An Appraisal' (2013) 11 (21) *Yonetim Bilimleri Dergisi* 193.

⁸⁰² J O Olatoke, 'An Examination of the Constitutionality of the Amnesty Programme in the Niger Delta Region of the Federal Republic of Nigeria' (2012) 5 *Journal of Law, Policy and Globalization* 187.

⁸⁰³ *Ibid.*

⁸⁰⁴ Presidential Programme on Rehabilitation and Reintegration (Establishment and Implementation) Act 2016

therefore, be considered to be the Chief legislator”.⁸⁰⁵ The President can make Executive orders and can also make changes to existing laws.⁸⁰⁶ The Presidential Amnesty Programme was more of an Executive Order than it was said to be made pursuant to the provision of section 175 of the Nigerian Constitution.

There was a need to have a legal and institutional framework for the effective functioning of the Presidential Amnesty Programme. The failure to have such legal and institutional framework has led to the ineffectiveness of the Programme after the death of President Umaru Musa Yar’Adua. The realization of this gap in the implementation of the Presidential Amnesty Programme resulted in the passage of the Bill to establish the Presidential Programme on Rehabilitation and Reintegration for the Implementation of the Presidential Amnesty Programme in the Niger Delta Area of Nigeria and for Related Matters, 2016. The Bill was duly enacted by the Nigerian Senate on the 13th day of December, 2018. The Bill was aimed at providing a legal and institutional framework for the implementation and management of the Presidential Amnesty Programme in Nigeria.⁸⁰⁷ The Bill is however yet to be signed into law by the Nigerian President. Section 1 of the Bill provides the objective as follows,

- (a) provide legal and institutional framework for the implementation and management of the Presidential Amnesty Programme in Nigeria;
- (b) consolidate the different phases of the programme commencing from the 2009 Presidential Amnesty Proclamation;
- (c) ensure an orderly completion of the mandate of the programme; and
- (d) provide an exit date for the programme.

The above proposed law is capable of ensuring effectiveness and efficiency in the implementation of the Presidential Amnesty Programme in Nigeria. However, the failure and refusal of the Nigerian President to sign into law the Bill as passed by the Nigerian Senate has left the programme in a state of comatose. There is need to persuade the Nigerian President to sign the Bill into law and give the Presidential Amnesty Programme the much required legal and institutional framework. The reason for the refusal to sign the Bill into law indicates the lack of will and sincerity on the part of the Federal Government of Nigeria in addressing the core issues of the Niger Delta people.

The policy of the Presidential Amnesty Programme was geared towards disarming and rehabilitating the militants of the Niger Delta area of Nigeria. It was set

⁸⁰⁵ I Udofa, Comparative Constitutional Law 2 Study Manual (2016). (unpublished), 47.

⁸⁰⁶ Section 315 (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), *Mohammed v Attorney General of Kaduna State* (1981) NCLR 117; *Attorney General of Abia State and 35 Ors v Attorney General of Federation* (2003) 1 SCNJ 131.

⁸⁰⁷ H Umoru, Senate Passes Amnesty Bill (2018) *Vanguard Newspaper* of 14 December, 2018.

up to manage the disarmament demobilization, rehabilitation and reintegration of the ex-militant.⁸⁰⁸ It is well noted thus, “the Presidential Amnesty Programme (PAP) was modeled after the United Nation’s Disarmament, Demobilization and reintegration (DDR) interventionist programme”.⁸⁰⁹

1.4 Constitutionality of the Amnesty Programme

The Nigerian President in his declaration of the Presidential Amnesty Programme relied heavily on the powers vested in his office as enshrined in section 175 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).⁸¹⁰ The declaration by the Nigerian President stated thus,

1. I hereby grant amnesty and unconditional pardon to all persons who have directly or indirectly participated in the commission of offenses associated with militant activities in the Niger Delta.
2. The pardon shall take effect on the surrender and handing over of all equipment, weapons, arms, and ammunition, and execution of the renunciation of militancy forms specified in the schedule hereto, by the affected person at the nearest collection center established for the purpose of government in each of the Niger Delta States.
3. The unconditional pardon granted pursuant to this proclamation shall extend to all persons presently being prosecuted for offenses associated with militant activities.
4. This proclamation shall cease to have effect from Sunday, October 4, 2009.

It has also already been argued in this paper that Amnesty Programme cannot be sustained by the provision of section 175 of the Constitution of the Federal Republic of Nigeria (as amended). Also, there is no constitutional provision that directly supports the said declaration. The Constitution however allows the Nigerian President to make Executive Orders and Declarations. Thus, the declaration of the Presidential Amnesty Programme can be said to be constitutional to the extent that it was made by the President by virtue of his constitutional powers to make orders or declarations. And not necessarily because it was claimed to be proclaimed to be made pursuant to section 175 of the Nigerian Constitution.

⁸⁰⁸ Ikelegbe and Umukoro (n45) 3.

⁸⁰⁹ BA Okonofua, ‘The Niger Delta Amnesty Programme: The Challenges of Transitioning from Peace Settlements to Long-Term Peace’ (2016) *Sage Open* 6.

⁸¹⁰ Ajibola (n14) 6.

A learned writer⁸¹¹ had posited that the Presidential Amnesty Programme cannot be said to be constitutional on two major legal premises to wit: firstly, that the programme is against the presumption of innocence enshrined against these set of people because they can never be pardoned unless there is an offence and such person is being tried or convicted by court of competent jurisdiction contrary to the situation in this case where majority of the militants have not been arrested. Secondly, the power of the Nigerian President under section 175 of the Nigerian constitution to grant pardon does not extend to power to grant amnesty and there is no other provision in the constitution or in any existing legislation empowering the President to grant such pardon from the feature of condition precedent for Amnesty. In the judicial authority of *Obidike v The State*⁸¹² it was held that pardon cannot by extension mean Amnesty because express mention of prerogative of mercy is the exclusion of the word ‘Amnesty’ which is a distinct concept on its own.

Olatoke went on to conclude however that, “The implication of the amnesty without the provision of such is that the ex-militant could still be arrested and arraigned before the court of competent jurisdiction for whatsoever offence they might have committed before now and they will not be covered by section 36 (10) of the constitution because what is unconstitutional cannot be covered by the constitution there is no basis upon which section 36 (10) of the constitution could operate as you cannot place something on nothing and expect it to stand.”⁸¹³

The Presidential Amnesty Programme can only be validated and assumed to be constitutional by virtue of the executive powers of the Nigerian President to make orders and declaration. It is therefore not completely unconstitutional as opined by Olatoke above. It is however important to have a legal and institutional framework for the management and operation of the programme in Nigeria.

1.5 Conclusion

The Niger Delta Amnesty Programme was granted the ex-militants of the Niger Delta region to quell the crisis and violence in the area with a promise that such peace will allow for development in the area. This is because the reason for the crisis and violence in the area was related to the environmental degradation of the environment from the oil and gas production in the area; which degradation eliminated and destroyed the means of livelihood of the people of the Niger Delta region.

There are several laws that regulate the oil and gas industry. And the provisions of these laws include provisions for the address of the environmental

⁸¹¹ Olatoke (n54) 28.

⁸¹² (1989)2 NWLR (pt 101) 1 at 18 Para A

⁸¹³ Olatoke (n54) 28.

degradation of the area and the development of the Niger Delta. There are also institutions⁸¹⁴ established to execute these laws. However, much has not been done to address either the environmental problems or the socio-economic development of the Niger Delta.⁸¹⁵ This accounts for the violence that was witnessed in the area from the criminal activities of the militants who blew oil installations and kidnapped foreign oil workers. The activities drastically reduced oil production in the Niger Delta and accordingly affected the revenue of the Nigerian Government. Government responded to the violence with violence but same did not produce the desired result until the declaration of the Amnesty Programme which brought back peace to the area.

Despite the return of peace and security to the Niger Delta, the main problems and concerns of the people of the Niger Delta have continued to persist. This proves the assertions that the Amnesty Programme was mainly made to solve the problem of reduction of government revenue as a result of the violence but not to wholesomely address the key problems of the area which included the cleanup of the environment from oil spills, termination of gas flaring and ensuring development of the Niger Delta as the area that produces the income or revenue for the sustenance of the Nigerian economy.

There is no effective legal nor institutional framework for the regulation of the Niger Delta Amnesty Programme. The mantra that the proclamation of the Niger Delta programme was made pursuant to the provision of Section 175 of the Nigerian Constitution cannot be sustained as that provision has nothing to do with amnesty. There is need for an effective legal and institutional framework in this regard.

From the analysis in this paper, the following recommendations are suggested to wit:

1. There is need to enact a law to regulate the grant of amnesties in Nigeria. The law should also establish an effective institution to manage and control any grant of amnesty, especially the Niger Delta Amnesty. The law will also provide a comprehensive list of requirements to qualify for the grant of amnesty in Nigeria.
2. There is need for the Nigerian Government to address the key problems of the Niger Delta that resulted in the resort to violence and conflict in the Niger Delta. The environmental degradation problem should be tackled firstly. The cleanup of the Ogoni lands and other areas that were destroyed by oil spills. Secondly by completely prohibiting gas flaring in the Niger Delta. And also by ensuring effective development of the area. The mere grant of amnesties to the ex-militants is not enough to solve the problem that resulted in resort to violence.

⁸¹⁴ Niger Delta Development Commission (NDDC).

⁸¹⁵ Ushie (n6) 30 – 44.

3. This work further suggest the amendment of the Nigerian Constitution to make express provision for Amnesty.
4. This work further suggest that the legal framework for amnesty should be comprehensive enough to highlight the nature of offences or circumstances where amnesty will be applicable and those where amnesty cannot be considered. Thus, amnesty should not be considered for terrorists and bandits.