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NIGER- DELTA CRISIS AND THE AMNESTY INITIATIVE OF GOVERNMENT

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ABSTRACT

The amnesty Initiative by Government of Nigeria for Niger Delta militants is a bold effort and measure taken by the state to address the issue of militancy in the region .Though ,a political solution to the problem ,one is minded to say that the idea was developed based on the pardoning powers of the president inherent in the constitution .However ,there is still a problem because the pardon itself is usually for offenders already tried and convicted .The paper looks at the amnesty programme and assessed its nature ,benefits ,the legal components ,the situation in other jurisdictions like USA,UK ,Chile and South Africa and concluded with recommendations on the ways to further make the scheme stronger to ensure lasting peace in the Niger Delta region.

Keywords: Amnesty Under International Law, Amnesty and Niger Delta.

Introduction

Amnesty, derived from the Greek word *amnasthia*, has retained the original general concept of oblivion, although, it has evolved into distinct technical concepts in criminal law, constitutional and international law (Muyot, n.d). Generally, amnesty is understood in law as:

> A sovereign act of forgiveness for past acts granted by a government to all persons (or to certain classes of persons) who have been guilty of crime or offences especially political offences – treason, sedition, rebellion, draft evasion and often conditioned upon their return to obedience and duty within a prescribed time (Black's Law Dictionary, 1991).

The above definition of amnesty in our opinion does not provide an acceptable technical meaning to the concept of amnesty nowadays. This is because it did not only restrict the scope of the concept to certain offences, regarded as political offences, but also gives the idea and impression that amnesty is granted only to persons who have been found guilty thereby complicating the controversy surrounding amnesty and pardon. The problem created by the definition of Black's Law Dictionary above is confirmed by the fact that amnesty in some states is granted not just for political cases but for other range of offences and is granted in favour of persons who has never been arrested, investigated let alone being prosecuted, or found guilty by any court.

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In criminal law, amnesty is simply appreciated as a mode of extinguishing criminal liability. However, in constitutional law, the consideration of amnesty and the power to grant the same is expressly provided and granted by the executive or the legislative branch of government or shared both by arms/branch. It is distinct from the power to grant pardon. There is still a problem as to the definition of amnesty, as enshrined in the constitution of some states, in the sense that though grantable by either the executive or the legislative organ of government, it is not yet settled whether such grant is made in the form of "pardon" or basically as "amnesty (Haiti Constitution Explanatory Note, n.d). The problem is heightened by the fact that some state's constitution offers many ranges of amnesties as can be seen in the case of Japan where there is general and special amnesty. A constitution may also provide for both amnesty and pardon as exemplified by Article 29 of the Constitution of Iceland.

A look at the laws of many countries reveals that in some states, there is a fusion of the concept with the concept of pardon which may be granted in each instance either by the executive or the legislature (Osegbue, 2019; Anushiem and Anushiem, 2023). In other states, such grant and clemency are made only for political offenders and is not extended to other crimes. Additionally, in most states, the amnesty or pardon as the case may be, is usually for persons who have been tried and found guilty.

Amnesty is a pardon extended by the government to a group or class of persons usually for political offence, it is the act of a sovereign power officially forgiving certain classes of person who are subject to trial but have not yet been convicted (Ezeaku, 2019); Ekwesianya, Okaforcha & Okeke, 2020). The above reasoning as to what amnesty is all about makes difficult the idea of having a definite and precise meaning of amnesty. This is why controversy between amnesty and pardon is narrow. Properly this is also why there is controversy as to its meaning in Nigeria. However, for the purpose of our discussion amnesty is an official action of government where by a person or persons who commits a crime and who is subject to trial but have not been convicted is forgiven and exonerated of his criminal liability.

Put in another word amnesty is the action of government by which all persons or certain groups of persons who have committed a criminal offence, usually of a political nature which threatens the sovereignty of the state, are granted immunity from prosecution. Examples of such offences include treason and sedition (B.E West Encyclopedia, 2008).

According to Anushiem, (2017); Iloka and Nwakoby (2025), amnesty allows the government of a nation or state to 'forget' criminal acts usually before prosecution has occurred. This concept has been traditionally used as a political tool of compromise and reunion following a war. It is usually a reprieve extended to persons and group who have committed crimes against the state.

The history of amnesty dates back to 403B.C according to Greek and Roman Law. One example of amnesty was the long-term civil war in Athens which was ended after a group dedicated to reuniting the city took over the government and arranged a general political amnesty. The Athenian amnesty above was affected by loyalty oaths taken by all Athenians. The amnesty proclaimed the acts of both warring factions officially forgiven.

The Amnesty was known as Act of Oblivion and it was later enacted as a law and was specifically

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to heal the wounds resulting from the war between the democrats and the oligarchs. As noted by Ezeaku, and Okoye (2025); Osegbue (2022); Ibe, (2019), it prevented the prosecution of those perceived and seen to be political enemies. This is because the intendment of the amnesty was that past offences will no more be remembered by the jurors. Thus, when the amnesty vote was passed, everyone that participated in the war were not prosecuted (Ucheagwu-Okoye (2021; Ezeaku, 2025; B.E West Encyclopedia, 2008).

If the Athenian example is taken hook, line and sinker, then it may seem that amnesty is only grantable in favour of persons or group of persons who have committed crimes against the state during war situation. This, in our opinion may not be a plausible argument because, some acts capable of threatening a state's sovereignty may well be perpetrated against the state in a non-war situation. The acts of members of Boko Haram Islamist sect in the North Eastern Nigeria and that of the Niger-Delta militants are threats to national security. All these groups were offered amnesty. While the Boko Haram sect rejected the offer, the Niger-Delta militants accepted it. Even though there is no war in the Niger-Delta the crisis continues despite the amnesty.

Amnesty in our view should be seen as official action by government, where persons or group of persons, who committed or allegedly committed a crime or crimes i.e., political or otherwise are forgiven and excused from prosecution. Amnesty in the opinion of Enwezor, (2021); Onyekwelu and Adinna (2022) has the effect of: immediate release of all political prisoners; allowing person on political exile to return to their state; relinquishment of civil and political rights; reinstatement for persons dismissed on political reasons; and granting compensation to persons or families subjected to inhuman treatment.

The above notwithstanding, it is still doubtful whether the amnesty as practiced and implemented by the Federal government for the Niger-Delta militants satisfies the requirement or expectations of law, be it national, regional or international arena. This is because, those militants have not been at any time arrested, detained, investigated nor tried. Moreover, most of them are not even known. Thus, it seems that the reason for the implementation of amnesty for Niger-Delta militants by the federal government is only to bring about a political solution to the crisis in the region. This is because there is no legal backing to the programme.

Studies have shown that amnesty granted by states is usually aim at dealing with overcrowding prisons which may be prejudicial to human rights of imprisoned persons (United Nations Economic and Social Council, 1985). Hence, the granting of freedom through amnesty.

Generally, amnesty imports that the beneficiary must have been tried for an offence, convicted and put in prison custody. This practice, with respect, is not the case with Nigerian law on amnesty. This is because in Nigeria prisoners are only granted pardon after conviction, sentence and when appeal is exhausted under the Prerogative powers of the president or governor of states as stated in section 175(1) of the Constitution of Federal Republic of Nigeria, 1999 (as amended) in 2011 (CFRN, 1999 Sect. 175). But that is not amnesty. Where amnesty is granted, the purpose is usually humanitarian backed by law. For instance, in Zaire, the act of 17th November 1981 allows amnesty granted in favour of disabled persons who neither committed any offence nor were suspected to have committed any offence. In Syria, Act no 26 of 12th

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March 1978 allowed amnesty for incurable and chronically ill-prisoners while in Eastern European States children, women, the aged and the sick who might have committed crime or crimes are given amnesty usually on humanitarian ground. Similarly, in USSR (Decrees of 1979 and 1981), Bulgarian (1979) and in Hungary (Acts of 1975), measures that are humanitarian in nature were adopted to mark the international year of the child. The amnesty granted on those occasions were for the benefit of the minors, pregnant women and mothers of very young persons.

What is important however is that these amnesties granted on humanitarian grounds come by way of proclamation by the head of government and not just by way of "charitable gift or donation by the sovereign" but an action predicated on law. This is the only way it can stand the test of time. As noted by Ucheagwu-Okoye (2025); Okaforcha, and Okeke (2020), amnesty can also be granted on political reasons, for instance, during transition of government from military to civil rule or from authoritarian regime to democracy. Authoritarian leaders usually grant amnesty to themselves during transition to avoid prosecution by the incoming administration (United Nations Economic and Social Council, 1985).

Amnesty can also be for a period of time during which people are not punished for committing a crime. This is evidenced in cases of Hungary where amnesty was granted to mark the celebration of year of the child. This consideration conforms to the definition given to amnesty by the Cambridge Advanced Learner's Dictionary. According to it, amnesty mean a decision by the government that allows political

Prisoners to be free and further "a fixed period of time during which people are not punished for committing a particular crime" (Wiliams, 2009). Similarly in Argentina, the Argentine military at the wake of handing over to a democratically elected regime promulgated an amnesty law called "Pacification Law" in 1983 to obviate and terminate any possibility of criminal or civil liability against persons who committed serious crimes that violated people's rights during the time of attempting to restore public order (Ojimba, 2024); Okeke, Okaforcha & Ekwesianya, 2019).

In general terms, amnesty is intended to neutralize aggrieved opposition group and by this reduce tensions in the country and restore social tranquility. It is usually done by dialogue and diplomatic process of peace building and some other times force the opposition group to adopt a passive role though, the later measure does not produce or provide a viable result (Anushiem, 2022; Obumse, 2022; Ofozoba (2020). This is the measure adopted presently by the federal government under the watch of President Mohammadu Buhari where the Nigerian Military and other security personnel under the aegis of Joint Task Force (JTF) has continued to launch military reprisals and attack on Niger-Delta Avengers and other militant groups. The operations have not made any positive impact as the crisis in our view is far from being ended. It only results in more havoc and damage as many innocent people (children and women) are injured and brutalized and their rights violated. This is more or less like the Polish Amnesty Law of 1984 which was intended to bring about normalization rather than reconciliation or normalcy rather than reconciliation.

All said, it may appear that the amnesty programme of federal government of Nigeria for the Niger-Delta militants is merely patterned and designed in line with Polish principles which was aimed at restoring and reducing tension in a region which has threatened the country's national security.

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Indeed, in our opinion, the amnesty programme in Nigeria for the militants in the Niger-Delta has no aim or intention of reconciliation which means addressing the critical areas of grievances in the region or the core causes of the unrest.

In South Africa, the amnesty model adopted after the collapse of the apartheid regime was designed for reconciliation and discovery of truth about what happened. It was meant to find out who did what and who were the victims, and through persuasion and dissuasion, the victims and their families developed the feeling of forgiveness and commitment to forget the past. This was facilitated by the Truth and Reconciliation Commission established by the National Unity and Promotion of Reconciliation Act (1988).

From the above review, amnesty can be said to be an official action of government which 'exonerates" liability for all political offences and other offences such that the offender is given a clean slate for all his crimes. It is also a period when no punishment is imposed for offence(s) committed. Such action of the state must be backed up by a law for it to have legal validity though it may be deliberately designed to restore normalcy and reduce tension or ensure reconciliation.

An interesting aspect of amnesty in the Philippines is that the concept does not only denote general forgiveness by the state to those who committed crimes against the state. But constitute a defence which must be proved for the charge to be dismissed (Muyot, 1980). This means that if there is a proclamation of the president supported by majority vote of members of congress excusing liability or criminal liability for some common crimes, the mere fact that there is already such a proclamation for offences in the charge will be a defence in the event of a new charge for such common crime and the same must be pleaded. This procedure with every due respect is not in tandem with the Nigerian type of amnesty which is neither backed up by any legislative action nor is it reinforced by any provision of the Nigerian Constitution.

Conceptual Explanations.

i. Amnesty under International Law

In public international law, amnesty clauses are found in peace treaties such as those in the Treaty of Nimenguen of 1678, Treaty of Utrecht of 1713, Treaty of Aix-La Chapelle of 1748 and Treaty of Paris of 1763 (*Encyclopedia of Public International Law* (EPIL), 1992). The above instruments are mainly treaties targeted towards peace and tranquility within the domain of parties' signatory to it. Although, treaties concluded after World War 11 usually did not include amnesty clauses but instead provide for the punishment of war criminals, general amnesties were granted to anti-Nazi and anti-fascist war participants by numerous states under national legislation (Muyot, 1980).

Protocol 11 to Geneva Convention of 1949, relating to the protection of victims of non-international armed conflicts provides in its Article 6(5) that: At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated or those deprived their liberty for reasons related to the armed conflict whether interned or detained.

The Protocol 11 above recognizes a wide range of opportunity for grant of amnesty or reprieve for those who participated in hostilities and others who may have done one act or the other which led to their freedom or liberty being restrained. Such amnesty allowed by the Protocol excused the persons involved of all criminal responsibility or liability for

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their actions during the hostilities. As Nonyem and Chimaa (2020), Ojimba, (2020) rightly noted, in 1985, the United Nations Commission on Human Rights carried out a study on amnesty laws of 88 states in combination with international law. The study viewed amnesty as a judicial expression of a political act who's expected effects directly concern the promotion or protection of human rights and in some instances and the return to or consolidation of democracy. This is because according to the report, amnesty encourages national consensus; initiates process which is intended to block internal crisis (UNDOC, 1985).

From the review of the report, it appears clearly that amnesty is an official action restoring normalcy in a crisis ridden society or state. Although it is clear from the report that amnesty is recognized as an outgrowth of right to pardon, the report notes that amnesty as applied to ordinary political offences differ in nature and purpose (UNDOC, 1985). The report reasoned that when granted for ordinary offences, it is meant to integrate the persons involved into the society but when it is for political offences, it is intended to reduce tension and restore normalcy and in some other cases reconciliation especially in authoritarian States.

It would be noticed as Okechukwu (2025); Ugwaka and Igbokwe (2023), reasoned that the application of Amnesty by a state in some situations can transcend domestic crimes to sphere of international law. This usually happen where the offence for which immunity against prosecution is provided are so atrocious that they deeply shock the conscience of humanity and are regarded as a concern to the international community as a whole. I.e., where some heinous crimes committed by some persons holding offices in state laws are immune from criminal prosecution by domestic law the international community may become concerned with such because it undermines the conscience of human existence to permit and excuse such atrocious acts in the name of immunity or amnesty in the context of domestic or municipal law. The Rome Statute establishing the International Criminal Court in its Article 5 listed the offences regarded as being of concern to the international community to wit: (a) Genocide; (b) Crimes Against Humanity; (c) War Crimes and (d) Crimes of aggression.

Principles of conventional international law and treaties impose significant obligations on states and requires them to prosecute atrocious crimes. Ibe, (2022); Okoye and Ezeaku (2025) supports this view to the effect that states should not grant immunity for offenders who have committed atrocious crimes which are generally of concern to international Community. The reason for that is because, violations against humanity endanger the value of the global community. Thus, the grant of amnesty for heinous crimes by state undeniably contradicts the principles of international law. As reasoned by Azinge that

> International law however its tough stand against the atrocious crimes touching on humanity does not exclude amnesties. This then raises the questions of legality of granting amnesties under international law for which ever crime whether the ones regarded as atrocious or otherwise.

The dominant trend is that there is presumption of illegality of amnesty granted by states for heinous crime. This is because under

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international law principles, there is no option for amnesty by state rather states should prosecute such offenders of serious crimes. This view is gaining ground and acceptance in many quarters and in our firm opinion should be supported. Anchoring this support on the provisions of article 4 of convention against genocide, perpetrators of the offence of genocide should be punished by states instead of granting them amnesty. The states are also in our opinion expected to put in place necessary legislation to give effect to the provisions of the convention by taking legislative steps to domesticated the provision of the convention as domestic law and ensure that there is penalty or penalties against perpetrators of genocide or related offences.

A useful support to the above proposition that states should stop granting immunities to perpetrators of heinous crimes is the mandatory system of universal jurisdiction over breaches of grave offences. That empowers the extradition and prosecution of persons accused of human rights violations (Geneva Convention, n.d Art 50, 51). From the wordings of the Geneva Convention and the additional Protocol of 12th August 1949 relating to victims of International Conflict provide for offences such as willful killing, torture or inhuman treatment, willful causing of great suffering or serious injury to body or health and willful and/or serious violations of laws and customs of war.

The above acts can cause great hardship and pains to the victims. Thus, when perpetrated, state parties should prosecute the offenders than granting them amnesty under municipal law. This is because the purport of the above provisions of international law is that state parties cannot and should not through their own national legislations or actions condone or grant amnesties for offences that fall within the definition of grave breaches provided under Geneva Conventions. There is also a positive obligation on other state parties not to recognize such amnesties if granted.

There are still other studies, apart from international convention and treatise in international human rights law, which noted that amnesties granted to human rights violators, whether by law or by states, inhibiting prosecution such cases, constitute derogation of international law from which demand prosecution of serious violations of human rights (Orentlicher, 1991).

In our view, if international law takes a strict stand against violations of human rights and compels states to respect human rights and stop its violations through amnesty, it will deter repetitions of such violations. Moreover, domestic law which tends to exculpate or wave liability for the culprits should be seen and held as not justifiable either on account of law or policy (Okaforcha & Iloka 2025; Ekwesianya, 2022; UN Study, n.d). Thus, under international law, amnesty is looked at as states declining to prosecute crimes which undermines the humanity of its citizens. This is in violation of international rule that such perpetrators of human rights violations be prosecuted in line with the entrenched principles of international law.

The United Nations study also observes that the dissension to undertake prosecutions against human right violators will not necessarily solve the problem rather; what is effective is to address and deal with the causes of the violations using corresponding social, economic or political measures. Relating this to the situation in the Niger-Delta, the crisis arising from the militancy in the region leading to heinous crimes committed against the people cannot be addressed successfully by the amnesty of the federal government rather, the crisis should be controlled through economic, social and

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political measures backed by a legal frame work or legislative action which address the root causes of the crisis which include poverty, environmental depredation and poor standard of living in the region.

A similar obligation to prosecute persons violating the rights of others, especially through torture and other forms of cruel treasure, is recognized by international law and is contained in the Final Declaration and Programme of Action of the 1993 World Conference on Human Rights captioned Vienna Declarations. It provides that grave violations of human rights such as torture should be prosecuted for violating the rule of law. The purport of the above provisions or declaration is to render nun and void the granting of amnesty to perpetrator of heinous crimes by state parties. Where such law or laws exist, the same should be abrogated in order to promote the rule of law.

War crimes is also recognized as one of the crimes that are of concern to the international community under the Rome Statute creating the International Criminal Court (ICC, n.d). The criminal prosecution of those accused of committing war crimes is a fundamental aspect of victim's right to justice (Naqvi, 2003). However, where in an armed conflict, serious violations of right and of the laws of war has been committed in a massive scale, the notion of remedial justice for victims of war crimes is often balanced with the needs of the state to effectively and progressively deal with the past atrocities and not to provoke further violence. In such situation, restorative justice, which allows

Limited amnesties instead of punitive action may be the appropriate approach to make. What this means is that, even though international law recognizes and permits prosecution for perpetrators of war crimes, where such crimes leads to human rights violations on large scale, international rule of law allows states to deal with the past atrocious acts by effectively and progressively initiating measures that is capable of providing restorative justice to the victims and control the violence by allowing limited sphere of amnesty instead of insisting on the punitive justice in the form of punishment provided by criminal law which will further maintain or provoke violence. In this regard, such amnesty in limited nature does not only serve the purpose of normalization but also brings about reconciliation between the violator and the victim or the government and the perpetrator of the acts. This in our opinion is a good model that should be supported and applied.

The complex issue whether amnesty for crimes recognized as being of concern to the international community like war crimes, genocide, crimes against humanity and others should be given a de jure or defector recognition by foreign or international courts is still a serious question for consideration (Naqvi, 2003). This is because to secure recognition which relates to rules laid by law requires compliance with law as constituted in domestic law of the state. On the other hand, defector recognition relates to fact in existence, which may or may not be legally acceptable.

Amnesties designed to preclude prosecution for war crimes and other grave crimes above take the form of legislative or constitutional acts of states or as contained in treaties or agreements entered by states. However, state practice in their domains may also prevent domestic or international courts from adjudicating over war crime cases and other cases by stating that courts should not do so or precluding jurisdiction by ouster clauses. It is also important to observe that immunity for state officials may bar prosecutions under international law for a violation as considered grievous or heinous. This could by stating in national constitution that both international

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and domestic courts are barred from adjudicating on matter of grave violations of human rights against a public official under immunity clauses. A good example in our view is the provisions under section 308 of 1999 Constitution of Federal Republic of Nigeria which provides immunity for president, Governor of states and other designated officials for any omissions, in actions or actions which incurs criminal liability against the state or citizen at the currency of their tenure in office. The same Constitution makes it difficult for actions to be brought against the Federal Government of Nigeria by citizens to seek redress for the violation of economic, social and cultural rights by not only making these rights subordinate in the cadre of rights but also oust the jurisdiction of courts to entertain actions initiated to redress the violations of those rights.

This is important for the non-satisfactions of those rights have left the people of Niger Delta under pains and suffering. This has also triggered off crisis in the area lending to the people of the region taking up arms against the government of Nigeria and multi-national corporations involved in oil exploration. The government in attempt to address the situation introduced the amnesty programme for the militants. The question which is still yet to be answered is whether the implementation of amnesty for the militants will address the root causes of militancy. Assuming it can, does the programme have any legal effect or favour? These issues will be settled in this research.

In addition to state's immunities to public officers, which bars prosecution for grave breaches of human rights, the recent crisis in the Federal Republic of Liberia in which the then Liberian President, Charles Taylor, was indicted by the United Nations sponsored Special Court for Sierra Leone presents a legal dilemma. Charles Taylor asked the court that he will leave the presidency on the condition that the indictment be removed (UN Document, 2003). In our candid opinion, had this deal been accepted, the removal of the indictment for Taylor would not strictly speaking constitute amnesty barring prosecution but its objects and effect which was dropping of the war crime charges to secure a peace deal would essentially be the same. However, the deal was not accepted. Hence, Liberia applied to the International Court of Justice (ICJ) claiming that the arrest warrant should be voided on the basis of customary rule of immunity for foreign heads of states. (International Court of Justice (ICJ), 2003) The Contention of Liberia is that their sitting head of state is immune from arrest, at the currency or pendency of his tenure in office, and that he cannot be subjected to criminal prosecution before the domestic or national court or even foreign international court.

According to Yasmin Naqvi of the International Red Cross Review, the issuance of the international arrest warrant against Charles Taylor is against the spirit of the judgment of the International Court of Justice in Democratic Republic of Congo v. Belgium where the court upheld the absolute immunity of an incumbent minister of foreign affairs under customary law (Naqvi, 2003). In the arrest warrant of April 11th 2000, the court held that the issue and circulation by a Belgian Magistrate of an arrest warrant against an incumbent minister of foreign affairs of Democratic Republic of Congo failed to respect the immunity from criminal jurisdiction and the inviolability of the law. According to Abonyi (2021), what may be a serious agenda to contend in the court, that is ICJ in the future is the issue of universal jurisdiction in which countries may purport to look beyond their territory

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into the affairs of other states under the disguise of attributing to itself universal jurisdiction in criminal matters which unavoidably defeats the principle of sovereign equality that prescribes that state should not in branch of principle of sovereign equality exercise its authority on the territory of another state.

Generally, amnesties for war crimes and other international crimes came into being when states are going into transition, for example, from war to peace. During such period, the essence of the amnesty is to reconcile the competing needs of the territorial state and dedicate the political process towards peace or democratic consolidation (Cassel, 1996). It will be interesting to find out whether a foreign court or international courts under international law will be bound by the amnesty for war crimes and other crimes of concern to international community. In principle, states are bound only by their internal law, treaty obligation and rules of customary international law (Brownline, 1998). Amnesty is surely an internal issue to a state and usually such is based on agreement in a peace deal to end years of conflict or civil war. Generally, amnesty negotiated between incoming and outgoing regime at a period of political transition are not binding on other states. Similarly, amnesty based on negotiated agreements by two or some states which ends an international armed conflict is not binding on a third-party state who is not a party to the agreement. The general view of plethora of legal sources is to the effect that domestic laws or judicial decisions cannot exempt a person accused of international crimes from that individual criminal responsibility or prevent foreign or international court from prosecuting such crime or crimes and no statutory limitation would apply to war crimes, crimes against humanity or genocide (General Assembly Resolution, 1968).

In addition, recognition of amnesty to cover a person who committed any of the above crimes may constitute a violation of state duties under the Convention's additional protocol to prosecute or extradite person accused of grave breaches (Paust, 1972). In our opinion, what the above stipulations and resolutions cum provision in the conventions and its protocol show is that, there is a limitation of the extent to which amnesty may be granted to bar prosecution of perpetrators of crimes that are of concern. Concern to international community including war crimes, genocide, crimes against humanity and grave breaches.

The fact that amnesty is not granted for heinous crimes under the international law, there is still a conceivable situation in which amnesty may be granted or allowed to bar prosecution for example, where such amnesty is approved by the United Nations Security Council. Usually in such situation, the United Nations Security Council intervenes to broker peace so as to maintain international peace and security, when this occur, state party will be bound by the amnesty which is recognized as a deal created not to undermine peace and threaten international peace and security.

Apart from Security Council approval barring prosecution, political pressure may well compel International Criminal Court to refrain from exercising jurisdictions over those grave crimes of international concern (Convention on Non-Applicability of Statutory Limitations, n.d Art. 3 and 4).

Because international community frowns against amnesty for heinous crimes, the Convention on Non-Applicability of Limitation on War Crimes and Crimes against Humanity encourages states to adopt measures under their domestic law which ensures that no form of statutory limitation or

practice applies to bar prosecution and punishment for those crimes (*NIALS Journal of Constitutional Law,1999*). The emergence of International Criminal Court and Criminal Tribunals providing a base for international prosecuting system is a strong point in support of the argument that immunities for international crimes are not recognized. The non-recognition of amnesty in relation to international crimes have been restated in many decisions of international tribunals. As Ibe, (2022); Okoye and Ezeaku (2025) reasoned, this has helped to consolidate the network of case law that can be said to aid the development of International Customary Law jurisprudence on the concept of amnesty.

In the case of Gomes Lund v. Brazil, Abonyi (2022) stated that the Inter-American Court of Human Rights (IACHR) considered the case of small group of students and workers who "disappeared" under the watch of elements of Brazilian army and state police in the 1970s'.

The Brazilian amnesty law prevented release of information on the fate of the victims, investigation and prosecution of those behind the disappearance. However, the inter-American court held that the investigation, prosecution and punishment of perpetrators of the crimes is imperative for justice for the victims and that the Brazilian amnesty law runs contrary to International Convention which Brazil is a party. This decision in our opinion is well reasoned bearing in mind that Brazil is signatory to the Convention and has obligation internationally to comply with the dictates of the Convention. Similarly in 2000, Appeal Chambers of the Special Court for Sierra Leone in the Case of Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gvao ruled that the amnesty granted to persons of the warring factions in Sierra Leone inspite of the 1999 Lomé Peace Accord (LPA) between the government and Revolutionary United Front (RUF) which contained amnesty provision pardoning all rebel forces and their collaborators for crimes during war was not a bar to prosecution as amnesty did not apply to war crimes and other related crimes such as serious violations of international humanitarian law (*NIALS Journal of Constitutional Law, 1999*). The view of the courts above in our opinion were founded and anchored on the fact that international crimes which are of concern to international community are seen and recognized as jus cogens, meaning they are of great importance demanding protection, and by the principle of punishment, the punishment for such crimes ranks highest in international hierarchy of punishment for crimes so as to protect the victims and give them justice. In the International Criminal Tribunal for Yugoslovia (ICTY), a similar approach was adopted in Prosecutor v. Anto. The tribunal concluded that anything that will undermine the principle of jus congens of international law would not be accorded international legal recognition.

There has been argument by states that article 6(5) of the Additional Protocol to Convention on Non-Applicability of Limitation allows amnesty for international crimes but like Nwankwo, (2022); Ugwaka and Igbokwe (2020) viewed, to think on this direction will mean that article 6(5) of the Protocol would no doubt be inconsistent with the main objective of the protocol which is not to allow amnesty to bar prosecution for such grave atrocities. According to him, the purpose of article 6(5) of the Protocol is to encourage amnesty for those detained or punished for merely participating in hostilities and not to provide amnesty for those who violated international humanitarian law (Geneva Convention, 1949).

The truth remains that though international law places obligations on state parties to prosecute

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offenders who commit heinous crimes, none of these treaties except the 1977 Additional Protocol 11 to the Geneva Convention explicitly or expressly discourage the offering of any form of amnesty (Promotion of National Unity and Reconciliation Act of 1995). Thus, though international laws such as treaties and conventions places obligation on state parties to prosecute, they have not expressly prohibited or barred amnesty for such crimes. The only thing there is that state parties are called upon to give effect to the prosecution of their perpetrators. What this means in our consider reason is that international law as stated in these treaties and conventions, allows grant of amnesties by states in some instances to accommodate peculiar circumstances which threaten the peace and stability of a nation like where an attempt to handle the situation otherwise might prove disastrous to the economic and political survival of the state or could lead to perpetration of more crimes against humanity and other related crimes by enacting laws as is the case of South Africa.

We agree totally with Naqvi and Azinge that if all amnesties are to be considered as invalid and not accorded recognition in international law, an important tool to prevent and end civil wars and aid the process of reconciliation in a particular state may be severely hampered at the end this might be a threat to peace and security (*NIALS Journal of Constitutional Law, 1999*). The provisions of article 16 of the Rome Statute and its application lends support to this argument to the effect that unlimited prosecution of international crimes may lead to threat to peace and security and in such cases, domestic amnesty backed by enacted law may be recognized. Article 16 of the Statute of Rome empowers the Security Council to request that proceedings before the International Criminal Court be deferred for a period of 12 months. This will allow international community and the court to recognize domestic amnesty and refrain from prosecution for peace.

Citing the case of Azapo v. President of Republic of South Africa, Abonyi (2023), noted that the court held that amnesty was permitted because without it, there will be no incentive for the offenders to disclose the truth as to what happened. The aforementioned South African example is a permissible case of domestic amnesty allowed by international law. Looking at Nigeria and the crisis in Niger Delta, many heinous crimes has been committed as a result of government's inactions and omissions in addressing the environmental problems caused by oil activities in the region. Through the amnesty introduced by government is to address the tension and restore peace the amnesty is without legal backing or reinforced by ant law. Because of this can it be legally recognized within Nigeria or within the purview of international law? The answer to our question is No.

ii Amnesty in the Niger-Delta and other Jurisdictions

Amnesty is an official action excusing criminal liability in favour of persons for the crimes they have committed. As Azubuike, (2024) and Okoye (2021) reasoned, one must mention that here in Nigeria, amnesty is made to operate like pardon by way of prerogative of mercy but they are clearly distinct concepts in law. Amnesty has been offered in Nigeria in two cases. The first was in 2009 when the Federal Government of Nigeria approved an offer of unconditional amnesty for members of the Niger-Delta militants and the second was the offer of amnesty to the dreaded Boko Harma Islamist set in 2013.

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In each of the two sets of amnesty, the Federal government of Nigeria did constitute a presidential committee to that effect.

The amnesty programme for the Niger Delta militants was the brain child of the presidential Technical Committee on Niger-Delta Inaugurated on September 2008 by late President Umaru Musa Yar'Adua (Abonyi, 2014). It is interesting to state here that our concern is more in the implementation of amnesty programme for the Niger-Delta militants as the members of the Boko Harma sect rejected the amnesty offered to them by the federal government and the programme did not go beyond inauguration of its panel. However, the amnesty programme of the federal government for the Niger-Delta militants became effective on the 6th of August 2009 after the inauguration of the technical – committee on amnesty for Niger-Delta militants.

Nigeria's amnesty programme for the Niger-Delta militants has been described as a homegrown Demobilization, Disarmament and Rehabilitations programme by the initiators and implementers (Ukiwo, 2015). The appellation indicated a distinction between the programme and contemporaneous Demobilization, Disarmament and Rehabilitations programmes implemented under the auspices of United Nations and regional organizations. However, the appellation shows the resolve of the Nigerian state to affirm its capacity to address internal security challenges. The conscious effort to affirm the principle of non-interference was partly in response to the advocacy of social movements in the region for an internationally mediated settlement. Nigeria in this respect was positioning herself as a prominent country in Africa. She also wants the world know that it can handle internal security challenges.

From the above, it is clear that the kind of amnesty that Nigeria state adopted is intended to first restore the internal security challenge in the country and ensure normalcy or stability in the polity. The Nigerian state understood, in our view, the grave consequences the Niger-Delta crisis will be for her especially in the areas of the economy, politics and governance. Thus, the government instead of taking actions that will exacerbate the violence took steps to maintain and sustain peace building, hence the amnesty programme.

The progamme in our view is a political tool to achieve national peace and tranquility in the region. Therefore, the amnesty granted to Niger-Delta militants is far from being the same with pardon or prerogative of mercy which is allowed by the Constitution of Federal Republic of Nigeria (CFRN, 1999 Sect. 175 & 212). The amnesty application and implementation in Nigeria is akin to the amnesty idea in the Philippines, which is targeted at ensuring and bringing lasting peace in the state instead of maintaining peace by suppression of opposition (Muyot, n.d). The amnesty programme of the Federal government which was more or less based on the proclamation by the president without any backing of a legislative action was a decision taken by Nigeria without international support and was based on nationalist and anti-imperialist sentiments. According to Abonyi, (2020), the sentiments were borne out of the country's struggle against colonialism and the perceived duplicitous roles played by the big powers during the civil war which made successive Nigerian governments and her public to be wary of international intervention in her internal affairs or security challenges.

In fact, this was further demonstrated by the country's massive investments in regional stability evidenced by her unequalled support for Economics

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Corporation of West African States, as well as, peace keeping missions in Liberia, Sierra Leone which stemmed up from her foreign policy objective of keeping the big powers at bay from the neighborhood.

From the above review, it is clear that the Nigerian model of the concept of amnesty is such that it is devoid of any international involvement or reliance on any programme of such a nature by any other state of the world. It is trite to say that the Nigerian idea of amnesty is one that has indigenous character not tainted, in any form, by international trait. It is a programme intended by the government of Nigeria to address economic, social and cultural problem located in the Niger-Delta region: a problem if not controlled or checked properly will destabilize the peace, unity and survival of the country.

The historical experience of managing post-conflict, and building process learnt from Nigerian civil war inspired her actors to insist on instituting the amnesty programme without recourse to any external intervention (Muyot, n.d). When the civil war ended in early 1970s, Nigerian was, keen since then on, to limit international intervention which could have corrosive effects on her legitimacy. The implementation of the amnesty programme was considered another opportunity to further the nation building process and revive her sagging legitimacy as a state. By being at the driver's seat of the amnesty programme, the Nigerian state hope to regain the trust and confidence of groups in the Niger-Delta region that had started seeking succor elsewhere.

The Federal government, in our view, structured its own amnesty in the form of peace building process instead of engaging in maintenance or sustenance of violence, hence, the militants voluntarily dropped their weapons as a condition for participating in amnesty programe. Those who volunteered to embrace the programme were given assurance that they will not be prosecuted but will be empowered so that they become useful to themselves and to the society. However, what happened which led to the lingering of the crisis and what appears to be the emergence of a more ferocious militant activities is still uncertain in our view and must be addressed.

It is interesting that in deciding to put the amnesty progamme in place, the federal government of Nigeria was motivated by its ability to retain the fiscal and physical capacity to implement the programme without seeking for any external support overseas (Muyot, n.d). Unlike other states where civil wars and hostilities have created cash-strapped governments, without dependable revenue sources, the Nigeria state still depend on domestic revenue to run the programme. This view may no longer be the case since oil revenue has crashed, as a result of the latest crisis in the region allegedly carried out by Niger-Delta Avengers. This has led to low oil production in the region as many multi-national oil corporations have ceased production.

Though the amnesty programme is a local initiative, the United Nations, through the United Nations Development Programme (UNDP), provided some technical support for the different consultations that lead to the proclamation of the amnesty. The moment the amnesty was proclaimed by federal government, United Nations Development Programme supported the preparation of the strategic and operational plan (SOP) for the Disarmament, Demobilization and Reintegration; which defined the vision and operations of the amnesty programme. The United Nations Development Programme also supported the office of the Special Assistant to the President on Niger-Delta affairs charged with the implementation of the amnesty programme. At the

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request of Amnesty implementation office, the United Nations Development Programme provided technical experts to support the programme in the area of demobilization and reintegration. All these support in our view cannot be overlooked. Before the amnesty programme commenced in Nigeria for the Niger-Delta region, the EU, US, UK and multi-lateral institutions like the World Bank and United Nations among other international partners were visible actors in stabilization and development efforts in the region. Estimates of funding commitments by the major development partners in the region is put around $3 billion. This even tends to confirm in our opinion that Nigeria prior to the amnesty have been in receipt of funding towards the development of the region. Unfortunately, there is nothing to show for such help in terms of physical development of the region. In effect, there is no provision or facilities that promote healthy living and improved life. Possibly, this could be as a result of the fact that the focus of international partners was improvement of governance and capacity of institutions and human resources to ensure sustainable development in the region.

Although, it may seem that the programme has led to the training of some indigenes of the region, the number trained is so minimal that it cannot, in any way, be compared with the number of people who are jobless within the region. This is why the programme is perceived to have performed poorly in terms of delivery of human security in the region (Muyot, n.d). Analysis suggest that this is why cases of piracy, oil theft, arms proliferation and kidnapping have increased in the region even with the introduction of the amnesty programme. There is also the concern that the programme has promoted the culture of violence. This is because rewarding the perpetrators of violence has contributed to the distortion of socialization processes in the region and beyond. Also, the privileging of the ex-militants is perceived to have introduced new systems of inequalities, thus some ex-militants are becoming extremely rich through amnesty patronage, for example Alhaji Asari Dokubo, an ex-militant who is believed to have made his fortune through the programme. Another is High Chief Government Ekpemupolo alias Tompolo who is now acclaimed to be stupendously rich and respected.

A careful consideration of the amnesty programme and its implementation so far in the Niger-Delta region shows clearly the existence of operational deficiencies arising notably from inability to plan for the employment and reintegration of graduates of the programme. If the federal government purport to train the indigenes of the region and does not provide opportunity for their employment after training, the whole exercise amounts to nothing but a waste of resources. In the absence of this, the graduates can still and may as well go back to what they know best militancy.

b. Amnesty in other Jurisdictions: In considering the law, as it relates to amnesty and its application in Nigeria, it will be necessary to look at the situation with respect to other jurisdictions. In view of this, a comparative review of the concept will be made in respect of other jurisdictions such as (i) United States (ii) United Kingdom and (iii) South Africa

The choice of the above three countries is to give a balanced position on the concept, bearing in mind that, the three states above are key players in Organization of American States, the European league and the African Union respectively (Abonyi, 2014).

i. Amnesty in the United States: Amnesty was first offered in the United States by President George

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Washington in 1795 to the participants in the "Whiskey Rebellion" which was a series of riots caused by an unpopular excise tax on liquor. It was a conditional amnesty which allowed the United States government to forget the crimes of those involved in exchange of their signature on an oath of loyalty to the United States. Other amnesty in the history of United States was granted on account of crimes committed during the Vietnam wars. What is important in the amnesty granted by United State government is whether the persons involved in rebellion or those who committed crimes during the war is unconditionally forgave the perpetrators? It seems from the application of the amnesty in the United States that the amnesty, more or less, is an indirect way of coercing the perpetrators of the crimes to sign and undertake that they will not in the future or anytime thereafter go against the state by committing such crime or similar crime again.

In the United States, study has shown that, there is no specific legislative or constitutional mention of amnesty. What the statement above suggest is that there is no legislative enactment by way of statute or legislation in the United States which expressly permitted amnesty or mentioned amnesty as a legal concept permissible under United Sates law nor is there any provision of her constitution prescribing or permitting amnesty of any kind as a concept. Hence, amnesty as a concept is ambiguous in United States' law.

The legal justification of amnesty in United States is drawn from the provisions of article 2 section 2 of the United States constitution which states that: The President of the United States shall have powers to grant reprieves and pardons for offences against the United States except in the cases of impeachment (Constitution of the United States, 8th Amendment). The purport of article 2 above is that the president of the states has the power to make proclamation forgiving certain persons who have committed crimes against the country and such reprieve or pardon is not extended to cases of impeachment. Owing to the fact that there is no express provision in the United States law prescribing amnesty as earlier stated, there has been a vexing controversy as to the difference between amnesty and pardon in US legal history (CFRN, 1999 As Amended, 2011).

In theory, in the United States, amnesty is granted before prosecution takes place whereas pardon is granted most often after conviction and sentence or when trial is ongoing (Azubuike, (2024; Okoye, 2021). Even at that, there is still confusion because, President Gerald R Ford for example granted a pardon to President Richard M. Nixon before he was charged. So, in our view, the issue of whether amnesty is granted to bar prosecution and pardon granted after conviction in the United States is neither here nor there. If President Nixon was granted pardon before he was even arraigned, that means that it is clearly difficult to have a water tight distinction between the word amnesty and pardon in United States. Therefore, in our view, it is reasonable to support the acceptance by the courts in United States that the two words be used interchangeably.

In other nations, where amnesty is part of governance, the power to grant amnesty either lies with the legislative bodies or the executive headed by the president. In the United States, the power to grant amnesty lies with the executive (United States of America, 8th Amendment). However, there are some instances where the congress may initiate amnesty as part of a legislation as it was the case in the Immigration Reform and Control Act of 1986 that punished employers who knowingly hired illegal aliens in United States. The concerns voiced by

employers and immigrant community leaders made the Congress to make provision under the act for amnesty and also grant citizenship to illegal immigrants who had been residents for a specific period of time. Although from the views expressed about the Immigration Act of United States above, it seems that the Congress can grant amnesty. However, the United States Supreme Court has not arrived at any decision on which congress has the right to grant amnesty. Till date, most of the amnesties granted in the country have always been based on the pardoning powers vested on the president by the constitution of United States and no more. Usually, in the United States, power to grant amnesty is deemed to have been included in the pardoning powers of the president and necessarily take the form of a general pardon by virtue of presidential proclamations (Muyot, n.d). Any other amnesty granted by the congress is granted based on their powers generally to make laws or enact amnesty laws like that of the Immigration and Control Act.

An amnesty in favour of a class of people or persons accused of certain offences against the state is deemed to constitute an act of oblivion obliterating, not only, the penalty but the offence itself (Muyot, n.d). This was the effect of the amnesty proclamation issued in 1863 by US President Abraham Lincoln following the civil war and during the Vietnam conflict in 1970s in favour of those guilty of violating the Military Selective Service Act amidst opposition from different sections. The summary of the views, regarding the implementation and grant of amnesty in United States is that amnesty is not expressly provided for but granted pursuant to the deemed pardoning powers of the president and the general power of the congress to make law under the constitution.

ii. Amnesty in the United Kingdom: A notable amnesty in the United Kingdom was the one granted which restored Charles II of England but did not extend to those who had taken part in execution of their father. There is also the Prussian amnesty of August 10th 1840.

It is observed that in the United Kingdom, amnesties are granted either by the proclamations of the crown or by the parliament mainly to political criminals with specific exceptions. Thus, even though the crown and the parliament can grant amnesty, each of them reserves the right to extend amnesty to certain person or persons or to a group of persons as case may be, such as, the case of exclusion of amnesty for persons that killed their father.

A look at United States and United Kingdom presents a different instance in the application of amnesty law i.e., in the United States, amnesty is granted under the pardoning powers of the president and by congress in the exercise of its general powers of making laws. In the United Kingdom on the other hand, amnesty is done by proclamations of the crown and the parliament but granted with specific or limited exceptions. However, in the two jurisdictions, amnesty is usually for persons that have committed crime and may have been convicted or are being tried and not necessarily for those that are not being subjected to any form of prosecution.

It is also imperative that in United Kingdom amnesty is granted for specific reasons mainly to stabilize the polity, as well as, boost economic development (Ofozoba & Ofozoba, 2023; Anushiem, 2023). In a letter to the new Prime Minister, Theresa May, signed by over 30,000 persons cross the United Kingdom, it was contended that granting amnesty to illegal immigrants will legalize their stay and make them contribute their own quota to the development of the new independent United Kingdom. This is

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because amnesty will bring out illegal immigrants and inject them into the economy where they contribute to the tax system. In response, the Prime Minister said that the government which she leads will be driven not by the interest of the privileged few but promised to give more control over everyone's life in the country and insist that the illegal immigrants want to take up jobs to support themselves, their facilities and the national development but they are unable to do so because they are restricted in a multi-cultural country which the whole world look up to resident permit. The Prime Minister agreed that amnesty should be granted to the illegal migrants already in the country so that they can live a normal life and contribute substantially to national economy.

Amnesty for the illegal immigrants in the United Kingdom was before now not allowed but with the successful exit from the Council of Europe, the United Kingdom is charting a new course. Similarly, in United States, as we have seen, the congress enacted the Immigration and Control Act which permits the congress to grant certain amnesties for migrant workers. What must however be noted is the fact that in United kingdom, amnesty jurisprudence show that in that jurisdiction, amnesty refers to a legal measure that have the effect of: (a) prospectively barring criminal prosecution and in some cases civil action against certain individuals or categories of individuals in respect of specific criminal conduct committed before adoption of the amnesty, or (b) retroactively nullifying legal liability previously established and (c) amnesty do not prevent legal liability for conduct that has not yet taken place (UN Documents, 2009).

iii. Amnesty in South Africa: South Africa's democracy was founded on an agreement between the National Party is apartheid regime and the African National Congress. This was based on a conditional amnesty (Dugard, 1999). According to scholar Priscilia Hayner and confirmed by John Dugard, prosecution for heinous crimes is rare in South-Africa after the Truth Commission Report even though the identity of the perpetrators is known.

In some states, there are amnesty laws passed explicitly to prevent the trial of criminals while in other circumstances there are defacto amnesty laws where prosecutions are seriously not considered. Though the Truth Commission is a competing mechanism for dealing with crimes of the past in South-Africa, it cannot grant a blanket or unconditional amnesty to a criminal without unraveling the truth as to what happened. Therefore, in our opinion what exist in South-Africa is either that a person is not exempted from prosecution or the person is granted unconditional amnesty but accompanied by a truth commission, meaning that he must be made to reveal the truth of what really happened before he can be let go. Without doubt, each of the two options above has its merits. While prosecution emphasizes the right to justice and society's demand for retribution, the Truth Commission seeks to satisfy the right to know and understand the past and, in that way, ensures reconciliation instead of retribution (Abonyi, 2013). The question still remains: which one out of the above two options will heal a divided society? This is still a controversial question. Our response to the question is that it does appear that while the international opinion increasingly demands prosecution and justice, domestic opinion has other priorities like reconciliation in South-Africa. In order to dissect the controversy, one has to read and appreciate the eloquent judgment of South Africa's Chief Justice, Ismail Mahomed on the challenge to the Constitutionality of South Africa's amnesty

legislation. According to him in the case of Azapo v. President of the Republic of South Africa (SASC, 1996). The South-Africa society prefers truth to prosecution because:

> Most of the acts of brutality and torture which have taken place have occurred during an era in which neither the law which permitted the incarceration of persons or the investigation of crimes nor the methods and culture informed such investigation were easily open to public investigation, verification and correction. Much of what happened in this period is shrouded in secrecy and is not easily capable of objective demonstration and proof. Loved ones disappeared, sometime mysteriously and most of them no longer survived to tell their tales. Secrecy and authoritarianism have concealed the truth in little crevice of obscurity in our history. Records are not easily accessible or people are unwilling. All that often effectively remains is the truth of wounded memories of loved ones sharing instinctive suspicious, deep and traumatizing to the survivors but otherwise incapable of translating themselves into objective and corroborative evidence, which could survive the rigors of the law. The promotion of National Unity and Reconciliation Act seeks to address the massive problem by encouraging these survivors and the dependents of the tortured and the wounded, the maimed and the dead to unburden their grief publicly to receive collective recognition of a new nation that were wronged and crucially to help them discover what did in truth happen to their loved ones where and under whose responsibility. The truth which the victims and their families need to know in the circumstances is for the perpetrators to be known. What is the incentive for them to disclose the whole truth of what happened? The incentive is the fact that they will

> not be punished which ordinarily they deserve. Without the incentive, they cannot disclose the truth and hence the truth which the victims desire will never come.

In our considered view, the reasoning of the Chief Justice in the above judgment is well thought and is accepted. The option of Truth Commission than prosecution has a lot of advantages which outweigh the advantages for the option of prosecution. Of the most important advantages of the truth commission is the fact that the perpetrators reveal the truth of what happened and the victims and their families including those that died and those that survived will know the real truth of what happened while the perpetrators are then allowed and excused from being punished for all that they have done. This indeed will bring about total national reconciliation in a divided society.

Although international opinion may not favour amnesty in form of Truth Commission mainly because western activists and advocates of prosecution never accept the circumstances in the society that chooses amnesty instead of prosecution, moreover the argument that wounds are better healed at home in local or national courts is not appreciated by them, hence they support foreign courts and international tribunals. (Dugard, 1999).

A comparism of amnesty law in Nigeria, United States, United Kingdom with that of South Africa shows that the Truth Commission in South Africa has worked better than prosecution. Unlike in the United States and the United Kingdom, the Truth Commission, as an option, is not strictly the making of the executive but rather is pioneered, supported and backed by an Act of the parliament known as the Promotion of National Unity and Reconciliation Act, 1996 which established the South African Truth and Reconciliation Commission (TRC). In case where the security and national tranquility is threatened, our view is that a solution must be provided to reconcile the competing needs and interest of the territorial state and the international community.

In practice, the suggestion above means that an attempt must be made to provide the legitimization of amnesty and its recognition by not only the national courts but also foreign or international courts. Obviously, we are not saying that all amnesty laws must be recognized abroad as was the case of blanket or unconditional amnesty granted by Pinochet and his regime to themselves. This is because that cannot enjoy international recognition. In this regard a conditional amnesty accompanied by a thorough investigation of a truth and reconciliation commission, as in South Africa, is more likely to be accepted nationally and internationally. Therefore, a truth commission is more likely to reconcile international demand for prosecution of crimes that are heinous with the national appeal for political compromise.

The Reports of the Chilean National Commission on Truth and Reconciliation 1991 and the South Africa Truth and Reconciliation Commission 1998 have much in common. This is not surprising as the South African process was inspired by and modeled on that of the later. Both sought to use their reports to provide a full picture of the gross violations of human rights that occurred in their countries (Truth and Reconciliation Commission Report of South Africa, 1995). It is observed that though the truth commissions in Chile and the South Africa were intended to bring out the truth and offer national reconciliation, there were differences

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between the two commissions and what they stood for. The differences are:

1. The Chilean Commission confined its investigations to the killings while the South African Commission investigated all gross human rights violations involving killings, abduction, torture put in another sense, the Chilean model did not investigate torture where the victim survived. This in our opinion not acceptable.
2. The Chilean Commission had no *supeona* powers to compel witnesses to come forward and testify which meant that security forces had powers to refuse to another before it. The South-African Commission on the other had power to *supeona* witnesses.
3. The Chilean Commission had no powers to name the perpetrators unlike their South African counterpart that had such powers. What it means is that the Chilean Commission is clothed with secrecy and the leaders used it to cover themselves and merely use it to satisfy the yearnings of the people and international community that they have done something over the violations and crimes.

Due to the powers to mention perpetrators of the crimes by the South African Commission, it was found out that the former president P.W. Botha facilitated gross human rights violations and was held accountable. The same was the findings that P.W. Botha, Magnus Malan (Minister of Defence) and Chief Mangosuthu Buthelia were accountable for the gross human rights violations committed by para military units in Kwazulu and that Winnie Madikizela-Mandela was accountable for the acts of murder, torture and assaults committed by the Mandella Football Club (South African Truth and Reconciliation Commission Report).

4. In Chile, the National Commission operated in the shadow of its former dictator, Augsto Pinochet who remained Commander in Chief of the Army. No such threat existed in South Africa and many members of the security forces testified before the commission.
5. The most important difference related to amnesty is that the Chilean National Commission was bound by the 1978 amnesty decree in which the armed forces under Pinochet had given themselves immunity from prosecution for crimes committed between 1973 and 1978. Thus, the Commission had no legal competence to pronounce on matters of amnesty. Thus, in our opinion, the Chilean kind of amnesty is not an acceptable form of amnesty but that of South-Africa is a shining example and jewel that should not only be recognized nationally but applauded by the international community as a unique model.

The Nigeria model of amnesty is still questionable in the sense that whereas, it still lacks a legal character, it is doubtable whether it is akin in nature to any model practiced anywhere in the world. This is because, apart from the fact that none of the militants, who are beneficiaries in the amnesty programme, has been arraigned or tried let alone found guilty, the government has not really taken any bold national step to find the real truth about what is the situation and what should be done in the region to address the crisis. This is contrary to the situation in other jurisdictions where amnesty is granted either by proclamation of the president, the crown, prime minister or the parliament but with legal support i.e.,

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an enacted legislation or law. It is such enactment that provides the basis and mechanism for the implementation of an amnesty because any implementation outside the law or act prescribing the amnesty will be void and a nullity.

Design and Implementation of Amnesty in the Niger-Delta Region by Federal Government.

The oil-rich Niger-Delta region of Nigeria has for many years been a site of environmental degradation, violence, vandalism and chaos. The exploration and exploitation of oil mineral resources is at the root of this problem. Conflicts between the region's residents and the federal government of Nigeria started as soon as multi national's oil companies began settling down for operations under the watch of federal governments that do not care (Duru, et al., 2012).

The problem of the region, in our view, revolves around oil exploration, which has led to environmental degradation arising from pollution, oil spills and gas flares. These does not only destroy people's lands and livelihood; it also shortens their life expectancy. All these resulted in unrest and gradually deteriorated to armed struggle which have no doubt obstructed local and national socio-economic development. It is also a fact that the over 50 years' oil exploration and exploitation activities in the Niger-Delta region has resulted in excruciating and brutalizing poverty, unemployment, diseases and health hazards which has caused deaths among the people living in the region.

As Ofozoba and Ofozoba (2023); Anushiem, (2023) had argued, the major culprits in these ugly incidents are the multinational corporations. In our view, the multinational corporations cannot be held as the only culprits rather the federal government that granted them oil licenses should also be seen as the principal culprit.

From one community to the other, vast acres of farmlands are devastated by oil spills, aquatic lives are destroyed and the very existence of the people is threatened by the toxic effects of gas flares in addition to the cumulative effects of the disasters. Thus, threatened by decades of operations of oil companies and abandoned by successive federal governments, the resulting high level of socio-economic underdevelopment, manifesting in absence of infrastructural facilities and poor standards of living, the region became enveloped by a feeling of neglect, denial and frustration (Duru et al., 2012). Consequently, resistant organizations emerged since 1990's from various ethnic nationalities in the region to confront the multinational oil corporations and the Nigerian State.

The restiveness which started on a mild note, as pockets of peaceful demonstrations, has degenerated into a state of militancy, leading to all manner of crimes including kidnapping, hostage taking, and destruction and bombing of installations, disruption of socio-economic activities and unparallel violence this has turned the region into a hot spot. It also made the people vulnerable and prone to violence at the least provocation.[228] by 1998 and thereafter, the region had become lawless zone with restive youths and daring militants declaring full scale war against the operators of oil industry and the government of Nigeria. Faced with the above problems, our considered view, is that a good government that believes in peace and stability must without delay workout measures and

strategies to address the root causes of the problem instead of merely granting an ill-potent, and ill-motivated amnesty.

Our view which is also corroborated by Emmanuel Duru (2012), is that the approach adopted by successive federal governments have failed to address the fundamental issues at stake in the region which include among other things the environmental degradation as a result of oil exploration activities, issues of fiscal federalism, minority rights, resource control and allocation of revenue as well as dearth of socio-economic facilities that promote a healthy living.

In 1995, the federal government led by late General Abacha responded to the age-long agitation of the region started by Isaac Adaka Boro and continued by Kenule Saro Wiwa struck and killed Kenule Beeson Saro Wiwa (a seasoned writer and renowned environmental right activist) and his eight Ogoni compatriots for demanding that the Ogoni people be compensated by Shell Petroleum for environmental degradation and economic sabotage. This approach never solved the issues behind the crisis.

In November 20, 1999, President Obasanjo deployed Nigerian troops to Odi, a predominantly Ijaw town in Bayelsa State, the military carried out attacks on innocent civilians on the orders of the president, killing men, women and children. The attack which has come to be known as "Odi Massacre" is in our view unreasonable notwithstanding and whatever explanations the federal authorities may give, the truth still remains that the attack comes within the context of the ongoing conflict and crisis in Niger-Delta over the indigenous rights to oil resource and environmental protection which the people have demanded for years without receiving attention. The government could have used other options apart from the one it employed like setting up effective developmental approaches, not necessarily a repetition of existing and an effective one such as the defunct Oil Mineral Producing Commission (OMPADEC). The failure of the federal government to do so is probably because the government and her agents could not define and understand what constitutes underdevelopment that is necessary to address the problem in the region.

As argued by Nwakoby and Iloka (2025); Osegbue (2021), the understanding of what constitute development and underdevelopment and related issue by government will help in properly appraising the roles of these agencies in the region and why they have failed over the years to bail the region out of its persistent and endemic socio-economic, infrastructural and environmental crisis (Onyekwelu (2024); Adinna and Onyekwelu, (2021).

From the above, our opinion is that, it is either that the Nigerian state and those who acted on its behalf have not acknowledged or have criminally refused to acknowledge that the root cause of the crisis in Niger-Delta is oil extraction and the failure by the Nigerian state to use the oil revenue to promote healthy life in the region. Coupled with above, insensitivity of the operators of multinational oil companies also contributed to the fueling of the crisis.

It seems in our view that it was when the government of late President Umaru Musa Yar'Adua discovered that any development policy in the region that fails to address the issue of oil exploration and its devastating and excruciating effects on the people will be effort

in futility that is inaugurate the amnesty schemes which was aimed at resolving and managing the crisis in the region. Indeed, the central objective of the programme is that the Federal Government will grant amnesty to any militant willing to come out of the regions' million-square mile network of oil-laden creeks and swamps, turn in his weapon and accept a US$13 daily stipend in exchange of renouncing violence. The amnesty programme by the government was to last between August to October 2009, it is estimated that within the said period between 10,000 to 25,000 militants surrendered their weapons (New York times, 2009). Apart from the daily payments for accepting the amnesty offer and surrendering of weapons, the militants are to undergo retraining and re-orientation programme within and outside Nigeria to prepare them for full integration into the larger Nigeria society. This was confirmed by Mbalis where he said that the presidential technical committee on Amnesty Programme recommended among other things that the amnesty for the militants shall proceed from disarmament, through demobilization, to reintegration into the Nigerian Society otherwise called "Disarmament, Demobilization and Reintegration" (Academic Research International, 2012).

The disarmament programme is a comprehensive way of recovering arms, ammunitions, explosives and allied equipment and preventing their re-circulation in the society. At the end of the disarmament period, the following arms were recovered (Abonyi, 2014). (a) 2,760 guns of different types; (b) 287,445 rounds of ammunitions; (c) 18-gun boats; (d) 763 explosives and (e) 1,090 dynamic caps

The demobilization programme came shortly after disarmament and is involves registration and gathering of necessary information from members of the militant groups that voluntarily surrendered arms, ammunitions and explosives. Camps were opened and members of the group were admitted and documented with requisite identity cards and then counseling and training on non-violence commenced with combined teams of experts, medical, psychological and legal personnel.

The final phase is the re-integration stage. In this phase, the group that voluntarily surrendered arms were integrated into the social and economic spheres of the society. This phase was coordinated through a design process of partnership with government institutions and participation of stakeholders. It was intended to make the group not only economically independent but to prepare their talents and potentials for more lucrative economic ends. In this phase, the ex-militants were placed in different schools within and outside Nigeria where they are trained in vocational and non-vocational courses. After that they were demobilized and integrated into the society.

The details of the programme, as at deadline, given by Yar'Adua's led government is shown in the annexed table (Omokhoa, 2015). From the said table, it is clear that at the end of the first phase, about 20,049 male ex-militants and 33 females registered. In the re-integration phase, ex-militants were engaged in various skill acquisition programme, some were in vocational training while others were in educational training programme. The breakdown is shown in the table referred.

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From the report above, more male militants were demobilized while most of those reintegrated went into educational training. However, our candid view is that the number of ex-militants that were demobilized and those re-integrated to the society are far less than the number expected considering the number widely perceived to be in the militant activities.

While it must be acknowledged that the amnesty programme remains one of the realistic efforts by any government in Nigeria to address and ease the unrest in the Niger-Delta region, its constitutional character notwithstanding, the progamme has come under criticisms for not seeking permanent solution to the underlying problems (Duru et al., 2012). While some have criticized the programme for doing "little or nothing to address the core causes of militancy and criminality that have plagued the Niger-Delta region for decades, such as lack of education, jobs and basic services, others question the viability of the Amnesty programme, as a crisis management strategy, when the conditions and terms of the amnesty were decided by the government without recourse or consultation with the militant groups (BBC News, 2009).

In an editorial titled "Amnesty: Is this the end of militancy?" it was asserted by the Vanguard Newspapers of Tuesday October 13, 2009 that government has refused to address the root cause of the militancy. The programme failed because it did not address the root causes of the crisis in the Niger-Delta. The Vanguard editorial concluded that unless root causes are addressed, amnesty will be a mere ruse or an exercise in futility.

Notwithstanding the amnesty programme, the environmental and ecological devastation of the Niger-Delta region by the multinational oil companies remain unabated and unresolved. The militancy has not abated but has escalated with the groups sustaining and carrying on attacks on strategic places. A good example was the. October 1, 2010 bombs at the Eagle Square, Abuja. The Movement for Emancipation of Niger-Delta (MEND) was accused of that bombing, while the recent bombing of installations and terminals was carried out by the Niger –Delta Avengers (NDA).

In summary, the amnesty programme failed owing to the following: (i) the inability of the programme to provide a permanent solution to the perennial problems in the region like environmental degradation, pollution, gas flaring and oil spillage which has destroyed traditional lands of the people; (ii) the failure of the programme to address the core causes of the militancy in the region which include lack of education, job opportunities, poverty, lack of basic services and amenities that make life worth living; (iii) the design of amnesty programme as a strategy for crisis management is very poor owing to the fact that the government did not consult the stakeholders groups when the terms and conditions of the programme was conceived.

Recommendations

It is recommended as follows:

1. The amnesty programme should be rejigged to make it people oriented and value driven.
2. More skill acquisition and training programme should be put in place towards

rehabilitation of militants who have laid down arms.

3. More durable solutions and support initiatives should be developed to help the youths and host communities.
4. MNC'S should increase or double their social responsibility efforts and programme and restore hope and happiness among the people.
5. Government, MNC'S and donor agencies should collaborate and partner together to raise money and use it to improve the welfare and well-being of the people.

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Article 4 of Convention on the Prevention and Punishment for the Crime of Genocide

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Article 50, 51 of Geneva Convention and Article 85 of Protocol Addition to the Geneva Convention.

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