

## APPRAISING THE CONSTITUTIONALITY AND JUSTIFICATION FOR THE USE OF AMNESTY IN TACKLING TERRORISM IN NIGERIA

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### ABSTRACT

*Violent agitations which have taken terror dimensions are now a major concern for both the Nigerian government as well as the international community. Initially, it was the agitators from the southern part of the country where crude oil is produced, and now, the 'Boko Haram' sect from the Northern part of the country. To seek out a lasting solution to the senseless killing, the Nigerian president recently set up a committee, to work out a modality for the amnesty for the 'Boko Haram' terrorist sect as it was done for the Niger-Delta militants in the past. The major thrust of this paper therefore, is to appraise the constitutionality and justification for the use of amnesty in tackling terrorism in Nigeria. In doing this, the Nigerian constitutional provisions that relate to pardon are interpreted, analysed and applied to the government action on the programme. From the analysis, the study discovers that, granting amnesty though justified but it is unconstitutional because the Nigerian president fails to satisfy the constitutional requirement for such programme. To make the programme constitutional, the paper recommends an amendment to the Nigerian constitution as regard prerogative of mercy to include amnesty or the president should approach the National Assembly to enact new law permitting him to grant amnesty as a way of tackling terrorism in Nigeria.*

*Keywords: Amnesty, Terrorism, 'Boko Haram', Constitutionality, Justification.*

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## INTRODUCTION

The act of terrorism is increasingly becoming widespread criminal violence in different countries of the world and each of them has its own unique way of perpetrating the act. While some terrorists take to bombing and hijacking of airlines, some make use of device such as air missiles<sup>1</sup>. In Nigeria, the common strategies used by terrorists are, kidnapping,<sup>2</sup> abduction<sup>3</sup>, bombings of multinational oil pipelines installations,<sup>4</sup> churches<sup>5</sup>, destruction of property and government institutions<sup>6</sup>, killing of citizens,<sup>7</sup> attacking of media Houses<sup>8</sup> and Institutions of learning.<sup>9</sup>

<sup>1</sup> Abimbola J.O. and Adesote S.A., “Domestic Terrorism and ‘Boko Haram’ Insurgency in Nigeria, Issues and Trends: A Historical Discourse”, 4 (2012) *Journal of Arts and Contemporary Society*, pp. 11-29, at p.15.

<sup>2</sup> As it occurred on 9/2/2013 when *Boko Haram* sect kidnapped 7 French family and series of kidnapping carried out by the Movement for the Emancipation of Niger Delta between 2006 till today especially on 10/1/2006, 18/2/2006, 11/5/2006, 3/10/2006, 1/10/2007, 1/5/2007, 3/5/2007, 8/7/2007, 21/1/2009, 16/4/2009, 12/1/2012, 11/4/2012 where both foreigner and Nigerian alike were among the victims. For details, see, the Punch Correspondent report “Oil Vessel Bombed” the *Punch* (Nigeria), July 17, 2011 at p.4, see a similar report titled, “Bomb Blast Again”, the *Punch* (Nigeria), February 20, 2012, at pp.1,5, see also B. Leke, “Boko Haram, Ansaru Target Lagos, Others” *Punch* (Nigeria), February 23, 2013, at pp.1,5, Issa A. “Soldiers other killed in JTF Boko-Haram Clash”, *Guardian* (Nigeria), March 12, 2012, at p.2, Taiwo, A., “Boko Haram Storms Fertiliser Market for Bombs”, *Tribune* (Nigeria), January 3, 2012, at p.4, and J. Duku “Boko-Haram Kills 7 students, Two Teachers” *The Nation* (Nigeria), June 18, 2013, at pp.1,4,60. Similarly, see, “Boko-Haram beheaded Informant”, at <<http://pmnewsnigeria.com/2013/03/06/boko-haram-beheaded-informant>> (Last visited on June 6, 2013), see also, “Boko-Haram Posts Video of Kidnapped French Family” at <<http://pmnewsnigeria.com/2013/02/25/boko-haram-posts-video-of-kidnapped-french-family>> (Last visited on June 6, 2013), Wikipedia “Boko-Haram” at <[http://en.wikipedia.org/wiki/Boko\\_Haram](http://en.wikipedia.org/wiki/Boko_Haram)> (Last visited on June 6, 2013).

<sup>3</sup> On 8/3/2012 An Halian, and a Briton who were expatriate staff of Stabilim Visioni Construction firm were abducted by *Boko Haram* splinter Group JAMBS and were later killed, the Movement for the Emancipation of Niger Delta also carried out similar act on 17 and 20/12/2012 .

<sup>4</sup> The Movement for the Emancipation of Niger Delta bombed an oil pipe lay barge LB300 on 25/5/2007 and on the 15/6/2013, bombed fuel tankers in Federal Capital Territory, Abuja.

<sup>5</sup> Bombing of St. Theresa’s Catholic Church, Mandala on 25/12/2011 where close to 50 people died, Bombing of Church of Christ in Nigeria Jos where 2 died and

Terrorists' attacks have resulted in the killings of thousands of innocent Nigerians as well as foreigners and it has compounded the already bad economy of the country. Ethnic rancour, religious conflicts and other acts of terrorism were manifested in Nigeria. Today, increasing violence is becoming a characteristics hallmark of group relations in the country<sup>10</sup> and terrorism now contributes to insecurity and high level of criminality in Nigeria.

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over 38 were injured on 26/2/2012, bomb blast near the Christ Embassy Church Suleja on 19/2/2012, bombing of the Military base church where 11 people died on 26/12/2012, recently, on 16/6/2013, despite the state of emergency declared in Borno, Adamawa and Yobe 4 churches were attacked by *Boko Haram* sect in Borno state and a reverend father was killed on 16/6/2013

- <sup>6</sup> Attacks on police stations in Bauchi on 26/7/09, 1/4/2011, Bauchi Prison on 7/9/2010, Bombing of police station in Maiduguri on 11/10/2010, 7/6/2011, Bombing of Poling Centre in Maiduguri on 9/4/2011, Attack on prison in Yola on 22/4/2011, Army Barrack on 29/5/2011, Bombing of Police Headquarters Abuja 16/6/2011, Bombing of UN office in Abuja where about 34 people died on 16/8/2011, Army Headquarters, Kaduna on 8/2/2012, Koton Karfi prison on 15/2/2012.
- <sup>7</sup> *Boko- Haram* attack in Jos killing 8 people on 24/12/2010, another attack on Christmas eve in Jos, attack on mammy market Abuja on 31/12/2010, Bomb explosion in Maiduguri on 24/4/2011, Killing at a joint bar in Maiduguri on 26/6/2011, Bomb explosion in Jalingo on 30/4/2012, Killing of Brother to Shehu of Bornu on 31/5/2011, bomb explosion killed 9 and injured 3 in kano in December, 2012 and recently the killing of 12 police men by the Movement for the Emancipation of Niger Delta by along Azuzuama waterways in southern Ijaw Bayelsa state in 5/4/2013. See, *Tribune* (Nigeria), December 4, 2012, at pp. 4, 12 and *The Nation* (Nigeria), April 4, 2013, p.4
- <sup>8</sup> *This Day*, *Sun* and *Moment* Newspaper Houses attacked on 26/4/2012
- <sup>9</sup> Attack on Bayero University Kano on 29/4/2012 where students and lecturers were killed. 7 pupils and 2 teachers of Government Day Secondary School were killed in another attack by *Boko-Haram* sect on the 17/6/2013 in Maiduguri. See *The Nation* (Nigeria), June 18, 2013 at p.2. Similarly, 29 pupils of Government Secondary School, Mamudo, Yobe state were killed on June 6, 2013, see *Punch* (Nigeria), July 7, 2013, at p.2.
- <sup>10</sup> E., John, "Youth Violence and Democratic Governance in Nigeria 1999-2009", in Tella N.S *et.al.*, *Law and National, Security in the Fourth Republic* (eds.), Lapai, IBB University, 2010, pp. 133-153, at p. 133; A. Makwemoisa, "Youth Existence and the Conditions of Exclusion and Underdevelopment in Nigeria", in Udu Y. (ed.), *The Dialectics of Cultural Development: Special focus on Nigeria*, 4 (2002), *Journal of Cultural Studies*, No.1, pp. 117-135 at p.133