

LEGAL CONUNDRUM OF AMNESTY GRANT AS MECHANISM FOR COMBATING TERRORISM IN NIGERIA: SHARI'AH STANDPOINT

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ABSTRACT

Amnesty grant is one of the powers conferred on the President or the Governor as the case may be under the Nigerian constitution. The scope of amnesty grant covers pardoning of offenders before and after prosecutions. Nigerian government has over the year granted amnesties to offenders covering the foregoing. However, the legal conundrum cropped up with respect to amnesty granted prior to offenders' prosecution. The validity of the earlier actions remains questionable due to the constitutional inadequacy. This paper thus examines the legal conundrum of the amnesty grant as mechanism for combating terrorism in Nigeria from Shari'ah standpoint vide doctrinal method of legal research. The paper reveals that the Nigerian legal regime is adequate with respect to grant of amnesty to offenders after convictions. The grant of amnesty prior to prosecution remains a serious legal issue as a result of legislative inadequacy. The paper finds that such inadequacy is absent in the jurisprudence of Islamic law as the real focus of amnesty from Shari'ah standpoint is on that exercised in favour of the offender prior to prosecution upon the satisfaction of the requirements of repentance. Borrowing leaf from Shari'ah standpoint, amendment of the legal framework for amnesty grant in Nigeria is accordingly recommended to put an end to the legal conundrum.

Keywords: Legal Conundrum, Amnesty Grant, Terrorism, Nigeria, Shari'ah Stand point

1. Introduction

Post conflict resolution has occupied global debates in the recent time. It appears to be the lasting solution to surrendering of weapon after insurgency. Most governments have now decided to thread the part of amnesty grant to ensure everlasting peace after civil war. Nigeria government have utilized amnesty grant to both convicted and yet to be prosecuted offenders in the country in the name peace-keeping. The actions of the government have been linked with the power conferred on them by the constitution.

However, serious arguments have ensued regarding the previous actions of the government in the exercise of the power conferred on them by the law of the land. With respect to grant of amnesty to the convicts, there appears to be no legal conundrum. Where the issue lies is the grant of amnesty to offenders prior to conviction. In view of the arguments of the legal conundrum surrounding the application of the amnesty grant in Nigeria, this paper thus examines the amnesty grant from the Nigerian legal regime vis-à-vis Shari'ah standpoint.

2. Concept of Terrorism

The concept of terrorism remains a subject of definitional controversy as a result of difficulty in finding a universally acceptable definition for it. The word "terrorism" is etymologically from the word "terror" which emerged in the parlance of English language to qualify the actions of the French revolutionaries against their domestic enemies around 1793-1794.¹ The difficulty is attributable to the fact that the

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¹ Ziyanda S, 'Terrorism as Controversy: The Shifting Definition of Terrorism in State Politics' (2019) E-International Relations, 1. Available on: <https://www.e->

concept is a political concept which is usually regulated through the instrument of the criminal law of each state. Therefore, each sovereign state has its respective laws regulating terrorism which also define the concept according to the political interest of its law-makers. To some scholars, the concept is impossible to be defined universally because of the indefinite and varied means and methods through which a terrorist act can be committed.² One of these scholars is Walter Laqueur, who argued that an observer would only know that an act amounts to terrorism when s/he sees it.³

However, notwithstanding the difficulty in preferring a universally acceptable definition of the concept, there have been academic trials from scholars to define the concept according to their individual perspective. Of importance is the definition formulated by Alex Schmid, who employed questionnaire and mailed it to different respondents. He gathered from the responses, 109 different definitions from different respondents.⁴ In analyzing the definitions, he noted several key words or key definitional elements of terrorism which were used to proffer his definition which says:⁵

Terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group, or state actors, for idiosyncratic, criminal, or political reasons, whereby-in contrast to assassination-the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat-and-violence-based communication processes

[ir.info/2019/09/24/terrorism-as-controversy-the-shifting-definition-of-terrorism-in-state-politics/](https://www.ir.info/2019/09/24/terrorism-as-controversy-the-shifting-definition-of-terrorism-in-state-politics/) accessed on 25th March, 2023

² Weinberg L, Pedahzur A, and Hirsch-Hoeffler S, 'The Challenges of Conceptualizing Terrorism' (2004) 16(4) *Terrorism and Political Violence*, 777. Available on: <https://www.tandfonline.com/doi/pdf/10.1080/095465590899768> accessed on 27th March, 2023

³ Walter L, *Terrorism* (Little Brown, 1977) 5.

⁴ Alex P. S, 'The Response Problem as a Definition Problem' (1992) 4(4) *Western Responses to Terrorism* 7-8. Available on: <https://www.tandfonline.com/doi/abs/10.1080/09546559208427172?journalCode=ftpv20> accessed on 27th March, 2023

⁵ Albert J and others, *Political Terrorism* (NJ: Transaction Books, 1988) 28

between terrorist (organization), (imperiled) victims, and main target (audiences(s)), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought.

Terrorism has always been wrongly perceived as merely a political violence or as being synonymous to words like; murder, assassination, banditry and so on. The fact however is that, the intent or purpose behind an act of violence will determine whether it qualifies as terrorism or not.⁶ Also, it is the legitimacy or otherwise of an intent that helps determine when an act amounts to a terrorism act. Importantly, the concept is not left undefined notwithstanding the lack of universality. It is rather defined differently in different legal instruments. In the United Kingdom, terrorism is defined in her Terrorism Act 2000 as the use or threat of action which involves serious violence against a person or serious damage to property, or which is designed to seriously interfere with or disrupt an electronic system with the purpose of influencing the government, or intimidate the public or any section thereof, or with the purpose of advancing a political, religious or ideological cause.⁷ Section 83.01 of the Canadian Criminal Code 1985 also defines terrorism as:

...an act committed in whole or in part for a political, religious or ideological purpose, objective or cause, with the intention of intimidating the public...with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act.

In Nigeria, the word “terrorism” is not directly defined. However, an “act of terrorism” is defined in the Terrorism (Prevention and Prohibition) Act 2022. The Act defines an act

⁶ Richards A, ‘Conceptualizing Terrorism’ (2013) 12 <https://repository.ucl.ac.uk/download/1a516f29404d1a130c5bc2013079ccbad50a2c07704631b97a9c284957366121/524404/ConceptualizingTerrorismFinalROAR.pdf> accessed on 27th March, 2023.

⁷ UK Terrorism Act, 2000, section 1

of terrorism as “any act specified in section 2 of this Act”.⁸ Section 2(3) on the other hands provides that:

In this Act, “act of terrorism’ means an act willfully performed with the intention of furthering an ideology, whether political, religious, racial, or ethnic, and which—

(a) may seriously harm or damage a country or an international organization;

(b) unduly compels a government or an international organization to perform or abstain from performing any act;

(c) seriously intimidates a population;

(d) seriously destabilizes or destroys the fundamental political, constitutional, economic or social structures of a country or an international organization;

(e) influences a government or an international organization by intimidation or coercion;

(f) violates the provisions of any international treaty or resolution to which Nigeria is a party, subject to the provisions of section 12 of the Constitution of the Federal Republic of Nigeria, 1999; and

There is another paragraph (g) to the above section which is to the effect that an act of terrorism includes any act willfully performed with the intention of advancing an ideology, whether political, religious, racial or ethnic, and which involves, causes or results in murder, kidnapping, destruction of government or public facility, seizure of any means of public transportation or conveyance of goods, dealing illegally with weapons (including explosives), and so on.

Generally, terrorism is of different types which include; state terrorism, religious terrorism, dissident terrorism, ideological terrorism, and international terrorism. State terrorism is defined as deliberate targeting of individuals that the state ordinarily has the duty to protect as a way of invoking terror in a wider audience.⁹ It involves the government of

⁸ Terrorism (Prevention and Prohibition) Act 2022, section 99

⁹ Blakeley R, ‘State Terrorism in the Social Sciences: Theories, Methods and Concepts’ in Jackson R and Murphy E, and Poynting S (ed), *Contemporary State Terrorism: Theory and Practice* (Routledge, 2009) `15. Available on: <https://kar.kent.ac.uk/30159/1/State%20Terrorism%20in%20the%20Social%20Sciences.pdf> accessed on 27th March, 2023

state encouraging acts of terrorism against its own people. However, where political or religious violence is used as a strategy of achieving certain religious goals, it is referred to as religious terrorism.¹⁰ This form of terrorism is mostly influenced by religious extremism on the part of the adherents of a particular religion. A typical example of a religious terrorist group in Nigeria is Boko Haram. Dissident Terrorism also refers terrorism committed by non-state movements and groups against government's ethno-national groups, religious groups and other perceived enemies.¹¹

3. Historical Account of Terrorist Attacks in Nigeria

The history of terrorism and treason in Nigeria remains vague for academic discussion, however there are historical accounts of groups of individuals which were declared wanted by various traditional leaders for waging war or instigating violence against the people of their dynasty or their property in order to compel the dynasty to perform their political request. The tussle between the Afonja group of warriors and the then Alaafin of Oyo remains an apposite example to prove the existence of terrorism and treason during the pre-colonial era.¹² Moreso, some traditional kings made use of violence or threat of violence on their subjects for their larger political interest. In expressing the existence of terrorism in the pre-colonial era, Oyeniyi noted thus:¹³

Secret societies were involved in acts of terrorism like killing, looting, armed robbery, assassination,

¹⁰Royal B, 'Religious Terrorism' (1990) 131 https://www.sagepub.com/sites/default/files/upm-binaries/33557_6.pdf accessed on 27th March, 2023

¹¹Martin G, 'Types of Terrorism' in Martin G (ed.) *Developing Next-Generation Countermeasures for Homeland Security Threat Prevention* (IGI Global Publisher, 2017), 22

¹² Ayomide A, 'Aare Ona Kakanfo Afonja: The Rise and Fall of the Oyo Empire' (2022) <https://www.thehistoryville.com/aare-ona-kakanfo-afonja-oyo-empire/> accessed on 28th March, 2023

¹³ Oyeniyi B. O, 'A Historical Overview of Domestic Terrorism' in Wafula O and Botha A (ed.), *Domestic Terrorism in Africa: Defining, Addressing and Understanding its Impacts on Human Security* (Institute of Security Studies, Terrorism Studies & Research Program, 2007) 44; Eke C. C, 'History and Dynamics of Terrorism in Nigeria: Socio-Political Dimension' (2012) 1(11) *International Journal of Innovative Research & Development*, 423-424. Available on: <https://fmis.fulafia.edu.ng/download.php?filename=A0088-1188-f78ed1658a3f.pdf> accessed on 28th March, 2023

kidnapping, perversion of justice and so on. Most of them were also used by the local chiefs as agents of terrorism to eliminate their opponents and threaten oppositions...

Also, during the colonial administration in Nigeria, the concept of terrorism was still vague, although it has been argued that colonialism remains part of the major influencing elements of terrorism because its impacts is still felt till today.¹⁴ In fact, the act of colonialism itself is a terrorist act by the colonialists in conspiracy with the corrupt local chiefs to threaten and use violence against the people of Nigeria for the actualization of their political interest.¹⁵ Also, after the colonial government has been constituted as an authority, there were serious record of brutality, use of force and threats against the people of Nigeria in order to actualize their political desire of subjugation and exploitation. They rapaciously removed traditional rulers and installed their own colonial stooges in order to ease their colonial objectives through indirect rule system. Some of the kings removed are; King Jaja of Opobo, Nana Olomu of Itshekiri and so on.

The civil war has been argued to be the starting point of formal terrorism in Nigeria, notwithstanding the fact that the war was secession-oriented. The Biafra group was agitating for independence and right of self-determination through the use of political violence which endangered the lives of many and destroy their properties too.¹⁶ This is in line with the ongoing argument that separatism forms part of terrorism.¹⁷ This civil war led to the loss of one to three million

¹⁴ Jrajrafaa-Bestman D, 'The History of Terrorism in Nigeria: Examining the Relationship between Colonialism in Post Colonial Nigeria' (Texas Southern University ProQuest Dissertations Publishing, 2018) 196-119. Available on: <https://www.proquest.com/openview/a26ba470368d72eb57cfa0be6fc44c17/1?pq-origsite=gscholar&cbl=18750> accessed on 28th March, 2023

¹⁵ Oshita O. O, 'Domestic Terrorism in Africa: Ontology of an Old War in New Trenches' in Wafula O and Botha A (ed.) Domestic Terrorism in Africa: Defining, Addressing and Understanding its Impacts on Human Security (Institute of Security Studies, Terrorism Studies & Research Program, 2007), 27-30.

¹⁶ Elena P, 'Framing Separatism as Terrorism: Lessons from Kosovo' (2010) 33(5) Studies in Conflict and Terrorism, 12. Available on: <https://www.tandfonline.com/doi/full/10.1080/10576101003691564?scroll=top&needAccess=true&role=tab> accessed on 28th March, 2023

¹⁷ Ibid

Nigerians, apart from the destruction of properties.¹⁸ The consequence of civil war is the emergence of several pro-Biafran separatist groups like the Indigenous People of Biafra (IPOB), the Movement for the Actualization of the Sovereign State of Biafra (MASSOB) and the Biafra Zionist Federation. These groups have been declared by the Nigerian Government as terrorist groups, especially the IPOB.¹⁹ Even, the court has formally declared the IPOB as a terrorist group through the case of Attorney General of the Federation v. Indigenous People of Biafra.²⁰ Although there are arguments that the IPOB is just a separatist group that agitates for secession and right to self-determination, which is well protected at the international level and it is wrong to declare such agitation as terrorism.²¹

Another notable terrorism experienced in Nigeria is executed by some Niger Delta Militants whose grievance is that the government has neglected the entire Niger Delta (an oil-rich region) to environmental degradation, water pollution and oil spillage, notwithstanding the billions of barrels of oil that are extracted from their region for national economic growth.²² The militants therefore, in consequence, attack oil-producing facilities in their areas, including oil-companies through the use of ammunitions, explosives and other deadly weapons. Their aim is to pressurize the government to dance to their tune. The major militant groups in these areas are; Niger Delta People's Volunteer Force (NDPVF), Movement for the Emancipation of the Niger Delta (MEND), and Niger Delta Avengers (NDA).²³ The activities of these militant groups have subjected the nation into chaos to the extent it is rated as the third most terrorized countries in Africa after Somalia and

¹⁸ HistoryVille, 'The Nigerian Civil War (1967-1970)' (2022) <https://www.thehistoryville.com/nigerian-civil-war-2/> accessed on 28th March, 2023

¹⁹ Idris I, 'Nigerian Military Declares IPOB "Terrorist Organization"' Premium Times (September 15, 2017) <https://www.premiumtimesngr.com/news/headlines/2433357-nigerian-military-declares-ipob-terrorist-organisation.html> accessed on 28th March, 2023

²⁰ Suit No. FHC/ABJ/CS/871/2017

²¹ Zacchaeus A, 'Proscription of the Indigenous People of Biafra (IPOB) and the Politics of Terrorism in Nigeria' (2018) 158-154. See also; the OAU Convention on the Prevention and Combating of Terrorism 1999

²² Kimiebi I. E, 'Militancy in the Niger Delta and the Emergent Categories' (2011) 38(130) Review of African Political Economy, 637. Available at: <https://www.jstor.org/stable/23145870> accessed on 27th February, 2023

²³ *ibid*

Burkina Faso.²⁴ The militant acts of these groups have been economically estimated as costing Nigeria to lose 1.3 billion naira daily.²⁵

Another terrorist group that terrorizes the country is the Boko Haram Jihadist group. Boko Haram was initially formed by Late Mohammad Yusuf in 2002 in Borno state as an Islamic-sunni sect.²⁶ It is the claim of this terrorist group that their sect's objective is based on the Sunni Islamic philosophy that sees western education as sinful and obnoxious.²⁷ Also, their goal is to establish a Shariah state that is based on the fundamentalist Wahhabi theological system.²⁸ In short, the fulcrum of their ideology is the opposition of democracy and rejection of western-style education.²⁹ The activities of these self-acclaimed Muslim Jihadists have caused Nigeria her reputation to the extent that it was rated as the second-largest countries with deaths related to terrorism worldwide.³⁰ Statistically, between the periods of 2011 to 2022, Nigeria lost not less than 57,902 lives to the terrorist acts of the

²⁴ Lars k, 'Terrorism Index in African Countries as of 2021' (Statista, 2022) <https://www.statista.com/statistics/1197802/terrorism-index-in-africa-by-country/> accessed on 27th February, 2023

²⁵ Arodiegwu E, 'Nigeria Loses another N1.3 Billion Daily to Attacks by Niger Delta Avengers' (Prime Times News, 2016) <https://www.premiumtimesng.com/news/headlines/204715-nigeria-loses-another-n1-3-billion-daily-attacks-niger-delta-avengers.html?tztc=1> accessed on 28th March, 2023.

²⁶ Osewa S. O, 'Terrorism in Nigeria: Causes, Consequences and Panacea' (2019) 2(6) International Journal of Legal Studies, 347

²⁷ Ibid

²⁸ Campbell J, 'Boko Haram: Origins, Challenges and Responses' (2014) Norwegian Peacebuilding Resource Centre, 1-4. Available at: <https://www.files.ethz.ch/isn/184795/5cf0ebc94fb36d66309681cda24664f9.pdf> accessed on 26th February, 2023.

²⁹ Thurston A, 'The Disease is Unbelief: Boko Haram's Religious and Political Worldview' (2016) Centre for Middle East Policy, 5. Available at: <https://www.brookings.edu/wp-content/uploads/2016/07/brookings-analysis-paper-alex-thurston-final-web.pdf> accessed on 27th February, 2023

³⁰ Doris D. S, 'Deaths from Boko Haram Attacks on Military Targets in Nigeria 2018-2019' (Statista, 2022) <https://www.statista.com/statistics/1197732/deaths-from-boko-haram-attacks-on-military-targets-in-nigeria/> accessed on 27th February, 2023

Boko Haram, and the major states that experienced this spate are; Borno, Zamfara, Kaduna, Adamawa, Benue, Plateau Yobe and so on.³¹

The Fulani herdsmen have also been contributing to the insecurity bedeviling Nigeria. The term “Fulani herdsmen” are used to refer to herders of cattle from the Fulani tribe in Nigeria.³² They have been recognized as one of the deadliest terror groups in Africa after ISIL, Taliban, Al-Shabab and Boko Haram.³³ In other words, the inhumane actions of the Fulani herdsmen which have endangered many lives and destruct different properties are tantamount to terrorist acts.

4. Factors Responsible for Terrorism

The entire inhumane use of force that endangers the lives of individuals and causes danger to their properties is generally aimed at a purpose, which may be political, religious, ideological, racial or ethnical in nature. Thus, the end goal of the terrorists is to compel the government to dance to their tones by granting their desires forcibly. It must be noted that terrorists usually perceive their act to be legitimate as they pursue a political or religious objective, although the same acts usually amount to terrorism in the state laws. However, there are various factors that influence terrorists to engage in acts of terrorism. Some of them are discussed below:

- i. Resistance of Colonial Rule: States or countries under the colonial government sometimes employ some strategies to overthrow the colonialists which may include the use of political violence. For instance, India and USA fought for their independence which involved use of violence. It is hereby clear that a colonized country may be tempted to gain freedom from the colonialists through violence. To the group spearheading the struggle, they qualify themselves as freedom fighters, and the colonialists perceive them as terrorist. This is in line with

³¹ Doris D. S, ‘Deaths Caused by Boko Haram in Nigeria 2022, by state’ (Statista, 2022) <https://www.statista.com/statistics/1197570/deaths-caused-by-boko-haram-in-nigeria/> accessed on 27th February, 2023

³² Nabaid I, ‘Is Fulani Herdsmen Menace in Nigeria an Act of Terrorism?’ (2018) 3 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3283286 accessed on 29th March, 2023

³³ Nasir J, ‘From Ghana to Ivory Coast: How Herdsmen have been wreaking Havoc across Africa’ (The Cable, 2018) <https://www.thecable.ng/228912-2> accessed on 29th March, 2023

the popular quote that says; “one man’s terrorist is another man’s freedom fighter”.

- ii. Perceptions of Deprivation and Inequality: This is another factor that majorly contributes to terrorism in different places. Some sets of groups which are usually members of the same community or ethnic group perceive their ethnic group or community as being sidelined by the government usually in the distribution of wealth or allocation of resources. A typical example is the agitation of the Niger Delta People’s Volunteer Force (NDPVF), Movement for the Emancipation of the Niger Delta (MEND), and Niger Delta Avengers (NDA).
- iii. Ideological and Religious Belief: The ideology of an association or group of people also influences them to engage in acts of terrorism.³⁴In explaining the relevance of ideology to the perpetration of terrorism, Drake said:³⁵
ideologies play a crucial role in terrorist’s target selection; it supplies terrorists with an initial motive for an action and provides a prism through which they view events and the actions of other people...ideology also allows terrorists to justify their violence by displacing the responsibility onto either their victims or other actors.

Extreme religious belief also falls under the major contributors to terrorism in the world. The religious ideology of the Boko Haram is to forbidden western education and prioritization of Islamic education notwithstanding the secularity and multi-religious of Nigeria as a country.

There are many other factors that are responsible for the spate of terrorism in any nation, as posited by various writers. Khan, for instance, identified the following as the major causes of terrorism in any society;³⁶

- a. Ethnicity, nationalism/separatism
- b. Poverty and economic disadvantage
- c. Absence of true democracy

³⁴ Khalil A, ‘Causes of Terrorism’ Undergraduate Research Journal, (2003), 6

³⁵ Drake C. J. M, ‘The Role of Ideology in Terrorists’ 10(2) Terrorism and Political Violence, (1998), 53

³⁶Khan R, ‘Can Terrorism be beating by Military Means’ (2003) 9(11) Global Policy Forum, 11.

- d. Disaffected intelligentsia
- e. Dehumanization
- f. Religion

5. Effects of Terrorism on Nigerian Populace

The effects of terrorism on the development of any nation cannot be discussed exhaustively. It affects both the citizens and the government in myriad of ways. The citizens are usually subjected to precarious situation that endanger their lives and their properties. Families are scattered, properties are destroyed, and even, lives are lost. The government itself becomes disturbed about the containment of the insecurity which is the consequential result of terrorism in any nation. The generated revenue which should be used to cater for the well-being of the people through construction of roads, structural erection of infrastructural facilities, provision of social amenities, enhancement of good conditions, are all sadly diverted to suppress national insecurity that is instigated by the terrorists.

Nigeria, being one of the most terrorized countries in Africa, is not spared from these negative effects of terrorism which affect her national peace and development.³⁷ The following are some of the effects of terrorism on the Nigerian populace:

- i. Insecurity of lives and properties: The Nigerian Constitution is express in affirming the primacy of security and welfarism of the people among the objectives of the Federal Republic of Nigeria.³⁸ Therefore, it is the duty of the government and its people to strive towards the enhancement of national security in all their daily activities. However, the reverse is the case of Nigeria, especially in the face of terrorism which has claimed lives of many innocent citizens, deteriorate their properties, ruin their investments and devastate their living conditions. In January 2022, it was reported that armed bandit groups killed

³⁷ Dibia, I. I, 'The Effects of Terrorism on Peace and National Development in Nigeria' (2021) 22 Journal of Public Administration, Finance and Law, 315-316. Available on:

https://www.jopafl.com/uploads/issue22/the_effects_of_terrorism_on_peace_and_national_development_in_nigeria.pdf accessed on 30th March, 2023

³⁸ CFRN 1999, section 14(2)(b)

more than 2,600 civilians.³⁹ Boko Haram has been noted to be the most deadly terrorist group in Nigeria which has caused the lives of thousands civilians. The operation of this terrorist group is much felt in the north-east. For instance, it has been reported that between year 2011 to 2022, Boko Haram has caused the death of 35,646 lives in Borno, 5, 747 lives in Zamfara, 5,462 lives in Kaduna, 4,097 lives in Adamawa, 3,774 lives in Benue, 3,359 lives in Plateau, and 3,176 lives in Yobe state.⁴⁰ Even, notwithstanding the Niger Delta Amnesty, the operations of militants in the region continue to skyrocket the threatening situation of lives therein to the extent that Nigeria loses almost ₦1.3 billion daily to fight the Niger Delta Avengers among other militants.⁴¹

- ii. Investment Apathy: foreign investment contributes largely to the economy of any nation. In fact, every country with serious intention of developing must ensure its environment is conducive for business operation in such a way that foreign investors (including domestic investors), will be attracted to investment in its economy. Terrorism affects the tendency of investors to invest their capital or equity in the economy of any country that experiences sporadic terrorized atmosphere.⁴² According to Edieya:⁴³

On the state of the country, when people feel insecure, their appetite to invest, to buy or rent from the product of investment reduces; and that is why all over the world, any country that radiates an environment of insecurity naturally repels investment initiatives from

³⁹ Global Centre for the Responsibility to Protect, 'Nigeria: Populations at Risk' (2023) <https://www.globalr2p.org/countries/nigeria/> accessed on 30th March, 2023.

⁴⁰ Doris D. S, 'Death Caused by Boko Haram in Nigeria 2022, by state' (Statista, 2022) <https://www.statista.com/statistics/1197570/deaths-caused-by-boko-haram-in-nigeria/> accessed on 30th March, 2023

⁴¹ Arodiegwu E, 'Nigeria Loses another N1.3 billion daily to attacks by Niger Delta Avengers' (2016) <https://www.premiumtimesng.com/news/headlines/204715-nigeria-loses-another-n1-3-billion-daily-attacks-niger-delta-avengers.html?tztc=1> accessed on 30th March, 2023

⁴² Edieya D, 'The Menace of Fulani Herdsmen Attack and its Effects on Socio-Economic Development of Nigeria' (2019) 1 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3476374 accessed on 31st March, 2023

⁴³Ibid

both the international community and its own local investors.

- iii. High rate of unemployment: Another effect of terrorism is the high rate of unemployment that springs up from it. Employed persons become displaced or de-employed by virtue of the insecurity occurring in a terrorized state, or region. The summation of the newly unemployed citizens with the pre-existing unemployed citizens makes it crystal clear that terrorism has woeful impacts on the society at large.

6. Understanding Amnesty Grant as Mechanism for Combating Terrorism

The word “Amnesty” has been defined as a pardon extended by the government to a group or class of persons, usually for a political offence.⁴⁴ It is also seen as a sovereign power officially forgiving certain classes of persons who are subject to trial.⁴⁵ The essence of granting amnesty is to pardon, forgive or overlook the political offences that have been committed by some individuals, instead of punishing them according to the law. It is a total cancelation of the penal sanction that is or should be imposed on the perpetrators of a criminal act by the highest governmental bodies of a country. Ordinarily, the grant of amnesty to criminals is usually justified when the government weighs the consequence of imposing the legal punishment on such criminals. For instance, a spy from another country may be pardoned by the government in order to maintain the good relationship between it and that country. It must be noted that amnesty can be granted either before the conviction of the accused persons or after their convictions.⁴⁶ It has been defined by the International Committee of the Red Cross thus:⁴⁷

⁴⁴ Bryan A. G, Black’s Law Dictionary (10th edn, Thomson Reuters, 2014) 103.

⁴⁵ Ibid

⁴⁶ Nada S, ‘Meaning of the Terms Amnesty and Pardon in the Macedonian Criminal Law’ (2017) 5(1) Journal of Process Management-New Technologies, International, 14. Available on: https://www.researchgate.net/publication/313273800_Meaning_of_the_terms_amnesty_and_pardon_in_the_Macedonian_criminal_law/link/5894aaf8a6fdcc45530effa3/download accessed on 31st March, 2023.

⁴⁷ International Committee of the Red Cross, “Amnesty and International Humanitarian Law: Purpose and Scope,” Amnesty Factsheet, ICRC (2017), https://www.icrc.org/en/download/file/56882/170545_amnesties_factsheet_october_2017_clean_en.pdf accessed on 31st March, 2023

An amnesty generally refers to an official act on the part of the legislative or executive authority which prevents, in the future or retroactively, the investigation of a person, a group or a category of persons for certain violations or any criminal prosecutions against them, and cancels all sanctions taken against them. Thus, an amnesty can halt imminent or ongoing prosecutions, quash convictions already handed down and/or lift sentences already imposed. In some cases, amnesties may be granted by way of an international treaty or a political agreement

The United Nation also defined it as:⁴⁸

...legal measures that have the effect of: a. Prospectively barring criminal prosecution and, in some cases, civil actions against certain individuals or categories of individuals in respect of specified criminal conduct committed before the amnesty's adoption; or b. Retroactively nullifying legal liability previously established.

The opinions of scholars on the concept of amnesty in the administration of justice system are divergent, because some find it advantageous and others find it disadvantages. The pro-amnesty scholars believe that there is possibility of some mistakes committed by the court by convicting innocent persons based on false statements, and the only available corrective measure to remove the injustice is amnesty.⁴⁹ Also, due to political and economic changes, the criminal act may lose its social risk which ordinarily makes it unjust to punish its perpetrator again.⁵⁰ It also helps the government to avoid expensive prosecutions, prompts the violators to surrender themselves to the authorities without exhaustion of resources, and helps to reconcile the offenders and the society.⁵¹ On the other hands, granting of amnesty is

⁴⁸ Office of the United Nations High Commissioner for Human Rights, Rule of Law Tools for Post Conflict States, Amnesties, (New York and Geneva: United Nations 2009), 5, https://www.ohchr.org/Documents/Publications/Amnesties_en.pdf accessed on 31st March, 2023

⁴⁹ Ibid, 15

⁵⁰ Ibid

⁵¹ Therese A.A. and Hugo V. D. M, 'Reconciliation through Amnesty: Amnesty Applicants' Views of the South African Truth and Reconciliation Commission' (Centre for the STUDY OF Violence and Reconciliation, 2005) 2. Available on:

perceived as undermining the justice system, and denying the main objective of punishment, which is deterrence. It is also argued that there is no assurance that the reintegration of these people after reformation programmes will not give them another second chance of re-terrorizing the country.

It is very important to note that there is difference between granting of pardon or prerogative of mercy as against amnesty grant. While the former is in the case of an individual person, the latter is granted to a class of persons.⁵² Also, pardon is granted in relation to any criminal offence, but amnesty usually relates to political crimes, like treason and terrorism. Another major difference between the two concepts is that while pardon relates to already convicted offences, amnesty can be granted at the investigation stage, prosecution stage and the conviction stage.⁵³

7. Legal Conundrum of Amnesty Grant in Nigeria

The legality of amnesty is beclouded with arguments because there is currently no judicial decision that has settled the position. The concept has however been likened to prerogative of mercy which is constitutionally rooted in section 175 and 212 of the Nigerian Constitution as exercisable by the President of the Federal Republic of Nigeria and the Executive Governor of any of the 36 states in Nigeria respectively. Prerogative of mercy is an act of grace which is subject to the discretion of the President or Governor by which a convicted offender is pardoned from the punishment imposed on him by the court of law in consequence of a criminal act. This is not as wide as amnesty grant which refers to the foregoing of prosecution of accused persons, and forgiving the punishment of convicted persons by governmental authority. The word “Amnesty” is not mentioned in the Nigerian law at all, but there is provision for prerogative of mercy which is housed in section 175 and 212 for the President and the Governor respectively. Section 175 provides:

<https://www.files.ethz.ch/isn/104943/reconciliationthroughamnesty.pdf> accessed on 31st March, 2023

⁵² Childress J. F, ‘The Amnesty Argument’ (1973) 23(3) University of Carolina Press, 310. Available on: <https://www.jstor.org/stable/24457861> accessed on 31st March, 2023

⁵³ Patajo-Kapunan L, ‘Pardon and Amnesty’ (2018) <https://businessmirror.com.ph/2018/10/08/pardon-and-amnesty/> accessed on 31st of March, 2023

175.-(1) The President may-

(a) grant any person concerned with or convicted of any offence created by an Act of the National Assembly a pardon, either free or subject to lawful conditions;

(b) grant to any person a respite, either for an indefinite or for a specified period of the execution of any punishment imposed on that person for such an offence;

(c) substitute a less severe form of any punishment imposed on that person for such an offence; or

(d) remit the whole or any part of any punishment imposed on the person for such an offence or of any penalty or forfeiture otherwise due to the State on account of such an offence.

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

(3) The President, acting in accordance with the advice of the Council of State, may exercise his powers under subsection (1) of this section in relation to persons concerned with offences against naval, military or air force law or convicted or sentenced by a court-martial.

The above provision is repeated in section 212 for the power of Governor to grant prerogative of mercy except that subsection 2 of the section notes that the exercise of such power after due consultation with the Advisory council of state is subject to any established law of the state. Also, section 212 does not have similar provision like subsection 3 since court martial takes no directive from the Governors but the President directly.

The wordings of these two provisions are however subject of controversy between those who argue that the provisions do not anticipate amnesty grant for un-convicted persons but a mere pardon to convicted persons, and those who hold a contrary view.⁵⁴ The cause of this controversy is not farfetched; it is because there is yet to be a clear-cut decision of the court on the scope of prerogative of mercy.

⁵⁴ Chris W, 'Is there a Constitutional Power to Grant Amnesty under the 1999 Constitution of the Federal Republic of Nigeria' (2013) 1-7 https://www.academia.edu/30992676/IS_THERE_A_CONSTITUTIONAL_POWER_TO_GRANT_AMNESTY_IN_NIGERIA_docx accessed on 4th April, 2023

According to those who argue the constitutionality of amnesty in the Nigerian justice system, the word “or”, which is literally disjunctive, exists in the provisions of section 175 (1) that says; “The president may grant any person concerned with or convicted of an offence....”. It is argued that the interpretation can be dissected into two disjunctive situations which are:⁵⁵

- a. The president may grant any person concerned with an offence;
and
- b. The president may grant any person convicted of an offence.

So, while the second arm of that provision relates to grant of pardon to convicted persons, the first arm relates to grant of pardon to persons who are yet to be convicted.⁵⁶ Thus, it was submitted that section 175(1) remains a legal basis for presidential amnesty being granted to both convicted and un-convicted persons.⁵⁷

To those who argued otherwise, amnesty grant cannot be legally backed up with the provision of section 175(1) in any way. It is argued that conviction is the only way of determining the guilt of a person in respect to a criminal indictment.⁵⁸ Unless, a person is convicted by a court of competent jurisdiction, he is presumed innocent according to the law.⁵⁹ Thus, a careful perusal of the provision shows that interpreting it as anticipating amnesty grant to un-convicted persons will be absurd and ridiculous, because you can only pardon someone that has committed a criminal wrong, and not someone that is still innocent in the eyes of the law. In fact, several judicial cases have been decided to show that sections 175 and 212 only relate to pardoning convicted persons and not otherwise. In the case of **Okongwu v. The State**⁶⁰ the court held that:

In exercise of the powers of Prerogative of Mercy, section 192 of the Constitution confers various powers. Under 1(a) the conviction is pardoned either unconditionally or conditionally. Under 1(b) the Governor may respite or postpone the execution of the

⁵⁵Ibid, 3-4

⁵⁶Ibid

⁵⁷Ibid

⁵⁸Ibid, 56

⁵⁹ CFRN 1999, section 36

⁶⁰ (1986) 5 NWLR (pt 44) 741

punishment imposed. Under 1(c) a less severe punishment may be remitted in whole or in part. From the provisions of section 192(1)(a) it is clear that the effect of a free pardon granted by the Governor of a State pursuant to this subsection is to wipe away the conviction for the offence created by any law of the State for which the donee or grantee of the pardon was tried and convicted.

In *Obidike v. The State*,⁶¹ the Court of Appeal similarly held that:

This Court is unmindful of the power of the President of this country under section 161 (which is *impari materia* with section 175 of the 1999 Constitution) of the Constitution of the Federal Republic of Nigeria 1979 to grant pardon to convicted persons.

Hence, the amnesty grant cannot be justified legally through the provision of section 175 or 212 of the Nigerian Constitution (1999 as amended). Absurdity will therefore erupt from any contrary interpretation. Importantly, the argument that “or” in a statute is always disjunctive is not true, because there are instances when “or” can be interpreted to mean conjunctive, depending on each case.⁶²

8. Shari'ah Standpoint

The legal conundrum resulting from the legislative inadequacy in the Nigerian legal regime focuses on whether the law allows the grant of amnesty to prevent prosecution of the affected offender(s). This is because there appears to be no issue with respect to grant of amnesty to the already convicted offender(s).⁶³ This line of discussion will be followed in x-raying Shari'ah standpoint with respect to the legal conundrum. The pertinent question thus is whether amnesty is grantable prior to the prosecution and after the conviction of offender(s) under Shari'ah.

The connotation of Shari'ah under Shari'ah jurisprudence comes with the understanding of the binding nature of the primary sources of the

⁶¹ (2001) 7 NWLR (pt 743) 601; see also the case of *Falae v. Obasanjo* No 2 (1994) 4 NWLR (Pt. 559) 476

⁶² *Ibid*

⁶³ See sections 175 and 212, Constitution of Federal Republic of Nigeria, 1999 (as amended).

law. Shari'ah as body of divine law passed unto the universe through the beloved Prophet Muhammad (PBUH) as the seal of all Prophets.⁶⁴ The legislative process of the divine law inextricably co-joins Holy Qur'an and Hadith⁶⁵ as the primary sources of Shari'ah.⁶⁶ While the Holy Qur'an is the pure and undiluted words of Allah (SWT) containing *Ayaat Ahkam* (legislative verses) in form of binding commandments,⁶⁷ the Hadith is the combination of the traditions of the Prophet (PBUH) which are complementary to the legal commandments contained in the Holy Qur'an.⁶⁸ Thus, in the classical Shari'ah jurisprudence, both the Qur'an and Hadith are regarded as the primary sources of Shari'ah with Holy Qur'an graded as the first primary source and the Hadith graded second primary source.⁶⁹ Nevertheless, the grading does not affect the binding nature of the two.⁷⁰ Allah posited with respect to the binding nature of Qur'an and Hadith in the Holy Qur'an unambiguously thus:

O you who believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the last Day. That is best (way) and best result.⁷¹

In another verse,⁷² Allah reiterated the binding nature of the two primary sources of Shari'ah in following words:

⁶⁴ Muhammed-Mikaaeel, A.A. 'Emergence of Usulul Fiqh under Shari'ah: From Developmental to Standardization Stage' Maiduguri Law Journal, Vol. 18, 2020, pp. 400-417

⁶⁵ Hadith is technically and interchangeably referred to as Sunnah though Sunnah seems to have elaborate meaning than Hadith. While Hadith linguistically to the words of the Prophet (PBUH) alone, Sunnah encapsulates both the words of the Prophet (PBUH) together with his actions and silent approval.

⁶⁶ Muhammed-Mikaaeel, A.A. 'Nexus between Education and Ethics: Islamic Law Perspective' Journal of Islamic Law (HUIJIL), Vol. 3, 2019, pp. 181-182

⁶⁷ Muhammed-Mikaaeel, A.A. 'Legal Implication of Qur'an Chapter 4 Verse 3 on Muslims' marital Affairs' Jurnal Hukum Novelty, Vol. 12(02), 2021, pp. 204-224

⁶⁸ Muhammed-Mikaaeel, A.A. 'Nexus between Education and Ethics: Islamic Law Perspective' Journal of Islamic Law (HUIJIL), Vol. 3, 2019, p. 182

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ Qur'an Chapter 4:59

⁷² Qur'an Chapter 33:36

It is not for a believing man or a believing woman, when Allah and His Messenger have decided a matter, that they should (thereafter) have any choice about their affairs. And whoever disobeys Allah and His Messenger has certainly strayed into clear error.

Thus, it needs be clarified that all the secondary sources of Shari'ah,⁷³ *Maqaasid Shari'ah* (objectives of Islamic Law) and *Ijtihad*⁷⁴ (research) by Islamic scholars must as a matter of compulsion derive validity from the foregoing primary sources because of their binding nature.

Having discussed the binding nature of the primary sources of Shari'ah from which the analysis of the legal conundrum and legal analysis of the grant of amnesty shall be reviewed, it is thus expedient to first and foremost shed light on the conceptualisation of the term amnesty from Shari'ah legal parlance.

Linguistically, the term 'amnesty' is represented by the Arabic word *Afw* in Islamic jurisprudence. *Afw* literally means waiver or omission.⁷⁵ It denotes a kind of exemption granted to someone geared towards not holding him accountable for the consequence of his action.⁷⁶ In metaphorical sense, *Afw* refers to pardon or forgiveness granted to an offender purposely to free him from the consequence of the offence which he has committed after the show of remorsefulness on the part of the offender. This enjoys many legal injunctions in the Holy Qur'an.⁷⁷

Thus, the concept of amnesty is very much recognised in the jurisprudence of Islamic law. But it must be noted that it is of wider scope than that of the Nigerian legal regime. The jurisprudence of

⁷³ Such as *Ijma'* (consensus of opinion of the companions), *Qiyas* (analogical deduction of Shari'ah rules), *Istihab* (Juristic presumption), *Istislah* (public policy), *Istihsan* (juristic preference), *Sad ad-darai'* (blocking the ways to greater evils) etc.

⁷⁴ Muhammed-Mikaael, A.A. and Salman, K.O. 'Ijtihad: Scope, Modes & Legislative Value in Islamic Jurisprudence' *Journal of Islamic Law (HUIJIL)*, Vol. 4, 2021, pp. 1-29

⁷⁵ Jannatian, A., et al. 'Linguistic and Meta linguistic Elements of the Term Forgiveness (AFW) in Resolving Family Conflicts in the Holy Qur'an', *UTOPIA Y PRAXIS LATINNOAMERICANA*, Vol. 26 (3), 2001 pp.76-89.

⁷⁶ Ibid

⁷⁷ For instance, in Qur'an Chapter 5:34, Allah says: "Except for those who return (repenting) before you overcome (i.e., apprehend) them. And know that Allah is Forgiving and Merciful."

Islamic law allows application of amnesty in two circumstances of individual and public affairs. With respect to the individual affairs, the application here is exercisable by the victim of the wrongdoing.⁷⁸ Upon commission of offence under Shari'ah, the victim has two major options of taking revenge through due process of law or outright pardon and forgiveness. In the numerous verses of the Holy Qur'an, the Law Giver enjoins forgiveness to the wrongdoer as a form of *Sadaqah* which is highly rewarding in this world and in the hereafter.⁷⁹ Such pardon can be granted the offender before prosecution after remorsefulness and real *Tawbah* on the part of the offender.

In the Prophet's life time, certain criminal complaints (*hudud* offences) were brought before him (PBUH) for adjudications which the complainants later changed their minds by opting to grant pardon to the offenders. The Prophet admonished that such pardon ought to have been done before reporting the cases due to the non-compoundable nature of some of the cases.⁸⁰ This illustratively shows that an individual can exercise grant of pardon to an offender prior to prosecution under Shari'ah. It is thus important to note that once an offender has been prosecuted and convicted, the individual has no influence on the case again except in the special case of murder which Allah granted the family of the victim the options of *Qisas*, *Diyyah* and unconditional forgiveness.⁸¹

Allah's injunction concerning the case of *Hirabah*⁸² laid down the foundation of public grant of amnesty prior to persecution. It was mercifully legislated that if the offenders repented before they are caught, then Allah grants *Afw* to them to bar them from prosecution.⁸³ This grant of amnesty must not however be confused. It is actually relating to offenders who had committed an offence in the past but have shown great remorsefulness for over a long period of time prior to his

⁷⁸This is the bone of contention in Qur'an Chapter 42:40 and Qur'an Chapter 22:60. Specifically, in Qur'an Chapter 42:40 Allah ordains that: "And the retribution for an evil act is an evil one like it, but whoever pardons and makes reconciliation – his reward is (due) from Allah. Indeed, He does not like the wrongdoers."

⁷⁹ Qur'an Chapter 5:45

⁸⁰ Bambale, Y.Y., Crimes and Punishment under Islamic Law (2nd Edition, Malthouse Press Limited, Lagos, 2016), p43

⁸¹ see Qur'an Chapter 17:33

⁸² See Qur'an Chapter 5:33

⁸³ See Qur'an Chapter 5:34

arrest.⁸⁴ The reason being that issue of repentance is determined by length of time. Thus an offender caught in the act cannot successfully claim to have repented.

It must be noted that amnesty prior to prosecution is validly recognised under Shari'ah as can be exercised individually and publicly. However, *Afw* is rarely granted after conviction except in limited *sui generis* cases. In the case of murder where the family of the deceased can choose to pardon the culprits even after conviction. Similar situation is the case of *Ar-Riddah* which comes to play in the instances of *Iqaamatul Hujah* usually granted the offenders to retract his position otherwise he faces the punishment of death.⁸⁵

What is discernible from the foregoing is that while amnesty is grantable under Shari'ah prior to prosecution in favour of a fully repented offender; amnesty is rarely granted to an offender after conviction contrary to what is obtainable under the Nigerian legal regime. More so, the grant of amnesty to the dead persons has no place under Shari'ah.

9. Comparing Amnesty Grant under the Nigerian Legal Regime and Shari'ah

A cursory examination of the legal regime of amnesty grant under the Nigerian law leads one back to the salient provisions of sections 175 and 212 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) highlighted above. As already examined above, it is abundantly clear that the contemplation of the Constitution is nothing but pardon of the offenders after convictions. The principle of law is clear that where the provisions or letters of the law are clear and unambiguous, they deserve to be interpreted literally. Thus, extraneous matter cannot be imputed into the law for that will remain invalid exercise. The point being made out here is that the combined provisions of sections 175 and 212 of the Constitution are only fit for pardoning of the offenders after conviction. They are not suitable for amnesty grant prior to prosecution as contended in some quarters. This shows the lapses and ambiguity in the law as being presently applied to amnesty grant.

⁸⁴Ibid

⁸⁵ Bambale, Y.Y., Crimes and Punishment under Islamic Law, pp. 96-97

In contrast, better legal regime of amnesty grant holds sway under Shari'ah. Shari'ah provisions do not only encapsulate pardoning after conviction but also clearly make room for amnesty grant prior to prosecution. The uniqueness of Shari'ah legal regime is that pardoning after conviction is not meant for all types of offences. This is because, offences under the ambit of *Hudud* are completely excluded from pardoning after conviction. Invariably, any offence categorised under *Hudud* cannot enjoy pardoning after conviction. However, the *sui generis* offence of *Qisas* and *Ar-Riddah* can enjoy pardoning after conviction as highlighted above. Offences involving kidnapping and other forms of terrorism are tagged under *Hirabah* which is *Hudud* offence; such offences cannot be subject of pardoning after conviction under Shari'ah. In contradistinction, Nigeria legal regime offers pardoning to such category of offences as being perpetrated by *Boko Haram* and *Fulani* Herdsmen in the country.

More so, with respect to amnesty grant prior to prosecution, the position of Shari'ah is very clear. The position is that all types of offences be it *Hudud*, *Qisas* or *Ta'azir* can enjoy amnesty grant prior to prosecution upon the fulfilment of the condition precedent of remorsefulness on the part of the offenders. Thus, as clear as amnesty grant prior to prosecution is under Shari'ah, it is not granted as matter of course. It is granted conditionally, i.e. upon genuine *Tawbah* (repentance) by the offenders. This is thus different from the way amnesty grant is being applied by the Nigerian government because the focus is never on repentance and remorsefulness but peace keeping mission which does not always achieve the greater purpose for which amnesty grant is designed. In the recent time sometime in July, 2023, a group of people called Northern Development Forum (NDF) pleaded that the current administration of President Bola Ahmed Tinubu should grant amnesty to *Boko Haram* and Bandits in the North.⁸⁶ The reason advanced for the sought amnesty grant was because of the previous grants to the ex-militant of the Niger Delta Region that what is good for the goose is equally good for the gander.⁸⁷ Most important, the group was of the view that grant of amnesty by the current administration would foster lasting peace and the spirit of national inclusiveness.⁸⁸ Funny enough, in the month of December, 2023, the

⁸⁶⁸⁷ Ibid⁸⁸ Ibid

amnesty grant sought seems not have yielded positive results as the Director of State Security (DSS) continues to warn that each gathering during the December festive period be wary of sudden attacks by the terrorists.

Thus, the merit of the legal regime of amnesty grant prior to prosecution under Shari'ah is that the application is result-oriented other than peace keeping mission.⁸⁹ The reason being that without genuine repentance on the part of the offenders, no amnesty grant can be secured. More so, acts of terrorism which have been subjected to prosecution cannot be subjected to amnesty grant to ensure deterrent and to discourage the act.

10. CONCLUSION

Amnesty grant remains bedevilled with legal conundrum amidst constitutional issue as it is argued whether amnesty grant is covered by sections 175 and 212 of the Nigerian Constitution (1999 as amended). This paper reveals that the provisions of section 175 and 212 of the Nigerian Constitution do not contemplate amnesty grant at all. Because amnesty grant properly so called, entails pardoning of offenders even prior to prosecution but as it is under the Nigerian legal regime, it is limited to pardoning after conviction. Thus, the earlier and current amnesties being granted prior to prosecution to some terrorists/offenders by Nigerian government have serious issues if contested at the court of competent jurisdiction.

However, from Shari'ah standpoint, amnesty is very well applicable even before prosecution of offenders upon satisfactory show of remorsefulness. To this extent, a constitutional amendment is recommended learning from Shari'ah standpoint. As it is the case in Islamic jurisprudence, amnesty is rarely granted after conviction but prior to prosecution after the requirement of *Tawbah* is met. This is because, true amnesty is that granted prior to prosecution as that granted after prosecution smears of injustice on the part of other convicts who do not enjoy such privilege.

The Nigerian legal regime cannot but learn from the Shari'ah legal regime. The ambiguous constitutional provisions need to be addressed. The provisions of sections 175 and 212 of the Constitution should be

⁸⁹ Which is the focus under the Nigerian legal regime

amended to clearly make provision for amnesty grant prior to prosecution. In addition to that, the grant of amnesty grant to offenders prior to prosecution should be looked into beyond mere peace keeping. To achieve the purpose for which amnesty grant is designed, it is high time the Nigerian government began to apply conditional amnesty grant prior to prosecution upon evidence of genuine repentance and remorsefulness. This is the only way the so-called peacekeeping can be achieved as well.