

Law and complexity of presidential amnesty in Niger Delta quagmire

By Robert Omote

THE Niger Delta saga pre-dates the independence of the Nigerian State when in 1957, the British colonial government inaugurated the Willinks Commission to passionately assess the critical issues that confronted the area. Notable among its various recommendations, the committee unequivocally suggested that "there shall be a Special Development Board for Niger Delta Areas with recourse to its peculiar terrains", more so, as the Shell-Bp had just discovered Nigeria's first commercial quantity well in large quantity. This was at Oloibiri situated in present day Bayelsa State in 1956. This unresolved colonial panorama was re-enacted in our Republican Constitution of 1963 where S.159 (1) (4) and S.159 (1) succinctly provided that "there shall be a board for the Niger Delta, which shall be styled the Niger Delta Development Board. Sub-section four provided further that the board shall be responsible for advising the government of the federation and the governments of Eastern Nigeria and Mid-Western Nigeria with respect to the physical development of the Niger Delta and in order to discharge that responsibility, the board shall:

- Cause the Niger Delta to be surveyed in order to ascertain what measures are required to promote its

physical development;
- Prepare schemes designed to promote the physical development of the Niger Delta, together with estimates of costs of putting the scheme into effect;
- Submit to the Government of the Federation and the governments of Eastern Nigeria and Mid-Western Nigeria annual reports describing the work of the board and the measures taken in pursuance of its advice.

With recourse to the unbroken historical records of the restiveness associated with the region, some key personalities have sacrificially drawn the attention of the international community to the exploitation and neglect in the region, example the late Major Isaac Adaka Boro (Gowon administration) extra-judicial murder of a renowned environmentalist, poet and play writer of an international repute - late Ken Saro-Wiwa and eight other Ogoni notable elite (Gen. Sani Abacha), the Odi Massacre (President Olusegun Obasanjo) and the recent creek war (President Yar'Adua).

It is the failure of the creek war to muzzle the agitations in the region that has necessitated the introduction of amnesty being offered the militant and their spinster associations. It is worrisome to fathom the constitutionality of the power of amnesty, which the President has ingloriously arrogated to himself, and so held with the ransom associated with the project.

Section 175 (1) of the 1999 Constitution of the Federal Republic of Nigeria Provides thus: the President may:

- 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;
- 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;
- Substitute a less severe form of punishment imposed on that for an offence; or
- Remit the whole or any part of any punishment imposed on that person for such an offence or of any penalty or forfeiture otherwise due to the state on account of such offence.

The import of this section is that for prerogative of mercy to be invoked by a President, a person must have committed or been convicted of an offence. The New International Webster Comprehensive Dictionary of English Language (Encyclopedic Edition) on Page 306 defines 'crime' which is synonymous with an "offence" as "An act that subjects the doer to legal punishment; the commission or omission of an act specifically forbidden or enjoined by public law; and criminal as one who has committed an offence punishable by law. The same dictionary defines amnesty on page 48 as "an official act of oblivion or pardon on the part of a government, absolving without trial all offenders or groups of offenders; intentional forgetfulness of overlooking especially of wrongdoing".

When the rage over President Olusegun Obasanjo's candidature of the Peoples Democratic Party (PDP) was at its peak because of his incarceration by General Sani Abacha and the shoddy manner he was pardoned by General Abdusalam

Abubakar, the Appeal Court in *Falae v Obasanjo* (1999) 4 NWLR (PT 559) 476 particularly on page 495 lucidly interpreted S. 161 of the 1979 CFRN (now S. 175 1999 CFRN) to mean that the Head of State may 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. In the words of Per Ogundare in *Okongwu v State* (1986) 5 NWLR (Pt 44) 741 particularly at 750 pars G-H, His lordship respectfully declared that: "pardon is usually granted where a convict:

- Has exhausted all his legal rights of appeal;
- Has no intention of exercising such right;
- Where he is wrongfully convicted and is afterwards pardoned upon the ground of his innocence.

Former President Olusegun Obasanjo and Alhaji Salisu Buhari, a one-time Speaker of the Federal House of Representatives who was impeached and subsequently convicted of forgery of a Toronto Certificate have both enjoyed the legal respite of His Lordship. It is obvious from the few cited cases that

conviction pre-dates pardon simpliciter.

The presidential amnesty and its ambivalence

The approach of the Federal Government to inject the sum of fifty billion naira (N50bn) into the amnesty payment is even criminal in nature. S. 28 of the Evidence Act provided that

"A confession made by an accused person (hereby represented by MEND and other criminal gangs including armed robbers-emphasis) is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the court, to give the accused person grounds which would appear to him (them) reasonable for supposing that by making it, he would gain any advantage or avoid any evil of a temporal nature".

It is expedient to echo it here that it has been established as a positive rule in both English and Nigerian criminal laws that a confession made out of threat or inducement emanating from a person in authority is rendered inadmissible so held the courts in *Ibrahim v R* (1914) AC 599, *Kareem v FRCN* (No 1) (2002) 8 NWLR (Pt 770) 682 - 683.

The President is a man in authority and his perceived gesture has further widened the scope of criminality in the area. Currently, there is an upsurge of criminally-minded persons from other geo-political zones to the region not members of MEND involved in the struggle but miscreants who wear the toga of militancy because of the N50bn booty.

Akin to the upsurge is kidnapping, which has spirally engulfed the six geo-political zones. Kidnapping is a geometric advancement of armed robbery. Section 364(2) of the Criminal Code Act (2004) Cap 38 Laws of the Federation of Nigeria provides:

"Any person who unlawfully imprisons any person within Nigeria in such a manner as to prevent him from applying to a court for his release or from discovering to any other person the place where he is imprisoned, or in such a manner as to prevent any person entitled to have access to him from discovering the place where he is imprisoned, is guilty of a felony and 'is liable to imprisonment for 10 years.

Kidnapping is not a capital offence, which makes it bail-able going by the provisions in the Laws of the Federation of Nigeria.

A corollary of this ambivalence is potently manifested by the various enactments of the Houses of Assembly of some states of the Nigerian Federation in contravention of S. 364 of the Criminal Code Act (2004) Cap. 38 LFN; S. 1(3) and S. 4(5) of the 1999 Constitution.

S. 1(3) provides "If any other law is inconsistent with the provisions of this constitution, this constitution shall prevail and that other law shall, to the extent of the inconsistency, be void". S. 4(5) further provide "If any law enacted by the House of Assembly of a state is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall, to the extent of the inconsistency, be void.

The summary of these citations is to the effect that the satanic malaise of kidnapping cannot be cured by the enactment of a state; it is a constitutional lacuna that requires a legislative therapy of the National Assembly.

In accordance with the Federal Principle, the prosecution of federal offences is the constitutional responsibility of the Federal Government through the Federal Attorney General. The AGF has complete control of all persecutions in respect of offences created by or under a law made by the National Assembly or deemed to be so made. He may initiate them directly or, where they are initiated by some other authorities or persons, he may take them over or discontinue them. S.174(1) (a) (b) (c) CFRN, Anyebe V The State (1986) 1 S. C. 87.

Proposed safeguards to douse restiveness in the region

- The financial superiority of the Federal Government is not at all consistent with the principle of autonomy of each tier of government in a federal system with the strong resurgence in oil revenue, writes the Aboyade Committee on Revenue Allocation (1997). Physical Federalism needs to be accommodated by our constitution and in the words of Justice Uwais CJN (as then was) in AG Ondo State v A.G Federation (2002) a NWLR (PF722) p222 copiously declared.

"If there is a breach of the Principles of Federalism, it is the constitution, which has facilitated the breach and not him or any judge for that matter;

- The president should match his words with actions. The region needs massive physical development in line with the Willinks Commission and the 1963 Republican Constitution.
- The Federal Government should stop paying lip-service to the issue of corruption. The trial of some former governors and other public office holders in the region should be given the urgent attention it deserves by the Economic and Financial

Crime Commission (EFCC) to serve as a deterrent to others. In the same vein, the government should abandon the plea-bargaining deal, which is neither in our Criminal Procedure Act nor the Evidence Act;

- The Federal Government should separate those engaged in the genuine struggle for the meaningful development of the area, engage in robust campaign against environmental degradation and resources control. It will be erroneous on the part of the government to equate those involved in the struggle with the increasing criminal gangs in the area;
- The N50 billion attached to the amnesty initiative should be earmarked for the provision of social welfare facilities in the region;
- The Federal Government should, as a matter of urgency, publish the list of sponsors of criminality in the area irrespective of their connection with the Aso Rock Villa except the Presidency wants to reserve the list in readiness for the prosecution of 2011 general elections;
- The Federal Government should implement the Ledum Mitee Technical Committee on the area, as well as the Justice Uwais Electoral Reform that will guarantee the election of credible public office holders in the area;
- There should be a legislation by the National Assembly to overhaul S.364 on kidnapping to cure the (legislative rascality of some state Houses of Assembly);
- The Federal Government should evolve an employment policy where at least 40 per cent of both skilled and unskilled indigenes of the area are employed by oil companies operating that geopolitical zone;
- A tough legislation vigorously putting a halt to the issue of gas flaring. Both the Legislature and the Executive should garner the political will to demand compliance from the oil multi-national companies operating in the area.

Conclusion

Societies disintegrate from within more frequently than they are broken up from external pressure. There is disintegration when no common morality is observed and history shows that the loosening of moral bonds is often the first stage of disintegration. Both cocoa and groundnut pyramids were seen as symbols of integration in their respective regions because the dominant ethnic groups in Nigeria were involved. In a sharp reverse, oil has become a crude symbol of speedy disintegration because the hapless minorities are involved. It is sufficient to assert that the goose and the gander are legally inseparable in all facets of life. The plight of the Niger Delta can best be evaluated and appreciated by the people indigenous to an unquantifiable environmental degradation. Amnesty is hogwash

and cosmetic to the expectations of the people of the area who have been pauperised by series of round conference talks that profited nothing from the recommendations of Willinck's Commission of 1958 till date.

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