

# J-K Gadzama & PARTNERS

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## PROCLAMATION OF AMNESTY TO NIGER DELTA MILITANTS: MATTERS ARISING

### INTRODUCTION:

Alhaji Umaru Musa Yar'adua, President and Commander-In-Chief of the Federal Republic of Nigeria in an unprecedented move on the 25<sup>th</sup> of June, 2009 in exercise of Powers conferred on him by Section 175 of the 1999 Constitution of the Federal Republic of Nigeria announced the granting of Amnesty to Militants in the Niger-Delta region who were willing to surrender their weapons and renounce militancy.

A discourse on the proclamation of Amnesty is incomplete without a definition of the term "Amnesty". What exactly is Amnesty? Amnesty which is derived from the Greek word "*amnestia*" otherwise known as Oblivion, is an act of grace by which the Supreme Power in a state restores those who may have been guilty of any offence against it to the position of innocent persons or a new man (*Novus homo*) and it includes more than pardon, in as much as it obliterates all legal remembrance of the offence. It is the release from guilt or penalty of an offence; it is also the act of an authority as a government by which pardon is granted to persons especially for political offences. The Oxford Advanced Learners Dictionary defines it as a period of time during which people can admit to a crime or give up weapons without being punished. Black's Law Dictionary 6<sup>th</sup> Edition page 82-83 defines Amnesty 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 delict, generally political offences, treason, sedition, rebellion, draft evasion and often conditioned upon their return to obedience and duty within a prescribed time*"

Furthermore, the offer of Amnesty by the President and Commander-In-Chief of the Armed Forces of Nigeria which will be open for 60 days commencing from the 25<sup>th</sup> of June 2009 to the 4<sup>th</sup> of October, 2009 is predicated on the willingness and readiness of the militants to give up all illegal arms in their possession and completely renounce militancy in all its ramifications unconditionally and depose to an undertaking to this effect. The President further stated that the pardon shall take effect upon the surrender and handing over of all

equipments, weapons, arms and ammunitions also an execution of the renunciation of militancy forms specified in the Schedule thereto, by the affected persons at the nearest Collection Centers established for such purpose by the Government in each of the Niger-Delta States. The unconditional pardon granted pursuant to this Proclamation shall extend to all persons presently being prosecuted for offences associated with militant activities.

This proclamation has been lauded by many as a bold welcome initiative of the Federal Government showing commendable goodwill, seeing that if the olive branch extended is accepted, it will bring about a cessation of warfare, forge harmony and led to a positive development of a region that has been ravaged by crises that has literally paralyzed the oil sector for more than a decade and has cut Nigeria's oil output to less than two third ( $\frac{2}{3}$ ) of its capacity of three million barrels a day over the past three years and the ripple effect of all these is ruining the price of oil in the International market and affecting the Economy worldwide.

The root cause of the Militants struggle is a dissatisfaction and inadequacy of previous attempts by Government to meet the yearnings and aspirations of the Niger-Delta People. The struggle is aimed at reversing unjust treatment of local communities after more than five decades of oil exploration and exploitation with the local communities remaining impoverished while bearing the pain of environmental pollution caused by the oil industries.

There has been increased concerted effort by the Niger-Delta Elders Forum to get more militants in the Niger-Delta to accept the Presidential Amnesty. This was disclosed via a communiqué issued at the end of a meeting held in Effurun Warri which stated that they would meet with the various militant groups with a view to persuading them to hand over their Arms and embrace the reprieve. So far some militants have heeded this call and surrendered their Arms while others having expressed skepticism and reservations over the Federal Government's Amnesty Offer have described it as a "Greek gift" saying that the release of Mr. Henry Okah who is currently undergoing trial in Jos, Plateau State had conditions attached to it. Interestingly, a very vocal militant group, Movement for the Emancipation of the Niger Delta (MEND) has in a statement said that the leader of the Ijaw National Congress (INC) Chief Edwin Clark was on his own as far as the Amnesty offer was concerned.

Meanwhile the Federal Government in a bid to show its seriousness about this offer has taken further steps to indicate its commitment and willingness to follow through. This was demonstrated by President Umaru Musa Yar'adua's directive to the Chairman of the Presidential Committee on Amnesty and Disarmament of

Militants in the Niger Delta and the Minister of Interior, General Godwin Abbe to immediately arrange a meeting with the detained leader of MEND and formally offer him Amnesty, this is because Amnesty though voluntary cannot be done through or by Proxy. In a very surprising twist, the detained leader of the Movement for the Emancipation of the Niger Delta (MEND), Mr. Henry Okah accepted the Amnesty offer on the 9<sup>th</sup> of July, 2009 and this further spurred the group to announce that it was ready to have dialogue with the Government on how to resolve the Niger Delta crises.

#### **PRESIDENTIAL POWERS FOR THE GRANT OF AMNESTY UNDER THE 1999 CONSTITUTION**

Though the word "Amnesty" is not mentioned in the Constitution, the President relied on the explicit powers conferred by Section 175 of the 1999 Constitution of the Federal Republic of Nigeria on the prerogative of mercy, which section provides Inter-alia that:

##### **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 punishment for any punishment imposed on that person for such an offence; or*
  - d) *Remit the whole or any part of any punishment imposed on that person for such an offence or off 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.*

S. 175(2) of the 1999 Constitution further stated that this powers especially the one espoused in subsection (1) (a) shall be exercised by the President after consultation with the Council of State. That is to say the present Amnesty offer having being made after due consultation with the Council of State by the President under the exercise of these powers has the full backing of law and the Constitution.

Also, the phrase "The President may grant any person concerned with or convicted of any offence created by an act of the National Assembly a pardon" means any person concerned with an offence or having committed an

offence but not prosecuted or those who have been prosecuted and convicted of offences' would benefit from the Amnesty grant. A similar provision *mutatis mutandi* is set out in Section 212 of the 1999 Constitution relating to powers of the Governor to grant pardon. Likewise Article II Section 2 of the United States Constitution gives Presidential Powers to "grant reprieves and pardons for offenses against the United States".

#### **MATTERS ARISING**

Generally, Political Amnesty is often a product of two main situations. There is an Amnesty arising out of a negotiated settlement in which two parties having arrived at a deadlock in their conflicts have decided to use negotiations and peace deals to settle their differences, an example of this can be seen in South Africa during the Liquidation of apartheid where the crimes of the Boers and National Party were pardoned in the light of a new South Africa. The second context is a Victors' Amnesty in which one party overwhelms the other, claims victory and then magnanimously offers Amnesty to the defeated side, this was evidenced in the aftermaths of the Nigerian Civil War of 1968 - 1970 where General Yakubu Gowon declared the "No victor, No vanquished" principle which was an Amnesty granted to the soldiers who fought on the Biafran side.

#### **HISTORY OF THE GRANT OF AMNESTY**

The grant of pardon otherwise known as Amnesty has been in existence for a very long time. It was generally granted by the Crown alone or by an Act of Parliament usually on Coronations and similar occasions as seen in France, where the President traditionally grants Amnesty to specially selected prisoners on Bastille Day. The earliest recorded case of Amnesty was that of Thrasylbulus at Athens in 403 BC followed by the Amnesty proclaimed on the restoration of King Charles II of England after his father was executed.

In addition, other notable grants of Amnesty in the western world includes but are not limited to the following;

- George Washington's Amnesty of 1795 to participants in the Whisky Rebellion,
- Great Britain Amnesty of 1747 to the Partakers of Jacobite Rebellion/Rising,
- Amnesty granted by Napoleon on March 13, 1815,
- General Amnesty proclaimed by Emperor Franz Joseph I. of Austria in 1857,
- President Andrew Johnson's proclamation of Amnesty in 1863 to more than 200,000 persons after the American Civil War (April 9<sup>th</sup> 1861 - 1865),
- Abraham Lincoln's restoration of Confederates States into the Union in 1863,
- The Amnesty in United States Politics in 1872 which restored the right to vote and hold offices to the ex-confederates which said right was achieved by an

Act of Congress,

- The French Amnesty of 1905,
- President Franklin D. Roosevelt and Harry Truman in 1933 granted Amnesty to select World War I draft dodgers,
- President Jimmy Carter in one of his first acts as President granted a full, complete and unconditional pardon to draft dodgers and deserters on 21<sup>st</sup> January, 1977 thereby drawing to a close the legal, if not the political antagonisms of the Vietnam war.

Other Countries have, at one time or the other offered/granted Amnesty; they include South Africa during the 1990's as part of Truth and Reconciliation (TRC), Ivory Coast in 1991, Zimbabwe, etc. Coming closer home, in Nigeria, General Yakubu Gowon in January, 1970 while canvassing the “*no victor, no vanquished*” principle offered general Amnesty to Biafra rebel leader Chukwemeka Odumegwu Ojukwu. Likewise in the same vein, General Abdulsalam Abubakar in 1998 granted Amnesty to 646 prison inmates which included General Olusegun Obasanjo who was also in detention at that time. Thereafter, General Olusegun Obasanjo in 2004 granted Amnesty to militant leader of the Niger-Delta Peoples Volunteer Force Asari Dokibo Mujahid.

#### **REASONS FOR THE GRANT OF AMNESTY**

Amnesty may be offered when the authorities decide that bringing citizens into compliance with the law is more important than punishing them for past offences. It can also be extended as an incentive to make peace deals, forge unity and heal wounds inflicted by certain acts, though it is often used to get people to turn in contraband as was the case in China's gun restrictions, Kansas city's ban on Pit bulls and the Nigerian Example of “*gun buy back*” scheme under General Olusegun Obasanjo where militants were asked to turn in their guns for financial compensations.

#### **Advantages of Amnesty**

- 1) Avoidance of expensive prosecution especially when huge numbers of violators are involved.
- 2) Prompts violators to come forward who might otherwise have eluded the authorities.
- 3) Promotes reconciliation between the offenders and objectors and draft dodgers in the wake of Vietnam War in the 1970's in an effort to heal war wounds.
- 4) Creates a forum where peace talks can begin and issues identified and addressed.
- 5) Creates a forum where wounds inflicted on a nation's psyche can be healed.

Interestingly, some fundamental issues have been raised by an indiscriminate grant of Amnesty and they include; the question of justice (whether it has been served or not) for example, the Ugandan Government's offer not to prosecute alleged war criminal Joseph Kony in the hopes that further bloodshed will be avoided. Similarly, in the United States of America, there are controversies on whether illegal immigrants be granted Amnesty and immediate probationary status if they come forward as illegal immigrants. This position has been criticized as being a reward for breaking the law.

Nevertheless, it is without doubt that for this Amnesty offer to have the desired impact and overall success envisaged, the underlying problems of the Niger-Delta region which includes but are not limited to; Under development, Environmental pollution/degradation, Youth joblessness, Oil pollution/spills must be considered, addressed and tackled. In as much as Property Rights in a jurisdiction like Nigeria is vested in the Federation, with it owning all the natural resources, it in turn allocates these rights to lease- holders, Contractors, States and Local Governments in cases where ownership is not already vested in them. Though generally, ownership rights are vested in the States (Federation) with possible owners of these rights being Private, Sovereign State, Federating Parts or a combination of both.

Be that as it may, there is a need not to focus on ownership alone but on powers for decision making by the Communities, “a seat at the negotiating table” for the affected Communities, Rights to some benefits of the Industry (oil), Procedures to compel enforcement of social responsibilities by licensed contractors/oil companies carrying out operations in the region, Undertaking of specific measures to reduce the adverse effect of oil spillage, Provision of necessary Infrastructures like Good road Networks, Schools, Hospitals, Portable water, Electricity etc.

The Federal Government needs to create the requisite enabling environment for lasting peace and development by providing long term political and financial backing. In addition, the Federal Government has to ensure that Human Rights to sustainable development and a healthy environment are respected, with violations being brought under the International Charter on Human Rights and the International Community being involved in resolving and prosecuting violations.

#### **CONCLUSION**

The Federal Government of Nigeria has been commended for this show of goodwill and it's bold initiative of the Amnesty offer. It is our sincere hope and prayer that the Government will follow through on it's desire to see peace reign in the Niger-Delta region and this

can be achieved through meaningful, inclusive and incisive dialogue with organized interests and social forces of both fractions. There should be a move to genuinely engage all actors in the Niger-Delta with implementations of Policies by the Government that would benefit the region. It is our fervent hope that more militants will drop their arms and fully accept the Amnesty offered by the President. Having said that, the bottom line is, what genuine efforts can be made by Government to build relevant Institutions in the Niger-Delta for service delivery? The people of the Niger-Delta have a genuine claim for better governance but this genuine quest must be separated from Criminalities. All hands must be on deck to achieve a long lasting solution, as without peace and tranquility, there can be no meaningful progress and development.

# News from the Firm

It is with great joy that the Firm of Messrs J-K Gadzama & Partners felicitates with a staff of the Firm, Mr. Reuben Onakpome, who recently got joined in holy matrimony with former Miss Chioma Nsoedo of Nnewi, Anambra State. The entire Firm wishes both of them, marital bliss, God's blessings and protection, a fruitful union and above all, a long lasting and happy married life.

In a related development, the said staff, Mr. Reuben Onakpome will be leaving the Firm and subsequently the country to join his wife who is resident in the United Kingdom. While he was with the Firm, he served in the capacity of an I.T Specialist; he was a dedicated and committed staff whose invaluable contributions to the success and growth of the Firm cannot be quantified. The Firm wants to use this opportunity to wish him the best in his future endeavors and God's guidance as he embarks on this new phase of his life. He will be solely missed by all staff.

The Firm of Messrs J-K Gadzama & Partners also wishes to announce an addition to the Firm, in the person of Miss Nachamada Shaltha who joined our Abuja Office as one of the counsel in chambers. Miss Shaltha is a young talented lawyer with passion for Litigation and Corporate Legal Practice with a very promising career ahead of her. The Firm welcomes her and wishes her a very interesting stay and the best of times..

## BAR NEWS

### **International Bar Association (IBA) Conference**

Date: 4<sup>th</sup> - 9<sup>th</sup> October, 2009

Venue: Madrid, Spain.

### **The Commonwealth Regional Law Conference, 2010**

Date: 8<sup>th</sup> - 11<sup>th</sup> April, 2010

Venue: Abuja, Nigeria.

## **PHOTO NEWS:**



Students on Law Office Attachment with the Deputy Head of Chambers of J-K Gadzama and Partners, A.C Ozioko Esq.



MR. & MRS. Reuben Onakpome

## **PARTNERS IN THE FIRM**

- (1) CHIEF JOE-KYARIGADZAMA MFR, SAN, FCIArb.
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- (5) ABEL C. OZIOKO ESQ.
- (6) TOYIN UKO, ESQ.

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