RE-EXAMINING THE LEGALITY OF REGIONAL SECURITY OUTFITS IN NIGERIA*

Abstract

Rising insecurity has become a challenge to the government and people of Nigeria. The magnitude of this problem has exceeded the coping capacity of the conventional security outfit in Nigeria. Although Nigeria is a federal state, the central government has always found the idea of a decentralized policing and security activities scary. This is not unconnected with the post-civil war mentality of ensuring the absence of coercive instrument of State do not get into the hands of people with centrifugal tendencies. However, insurgency and other forms of criminality has rendered these fears unwise at this time. The paper examines the constitutional and legal provisions for security of lives and property in Nigeria. The paper found that contrary to the widely held belief that policing and security is the exclusive preserve of the Federal Government, there are provisions within the Constitution and other laws that could enable regional security outfits to operate lawfully in Nigeria. Their effective operation however requires a measure of cooperation with the central government in view of the fact that arms and ammunition which constitutes the major weapon used in security operations is within the exclusive legislative list. The paper also found that the fact this cooperation is required does not make the establishment of security outfit by the States unlawful. In view of the enabling laws, the devolution of powers for the establishment of regional security outfit is inherent within the constitution.

Key Words: "Security", "Law", "National Development", "Constitution"

1 Introduction

The current insecurity plaguing the Nigerian nation has certainly defied the capacity and competence of the conventional security apparatuses in the country. The mayhem that is being wreaked on hapless Nigerians in the North East of Nigeria with little or no protection being afforded them by the traditional security institutions against the incessant attacks by terrorists have questioned the logicality of the Nigerian Constitution in making policing the exclusive

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affair of the Federal Government. In the first place, it needs to be restated that the whole idea of a centralized security arrangement arose out of the desire to quench every real or imagined agitation for self-determination or resource control by any traumatized or marginalized segments of the Nigerian nation. This exclusive jurisdiction for policing certainly arose from the ashes of the Nigerian civil war.

The prevalence and subsistence of the Boko-Haram insurgency in the North East, armed banditry and kidnapping for ransom in the North Central (which has eventually spilled over to the South West) has made nonsense of the present security infrastructure of the Nigerian State. The attacks by herdsmen (most of whom are Fulani of non-Nigerian origin) in the farmlands, killings, kidnappings, raping and destruction of lives and property all over the grazing terrain of Nigeria has placed the Nigerian state in a situation where it has to choose between holding on to/and jealously guarding a centralized security arrangement while spending billions of dollars fighting insurgency/terrorism armed banditry and other forms of violence related criminal activities on the one hand, and allowing reasonably decentralized security arrangements for the protection of the lives and properties of Nigerian citizens on the other hand. From the way things are currently going, the Nigerian state has no middle course option.

2 Law and Security

There exists an intricate relationship between law and security. Law has been defined in various ways as follows:

> The aggregate of legislations, judicial precedents and accepted legal principles that forms the authoritative grounds for judicial and administrative actions.[1]

The whole idea of law is founded on the philosophical principle of a "Social Contract" which began to be espoused from the times of the Greek philosophers but was given fervency by the writings of notable philosophers such as Thomas Hobbes[2], John Locke[3] and Jean Jacques Rousseau[4].

Law has further been defined as:

> The Regime that orders human activities and relations through systematic application of the force of politically organized society or through social pressure backed by force in such a society.[5]

For any set of rules to be properly regarded as law, such rules must be:

> the law of a group of individuals. No one can make a law purely for himself. He may form a resolution,

[1] Black's Law Dictionary, (10th edition), cited in F.O. Iloh, et al, proceedings of the 50th Conference of the Nigerian Association of Law Teachers (NALT), June 2017, p. 87.
[2] B.A Garner; *Black's Law Dictionary*, 10th edition(St Pauls Minning: Minessota,2004). p. 1288
[3] *Ibid*
[4] *Ibid*
[5] *Ibid*

> frame an ambition, adopt a rule but these are private prescriptions, not laws.[6]

This means that law must exist in a social context. The central theme running through the popular conceptualization of the term "law" is the idea of a "social contract" that was propounded by the early philosophers. The term "Social Contract" has been expressed to mean:

> The express or implied agreement between citizens and their governments whereby individuals agree to surrender certain freedoms in exchange for mutual protection.[7]

It is this kind of agreement that forms the foundation of every political society. Flowing from this concept, we must note that all modern nation states are supposed to be anchored on the foundation of a "Social Contract" existing between the government and the governed, rather than on tyranny or other forms of arbitrariness. According to Hobbes, before the evolution of political society, men recognized no law but that of the strongest and consequently lived in a state of perpetual fear. It was in the bid to remedy this formless and anarchic condition that some form of common authority was established.[8] The major purpose of the political authority then, is to preserve the life and property of the men who granted the authority by surrendering their natural freedoms. Thus, any state that fails in this fundamental task has no reason to continue to exist. The key tool by which the political authority carries on its purpose is the enactment and enforcement of laws.

National security has been defined to mean the "*policy enacted by governments to ensure the survival and safety of the nation state*"[9]. The elements of national security have been identified to include military security, economic security, political security, cyber security, environmental security and energy security.[10] Essentially, a sense of security depicts a state of general well-being reflected by overall preservation of life and protection of property.

From the foregoing, it can rightly be said that the states exist to make and enforce laws for the security and well-being of the citizens that make up a nation. The state enacts the law by virtue of the individual freedoms surrendered to it by citizens in their pursuit of security and freedom from fear. The only reason why individual citizens obey the laws of a community or nation, by giving up their absolute personal freedom to the state is so that, the state will deliver them from the Hobbesian state of nature by offering them security. Thus, the social contract envisioned by Thomas Hobbes, John Locke, Jean Jacques Rousseau and others cannot hold where the state is unable to preserve and protect the lives of the citizens.

3 Provisions for Security of Lives and Property under Nigerian law.

There is a plethora of laws in Nigerian jurisprudence geared at the protection of lives and property. This paper will only consider the Nigerian Constitution and the Criminal and Penal

[6] *Ibid*
[7] *Ibid*
[8] C W Keeton, *The Elementary Principles of Jurisprudence* (Oxd ed), (Oxford: Longman Publishing Co,1949), p 67.
[9] E Smaranda; E Olarinde, O Sesanfabamise and Ifeoluwayimika Bamidele, 'Militancy, Terrorism and National Security 1914-2014: The Role of the Law' in C.A Amaka, ed., *Proceedings of the 47th Annual Conference of Nigerian Association of Law Teachers (*Nigerian Association of Law Teachers, Abakaliki 2015) 296.
[10] *Ibid*

Codes in order to determine the legality or otherwise of promoting regional security outfits such as the one that has already taken off in the South West, (Operation *Amotekun)* and that being proposed for the South East, (Operation *Ogbunigwe*).

4 Constitutional Provisions for a Central Security Infrastructure

The Nigerian *grund* norm which is the 1999 Constitution (as amended) appear on the surface to confer on the Nigerian state, the exclusive jurisdiction to provide for the security of lives and property in Nigeria. The Constitution of the Federal Republic of Nigeria, (1999) provides as follows:

> There shall be a Police Force in Nigeria, which shall be known as the Nigerian Police Force, and subject to the provisions of this section, no other Police Force shall be established for the federation or any part thereof.[11]

The constitution concerning security further provides that:

> There shall be an armed forces for the Federation which shall consist of an army, a Navy, an Air force and such other armed forces of the federation as may be established by an Act of the National Assembly.[12]

The above constitutional provisions have been interpreted in some quarters to mean total exclusion of individuals and communities from activities geared at the protection of their lives and properties. The presumption is that any formal organization set up in this regard automatically becomes a parallel police force outlawed by section 214(1) of the Constitution. It is submitted that this argument is completely misconceived. Assuming the argument is correct, then private security guards organization are also existing contrary to the provisions of the Constitution. It would mean that nobody or organization has a right to employ private security guards organizations since they could be declared to be illegitimate bodies.

However, the same constitution in sections 33 – 35 grants to every Nigerian citizen the right to life, dignity of the human person and personal liberty. These rights are inalienable and every Nigerian citizen or community has a right to do all that is within their powers (without violating the right of other persons or other communities or breaking any law) to protect these rights. Section 44 of the same constitution further confers on every citizen and by extension communities the right to own moveable or immoveable property in any part of the country without same being unlawfully taken away from them. Furthermore, every Nigerian citizen, by virtue of section 40 of the same Constitution, is free to communalize the protection of these rights by joining other persons to form associations for the purpose of pursuing and protecting those rights and interests. The import of section 40 of the Constitution is that the pursuit of the right to life, right to the dignity of the human person and personal liberty can be communalized through the formation of associations and outfits for that purpose. Consequently, associations that are formed for the protection of lives and properties which rights are guaranteed by the Constitution are lawful as long as these associations do not violate the rights of others or run afoul of any extant law.

[11] Section 214(1) Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[12] Section 217 Constitution of the Federal Republic of Nigeria, 1999 (as amended).

5 Protection of the Right to Life under the Criminal and Penal Codes

In furtherance of the protection of the right to life and freedom from aggression, the right to self-defence is deeply entrenches in both the Criminal Code and the Penal Code. The Criminal Code in respect of the above principle provides as follows:

> A person is not criminally responsible for an act or omission if he does or omits to do the act when the act is reasonably necessary in order to resist actual or unlawful violence threatened to him or to another person in his presence.[13]

The Penal Code is even more apt on this matter when it provides that "*Nothing is an offence of which is done in the lawful exercise of the right of private defense.*"[14]

The above provisions go to show the prominence given to the protection of life under Nigerian law. They are however not without limitations otherwise; the society will degenerate into anarchy. Notwithstanding, the limitations as contained in the express provisions of the statutes are not designed to derogate from the potency of the protection of lives and property afforded by the Codes but are meant only to guard against excesses The limitations are contained in sections 286 – 288 of the Criminal Code and sections 62 – 66 of the Penal Code. Section 286 of the Criminal Code provides as follows:

> When a person is unlawfully assaulted and has not provoked the assault, it is lawful for them to use such force to the assailant as is reasonably necessary to make effectual defence against the assault, provided the force cited is not intended and is not such as likely to cause death or grievous bodily harm. What harm or force is reasonably necessary is invariably a question of fact, in a case of brutal attack when a person's life is in danger, such force may extend to the causing of the death of the assailant".

The second paragraph of section 286 goes on to provide that:

> if the nature of the assault is such as to cause reasonable apprehension of death or grievous harm and the person using force by way of defence believes on reasonable ground that he cannot otherwise preserve the person being defended from grievous harm, it is lawful for him to use any such force to the assailant as is necessary for defence, even through such force may cause death or grievous harm.

The Supreme Court in a plethora of decisions have interpreted the above provision and gave effect to its plain meaning.

[13] Section 32(3) of the Criminal Code.
[14] Section 59 of the Penal Code

6 The Legality of Regional Security Outfits in Nigeria

From the foregoing analysis, it is trite to posit that the word "police" as used in section 214(1) of the 1999 Nigerian Constitution is not synonymous with the word "security". Time will fail us in exploring the etymological distinction between the two words, it is necessary to reiterate that the main reason for the existence of the state is the security of the lives and properties of the citizens. There is usually a multidimensional approach to the protection of lives and properties. A central police force as created by the constitution is only one approach.

A combined reading of the constitutional guarantees for the preservation of lives and property and the statutory provision for self defence both in the Criminal and Penal codes, will irresistibly lead to the conclusion that Nigerian law recognizes the right of the state governments to enact laws for the establishment of security outfits for the protection of the lives and properties of the citizens in their states. Moreover, in turbulent times such as these, when the blood of innocent and hapless citizens are being spilled on the streets and bushes by terrorists, kidnappers, etc., the only alternative to complete legalizations of self help with its possible fearful outcomes, would be the registering of proper communal/state/regional bodies, that are within the purview of the law to assist the central police in the preservation and protection of lives and property.

It is submitted that greater anarchy and chaos will be occasioned against the Nigerian society if the rights of individual citizens to self-defence as contained in extant law is strictly promoted and pursued by the state in such a manner as to leave the exercise of such right solely at the discretion of individual citizens. Government could do this for example through the legalization of the possession of firearms for self-defence by private individuals. It is arguable whether the Nigerian citizenry has matured and have become stable to be entrusted with this kind license. In more advanced and stable societies, where the possession of firearms for self-defence is legalized, there is a presumption that a majority of the adult population are sufficiently and emotionally stable enough to bear arms for self defence against a minority miscreant population. This same presumption may not apply to our level of development as a nation. Besides, communally based defensive actions appear to wield more force and credibility in Nigeria than actions that are instituted by an individual for his self defence.

7 Conclusion

This paper has x-rayed the legality of a community based security outfit for South East Nigeria and indeed other parts of Nigeria.

It is respectfully submitted that based on extant laws, a regional security outfit for the East such as "Operation *Ogbunigwe*" as been planned by the South East Governors is quite within the purview of Nigerian law as long as such an outfit is solely established for the protection of lives and property as guaranteed by the Constitution. For such an outfit to exist within the law, it must not go by the name "Police" and must operate within the ambit of the general law and the various state laws that will establish them.

They must not operate in conflict but in collaboration with the Nigerian Police albeit exist independent of the police in terms of structure, funding and organization. The states that make up the south East must enact enabling laws in their various states for the existence of the outfit.

Such state laws must contain provisions for regional collaborations in view of the similarity of the terrain of operation since the region is not a federating unit under the Nigerian Constitution

The sore issue of the use and bearing of firearms, when necessary, must be diligently and intelligently ironed out with the police and the bearing of such firearms must be with the consent and approval of the police to be within the ambit of the law restricting the possession of firearms.

This consent and approval is necessary in order to ensure that the regional security outfit confines itself to the duty of preservation and protection of the lives and property of the people of the South East and will not be used by politicians to pursue their political agenda or be abused in any other way. This will also prevent the proliferation of firearms with the attendant risk of such arms entering the wrong hands.

Finally, a combined reading of the constitutional guarantees to safety and the provisions of the Criminal and Penal Codes with respect to self-defense clearly reveals that regional security outfits that operate within the law are lawful in Nigeria.

8 Recommendations

The current fear and anxiety over regional security outfits in Nigeria has no bases either in the constitution or in the general Law. The existence of such outfits are not only constitutional and lawful but justified in the light of rising insecurity in Nigeria.

The Federal Government has a duty as the chief security infrastructure in Nigeria to coordinate the outfits by making laws that can manage and effectively control the use of fire arms by the security outfits.

Item 2 of the exclusive legislative list of 1999 Constitution of the Federal Republic of Nigeria confers on the National Assembly the powers to legislate for the whole nation concerning arms, ammunitions and explosives. This means that the regional outfits in pursuance of the communal defense of our various communities must pass through the national assembly in other to effectively procure the appropriate arms and ammunitions required by them for the effective defense of the communities. This means that even though the existence of a regional outfit is lawful under a State Law, they will need the National Assembly for legislation that will enable them to bear arms. This is where the cooperation is needed between such outfits and the central government.

The central government can through its centralized security infrastructure. i.e, the police and the army provide training for the safe use of fire arms by the outfits without interfering in their security operations as long as they are operating within the ambits of the law.

It is recommended that the regional security outfits being closer to the people should be galvanized to cooperate with the centralized security infrastructure to flush out criminality from our midst.

The State Governments should deploy funds for the running of the regional outfits set up by them for the communal defense of their citizens.

The government at the center and those of the component units must work out the modalities for cooperation so as to avoid conflicts of rules