

LEGAL ISSUE BRIEF

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Legal Framework of State Role in Public Safety and Public Order

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1.0 Introduction

Insecurity has for long remained a major challenge in Nigeria. Armed robbery, kidnapping and wanton killings have spread to virtually all parts of the country. The federal government has primary constitutional responsibility to secure the lives and properties of the people. Indeed, the federal government has exclusive legislative powers over policing, and securing the territorial integrity of the country.¹ Thus, under the Constitution, a subordinate role in policing has been given to the governor of a state *vis-a-vis* federal authorities, to the extent that a commissioner of police may be issued lawful directives by the governor in

respect of policing challenges within the state.²

Despite this legal framework, the federal government's dominant (exclusive) role in police and security of lives and property have barely yielded the desired result. This grim verdict is obvious from the widespread and intractable persistence in security challenges across the country, leading to overwhelming public outcry against the inability of the federal government to secure the people.³ This has prompted some states to initiate state security outfits to respond to the situation.⁴ Recently, the government of states in the south west announced the introduction of a joint security outfit by the name Amotekun, to offer security services across the region.⁵

¹ See sections 214 and 215, 2016 and 217, 1999 Constitution.

² Section 215 (4), *ibid*.

³ "Insecurity and violence turn Nigeria into a 'pressure cooker' that must be addressed", says UN rights experts, in UN News, 3 September, 2019 available at <https://news.un.org/en/story/2019/09/1045472> (accessed 14 February, 2020). See also "Nigeria Events, 2019", *Human Right Watch Report* available at <https://www.hrw.org/world-report/2020/country-chapters/nigeria-0>, detailing atrocious Boko Haram insurgency violence and inter-communal violence

spread across the country (accessed 14 February, 2020).

⁴ See "State Governments face pressure to respond to national insecurity", *Legist*, publication of Policy and Legal Advocacy Centre, 12 February, 2020 available at <http://placng.org/Legist/state-governments-face-pressure-to-respond-to-national-insecurity/> (accessed 14 February, 2020).

⁵ See "Operation Amotekun: Western Nigeria Launch security Outfit" in *PM News*, 14 January, 2020, available at <https://www.pmnewsnigeria.com/2020/01/09/operati>

Questions have been raised about the legality of this latest initiative, against the backdrop of constitutional provisions which grant exclusive powers over internal security to the federal government. This brief offers an overview of the state of Nigerian Constitutional Law on the issues raised particularly with regard to the role of the states in public safety and public order.

2.0 Policing Power, Public Safety and Public Order

Under the 1999 Constitution, police power is conferred exclusively on the federal government. This is by virtue of item 45 of the Exclusive Legislative List. The item is quite broad, because it not only confers police power on the federal government but also grants exclusive power to the federal over “other government security services established by law”. The power over public safety and public order is not specifically granted to any government, whether federal or state, in either the Exclusive Legislative List or the Concurrent Legislative List. However, this power is mentioned in section 11(1) and (2), as being within the legislative powers of both the federal government and the government of the states. It is noteworthy that section 11 (2) specially prohibits any obstruction to the power of a House of Assembly to legislate in respect of public safety and public order. Section 11 (1) and (2) provides thus:

(1) The National Assembly may make laws for the Federation or any part therefore with respect to the maintenance and securing of

public safety and public order and providing, maintaining and securing of such supplies and service as may be designed by the National Assembly as essential supplies and services.

(2) Nothing in this section shall preclude a House of Assembly from making law with respect to the matter referred to in this section, including the provision for maintenance and securing of such supplies and services as may be designated by the National Assembly as essential supplies and services.

3.0 Role of States in Public Safety and Public Order

From the foregoing it’s clear that the states have role to play in “maintenance and securing of public safety and public order”. The role is a unique concurrent one to the extent that both the National Assembly and the state assemblies share equal powers in respect of it, and yet the federal government’s power to cover the field is curtailed. Although section 11(2) of the Constitution grants power to the states over “maintenance and securing of public safety and public order”, the subsection limits the role of the states to provide for maintenance, and securing of such essential supplies and services only to what the National Assembly has designated as “essential supplies and services”. No such designation has been so far made by the National Assembly, even as it is unclear by the language of the constitutional provision in section 11(1) and 11(2) what form the designation may take.

on-amotekun-western-nigeria-governors-launch-security-outfit/ (accessed 14 February, 2020).

As noted in the introduction, following national outcry against the menace of insecurity, a number of state governments have established or expressed intention to establish security outfits with a view to protecting the lives and property of the people.⁶ States of South West Nigeria have each taken steps to form a joint security network with the name Amotekun. The establishment of this outfit has elicited mixed reactions, with some expressing support citing constitutional provisions especially section 14(1) which declares that the security and welfare of the people are the primary concern of government.⁷ Therefore, it is further argued, since state governments are envisaged in the meaning of “government” under that provision, states are well within their constitutional mandate to establish security outfit to protect citizens.⁸

Those opposed have focused on the provisions of sections 214 and 215, read together with item 45 of the Exclusive Legislative List in the Second Schedule Part One of the Constitution, which empower the federal government to exercise exclusive legislative power over the police, “and other government security services established by law”.⁹ Going by the provisions of the Constitution cited including section 11(2), it may be correct to suggest that states may not have been empowered to establish security outfits independent of the authority of the federal government. Nonetheless, the

Constitution does not prohibit the federal government from forbearing in exercising its powers over policing and establishment of “government security services”.

Thus, the federal government can tacitly; or through expression statutory donation of powers, confer power on state governments to establish security outfits for the purpose of tackling widespread security challenges across the nation. This is a step which accords with both the provisions of section 11(1), (2), and item 45 of the Exclusive Legislative List. Section 11(1) and (2) empowers the National Assembly to designate what constitutes “essential supplies and services” for maintenance of public safety and public order, which the states are obliged to adopt. Item 45 of the Exclusive Legislative List confers exclusive power on the federal government not only over police, but also “other government security services established by law”. “Government” here could as well mean security outfits established by a state government.

Therefore, the Constitution envisages that even state governments other than the federal government can establish government security services, distinct from the police, even as such “government security services” are required to be “established by law”, and within the exclusive legislative power of the federal government. As a matter of constitutional permission, by the provision of paragraph 2 of the Concurrent Legislative

⁶Ibid.

⁷ Festus Ogun “Amotekun is not illegal: a reply to Malami”, in *Punch* newspaper, January 16, 2020, available at <https://punchng.com/amotekun-is-not-illegal-a-reply-to-malami/> , accessed 20 February, 2020.

⁸ Ibid.

⁹ “Amotekun is illegal – FG”, in *Punch* newspaper of 14 January, 2020, available at <https://punchng.com/breaking-amotekun-is-illegal-fg/> (accessed 14 February, 2020).

List, a state can make financial provisions in respect of matters within the exclusive powers of the federal government. Therefore, in setting up a security service apparently under section 11(2) of the Constitution, following federal forbearance, a state is well within its prerogative to do so, including funding such initiative in collaboration with the federal government or with themselves, since there is no express prohibition of existence of “other government security services” except the constitutional prohibition against establishment of a “police force” other than the Nigeria Police Force.¹⁰ The totality of our submission is that state governments cannot exercise powers in respect of public safety and public to the extent of establishing and funding security outfits except upon federal government forbearance, with possible input and collaboration of federal authorities as prescribed by the National Assembly.¹¹

4.0 Conclusion/Recommendation

The need for protection of lives and properties through effective security services of government cannot be overemphasized. From the foregoing constitutional provisions,

there is an intrinsic indication that “government” can establish security services for the purpose of public safety and public order. This may not be limited to the regular police alone. “Government” in this sense appears to mean not only the federal government but also the government of states, even as the latter is, for the purpose of providing “essential supplies and services”, required to comply with what the National Assembly has so designated as “essential supplies and services”. “Services” here is wide enough to include security outfits charged with the responsibility of providing security services. What is clear is that the Constitution does not prohibit a collaborative relationship between both governments in maintenance of public safety and public order. This is obvious from sections 11(1) (2), 214, and 215 of the Constitution, among other. It is therefore recommended that the states should play more active role in public safety and public order in collaboration with federal authorities. This will go a long way to compliment the efforts of the federal government in stemming the tide of insecurity across the country.

¹⁰ See section 214 (1), 1999 Constitution.

¹¹ See section 11(1) (2) and item 45 of the Exclusive Legislative List, *ibid*.