

EDITORIAL COMMENT

The Legal Implication of Regional Security Outfits

For over a decade, Nigeria has been facing security challenges posed by Boko Haram, banditry, and Kidnapping in different parts of the country. Like many other African states, Nigeria has porous and unguarded borders, with daily problems of influxes of un-profiled persons, movements of arms cross-borders by bandits, militants, and mercenaries. These have culminated in mindless killings and forceful take-over of ethnic lands by the new marauders and insurgents. The activities of terror groups have resulted in attacks, resistance, and counter-attacks, with casualties on both sides of the conflict divide. Perhaps the most aggravating factor ever considered is the inability of law enforcement agents to curb the menace, or decisively deal with the weapon-wielding insurgent terrorists who transcends the national landscape daily killing and maiming innocent citizens. Also reflexive and inexplicable in the present circumstances is the wilful failure, and sometimes indifference, of the respective security agencies to act as appropriate or follow due process or rule of law by taking the apprehended culprits to the law courts. Even when arrested and handed over to the police, it is either the culprits are released or granted questionable 'state amnesty' under the so called '*Deradicalization*' programme for repentant bandits or terrorists.

The daily destruction of lives and properties continue unabated. The Federal Government is perceived, in many quarters, to have reached the end of its wits on what to do and how to handle the security quagmire. It is against these backgrounds of hopelessness and helplessness that a few states within the country have decided to form '*regional security outfits*' to provide additional security within their states or region. But the pertinent legal questions are, on whether the regional security outfits are legal formations. What is the legal implication of these security outfits? Can a region set up a security outfit?

The Nigerian state is a federation with powers shared under its *1999 Constitution* between the Federal Government, and the federating State and Local Governments. Under Section 4(3) and (4) (a) and (6) and (7) (a) (b) legislative powers is shared between these levels of government. Section 14 (2) (b) of the Constitution makes '*security and welfare of the people as primary purpose of government*'. While the Exclusive Legislative Lists under Schedule I earmarked *Defence* as *item 17. Defence* is different from 'Security'. The word security is not mention under the *Exclusive List* or the *Concurrent Legislative List*. The implications or natural intendment of the Constitution is for matters of security to form part of the *Residuary Legislative List*, in so far as it is not expressly mentioned as an item in the Exclusive or Concurrent Lists. The confusion over, whether only the Federal Government has exclusive powers over security matter is needless and superfluous in the light of the Constitution of the Federal republic of Nigeria 1999. What the Constitution has done by implications is to make security a business of all. In further support of the ordinary literal interpretations of the Constitution is the effect of constituting State Governors as the '*Chief Security Officer*' of the state. The implication of this is to give exclusive and absolute powers to the Governor over the Security of the state. The addition of the word '*Chief*' ordinarily implies there may be other '*security officers*' within a state, but the Governor is superior and above any security apparatus or other security officers in the State. It follows therefore that a Governor in furtherance of his preferences or pursuit of state's priority objectives may set up security outfits within the state to provide adequate security or pursuit of the state government's duty and policy to protect life and property.

The final point on this is to examine if in the light of the above provisions and other extant laws, a regional security outfit is legal and appropriate within the Federal arrangement of 1999 Constitution. The 1999 Constitution creates and establishes States. There is no

territorial or geopolitical division of the country into regions under the Constitution. The idea of 'region' is not derived from the Constitution, it is a political arrangement by political parties for benefits and power-sharing among the constituent states based on their geopolitical location, tribal or cultural affinity, religious inclination, and historical heritage. It is a rule of convenience, developed to encourage competition, efficiency and even development of the group of member states. The politicians divided the country into 6 zones of the North West, North East and North Central zones in the northern region, and South West, South East and South/South in the southern region. However, to the extent that the Constitution did not provide for this arrangement, it would appear as if any security arrangement of any kind based on this six zone arrangement is unconstitutional, null and void, more so as no enabling law for a regional security outfit by the States Houses of Assembly as a unitary body would be valid. But where each state sets up its own security outfits exercising its powers as a state under the Constitution. The '*state security outfit*' would be legally established and within 1999 Constitutions, provided that the state assembly enacts an enabling law pursuant to powers derived under Section 4 (6) and (7) of the 1999 Constitution.

In conclusion, while a '*regional security outfit*' set up as a regional outfit in this respect may be unknown to law under the 1999 Constitution of the Federal Republic of Nigeria, a '*state security outfit*' established under the legislative powers of a state would be in legal and valid exercise of constitutional powers conferred on state.

Professor Momodu Kassim-Momodu
Editor-in-Chief and Dean of Law