ADDRESSING EXECUTIVE DEPLOYMENT OF ARMED OFFICERS AND POLITICAL THUGS DURING ELECTIONS AND THE CONCERNS FOR RIGHTS TO LIFE AND PROPERTY IN NIGERIA

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Abstract

The enjoyment of fundamental rights to life and property enshrined in the grundnorm of any society is meant to be respected regardless of the circumstances calling for their violation. Violation of human rights during election process, is however what appears indignant and abnormal for any democratisation process. Every election year, African nations record casualties of human rights violations before, during and after electoral process. It is worrisome to hear or read about it but more appalling and repugnant, experiencing such incidents during the electoral processes that should lead to a peaceful transition from one democracy to another. Significant among the rights constantly violated, are rights to security of life and property. This paper argues about the need to secure life and properties among other rights during electoral process as it is in the nature of African politics and politicians and their supporters to behave violently during election just to win at all costs. The paper examines constitutional issues using the doctrinal legal research methodology which consists of the use of the primary and secondary sources of law. The resource materials obtained,

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were analysed in the context of the scope of the topic under examination. The legal issues falling under the context of discussion therefore include: the legal corpus of rights to life and security in African countries such as Nigeria, Ghana, and South Africa and the role of relevant agencies such as National Electoral Commission, the Police Force, Armed Forces, State Security Service and Intelligent Agencies, in achieving this desired protection particularly under the various Electoral Acts. It presents the possible implications of lack of assured protection each time election takes place in any African country. It therefore makes recommendations to the current insecurity that bedevils electoral process in Africa, such as sharing weapons among the security agencies, sharing intelligence information and re-orientation/ training of police officers purposely towards respect for human rights during the conduct of elections.

KEYWORDS: *Rights, Life, Property, Executive, Armed Officers, Electoral Process, Africa.*

Introduction

The right to life[226] and property,[227] are fundamental human rights enshrined in the Constitution of many African nations. The courts have since been empowered by the Constitution, to enforce these rights among others wherever they are brought before it against their violations.[228] For example, in Nigeria, Section 46 of the Constitution of Federal Republic of Nigeria 1999 (CFRN) (as amended), provides for special jurisdiction of High Court and legal aid for the enforcement of fundamental rights. It states that whenever anyone has allegation that any of the constitutional provisions on fundamental human rights inclusive of the rights to life and property has already been violated or about to be violated

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[226] Constitution of Federal Republic of Nigeria 1999 (CFRN) (as amended) s. 33; *Musa v. State* [1993] 2 N.W.L.R Pt 277, p. 550 CA; *Bello v. A. G. Oyo State* [1986[5 N.W.L.R. Pt 45, p. 828 S.C.; African Charter of Human and People Right, art. 4; *Joshua v. State* [2008] WHRC Vol. p. 45; *Maiyaki v. The State* [2008] 15 NWLR 173 at 220; *Lateef Adenyi v. State* [2008] WHRC Vol.1 P.83; *Okonkwo v. State* [1998] 4 N.W.L.R. Pt.544, p.142 CA; *Kalu v. State* [1998] 13 NWLR Pt. 583, P.531 S.C.; Odogu v. A.G. Fed (1996) NWLR Pt. 456, p. 508 SC; Ibe v. State 7 NWLR Pt 304, p. 185 C.A.; Lester, Pannick, at all (eds), Human Right Law and Practice, (Reed Lesevier Ltd 2009) p. 138; The European Convention, art. 2 (1).

[227] CFRN 1999 (as amended) s.43; African Charter Human and Peoples Right, art.14; *Lakanmi v. A. G Western State* [1971] 1 UILR 210; *LACOED v. Edun* [2004] 6 NWLR Pt. 870, p.476 Ca; *Ndoma– Egba v. Chuchwugor* [2004] 6 NWLR Pt 869, p. 382 S.C; *A.C.B. v. Okonkwo* [1997] 1 NWLR (Pt. 480) 195 C.A; *Ijeoma Anazodo v. All State Trust Bame Plc & Ors* [2007] CHR 117; *A.G. Bendel v. Aiyedan* [1989] 3 N.S.C.C 276; *Golden Victor Nangibo v. Uche Okafor* [2003] 10 S.C. 85; *Provost Lagos State College of Education v. Kolawole Edun & Ors.* [2004] 3 S.C.M 191; *Peenok Investment Ltd v. Hotel Presidential* [1982] 12 S.C. 1; *Onyiuke v. Eastern State Interim Asset Liabilities Agency* [1974] 10 S. C. 77 at 87; *Maiyegun v. Government of Lagos State* [2011] 12 NWLR (Pt. 1230) 154; *Federal Republic of Nigerian v. Joachim & Ors.* [2002] 2 F.H.C.R.R, 94

[228] CFRN 1999 (as amended), s. 46.

or it is in the process of being violated, the High Court near to him or her, is available to lodge his or her complaint.[229] In hearing the matter, the Court has the power to give order as may be appropriate in the circumstance. The jurisdiction of the Court can further be expanded in future by an Act of the Parliament.[230] This framework is virtually available in many African countries.

By implication, the Constitution is very protective of the rights of the citizens to such an extent that even when any of the rights are yet to be breached, the Constitution already provides the means of enforcement so as to prevent further damage as well as possible damage to the enjoyment of the rights. This is because the right of the citizens is one of the underpinnings of the basic concepts of governance such as rule of law and separation of powers.

Surprisingly however, the process that should usher in the kind of government that will take this responsibility of protection of these rights, have been found to be the medium by which they are violated, particularly, rights to life and security of property. This paper focuses on the examination of these two rights (rights to

[229] *Grace Jack v. University of Agriculture Markurdi* [2004]5 NWLR (Pt. 856) 208 at p. 225; CFRN 1999 (as amended) s.46(3) which empowers the Chief Justice of Nigerian to make rules with respect to the practice and procedure of a High Court for the purpose of this section. To this end, the Fundamental Right Enforcement Procedure Rules, 2009 was made.

[230] ibid.po-i

security of life and property) because right to life is conditional to the enjoyment of other rights contained in the Constitution of any nation. Second, rights to security of property, is right to shelter, without which the existence of life is seriously jeopardised and the society at large will become more disorganised.

Conceptual Framework and Legal Framework

Executive Arm of Government

The executive arm of government is the part of governmental body responsible for execution of the law made by the legislature and implementation of policies.[231] The duties and roles of the executive are quite clear and distinguished. However, there appears instances where conflict exist between the two organs.[232] Thus, the body is poised to defend the Constitution, uphold it and carry out the content of law made in compliance with the Constitution. Coincidentally, the second chapter of the Constitution on Fundamental Objectives and Directive Principles of State Policy places further responsibility on the executive body to ensure compliance with the spirit of the Constitution.[233]

While Chapter four of the Constitution provides for fundamental human rights to be respected and enforced in all situations including during electoral process,[234] it also makes adequate provisions for election process, adjudication and justice.[235]

[231] CFRN 1999 (as amended), s.5
[232] Godswealth I. C., Z. B. Ahmad, and J. Jawan, "Factors Influencing the Executive and Legislative Conflict in Nigeria Political Development", 21(8) (2016) *IOSR Journal of Humanities and Social Science*, 20-25.
[233] CFRN 1999 (as amended), s.13.
[234] CFRN 1999 (as amended), ss.33-43.
[235] CFRN 1999 (as amended), s.285.

Hence, the duty of the executive body is first to obey and then ensure that the provisions are obeyed.

Fundamental Rights Enshrined in Chapter 4 of the Constitution

Human rights are the basic entitlements of all human beings in any society.[236] They pertain to humans by virtue of their humility. [237] In the words of Justice Kayode Eso of blessed memory:

"This is no doubt a right guaranteed to everyone including the appellants by the constitution. However, what is the nature of a fundamental Right? It is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilised existence…"[238]

To Professor M.A. Ajomo, [239] "human rights are inherent in man and they arise from the very nature of man as a social aroma. They are those rights which all human beings enjoy by virtue of their humanity, whether black, white, yellow, Malay or red, the deprivation of which would constitute a great affront to one's natural sense of justice." The history of human right in division in Nigerian constitution is traceable to events proceeding the

[236] Abdullahi Ahmed An-Naim, *Universal Rights Local Remedies* (Interrights, Afornet, GTZ, 1997) 7.
[237] Yemi Akinseye-George, *Improving Judicial Protection of Human Right in Nigerian* (Centre for social –Legal Studies, Abuja, Nigeria, 2011) 1.
[238] *Ransamo Kuti & Ors. v. Attorney-General of the Federation* (1985) 5 N.W.L.R. (Pt. 10) 211 at 229-230 quoted in *Improving Judicial Protection of Human Right in Nigerian* (Centre for Social-Legal Studies, Abuja, Nigeria, 2011) 1.
[239] See Ajomo M.A, 'The Development of Individual Right in Nigeria's Constitutional History' in Ajomo and Owasanoye (Eds), *Individual Right Under The 1989 Constitution*, (Nigerian Institute of Advanced Legal Studies 1993) 1.

1960 independent constitution[240] Yemi Akinseye–George quoted the account of the background that led to the inclusion of human right in the Constitution by Professor M. A. Ajomo in the following illustration:

"So, Nigeria forged ahead in constitutional development prodded on by the various nationalists of the time agitating for self-government, the need to introduce some elements of human right unto the country's constitution gained prominence. One factor, which prompted this, was the heterogeneous nature of the country and the fears of the minorities that their survival would be threatened in a country dominated by three major tribes the Hausa, Igbo and Yoruba. The minorities therefore urged the British colonial government to allay their fears by the creation of states for them before independence was granted. The British government's responses were the Minorities commission under the chairmanship of Sir Henry Willink with the mandate to ascertain the facts about the fears of minorities and suggest means of allaying those fears. The Commission did not surprisingly recommended the creation of more states, rather it recommended the entrenchment of fundamental right provisions in the constitution though the commission observed that such provision would be difficult to enforce and sometimes difficult to interpret.[241]

[240] See Yemi Akinseye- George, Improving Judicial Protection of human Right in Nigeria, at p.7.

[241] See Ajomo M.A 'The Development of Individual Right in Nigerian's Constitutional History in Ajomo and Owasanoye (NIALS 1983) 1 at.4; See also Femi Falana, *Fundamental Right Enforcement in Nigeria*, (2nd Edition) (Legal Text Publisher, Lagos) 3-5.

Whatever rationale is acclaimed for the inclusion of fundamental rights in the constitution, what is clear is that it is not accidental. The inclusion is a genealogical response to the development of human rights in the entire globe at that time.[242]

Thus, under the 1999 Constitution, chapter four is dedicated to Fundamental Human right which include:

1. Right to Life[243]
2. Right to Dignity of Human Person[244]
3. Right to Personal Liberty[245]

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[242] Historical development of human rights have shown that various documents were drawn at different times to enshrine human right. The Magna Carta of England in 1215, the United State Declaration of Independence 1776. The French Declaration of the right of man and the citizen 1789 and the America Bill of Right of 1791 were example of the human right documents upon which many nations built their constitutional Rights. The major and most often pronounced of these historical documents on Bill of Rights is the Universal Declaration of Human Rights, 1948.

[243] Section 33 of 1999 Constitution (as amended); Musa v. State (1993) 2 N.W.L.R Pt 277, p. 550 CA; Bello v. A. G. Oyo State (1986) 5 N.W.L.R. Pt 45, p. 828 S.C.; Article 4 of African Charter of Human and People Right; Joshua v. State (2008) WHRC Vol. p. 45; Maiyaki v. The State (2008) 15 NWLR 173 at 220; Lateef Adenyi v. State (2008) WHRC Vol.1 P.83; Okonkwo v. State (1998) 4 N.W.L.R. Pt.544, p.142 CA; Kalu v. State (1998) 13 NWLR Pt. 583, P.531 S.C.; Odogu v. A.G. Fed (1996) NWLR Pt. 456, p. 508 SC; Ibe v. State 7 NWLR pt 304, p. 185 C.A.; See also Lester, Pannick, at all (eds), Human Right Law and Practice, (Reed Lesevier Ltd 2009) 138; Article 2 (1) of the European Convention.

[244] Section 34 of 1999 Constitution; Article 5 of African Charter; section 31 of 1979 Constitution; Uzoukwu v. Ezeonu (1991) 6 NWLR (Pt 200) 708; Mogaji v. Board of Customs and Excise and Another (1982) 3 NCLR p.552 at 562; Alobo v. Boyles & Anor (1984) 3 NCLR 830; Odofe & Ors v. Attorney-General of the Federation & Ors (2005) (CHR 309; Amakiri v. Tuowari (1974)1 RSLR 5; Dele Giwa v. IGP unreported Suit No: M/44/83 of 30/7/84; Wabali v. COP (1985) 6 NCLR424 H.C; RV. Bodom (1935) 2 WACA 353; Queen v. Haske (1961) All NLR 330 SC; McNabb v. United states 318 US 332; Mallory Lagos State (1996) 6 NWLR Pt 427, p.713 CA; Labour Board v. Virgina Power Co. 314 US 469; Girouard v. United State 328 US 61; Schnenk v. United State, 249 US 47.

[245] Section 35 of 1999 Constitution; Article 6 of the African Chapter on Human and People Right; Ekanem v. Asst. IGP (2008) CHR 172 at p.182; Anekwe v. Michael

4. Right to Fair Hearing[246]
5. Right to Private and family [247]
6. Right to Freedom of thought, Conscience and Religion [248]

(2009) 10 N.M.L.R. 18; A.G Anambra State v. Uba and 3 Ors (2005) All FWLR. (Part 277) 909 C.A: Mohammed v. Olawunmi (1990) 2 NWLR Pt 133. P.458; COP v. Obolo (1989) 5 NWLR Pt. 120,P.130CA; Shugaba v. minister of Internal Affairs (1981) NCLR 459; Bamaiy v. State (2001) 8 NWLR Pt.715, P.270 SC; COP v. Oruware (1974) All NHR 627; Udeh v. FRN (2001) 5 N.W.LR. Pt 706, P. 312 C.A; Nwangwu v. Duru (2012) 2 NWLR Pt 751 P. 265 C.A; Lord Denning opinion in his book 'Freedom Under The Law' where he said liberty as "the freedom of every law abiding citizen to think what he will, to say what he will on his lawful occasions without hindrance from any other person" –(Freedom Under The Law, Steven & Son Ltd London, 1948 P.5): See also A.V. Dicey, Constitutional Law 9th ed pp. 207 708; Okeke v. state (2003) 15 N.W.L.R. pt. 839, p.57 S.C; State v. Olatunji (2003) 4 NWLR pt. 810, P. 233 S.C; N.A.F. v. Obiosa (2003) 4 NWLR Pt 810, P. 57 S.C; Nigerian Army v. Mohammed (2002) 15 N.W.L.R. Pt. 789, p. 42.

[246] Section 36 of 1999 Constitution (As amended); section 33 of 1979 Constitution; *Akulega v. Benue State Civil Service Commission* (2002) 2 CHR; *State Civil Service v. Bozugbe* (1984) 7 S.C. 19; *University Teaching Hospital v. Noli* (1984) NWLR (Pt.363) 376 at 403; *Federal Civil Service v. Laoye* (1989) 2 NWLR (Pt.106) 652 or (1989) 4 SCNJ. (Pt.11) 46; *Adigun & Ors v. A.G. Oyo State & Ors* (1987) 18 NSCC Part 1, 346; Okaduwa & Ors State (1988) NSCC Vo. 19 Part 1 718; Victino Fixed Odds v. Joseph Ojo & Board of Internal Revenue Edo State Ors (2010) 8. NWLR (Part 1197) P.488; LPDC v. Fawehinmi (1985) 1 NWLR Pt.7, p.300 S.C.; Orugbo v. Una (2002) 16 NWLR Pt. 175 S.C; 720, p. 126 C.A; *NAF v. Shekete* (2000) 18 NWLR Pt 798, p. 126.; Director of SSS v. Agbakoba (1999) 3 NWLR Pt 595, p.314 S.C; *Menakaya v. Menakaya* (2001) 16 NWLR Pt. 738 p. 303 S.C

[247] Section 37 of 1999 Constitution; Article 8 European Convention; *Staley v. Georgia* (1969) 384 U.S. 557; Article 18 (2) of the African Charter of Human and People's Right; *Tolani v. Kwara State Judicial Service Commission* (2009) All NWLR (Pt. 481) P-880; *Dudgeon v. United Kingdom* (1981) 4 E.H.R.R 149; Entirck v. Carryington (1558) - 1777) All ER 41; *Thomas v. Sawkins* (1935) All ER 655; Ezeadukwa v. Maduka (1997) 8 NWLR Pt. 518, p. 635 C.A; *Complete Comm. Ltd v. Strange* (1849) 4171; Malone v. COP (1979) 2 All E.R. 620

[248] Section 38 of 1999 Constitution (as amended); See *Agbai v. Samuel Okagbue* (1991) 7 NWLR (Pt.204) 391; *Theresa Nwafor Onwo v. Oko* (1996) 6 NWLR (pt.456) 587; *Ojonye v. Agbudu* (1981) 4 NCLR; Comfort Nduchuckwu v. Anor v. Obi Okonji & 2 Ors (2007) CHR 199 Adamu v. A.G. Borno State (1996) 8 N.W.L.R (part 465). 203, Emmanuel Bijoe v. State of Kerala AYR 1987 S.C 748 (1988) 14 CLB p. 43; Esabunor v. Fawja of the Rosicrucian Order, AMORC (Nigerian) v.

7. Right to Freedom of Expression and the Press[249]
8. Right to Peaceful Assembly and Association [250]
9. Right to Freedom of Movement [251]
10. Right to Freedom from Discrimination [252]
11. Right to Acquire and own Immovable Property anywhere in Nigeria [253]

Henry O. Anonyi & Ors (1994) 1 NWLR (Pt. 355) 154; *Hamisi Rajabu Dibagula v. The Republi*c (2009-2010) CHR 147: Davis v. Brown 133 US 333.

[249] Section 39 of 1999 Constitution (as amended); *Ondo State Broadcasting Corporation v. Ondo State House of Assembly* (1986) 6 N.C.L.R. 333 at 337; *Derbyshire Country Council v. Times Newspaper* (1993) AC 534; State v. Ivory Trumpet (2007) All NWLR (Pt.386) 658; *State v. Author Nwankwo* (1985) 6 N.C.L.R 228; Bailey, Hairs and Jones, *Civil Liberties case and Materials*, (5th Edition, London, Butterworth Lexis Nexis, 2001) 647; Frohwerk v. U.S (1919) 249 US 204*; Gitlow v. New York* (1925) 268 U.S 652; *A.G. Federation v. Guardian Newspapers* (1999) 9 NWLR Pt. 618, p.187 S.C.

[250] Section 40 of 1999 Constitution (as amended); A.G. Federation v. Atiku Abubakar (2008) 2 CCLR SC 483; Independent Electoral Commission and Anor. v. Balarabe Muda and Ors (2003) CHR 131; Agbai v. Okogbue (1991) 7 N.W.L.R. (Pt. 204) 391; Aniekwe v. Okereke (1996) 6 NWLR (Pt. 452) 60.

[251] Section 41 of the 1999 Constitution; Article 12 of the African Charter on Human and Peoples Right; *Agbakoba v. State Security Service* (1993) 3 NWLR (Pt.599) 314; *R. v. Secretary of State Export Everett* (1989) 1 All ER 655, 650; *Federal Minister of Internal Affairs v. Shagaba* (1982) 3 NCLR 915; *William v. Majekodunmi* (1962) NSCC Vol.2, 219,228; Arowolo v. Akapo & Ors (2003) 8 N.W.L.R (Pt.823) 451; *A.G. Federation v. Ajayi* (2003) 12 N.W.L.R. Pt. 682, Pt. 509 C.A.

[252] Section 42 of 1999 Constitution (as amended); Article 2 of the African Charter on Human and People's Rights; section 39 of the 1979 Constitution; *Adam v. A.G. Borno State* (1996) 8 N.W.L.R (Pt. 465 203; *Mojekwu v. Ejikeme* (1997) 7 N.W.L.R. (Pt. 572) 2381; Article 2 Constitution on the Elimination of All Forms of Discrimination Against Women (CEDAW); *Chukwu v. Amadi* (2009)3 NWLR (Pt. 1127) 56; *Timothy v. Ofooka* (2008) All F.W.L.R. (Pt. 413) p. 1370; Article 1, 2, 7 and 10 of the Universal Declaration of the Rights 1948; Resolution 41 of the World Health Assembly 1988.

[253] Section 43 of the 1999 Constitution; Article 14 of the African Charter Human and Peoples Right; *Lakanmi v. A. G Western State* (1971) 1 UILR 210; *LACOED v. Edun* (2004) 6 NWLR pt. 870, p.476 Ca; Ndoma– Egba v. Chuchwugor (2004) 6 NWLR Pt 869, p. 382 S.C; A.C.B. v. Okonkwo (1997) 1 NWLR (Pt. 480) 195 C.A; Ijeoma Anazodo v. All State Trust Bame Plc & Ors (2007) CHR 117; A.G Bendel v.

The focus of this article therefore is the right to life and property. Although, the Courts have since been enjoined to enforce all the rights regardless and whenever they are brought before it.[254] Section 46 of 1999 Constitution provides for special jurisdiction of High Courts and legal aid for the enforcement of fundamental rights.

Electoral Process and Innovations New Electoral Act 2022

Election process refers to all the activities and procedures involved in the election of representatives by the electorates. It refers to all the pre- and post-election activities without which an election is meaningless. These include the registration of political parties, review of voters' register, delineation of constituencies, resolution of electoral disputes, return of elected representatives, and swearing-in of elected representatives. In addition, electoral law is the set of rules that guide the conduct of election and important activities that make up an electoral process.[255] Election process can be said to commence with the announcement of intention to conduct elections, till the elections have been won and invariably lost.[256]

Aiyedan (1989) 3 N.S.C.C 276; *Golden Victor Nangibo v. Uche Okafor* (2003) 10 S.C. 85; Provost Lagos State College of Education v. Kolawole Edun & Ors. (2004) 3 S.C.M 191; *Peenok Investment Ltd v. Hotel Presidential* (1982) 12 S.C. 1; *Onyiuke v. Eastern State Interim Asset Liabilities Agency* (1974) 10 S. C. 77 at 87; *Maiyegun v. Government of Lagos State* (2011) 12 NWLR (pt. 1230) 154; *Federal Republic of Nigerian v. Joachim & Ors* (2002) 2 F.H.C.R.R, 94.

[254] See Section 46 of the 1999 Constitution (as amended).

[255]Nnamani D. O., 'Electoral Process and Challenges of Good Governance in the Nigerian State (1999-2011)' 2014, 2(3), *Journal of Good Governance and Sustainable Development in Africa (JGGSDA)*, 80.

[256] ibid 81.

It is worthy to note that, election process is all about election, which is a process that allows for smooth and orderly change of government in a democracy. Democratic election is widely recognised as a foundation of legitimate government. By allowing citizens to choose the manner in which they are governed, elections form the starting point for all other democratic institutions and practices.[257] The electoral process is fundamental to democracy and an integral part of it,[258] because democratic election serves as the means for citizens to freely express their will as to who shall have the authority and legitimacy to wield the reins of government as their representatives.[259]

The recent passage of Electoral Act 2022 brought in several new provisions that appear to have changed the status quo of electoral law and practice in Nigeria. Of particular relevance is the one that bothers on the right to vote and to be voted for at political party primaries. It states that "no political appointee shall be voted for or be a voting delegate at the convention or congress of a political party."[260] It is believed that political appointees fall among the executive body of government and the aim of this provision in the view of this author, is to prevent abuse of office and power,

[257]Eric B., 'More than Election, How Democracy Transfer Power 15(1) (2010) *E Journal USA*, 4.
[258]Gerhard T., 'Namibia's Constitution, Democracy and the Electoral Process', 1, <www.kas.de/upload/auslandshomepages/namimbia/constitution_2010/toetmeyer.pdf&sa=u&ved=0ahUKEwix0rGzbTPAhXBlxoKHf25DKsQFggNMAA&sig2=c_hRCjAzsSDduHPkjkXxz7A&usg=AFQjCNEo4QapeY2shJZOTjeWkcK88FZH5w> accessed on 23 September 2016.
[259]Patrick M., 'Promoting Legal Frameworks for Democratic Elections, an NDI Guide for Developing Election Laws and Law Commentaries', (National Democratic Institute for International Affairs (NDI) 2008) 1
[260] See Section 84(12) of the Electoral Act 2022.

wrongful deployment of state resources to garner support from electorates and party delegates. One major bad practice that section 84(12) of the Electoral Act 2022 would achieve in Nigerian politics is the abuse of armed officers and security men who have been used in the past to influence or rig elections to the favour of an individual political appointee as a member of one executive arm of government. This is because it is common to see politicians move about during elections, brandishing security men as if they are private guards even when they are not part of officiating officers for election purposes.[261]

Violence during Electoral Process Endangering Rights to Life and Property

The nature of breach of right to life and property during electoral process in Nigeria is something that gives cause for concern. Meanwhile, the electorates "voted for an improved quality of education, from the primary to the tertiary levels and they voted, most importantly, for security of lives and property."[262] In spite of that, the rights to life and property have been breached in Nigeria and other African nations in democratic dispensations against the supposed support that the right to life and property should have guaranteed. These two rights are often the most breached rights in Africa nations. Many electorates are interest in vying for offices and want to participate in the process but the

[261] Ikechukwu Ikeji, "Is Deployment of Soldiers During Elections Constitutional?", *Vanguard* (March 5, 2015) available at https://www.vanguardngr.com/2015/03/is-deployment-of-soldiers-during-elections-constitutional/ accessed 4th September, 2022; "2019 General Election and the Military", *Thisday* (March 17, 2019) available at https://www.thisdaylive.com/index.php/2019/03/17/2019-general-election-and-the-military/ accessed 4th September, 2022.

[262] Paul Usoro, 'Nba President's New Year Message: Welcome to Year 2020 and Happy New Year', 2nd January 2020.

fear of violence at the polling booths discourages them. Unfortunately, the Executive who is to address these issues passionately, are also the politicians who seek the votes of the electorates to return to offices. They must come to the level of understanding that without the security of lives and property, they face the prospect of a radical decrease in the level of participation of citizens in democratisation processes.

In a recent election held in Nigeria, a Woman was reportedly burnt to death by thugs who were apparently unhappy because of the role she played in support of her party. Mrs Samole Abuh, the Women leader of the People's Democratic Party in Kogi State, was said to have been burnt alive at Ochadamu, Kogi State on the 18th of November 2019 according to news reports.[263] That was a woman who had summoned the courage to participate in politics to the extent of leading other Women in the state in the most populous political party in Africa. The deprivation of her right to live in such a process which is supposed to be peaceful, free and fair was very heart rending. The United Nations in its response condemned this killing outright, and same goes for all Civil Society Organisations in the protection of rights to life and property.[264]

Similarly, the outbreak of violence in Oba Akoko in Akoko South-West Local Government Area of Ondo State, during the

[263] **News Agency of Nigeria, '**Salome Abuh, PDP Woman Leader burnt to Death, buried amid Tears', available at https://www.pulse.ng/news/metro/salome-abuh-pdp-woman-leader-burnt-to-death-buried-amid-tears/84ghgzv accessed 13th December 2019.

[264] Amina Mohammed, 'UN Condemns Killing of PDP Women Leader in Kogi' available at https://www.thisdaylive.com/index.php/2019/11/28/un-condemns-killing-of-pdp-women-leader-in-kogi/ accessed 13th December 2019.

April 2019 election to the House of Assembly, forced the state government to impose a curfew on the community. It was reported that one person lost his life, when security agents, particularly men of the Nigerian Police Force (NPF) and some political thugs, engaged the youth in an attempt by the security agents to 'protect' politicians and ballot boxes.[265] Several properties were destroyed in the process belonging to individuals, the community and the NPF.

Executive Deployment of the Army Officers and State Security Service during Electoral Process

The executive deployment of armed law enforcement officers such as the Nigerian Army and men of the Department of State Security Services other than the Police is not necessary except where there is a clear case of serious terror. An example of the region where this deployment may be required, is the North Eastern part of Nigeria where men of *Jamāʿat Ahl al-Sunnah li-l-Daʿawah wa al-Jihād,* otherwise known as 'Boko Haram', often carry out acts of terrorism on regular basis. A careful perusal of the constitutional[266] and statutory role of these agencies or armed entities will reveal their main purpose of establishment, powers and functions in a democratic system and during democratisation process.

The Armed Forces are the institutions of government saddled with the responsibility for preservation of peace and security

[265] 2nd Interim Report of the Nigerian Bar Association Election Working Group on the 2019 Gubernatorial and Houses of Assembly Elections which held on Saturday, 9th March, 2019.

[266] CFRN 1999 (as amended), ss.217 and 218.

across the federation. Security and orderliness are of great importance in the maintenance of organised government. For ease of performance of their duties, they are empowered by the Constitution and the Armed Forces Act in the context of the establishment, organisation, administration and in the exercise of military powers enshrined in the law. However, the performance of their lawful duties has been greatly and adversely hampered as a result of political factor in which they have inevitably found themselves. This led to the occasional problems of indecision by the Armed Forces' failure to perform duties imposed on them. Political system is in a way, one major obstacle confronting the Armed Forces when one looks at the way the president is given power of operational control of the Forces. This, therefore, raises some salient questions of national concern about the independence of the Armed Forces in the performance of their duties, and Armed Forces accountability and control under relevant laws in Nigeria. The Nigerian Army (NA) for example is the land branch of the Nigerian Armed Forces and the largest among the Armed Forces. The constitutional and statutory powers, duties and responsibilities of Nigerian Army are clearly spelt out in the Constitution.[267]

From the constitutional provision, the Armed Forces are known and designated for the purposes of: defending Nigeria against external aggression; maintaining her territorial integrity and securing her borders from violence on land, air and sea; *suppressing, insurrection and acting in aid of civil authorities to restore order when called upon to do so by the President, but*

[267] CFRN 1999 (As amended), s.217(2)(a)-(d).

subject to some conditions as may be prescribed by the Act of the National Assembly.[268] The Armed forces can also perform such other functions as may be prescribed by the Act of the National Assembly.[269]

Without prejudice to any of the segmented functionality of the military forces above, it will appear that the underlined functions are the ones to focus and handle strictly as prescribed, otherwise, they can be abused on the altar of politics, executive bias and in favour of one political ally/party, state, or interest during the conduct of election. The clause, "acting in aid of civil authorities to restore order", could include when government calls on the Armed Forces to assist INEC or police for the purpose of ensuring peaceful electoral process. However, this paper argues that this supposed power of the President should only be read and acted upon in cases of "suppression or insurrection" since the statute used the word "and" and not "or". Hence, the Armed Forces are not expected to be ordinarily deployed to aid electoral process where it is obviously and manifestly clear that suppression or insurrection is not likely. This is the first leg of the condition for deployment that the President should not breach. In addition, the President is also not permitted to take such decision regardless of this first condition where it is not permitted by conditions stipulated by the Parliament.

On the contrary and in practice, the President hardly seeks the permission of the National Assembly before exercising powers over the Armed Forces. Regardless of the intention of the

[268] Underline mine.
[269] CFRN 1999 (As amended), s.217(2)(a)-(d).

executive, deployment of the Armed forces in the internal security system in Nigeria is the joint responsibility of the legislature and executive. On the roads, one would witness several road blocks now manned by the Armed Forces rather than the police.[270] During elections, some highly placed politicians within the executive protect themselves with military personnel.[271] It is also observed by the author that during elections, the entrance to and out of every state capital is manned by the armed forces. Police are not seen at these points of entry and exit except may be at polling stations. The practice of permitting soldiers to get near the polling units or areas including the INEC offices are not in tandem with the constitutional stipulation for which the army should be deployed. Invariably, they have taken over the work of para-military agencies like Nigerian Police, Nigerian Security and Civil Defence Corps as well the State Security Service (SSS), self - styled as the Department of State Services (DSS).

Also, the State Security Service (SSS), self-styled as the Department of State Services (DSS), is the primary domestic intelligent agency of Nigeria.[272] It is part of the organisation that

[270] "Illegal Roadblocks: Human Rights Commissioner Wirtes GOC, Enugu CP" *Vanguard* (December 8, 2021) available at https://www.vanguardngr.com/2021/12/illegal-roadblocks-human-rights-commissioner-writes-goc-enugu-cp/ accessed 3rd September 2022.

[271] Ikechukwu Ikeji, "Is Deployment of Soldiers During Elections Constitutional?", *Vanguard* (March 5, 2015) available at https://www.vanguardngr.com/2015/03/is-deployment-of-soldiers-during-elections-constitutional/ accessed 4th September, 2022; "2019 General Election and the Military", *Thisday* (March 17, 2019) available at https://www.thisdaylive.com/index.php/2019/03/17/2019-general-election-and-the-military/ accessed 4th September, 2022.

[272] Samuel Ogundipe, 'Fact-Check: How Nigeria's Secret Police, SSS, is violating the Law and Illegality Parading Itself as DSS', *Premium Times Nigeria*, (26 August

broke out from the defunct National Security Organisation (NSO) in 1986 and now established by the National Security Agencies Act (NSAA).[273] The SSS now operates as a department within the presidency and is under the control of the National Security Adviser.

Primarily, the mission of the SSS is to detect and prevent crimes that are against internal security of the nation. But the practical deployment of the SSS, is now to protect state officers such as the President, Vice President, Senate President, Speaker of the House of Representatives, State Governors, their immediate families, other high ranking government officials, past presidents and their spouses, certain candidates for the offices of President and Vice President, and visiting foreign heads of state and government.[274] The SSS, has constantly adapted to various roles necessitated by evolving security threats in Nigeria, including counter-terrorism and counter-insurgency. Observably, there is a cross section in the duty of the SSS and police. That notwithstanding, the SSS has little or no role to play during electoral process but the police has. Effort should be channelled appropriately and to the right source.

The Constitutional and Statutory Role of the Police

The roles and functions of the security agencies as examined above are distinguishable from that of the police force. The police in any nation in Africa are saddled with the mandate of protecting life and property. They are to protect the electorates, the officers

2016) available at https://www.premiumtimesng.com/investigationspecial-reports/209343-fact-check-nigerias-secret-police-sss-violating-law-illegally-parading-dss.html accessed 3 January 2020.

[273] National Security Agencies Act, Cap. N74 LFN 2004, s.1(c).

[274] Ikechukwu Ikeji (fn 45).

of the electoral body conducting the election, their agencies, local and international observers, members of the press and other personnel whose duties are meant to be performed while the exercise lasts. This is not just the first and primary goal of the police but also the summary of it. The police understand and ought to know that this core duty is most required, during the conduct of election. This is also true when you consider the disposition of typical African politicians and their supporters with their innate and underlining motive for violence where the electoral process does not end in their favour or even where it does like the case of Abuh.

Fortunately, the police live and reside close and even within the communities where elections are conducted. Some of the officers are members of these communities or at least, close ethnic associates. Hence, there is no better agency to harness, fund, prepare and deploy for the conduct of elections and protection of lives and property other than the Police.

However, the executive-politicians who wheels the power of control over the police[275] have rather used the entity to satisfy their political aspirations and the inordinate ambitions of their political parties. For example, just for a single gubernatorial election in Ekiti State, the federal government deployed thirty thousand police officers with armoured vehicles in 2018. In Kogi and Bayelsa state elections, over sixty-six thousand police officers were deployed,[276] yet, a precious live could not be saved

[275] CFRN 1999 (as amended), s.215(1) and (3).
[276] Seun Opejobi, 'Kogi Guber: Police deploy 35,000 additional Personnel ahead of Nov. 16 Election', available at https://dailypost.ng/2019/11/06/kogi-guber-police-

in the process. This gesture can only suggest a clandestine plan to use power of incumbency to win election at all costs. Consequently, the electorate is intimidated and a signal of threat to life is surreptitiously communicated to them by this act.

Besides, if government can deploy such large number of police officers, the electorates in such state will only sense insecurity to life and property. Perhaps half of the number is not necessary in their view (35,000 officers is approximately 10% of the strength of the entire police force that is about 371,800 in number). This increases the tempo of insecurity and could engender reprisal attack from aggrieved and angry youth. The contention here is that politicians occupying governmental positions should not act or use the power to control the police in a way that increases the possibility of jeopardising the enjoyment of the people's right to life and security of property while trying to protect same.

It is also observed that due to the political motive behind the deployment of armed military personnel and police alike for electoral process, there is little or no training, orientation or re-orientation for the officers about their supposed roles. The officers are not trained about their special duties, most especially as it bothers on the protection of lives and property on the field. With the nature of deployment now in practice, which has been considered above, many of the officers are posted to unfamiliar jurisdictions. They are meant to carry out their duties mostly within a maximum of forty-eight hours while the conduct of election lasts. It is therefore imperative for pre-election

deploy-35000-additional-personnel-ahead-of-nov-16 election/ accessed 3 January 2022.

orientation, as the strategy employed to maintain security in an atmosphere of riot, terror or conflict, cannot be the same strategy to be adopted in electoral process that is preconceived all over the world, to be a peaceful process.

Involvement of Security Agencies and Political Thugs in Breach of Rights to Life and Property

Report of the Nigerian Bar Association (the largest Bar in Africa) about the involvement of officers and electoral violence from all over Nigeria in the last gubernatorial and legislative elections were saddening. It was reported that party thugs and hoodlums had a field day, invading voting centres to snatch polling materials, destroy voting materials, harass, molest and intimidate voters and, in some instances, INEC officials.[277] Suspected political thugs, accompanied by security operatives, particularly officers and men of the Nigerian Army, hijacked materials, destroyed materials, harassed, interfered with the voting processes, prevented the counting of votes at some voting centres, hindered voting, intimidated and prevented some people from voting, chased away some party agents and observers from polling units and collation centres. For instance, in Polling Units 5, 6 and 7, of Ward 4 in Ogbomosho South Local Government Area of Oyo State, political thugs forced voters to show their ballot papers after voting before depositing same in the ballot boxes.[278]

In many cases, the issue of security officers' involvement in breach of people's right, may be complicated by hired political

[277] ibid.
[278] Nigerian Bar Association 2nd Interim Report (fn 9).

thugs. Communities have complained in the past where some political thugs were seen wearing Army or Police uniforms while operating during electoral process and yet with awareness of the government.

Observations

Political apathy is the possible outcome of unsecured environment where life and properties are in danger during electoral process. The response of the electorates moving away from voting began to decrease as a result of advocacy by many Civil Society Organisations, since 2003. However, the achievement made so far may degenerate or shrink if effort is not consciously maintained to address the security of life and property during election process. Accordingly, the state being premised on the principles of democracy and social justice, is to proclaim that sovereignty belongs to the people from whom government through the Constitution derives all its powers and authority.[279] It is therefore imperative that the security and welfare of the people shall be the primary purpose of government and the participation by the people in their government must be ensured in accordance with the provisions of this Constitution.

Again, African politicians with their disposition to grab power at all cost, must be checkmated with the corresponding duty to protect life and property.[280] In other words, if an incumbent politician occupying the seat of government seeks to be re-elected, then, the manner he or she conducts himself and how his political party activities give respect to rights to life and property

[279] CFRN 1999 (as amended), s.14(1) and (2).
[280] Ibid.

over time of his previous governance and during the process of election, will become germane instrument in this regard. This will become achievable where the electorates are educated and willing to take necessary proactive steps.

The provision of Section 84(12) of the Electoral Act 2022 has come to stay and it is believed to be in the best interest of the electorates and the citizens. Executive deployment and abuse of the use of security personnel to achieve political ambition has been partially resolved by this provision and should be encouraged. Thankfully, the Supreme Court, in a unanimous decision led by Justice Muhammad Dattijo, held that President Muhammadu Buhari (the head of the executive) was not the proper person to approach it with such suit, owing to the nature of reliefs that were sought. Above all, it held that to delete section 84(12) of Electoral Act 2022 would amounts to an abuse of judicial process just as permitting political appointees to vote during political primaries would lead to abuse of office in the use of army officers and security personnel as well as a major threat to rights to life and property.

Conclusion and Recommendations

This paper examined the legal issues bordering on the legal corpus of rights to life and security during the conduct of elections in Africa, the risk the rights usually suffer, and the supposed role of relevant agencies such as INEC, Nigerian Police Force, Nigerian Army and State Security Service that are meant to protect those rights. In achieving this desired protection, the paper identified certain loopholes already created by the law and functional operations of the regulatory institutions identified in

this paper. It therefore presents the possible implications of lack of assured protection each time elections take place in any African country.

The paper further and particularly discussed the violence experienced in electoral process and the danger to life and property, with examples such as the killing of the Women Leader of the People's Democratic Party in the Kogi State election that took place in 2019 in Nigeria. It further examines the legality or propriety or otherwise in the deployment of officers of the Nigerian Army and men of the Department of State Security Services during the election process with a view to protecting life and property.

To these causes, problems identified and implications, the paper recommends that strategies for overcoming the violence that bedevils electoral process in Africa should always be part of pre-election preparations and logistic planning to prevent further breaches. The process of election and the conduct of it, involves more than having the election or expecting the participation of voters. Necessary machineries should be put in place to ensure a safe and secure atmosphere for the electorates that will cast their votes. Politicians and political parties must see and understand that the votes of the electorates are cherished and treasured and more should be done to win the votes not only legitimately but also securely. It amounts to abuse of electoral process and 'human dignity' to think that votes can be gotten by the use of force, money and threat where life and property itself is put at risk. Such practices only portray the system, particularly the perpetrators as desperate, undemocratic and insensitive sets of

ambitious political leaders who neither value the essence of democracy nor the beneficiary of democracy who are the people.

The paper also recommends, a frequent training and re-training of the police officers whenever a transition to democracy is envisaged. The training should be a planned, strategic and coordinated one. With such training, the police officers will not only act well and in the interest of democratic value but are also likely to shun manipulation by politicians in the executive and view themselves as part of the democratisation process. They will also wish to contribute meaningfully to the delivery of a credible leader.

From the assessment, the paper views that considering the dwindling and scarce economic resources in Nigeria, the job of security is a joint effort that includes the citizens. As a result, arms and security information can be shared by the various security agencies instead of deploying the wrong personnel for the job of securing electoral process. At least, the arms shared can serve for the maximum period that the national assignment on election lasts. It is believed that the Army, SSS, Civil Defence and Custom possess arms and quite a number are available at their disposal that may not all be in use at the same time elections are carried out. As such, the police whose primary duty is to secure life and property at this crucial time, can be furnished, equipped and trained to use such weapons or arms. After all, the agencies as well as the arms they bear all belong to the government. However, proper accountability and high sense of responsibility, should be attached to this suggestion in order to ensure synergy between the security agencies.