



**OPERATION AMOTEKUN –
IS IT VALID UNDER NIGERIAN CONSTITUTION?**



1.0. OPERATION AMOTEKUN

The Western Nigeria Security Network code named Operation Amotekun has been described as a regional “security formation” or “outfit” set up to complement the efforts of the police in the area of combating kidnaping, armed robbery as well as herdsman and farmers contentions in the Western region. Till date, no law establishes and/or define the scope of the outfit. Information on the powers of the outfit is limited to statements made by governors and officials of the affected six western states. However, Operation Amotekun questions the constitutional powers of state governments over internal/civil security.

2.0. POWERS OF STATE GOVERNMENTS OVER INTERNAL/CIVIL SECURITY

Proponents of Operation Amotekun validate their position with the general constitutional duty of government to ensure that security and welfare of citizens are the primary purpose of government under Section 14(2)(b) CFRN 1999, (a non-justiciable provision). Others argue that a civilian security outfit with emphasis on intelligence gathering is valid under Section 24(e) of the CFRN 1999 where the duty of every citizen is to- render assistance to appropriate and lawful agencies in the maintenance of law and order. It is our considered opinion that provisions of the Constitutions cannot be read in isolation because the law requires a section of a statute to be construed as part of a greater whole. See RIVERS STATE GOVERNMENT OF NIGERIA & ANOR V. SPECIALIST CONSULT (2005) 3 SCM 140. Consequently, we shall consider related constitutional provisions.

The legislative powers of the States and Federal Government are delimited under the legislative lists contained in Second Schedule. ITEM 45 OF THE EXCLUSIVE LEGISLATIVE LIST places the powers over police and other government security services established by law within the legislative competence of the Federal Government. Therefore, only the Federal Government, to the exclusion of State or Local Government, may legislate or make policies on matters related to policing or other government security services. See THE MILITARY GOVERNOR, ONDO STATE & ANOR. v. ADEWUNMI (1988) LPELR-3188(SC). Accordingly, if Operation Amotekun was set up as a police formation or conventional security agency, then the State governors have acted beyond their constitutional powers.

Also, by Section 227 of the Constitution: “no association shall retrain, organize, train or equip any person or group of persons for the purpose of enabling them to be employed for the use or display of physical force or coercion in promoting any political objective or interest or in such a manner as to arouse reasonable apprehension that they are organized and trained or equipped for that purpose. Available facts are that Operation Amotekun was initiated by the Development Agenda for Western Nigeria (DAWN) Commission- a largely political organization, and an offshoot of the Odu’a Investment Company Limited. Being the brainchild of a political organization and operationally designed to kit its personnel with uniforms, operational vehicles and security hardware, it may be difficult to scale the hurdle of this part of the constitution.

Another constitutional issue is the geographical spread of Operation Amotekun described as a security formation for the Western region. It should be underscored that Nigeria has long abandoned regionalism and the CFRN 1999 does not recognize the Western Region as a political entity capable of making laws or enacting executive policies. The constitution does not provide for a regional political structure, rather, it recognizes states and vests them with the requisite political structures to make laws and implement policies. Only the National Assembly and the Federal Government may make laws and implement policies applicable to the regions, state governments have no such powers. The CRIMINAL CODE ACT and PENAL CODE are examples of Federal laws with regional application. Section 4(2) CFRN 1999 states that the National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof... Specifically, SECTION 5(3)(a) warns that the executive powers vested in a State shall... be so exercised so as not to impede or prejudice the exercise of the executive powers of the Federation. In essence, the state governors do not have the powers to create a security outfit with regional spread. Although identical state laws establishing Operation Amotekun may be enacted, their constitutionality may be called to questions if not crafted to stay within the constitutional powers of the state governments.



3.0. OPERATION AMOTEKUN AS AN INTELLIGENCE GATHERING OUTFIT

Some have made the point that Operation Amotekun is not a conventional security outfit. Rather, its operations are said to be limited to intelligence gathering to complement the activities of the Police Force and other agencies. Without doubt, Section 24 (e) allows private citizens to organize themselves to gather useful intelligence and information to aid security agencies in the fight against crime. However, Operation Amotekun is set up as a formal organization, with a structure, designated uniform, code of operations and personnel who would bear some sort of weapon. Unless supported by a valid law which denotes and defines its powers, personnel of operation Amotekun can exercise no more than the powers of a private citizen to report crime or suspicions of crime, and conduct arrests. They cannot conduct search, or carry weapons without license granted under the Firearms Act 1959. There is also no obligation on persons to obey their instruction/commands or submit to their authority. Extant laws require all civilian security structures to be registered. Under the Nigerian Security and Civil Defence Corps Act, 2003 the Nigerian Security and Civil Defence Corps (NSCDC) is charged with the registration and regulation of private guard companies. Under the Act, it is illegal to operate a private guard company without registration.

The Neighbourhood Watch (Registration) Law of Lagos State, 1996 makes it mandatory for every neighbourhood watch within the State to be registered with the Local Government Area/Local Council Development Area where it is situated. The law prescribes the powers and limitations of the watch and its relationship with other law enforcement agencies.

Proponents of Operation Amotekun may want to take a hint from the Neighborhood Watch (Registration) Law of Lagos State.

CONCLUSION

The Federal Government has described Operation Amotekun as illegal, and an overreach of the constitutional powers of the Federal government. If the outfit continues operations as it is, the Federal Government may take steps to declare it an illegal society under Section 62 of the Criminal Code, and proceed to proscribe it. While the intention behind the outfit may be noble, the approach adopted towards establishing it flies in the face of the constitution. In the final analysis, we recommend that the respective South Western States should enact laws establishing the outfit and limiting its powers to intelligence gathering and surveillance to aid security agencies. The personnel should be well trained and carefully recruited and their activities should be monitored and made subject to police supervision.

AUTHORS



TOPE ADEBAYO

SENIOR PARTNER

E: t.adebayo@topeadebayollp.com



PETER OKOYOMOH

ASSOCIATE

E: p.okoyomoh@topeadebayollp.com

Do you need to get in touch with us, to know how we can help you and your business?
Please contact us using any of the details provided below:

TOPE ADEBAYO LLP

25C Ladoke Akintola Street, G.R.A. Ikeja Lagos, Nigeria

p: +234 (1) 628 4627

e: info@topeadebayollp.com

w: www.topeadebayollp.com

