

Security and Quick Delivery of Election Materials in the Electoral Process in Nigeria: A Legal Perspective

AMARAMIRO, A.S., Ph.D¹

NWOCHA, M.E., Ph.D

IBEZIM, E. C., Ph.D

Corresponding Author: Matthew Enya Nwocha

Abstract

Security is an integral part of the success of elections and electoral process in Nigeria as elections at all levels cannot be successful without security of voters, candidates, personnel and quick delivery of materials. Security enhances peace and good government and encompasses protection of human rights. Indeed, it is the ability of a nation State to ensure or pursue interest internally and thus protect her internal territory. Over the years, provision of Security during elections at Federal, State and Local/County levels of elections had been guaranteed at all levels of governance, particularly, the Federal governance upon whose shoulders it is their constitutional responsibility. The Police, Armed forces, the Civil Defense and other Para Military have been involved to ensure smooth and effective protection of human lives, properties, election materials and logistics. But whether these Security Agencies have delivered to the expectation of the people have remained partisan-ly disputable. Through doctrinal study, we found that security remains a nebulous term in definition, and rating of the ability of the security apparatus to quickly deliver election materials, prevent violence and malpractices during elections in Nigeria is under scored by partisanship of political parties and stakeholders in their various interests to capture power. Where the interest is, is where the security functions efficiently. It is concluded that security functions effectively in all states where elections have been staggered. Hence, we recommend that the more we stagger elections, the more active and prospective the operations and effective delivery of security materials would be in Nigeria.

Keywords: Security, National Security, Police, Armed Forces, Elections

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I. INTRODUCTION:

The Black's Law Dictionary²(8^{ed}) defines 'Security' as the State of being secure, especially from danger or attack". Adedoyin³ goes to describe security as "measure ensuring peaceful co-existence and development at a large. It guarantees absence of fear, threats, anxieties, tension and apprehension of losing life, liberty, property, goals, values". To Adedoyin,⁴ security encompasses protection of human rights and provision for basic human needs, which are appropriate approaches for social system transformation. Security is very important to lives, and is critical to human development that no nation or reasonable society takes it for granted.

The concept of security like many other concepts is nebulous and has not had an acceptable definition. As observed by the UNDP.⁵

The concept of security has for too long been interpreted narrowly as security of territory from external aggression, or as protection of national interest in foreign policy... it has been related more to Nation State than to people... security symbolizes protection from the threat of disease, hunger, unemployment, crime, social conflict, political repression and environmental hazards.

¹Amaramiro, A.S, Senior Lecturer, Faculty of Law, Abia State University Uturu, Abia State, Nigeria; Nwocha, M.E, Senior Lecturer and Head of Department, Jurisprudence and International Law, Faculty of Law, Ebonyi State University, Abakaliki, Nigeria; Emmanuel Chinweike Ibezim, Senior Lecturer, Faculty of Law, Abia State University, Uturu, Nigeria.

² Garner B.A, Black's Law Dictionary (8th ed.), Texas, Thompson West Publishing Co. 2004, 1384.

³Adedoyin, A.; Peace Security and Development Studies-Global System in Search of Social Stability and improvement, Ibadan, John Archers Ltd, 322-327.

⁴ Ibid-Adedoyin.

⁵ United Nations Development Programme

There are many typologies of security and again, Adedoyin lists them as:

- a. Political: This enhances peace building and good governance.
- b. Regional and International security: This takes cognizance of International community safety, prevents or arrests dysfunctional threats or aggressions.
- c. National Security: This refers to ability of a Nation to ensure or pursue its interest internally or among the committee of Nations, or is able to maintain its sovereignty if challenged, to protect its territory internally and externally in a war situation.

Other typologies of security include State Security which is coterminous to National Security, Community, Regime, Domestic, Economic and Industrial or Work Place Security typologies.

The philosophy of National Security lies in the notion that safety of a nation is the supreme law, thus, expressed in the *Latin word-maximsaluspouliest suprema lex-* meaning that in the event of any threat to the corporate survival of the state, the government is entitled to resort to any act that protects the state from disintegration. The concept of National Security has been seen from different perspectives by scholars and stakeholders. Thus, according to Wikipedia,⁶ National Security is a concept that government should protect the state and its citizens against all kinds of “national” crisis, through a variety of power projection, such as political power, diplomacy, economic power, military might etc. It states that:

Initially, focusing on military might it now encompasses a broad range of facets, all of which impinge on the non-military economic security of the nation and the values espoused by the national security. Accordingly, in order to possess National Security, a nation needs to possess economic security, energy environmental security etc. security threats involve not only conventional foes such as other Nation States but also non state actors such as violent non-state actors, narcotic cartels, multinational operations and non-governmental organizations. Some authorities include natural disasters and events causing severe environmental danger in this category.

Consequently, Brown⁷ a former US Secretary of Defence (1977-1981) opined that National Security included elements of economic and environmental security. According to him:

National Security is the ability to preserve the Nation’s physical integrity and territory; to maintain its economic relations with the rest of the world on reasonable terms, to preserve its nature, institution and governance from disruption from outside and to control its borders.

National Security is indeed the capacity of a state to promote the pursuit and the realization of the fundamental needs and vital interests of man and society and to protect them from threats which may be economic, social, environmental, political, military or epidemiological.⁸ Thus, national security is freedom of the state from danger, harm or anxiety. Security is not really the absence of threats but the ability to respond to security breaches and threats with expediency and expertise. The provision of security by the security agents and the timely delivery of election materials has remained a problem of INEC over the years. Complaints of election materials not delivered on time on each election has remained a consistent cry from 1999 when president Obasanjo assumed office till date, as same complaints prevailed in the 2013 Anambra state governorship election with little improvement in the 2014 Ekiti and Osun states elections to win the 2019 Kogi and Bayelsa elections.⁹

II. CONSTITUTIONAL ROLE OF POLICE IN ELECTION

The Nigerian police is responsible for internal security in the country. Section 214 (1)¹⁰ of the 1999 Constitution provides that “there shall be a police force for 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”. And section 3 of the Police Act¹¹ re-enacted the provision of the constitution as follows: “there shall be established for Nigeria a police force to be known as the Nigeria Police Force.” The statutory duties and functions of the Nigeria police force are clearly defined under section 4 of the Police Act. These duties are listed as: the protection of life and property; the prevention and detection of crime; the apprehension of offenders; th

⁶ <https://en.wikipedia.org/wiki/nationalsecurity>. accessed 15/8/19.

⁷ Brown. H.; *Thinking About National Security? Defence and Foreign Policy in an Dangerous World* (1983); In Watson C.A; *U.S National Security: A Reference Handbook* (2ed) , Contemporary Issues, 2008, 10

⁸ Onuoha, F.C.; *The Transformation of the Conflict in the Niger Delta*, In Taiwo H.A (ed) *Nigeria Beyond 2007: Issues, Perspectives and challenges*, Ilorin, University of Ilorin Press, 2008, 265.

⁹ Ugwujare, Ngozi; *Osun Guber: How We Ensured Peaceful Poll-Police*, Daily Sun, Monday August 11, 2011, p. 7. See also www.sunnewsonline.com.

¹⁰ See section 214 of the Constitution of Nigeria, 1999. See also Okoro, Barnabas C.; *The Police, Law And your Rights ‘With Police Act and Regulation, Code of Conduct*, 2012, Lagos, Princeton Publishing Co, 2013, p.10.

¹¹ Okoro, Barnabas C. *Ibid* P.10. See also Police Act, Cap P.19, LFN 2004.

the preservation of law and order; and the enforcement of all laws and regulations with which they are charged, as well as performance of such military duties within and outside Nigeria as may be required of them.¹²

The security of election materials and ensuring its delivery to all nooks and corners of the federation during elections therefore falls within the domain of the internal security functions of the police. However, some other enactments have provided for the role of the police in election. They are the Public Order Act and the Electoral Act 2010 (as amended).¹³

The role of the police in providing security for the election are enacted in sections 59, 61⁽¹⁾⁻⁽³⁾¹⁴ and 60 and 62⁽¹⁾⁻⁽³⁾ of the Electoral Acts 2010 (as amended) and 2006 respectively. Section 59 provides:

If at the time a person applies for a ballot paper and before he has left the polling unit, a polling agent, polling unit official or security agent informs the presiding officer that he has reasonable cause to believe that the person is under the age of 18 years or has committed the offence of impersonation and gives an undertaking on a prescribed form to substantiate the charge in a court of law, the presiding officer may order a police officer to arrest that person and the presiding officer's order shall be sufficient authority for the police officer so to act.

Section 61 (1)-(3) also provide as follows:

Section 61⁽¹⁾ - The presiding officer shall regulate the admission of voters to the polling unit and shall exclude all persons other than the candidates, polling agent, poll clerks and persons lawfully entitled to be admitted including accredited observers, and the presiding officer shall keep order and comply with the requirements of this Act at the polling unit.

Section 61⁽²⁾ "the presiding officer may order a person to be removed from a polling unit, who behaves in a disorderly manner or fails to obey a lawful order".

Section 61⁽³⁾

a person without the permission of the presiding officer, again enter the polling unit during the day of the election, and if charged with the commission of an offence in that polling unit, the person shall be deemed to be a person taken into custody by a police officer for an offence in respect of which he may be arrested without a warrant removed from a polling unit under this section shall not,

Thus, the arrest of offenders at polling stations or units is carried out by the police on the authorization of the presiding officer. It is the presiding officer guided by the Electoral Act that decides when the electoral offence is committed and the police carry out the arrest and prosecution of the offenders. The police are involved in providing security for elections during pre-election and post election periods. During the registration of voters, conducted by the Independent National Electoral Commission to ensure that the INEC register is updated, reliable and acceptable to all parties. It is the duty of the police to provide enabling environment, and good security for the materials and officials connected with the exercise. In addition, police maintains law and order generally at the various registration centers throughout the country. The police attend to crisis that arises during this period to ensure that the voter's registration is hitch free.

The police play a vital role in the successful screening and clearance of political office aspirants through furnishing the Electoral Commissions with available security information or records to assist in the correct determination of the eligibility of the prospective candidates. Again, police play major role during the party congresses and conventions. The organization of the congresses and conventions is a major political party activity. During this time, party executive members at various levels are elected to oversee the activities of such parties. Police during this period are saddled with the responsibility of ensuring adequate security coverage to enhance peaceful conduct of such congresses and conventions. Save for adequate security coverage by the police, the congresses and conventions would be disrupted by aggressive and violent party members and their supporters.

Further, the role of the police in securing the elections manifests during the political campaigns, meetings and rallies. Political parties regularly organize campaigns, meetings and rallies for the members and it is the duty of the police to ensure that such activities are regulated to ensure law and order. It is during such activities

¹²Ehindero, S.G.; Securing The Electoral Process in the INEC Electoral Journal, vol. 1, No 1 June 2007. See also Aina, Kunle; The Nigerian Police Law with Police Act and Code of Conduct, Lagos, Princeton Publishing Co, 2014, p.33.

¹³Ehindero, S. G.; opcit p. 87. See also P 42, LFN, 2004 and The Electoral Act 2010 (As amended).

¹⁴ See sections 59 and 61⁽¹⁾⁻⁽³⁾ of Electoral Act 2010 (As Amended). See also sections 60 and 62⁽¹⁾⁻⁽³⁾ of Electoral Act 2006.

that the Public Order Act plays out its provision as the Act empowers the police to issue permits for rallies, campaigns, meetings and processions. Section 3 of the Public Order Act¹⁵ provides:

“Any assembly held without an approval by the police shall be deemed to be unlawful and any person caught participating in such assembly shall be liable on conviction to a fine of N1,000.00 or 6 months imprisonment or both”.

The Public Order Act mandates all political parties or groups intending to hold rallies, campaigns or processions to apply to the state commissioner of police for a permit. In the application for permission, the political parties should indicate the date, time, venue and routes to be taken in the case of a procession by a political party. Also, the Act directs that such application for permission should be submitted not less than 48 hours before the date and time of such meeting and the approval of such an application should be obtained in not less than 24 hours before the meeting, rally or campaigns. The Public Order Act additionally prohibits the carrying of offensive weapons during such meetings, rallies, campaign and procession. It directs on the routes to be taken in the case of procession, and prohibits any conduct that could breach the peace or threaten lives and property. The Act, furthermore, empowers the police to withdraw such permits if there are manifest circumstances that peace could be threatened as a result of holding of such meetings, rallies, campaigns or processions.

The role of the police is constitutionally and statutorily extended to nomination processes and prohibition of quasi military organization.¹⁶ Nomination of party flag bearers is tangentially connected to the party congresses and conventions and it starts from the ward levels to local government to state and then national levels. During these processes, the police normally mount close surveillance and provide necessary security coverage to ensure they are hitch free and always available to prevent breakdown of law and order. The Public Order Act in anticipation of possible disruption of lawful assemblies in whatever guise by unscrupulous elements, prohibited the establishment of, or use of quasi military organizations and militant groups that will constitute a threat to smooth electoral process. Consequently, the police in the constitutional execution of her mandate carry out intelligence gathering on all groups and association to verify if they are within such quasi military groups whose activities are capable of thwarting a smooth electoral process.

Section 6 (1) (a) and (b) of the Public Order Act¹⁷ provides:

(1) if any association (whether corporate or unincorporated): organizes or trains or equips persons (whether or not members or adherent of any such association) for the purpose of enabling any such person to be employed in usurping the functions of the Nigeria police force or of the Armed forces of the federation; or

(2) organizes and trains or equips persons (whether or not members or adherents of any such association) either for the purpose of enabling such persons to be employed for the use or display of physical force in promoting any political objective, or in such manner as to arouse reasonable apprehension that they are organized and either trained or equipped for that purpose, such association shall be liable to a fine of N5, 000.00 or members will be imprisoned for 2 years or to both such fine and imprisonment.

(b) In the case of a person who is proved to be engaged in, being organized, trained or equipped, be liable to a fine of N1, 000.00 or imprisonment for 6 months or to both such fine and imprisonment.

Similarly, the Electoral Acts¹⁸ went further to prescribe punishment for bearing or carrying missiles unlawfully in a political rally or voting centre. Section 96 of the Electoral Act 2010 (as amended) provides: a candidate, person or group of persons shall not directly or indirectly threaten any person with the use of force or violence during any political campaign in order to compel that person or any other person to support or refrain from supporting a political party.

Accordingly, both the Public Order Act and the Electoral Act were in accord in banning the use of quasi military organizations or any similar organizations whatsoever to wreck havoc or cause apprehension or violence on the electorate during the pre-election period of the electoral process. Security Agencies, particularly the police are involved on Election Day, and during the post election periods. On election days, during the conduct of the major election, police work in tandem with the Independent National Electoral Commission to ensure security of electoral materials, the officials, and peaceful conduct of such elections at all centers including the collation of results. Again, during such major elections, enhanced security arrangement is made for INEC officers and the headquarters of the parties. Security agents provide escort for polling officials carrying final election results to the headquarters of the Electoral Commission for announcement.¹⁹

¹⁵ See section 3, Public Order Act P 42, LFN 2014.

¹⁶ Ehindero, S.G; opict p.90-92.

¹⁷ See section 6 (1) (a) and (b) of Public Order Act cap LFN 2004.

¹⁸ See section 98 and 96 of the Electoral Acts 2006 and 2010 (As Amended) respectively.

¹⁹ Ehindero, S.G.; opict p.92

Post election period refers to the period after elections have been concluded and results announced. It is a period when petitions arise and are entertained in the tribunals and courts. Election tribunals as established under the Rule of Law are constituted to hear petitions arising from the conduct and result of elections. Because of the sensitive nature of election petitions and the passion exhibited by party faithful and supporters in attending court hearing, adequate security arrangement is usually made to ensure the job of the tribunal and court are not disturbed. The police are at times vital witnesses in such matters and therefore stay to assist the court in promptly determining the petitions. Furthermore, police carry out the function of arresting and prosecuting²⁰ persons accused of involvement in election offences and malpractices and thereby helping to facilitate effective administration of justice. Post election crises are also handled by the police. Since 1999 till date and under the 1999 Constitution, quite a lot of post election crises took place at Bauchi, Kaduna, Katsina, Enugu, Ogun, Oyo and Ekiti States in 2007 and indeed in Bayelsa and Kogi in 2019. Infact, in Ekiti state, a state of emergency was declared because of the serious electoral crises that manifested in riots²¹. It is the police that were used to quell these riots that were similar to 1964 riots that was tagged the "Wild, Wild West"²². Election crises have always been traced to the inability of the political parties and their supporters/members to gracefully accept defeat. Elections are characterized by rigging and overall malpractices and once a party out rigs and consequently lose in an election, they are thereafter used to cause mayhem, as the passion to cling to power or assume power is manifested in the crises. This is disrespect for rule of law. It has therefore been the onerous responsibility of the police to handle such manifest crises in such a manner to ensure that the internal security and corporate existence of the nation are not threatened. Since 2013, the Electoral Commission has expanded the scope of security often provided during elections. During the governorship election in Anambra state, there was a massive deployment of not only the police personnel but also the Directorate of State Security Service, Nigeria Security and Civil Defence Corp and the Army.²³ Adequate security was provided and we had a hitch free election.

In 2014, count down to the Ekiti and Osun governorship elections, the security was increased particularly; the Army²⁴ was used in addition to police, consequent upon which the then ruling party (PDP) was accused of militarization of the democratic elections. The opposition party (APC) in these states claimed that the militarization brought about the hounding of the opponents supporters by law enforcement agencies.²⁵

The Electoral Commission through the Chairman responded promptly and variously to the accusations and criticisms. According to Jega²⁶

In recent times, we have an increased presence of hooded security operative during elections. This is an emerging trend which is highly worrisome and which needs to be addressed in good time. Security agents who are deployed on election duties should not be masked, the doctrine of transparency requires that they should be identifiable.

In defense of the militarization of the electoral process in the elections held at Ekiti and Osun states, Jega maintained that it did not deter electorate from voting for their desired candidate. He said;

In fact, the two elections proved that there was a high correlation between the massive deployment of security and the willingness of people to come out to vote. Apart from over zealousness on the part of some of the security men on the field we discovered that people actually felt more secured to exercise their franchise. The key lesson our politicians need to learn from the two elections is that the era has gone when they relied on corrupt electoral officers or security agents to manipulate elections.

To Jega²⁷, the military performed what he described as "peripheral outer cordon". It is the mobile police that handles internal movement in terms of movements in the towns but away from polling unit. And it is the unarmed policemen that are positioned at the polling units at average of three per polling units". This is to ensure provision of adequate security for the electoral process. This brings us to the Constitutional role of the Armed Forces in Nigeria vis a vis electoral process. The role of the Armed Forces in elections in Nigeria is not extensive but limited.

²⁰Okoro, Barnabas C.; opcit p.103. See also s.23 of the Police Act cap p.19 LFN 2009. See also sections 174 and 211 of the 1999 Constitution.

²¹Odey, John Okwoeze, Another Madness called Election, Enugu, snap press Ltd, 2007, pp 44-50.

²²Iyayi, Festus; opcit p.3.

²³APC members Drag Army, DSS, Police to Court, TELL, No 36, September 8, 2014.

²⁴sunnewsonline.com.new/?p-76351 accessed 03/09/14.

²⁵ynaija.com/polico/tag/prof-attahiru-jega accessed 03/09/14.

²⁶Ibid.

²⁷Jega; Military Presence Enhanced Success of Ekiti Election www.dailytrust.com.ng/daily/politics/29992-military-presence-enhanced-success-of-ekiti-election-jega says. See also newtelegraphonline.com/jega-supports-use-of-military-in-elections.

III. CONSTITUTIONAL ROLE OF ARMED FORCES IN ELECTIONS

The origin of the Nigerian Armed Forces of the Federal Republic of Nigeria lies in the elements of the Royal West African Frontier Force that became Nigerian when Independence was granted in 1960. The Nigerian Armed Forces had been involved in Civil War (1967-1970) and peacekeeping forces abroad with both the United Nations, the Economic Community of West African States (ECOWAS), Cease Fire Monitoring Group (ECOMOG) in Liberia and Sierra Leone. It has also seized power at home (1966 and 1983).

In terms of training, the Armed Forces Personnel have been trained in the prestigious officer entry Nigerian Defense Academy at Kaduna, the Armed Forces Command and Staff College, Jaji and the National War College at Abuja. Regarding advice on Civil-Military relations for the Armed Forces, the U.S Commercial Military Contractor-Military Professional Resources Inc. has been undertaking this assignment since 1999-2000.²⁸ The Nigerian Army is the land branch of the Nigerian Armed Forces and the largest among the armed forces. The Nigerian Armed Forces came under criticism by International and local observers over its conduct in the 2015 and particularly the 2019 general elections, regarding its apparent unprofessional conduct in the gubernatorial elections in particularly Rivers, Ekiti and Osun States. The European Union (EU), United Kingdom, and the Coalition of United Political parties have all condemned the unbecoming conduct of the Armed Forces in the electoral process, which climaxed in show of "partisanship to temporal wielders of political power in the country". According to coalition of United Political Parties, the Military is an element of the State and its loyalty should be to the state and not to interim occupiers of the government tier, which itself is just an element of the state, fleeting in nature.

The Armed Forces have gone ahead to spiritedly deny that the allegations were untrue and baseless with the potentiality of misleading members of the public about its image. It stated that there was no credible record of alleged involvement in the course of the 2019 elections and that the Military was responsible organization that discharged itself professionally to the applause of many individuals, foreign and local elections observers".

There is no gainsaying that credibility and integrity of the military are at stake and the current hierarchy of the military whose skewed appointment in apparent disregard to federal character is to be held responsible. Nigerians have lost faith in the police institution due to its socialization to malpractices and corrupt partisanship and subjecting the Military to the same process would be tragic for the Nigerian electoral processes. The military colluding with politician is counterproductive to the rule of law and democracy. It is therefore clear that abniti o, it is not the constitutional role of the Army to play any role during elections, but given the crazy and overzealous nature of Nigerian politician, it has become needful to invite and involve them in elections in Nigeria. Post election crises have portended greater danger to the survival of democracy and indeed in our electoral processes

IV. CONCLUSION

Generally, the security agencies particularly the police, should be up and doing in the delivery of electoral material and in the prevention of the manifest crises of violence and electoral malpractice in Nigeria electoral processes. The police and the army should be well equipped with all the necessary gadgets and equipment to enhance their operational efficiency and effectiveness. Seminars, workshops, internal as well as external training and in-service training should be organized and approved for the police to educate and enlighten them on their roles and responsibilities in elections. Today, the police personnel are depleted by their postings to serve some well to do citizens and leaderships in the country.

Given this development and the dire need to provide our leaders as well as stakeholders from being murdered as ordinary chicken by thugs and charlatans hired by party opponents, it becomes imperative to employ more non-partisan police personnel and Armed Forces to effectively carry out their constitutional roles, no matter how limited to the entire citizenry and the electoral process.

Overall, the police ensured peaceful and exemplary conduct in professionalism during the conduct of the elections in the Osun and Ekiti States because the police were not only adequately prepared because of the effect of staggered elections, but were not overwhelmed by inadequate personnel, hence they achieved high level of success.²⁹ The police won the commendation of both the winner and the loser in the elections as well as their supporters because policemen played a neutral role and ensured a level playing field for all the candidates and their parties in the election. The police have always remained non-partisan and biased in the discharge of their statutory functions in all staggered elections. That is, elections that do not follow the general elections where more states of the federation are involved. General elections have always overstretched the security apparatus and Electoral Management Body in the quick delivery of election materials. We may therefore move for staggering of

²⁸ <http://news.biafranigeriaworld.com/archivers/2003/dec/11/0097.html> accessed 17/01/2020. See also Peter Swgar, *Corporate Warriors*; Cornell University Press, Ithaca and London, 2003, P.131-2

²⁹ Ugwujiare, Ngozi; Osun Guber: How We Ensured Peaceful Poll-Police Daily Sun, Vol. 10, No 2944, Monday August, 11, 2014 p.7.

more elections in Nigeria electoral process to abate violence, malpractices and the quick delivery of election materials to all the nooks and crannies during elections in Nigeria.

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