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LAW AND SECURITY IN NIGERIA: THE ROLE OF THE MILITARY

By

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*I*ntroduction

Since the creation or evolution of man, society has been on the dynamic trend for the preservation of life and improved social relation. The need for man to have an orderly and a well structured and organized system aimed at achieving comfort, harmony and peace has been the pre-occupation of modern states. Much as society tries, fundamental challenges have thwarted man's efforts towards the realization of an egalitarian and just society. The various Nigerian constitutions and the statute books and other legal enactments in place aimed at providing backbone to governance to enhance national security and socio-economic growth are still confronted with obvious challenges. The need therefore, for a peaceful and decent environment to allow for harmonious co-existence and enabling climate for socio-economic and political advancement cannot be over-stated.

The military which is a critical element of national defence alongside other security agencies would have to ensure that the territorial integrity of the nation and indeed, internal security of the nation is assured. The successive administrations from the colonial times to independence, up until the current dispensation have tried to ensure the stability of the nation. However, inherent internal contradictions of politics, economics, religion, ethnicity, corruption and other social ills have all combined to exert pressure on the national

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psyche and these have adversely impinged on the potentialities of the Nigerian nation.

A nation's national security is predicated on her national interest, as well as her strategic calculations within the region and in the global arena. For us to have an effective and result-oriented National Security therefore, the socio-economic terrain and the entrepreneurial needs of the nation must be well enhanced, as these are the catalysts that propel growth and development, which in turn assures the well-being of the citizenry. This cannot be achieved by one sector alone, a combination of all elements of national power and our strategic alliance would have to be harnessed. The armed forces however remain a vital element in the overall national security strategy.

The key concepts or ingredients in this write up are 'MILITARY LAW, SECURITY and ROLE OF THE MILITARY which will be viewed in the light of contemporary challenges. The scope of the write up will cover the following:

- a. Conceptual Discourse
 - Law and Order
 - National Security
 - Socio- Economic Growth
- b. Military Law as a Complementary Tool for the Enhancement of National Security;
- c. Overview of Ethnic Militia and Emerging Security Challenges;
- d. Maritime Challenges, Socio-Economic Growth and National Security;
- e. The Role of the Army in Support of Efforts to enhance National Security;

- f. Military Aid to Civil Authority and Disaster Response;
- g. Civil-Military Relation as a Confidence Building Measure for National Security.

Conceptual Discourse Law and Order

The concept of law transcends social, political, economic and environmental dimension of human existence. Law, according to Robertson, in his *Crimes Against Humanity*:

is a system of rules and guidelines, usually enforced through a set of institutions ...and a social mediator of relations between people.

He argues further that, sociology of Law is a field of study that examines the interaction of Law with society and overlaps with jurisprudence, economic analysis of Law and more specialised area of law like criminology. The development and enforcement of Law, and the need for the establishment of the Police and Military institutions informed the ancient royal courts and modern states to emphasis the need for the projection of state power. This has been attested to by both ancient and 20th century strategists like Nicollo Machiavelli, Sun Tzu, Clausewitz and Henry Kissinger. The theory and philosophy of Law which underscores the need for equity and fairness and democratic principles was vividly captured by Aristotle when he declared that, "The rule of Law is better than the rule of any individual." This remains instructive even today for a peaceful, just and a cohesive society.

The Police Act and Regulation (CAP.PIa-LFN 2004),the Robbery and Fire Arms Act(CAP.PTI.LFN 2004) as well as

the Fire arms Act (LFN) CAP.F28,2004) all regulate Law and order in Nigeria. All these are put in place in conjunction with the National Security agencies including para-military organizations to ensure an orderly society.

National Security

The scope, understanding and dimensions of security is viewed from diverse tributaries, but with a confluence of thought in the safety and security of the individual, security of installations and security of information.

A Professor and former Head of Defence Studies, Nigerian Defence Academy, Ozoemena Mbachu argues that, security is all about national interest and involves “the sum total of actions and measures, including legislative and operational procedures, adopted to ensure peace, stability and the general well being of a nation and its citizens”.

Security generally, can be explained in the classical and traditional sense as remarked by a retired Brig Gen, J.O. Olorunfemi, a one time commandant of Nigerian Army Education who states that, “The cold-war era conceptualization of national security, perceived it in terms of the amassment of military armaments and personnel”. This, he believes would be myopic as modern challenges have redefined security.

Sun Tzu, a Chinese military strategist, differs from this perception when he states that, “To win one hundred victories in one hundred Battles is not the acme (Hallmark) of skill. (But) to subdue an enemy without fighting is the acme (Hallmark) of skill”. Contemporary understanding of security as stated by Roosevelt Idehen, a Lecturer in Dept of Strategic Studies, Igbinedion University, has been expanded to include non-military threats and protection of social welfare.

The concept of national security in recent times now includes: social, economic, cultural, technological and political consideration. Hence, Robert McNamara, a one time US Secretary of Defence asserted that:

Any society that seeks to achieve adequate military security against the background of acute food shortages, population explosions, low level of productivity and per capital income, low technological development, inadequate and inefficient public utilities, and chronic problem of unemployment, has a false sense of security.

These variables, no doubt fall within possible threats to national security, as we have seen in some part of the world.

In line with the above submission, a Public Affairs analyst and security consultant Max Gbanite opines that:

To establish sound intelligence and national security policies, one must look thoroughly and eliminate all nuances that are considered inimical to the country.

These can be achieved additionally, with workable structures and institutions in place, as well as citizens willing and able to offer proactive intelligence support in acts inimical to the existence of the country.

Socio-Economic Growth

A general explanation of Socio-Economic Growth could mean, “relating to, or involving the combination of social and economic factors”. Peter Drucker, a management expert,

defines Social development as, “the process of organizing human energies and activities at higher levels to achieve increase in the utilization of human potential”. The goal of socio-economic efforts therefore, is to bring about socio-economic advancement usually in terms of improvements in standard of living and security of the citizenry. The Socio-economic and political environment cannot witness the desired growth and transformation except the ‘myriads’ of challenges facing the nation are addressed.

Military Law as a Complementary Tool for the Enhancement of National Security

Military Law is a branch of law that regulates the conduct of military personnel. According to *Columbia Encyclopedia*, it applies to members of armed forces during war, peace time and to some extent reservists. Military Law differs from Martial Law which is invoked by domestic military force over an area or temporary governance of the civilian population. Military Law encompasses Laws of armed conflict and International Humanitarian Law during belligerency. Since the ordinary laws of the land is unable to adequately address acts or omissions in combat situation, Military Law becomes imperative to achieving a higher strategic objective of a nation state in its quest to assert its national interests and values. Akin Kejawa, supports this view when he remarked that:

The parallel existence of Military Law with the ordinary laws of land is demonstrative of the objective of Military Law in the military community which the former (civil laws) cannot accomplish.

He states further, that the characteristics of military law includes the following:

- a. Criminalization of acts or omissions which ordinarily in civil life would at worst amount to near breaches of contract or moral obligation,
- b. Prevention in war time, acts or omissions, capable of impairing the fighting efficiency of troops,
- c. Provision for administrative matters for the smooth and effective administration of the military both in time of war and peace.

It is instructive to note that where any of its provisions runs contrary to the letter and spirit of the Constitution or is inconsistent with the provision of the Constitution, it remains void to the extent of its inconsistency. This is for the good order of society. The origin of the Nigerian Military Law which is linked to the history of Nigerian Army had its roots from the nations colonial experience and relates directly to the protection and enforcement of British economic, military and political interest in the colony. The earliest phase was linked to the formation of the Hausa Constabulary force in 1879, with a clear objective for the imperial defence of British sovereignty. This could be said to be the fore runner of the Nigerian Armed Forces Act. According to earliest sources (Wikipedia), the Nigerian Military Law and aspects of the laws then were crafted for the Nigerian military units to “undertake police actions and punitive expeditions to break strikes, to control local disturbances, to enforce tax collection, and to support police anticrime operations”.

The Nigerian Military Law has undergone metamorphosis from those earliest times to what today is known as the Harmonized Nigerian Armed Forces Act. This 'Act' derived legitimacy from the Army Act, the Navy Act and the Nigerian Airforce Act. The laws were direct imports from the British military structure and were tailored to suit the colonies for both political and economic objectives. These laws have extra-territorial Jurisdiction. According to Akin Kejawa, "the British Military Act 1881 as a statute of general application was applied to Nigeria as the West African Frontier Forces 'Ordnance'. This was a received English Law which gave birth to the British Army Act 1955 and became the last British Army Act in Nigeria before Nigeria became independent in 1st October 1960." Other sources of Nigerian Military Law include the Nigerian Constitution, (this will be discussed in much greater detail), local legislations, case laws, Regulations and instructions of local commanders.

The U.S, Canada and Indian examples of evolution of their countries Military Laws are no different, except that, whereas, the Nigerian example for now is a Harmonized Armed Forces Act. In the U.S, the individual Service branches including the Maritime and Coast Guard retain their Laws; in Canada, it is governed by the National Defence Act, while India has its separate service Act including Border Security Act, Coast Guard Act etc. All these are aimed towards support to the civil authority and supremacy of the constitutions of the various countries.

With the attainment of Independence, the Nigerian Military Law and the roles of the military had to change in line with sovereignty and demands of the state. The need therefore, to have an effective Military Law to guide the conduct of service personnel which will in turn impact well

on their constitutional roles becomes highly necessary. Hence, General Ocran of Ghana Armed Forces once remarked in his book *Politics of the Sword*, that “the army thrives on discipline, obedience, self abnegation, self-sacrifice, fidelity etc, to the extent that if these disappear, there is no army but a rabble” Since Laws are enacted to safeguard society, an excursion to understanding the various perspectives of security and indeed, national security and socio-economic environment will be discussed in the next chapter.

Overview of Ethnic Militia and Emerging Security Challenges

There has been varying degrees of national security challenges in the recent past. Disturbingly visible, are the ones in the area of ethnic militias. Gen Olorunfemi again, quoting Obasi, who has made extensive studies in the area of ethnic militias in Nigeria, asserts that, “the emergence (of ethnic militia) began with the formation of the Odua People’s Congress (OPC) in the mid 1990s, and this was followed by the Movement for the Survival of Ogoni People (MASSOP). Other ethnic militias arose later, such as the Movement for the Actualization of the Sovereign State of Biafra, (MASSOB), Arewa Peoples Congress (APC), Ijaw Youth Congress (IYC) and recently, the Movement for the Emancipation of the Niger Delta (MEND)”. It is worth mentioning that the amnesty programme is on course. Aside from those major ethnic militia, there are micro groups whose organization and structures are not as pronounced as the ones earlier mentioned, but could nonetheless threaten national security.

Equally worrisome, is the ethnic/sectarian crisis (like the Jos crisis and Maiduguri crisis), communal clashes, electoral violence, cross-border banditry, corruption, violent crimes, youth restiveness, unemployment, smuggling, food insecurity, kidnapping/hostage taking (this has reduced to a large extent with military aid to civil security agencies), terrorism (bomb blast) and cyber crime. Other subtle threats that could affect national security include: subversion, psychological warfare, economic sabotage and espionage. All these have serious implications for socio-economic growth and political health of the country. There is therefore the need for concerted efforts on the part of security agencies and the civil populace, including the private sector, for close liaison, information gathering and intelligence sharing to proactively contend with these challenges. The on-going efforts by government in finding lasting solutions to these challenges will be helpful to the overall national security.

Maritime Challenges, Socio-Economic Growth and National Security

Since oil remains for now the fulcrum on which the wheel of the national economy revolves, it is important to understand the maritime environment *vis-à-vis* national security. The threat perception and vulnerability assessment of the coastal region broadly speaking is 2 fold; first, is the internal security challenge and secondly, is the trans-national threat. In view of the vast coast line within and beyond the Delta region, some challenges have been identified. G.J. Jonah, a retired Rear Admiral remarks that:

Nigeria, like other littoral states of Africa has had to contend with increasing maritime difficulties. These include economic issues

like, piracy and sea robbery, poaching, illegal bunkering and crude oil theft, pipeline vandalism and proliferation of small arms and light weapons.

He observes further, that the Nigerian Maritime Domain include a territorial sea of 22kms, a contiguous zone of 22-44kms and an Exclusive Economic Zone (EEZ) from 22-370kms, over which Nigeria has sovereign rights to all living and non-living resources therein. This is almost equal to one-third the total land area of Nigeria, and includes the sea area referred to, as the Gulf of Guinea (GOG). The socio-economic benefit and the strategic value of the entire Delta and beyond can therefore not be over emphasized, hence, the need for an accelerated effort to consolidate, on the gains so far recorded in the Niger Delta. The current effort at strengthening the maritime capability of our security agencies to cope with these challenges, including surveillance and security of the “maritime area of interest” is a welcome development.

A.G. Omede, of the Dept of Political Science, University of Ilorin posits:

while the government should direct its attention to solving the socio-economic problems like the ones being witnessed in the Niger-Delta area, the Nigerian government should pursue an internal security policy that seeks to achieve an optimum level of military capability adequate to the task of maintaining law and order.

It is noteworthy to observe that, with the promulgation of the amnesty program, there are obvious signs of substantial improvement in the security environment.

The Role of the Army in support of efforts to Enhance National Security

The role of the Army in national security and the attainment of national socio-economic growth was underscored in the words of Nwolise, of the Dept of Political Science, University of Ibadan thus:

The development of Nigeria's military power has become urgent today for four reasons: the transformation of 21st century terrorism into a new genre of warfare, the rising profile of Nigeria in world affairs, the country's regional leadership position, and Nigeria's quest for a permanent seat at the United Nations Security Council. These call for better funding of the defence sector.

Since the military is a major determinant of other elements of national power, this statement in my view, cannot be an under-statement. I cannot agree any less!

The constitutional obligations that clearly defines the roles of the military are enshrined in the 1999 Constitution of the Federal Republic of Nigeria, section 217 and 218 respectively. Section 217 deals with establishment and composition of the armed forces of the Federation, while section 218 deals with command and operational use of the armed forces of Nigeria. Section 217 sub section (1)

specifically states that, there shall be an armed forces for the Federation which shall consist of an Army, a Navy, and Air Force and such other branches of the armed forces of the Federation as may be established by an Act of the National Assembly. Sub section (2) states, the Federation shall, subject to an Act of the National Assembly made in that behalf equip and maintain the armed forces, as may be considered adequate and effective for the purpose of:

- (a) defending Nigeria from external aggression.
- (b) maintaining its territorial integrity and securing its borders from violation on land, sea or air
- (c) suppressing insurrection and acting in aid of civil authorities to restore order when called upon to do so by the President, but subject to such conditions as may be prescribed by an act of the National Assembly and
- (d) performing such other function as may be prescribed by an Act of the National Assembly.

I will dwell on section 217 sub section (2) (c) which has to do with acting in aid of civil authority to restore order when called upon to do so by the President but subject to such conditions as may be prescribed by an Act of the National Assembly. There are 2 components of aids to civil authorities. Firstly, is the support to civil police in an event that they are unable to cope with civil disturbances or any of such unrest, and when the military is called upon to do so. The other is, in times of national emergencies like disasters and the like.

Military Aid to Civil Authority and Disaster Response Units

Section 217 (2) (c) of the 1999 Nigerian Constitution empowers the military to act in aid of civil power. The military plays a complementary role in the area of disaster management, hazards and other emergencies in variety of ways to alleviate socio-economic stress. The peculiar nature of the training, discipline, *esprit de corps* and effective teamwork within the military all combine to underscore the relevance of national armed forces in disaster mitigation, risk reduction and management. Osahor, a retired Maj Gen and a Military Engineer, defines the roles of the military during disasters to include search and rescue, debris removal, medical, clearance of roads, demolition of unsafe structures, provision of temporary shelters and information dissemination among others.

These roles have been recognized in many countries and have been put into effective use with active public and private sector support, e.g. in US during hurricane Katrina and the various Tsunamis in South-East Asia and recently, during various natural disasters in Haiti and floods in Australia, Brazil and other Latin American countries. We witnessed such roles also in Southern Africa, particularly Mozambique.

The Nigerian military has risen to the challenge whenever called upon. For instance, during the recent flood that occurred in Sokoto, the Nigerian Army Engineers were called upon to construct bailey bridges to facilitate the movement of Internally Displaced Persons into the safety zones. Same was the situation when a part of Taraba state was virtually cut off. Military Engineers contributed to restoration of the socio-economic life of the people.

For an effective and wide coverage of disaster response by the Armed Forces of Nigeria, the Disaster Response Units (DRUs) have been established in the various formations within the military. The ease of mobilization, discipline and comradeship provides the impetus for collective action in times of crises. The military also have organized structures to assist civil authority in emergency situations. For instance, “Operation Second Eleven”, is an aid to civil authority initiative aimed at complementing civil agencies in the maintenance of essential services like telecommunications, petroleum product distribution and medical services in the event of strike by the ‘first eleven’ employees. The NA Signals, Supply and Transport and Medical Corps all have operational structures that can be activated at short notice to become ‘second eleven’.

The Nigerian Medical and other Corps within the military have equally rendered valuable services that have contributed to the socio-economic well-being of the nation. The invention by retired Brig Gen Ovadje of the Nigerian Army Medical Corps, of a ‘Blood Transfusion Set’, which earned Nigeria international recognition, is a worthwhile example. The challenge however, is in the area of funding and lack of adequate equipment to match the existence of these units. Inter-agency cooperation and coordination with the National Emergency Management Agency (NEMA) would greatly improve socio-economic well-being during crisis.

The Armed Forces of Nigeria have equally played some roles in the area of Search and Rescue. For instance, during the unfortunate air crashes of the past, including the Ejigbo, Lisa and Abuja air disasters, the Nigerian Air Force was involved in the Search and Rescue and identification of crash sites. With the establishment of the Total Radar Coverage of

Nigeria (TRACON) the disaster Response arm in the military will be better equipped in its joint efforts with other security agencies.

Civil-Military Relation as a confidence Building measure for National Security

If the military and the civil populace must achieve a vibrant and secured nation, the bond of brotherhood and common heritage between the military and civil society must be perpetually nurtured, particularly as the military subordinates itself to civil power. The Nigerian Army in its quest for a harmonious Civil/Military relations recently established a dept of Civil Military Cooperation at the Army Headquarters. When fully operational, the (CIMIC) Department is expected to enhance civil military cooperation and serve as a confidence building avenue between the military and their civilian counterparts. In addition to what the current military leadership is doing through its programme on improving civil-military relation, Nwolise remarked that the T.Y. Danjuma centre for Civil-Military Relations set up by our, one time Chief of Army Staff, Lt Gen T.Y. Danjuma complements the military's drive in its quest to improve relations between the military and the populace. The centre's goals are:

The organization of activities aimed at fostering *esprit de corps* amongst the armed forces and security agencies in Nigeria, facilitation of quick resolution of disputes between the armed forces with organized private sector and multinational corporations and the promotion of social re-integration of retired service personnel into the civil society.

We believe that, with a harmonious society, a foundation for a peaceful environment for entrepreneurship will be assured.

Conclusion

For the nation to attain a sound National Security, a vibrant socio-economic and healthy political climate need to be in place. The requirement for a purposeful socio-economic policy and implementation at all tiers of government remains imperative. The role of the citizenry, who should be able and willing to contribute and volunteer information on critical issues and challenges facing us as a nation need to be constantly emphasized, and this could be complemented with technical intelligence support. Equally, the role of the private sector, Judiciary and the urgency to partner with government on key socio-economic variables, particularly infrastructure becomes highly necessary to engage our teeming youth. The role of the Judiciary which has in recent time been brought into national limelight, remains pivotal and paramount particularly in the quest for a vibrant democracy that will usher in a just and equitable society.

The military, which indeed is a critical element in the National Security calculation would continue to live up to its constitutional obligation as well as meet contemporary challenges in support of other security agencies in the overall interest of the nation. In the journey towards a sound national security, and a robust socio-economic development, and unfettered judicial system, all hands need to be on deck.

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