



The amotekun question: towards achieving a win-win outcome through the ADR instrumentality

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Abstract

It is trite law that the primary preoccupation of government is to secure lives and property as enshrined under section 14(b) of the 1999 Nigerian Constitution (as amended). In line with this mandate, the Nigeria Police and other government security services were established and superintended by the federal executive arm of government. Accordingly, both citizens and state governments are accustomed to look up to the federal government for their security in view of the fact that the power to legislate over security matters falls under the Exclusive List and by implication, only the National Assembly is bona fide to so act. Two opposing views are distillable on the above stated Constitutional conundrum; first, is the notion of illegality for state governments to establish in line with the Constitution, and second, the construction of such power as composite and as such, making it permissible for state governments to complement the effort of the federal government in the face of widespread occurrence of crime and criminality in the nation. It is on the strength of the former that the Minister for Justice and Attorney-General of the Federation, Abubakar Malemi, SAN, opposed the establishment of a regional security organisation codenamed "Amotekun" by the South-western governors for their region. The Minister's action is premised on the provision of section 4(5) of the 1999 Constitution, which states that where a conflict exists between the laws made by the National Assembly and the State Houses of Assembly, the former shall prevail, and that such other law made by any House of Assembly shall, to the extent of the inconsistency, be void ab initio. Furthermore, litigation is the traditional option open to the federal government and the states in the determination of any matter between them. It is in light of the foregoing therefore, this research seeks to make a case for Alternative Dispute Resolution mechanisms as a viable solution to the seeming tussle between the federal government and the governors of the South-western geopolitical zone of Nigeria on the "Amotekun" question.

Keywords: preoccupation, government, Nigerian, question

Introduction

A peep into history shows that Nigeria, like every other country of the world, has grown from its stage at independence to where she currently is.¹ It goes without saying that it has witnessed several cataclysmic changes to its governance approaches. At initial stage, post-independence, the Queen leverage was transferred to Nnamdi Azikiwe while Tafawa Balewa became Prime Minister i.e. the Head of government² before Nigeria succumbed to Military rule in 1966. The country experimented several other forms of government but over the years, the dominant form of governance it has deployed is federalism as Adamolekun asserted as at 1991 that Nigeria is the only country in Africa that had created and sustained its own federalism.³ Like every form of governmental system she has employed, the federalism of Nigeria has witnessed its own threats, the most popular being the civil war that rocked the country from 1967-1970. Lieutenant Colonel Odumegwu Ojukwu's pronouncement of

the state of Biafra on May 30, 1967, was the immediate factor responsible for the civil war,⁴ a secessionist plan that threatened the federalism of Nigeria from a regional front based on the asymmetrical distribution of power among the various ethnic and geopolitical groups amongst other reasons.⁵

The regional outlook of the *Amotekun* development creates a similitude to the Biafran crisis of 1967 which resorted to bloodshed and systematic killings that cost over two million civilian lives.⁶ But more importantly was the result of a failed attempt at alternate dispute resolution, as the two-day meeting held by Nigerian stakeholders (including the Supreme Military Council, the regional premiers amongst others) at Aburi, Accra in 1967 could be deemed to fit into the modern day definition of "negotiation" as a form of alternate dispute resolution but failed given the low sophistication and scholarly investment in the field during the period. ADR is believed to be rooted in the late 1970's⁷ and only became popular two decades after the genesis of

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² Murtala, M. (2014). Nigeria's Tortuous Transition after Independence: The Collapse of the First Republic. In A. Bako, M. Muhammad, Y. Ismaila & M. Rufai (Eds.), *Issues on Nigerian Peoples and Culture* (110-127). Zaria, Kaduna: Ahmadu Bello University Press.

³ Adamolekun, L. Federalism in Nigeria (1991). *Publius: The Journal of Federalism*, 21(4), 1-11. Available at: <https://doi.org/10.1093/oxfordjournals.pubjof.a037961/> Accessed 24/01/2020.

⁴ Falode, J. (2011) The Nigerian civil war, 1967-1970: A revolution? *African Journal of Political Science and International Relations*. 5(3). 120-124.

⁵ Adeleke as cited in Falode (2011)

⁶ Combatgenocide.org. (n.d.) Biafra 1966-1970. Available at: https://combatgenocide.org/?page_id=90/ Accessed 24/01/2020.

⁷ Carrie, M. The history and development of "A" DR. *Volkerrechtsblog*. Available at: <https://www.volkerrechtsblog.org/the-history-and-development-of-a-dr-alternateappropriate-dispute-resolution/> Accessed 24/01/2020.

the civil war⁸. The declaration of ‘No victor, no vanquished’ by then ruler of Nigeria, Yakubu Gowon was an attestation of the superiority of the federal government⁹ which is a major characteristic of a federal state. However, this does not undermine the autonomy of individual states in the federation.

A typical case in point is the emergence of the *Amotekun* outfit, a western Nigeria security network meant to complement mainstream security agencies in the country¹⁰ formed by governors of south-western states in Nigeria.¹¹ The legality of this outfit is hinged solely on two provisions of the Nigerian Constitution. While one legitimates the capacity of an individual governor to initiate and execute security actions within a state, the other legalises the regional garb of the outfit. Precisely, section 14 (2) of the Nigerian Constitution 1999 as amended states that “the security and welfare of the people shall be the primary purpose of the government and the Constitution also guarantees that the governor is the chief executive of the state under chapter 6 (2) section 176 which provides a state governor with the right to carry out any security measure he deems fit. The right to peaceful assembly and association also enunciated under Chapter 4, section 40 grants the state governors the legal backing to assemble for the purpose of regional security.

The law establishing the Nigerian police however contradicts the establishment of a regional security outfit as it states in section 214 (1) 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” inhibiting the creation of any other policing outfit for any part of the country. However, Oputa, Alemika and Chukwuma opine that the Nigerian Police force has a very serious image problem in the eye of the public it is meant to serve as they are believed to be a pariah of some sort perceived as unfriendly and trigger happy.¹² To complement them, the power of the National Assembly to make laws can be exercised in this regard, as they, pursuant to section 58 (1) can propose bills for the formulation of paramilitary outfits that are meant to complement the mainstream policing outfit allowing for the creation of *Amotekun*. Some of the existing paramilitary outfits include but not limited to the Department of State Service (DSS), Nigeria Customs service (NCS), the Nigeria Security and Civil Defense Corps (NSCDC) etc. The presidential prerogative is required to make it law through an assent or otherwise by a decline, it may also become law through a two-third majority vote of the National Assembly.

The federal government through the Attorney-General declared *Operation Amotekun* ‘illegal’ noting that security

remains the exclusive reserve of the federal government.¹³ However, it is trite law that the right or power to declare any assembly illegal reside in a court of competent jurisdiction and not the reserve of the Federal government or any of its agencies.¹⁴ Against the backdrop of the legal booby traps presented by the aforementioned, litigative consequences of the watershed and its consequential expenses amongst other costs to be incurred in the process, the benefits of alternative dispute resolution can be exploited in this regard as it was formulated to save costs and time, increase user satisfaction and help the justice system in a country generally by upholding the general judicial principle of settling out of court.¹⁵

In view of the foregoing analogy, this paper is therefore poised to explore the different forms of ADR mechanisms¹⁶ with a view to proposing actionable pointers towards engendering a positive outcome devoid of losses to any of the parties in the process.

Concept of Alternative Dispute Resolution

There is scholarly consensus on the meaning of alternative dispute resolution and its philosophical background as Hamilton (n.d.) asserts that ADR is a consensual process that involves the deployment of a neutral third-party to assist conflicting parties resolve a case.¹⁷ Mnookin also submits that ADR is a set of practices that permits the resolution of conflicts outside the binding decisions made by courts or tribunals.¹⁸ Furthermore, Stratizar equally avers that ADR is synonymous with different techniques used to ensure out-of-court settlements that reduce litigation costs and the duration of long court procedures.¹⁹ These definitions reflect the philosophical background of ADR which are: (1) the use of a neutral third party; (2) the deployment of alternative adjudicative measures; and (3) the overarching objective of reducing litigation costs and time spent on court procedures. Therefore, ADR refers to every technique that may be deployed in the eventuality of any legal clash between organisations, individuals or the government to resolve an issue outside the court and its legally binding instruments with the use of a neutral third party. The implication of which results in lesser time and money spent on pursuing litigative cases.

Like its definition, there is a dilute of scholarly input regarding reference to the origins of ADR, although several scholars have identified varying dates, Stratizar opines that the first roots of ADR can be traced back to China.²⁰

¹³ Akinkuotu, E. (2020, January 15). Amotekun is Illegal-FG. *Punchng*. Available at: <https://punchng.com/breaking-amotekun-is-illegal-fg/> Accessed 25/01/2020.

¹⁴ See generally, section 6 of the Nigerian Constitution, 1999 as amended.

¹⁵ Love, I. (2011). Settling out of court. How effective is Alternative dispute resolution? *The World Bank, Financial and Private sector development Vice president*. Available at: <https://siteresources.worldbank.org/FINANCIALSECTOR/resources/282044-1307652042357/VP329-Settling-out-of-court.pdf/> Accessed 25/01/2020.

¹⁶ Rozdieczer Lukasz & Alejandro Alcaez de la Campa. 2006. *Alternative dispute resolution manual: Implementing commercial mediation*. Washington DC: World Bank Group

¹⁷ Hamilton (n.d.) *Alternative Dispute Resolution (ADR) — Definitions, Types and Feasibility. International Investment and ADR*.

¹⁸ Mnookin, R. "Alternative Dispute Resolution" (1998). *Harvard Law School John M. Olin Center for Law, Economics and Business Discussion Paper Series. Paper 232*. Available at: http://lsr.nellco.org/harvard_olin/232 Accessed 25/01/2020.

¹⁹ Stražišar B. (2018) *Alternative Dispute Resolution*. Pravo. *Zhurnal Vysshey shkoly ekonomiki*, no 3, pp. 214–233 (in English)

²⁰ Ibid, fn. 17

⁸ Teacher, Law (November 2013). *Alternative Dispute Resolution in Civil Disputes*. Available at: <https://www.lawteacher.net/free-law-essays/civil-law/alternative-dispute-resolution-in-civil-disputes.php?vref=1/>

⁹ Ideh, P. (2017). No Victor, No Vanquished. *StearsBusiness*. Retrieved from: <https://www.stearsng.com/article/no-victor-no-vanquished/> Accessed 24/01/2020.

¹⁰ Adebayo, M. (2020, January 15) Why we established Amotekun-Makinde. *Dailypost.ng*. Available at: <https://www.google.com/amp/s/dailypost.ng/2020/01/15/Why-we-established-Amotekun-makinde/> Accessed 24/01/2020.

¹¹ Lagos, Ogun, Oyo, Osun, Ekiti, Ondo.

¹² as cited in Obarisagbon & Akintoye, 2019.

Wolaver posits that advances towards arbitration could be found in ancient Greece,²¹ while Nesheiwat and Khasawneh are of the view that ADR was an integral part of the judicial process in pre-Islamic Arabia.²² On the ADR timeline however, the genesis could be dated back to 100 B.C. in West Zhou when the post of a mediator was established followed by more significant dates that led to the establishment of the judicial arbitration and mediation service in 1979²³ for which ADR is now dated from the 1970's.²⁴ The popular form of ADR during these periods were arbitration and mediation as there is mountainous scholarly evidence to support this assertion. As dispute resolution is definitely of utmost importance to maintain a serene society, the emergence of ADR which envisaged its growth has seen it grow from beyond the two common forms of ADR i.e. mediation and arbitration to include conciliation and as mentioned earlier, scholarly investment and deployment of these forms of ADR have made them more sophisticated over time.

For the purpose of this paper, a synoptic analysis will be made on ADR mechanisms such as arbitration, mediation and conciliation in view of the peculiar circumstance of the subject matter of this research.

Arbitration

This refers to a form of dispute resolution outside court that deploys a third-party who reviews the arguments of the conflicting parties and proffers an actionable solution. The outcome of this process is legally binding on the concerned parties. According to Esmaili, arbitration is more formal than every other form of ADR and resembles a simplified version of a trial²⁵ as its use originates from a voluntary contractual agreement to deploy it whenever there is a dispute. The general rule is that when there is no agreement to arbitrate in the case of a dispute then there can be no arbitration.²⁶ The point of its difference from other forms of ADR is the binding nature of its output, unlike mediation etc., the results of an arbitration are binding as the parties consent to resort to ADR whenever a dispute arises. Its difference from litigation beyond the costs saved and duration is its finality i.e. while most court decisions are subject to various appeals, arbitration awards are mostly not subject to appeal and can only be challenged on limited grounds in court.²⁷

Mediation

Although all techniques used in ensuring out-of-court settlements may be synonymous, each process has its defining features and uniqueness.²⁸ In a similar fashion,

mediation also uses a neutral third party and participation is voluntary. However, in the case of mediation, the goal is not to come up with a binding decision but to help both parties define the objectives and interests and eventually guide their choices together to ensure a mutually beneficial reconciliation of interests.²⁹ Mediation encourages dialogue and is poised to ensure the avoidance of mutual disrespect followed by legal proceedings. Therefore, its instruments do not allow the mediator to impose his decision on the conflicting parties,³⁰ thus in its simplest form, mediation is negotiation facilitated by a third-party.³¹

Conciliation

With a very high level of similarity to mediation, it uses a neutral third-party, it involves direct negotiation and its outcomes are not binding. The difference however is that the solution is not amicable, rather the opposing parties are forced to agree with the position of the conciliator, thereby hinging the process more on compromise than an agreement³². This distinguishing position is also supported by Law Reform Commission as they opine that the conciliator, a neutral takes over the role of an activist and attempts to persuade the differing parties to accept his solution to the dispute.³³

Alternative Dispute Resolution in Nigeria

Considering the popularity of the vision 2020 set by Nigeria to position the country as one of the largest global economies by 2020 while striving to engender an atmosphere of peace promoted by a legal framework that does not rely solely on litigation.³⁴ The deployment of an ADR mechanism in resolving the *Amotekun* crisis is a veritable way to show that Nigeria is on its way to actualizing some of the goals it put on the global forefront as ADR has also received global attention in terms of relevance and acceptance as enthused by Shamir (2004) that the concept of ADR as an alternative to litigation is globally accepted and has become institutionalized as part of many court systems and systems for justice globally³⁵. The same inefficiencies, costs and strain on judicial professionals occasioned by extended duration of litigation complained about in the American judicial system amongst other global judicial systems (including England and Wales) as Robert³⁶ asserts that litigation is 'a bruising process, characterised by secrecy and suspicion, in which one party's representatives have successfully wasted the other to the point at which the latter decides reluctantly, perhaps facing the inevitable, that he or she has to give up'³⁷ have also been identified by Nigerian lawyers and judges in their own legal system

²¹ Wolaver E. (1934), "The Historical Background of Commercial Arbitration" *University of Pennsylvania Law Review and American Law Register*.2:132

²² Nesheiwat F. & Khasawneh A (2015). The 2012 Saudi Arbitration Law: A Comparative Examination of the Law and Its Effect on Arbitration in Saudi Arabia. *Santa Clara Journal of International Law*., 3: 443.

²³ Barrett, J. T. & Barrett, J. P. (2004). *A History of Alternative dispute resolution*. San Francisco, USA: HB Printing.

²⁴ Ibid, fn. 6

²⁵ Esmaili, T. (2017) Alternative Dispute Resolution. *Cornell Law School*. Available at: https://www.law.cornell.edu/wex/alternative_dispute_resolution/ Accessed 27/01/2020.

²⁶ International Trade Centre (2016) *Settling business disputes; Arbitration and alternative dispute resolution (2nd ed.)*. Geneva, Switzerland. ITC

²⁷ Ibid, Fn. 24

²⁸ Ibid, Fn. 15

²⁹ Radulescu, M. (2012) Alternative Dispute Resolution. *Revista Română de Statistică Trim 1*: S133- S140.

³⁰ Ibid, Fn. 16

³¹ Law Reform Commission (2010) *Alternative Dispute Resolution: Mediation and Conciliation*.

³² See 27

³³ See 29

³⁴ Oni-Ojo, E & Otaru, C. (2013). Dispute Resolution Strategies for Sustainable Development in Africa: Insights from Nigeria. *Journal of Management and Entrepreneurial Development*, 3(1): 37-55.

³⁵ Shamir, Y. (2004) *Alternative Dispute Resolution Approaches and Their Application*, Israel Center for Negotiation and Mediation (ICNM). (pp 1-17).

³⁶ 2002

³⁷ Roberts, Simon (2002) 'Institutionalized Settlement in England: A Contemporary Panorama' 10 *Willamette Journal of International Law and Dispute Resolution*

thereby accommodating the absorption of ADR in Nigeria.³⁸ Supported by the mountainous number of cases before the Nigerian Legal system, Justice Oke observes that Nigerian courts are overflowing with cases with each Honourable judge having not less than 300 cases before him.³⁹ As such, lawyers have now defined their role in dispute resolution and law firms now suggest arbitration and mediation (the popular forms of ADR) based on the need to decongest Nigerian courts.

Originally, ADR was a part of the Nigerian cultural fabric before the colonialist adventure as communities through the use of ward heads and family heads resolved disputes through negotiation, mediation and arbitration. By section 19(d) of the Constitution of the Federal Republic of Nigeria,⁴⁰ the use of ADR measures are recognised as part of the country's foreign policy amongst a host of other statutes recognising the legitimacy of ADR within the country thereby weaving its genuine nature into the judicial system.

The State of Insecurity in Nigeria

Insecurity in Nigeria has assumed a formidable role⁴¹ as Nigeria has been enmeshed in a firebox of clashes that have cost several civilian lives including foreigners and members of the Nigerian security personnel. Unfortunately, this spate of insecurity appears to have defied all security measure thereby making a mockery of the law enforcement agencies and the millions of naira annually budgeted for security.⁴² The different regions of Nigeria have experienced regional security threats as insurgency by militia groups in the North, kidnapers in the Eastern and Southern part of the country, ritual killings in the West, and political and non-political assassinations across the nation.⁴³ It has even been submitted that Nigerians have accepted insecurity as part of their lives.⁴⁴ Compared to other regions such as the South-south that have experienced conflict on the basis of resources,⁴⁵ Christian-Muslim divides in the middle of the country, the civil war that plagued the east and recently the Boko Haram insurgency in the North-east that forced the declaration of states of emergency on Yobe, Adamawa and Borno states, the west only bedevilled by ritual killings and systemic kidnappings,⁴⁶ has experienced less terror compared to other regions.

However, the insurgency is spreading. Edo state, one of the most geographically proximal states to the West has become popular for kidnapping and raping and killing allegedly by Fulani herdsmen. Afenifere⁴⁷ chieftain's daughter, Olakurin Fasoranti, who was killed by suspected herdsmen in July

2019⁴⁸ is another sign of the increasing proximity of insecurity to the west and was specifically enthused by Ekiti state governor, Fayemi as one of the reasons for setting up the *Amotekun* outfit.

The *Boko Haram* insurgent group have killed several thousand civilian lives, and displaced millions of people along the Lake Chad region. This terrorist group is reputed for once holding seventeen local government areas in Borno state, the recent kidnap of Dapchi girls and the global quagmire of the Chibok girls. Boko Haram, although believed to be heading towards extinction following several military campaigns in 2015-2016,⁴⁹ the terrorist organisation has remained remarkably adaptable with its tactics which has sustained its existence in the region till today.

With a consensus on its origin, most scholars agree that Boko Haram started in 2002 under the leadership of Ustaz Muhammad Yusuf in Maiduguri whose death in 2009 turned the group into a killing machine,⁵⁰ increasing their drive to impose Sharia law and more importantly, demonstrate opposition to western education which Nwagboso rightly asserts was made obvious by their popular opposition of the idea that rain came from water evaporated into the atmosphere and the spherical nature of the earth.⁵¹ It was immediately supported by their abduction of over two hundred girls from a boarding school in a village in Chibok local government in Borno state on the night of April 2014,⁵² thereby plunging the Nigerian army, foreign militaries and worse still the parents of the abducted children to a state of distress. In 2018, some of the girls were released as part of a deal between the armed group and the Nigerian government.⁵³ However, 112 girls remain with the abductors who are known for raping amongst other violation of human rights, and by extension, putting the world at a miss on the current plight of the girls.

Equally, on the 19th February, 2018, another set of schoolgirls aged between 11-19 were abducted from their school in Yunusari local government of Yobe state.⁵⁴ Although the federal government was able to secure their release circa five weeks,⁵⁵ one of the girls remains a captive for refusing to denounce her religion (Christianity),⁵⁶ a

³⁸ Faturoti, B. (2014). Institutionalised ADR and access to Justice: The changing faces of the Nigerian judicial system. *Journal of Comparative Law in Africa* 1(7): 67-91.

³⁹ (as cited in Faturoti, 2014), see 35

⁴⁰ 1999 as amended

⁴¹ Onifade, C., Imhonopi, D. & Urim, U. Addressing the Insecurity Challenge in Nigeria: The Imperative of Moral Values and Virtue Ethics. *Global Journal of Human Social Science Political Science*, 2(1): 53-64

⁴² Obarisagbon, I. & Akintoye, O. (2019) Insecurity Crisis in Nigeria: The Law Enforcement Agents a Panacea? *Journal of Sociology and Social Work* 7(1): 44-51. Available at: <https://doi.org/10.15640/jssw.v7n1a6> Accessed 26/01/2020.

⁴³ Ibid, fn. 40

⁴⁴ Onwuka, A. (2019, September 3). Nigerians have accepted insecurity as part of life. *Punchng*. Available at: <https://punchng.com/nigerians-have-accepted-insecurity-as-part-of-life/> Accessed 26/01/2020.

⁴⁵ states such as the Niger Delta

⁴⁶ Ibid, fn. 38

⁴⁷ Afenifere is a pan Yoruba socio-political group of south-western Nigeria.

⁴⁸ Akinkuotu, E. (2019, July 12) Suspected herdsmen kill daughter of Afenifere chairman, Fasoranti. *Punchng*. Available at: <https://punchng.com/suspected-herdsmen-kill-daughter-of-afenifere-chairman/> Accessed 26/01/2020.

⁴⁹ Brechenmacher, S. (2019) *Stabilizing Northeast Nigeria After Boko Haram*. Carnegie Endowment for International Peace. London. Available at: https://carnegieendowment.org/files/Brechenmacher_Nigeria_final.pdf/ ⁵⁰ See 37

⁵¹ Nwagboso, C. (2012). Security Challenges and Economy of the Nigerian State (2007–2011). *American International Journal of Contemporary Research*, 2(6): 244-258.

⁵² Searcey, D. (2018, April 11). Kidnapped as Schoolgirls by Boko Haram: Here they are now. *Nytimes*. Available at: <https://www.nytimes.com/interactive/2018/04/11/world/africa/nigeria-boko-haram-girls.html> Accessed 26/01/2020.

⁵³ Mbah, F. (2019, April 14) Nigeria's Chibok girls: Five years on, 112 still missing. *Aljazeera*. Available at: <https://www.aljazeera.com/news/2019/04/nigeria-chibok-school-girls-years-112-missing-190413192517739.html> Accessed 26/01/2020.

⁵⁴ Haruna, A. (2018, March 21) Freed Dapchi schoolgirl speaks: How we were kidnapped, treated. *Premiumtimes*. Available at: <https://www.premiumtimesng.com/news/headlines/262642-freed-dapchi-schoolgirl-speaks-how-we-were-kidnapped-treated/> Accessed 26/01/2020.

⁵⁵ BBC (2018, March 25). Nigeria Dapchi abductions: Schoolgirls finally home. *BBCNEWS*. Available at: <https://www.bbc.com/news/world-africa-43535872> Accessed 26/01/2020.

⁵⁶ Toromade, S. (2019, May 14) Dapchi schoolgirl, Leah Shaributurns 16 in Boko Haram custody. *Pulseng*. Available at:

situation that sparked global attention but has remained unresolved.

Another relevant case in point is the Niger Delta crisis that has persisted since the 1990s and has not been stamped out despite the enthronement of democracy in the country which led to the extra-judicial killing of Ken Saro-Wiwa and nine Ogoni leaders during Abacha's military rule. More recent is also the case of herdsmen who are allegedly popular for decimation of several parts of the country increasing the rate of unrest in the country.

The Amotekun Development

There is no gainsaying the fact that policing is local, ditto security,⁵⁷ and therefore it should be conducted from a local front, as against the current system that features a unified policing command under the authority of a federal-appointed Inspector General. Strongly supported by General Theophilus Danjuma (Rtd.) who charged Nigerians to defend themselves, the *Amotekun* development is a decision in response to the calls to legalise the Oodua People's Congress (OPC), promote regional security which is already in popular in the east and northern parts of the country and uproot the burgeoning threats of terror in the South-west.

Without obvious concern for political affiliation, the south-western governors comprising of:

1. Governor Babajide Sanwo-Olu Lagos state
2. Governor Dapo Abiodun Ogun state
3. Governor Seyi Makinde Oyo state
4. Governor Rotimi Akeredolu Ondo state
5. Governor Gboyega Oyetola Osun state
6. Governor Kayode Fayemi Ekiti state

The aforementioned governors unanimously agreed to set up a regional security outfit on the grounds that the mainstream police have not been able to arrest the rising threats of terror in the region. Compared to the mainstream police⁵⁸, Eghagha (2020) opines that the presence of the Oodua People's Congress, a local paramilitary outfit sends more threat to thieves in a society than the Nigerian Police and its cohorts, against this background therefore, an attempt to legalise a body with similar credibility is one that should be welcomed to avoid the inevitable upsurge of terror in the given the perceived incapacitation of the police in the region.

Another reason for the establishment of the *Amotekun* outfit and more so the demand for its legalisation is inherent in the presence of *Hisbah*, the Joint Civilian Task force and the most recently established Operation *Shege Ka Fasa* in the North. Abating the fear of crude practice, the governor of Ondo state, Rotimi Akeredolu equally noted that those willing to work in the outfit will be trained by security experts.⁵⁹

The Position of the Federal Government

The Attorney General of the Federation immediately

declared *Amotekun* illegal after its inauguration in Ibadan, without following the legal due process.⁶⁰ However, the *Amotekun* outfit had already started garnering a reasonable amount of legitimacy and acceptability, as spiritual and traditional leaders swiftly endorsed its formation. The call for a resolution was also made by APC national leader and elder statesman, Asiwaju⁶¹ Ahmed Tinubu in a statement where he called for a negotiation to be held between the Federal government and the south-western governors in order to engender a peaceful resolution. Interestingly, the Tinubu-call is in line with the tenets of ADR as it is mostly hinged on peaceful resolution of disputes.

The Way Forward

It is common knowledge that when the federal government and state clash on issues in the concurrent list, the federal government prevails and as such the federal government cannot be held to a binding process such as arbitration by the south-western governors, thereby leaving mediation and conciliation as the available alternatives.

Technically, an issue of this nature would be debated at a Federal High court or the Supreme Court of Nigeria. On the one hand, it brings to bear a strain on the judicial system as several lawyers will be assembled on the case. Being a naturally litigious society with over 30,000 new civil cases filed each year in Lagos state alone,⁶² Nigeria, a country whose law school as at 2010 had not graduated 70,000 lawyers since 1962⁶³ cannot afford any further strain on its judicial system. However, the line of argument to be presented by the south-west governors would feature the deployment of portion of the constitution that assures rights to collaborate for security reasons, the capacity of individuals to own and use licensed weapons that can be mainstreamed into a security outfit and the inability of the police to arrest the growing insecurity of the state. The argument of the federal government will be premised on security being the sole responsibility of the federal government and presumably, the ruling will be to allow the existence of *Amotekun* to curb insecurity in the region till the Nigerian police can fully boast of capacity to confront insecurity all over the nation, bringing a logical conclusion but costing a lot of money and time. Onyema and Odibbo rightly submit that many a typical court case now takes two to twenty years to conclude which will be a rather illogical amount of time to waste as insecurity inches closer to the region every passing day and may even grow beyond the proportion that can be arrested by the Operation *Amotekun*. A hybrid of mediation and conciliation can be deployed in this regard. Precisely, the technique of conciliation that allows for harmonisation of objectives can be used, which in this case, is in national interest i.e. tackling insecurity.

⁶⁰ The general speculation at the time was that the declaration would follow the precedent which saw the Indigenous People of Biafra (IPOB) being declared by the court as a terrorist group, or alternatively, declaring same to be illegal.

⁶¹ Loosely translated to mean "leader" under Yoruba native custom and tradition.

⁶² Onyema, E. & Odibo, M. (2017, June 23). How alternative dispute resolution made a comeback in Nigeria's courts. *Africa Research Institute*. Available at: <https://www.africaresearchinstitute.org/newsite/publications/> Accessed 26/01/2020.

⁶³ NBF News (2010, June 17) Since 1962, Law School has not trained up to 70,000 lawyers. *The Nigerian Voice*. Available at: <https://www.thenigerianvoice.com/news/27276/since-1962-law-school-has-not-trained-up-to-70-000-lawyers.html/> Accessed 26/01/2020.

<https://www.pulseng/news/local/leah-sharibu-turns-16-in-boko-haram-custody/ebrb2cg/> Accessed 26/01/2020.

⁵⁷ Eghagha, H. (2020, February 03) Amotekun and the future of our republic. *Guardianng*. Available at: <https://m.guardian.ng/opinion/amotekun-and-the-future-of-our-republic/> Accessed 26/01/2020.

⁵⁸ Ibid, fn. 50

⁵⁹ Ojo, D. Recruitment for Amotekun Security outfit to begin soon. *The Nation*. Available at: <https://thenationonlineng.net/recruitment-for-amotekun-security-outfit-to-begin-soon/> Accessed 26/02/2020.

Equally, the feature of mediation that does not make the decision of the process binding or the possibility of an imposition of a verdict should be used as the federal government is obviously superior given the federalist structure of Nigeria and cannot be held to ransom on any decision-making process.

For the purpose of a constructive conclusion, the use of ADR in this dispute will popularise the legitimacy of its procedures and engender national acceptance as only fourteen (including Abuja) of the 36 states of Nigeria have adopted the process and will more importantly save costs, time and achieve the ultimate judicial goal of out-of-court settlements.

Conclusion

The situation of unrest occasioned by heightened insecurity in Nigeria calls for relevant action from every cubicle of power in the country. Precisely, the overarching aim of the *Amotekun* development which is in line with the goals of the federal government should allow for its ventilation as its implementation would protect the integrity of the south-west from insecurity attacks and more importantly ensure a more secure nation.

Given this deontological purview, litigating the case for a conclusion will only increase the strain on the judicial system, cause unnecessary expenses and more importantly waste time as a cursory approach to litigation has been explored in this study and the evident judgement is imminent. This delay however, is not one that can be afforded as insurgency is a plant that should be arrested the moment it rears its head. The acceptance of the ADR mechanisms proposed in this study will impact the deployment of ADR nationally as it will increase its use and help achieve the goal of out-of-court settlements and reduce the burgeoning number of cases awaiting verdicts. This research is a contribution to existing literature on ADR and a call for the acceptance of ADR by the judicial system.

Equally, the adoption of a hybrid approach to resolving the issue calls for a revision of the forms of ADR to accommodate cases of this nature, arbitration generally does not allow for arbitration except there's an agreement to arbitrate. However, most cases that are not resolved through mediation or conciliation will mostly lead to litigation given that arbitration cannot commence without an agreement to arbitrate, this lacuna is also deserving of attention in further studies on ADR and its mechanisms.

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