

RIVERS STATE STREET TRADING, ILLEGAL MARKETS AND MOTOR PARKS (PROHIBITION) LAW 2019 – MATTERS ARISING

Introduction

Task Force generally is a quasi-law enforcement agency set up by an authority to carry out certain functions. In the case of a state, it usually consists of a group of persons selected by the governor to implement specific regulations or executive orders made pursuant to existing legislations. An example is the task force set up recently by the Executive Governor of Rivers State, His Excellency, Nyesom Ezenwo Wike CON, via Executive Order RVSG-02 No. 3 -2020¹, one of which functions is to secure the borders of the state for the purpose of controlling interstate travels in view of the threats posed by the pandemic COVID-19. In this discourse however, the focus shall be on the Rivers State Task Force (the “**Task Force**”) established pursuant to the Rivers State Street Trading, Illegal Markets and Motor Parks (Prohibition) Law, 2019 (the “**STIMMP**”), its constitutional background and excesses.

Constitutional Background of the Task Force

As a preliminary, the STIMMP was enacted by the Rivers State House of Assembly to prohibit street trading, illegal markets and motor parks in Rivers State and for other connected matters. To enforce this law, the Executive Governor of Rivers State, set up the Task Force pursuant to his powers granted by virtue of section 2 of the STIMMP.

By the provisions of the Constitution of the Federal Republic of Nigeria 1999 as amended (the “**Constitution**”), the executive powers of a State are vested in the Governor of that State. These powers the Governor can exercise directly or through the Deputy Governor and Commissioners of the government of that State or officers in the public service of the State².

Section 318(1) of the Constitution unequivocally outlines public service of the state to include, amongst others:

“(c) Member or staff of any commission or authority established for the State by this Constitution or by a Law of a House of Assembly”

In clear terms, as can be deduced from the foregoing, members of commissions or authority established pursuant to a law of a State House of Assembly are by virtue of section 318 (1) (c) of the Constitution public servants. Accordingly, the Task Force is a body enjoying constitutional backing as officers in the public service of the state, having been established by virtue of the STIMMP.

Excesses of the Task Force

However, since its inception, the Task Force has rather proved to be an institutionalized menace sunk in arbitrary exercise of powers as shall be discussed shortly.

In enforcing the provisions of the STIMMP, the Task Force is empowered to seize goods, wares and articles³. Nevertheless, these powers to seize goods granted under that law is not a blanket provision. By section 10 (1) of the STIMMP,

¹ Executive Order made pursuant to the Quarantine Act, Cap Q2, LFN 2004.

² See 5(2) of the Constitution.

³ Section 44 (2) (b) of the Constitution recognizes such laws which provide for seizure of properties under certain instances.

“an authorised person may, on production of a proper identification and a letter of authority from the Appropriate Authority:

- (a) in connection with street trading, seize any goods exposed or offered for sale in any public place in contravention of this Law; and*
- (b) remove and impound any property used by an offender in contravention of any provisions of this Law.”*

Furthermore, section 10 (2) of the STIMMP states that an authorised person acting pursuant to 10 (1) above shall in a prescribed form state:

- (a) Each of the property to be removed or impounded;*
- (b) The address where the impounded property shall be kept;*
- (c) Conditions for the release of the impounded property;*
- (d) Terms and conditions relating to the sale by public auction of any unclaimed property; and*
- (e) The name and address of the official to whom any representation regarding the impounded property may be made, and the date and time by which representation must be done.*

Similarly, section 3 (2) provides for the issuance of 24 hours-notice in writing by an authorised person to offenders – except street hawkers - who contravene the prohibition on street trading. For clarity, “authorised person” means a member of the Task Force or any other person authorised by the Governor or Commissioner in charge of Transport and includes representatives drawn from the Local Government Councils in the state.⁴

The foregoing provisions are so clear yet seldom complied with by the Task Force. For instance, members of the Task Force have been reported to alarmingly exploit and arbitrarily confiscate goods and vehicles without resort to the rule of law⁵.

Furthermore, worthy of note is the fact that nothing, absolutely nothing in the STIMMP authorises the use of arms by the Task Force. However, members of the Task Force brandish and employ the use of such arms like axes, clubs, machetes, rods, whips and other similar objects in a bid to enforce the provisions of the STIMMP. In some instances, they physically assault, harass alleged offenders and exert force with blatant disregard for human dignity⁶.

The Constitution is founded on the rule of law the primary meaning of which is that everything must be done according to law. It means also that government should be conducted within the frame-work of recognized rules and principles which restrict discretionary power⁷. In addition, Section 13 of the Code of Conduct Bureau and Tribunal Act provides that:

“a public officer shall not do or direct to be done, in abuse of his office, any act prejudicial to the rights of any other person knowing that such act is unlawful or contrary to any government policy.”

⁴ Section 16 of the STIMMP

⁵ Civil Rights Council 2020, *Civil Rights Council Calls For The Respect Of Human Rights By The Rivers Task Force On Street Trading, Illegal Markets And Motor Parks*, Civil Rights Council, viewed 22 May 2020, <<https://www.revelationagents.com/civil-rights-council-calls-on-rivers-state-task-force-to-respect-human-rights/>>

⁶ Ibid

⁷ Vide *The Military Governor of Lagos State & Ors V. Ojukwu & Anor* (1986) LPELR-3186(SC). See also *Omatseye V. FRN* (2017) Lpelr-42719(CA).

A necessary corollary from the above is that governmental authorities and persons in the public service of a state, the Task Force in this instance, must exercise their powers strictly in accordance with the law(s) from which they derive validity and not otherwise.

Recommendations and Conclusion

To borrow the words of Sir John Dalberg-Acton, power tends to corrupt, and absolute power corrupts absolutely. Accordingly, the exercise of powers by the Task Force must be effectively checked to ensure that implementation of the STIMMP is done within lawful bounds. To achieve this, it is suggested that the STIMMP be reviewed and amended by the State House of Assembly; amendments could include:

1. *Listing and defining punishable acts of members of the Task Force;*
2. *Prescription of penalties such as suspension, dismissal;*
3. *Setting up a disciplinary body or incorporating one which will be charged with the onus of supervising the activities of, bearing complaints of abuse against and disciplining of members of Task Force.*
4. *Provision for appeal by persons dissatisfied with the decision of the disciplinary body mentioned above.*

Importantly and in addition to the above, in spite of the validity conferred on the Task Force by its enabling law, the following actions can lie against members of the Task Force who abuse statutory powers:

- (a) Fundamental rights enforcement proceedings – where Task Force members infringe on constitutionally-guaranteed rights. In pursuance of Section 46 of 1999 Constitution (as amended), the courts have gone ahead in a plethora of cases, to safeguard our democratic processes by not only nullifying executive actions but also protecting the citizens against the whims and caprices of the ruling elite⁸;
- (b) Action in torts – where the act complained of constitutes a civil wrong;
- (c) Criminal prosecution – where the act in question amounts to a crime.

In conclusion, legislations setting up law enforcement agencies usually proscribe certain conducts of members of those agencies and appropriate disciplinary measures to be meted to deviants. Thus, whereas the apparent intention behind the enactment of the STIMMP is to promote orderliness within the state which is good, it is dangerous practice to allow any institution like the Task Force operate with powers seemingly unfettered, especially in its enabling law.

⁸ See Solomon Ohakosim V. Commissioner of Police Imo State & Ors (2009) LPELR-8874(CA). See also Director of State Security Service & Anor. V. Olisa Agbakoba (1999) LPELR-954(SC).