



SURVEILLANCE AND THE RIGHT TO **PRIVACY**





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Introduction

On Friday, June 25 2022, Governor Rotimi Akeredolu (SAN) of Ondo state signed an Executive Order mandating all private organisations within the state to install Closed Circuit Television (CCTV) cameras on their facilities. The organisations envisaged under the Order are religious places of worship, financial institutions, event centres, supermarkets, educational institutions, hotels/guest houses, restaurants, clinics/health centres, eateries and recreational parks. According to the Order, the governor draws his authority under Section 176(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Furthermore, the Order declares that defaulters will have their premises closed down and may be prosecuted under Section 203 of the Criminal Code Law of Ondo State.

Flowing directly from that Executive Order, the Ondo State Security Network Agency (more popularly known as 'Amotekun') issued a deadline for concerned organisations to comply with the Order. In a statement issued on the 29th day of June 2022, the Agency mandated all private organisations to install CCTV cameras on their facilities on or before the 1st day of August 2022.

In a related manner, there is a Bill for an Act To Make Provision For The Integration of Private Closed Circuit Television (CCTV) Into the National Security Network in Nigeria, pending before the House of Representatives. The Bill's objective is to expand the security network in Nigeria to secure life and property. It proposes the nationwide adoption of CCTV by private organisations to expand the security network infrastructure in Nigeria within six months of its coming into force.

Validity of the Ondo Executive Order:

As stated earlier, the Ondo State Executive Order is purported to be issued according to powers derived from two enactments. First, Section 176(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). This provision, a very short one, states that 'a governor of a state shall be the Chief Executive of that State.' Secondly, Section 203 of the Criminal Code Law of Ondo State. This Section is to the effect that a person is punishable with a prison term of up to one year if he disobeys an Order made by a person who is authorised by another Order or enactment to make that Order. While the combined effect of these enactments do not expressly authorise the governor to issue this particular Order, the Section of the Criminal Code more requires explicitly that the making of any Order must draw its authority from a preexisting Order or enactment.

Though we do not have an express definition of the term 'Executive Order' in our Laws, Mayer defines an executive order as a 'directive that requires or authorises some action within the executive branch.'¹ In this sense, an Executive Order is a command directly given by the president (or governor of a state) to an executive agency, class of persons or body under the executive arm of government which is in furtherance of government policy or Act of the Legislature. The executive order may require the implementation of an action, set out parameters for carrying out specific duties, define the scope of existing legislation or be a subsidiary instrument within the contemplation of section 37 of the Interpretation Act.² Therefore, the Order must derive its origin or be supported by law and is to be directed to a body under the executive arm of government; this is because 'all powers, legislative, executive and judicial must ultimately be traced to the Constitution.'³

Having stated the above, an executive order that is not made in pursuance of an enactment or preexisting order, especially one that aims to invade the right to privacy of Nigerian citizens should not be allowed to operate. The supremacy of the constitution is the hallmark of constitutional democratic governance because it is a reflection of the powers granted by the people to meet their aspirations.⁴

We therefore do not find any legal basis for the making of this Order and do not think that it ought to be enforced by the Amotekun. To remedy this defect and forestall a violation of the rights of persons whom this Order may affect, it is expedient that the law-making process be activated, detailing the intentions of the law and the mischief it seeks to resolve.

1 K R Mayer 'Executive Orders and Presidential Power' (1999) 61 The Journal of Politics 445-466, at p. 445.

2 Interpretation Act CAP I23 LFN 2004.

3 INEC v Musa [2003] 3 NWLR (Pt 806) p 72 at 157 para E.

4 Fawehinmi v Babangida [2003] 3 NWLR (PT 808) p. 604 at 651 paras. F-G.

Right to Privacy of the Person:

Section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides for the right to privacy which provides that 'the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.'

The court has held that the protection of personal data is also envisaged under the right to privacy, and as such, should be protected in favour of the Data Subject. Hence, the National Information Technology Development Agency (NITDA) has set out the Nigeria Data Protection Regulation (NDPR) for the purpose of stating the means and methods by which personal data may be treated. Also in support of the NDPR is Article 12 of the Universal Declaration of Human Rights (UDHR) 1948 and Articles 17 of the International Convention on Civil and Political Rights 1966. What all these authorities seek to establish is respect for the right to privacy of a person.

Possible Rights Violation Concerns:

The right to privacy is not absolute as it is subject to restrictions under a law which must necessarily pass constitutional scrutiny. This is the very essence of Section 45 of the Constitution, which is to the effect that such an act must be in accordance with a law which is reasonably justifiable in a democratic society, in the interest of defence, public safety, public order, public morality or public health, or for the purpose of protecting the rights and freedom of other persons. In summary, the fundamental rights may be derogated from for public interest, but this public interest must be established and safeguards against abuse firmly established in order not to subject the right to arbitrary interference.

The Bill and Executive Order do not provide any safeguard on the protection of privacy or the misuse of CCTV. We propose that proper guides on how rights violations emanating from this may be avoided be considered in line with the NDPR and other relevant enactments. The following proposals:

- a. As much as practicable, the installation and monitoring of CCTV should be limited to the areas where it is absolutely necessary. A person whose personal data (video footage and pictures) are being taken ought to be notified, especially where CCTV cameras are to be used in public restrooms and other places of like manner. There is a need for the posting of conspicuous notices in order to draw the attention of Data Subjects to the fact of being watched.
- b. The law should specifically provide for the qualification of persons to collect and process the data generated from the footage, who must be trained in data protection and trustworthy with the task of handling personal data. It is desirable that he has the duty of deciding what needs to be recorded and how it is to be stored so as to prevent data protection breaches. Closely connected with this, there should be a penalty for wrongful use of or sharing of data generated from the footage.

- c. The law should direct that the rights of Data Subjects be set out conspicuously and channels through which complaints can be presented and treated outrightly specified. This should include a 'subject access request' stating the time within which requests can be resolved and how to obtain CCTV footage of oneself, or even request for such footage to be deleted.
- d. The law ought to make provision for the duration for which data is to be kept. This would ensure that personal data is not kept in perpetuity or retained after a data subject has requested its deletion.
- e. The law should state specifically the nature and character of persons who may request data generated from footage and for the production of a warrant in support of this request so as not to make personal data available for just every person. This is against the mere provision that such data be made available to the Police upon request without more.

Conclusion

While we agree that there is a need to increase the capacity of our security organisations to combat crime and that the use of CCTV cameras to dictate and combat crime, especially in the face of incessant violent attacks like the Owo attack which claimed over 40 lives, it is good that safeguards be established in the face of possible abuses. This window should not be utilised arbitrarily to leave room for abuse by state actors.

Again, although the idea behind the Executive Order may be novel and good, we encourage that law-making be left in the hands of the Legislature, which is constitutionally empowered to do so, and the acts of the governor of Ondo or any other governor for that matter, be in accordance with the law. We propose that a well-prepared and researched Bill be presented to the legislature of that state for legislative action.

