

An Assessment of the Implications of Executive Orders 21 and 22 for the 2023 General Elections in Rivers State, Nigeria

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Abstract

This paper assesses the implications of Executive Orders 21 and 22 for the 2023 general elections in Rivers State, Nigeria. The paper opined that Executive Orders derive from existing laws but it is not the case with the Rivers State Executive Orders 21 and 22. The paper argued that the Executive Orders 21 and 22 are designed to grandstand and stifle opposition and the people from freely engaging in competitive political contestations in the build-up to the 2023 general elections in Rivers State. The paper adopted the legalist theory to interrogate the constitutionality of the Executive Orders 21 and 22 as they run contrary to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (As amended) and other extant electoral laws within the confines of exclusive powers of the National Assembly. Sources of data are both primary and secondary and the methods of data analysis are descriptive and content analytic models, respectively. The paper concluded that implementing the Executive Orders 21 and 22 would negatively affect the 2023 general elections in Rivers State, hence a recipe for political violence and voter apathy in a State perceived to have been polarised along ethnic and party lines, and consequently conquered for certain selfish political interests. The paper recommended among others, that the opposition and Civil Society Organisations should challenge the legality of the Orders in Court to act as a deterrence to successive State Chief Executives with a view to ensuring a level-playing field for all not just for the 2023 but future general elections in Rivers State.

Keywords: Implication, Executive Orders, Elections, Electoral Process, State

Introduction

Executive Orders are orders derived from the constitution and issued by the Chief Executive to all agencies under the executive arm of government in pursuance of government policies, Act of the Legislature, or address matters relating to the executive arm of government and not electoral matters or issues within the jurisdiction of the federal legislature. These Orders have full law of only if they are in conformity to the constitution. On 6th October 2022, Governor Wike of Rivers State signed the Executive Order 21 and on November 11, 2022, the Governor signed the Executive Order 22. Determining the constitutionality of these Orders and applicability is a

difficult and complex exercise. Notwithstanding, it is the preoccupation of this paper to ascertain the constitutionality and legality of these Executive Orders within the context of the Electoral Act, 2022 and the Constitution of the Federal Republic of Nigeria, 1999 (As amended). This is because, Nigeria do not have a culture of issuing executive orders, the courts have not directly pronounced on them save for the case whereby the Supreme Court of Nigeria in the year 2020 declared as ultra vires, unconstitutional, illegal and therefore null, void and of no effect the Executive Order 10 issued by President Buhari on the ground that the President lacked powers to issue the order under the CFRN 1999.

This paper is an exploration of the Rivers State Executive Orders 21 and 22 as an expression of the overbearing influence of executive power and how it contravenes the constitution, the Electoral Act, 2022, the rule of law, the separation of powers, and the citizens' rights which are critical pillars of democratic governance in Nigeria. The Executive Orders will be discussed with a view to assessing the implications of Executive Orders 21 and 22 for the 2023 general elections in Rivers State, Nigeria. This is because, it has been argued that general elections in Nigeria are constantly war-like and are envisaged in political rigmarole that threatens the polity of the nation (Sule, 2018). Rivers State is no exception to this history of war-like elections vis-à-vis political intimidations and violence.

General election is vital in Nigeria's political history and democratic consolidation. It is a constitutional right and exercise of the populace to determine who leads the biggest country in Africa for the sixth straight democratic peaceful handover through the electoral process which has not been obtainable prior to this Republic (Page & Tayo, 2018). Importantly, any general election that occurs in a democratic country is a plus to the attempt at full democratisation regardless of the challenges usually encountered during the electioneering process. Hence, they are considered as the evidence of progressing towards perfection in future. Unfortunately however, elections in Nigeria are characterised by violence, manipulation, allegations of rigging, imposition, intimidation, corruption, excessive spending, vote buying, godfatherism and other obstacles that discredit the process in most cases (Sule, et al, 2018).

The 2023 General Elections are expected to be an improvement upon that of past elections particularly in Rivers State, but it is glaring that much difference may not recorded. This is

because of the emerging issues of Executive Orders 21 and 22 hitting up the Rivers State political terrain among other political game-plays in the build-up towards the 2023 general elections. Ordinarily, Executive Orders derive from existing laws but it is not the case with the Executive Orders 21 and 22 which appear not derived from within the purview of the constitution. It is against this backdrop that this paper assessed the implications of Executive Orders 21 and 22 for the 2023 general elections in Rivers State, Nigeria.

Research Questions

- i. What is the constitutionality of the Rivers State Executive Orders 21 and 22?
- ii. What are the implications of Executive Orders 21 and 22 for the 2023 general elections in Rivers State, Nigeria?

Research Objectives

The specific objectives of this paper are to:

- i. ascertain the constitutionality of the Rivers State Executive Orders 21 and 22.
- ii. assess the implications of Executive Orders 21 and 22 for the 2023 general elections in Rivers State, Nigeria.

Literature Review and Methodology

Executive Orders

Executive Orders are orders issued by a President and directed towards officers and agencies of the government. They have the full force of law and are derived from the constitution. The ability to make such orders is also based on implied Acts of the Legislature that delegate to the president some degree of discretionary power. Executive orders originated from the United States of America where the first executive order was issued by President George Washington on June 8, 1789, and it was addressed to the heads of the federal departments, instructing them “to impress me with the full, precise, and distinct general ideas of the affairs of the United States” in their fields (Abiye, 2022).

Executive Orders are commands derived from extant laws and given directly by the President to an executive agency, class of persons or body under the executive arm of government in furtherance of government policy or Act of the Legislature. They are instruments for the management of the national economy and other domestic affairs by a President acting as Chief

Executive. Executive orders are issued according to the constitutional or statutory power of the President as Chief Executive, Sole Organ or Commander-in-Chief. It is exercised mainly to organize the executive branch of government, to streamline the jurisdiction of agencies under the executive branch and determine how these agencies will perform tasks already authorized by legislation. In Nigeria, an executive order can be issued to streamline the focus and boundaries of statutory mandates of the executive agencies. The executive order would however not bestow extra mandate on the agencies; it will merely clarify the exercise of executive function by these agencies (Abiye, 2022).

In sum, Executive Orders are Orders issued by an executive usually the President of a country to the executive arm of government and having the force of law. Impliedly, Executive Orders have full legal effect only if they are derived from the constitution. Deducing from the above definition, is the fact that only a President of a country can issue executive orders which must also be in consonance with constitutional provisions. Also clear in the above definitions is that Executive Orders address matters relating to the executive arm of government and not electoral matters or issues within the jurisdiction of the federal legislature.

Election

The concept of election has been largely explained by scholars. It is generally viewed as the most vital element of representative democracy and governance process. Buttressing this viewpoint, Alapiki (2004) opined that “election is the barometer to measure the political maturity, health, legitimacy and stability of a democratic governance (p. 130).” As such, how elections are conducted in a State determines the level of political development of that such a State (Paki & Inokoba, 2006). Election is therefore involves the organised procedures whereby the eligible voters choose few persons or a person to hold an authority or leadership position(s) on their behalf.

Okolie (2005) explained election as, “the process of selecting the officers or representatives of an organisation or group by vote of its qualified members (p. 436).” According to Paki and Inokoba (2006), “Elections are the institutionalised procedures for choosing political office holders by the electorate of a country. In other words, it is a means through which the electorate choose their representatives into the different organs (positions) of the government (p. 181).” Bain (1964) offered a more encompassing definition of election and described it as “the formal process by

which the electorate selects officials and determines the issues submitted to it. It is therefore a procedure for choosing officials or making binding decisions concerning policy by the vote of those formally qualified to participate (p. 162).”

Akzin (1960) also explained election as a social contract between the people and their governors and therefore implies, “the process by which a person is linked to an office with due provision for the participation of the people meant to come under the officer’s authority (p. 706).” In this sense, election serves as a framework for forming a government based on popular consent and this makes the product of free, fair, and credible elections, a responsible, responsive and accountable government. Importantly, for elections to impact positively on the governance, the electoral system must be just, fair and provides a level playing ground for political actors (Inokoba & Kumokor, 2011). In sum, it can be deduced from the foregoing definitions that election is an organised and formal processes or procedures whereby the electorates decide to choose those who occupy public offices to make policies and protect their common interests.

Rivers State Executive Orders 21 and 22: The Legality Question

In recent times, there is a rising use of Executive Orders by the executive arm of government at all levels of government (federal, state and local governments) in which cases the Chief Executives purportedly make laws and set rules of engagement stipulating severe punishment for violators of such executive orders. The constitutional basis for executive order is the President’s broad powers to issue executive directives, though there is no specific statutory provision backing their issuance. Section 5 of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) vests executive powers in the President exercisable by him either directly or through the Vice-President, Ministers or officers in the public service of the Federation. Likewise, the State Governors are vested with same executive powers in the various states of Nigeria (Abiye, 2022).

It is however pertinent to note that Executive Orders have legal force only when they are derived from the constitution or other extant laws. Suffice to say that the exercises of Executive Orders are legal only when they are within the boundaries of the constitutions. Notably, the legislatures by constitutional power may empower the Chief Executive which in Nigeria’s case is the President to use Executive Orders to perform strictly defined roles. The legislature can equally confer wide discretionary power on the Chief Executive (President) to issue orders in certain matters. An instance to this provision is section 315 of the CFRN 1999 which empowers the

President and other appropriate authorities to “make such modification in the text of any existing law, as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution.” The Chief Executive can therefore in exercise of their executive powers as enshrined in section 5 of the CFRN 1999, issue executive orders to give life or meat to existing laws but in doing so, they must act within their constitutional or statutory authority under the CFRN 1999 or any Act of the National Assembly (in the case of the president) and a Law of the State House of Assembly (in the case of a governor).

Buttressing the need for the president or a governor to operate within the confines of the law, section 5(2) (b) of the CFRN 1999 provides that the exercise of the executive powers by the governor “shall extend to the execution and maintenance of this Constitution, all laws made by the House of Assembly of the State and to all matters with respect to which the House of Assembly has for the time being power to make laws.” Impliedly, a governor can only issue orders on matters within the purview of their executive powers and as contained in the residual lists. In an event that in the exercise of their executive powers under the Constitution, the governor is alleged to have acted *ultra vires* and outside their constitutional or statutory roles, the Court can be called in to rectify the error. The Court has powers to declare as to the validity or otherwise of any executive order issued by the governor or even the president. For instance, the Supreme Court of Nigeria in the year 2020 declared as *ultra vires*, unconstitutional, illegal and therefore null, void and of no effect the Executive Order 10 issued by President Buhari on the ground that the President lacked powers to issue the order under the CFRN 1999.

From the forgoing discuss, it is clear that a State Governor can issue Executive Orders in exercise of his executive powers under section 5 of the CFRN 1999. But such exercise must be done in tandem with the provisions of the Constitution or a Law passed by the House of Assembly of the State. The legislative power of the State House of Assembly is however confined to matters not included in the Executive Legislative List set out in Part I of the Second Schedule to the CFRN 1999; matters included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to the CFRN 1999; any other matter with respect to which it is empowered to make laws in accordance with the provisions of the CFRN 1999.

The Rivers State Executive Orders 21 and 22 signed in October and November 2022 respectively were contrary to above constitutional provisions and as such unconstitutional.

The Executive Order 21 can at best be described as an attempt to regulate the 2023 general elections or electoral processes in the State by limiting how political parties and their candidates should carry out their campaigns in the state. While the Executive Order 21 prohibiting public gathering and particularly prohibiting political parties from holding campaigns and rallies using any public or private facilities without obtaining approval from the State Commissioner for Education and upon payment of non-refundable security fee of N5,000,000.00. In like sum and manner, the Executive Order 22 which came into effect in November 2022 prohibits political parties from opening party offices without obtaining approval from the State Commissioner for Urban Development. The above Orders contravene the provisions of the Constitution. Evidently, Item 22 of the Exclusive Legislative List and Items 11 and 12 of the Concurrent Legislative List indicated that that power to regulate general elections rests in the National Assembly, except for elections into local government councils in the State. In lieu, the National Assembly has enacted the Electoral Act, 2022 and made provisions for the regulation of political party campaigns and rallies, giving powers to INEC and the Commissioner of Police in each State of the Federation to regulate same.

Notably, section 95(2) of the Electoral Act, 2022 prohibits any State from creating a situation whereby a political party or its candidate is given advantage or disadvantaged in the campaign process. It states thus: “95.(2) State apparatus including the media shall not be employed to the advantage or disadvantage of any political party or candidate at any election.” Supposing the concern of the Rivers State Government is the issue of protecting public facilities from destruction during electioneering campaigns and rallies, section 91(1) of the Electoral Act, 2022 has taken care of that concern by entrusting the Commissioner of Police in each State of the Federation with the responsibility of providing adequate security for proper and peaceful conduct of political campaigns and rallies, including political processions in their respective States. All the political parties are expected to do is to notify the Commissioner of Police any planned or scheduled political rally or procession and secure armed police personnel to provide the needed cover to avoid clashes that could lead to breakdown of law and order and destruction of public facilities. Supporting this view, Abiye (2022) argued that Wike as Governor of Rivers State

cannot and does not have powers to issue executive orders with a view to regulating political party campaigns and rallies in Rivers State. As such, Executive Orders 21 and 22 issued by the Governor of Rivers State in clearly ultra vires his powers, unconstitutional, illegal, null, and void.

It can therefore be argued that the Executive Orders 21 and 22 are attempts by the State Chief Executive designed to grandstand and stifle opposition and the people from freely engaging in competitive political contestations in the build-up to the 2023 general elections in Rivers State. They are designed to give advantage to the ruling party and its candidates ahead of the 2023 general elections in the State. The Orders are contrary to both the provision of section 95(2) of the Electoral Act, 2022, and section 5(2) (b) of the CFRN 1999 providing for the exercise of the executive powers by the governor.

Theoretical Framework

This study adopted the legalist theory. The idea of legalism was developed by the philosopher Han Feizi (I. c. 280-233 BCE) of the State of Qin. Legalism in ancient China was a philosophical belief that human beings are more inclined to do wrong than right because they are motivated entirely by self-interest and require strict laws to control their impulses. Legalism became the official philosophy of the Qin Dynasty (221-206 BCE) when the first emperor of China, Shi Huangdi (r. 221-210 BCE), rose to power and banned all other philosophies as a corrupting influence (Mark, 2016). The legalists advocate for the government by a system of laws that rigidly prescribe punishments and rewards for specific behaviours. They stress the direction of all human activities toward the goal of increasing the power of the ruler and the State. Notably, legalism is hinged on the assumptions that punishments are the only way to control people, the code of law must be drafted and published, and that the laws should always be more important than individual interests and actions as all persons are equal before the law.

The legalist theory is relevant to this study as it serves as the basis for interrogating the constitutionality of the Rivers State Executive Orders 21 and 22. In line with the advocacy of the legalist theory that the government should be on a system of laws which should always be more important than individual interests and actions, the reverse is the case with the Rivers State Executive Orders 21 and 22 which rather indicate the individual interests of the State Chief Executive. Hence, the Orders are not based on the law and as such, contrary to the provisions of

the Constitution of the Federal Republic of Nigeria, 1999 (As amended) and other extant electoral laws in Nigeria.

Methodology

The study employed both primary and secondary method of data collection. This study is descriptive in nature and therefore made use of descriptive and content analytic models. Purposive sampling technique was used to select 140 participants as the sample size for the study from Port Harcourt metropolis. Questionnaires and interviews instruments were used to generate primary data which were analysed and determined using the mean and standard deviation scores. The mean and standard deviation analyses were done with the use of Statistical Package for Social Science (SPSS) Software Version 22. The secondary data were obtained from written and documentary sources such as journals, books, newspapers, reports etc. and were analysed with the use of the content analytical model.

Data Presentation and Data Analysis

Table 1: Questionnaire Report

Details	Questionnaires Administered	Questionnaires Returned	Questionnaires Unreturned
Total N0	140	139	1
Percentage	100	99.3	0.7

Source: Authors' Field Survey, 2022

The table indicated the administered questionnaires to the participants. It showed that 140 questionnaires were distributed. While 139 representing 99.3% of the sample were retrieved and found relevant, 1 representing 0.7% was not returned. Thus, a reasonable and workable percentage of questionnaires were retrieved and used for the study.

Table 2: Bio Data of the Respondents

Variable	Category	Frequency (%)
Gender	Male	79 (56.8)
	Female	60 (43.2)
	Total	139 (100)

Occupation	Student	38 (27.3)
	Civil Servant	61 (43.9)
	Trader	30 (21.6)
	Politician	10 (7.2)
	Total	139 (100)
Age Bracket	18-27 Years	31 (22.3)
	28- 37 Years	30 (21.6)
	38-47 Years	49 (35.3)
	48 years & above	29 (20.9)
	Total	139 (100)
Marital Status	Single	47 (33.8)
	Married	72 (51.8)
	Divorced/Separated	6 (4.3)
	Widowed	14 (10.1)
	Total	139 (100)
Times Voted	One Time	21 (15.1)
	Two Times	42 (30.2)
	Three Times	55 (39.6)
	Four Times plus	21 (15.1)
	Total	139 (100)

Source: Authors' Field Survey, 2022

Table 2 above presented the bio data of respondents. Based on gender, the males were 79 (56.8), while the females were 60 (43.2). Based on occupation, the respondents who are students were 38 (27.3%) of the total sample, those who civil servants were 61 (43.9%), traders were 30 (21.6%), while politicians were 10 (7.2%) respondents of the total sample of the study. The study showed that respondents who were within the age brackets of 18-27 years were 31 representing (22.3%), those between 28- 37 years constituted 30 respondents representing (21.6%), those between 38-47 years constituted 49 representing (35.3%) while those within bracket of 48 years and above were 29 representing (20.9%) of the total respondents. On marital status, the study showed that those who are single were 47 representing (33.8%), those married were 72 representing (51.8%), those divorced or separated were 6 representing (4.3%), while the widowed were 14 representing (10.1%). The result revealed most of the respondents were married. The study results indicated that, 21 of the

respondents representing (15.1%) had voted only once in general elections, 42 respondents representing (30.2%) of the respondents had voted twice, 55 respondents representing (39.6%) had voted three times, while 21 respondents representing (15.1%) had voted four times or more in general elections.

Research Question One: What is the constitutionality of the Rivers State Executive Orders 21 and 22?

Table 3: Descriptive Statistics on the factors that determine the constitutionality of Executive Orders on election matters as lacked by the Rivers State Executive Orders 21 and 22

N=139, Criterion=2.5

S/N	Items	SA	A	D	SD	Mean	Std.	Remark
1	Constitutional Provisions	46	77	16	--	3.22	0.63	Agreed
2	Acts of Parliament	46	47	46	--	3.00	0.82	Agreed
3	Electoral Laws	63	46	15	15	3.13	0.99	Agreed
4	Rule of Law	62	46	31	--	3.22	0.79	Agreed
5	Federal Legislations	77	46	16	--	3.44	0.69	Agreed
Grand Mean						3.20	0.78	Agreed

Source: Authors' Field Survey, 2022

Table 3 showed the factors that determine the constitutionality of Executive Orders. The mean scores of 3.22, 3.00, 3.13, 3.22, and 3.44 and standard deviations of 0.63, 0.82, 0.99, 0.79 and 0.69 indicated that the Rivers State Executive Orders 21 and 22 lacked constitutionality as they were neither derived from nor backed by the constitution, acts of parliament, electoral laws, rule of law, or any federal legislation. The grand mean of 3.2 which is above the criterion mean of 2.5 is an indication that the Rivers State Executive Orders 21 and 22 are contrary to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (As amended) and other extant electoral laws within the confines of exclusive powers of the National Assembly. Thus, the Rivers State Executive Orders 21 and 22 are unconstitutional.

Research Question Two: What are the implications of Executive Orders 21 and 22 for the 2023 general elections in Rivers State, Nigeria?

Table 4: Descriptive Statistics on the implications of Executive Orders 21 and 22 for the 2023 general elections in Rivers State, Nigeria

N=139, Criterion=2.5

S/N	Items	SA	A	D	SD	Mean	Std.	Remark
6	Weakening of oppositions	47	61	31	--	3.12	0.74	Agreed
7	Stifling of political campaigns	61	62	16	--	3.32	0.67	Agreed
8	Recipe for political violence	78	46	15	--	3.45	0.68	Agreed
9	Disenfranchisement/apathy	62	62	15	--	3.34	0.67	Agreed
10	Election rigging	65	56	18	--		0.93	Agreed
						3.34		
Grand Mean						3.31	0.74	Agreed

Source: Authors' Field Survey, 2022

Table 4 indicated the responses on the implications of Executive Orders 21 and 22 for the 2023 general elections in Rivers State, Nigeria. The mean scores of 3.12, 3.32, 3.45, 3.34, and 3.34 and standard deviations of 0.74, 0.67, 0.68, 0.67 and 0.93 showed that the implications of Executive Orders 21 and 22 for the 2023 general elections in Rivers State, Nigeria to include the weakening of oppositions, stifling of political campaigns, breeding of political violence, disenfranchisement/apathy of the electorates, and election rigging. With the grand mean of 3.31 which is above the criterion mean of 2.5, it can be argued that Rivers State Executive Orders 21 and 22 would pose negative implications for the 2023 general elections in Rivers State, Nigeria.

Discussion of Findings

The constitutionality of the Rivers State Executive Orders 21 and 22

The study finding with the grand mean of 3.2 which is more than the criterion mean of 2.5 indicated that the Rivers State Executive Orders 21 and 22 are contrary to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (As amended) and other extant electoral laws within the confines of exclusive powers of the National Assembly. Thus, the Rivers State Executive Orders 21 and 22 are unconstitutional. This finding finds expression in Abiye (2022) who observed that the Executive Order 21 and 22 issued by the Governor of Rivers State in clearly ultra vires his powers, unconstitutional, illegal, null and void. And that the Orders are contrary to section 95(2) of the Electoral Act, 2022 which prohibits any State from creating a situation whereby a political party or its candidate is given advantage or disadvantaged in the campaign process. It states thus: "95(2) State apparatus including the media shall not be

employed to the advantage or disadvantage of any political party or candidate at any election.” The Labour Party South-South National Vice Chairman also noted that executive orders have no place in the laws of Nigeria (Abiola, 2022).

The Rivers State Executive Orders 21 is deemed to have violated section 40 of the CFRN 1999 which guarantees the right to peaceful assembly and association to every person in Nigeria. It equally violates the right to property ownership. Even though this right is not absolute per se, as has been interpreted by the Courts over the years, its derogation can only be in accordance with section 45(1)(a) and (b) of the CFRN 1999 which provides that nothing in section 40 of the CFRN 1999 shall invalidate any law that is reasonably justified 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. The above conditions are however not the case with Executive Order 21 which requires anyone wishing to hold political rallies in any public facility to obtain permission from the Commissioner for Education not less than two (2) weeks before the date of the rally; and pay a non-refundable security fee of N5,000,000.00. The Executive Order 22 on the other hand which requires any political party to obtain permission from the Commissioner for Urban Development before setting up offices in the Urban areas. It empowered the respective Commissioners or Chairmen of Local Government Councils to prevent or stop any political rally which is in contravention of the Executive Order. These officers are card carrying members of the ruling political party in the State. Under no guise can the imposition of non-refundable security fee of N5 million on political parties for each use of public facility and obtaining permission from your “political opponent” be said to be justifiable in any democratic society. The Order equally conflicts with the Electoral Act 2022 which stipulated the election expenses limit to be incurred by candidates for the various political offices in Nigeria. The Rivers State Commissioner of Police, Okon Effiong, has however advised political parties to approach the court to challenge Executive Order 21 of Governor Nyesom Wike, if they feel aggrieved (Naku, 2022).

The implications of Executive Orders 21 and 22 for the 2023 general elections in Rivers State, Nigeria

The finding of this paper with the grand mean of 3.31 which is above the criterion mean of 2.5, proved that the Rivers State Executive Orders 21 and 22 have grave implications on the political parties in opposition. Thus, it has generated reactions from the opposition parties. Consequently, the Rivers State chapter of the All Progressives Congress (APC) alleged that Governor Nyesom Wike is waging war against the party by his signing of Executive Order 21 which restricts the use of public schools for campaigns. In a statement by its publicity secretary, Darlington Nwauju, the party noted that Wike is afraid of what the APC is capable of doing in the State, ahead of the 2023 polls. The party however maintained that the fear of the party is responsible for the signing of Executive Order 21 by Governor Nyesom Wike (Odili, 2022). Similarly, the Labour Party has condemned the Executive Order 22 signed by Rivers State governor, Nyesom Wike, describing it as a recipe for “anarchy” in the state. The South-South National Vice Chairman of the Labour party, Felix Reuben described the order as “draconian” (Abiola, 2022).

The findings also find support in the assertion of Abiye (2022) that an executive order cannot take away any of the citizen’s fundamental rights as enshrined in Chapter 4 of the CFRN 1999, except only a validly passed law by the Legislature which passes the test under section 45(1)(a) and (b) of the CFRN 1999 can do so. If the President or Governor in exercise of his executive powers under section 5 of the CFRN 1999 issue an executive order that adversely infringes on the fundamental right of citizens, such exercise is self-aggrandizing and unconstitutional.

Conclusion

There is no doubt that the Chief Executive has constitutionally assigned executive powers and can issue directives to agencies under the executive branch of government. Nevertheless, legislation on matters relating to general elections is the primary role of the National Assembly as enshrined in the exclusive legislative lists of the Constitution of the Federal Republic of Nigeria, 1999 (As amended). On this premise, the established that the Rivers State Chief Executive lacks the constitutional powers to issue Orders on matters bordering on general elections. The paper assessed the implications of Executive Orders 21 and 22 for the 2023 general elections in Rivers State, Nigeria. The paper opined that Executive Orders derive from existing laws but it is not the case with the Rivers State Executive Orders 21 and 22. The paper

argued that the Executive Orders 21 and 22 are designed to grandstand and stifle opposition and the people from freely engaging in competitive political contestations in the build-up to the 2023 general elections in Rivers State. The paper concluded that implementing the Executive Orders 21 and 22 would negatively affect the 2023 general elections in Rivers State, hence a recipe for political violence and voter apathy in a State perceived to have been polarised along ethnic and party lines, and consequently conquered for certain selfish political interests.

Recommendations

The following recommendations are required:

- i.** The opposition and Civil Society Organisations should challenge the legality of the Orders in Court to act as a deterrence to successive State Chief Executives with a view to ensuring a level-playing field for all not just for the 2023 but future general elections in Rivers State.
- ii.** The separation of power approach is critical to protecting the rule of law. Thus, there is need to police the boundaries of separation of powers such that the Chief Executives should act only in conformity to the provisions of the constitution or the express provisions of an Act of National Assembly.
- iii.** The Independent National Electoral Commission (INEC) should write to the National Assembly to urgently pass a resolution ordering the suspension and revoking of the Rivers State Executive Orders 21 and 22 as well as other related State which are inconsistent with Electoral Act 2022 as amended.
- iv.** The subjects of these Executive Orders relate to matters that are contrary to the express provisions of the law, a breach on the legislative functions, and violations to the guaranteed rights of citizens. The superior courts in Nigeria should through their oversight role and statutory powers of law interpretation disapprove and/or strike down such exercise of executive power if they are challenged by the opposition parties or any other concerned body. The Court however, has powers to declare as to the validity or otherwise of any executive order issued by the governor.

References

- Abiola, H. (November 17, 2022). Executive Order 22: Wike is calling for anarchy, Labour Party. *The Loyal Nigerian Lawyer*. <https://loyalnigerianlawyer.com/executive-order-22-wike-is-calling-for-anarchy-labour-party/>
- Abiye, A. A. (October 22, 2022). Constitutionality or otherwise of Executive Order 21 signed by the Executive Governor of Rivers State. *The Loyal Nigerian Lawyer*. <https://loyalnigerianlawyer.com/constitutionality-or-otherwise-of-executive-order-21-signed-by-the-executive-governor-of-rivers-state/>
- Akzin, B. (1960). Election and appointment. *America Political Science Review*, 3, 261-282.
- Alapiki, H. E. (2004). *Politics and Governance in Nigeria*. Port Harcourt: Amethyst and Colleagues Publishers
- Bain, C. W. (1964). Election. In J. Dunner (Ed.): *Dictionary of political science*. Philosophical Library.
- Inokoba, P. K. & Kumokor, I. (2011). Electoral crisis, governance and democratic consolidation in Nigeria. *Journal of Social Sciences*, 27(2), 139-148.
- Mark, E. (2016). *Legalism: Definition*. World History Encyclopedia.
- Naku, D. (November 10, 2022). Campaigns: Police vow to enforce Rivers Executive Order. *Punch Nigeria*. <https://punchng.com/campaigns-police-vow-to-enforce-rivers-executive-order/>
- Odili, E. (November 4, 2022). 2023 Election: Why Wike signed Executive Order 21, Rivers APC gives powerful reason. *Legit*. <https://www.legit.ng/politics/1501145-2023-election-wike-signed-executive-order-21-rivers-apc-powerful-reason/>
- Okolie, A. (2005). Electoral fraud and the future of elections in Nigeria:1999-2003. In G. Onu, & A. Momoh (Eds.): *Elections and democratic consolidation in Nigeria*. A Publication of Nigeria Political Science Association
- Page, M. T., & Tayo, S. (2018). *Countdown to February 2019 a look ahead at Nigeria's election*. The Royal Institute of International Affairs.
- Paki, F. & Inokoba, P. (2006). *An invitation to political science*. Kemuela Publications
- Sule, B. (2018). *Political party financing and election reformations in Nigeria's 2015 general election: Issues and impacts*. PhD Thesis Submitted to the School of International Studies, College of Law Government and International Studies, Ghazali Shafie Graduate School of Government, University Utara Malaysia.
- Sule, B., Sani, M. A. M., & Mat, B. (2018). Corruption and electoral process in Nigeria: Examining the 2015 general elections. *Journal of Techno Social*, 10(1), 1-16.