

## **THE POLICE AND ITS INHIBITING FACTORS IN ADMINISTRATION OF CRIMINAL JUSTICE IN NIGERIA**

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**Abstract:** The police, anywhere in the world, provide security services that touch the lives and properties of the citizens. Any organization that provides services of the nature of the police are charged with, must be prepared to receive criticisms, sometimes constructive and sometimes malicious. Although, generally considered an attractive career, the Nigeria Police Force has encountered a number of inhibiting factors which relates to training, inefficiency, corruption, lack of equipment, expertise, discipline and other sundry challenges. Corruption and dishonesty are widespread, lack of public confidence, poor crime justice as well as increased tendencies to resort to self help by the members of the public. Therefore the police as agent of administration of criminal justice in Nigeria has been blame and indicted for rising wave of violent crime without first considering other factors responsible for such lapses. Hence, this paper intend to x-ray these factors and proffer possible solutions for a better and smooth administration of criminal justice system in Nigeria, such as training and re-training of police officers, motivation of police officers, stoppage of arbitrary transfer and retirement of investigation police officers as well as provision of adequate modern equipment to facilitate modern policing as obtainable in the western world.

**Keywords:** The Police, Criminal Justice, Nigeria, Administration, Laws

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## 1. INTRODUCTION

Criminal Justice is a system of institutions and practices of government whose main focus is to mitigate and deter crime, uphold as well as sanction individuals who violate the set of specific state with rehabilitation and criminal penalties. Criminal Justice and administration involve setting defined laws that assist in the smooth running of the state through its agencies. However, there are issues and challenges facing the Nigeria police as agent of criminal justice which affect the smooth and effective administration of the criminal justice which affect the smooth and effective administration of the criminal justice system in Nigeria. One of such problems is the issue of delay by the various agencies. That is, delay in the conduct of investigation by the securities agents, delay in arraignment of criminal suspect in court, delay in the trial of accused persons due to poor investigation and technicality. These problems are perceived as challenges confronting the police as an agent of the criminal justice system.

The success of any system of justice administration depends on the level of efficient performance of responsibility imposed by law on agencies involved in criminal justice delivery. However, some of the problems confronting the administration of criminal justice in Nigeria are traceable to the failure by the criminal justice agencies to perform their legal responsibilities. The criminal justice system is organized into three bodies which are: the police who are responsible for law enforcement, court whose main role is to adjudicate the parole, probation, prison and jails that are held responsible for correction. All responsibilities are administered differently by different officers. Therefore, better coordination is involved in the administration of criminal justice system. Apart from the police, there are other security agencies in Nigeria which must work in concert with one another alongside the police, to avoid wastage and duplication of efforts in the system; hence it has become imperative that a mechanism be put in place for inter-agency cooperation. The implication of the collaborative nature of the agencies' work is that any failure, inadequacy or inefficiency in one of them will affect the entire system just as the saying goes; a chain is as strong as its weakest link or point.

It is a common knowledge that criminal cases take ungodly long period of time to decide in court in spite of the fact the Administration of Criminal Justice Act 2015 has recently been passed into law, often, trial drags to the point that conviction become unlikely, as I.P.O and witness may no longer be readily available, and where they are available, some fact relating to case would have been distorted and truncated as I.P.O are easily transferred or sent on other official engagement which makes it difficult for them to appear in court and testify when needed by the court to do so. Hence, this paper shall critically examine the issues and challenges facing the police as an arm of the criminal justice system with a view of finding lasting solutions to those bottlenecks created in the process of criminal justice.

### **A. The Advent of Nigeria Police**

In the areas presently known as Nigeria were people who served the traditional rulers, such as Chiefs, Obas, Obis and Emirs as well as messengers and servants. These people were also used by their masters as personal guard, and to enforce compliance with native laws and judgments. In the north where they were popular, they were called “Dongari” or “Yan Doka”. Among the Yoruba they were known as “Akoda” or “Olopa” while the Igbo referred to them as “Ohu” and later “Kotima”. Services of youthful age grade members were also sometimes employed to enforce compliance with native laws.

The origin of organized police in Nigeria was however, traceable to 1861 when the then Governor of Lagos, Mc Caskry and H.S. freeman, having established effective control to the colony. The need to form the guard became necessary to maintain law and order so as to protect British interest in trade and to prevent squabbles between the native chiefs and the imperial merchants. It was known as consular guard consisting of thirty armed men. In 1863, the guard was recognized and renamed “Hausa Police” consisting of six hundred men including captive slaves. In 1879, the Hausa police was again renamed “Hausa Constabulary” and enlarged by recruitment of more men most of who were Hausa. The new look police was military in character but performed mainly civil duties. It consisted of the commissioner, one Superintendent, one Assistant Superintendent, one Pay and Quartermaster, one master tailor and two hundred and fifty other ranks.<sup>1</sup>

In 1886, the Royal Niger Company established in Lokoja an armed constabulary modeled on the Hausa constabulary. The impetus of this force was essentially to protect its trade interest along River Niger. The constabulary was made up of five officers and four hundred and fifteen rank and file. This number was later to increase in the year 1898, to fifteen officers and one thousand and three rank and file. Until 1900 when this force was disbanded by reason of the proclamation of the protectorate of Northern Nigeria, it recorded remarkable success in punishing slave dealers in Ilorin and Bida<sup>2</sup>.

In that year, for the present south east and south–south geographical zone, organized police started in 1892, the area now known as Edo, Delta, Rivers, Bayelsa, Cross Rivers and parts of Imo and Anambra States was declared Oil River Protectorate with headquarter in Calabar. In order to effectively carry out consular orders in the area, the Niger Coast constabulary was formed to deal with local chiefs and other elements whose interest conflicted with British expedition against Benin expedition in 1879. This force survived until 1900 when the colony protectorate of Southern Nigeria was proclaimed.

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<sup>1</sup> Nigeria Police Training Manual, Enugu, Fredinco printing Press, 1976. P16

<sup>2</sup> Whitaker B, Police in Society. London 1979. Pp 35-36

With the proclamation of the protectorate of Southern Nigeria in 1906, Nigeria had three separate police forces, one in the North and two in the South. The forces were the Northern Police Force in the North, the Lagos Police Force and Southern Police force both of which exist in the South of Nigeria. The two police commands in the south were however fused into one single force in the later part of 1906, when the colony and Protectorate of Southern Nigeria.

In 1914, the colony and protectorate of Southern Nigeria was merged with the protectorate of Northern Nigeria to form the colony protectorate of Nigeria. Notwithstanding this development, the Northern and Southern Police forces remained separate until 1<sup>st</sup> April, 1930 when the Nigeria Police force, in its present form and structure, came into existence with headquarters in Lagos. It was headed by C.W. Ducan who was appointed as the first Inspector General of Police<sup>3</sup>.

During the colonial period, greater parts were associated with local governments (i.e., native authorities). In the 1960s, under the First Republic, these forces were first regionalized and thereafter. At that time, the Nigeria Police Force, generally performed conventional police functions and was responsible for internal security, as well as supporting the prison, immigration and customs services, it also performed military duties within or outside Nigeria as may be directed. Police officers, at this time, were not usually armed but were issued weapons when required for specific missions or circumstances. They were often deployed throughout the country until 1989 when General Babangida changed the policy. He announced that a large number of officers should be posted to those native areas to facilitate police- community relations.

The Nigerian Police Force has been under the general operational and administrative control of an Inspector General of Police (IGP) appointed by the President and generally, responsible for the maintenance of law and order. Note that in the year 1954, following the adoption of the new Constitution, the Nigeria Police Force became federal force. In 1963, it was divided into five regional commands, each headed by a Commissioner of police. The regional Commands were Lagos, Northern Region, Western Region, Eastern Region and Midwestern region. The Inspector General of Police remained the overall head at the force Headquarters in Lagos.

Following the agitation by nationalist for the nationalization of the police force since the country was no longer a British colony, Mr. Louis Orok Edet was in 1964 appointed the first Nigeria Inspector General of Police. In 1967, General Yakubu Gowon created twelve State Police commands in conformity with the new political structure of the country then. The subsequent creation of more states has culminated in the creation of additional state police commands. Presently Nigeria has 38 police command structure including the Federal Capital Territory,

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<sup>3</sup>. Nigeria Police Training Manual, Enugu, Fredinco printing Press, 1976. P16

Abuja<sup>4</sup>.

The role of the police in the society therefore, positions the force as a major catalyst in the progress of a nation. Since they are involved in the procedural aspect of legal powers, they are obligated to observe the canons of legality through respect of political rights, due process and official accountability. Their observance of individual rights is essential to making democracy a success in a mass society. Besides being involved in the enforcement of law, the force determine how much the human rights, as enshrined in both the international and municipal laws of each nation violated are protected. Afe Babalola, SAN in his write-up published in National Tribune, commented that;

*“The conception of the idea is noble. It is in line with what obtains all over the world. The sole purpose is to achieve a saner, regulated and orderly society”<sup>5</sup>.*

Section 4 of the Police Act:

*“The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or without Nigeria as may be required of them by, or under the authority of this or any other Act”<sup>6</sup>.*

The efficiency of the police is determined by how effective they carry out these duties with minimum complaints from the public. The effectiveness of police in dealing with crime is inextricably intertwined with the level of cooperation they received from the public, and the operation of the other agencies of the criminal justice system. They also need great support from government. By our system, police alone cannot commence and complete the prosecution of crime.

However, for effective performance of its role as prescribed under law, therefore, it must identify its objectives clearly; set priorities for the issues; eliminate the dysfunctional and counterproductive methods and develop adequate methods of response. Effective controls must be employed to preclude corruption or abuse of authority<sup>7</sup>. The government, members of the public and other agencies must however, be ready to support police work for the police to carry out its responsibilities effectively.

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<sup>4</sup> Chukwu I, “Above the Law”, Lagos: Civil Liberties Organisations, 1994. P12

<sup>5</sup> National Tribune Newspaper, 12<sup>th</sup> November, 2001. P6

<sup>6</sup> Police Act 1943, CAP 35, LFN

<sup>7</sup> Bouza, A. V., Police Administration: Organisation and Performance, Pergrainon Press, New York, 197,.P 28)

## **B. Police as an Agent of Criminal Justice System**

The police as a law enforcement agent of the State is a very vital machinery in the administration of criminal justice in Nigeria. This is recognized in our law. Most often its job is to keep public order, prosecute, prevent and solve crime in the State, in line with S.4 of the Police Act<sup>8</sup> which provides that:

*“The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of live and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or without Nigeria as may be required of them by or under the authority of this as any other Act.”*

This section aptly captured the duties performed by the police in modern Nigerian society. This is further enhanced by the constitution that members of the Nigerian police force shall have such powers and duties as may be conferred upon them by law<sup>9</sup>. It also provided that the national assembly will make provisions for branches of the Nigeria police force forming part of the armed force of the federation or for the protection of harbors, waterways, railways and art fields<sup>10</sup>.

The Constitution stipulates that;

*“Subject to provisions of the constitution, the Nigeria police force shall be organized and administered in accordance with such provisions as may be prescribed by an act of National Assembly”<sup>11</sup>.*

In this regard, the police Act was enacted. The Act provides that;

*“There shall be established for Nigeria a police force to be known as the Nigeria police Force (herein after in this Act referred to as the force)”<sup>12</sup>.*

General duties;

- i. The prevention and detection of crime
- ii. The apprehension of offenders
- iii. The preservation of law and order
- iv. The protection of live and property
- v. The due enforcement of all laws and regulations which they are directly charged, and

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<sup>8A</sup>Section 214(1) of the *Constitution of the Federal Republic of Nigeria*, 1999.

<sup>8</sup> Police Act Cap P19 LFN, 2004.

<sup>9</sup> Section 214(2) (b) of the *Constitution of the Federal Republic of Nigeria*, 1999.

<sup>10</sup> Section 214(2) (c) of the *Constitution of the Federal Republic of Nigeria*, 1999.

<sup>11</sup> Section 214(2) (a) of the *Constitution of the Federal Republic of Nigeria*, 1999.

<sup>12</sup> Section 3 of the Police Act Cap P19 LFN, 2004

- vi. Shall perform military duties within Nigeria as maybe required by them or under the authority of police Act or any other Act.

The Police are therefore essential in the society, given important function provided by law. It is in this regard that Onibonoje observed that, “the police are highly essential and almost indispensable to any government”<sup>13</sup>. Thus, the constitutional role of the police as stipulated under S.4 of the police Act.

Onibonoje observed further that, the functions which the police force is required to carry out in the administration of criminal justice, includes (and is not restricted to) the following:

- i. To prevent people from committing crime
- ii. To detect crime if it has been committed
- iii. To arrest offenders and bring them to the law court for trial
- iv. To arrest any suspected persons or persons in order to prevent crime
- v. To enforce laws, rules and court orders<sup>14</sup>.

Similarly, Ugbaja on his part observed that the basic function of the police in the modern society is targeted at preservations of public security including crime prevention, detection and investigation<sup>15</sup>. The various penal laws before now including the Criminal Code and the Penal Code as well as the Administration of Criminal Justice Act 2015 were enacted by government, and the duty to enhance them behooves on the police who ensure compliance with the laws for an ordered society<sup>16</sup>.

In performing their constitutional functions and duties in the administered functions and duties in the administration of criminal justice; the police are vested with the power to effect an arrest which could be either be with or without a warrant. An arrest with warrant is a situation whereby a warrant to arrest is issued, directing a Police Officer by name or to all Police Officers to effect an arrest<sup>17</sup>. The police derives power to arrest without warrant under the following enactments:

- (a) Any person whom he suspects upon reasonable ground of having committed an indictable offence against a Federal law or against the law of any states, unless the offender cannot be arrested without warrant.

Reasonable test of the discretion of police officer to arrest without warrant was considered in the case of *Chukwura V. Commissioner of Police*<sup>18</sup> where it is was held that;

*The test as to what is reasonable belief that a suspect has committed an offence is objective. It is not what the policeman himself considered*

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<sup>13</sup> Onibonoje, G. O. *Civics for the Nigerian*. Ibadan: Onibonoje Press, 1972. P 131

<sup>14</sup> Onibonoje, G. O. p 134

<sup>15</sup> Ugbaja, D. “The Police in the Administration of Justice”. Paper Presented at the Benue Bi-Annual Seminar, Makurdi, 1987 p. 4.

<sup>16</sup> Ugbaja, D. p. 4

<sup>17</sup> Section 25 (1) of the Criminal Procedure Act, (Cap 41) Vol. 4, 2004.

<sup>18</sup> (1964) NWLR at p. 283

*reasonable but whether the fact within the knowledge of the policeman at the time of the arrest disclosed circumstances from which it could be reasonably inferred that the appellant had committed an offence.*

In *Jackson V. Omorokuna*<sup>19</sup>, the plaintiff and defendant were dragging a motorcycle in a crime prone area at night. The police officer demanded for the particulars and ignition key of the motorcycles. When these could not be produced, he arrested them and took them to police station. The court held the plaintiff stole the motorcycle.

Also in *Wilshire V. Barrett*<sup>20</sup>, the police arrested the accused person without warrant for driving under the influence of alcohol. At appeal court, it was held that it appeared to the policeman that an offence has been committed.

The opinion to act at once on the fact as they appear them at the time and not on any expert factor analysis of the situation..... in all the many cases where a statute gives power to arrest when a man is committing a crime.

Thus, *Ugbaja*<sup>21</sup> is of the opinion that, in the administration of criminal justice, a police officer could arrest any person without warrant in any of the following cases:

Where any person in whose possession anything is found which may;

- (a) Reasonably be suspected to have been stolen, having committed an offence with reference to such a thing.
- (b) Any person who commits any offence in his presence.
- (c) Any person who obstructs a police officer in the execution of his duty, or who has escaped or attempted to escape from unlawful custody<sup>22</sup>.
- (d) Any person to whom he suspects upon reasonable ground of having being a deserter from any of the armed forces.
- (e) Any person to whom he suspects upon reasonable ground of having being concerned in any act committed in Nigeria would have been punishable as an offence and which is under any enactment in force in Nigeria.
- (f) Any person having in his possession without lawful excuse, the burden of proving such excuse shall lie on such person any implement of house breaking.
- (g) Any person whom he has reasonable cause to believe a warrant of arrest has been issued by a court of competent jurisdiction in the state.

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<sup>19</sup> (1962) NWLR at p. 22-24

<sup>20</sup> (1965) 2 ER at p. 271

<sup>21</sup> *Ugbaja*, D. p. 131-133

<sup>22</sup> Section 356 (2) of the Criminal Code made it a criminal offence to willfully obstruct a Police Officer in the execution of his lawful duty.



- (h) Any person found in the state taking precaution to conceal to his presence circumstances which afford reason to believe that he is taking precaution with a view to committing an offence which is a felony or misdemeanors.

The authority given to a police officer to arrest a person who commits an offence in his presence shall be exercisable in respect of offence committed in such officer's presence notwithstanding that the written law creating the offence provides that the offenders cannot be arrested without a warrant<sup>23</sup>.

The Police Act<sup>24</sup> also vested the power the arrest on a police officer. Section 24(1) provides that;

“It shall be lawful for any police officer and any person whom he may call to his assistance to arrest without warrant in the following cases;

- (a) Any person whom he finds committing any felony, misdemeanor or simple offence or whom he reasonable suspect of having committed a felony or misdemeanor or breach of peace.
- (b) Any person whom any other person charges with having committed a felony or misdemeanor.
- (c) Any person whom any other person
  - i. Suspect of having committed felony or misdemeanor or
  - ii. Charges with having committed a simple offence, if such person is willing to accompany the people to the police station and enter into a recognizance to prosecute such charge.”

Therefore, it suffices to state that the powers conferred on the police under our criminal justice system as well as the Police Act have control or limitations. For instance, a person arrested with or without a warrant must be taken to a police station with immediate dispatch or without unnecessary delay.

Also, a person arrested must be released on bail within 24 hours unless the offence is a serious one or of a serious nature in which case, the arrested person shall be taken to court, whether or not police inquiries have been completed. In *Edo V. Police*<sup>25</sup>, it was held that willful delay to take an arrested person to court is a criminal offence. An arrest is effected by the person making it, actual touching or confining the body of a person to be arrested, unless there is submission to custody by words of mouth or action to the person effecting the arrest when he is informed in unequivocal term that he is under arrest. An arrest cannot be effected by mere words. In *Sadique V. The State*<sup>26</sup>, the accused was invited by the police officer to the station. She refused; other officers came and persuaded her. In charge of resisting arrest, the appeal court held that the

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<sup>23</sup> Section 10 of the Criminal Procedure Act, 2004.

<sup>24</sup> Section 24 (1) and (2) of the Police Act; (Cap p. 19) Vol. 13, LFN 2004.

<sup>25</sup> (1962) 1 All NLR at p. 92

<sup>26</sup> (1982) 2 NCR at p. 142

accused was never arrested because there was no resistance of her person.

The use of force is allowed in effecting arrest but it must be commensurate with the force in resisting arrest. No unnecessary restraint to the arrested persons. According to the Criminal Procedure Act, “an accused person shall not be subjected to more restraint than is necessary to prevent his escape”.

The person arresting must inform the person to be arrested of the cause of arrest except when caught in the act while committing the crime or immediately or when he escapes from custody.

### **C. Investigating Powers of the Police**

Investigation is a critical examination or inquiring into a matter or crime to be able to detect or determine the facts concerning it. On the other hand, prosecution means the condition of trial in the Court of law. Prosecutor being the person, who conducts such trial.

The powers of the police to investigate are incorporated under the Police Act<sup>27</sup> which states that; “the police shall be employed for the prevention and detection of crime...”

Detection of crime is therefore investigating into crime. This constitutes the arresting process, searching, examination of exhibits, actual investigation which is interviewing and interrogating the parties, visit to scenes of crime, compiling of case diary or case file.

The principal aim of interviewing and interrogating witnesses and suspects is to discover whether or not an offence has been committed, how it was committed, by whom and why. Interview and investigation could be oral or in writing. This involves the taking of statement from witness or suspects. A statement is a representation of facts in writing or verbally. It is always made by a complainant, suspect or witness in connection with a fact in issue during the course of investigation. The objective of making statement is to obtain the facts still fresh in the memory of the maker, to collect and build information for prosecution, to enable the police to determine next line of action, to facilitate the examination of witness in the court, to justify an action taken by the police<sup>28</sup>.

It is after the completion of the investigation which is an aspect of detecting crime that a case is decided on whether or not to prosecute. Closely related to the function of the police force as provided under the Act<sup>29</sup>, is police discretionary power to prosecute. According to S.23 of the Police Act in relation to the powers of police officers, subject to the provision of sections 160 and 191 of the Constitution of the Federal Republic of Nigeria 1999 (which relates to the powers

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<sup>27</sup> Section 4 of the Police Act (2004) Cap 19 Vol. 13 LFN.

<sup>28</sup> Garba, D., *Police and the Society*. Ibadan: Spectrum Books Ltd, 1997 p. 24.

<sup>29</sup> Section 4 of the Police Act (Cap 19) Vol. 13 LFN 2004.

of the Attorney General of the Federation of the state to institute and undertake, takeover and continue or discontinue criminal proceedings against any person before any court of law in Nigeria), any police officer may conduct in person all prosecution before any court whether or not the information or complaint is laid in his name.

Furthermore, in the case of *Oluemo V. Commissioner of Police*<sup>30</sup>, it was decided in favour of the police that police lawyers can prosecute criminal cases in court to whatever level. In the past, there are limitations since they could only prosecute within the Magistrate and Area/Customary Courts. The police therefore, subject to the constitutional powers for the Attorney General of Federation or state may whether or not the information or complaint is laid down in his name. The writer is of the view that this is a serious issue that needs to be addressed in our criminal justice system as the police does not have the legal training requirement of high technicalities and intricacies involved in prosecution.

The function of the police is therefore not only to ensure public security but also include ensuring that justice is done to the public and the individual who commits the crime or whom a crime is committed against by prosecuting the criminal<sup>31</sup>. The police ensure compliance with the laws for an orderly society and initiate the due process of law for the prosecution of any person who violates them. The police owe it a duty by law to ensure that the interest of the suspected criminal is protected against malicious prosecution or violation of his fundamental human rights. Every person charged with a crime or an offence is presumed innocent until the contrary is proved<sup>32</sup>. The prosecution is required to prove the guilt of the accused beyond all reasonable doubts<sup>33</sup>.

Fakayode<sup>34</sup> observed that, perhaps the greatest literature on the meaning of burden of proof which lies on the prosecution in a criminal case is the following memorable passage from the House of Lords in the case of *Woolmington V. Director of Public Prosecution*<sup>35</sup> where Lord Wilberforce stated thus:

“But while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoners to prove his innocence and it is sufficient for him to raise a doubt as to his guilt, he is not bound to satisfy the jury of his innocence. The prosecution’s case will fail if they omit to call even one material witness whose evidence will decide the issue one way or the other, the rule does not mean that the prosecution must call a host of witnesses as they have discretion in the matter”<sup>36</sup>.

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<sup>30</sup> (1985) 4 NWLR pt. 515 at p. 547.

<sup>31</sup> Garba, D., p. 40

<sup>32</sup> Section 36 (5) of the Constitution of the Federal Republic of Nigeria, 1999.

<sup>33</sup> Section 138 (1) of the Evidence Act (2004).

<sup>34</sup> Fakajode, E. O., *The Nigerian Criminal Code Companion*. Benin: Ethiope Publishing Corporation, 1985. P. 125.

<sup>35</sup> (1935) 25 C. App Rep. at p.95

<sup>36</sup> *Yeboa v. The Queen* (1954) 12 WACA at p. 484.

If the uncalled witness is believed not to be truthful or to be bent on exculpating the accused, the prosecution has no duty to make him their witness<sup>37</sup>. Witnesses whose name appeared on the back of the information but are not called may be tendered for cross examination (if any) by the defense<sup>38</sup>.

#### **D. What are the Inhibiting Factors of the Nigeria Police as an Agent of Criminal Justice System?**

The criminal justice system in Nigeria is in a state of paralysis, effectively unable to dispense justice in a fair and speedy manner. Every aspect of the system from law enforcement to the judiciary, through to the prisons is characterized by combination of inefficiency, corruption and lack of resources even though the act was passed in 2015. Additionally, there is a shocking disregard for due process as guaranteed under the Nigerian constitutions. The constitution guarantees the right to life, liberty, a fair hearing and due process; prohibits torture and cruel, inhuman and degrading treatment<sup>39</sup>, and gives victims of human right violation right of access to court for redress and remedies.

The presumption of innocence is yet to be acknowledged as a key component of Nigeria Criminal Justice System. This results in suspect being apprehended and detained arbitrarily by Nigeria Police. It is notorious fact that the presumption of innocence is foundation to properly conducted investigations.

Through investigation, the police are able to gather evidence to verify or rebut accusations. In fact, by law, an investigation is required prior to the apprehension of suspect. However, the Nigerian Police Force (NPF) lacks the resources and knowledge to conduct adequate inquires into a crime. This lack of infrastructure, skills and appropriate training results in the Nigerian Police Force being demonstrated in many ways by the attitude and conduct of the Nigeria police. These issues, the writer shall address one after the other:

i. **Parading of suspects in public places:** At one point, the Nigerian Police Force resorted to parading suspects in public places to demonstrate that they were proactively fighting crime<sup>40</sup>. In 2006, as a response to this, the first Presidential Committee on Police Reform recommended that the Nigerian Police Force discontinue the parading of suspects because it is a fundamental breach of the provisions of the Constitution that presumes an accused person innocent. In its official response to the report, the federal government rejected this recommendation but require that the identities of suspect be protected when paraded in the public. The important question

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<sup>37</sup> Rex v Chipi Chigeri (1937)WACA at p. 21

<sup>38</sup> Rex v Chipi Chigeri (1937)WACA at p. 53-60

<sup>39</sup> Hassan v Economic and Financial Crimes Commission 2014, 1 NWLR (pt. 1389) 607.

<sup>40</sup> Emma, A. Dracula Notorious Delta Kidnapper Napped. Vanguard, Monday January 1<sup>st</sup> 2018. p. 7.

here is, what is the rationale behind this act? When it is impossible to identify a legitimate objective for parading suspect whose identities, including presumably their faces, must be covered, the writer submit that it is mere display or show-off by the Nigerian police to please the public in contravention of the supreme law of the land (constitution)<sup>41</sup>.

Another issue of the police which has reached an alarming proportion is the constitutional provision which ensure fair hearing in line with S.36 (4) of the 1999 Constitution which provides;

“Whenever a person is charged with a criminal offence, he shall unless the charge is withdrawn, be entitled to fair hearing in public within a reasonable time by a court or tribunal”.

Unfortunately, there is no specific time in the constitution as to what constitutes a reasonable time in the constitution. It is an incontrovertible fact that the Nigerian Police Frequently abuse this lacuna created in the constitution by apprehending and detaining suspects arbitrarily. Be it as it may, a criminal trial has to be promptly initiated and the case disposed off expeditiously. Prompt and speedy trial is sine qua non to fair trial as envisaged by the Administration of Criminal Justice Act 2015. In same vein, an undue hasty trial is likely to produce unjust results. The Supreme Court dealt extensively with the issue of arrest and trial within a reasonable time in the case of *Godspower Asakitipi v. The State*<sup>42</sup> that a trial is deem to commence in a criminal case upon the arraignment of the accused person, by charging him and reading over the charge of the accused and taking his plea thereon. There is clear difference between an arrest of a suspect and arraignment in court. That while investigation may even take quite some time, trial must be within a reasonable time after the accused has been charged.

ii. **Corruption within the Nigerian Police Force:** Another major issue that needs to be examined in the Criminal Justice System is corruption among the Police Force. A report released by the United States Government in January, 2012 postulates that: “corruption and lack of capacity hinder the ability of the Nigerian Police Force to respond to security and terrorist threat within the nation’s boarder”.<sup>43</sup> In its 2011 report, Human Rights Watch said this about the Nigeria Police:

As in previous years, the undisciplined Nigeria Police Force was implicated in frequent human rights violations, including extra judicial killings, torture, arbitrary arrests and extortion-related abuses. The Police routinely solicit bribes from victim to investigate crimes and from suspects to drop investigations. Embezzlement of police funds for rife among

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<sup>41</sup> S. 36 (1) (5) of 1999 Constitution of the Federal Republic of Nigeria. Presumption of Innocence of an Accused.

<sup>42</sup> (1993) 5 NWLR pt 269 at 641

<sup>43</sup> Odunayo o. “Corporal Kills Driver over #50”. The Nation. Thursday, December 14, 2017. p.9. See also Sun Newspaper, August 2, 2009, p. 7. “Enough of Police Extortion in Ajegunle”.

senior Police officials who also often demand monetary “returns” from money extorted from the public by their subordinates.<sup>44</sup>

Recent ratings by the transparency international have placed Nigeria between the most corrupt nations to the thirty sixth most corrupt nation in the world. The Nigerian Police Force is an indigenous institution made up of Nigerians. It cannot therefore be isolated from the ambience of the society.

Corruption in the Nigerian Police is therefore, by no means in doubt, it is widespread and manifests in multi-dimensions. From arrest to detention of a suspect, and receiving report from the complainants, the police are accused of extortion with impunity; at road blocks, motorists are extorted on a large-toils; even criminals are extorted to set them free by frustrating their prosecution; and riffles are leased to robbers for operation.

Shamefully, corruption is no more an issue at all. Perhaps, the greatest case of corruption in the Nigerian Police was the conviction of Chief Tafa Balogun the former Inspector General of Police, for corrupt enrichment and other corruption-related offences<sup>45</sup>. Though, corruption has no bound in Nigeria, it reflects in nearly all facet of transaction in the economy. The truth is that a policeman in the first place is a common member of the society who is normally swayed by the changing situations in the environment. To an average policeman, therefore, it stands to reason that those individuals who try to bribe policemen therefore, normally acquaints himself of all allegations of corruption because he is in a society where such things are normal. He reasons that “if a hard working officer takes money from a criminal to let him off the hook; it is not as if the criminal is being deprived of something that is legitimately his”<sup>46</sup>.

The writer believes that knowing the reason why policemen are so much corrupt in our society, thus, would assist in finding possible solution to this enigma.

According to Barnabas C. Okoro, one Police Officer, in a hot exchange of words with a certain personality, said to him:

You see, all of you, all of these so-called big men are criminals...You may not be an exception...if I arrest and charge you, you will wriggle your way out and I will gain nothing, so I will take the money from you<sup>47</sup>.

He then collected the bribe from the man and allowed him to go. His reason was that even if he

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<sup>44</sup> Ogundayo, O. “Corruption Among Senior Police Officers”. The Nation Newspaper. Sunday, January 22, 2012. p. 29.

<sup>45</sup> FCH/ABJ/CR/14/2005

<sup>46</sup> Herman, G. *Policing a Free Society*. Massachusetts, 1991. p. 199.

<sup>47</sup> Barnabas, C. *The Police, Law and Your Right*. Lagos: Princeton Publishers, 2013. p. 182.

arrests the man, considering his position and influence in the society, he will still bribe his way through, leaving him a loser financially.

Another cause of police corruption is the delay normally suffered in prosecution of the accused. The average policeman seems frustrated and impatient with the criminal justice system. He is not attuned to the long delays of adjournment necessitated by constitutional right of the accused person to fair-hearing and the technicalities of law. Besides, he has seen criminals being discharged by the court for lack of diligent prosecution or on other technical grounds.

A Police Officer who observes in Court, the processing of hundreds of petty offenders through a Court, cannot help, but be struck, by the futility of the procedures. He feels that there is lack of justice and dignity in the procedures. He is disenchanted by lack of prompt response by the Criminal Justice System in dealing with behavioral problems which brought the accused person to the Court.

The same impression is generated by prosecution of those accused of more serious offence and high profile cases. Against the background, the average police officer is readily willing to stop a charge for a payroll. He justifies such action by arguing that further processing for justice would produce no more effect or just disposition<sup>48</sup>.

A third reason for police corruption may be attributed to police compensation rate such as salary and fringe benefits<sup>49</sup>. These have not kept pace with rates among the 5 armed forces and paramilitary organizations in the country. The former Inspector General of Police, Alhaji Ibrahim Coomaise once observed that poor remuneration is largely to blame for the spate of corruption and dishonesty in the police. He reasoned; “if a policeman has all the enhanced welfare facilities, he will be prepared to stake his life to protect other people’s life and properties”.

Some Police Officers claim that corruption is rampant in the force because there are some responsibilities imposed on the officers illegally. One of such responsibilities is the unlawful returns made to superior officers for vantage posting. An officer said that if you are in a supposed lucrative position and you fail to make returns to the officer-in-charge, you will be reposted. This promotes unhealthy competition and corruption among officers. Some officers claim they made provisions for logistics such as purchase of materials (case file, writing materials etc), fuelling of police vehicles, feeding of the accused, etc. These and some other flimsy excuses the writer has observed as the major causes of corruption in the Nigerian police force.

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<sup>48</sup> Barnabas, C. p. 182.

<sup>49</sup> Omonobi, K., Identity, “Poor Salary, Welfare Package as Hindrance to Officers Performance”. Vanguard, Sunday, May 14<sup>th</sup>, 2017, p. 9.

**iii. Lack of prosecution skills:** Another issue which is gradually gaining much ground is the inability of the police to prosecute cases properly. The Police are not specially trained in skill and technicalities of prosecution of matters in court. Prosecution in the court of law requires a good knowledge of law and the very essence of prosecution, police officers charged with the responsibility of prosecution suffer a lot of difficulties in handling their duties. As a result of this deficiency rampant in the police prosecution, good cases had to be adjourned unreasonably, struck out prematurely for want of diligent prosecution, or dismissed. In some cases accused persons against whom there is sufficient evidence for conviction or acquittal have been wrongly convicted or discharged because of unethical conduct by police prosecutors.

Though, the police can prosecute both in the inferior and superior courts by the provision of S.23 of the police Act and the authority of *FRN v. Osaho*<sup>50</sup> and *Olusemo v. COP*<sup>51</sup>, respectively, it has been observed also that circumstances that necessitated the use of police prosecutors in the Magistrate Court no longer exist. The need to use police officers as prosecutors arose out of the dearth of qualified lawyers to handle prosecution. It is humbly submitted therefore, that since the establishment of the Nigerian Law School in 1963 and a further creation of other campuses in Enugu, Kano, Bayelsa and Lagos with the head campus at Abuja, the number of lawyers available for practice in Nigeria can help further the administration of criminal justice. More so, the use of lawyers for prosecution would duce to the barest minimum, the incidence of wrongful detention and want of diligent prosecution. Given his training, a lawyer would prevent the lapses to which police prosecution is usually exposed. Further support of this view came to lime light in an address delivered by Lanke Odigiyan, former president of NBA, at the 2005 Nigerian Bar Association Annual General Conference. He noted that the powers conferred on the police by section 23 of the Police Act and the Criminal Procedure Act have been flagrantly abused and misused leading to illegal detention and death in some cases<sup>52</sup>. He said further that the Nigerian Bar Association was of the view point that the powers conferred on the Police by section 23 of the police Act should be abolished because:

- (a) The exercise by the police of the power of initiation and prosecution of criminal case constitute an unwholesome incursion into the exclusive rights and privileges of qualified legal practitioners, who alone should have the right to plead any person's cause in our law courts.
- (b) Majority of the police prosecutors who have taken over the duties of legal practitioners do not have any or adequate legal training and therefore cannot make or respond to legal arguments from lawyers in the court;
- (c) Justice is jeopardized and cannot be done in a situation where the knowledge of the law of these police prosecutors is highly limited;

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<sup>50</sup> (2006) 5 NWLR pt. 873 p.36

<sup>51</sup> (1998) 2 NWLR pt. 575 p. 454

<sup>52</sup>The Address of NBA President at the 2005 NBA Annual General Conference.



(d) The powers conferred on the police is made subject to the over-riding power of the Attorneys-General;

There is no gainsaying that the exercise of the prosecution powers of the police as contained in the Police Act and other laws are counter-productive and serve no useful purpose and therefore, ought to be dispensed with<sup>53</sup>.

**iv. Arbitrary Transfer and Retirement of Investigating Police Officers (IPO):** It has been observed that the structure of police operation gives room for frequent transfer of police officers from one station to another in long distance. There are also incessant posting of investigating police officers outside the area where they had conducted investigation or prosecuting cases normally occasion prolonged trials. This routine which is done without notice and often without regard to the nature of their work leads to the abandonment of both pending cases in courts and often time truncates investigative processes in the administration of criminal justice in Nigeria. What is expected is obvious delay becomes inevitable. This is an issue that needs to be addressed by the Inspector General of Police in furtherance of administration of criminal justice in Nigeria.

**v. Poor motivation of police officers:** The present rate of police emoluments in terms of salaries which are sometimes delayed and other conditions of services is nothing to write home about. As long as a police officer is poorly remunerated for his service, it is difficult for him to work honestly and conscientiously due to lack of motivation, dissatisfaction and lack of leadership by example, performance will continue to be an issue to the Nigeria police, thereby creating bottleneck in the justice process from both the suspects and the complainants.

**vi. Extortion by police and bail processes:** Police view bail as a release into freedom of person who has committed an offence. Bail is not to be at any cost. It is to be granted free of charge. It is pertinent to note that the clause which states "...upon his entering into a recognizance... For a reasonable amount," does not contemplate that any deposit of money should be made to police for bail. The amount so entered in the recognizance is a guarantee recoverable from the accused or his surety, if any, by the court only on default by the accused person. In *Eyu v The State*<sup>54</sup>, the Court held that it is not a requirement of the law that the accused should deposit money with the police before his bail is granted. The suspect is therefore made to pay price for freedom. Many writers have identified extortion as the very motive behind police arbitrary arrest and detention. Testimonies from victims tend to lead credence to this stance. One victim said that after he was beaten and intimidated, even without informing him of what was his offence, the police officer presented him with a bail. He bargained with the police officer presented him with a bill to pay for his bail. He bargained with the Police officer for eight

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<sup>53</sup> The Address of NBA President at the 2005 NBA Annual General Conference.

<sup>54</sup> (1988) 2 NWLR, 602

hours before they agreed on a price. Meanwhile, the Police Act clearly provides that bail is free. Often times, at every police station, right on the counter or the wall across the counter, you will find a bold inscription “Bail is Free”, with all due respect, is bail actually free? In practice, when the relatives of an accused person or his counsel discuss with the police officer generally, they tell you that bail is free. This position changes once you have an accused in detention. Under these circumstances, the police introduced all form of pranks and antics suggesting that bail is not, only at a cost but very expensive; sometimes as high as N100,000 depending on the nature of the offence.

It is a notorious fact that in a matter of bail, like other forms of extortion perpetuated by the police daily, the police have no friends, brother, neighbor, nor do they respect any person. They become even toughened and more inclined to escalate the price for bail when they discover that the person approaching them for bail is highly placed in the society. It is common experience among lawyers and judges that police demand money before releasing accused person on bail<sup>55A</sup>. The salient question the writer poses is, to what extent lawyers, judges and magistrates have dealt with this misleading and mischievous attitude of the police to save our criminal justice system? This is an excuse that needs urgent attention in our criminal justice system for Nigeria to have a better place in the comity of nations.

**vii. Inadequate Expert Personnel in the Police Force:** It is an incontrovertible fact that, the Nigerian Police lack personnel skilled in technical matters such as handwriting and finger prints analyst, forensic laboratory technician, ballisticians and other scientists. Most criminal cases relating to fraud, forgery, impersonation or even murder and other offences are prolonged unnecessarily for more than reasonable period whenever the investigation of such cases require identification of finger prints and handwriting specimen of suspects.

Forensic laboratories are too few in the country, for example only one forensic laboratory exists in Lagos to handle all cases from the southern states and one in Kaduna that is, the Government Chemist for Laboratory tests in Criminal cases in the Northern states. The resultant effect of these inadequacies in respect to criminal matters gives room for unnecessary delay and prolonged adjournment for several months while the police are awaiting reports from either of the two centres. This issue needs to be reappraised by the government to enhance our criminal justice system.

**vii. Arrest of citizen on purely civil wrongs and breach of contract:** Our police stations have been turned into Debts Collection Centres whereby policemen are employed by members of the public to assist in enforcing contractual relationship and for recovery of debts. Majority of these cases pending in our police stations are purely civil wrongs and breach of contract. This

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<sup>55A</sup>Barnabas, C. *The Police, Law and Your Right*. Lagos: Princeton Publishers, 2013. p. 182.

position has been made clear by the court in the case of *McLaren v Jenings*<sup>56</sup> which was reechoed in *Nnoruga & Ors v Eniowo*<sup>57</sup>. Where the Court of Appeal per Abiriyi J.C.A stated;

*“...As I have stated above, no law in this country gives the police the power to dabble into purely civil transaction between parties. That is convert a purely civil transaction between the parties into a case of armed robbery and fraud and proceed to remove bank documents belonging to the second Appellant, march her to the bank and compel her to withdraw N970,000 which they gave the 1<sup>st</sup> respondent . This in addition to beating the 2<sup>nd</sup> appellant’s son whom was not even a party to the transaction between the 1<sup>st</sup> and 2<sup>nd</sup> appellant and the 1<sup>st</sup> respondent...”*

## **II. Conclusion**

The Police as a machinery or agent in the administration of criminal justice have been exhaustively discussed in this paper. Apparently, there is need for more improvement if the police force is to be seen as efficient and effective in the administration of criminal justice in Nigeria. Therefore, from the foregoing it is manifestly clear that the greatest threat to achieving quick and reasonable time among the component of criminal procedures is indeed the processes themselves, and the people in charge of carrying out those processes. In other words, this means that there is need for an overhauling of the police and other agencies involved. This brings about peace and development as well as respect for human right of others.

## **III. Recommendations**

Based on the writer’s observation, the following recommendations have been made:

- i. The police should focus on the investigation of crime while the service of lawyers are employed in all police stations in the federation to carry out prosecution of suspects in criminal trials both in major and minor offences.
- ii. Stoppage of incessant transfer of IPOs. It is a common practice in the Police Force where police officers are usually transferred from one station to another irrespective of the assignment given to such officer. The incessant transfer of Investigating Police Officers (IPOs) no doubt affects the criminal justice system. It becomes difficult for the prosecuting counsel to produce the IPO as a witness from his new station in other

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<sup>56</sup>2003 FWLR (Pt. 154 at 528)

<sup>57</sup> 2015 LPELR 24275

- to come to court and testify and this has truncated most trials. The writer therefore suggests that as a matter of administrative policy, the Inspector General of Police and the various state Commissioners of Police should issue a directive to all Divisional Police Officers (DPOs) to put on the hold the transfer of such officers pending when such officers have testified in a matter he or she has investigated. This will reduce the delay in prosecution in our criminal justice system.
- iii. Adoption of Criminal Case Tracking System (CCTS). All states in the federation should borrow leaf from Lagos state by adopting the Criminal Case Tracking System, which reduces the length of pretrial detention. In fact, this is a system that has the potentials to rectify some of these issues discussed in the work. The Criminal Case Tracking System (CCTS) is an electronic system which aims to track individual's cases through all level of criminal justice system from apprehension to release of suspects. The purpose of this program is to collate, update and share information on detainees and the progress of their trial. However, non-existence of power supply in some areas of the country is an obstacle that would have to be overcome for the CCTS to operate efficiently. The act requires communication among the institutions of criminal justice system, including the judiciary, public prosecutors, police, Legal Aid and bar at both federal and state levels. The writer suggests and submits that the implementation be made if we are to correct the anomalies in our criminal justice system, especially at the level of the law enforcement agency (police).

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