

**AN OVERVIEW OF POLICING IN DEMOCRACY AND OBSERVANCE OF HUMAN  
RIGHTS BY THE NIGERIA POLICE FORCE**

**BY**

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**A THESIS SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES,  
AHMADU BELLO UNIVERSITY ZARIA, IN PARTIAL FULFILLMENT OF THE  
REQUIREMENTS FOR THE AWARD OF MASTER OF LAWS DEGREE-LL.M.  
DEPARTMENT OF PUBLIC LAW, FACULTY OF LAW, AHMADU BELLO  
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**FEBRUARY, 2015**

## **DECLARATION**

I hereby declare the work in this thesis entitled: AN OVERVIEW OF POLICING IN DEMOCRACY AND OBSERVANCE OF HUMAN RIGHTS BY THE NIGERIA POLICE FORCE has been performed by me in the Department of Public Law under the supervision of Prof. Nuhu Mohammed Jamo and Dr. Yusuf Dankofa. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this work has been presented for another degree or diploma at any institution.

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## CERTIFICATION

This thesis entitled: AN OVERVIEW OF POLICING IN DEMOCRACY AND OBSERVANCE OF HUMAN RIGHTS BY THE NIGERIA POLICE FORCE by Dan-Iyo URUBULAM meets the regulations governing the award of degree of Masters of Laws of Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

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## **DEDICATION**

I dedicate this work to Marian, Stephanie, Luther and Ryan.

## AKNOWLEDGEMENT

My foremost gratitude goes to God almighty, maker of heaven and earth to whom everything positive emanates. Your endearing love enabled me to live and see this accomplishment come through. *Gloria in excelsis!*

My utmost appreciation goes to my amiable Supervisor, Prof. Nuhu Mohammed Jamo for his cooperation, supervision, scholarly insights and constructive suggestion till the very end. I cannot forget the contributions of my second supervisor, Dr. Yusuf Dankofa toward the success of this research work. I will not also leave out Prof. Y. Y. Bambale, Prof. Muhammed Tawfiq Ladan, Dr. Idiat Akande and Dr. Abubakar Madaki all of the Faculty of Law, Ahmadu Bello University, Zaria for their constructive criticism and candid help. I thank them for their onerous assistance.

To my dear wife, Marian and children - Stephanie, Martin Luther and Ryan-Cklemz-, thanks for your love and patience. And to my entire family: Mother Monica and siblings- Rowland, Sam, Lucy, Agnes, Getty, Yolanda and Cecilia, thanks too for your memorable encouragement.

Finally, I thank the duo of Mr. Godwin Duke who patiently typed the manuscript even in the midst of numerous changes and Alhaji Abubakar who was ever ready to drive me to Zaria at the shortest possible notice.

## ABSTRACT

*Ever since Nigeria returned to democratic rule in 1999, there appears to be a general consensus that the true tenets of democratic policing and observance of human rights has not been fully realized. Democratic policing emphasized responsive and representative policing, accountability and transparency to the public, preventive and effective in crime control, possessing the requisite education and training as well as professionalism in all respect. All these are sourced from international best practices of what is good policing and given credence by the United Nations and other international instruments. For example, the Code of Conduct for Law Enforcement Officials serves as the model for every police organization that seeks to operate in a free democratic society. Here individual rights are guaranteed even though they are not absolute, but the police, in carrying out its duties, try to balance the equation and follow the “rules of engagement” permitted by law and not otherwise. In Nigeria however, our research findings established that the Nigeria Police Force has not completely detached itself from the apron string of bad policing as a result of ever increasing acts of Torture, cruel, inhuman or degrading treatment, extra-judicial, summary and arbitrary executions arbitrary arrests, excessive use of force, unhealthy detention centers and other human right violations. Nigeria’s colonial past and the lacunas of the current Police Act have been identified as the militating factors inhibiting effective democratic policing. These obstacles must therefore be jettison in favour of innovative attributes that can boost democratic policing in Nigeria. For this to be achieved, behavioral, administrative and most importantly, legislative reform initiatives must be put in place. This will in no small measure enhanced and sustain good policing, democracy and the observance of human rights.*

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Public Order Act, Cap. P2 Laws of the Federation of Nigeria, 2004

## ABBREVIATIONS

EG	For example
C.P.A	Criminal Procedure Act
C.P.C	Criminal Procedure Code of Northern Nigeria
Eds.	Editors
E.t.c.	And so on
F.W.L.R	Federation Weekly Law Report
Ibid.	Ibidem
No.	Number
N.W.L.R.	Nigeria Weekly Law Report
L.F.N	Laws of the Federation 2004
J.C.A	Justice of the Court of Appeal
S.C.	Supreme Court
Supra	Earlier in this text
Op. cit	In the work cited or referred to
Ors.	Others
P.	Page
P.A.	Police Act
Vol.	Volume
Vs.	Versus

## CHAPTER ONE

### GENERAL INTRODUCTION

#### 2.0 Introduction

In most countries, it has been accepted that democracy is the only system of government that seeks to protect individual liberty and guarantee the fundamental rights of all. The pursuit of these rights is however not absolute as there exist state institutions like the police whose mandate is to maintain law and order and curtail the citizenry's excesses within constitutional means hence:<sup>1</sup>

Police power is the exercise of the sovereign right of government to promote order, safety, health, morals, general welfare within constitutional limits and it is an essential attribute of government.' Indeed, the police are the outward civil authority of the power and might of a civilized country. The generality of the public is potentially affected one way or another by their action or inaction

What this presupposes is that while democracy allows or guarantees freedom, the police as an institution policed that freedom and in carrying out this function, they are expected to operate within existing democratic norms, else the essence of democracy becomes defeated. This is because the role of police and the existence of these norms remain the standard benchmark in ascertaining an acceptable democratic system. As a result, most of the policing applications that are classified as democratic policing practices in an ideal society are designed to ordinarily promote democratic principles and human rights. In Nigeria however, many dilemma arose concerning the way and manner the police carry out its statutory responsibilities. Top on the striking balance of this is the need to respect the inalienable rights of citizens while carrying out their legitimate duties. These duties ought to be performed within the context of existing rules

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<sup>1</sup> Per Uwaifo JSC in *Fawehinmi Vs Inspector General of Police* (2002) 7 N.W.L.R (Pt. 767) 606 at 672-673

duly fashioned and recognized. It is however regrettable that despite more than a decade of democratic governance, Nigerians are still faced with lots of human rights abuses in the hand of the police. Contrary to what democracy represents, the police is still largely authoritarian in nature<sup>2</sup>. McCulley<sup>3</sup> opines that the state of human rights violations by police officials is becoming a culture of impunity and this includes arbitrary arrest, extra-judicial killings, illegal detention and destruction of property by security forces etc. The question therefore is how democratic is the Nigeria Police Force and how well have they imbibe democratic policing principles? What is their response level with regards to the observance of human rights since 1999? It has been correctly pointed out that the police have not performed well in this regard.

*The Guardian* editorial opined:

The truth is that the police system in Nigeria is decadent at several levels, not least of which is the tunnel vision of our police men in their operational approach to investigations and the treatment of suspects and detainees. Driven by overwhelming corrupt tendencies, they are rooted to a mixed bag of torture tactics that have nothing to do with the enforcement of the law or the promotion of justice... Nigerians know too well that whether accepting commissions from individuals or groups to settle scores against antagonists, opponents or offenders, whether hounding persons or groups in the name of the state or making suspects plead guilty to a crime not committed in order to be saved from police brutality, or whether committing sexual violence against female detainees, our police are adept to making life hell on earth for their victims.<sup>4</sup>

Reuben Abati observed further:

...the Nigeria Police Force is one of the most unpopular institutions in Nigeria today; it is distrusted by the same people whose lives and property it is meant to protect, and this has

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<sup>2</sup> Akhaine, S.O. and Chizea, B.U., *State of Human Rights in Nigeria*- Center for Constitutionalism and Demilitarization Annual Report, Abuja (2011) p. 16

<sup>3</sup> McCulley, T.P., "Nigeria's Commitment to Human Rights", *The Punch*, 25<sup>th</sup> April, 2013. [www.punching.com](http://www.punching.com) (assessed on 4<sup>th</sup> November, 2013)

<sup>4</sup> *The Guardian*, 18<sup>th</sup> August, 2005,p. 16

resulted into a resort to self-help in many ways. Every year, the Amnesty International and Human Rights Watch as well as local civil society organizations report on many cases of police brutality, police inefficiency and corruption. The crime rate is on the increase and the police have proven to be helpless and overwhelmed. This has been so in nearly every instance, be the matter of armed robbery, kidnapping, ethno religious violence or financial fraud. It is also generally regarded as a corrupt police force with policemen collecting bribes openly and showing tendencies of thuggery and mendicancy. It is so bad that rich persons hire the police for all kinds of unlawful purpose, or simply as bodyguards to oppress the less privileged.<sup>5</sup>

In spite of the foregoing, it has been shown that there are inherent factors responsible for this negative impasse. One of such is the impact of Nigeria's colonial/ military history. The annexation of Lagos by the British in 1861 and the subsequent establishment of a Consular Guard were solely to protect British economic interest and so no foundation was properly laid for a civil and genuine police force for Nigeria. Dambazau agrees when he stated that "the Nigeria Police was not constituted to provide services to the community in a manner consistent with human rights and democracy, but the main concern of the colonial administration was to brutally suppress popular resistance against colonialism by poorly educated and poorly trained personnel, and the effects are still felt today"<sup>6</sup>. Alemika also agreed:

...Historical evidence demonstrates that the colonial police forces were organized and oriented to behave as occupation forces-ruthless, brutal, corrupt, dishonest and prone to brutalizing the colonized peoples and vandalizing their properties... The preoccupation of colonial and post-colonial Nigeria police were not the promotion and enforcement of just laws, rule of law, natural justice and equity and security of the vast majority of Nigerians, as colonial surrogates often claimed...the greatest part of the police energies and resources were committed to, and dissipated on the suppression of struggles and protests against oppression and exploitation, the large scale theft and

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<sup>5</sup> *This Day Newspaper*, Tuesday, 15<sup>th</sup> April, 2008, p. 23

<sup>6</sup> Dabazau, A. B., *Criminology and Criminal Justice*, Spectrum Books Limited, Ibadan (2007) p.274

mismanagement of the public wealth by those who controlled the economy and state apparatus.<sup>7</sup>

Regrettably at independence in 1960, it became obvious that those who took over from the colonial authority began to manipulate the system for their own selfish interest.<sup>8</sup> Worst still, subsequent military regimes that took over from 1966 failed to improve the police and instead used it to enforce authoritarian rule which further entrenched a culture of public disdain and hatred for the police.<sup>9</sup> These negative tendencies continued unabated and finally culminated into acts of indiscipline, corruption and violation of the rights of citizens to mention but these few.

Another germane problem is the loopholes in the Nigeria Police Act which has enhanced the obvious disconnect between the police, the law and the citizens. Innocent Chukwuma laments that “since 1943 when the police Act was enacted by the colonial government, it has not been reviewed to reflect present day realities”<sup>10</sup>. According to him:

The first is to capture and incorporate into law, recent positive policy developments in the Nigeria Police Force. Such developments include community policing, police performance monitoring and minimum educational requirement for entry and performance in the force. The second issue is to amend or expunge provisions in the Act that have either become outdated or obnoxious in the light of the present democratic dispensation. The third is the necessity to amend sections of the Act that makes it impossible to insulate the police from partisan political control<sup>11</sup>

Suffice it to say that Democracy is a term that has been jointly and severally subjected to all kinds of meaning and interpretation. According to Buhlman et al, ‘there are abundant

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<sup>7</sup>Alemika, E. E. O., “Policing and Perceptions of Police in Nigeria” *Police Studies* 11 (4) (1998) p. 161-176

<sup>8</sup> Etannibi, A., and Chukwuma, I., “*Analysis of Police and Policing in Nigeria: A Desk Study on the Role of Policing as a Barrier to Change or Driver of Change in Nigeria,*” (Unpublished) Prepared for the Department for International Development, 2004.

<sup>9</sup> “*The Human Rights Violations Investigation Commission Report*” by Hon. Justice Oputa, C. A. <http://www.oputapanelreport.org> (last visited on 19/04/14)

<sup>10</sup> CLEEN Foundation One Day Interactive Forum of the House of Representatives’ Committee on Police Affairs on 8<sup>th</sup> November, 2004 at the National Assembly Complex, Abuja

<sup>11</sup> Ibid

literature relating to democratic theory with countless definitions of what democracy should be and what democracy is'<sup>12</sup>. Laza corroborated this view by saying that 'there is no consensus on how to measure democracy, and that definitions of democracy are contested and there is an ongoing lively debate on the subject.'<sup>13</sup> To start with, 'democracy' was define as 'a system of rule by the poor and disadvantaged; a form of government in which the people rule themselves directly and continuously without the need for professional politicians or public officials; a society based on equal opportunity and individual merit rather than hierarchy and privilege; a system of welfare and redistribution aimed at narrowing social inequalities; a system of decision-making based on the principle of majority rule; a system of rule that secures the rights and interest of minorities by placing checks upon the power of the majority; a means of filling public office through a competitive struggle for the popular vote.'<sup>14</sup> To some writers, 'democracy is a system of government by which political sovereignty is retained by the people and exercise directly by the citizens. In Sadaro's own view 'the essential idea of democracy is that people have the right to determine who governs them. In most cases, they elect the principal government officials and hold them accountable for their actions. A democracy also imposes legal limits on the government's authority by guarantying certain rights and freedoms to their citizens'<sup>15</sup>.

The minimalist sees democracy as a 'political system of political rights that specifies how leadership should be designated at the highest national level in a policy. It is in this same line that Schumpeter<sup>16</sup> defines democracy as 'that institutional arrangement for arriving at political decision in which individuals acquire the power to decide by means of a competitive struggle for

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<sup>12</sup> Bulman M, Wolfgang M., et al. *The Quality of Democracy: Democratic Barometer for Established Democracies*, National Centre for Competence in Research: Challenges to Democracy in the 21<sup>st</sup> Century (2008)

<sup>13</sup> Laza, K. *The Economic Intelligence, Unit Index of Democracy*, <http://www.economist.com/media/pdf/DEMOCRACYINDEX2007v.3.pdf> (last visited on 31/01/13)

<sup>14</sup> Helwood, A., *Politics (2<sup>nd</sup> ed.)* Palgrave, New York (2002) p.68

<sup>15</sup> Sodaro, M. J. *Comparative Politics: A Global Introduction*, MC Braw-Hill, Moscow (2004) p. 31

<sup>16</sup> Schumpeter, J. *Capitalism Socialism and Democracy (3<sup>rd</sup> ed.)* Harper & Row, New York (1950) p.12  
Also, Lipset, S. M.: "Prospects for Democracy" Unpublished Manuscript (2000) p.11

the people's vote. Other authors like Diamond Larry uses the maximalist definition of democracy as all encompassing 'not only a civilian, constitutional, multiparty regime, with regular, free and fair elections and universal suffrage, but organizational and informational pluralism; extensive civil liberties; effective power for elected office and functional autonomy for legislative, executive and judicial organs of government.<sup>17</sup>

From the foregoing definitions, the essential principles or elements for any system to qualify as democracy are many. In other words certain elements must co-exist for a political system to be called a democracy. Several views abound and shall be considered. Buhlman et al identified equality, freedom and control as the key principles or elements of democracy. They opined thus, "*we define freedom, equality and control as the three core principles of democracy. To qualify as a democracy, a given political system has to guarantee freedom and equality. Moreover, it has to optimize the interdependence between these two principles by means of control. Control is understood as control by the government as well as control of the government.*"<sup>18</sup>

Linz and Stepan<sup>19</sup> argues that for a democracy to be consolidated, five interrelated conditions must exist, that is to say: free and lively civil society, a relatively autonomous and valued political society, the rule of law to guarantee citizen's freedom and independent associational life, functioning state bureaucracy which can be use by the democratic government and an institutions analyzed economic society. In his own contribution, Professor Eteng posits that genuine democracy is obviously inconceivable today without the following structures and elementary forms: free and fair election completely bereft of money driven, zero-sum, macabre

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<sup>17</sup> Diamond, L., *Developing Democracy; Towards Consolidation*, John Hopkins University, Baltimore (1999) p.13 – 14

<sup>18</sup> Buhlman et al. op cit p.15

<sup>19</sup> Linz, J., and Stepan, A., *Problems of Democratic Transition and Consolidation*, John Hopkins University Press, Baltimore (1996) p.7

prone electoral process, truly representative government drawn not from ethno-religious constituencies but rather more or less from various occupational groups, an independent judiciary, a vibrant civil society comprising organized labour, professional bodies, pro democracy and human rights organization a free and unfettered press and finally a people oriented economy.<sup>20</sup>

The Inter-Parliamentary Council, the plenary governing body of the Inter-Parliamentary Union in its 161<sup>st</sup> conference held in Cairo Egypt on 16<sup>th</sup> September 1997 adopted the Universal Declaration on Democracy and asserted as follows:

A state of democracy ensures that the processes by which power is acceded to, wielded and alternates allow for free political completion and are the product of open, free and non-discriminatory participation by the people, exercised in accordance with the rule of law, in both letter and spirit.... As an ideal, democracy aims essentially to preserve and promote the dignity and fundamental rights of the individual, to achieve social justice, faster the economic and social development of the community, strengthen the cohesion of society and enhance national tranquility.

The Council maintained that democracy must be based on existence of a well structured and functioning institutions as well as a body of standards operated on the will of the society with rights and responsibilities. It is founded on the right of everyone to take part in the management of public affairs through the holding of free and fair elections at regular intervals. To achieve this, civil and political rights are essential, and more particular among them, the right to vote and be voted for, the right to freedom of expression and assembly, access to information and the right to organize political activities. Public accountability applies to all who hold public

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<sup>20</sup> Eteng, I. A., “*Transparency in Democracy Government in Contemporary Africa*” In: Akani, C. *Globalization and the People of Africa*, Fourth Dimension Publishers, Enugu (2004) p.137 - 139

office and independent judicial institutions with effective oversight. Mechanisms are equally required to give efficacy to the doctrines of the rule of law.<sup>21</sup>

In a similar vein, the United Nation General Assembly adopted a Resolution laying out the essential elements of democracy in 2004.<sup>22</sup> The resolution was endorsed by 172 states, with 15 abstentions and thereby represents and consolidates the international consensus of what democracy and its element means. According to paragraph 1 of this resolution, the essential elements include:

... respect for human rights and fundamental freedom, inter alia, freedom of association and peaceful assembly and of expression and opinion, and the right to take part in the conduct of the public affairs, directly or through freely chosen representatives, to vote and be elected at genuine periodic free elections by universal and equal suffrage and by secret ballot guaranteeing the free expression of the will of the rule of law, the separation of powers, the independence of the judiciary, transparency and accountability in public administration and free, independent and pluralistic media.

In an attempt to answer the question ‘what is policing’ a few point of clarification need to be made. Most important is the need to distinguish between the broader processes of social regulation that governs everyday life and the narrow set of functions performed by the institution called the police. This is because a wider account stresses that many other institutions or agencies contribute in ways that could be regarded as part of the process of policing. In the words of Reiner,<sup>23</sup>

The paradox is that not all that is policing lies in the police, to paraphrase Durkheim on the contract... the sources of order lie outside the ambit of the police, in the political economy and culture of a society.... Subtle, informal social controls and policing embedded in other institutions regulate most potential deviance...

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<sup>21</sup> Democracy: Its Principles and Achievements, Inter-Parliamentary Union, Geneva, Switzerland (1998) p. v

<sup>22</sup> General Assembly Resolution A/RES/59/201 20<sup>th</sup> Dec, 2004

<sup>23</sup> Reiner, R., *The Politics of the Police*, Oxford University Press, London (2000) p.xix

While a broad approach has the advantage of incorporating the wide range of processes that regulate social life, it lacks clarity, since almost anything could be included thus defeating the essence of the definition. A narrower approach equating policing to the activities of the institution of the police, might lack breath, but remains clear from a more concise perspective. It is from the narrow perspective that policing is defined.

The word policing is etymologically related to ‘politics’, the governance of the city or state, and was used in this broad term to signify social regulation in the widest sense. For the Greeks, *politia* meant all matters affecting the survival and well-being of the state (*polis*). The word and the idea were originally developed by the Romans (the Latin *Politia* can be translated as the state), but this largely disappeared after the collapse of the Empire. Later it was resurrected in the medieval universities to justify the authority of a Prince over his territories. By the early Eighteen Century in Continental Europe, *la police* and *die politzei* were being used in the sense of the internal administration, welfare, protection and surveillance of a territory.<sup>24</sup> Policing has always been necessary in all societies for the preservation of law, order and social relations. During the traditional era, policing was the responsibility of all adults in the community while the medieval period ushered in a system where all adult males were obliged to contribute towards the prevention and control of crime and disorder under the system of ‘hue’, cry and pursuit and the ‘watch and ward approach’. But the emergence of the state with its vast bureaucracies anchored on centralization, hierarchical authority, power structure and professional staff changed the traditional policing philosophy rooted in the idea of policing as everybody’s business. Accordingly, policing can be define as the measures and actions taken by a variety of institutions and groups (both formal and in-formal) in the society to regulate social relations and practice in order to secure the safety of members of the community as well as

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<sup>24</sup> Emsley, M.: *The English Police*, Longman Publishers 2<sup>nd</sup> Edition, England (1996) p.2

conform to the norms and values of society. It involves a methodology of policing the society with a view to ensuring that law and order reign supreme and the security of citizens and the safety of property are ensured. It is a subject of control processes which involves the creation of a surveillance system couple with the threat of sanction for discovered deviance either immediately or in terms of the initiation of panel processes or both in a multi faceted and advance society of today.<sup>25</sup> In the words of Alemika,<sup>26</sup> the necessity of policing “becomes even more evident in modern societies characterized by diversities and contradictions arising from population heterogeneity, urbanization, industrialization, conflicting ideologies on appropriate socio-political and economic forms of organization.”

Under a democracy, policing has become more demanding. This is because there is now a paradigm shift from “regime” policing to democratic policing. Regime policing, embedded as a tool of colonial rule, is characterized by the police answering predominantly to the regime in power and not to the people; controlling rather than protecting the public; and steadfastly remaining outside the tenets of the community to which they police. In contrast, democratic policing grounds itself in an approach founded on principles of accountability, transparency, participation, respect for diversity and the protection of individual and group rights. Democratic policing not only protects democratic institutions and supports an environment where democratic rights and activities can flourish, but also demonstrates democratic values in its own institutional processes and structures.<sup>27</sup> It is further viewed that the only legitimate policing is policing that helps create an environment free from fear and conducive to the realization of human rights,

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<sup>25</sup> Reiner, R.: *The Politics of the Police*, Oxford University Press, London (2000) p.3

<sup>26</sup> Alemika, E. E.: “*Police Community Relations in Nigeria: What Went Wrong?*” Paper Presented at the Seminar on Role and Function of the Police in Post Military Era, Organized by the Centre for Law Enforcement Education in Nigeria (CLEEN) and National Human Rights Commission at the Savannah Abuja, from 8<sup>th</sup>-10<sup>th</sup> March, 2010

<sup>27</sup> Prasad, D., Strengthening Democratic Policing in the Commonwealth Pacific, In: Doube C., and Woods D., (eds.) *Commonwealth Human Rights Initiative*, India, (2006) p. 1

particularly those that promote unfettered political activity, which is the hallmark of democracy.<sup>28</sup> In Nigeria however, the reality appears different as the police are unfriendly, nonchalant and feared.

What are rights and what is human about rights? The word “right” originates from a Latin word “Rectus” which literary means “correct” as opposed to “wrong” or “crooked”. Rights may also be regarded as being in accord with law, morality and justice<sup>29</sup>. The Oxford Advanced Learners Dictionary defines right as that which is “morally good or acceptable; what is correct according to law or a person’s duty”<sup>30</sup> This definition appears not satisfactory as it did not convey adequately the idea of right as being either a political or constitutional concept. This lacuna may perhaps be the result of the idea of “right” from the perspective of being recent in origin. A scholar in fact observed that,

There is no expression in any ancient or medieval language correctly translated by our expression ‘rights’, until near the close of the middle ages, the concept lacks any means of expression in Hebrew, Greek, Latin or Arabic, classical or medieval, before about 1400, let alone in old English, or in Japanese even as late as 19<sup>th</sup> century...<sup>31</sup>

Philosophers like Hobbes and Kant equate a “right” with naked power. Hobbes thinks that anything that is indeed a right is one which one may wish to make a right.<sup>32</sup> Kant considered a right as synonymous with power that is the naked power to compel. However the mere fact that one may wish anything to be his desire by the use of brute force is not synonymous with a right. Hollifield perception is more in consonance with modern view of the term right. He conceptualizes rights as amoral power but regards this power as subsisting in the force of public

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<sup>28</sup> Ibid p. 2 <http://www.humanrightsinitiative.org>. (last visited on 21/04/14)

<sup>29</sup> Uchegbu, A., *Universal Rights in the Commonwealth and Caribbean*, A Seminar Paper delivered at the University of West Indies on 14<sup>th</sup> Feb., 1974, p. 2

<sup>30</sup> 6<sup>th</sup> Edition, p.1013

<sup>31</sup> MacIntyre, A., *After Virtue*, University of Norte Dame Press (1981), p. 69-70

<sup>32</sup> Rudimentary Philosophy Concerning Government and Society Chapter 1 p.14

opinion<sup>33</sup>. Perhaps the most obvious things to be said about rights are that they are constitutive of the domain of entitlements. They help to define and serve to protect those things which one can make a very special claim. A claim of right is to acquire anything as a matter of right and is crucially different from seeking or obtaining it through grant of a privilege, the receipt of a favour or the presence of permission. To have a right to something is typically to be entitled to receive or possess or enjoy it and to do so without securing the consent of another. As long as one has a right to anything, it is beyond the reach of another to withhold or deny it or to be absolved from the obligation to be denied it in whatever form; to have a very strong moral and legal claim upon it. It is the strongest kind of claim that is<sup>34</sup>.

The question therefore is what is “human” about rights” since the word “human” qualifies the word “rights”. Human rights are those rights possessed by human beings in contradistinction with other non-human creatures. This definition is rather too broad in the sense that it could include other “rights” which though protected by society as rights are not necessarily protected by law or capable of judicial enforcement e.g. “rights” under customary law. But the general consensus is that once human rights have been identified their pride of place must be recognized and observed particularly in a democratic setting. Apparently, human rights are rights that all humans have solely because they are human. They are the universal moral and legal entitlements which every human being has under the law irrespective of his or her status. The notion of human right first found its expression on the fact that certain principles of justice are natural and that rights conferred by natural law are something to which every human being is entitled.<sup>35</sup> The greatest problem associated with human rights however is the consensus of the relevant standard

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<sup>33</sup> Holland (1937) *Jurisprudence*, O.U.P p.86

<sup>34</sup> Wasserstrom, ‘Rights and Racial Discrimination In: Lyons (ed.), *Rights* (Belmont, C. A., Wardsworth, 1979) 46 at pp.48-50

<sup>35</sup> Rosenbaum A., (ed.) *The Philosophy of Human Rights: International Perspective*, Aldwych Press, London (1980) part 1.

of their implementation. According to Worika, there are “sharp differences as to priorities, mechanisms and procedures of enforcing them because of different cultural pattern, ideological inclinations and development goals of western, non western and socialist societies”<sup>36</sup> In spite of this, the intrinsic value of human rights has made the world community to recognized and enshrine them into numerous international instruments like the United Nations Organization. The reference to human rights in the preamble to the UN Charter clearly illustrates the high reverence attached to human rights. For example, the objectives of the United Nations clearly states: “*to achieve international cooperation in solving international problems of an economic, social and cultural and humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedom for all without distinction to sex, language or religion...*”<sup>37</sup>

Thus, the signatories to the charter bind themselves or undertake to promote, respect and enforce the fundamental rights of man and domiciles without distinction as to race, colour or religion. Since the establishment of the United Nations, there has been growing corpus of norms in the form of instruments, declarations, conventions and resolutions. Among the notable instruments are the International Bill of Rights, the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966 including its optional Protocol and the International Covenant on Economic, Social and Cultural Rights 1966. The first of the three instruments is perfunctorily a declarative statement of fundamental rights, ascertained to be inalienable which all men are entitled. The latter two conventions gives legal

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<sup>36</sup> Worika, I. L., *Human Rights and Social Justice in Nigeria: Contending Perspectives*, University Press, Ibadan (2008) p. 27

<sup>37</sup> Article 1, Section 3 and Article 13, Clause (b), United Nations Charter

efficacy or force to the Declaration, and to those states that have ratified them, they remain binding.<sup>38</sup>

The International Bill of Rights represents a major landmark in human history by recognizing for the first time that respect for human rights is not merely an internal matter but a common cause of concern for all government and peoples of the world community including Nigeria. Though Nigeria is yet to ratify any of the convention which constitute the Bill of Rights (excepting the African Charter on Human and People's Rights), its constitutional development right from 1960 clearly shows that human rights has always been given its pride of place in the various constitutions.<sup>39</sup>

It is pertinent to note that human right is one of the democratic elements and therefore constitute part of policing standards. Most scholars agree on certain basic criteria that promote democracy in policing. Das<sup>40</sup> collected these criteria into seven categories as follows: The rule of law, accountability to the public, transparency of decision making, popular participation in policing, minimum use of force, creating an organization that facilitates learning and observation of human rights and internal democracy in the organization. Many other social and political scientists including research conducted by the Vera Institute in 2001 also supports the foregoing. Thus, police powers and functions must be regulated by legally enforceable human rights standards that require the delivery of effective, lawful and human policing as reinforced by the fundamental right chapter of the Nigerian Constitution. This will help create a policing

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<sup>38</sup> Ajomo M. A., and Okagbue I., (Eds.) *Human Rights and Administration of Criminal Justice in Nigeria*, Intec Printers, Ibadan (1991) p. 4-5

<sup>39</sup> Chapter iv, Constitution of the Federal Republic of Nigeria, 1999 (as amended)

<sup>40</sup> Das K. D., *Challenges of Policing Democracies: A World Perspective*. In Das, K. D., and Marenin O., (eds.), *Challenges of Policing Democracies: A World Perspective*, Overseas Publishers, Amsterdam, the Netherlands (2000) p. 3 - 22

environment free from fear and conducive to the realization of people's human rights in the country.

### **1.1 Statement of the Problem**

Policing a democratic state entails the ideals of the rule of law and human rights as its core principles. The rule of law emphasizes the need for all persons and institutions including law enforcement agencies (police) to be responsive to the tenets of all democratic laws that are consistent with human rights standards. These standards have assumed universal acceptance to the extent that there is a duty imposed on law enforcement officials to, at all times respect and obey the law, protect all persons against illegal acts and protect human dignity and maintain and uphold the human rights of all.

The constitution of the Federal Republic of Nigeria (as amended) in line with international norms and obligations contains human rights provisions to protect the rights of citizens. The constitution also established the Nigeria Police Force with the statutory duty of maintaining law and order. This duty must however conform to standard best practices that reflect the tenets of the rule of law and human rights observance. Unfortunately, the overall performance of the police in Nigeria leaves much to be desired. The force appears more adept to paramilitary operations, anti democratic tendencies and abuse of police powers. Incessant abuses such as arbitrary arrest, illegal detention, torture, inhuman and other degrading treatment as well as extra judicial killings are common place. Besides, democratic policing attributes like the rule of law, accountability, responsive/representative policing and respect for human rights are essentially lacking. The shortfall stems from the lapses in the Police Act and the inefficiency and ineffectiveness in the overall operation and execution of policing generally which if critically viewed together do not help to create a police force that respect the rights of citizens as

guaranteed under the constitution and other international human rights conventions which Nigeria has signed and ratified.

## **1.2 Scope of the Research**

This research work is limited to policing a democratic Nigeria and the observance of human rights by its police force in comparative terms with international best practices.

The reason for this limitation is most clearly informed by the fact that human rights standards are compromised and abuses abound in a developing country like Nigeria. Besides, policing raises issues which either enhances or retrogresses democratic advancement hence it became expedient to use the Nigeria Police Force as a case study to review their overall performance and participation in the democratic process to see whether Nigeria's nascent democracy is being advanced

## **1.3 Objectives of the Research**

This research had explored three correlated questions. First, to what extent or degree are democratic policing principles applicable in Nigeria? Second, how well has the Nigeria Force fared in terms of human rights observance since the return to civil rule in 1999? Was the Nigeria Police Act fashioned to encourage democratic policing and observance of human rights? To this end, the research x-rays the powers and operational capabilities of the Nigeria Police Force *vis a vis* the observance of human rights in the new Nigeria democratic setting. It explores in very simplistic terms, the basic principles of democratic policing and the need for human right observance within the context of global best practices. It provides a comparative and indebt analysis of policing as a major component of democracy, policing and human rights issues, judicial attitude to policing and other operational efficacy of the police with particular emphasis

on the lacunas of the enabling law establishing the police. It also brings to the fore myriads of abuses inherent in the system, the need to officially recognize their violations and the challenges of surmounting them. The overall objective is to observe and proffer amicable recommendations that will help save guard democratic policing in Nigeria.

#### **1.4 Research Methodology**

The doctrinal method of research shall be adopted where expert views on the subject will be articulated. Both primary and secondary data will also be used. The primary sources include the Constitution of the Federal Republic of Nigeria (as amended), the Police Act, The Criminal Procedure Act and The Criminal Procedure Code to mention but these few. Other data from books, journals, articles, seminar papers, unpublished materials and the internet forms the bulk of secondary sources relied on. The sum total of these materials will be critically analyzed and examine after which findings and observation be reached and recommendation given accordingly.

#### **1.5 Literature Review**

A review of literature indicates that actions that preserve universally accepted human rights are possible only in a democracy and they can only be realized through the democratic behavior of the police, the institution charged with coercive instruments to maintain internal law and order in the society.<sup>41</sup> As an agency that maintains public order, the social and cultural control function that the police perform in the society is emphasized.<sup>42</sup> This emphasis is led by Fitzgerald<sup>43</sup> who opines that the police protect us from crime but they also intrude into our lives. According to him, “we need the police to target at those we hold responsible for crime and

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<sup>41</sup> Berkley, G. E., *The Democratic Policeman*, Beacon Press, Boston (1969) p. 10 - 12

<sup>42</sup> Backwell Encyclopedia of Sociology online Edition:

<http://www.sociologyencyclopedia.com/public/technode?id=g> (last visited on 23/10/12)

<sup>43</sup> Fitzgerald, M., Hough, M. et al, *Policing for London*, Willand Publishing, Cullumption (2002) p. 32

disorder – and we clamour for more visible deterrent patrolling and a style of policing more responsive to local needs. But we resent it when the police turn their attention on us; we are especially sensitive to the fairness in which the police exercise their authority”. Much more broadly, but still as a cultural symbol, Manning and freiberg<sup>44</sup> concurs that ‘policing’ may also condense public sensibilities towards social order, change and authority which is why we look to the police to defend community values and moral structures, especially when those values and structures are felt to be under threat. Bittner<sup>45</sup> therefore concludes that all these functions are common and it is not possible to identify another agency that ought to be responsible for them other than the police. We do however have some reservations on the social and cultural control functions of the police. Apart from the statutory responsibility place on them to maintain law and order, nowhere can it be said that police are under a mandate to promote and or sustain the social and cultural values of the community being policed. In fact, in most developing countries like Nigeria, neither the training curriculum nor mission statement suggest the cultural control function of the police.

In the eye of the law, every member of the police force irrespective of his rank is a “police officer.”<sup>46</sup> He exercises basic powers and these powers and duties flows from the status a police officer has under the constitution and the law and not because of his rank in the force<sup>47</sup>. Though ranks are created to maintained discipline in the force, the status which a police officer enjoys under the law takes primary position because it is the basis of the performance of his duties. In the words of Amadi<sup>48</sup>: “*This status is not generated by the fact that a police officer is a*

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<sup>44</sup> Manning, P., *Police Work*, Waveland Press, Illinois (1997) p.17; Freiberg, A.: *Affective versus Effective Justice: Instrumentalism and Emotionalism in Criminal Justice*; Punishment and society (2001) 3: 265 - 278

<sup>45</sup> Bittner, E., *Aspect of Polie Work*, North Eastern University Press, Boston (1980) p.23 - 34

<sup>46</sup> Section 2, Police Act, Cap P. 19, Laws of the Federation of Nigeria, 2004: Section 18 (i) Interpretation Act Cap 192, LFN 2004

<sup>47</sup> Regulation 273 of the Nigeria Police Regulations, Cap 359, LFN, 2004

<sup>48</sup> Regulation 273 of the Nigeria Police Regulation Cap 359, LFN 2004

*public servant but by reason of the originality of his authority (powers) which enables him to carry out his work. Unlike other public servant, the authority of a police officer is original, flowing directly from the constitution.*

In line with this, Bittner<sup>49</sup> asserted that police are the main, sometimes the only mechanism for the state to distribute non-negotiated force in handling emergencies in a society. Similarly, Klockars<sup>50</sup> explained that the authority of using coercive force given by the state to police entails legal legitimacy and territorial coverage, which distinguish police from other occupation. In Sheering's<sup>51</sup> own words, "policing is part of government in all its form". By this he means the relation of state and civic society and more specifically the manner in which "state and non-state resources are networked including the various forms of social ordering called policing. It must, in our candid opinion be admitted that the non-negotiated force, legal legitimacy and social ordering more often than not becomes excessive and abusive in favour of the government in power.

Another perspective is from studies that consider the nature of the roles that the police perform in practice. The police are prizes and actors, objects and subjects in the continuous reproduction of political systems and state-civil society relations. What they do even when they try to act apolitically, or seek to be neutral will influence claims, perceptions and realities of legitimacy, effectiveness and justice. As Waddington<sup>52</sup> remarks, when, for example, the police control demonstrations, "it is not simply how they go about defending the state from violent disorder that is at issue but the fact that they defend the state at all even when they do so with

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<sup>49</sup> Bittner, E., *op cit*, p.41

<sup>50</sup> Klockars, C B., *The Ideal of Police*, Sage Publication (CA) USA (1985) p.62

<sup>51</sup> Sheering, C. D., *Reinventing Policing: Policing as Government*, In: Mavennin D., (Ed.) *Policing Change, Changing Police: International Perspective*, Newbury Park, (1996) p. 286

<sup>52</sup> Waddington, P. A. J., *Public Order in Britain*, In: Mathews M. L. and Heyman P. B et al (Eds.) *Policing the Conflict in South Africa*, University Press of Florida Gainsville (1993) p.159

utmost restraint”. When they act directly political, as they can, they alter the stakes and shapes of political conflicts. It is the police who establish most directly the rights and obligations of citizens by the treatment imposed in encounters; it is the police whose work create law and order, and it is the police who arrest, who makes political dissident and other challenges to the seats of power disappear, and who shore up the state or challenge its leadership, sometimes violently.<sup>53</sup> This tend to confirm that law enforcement accounts for only small proportion of police work, maintaining order and services which are more significant in terms of the time and resources allocated to them. Besides, policing raises issues which are part of the flow of political argument and conflict. “Their street behavior, their powers, their impartiality or deviance from law and public norms, their claims for autonomy-all are stakes in the normal political process, predominantly so in democratic political system.”<sup>54</sup> The police have variously been referred to, rightly or wrongly as the first-line of defense of the nation” “the first line of attack by the public and the keeper of the public peace.<sup>55</sup> To the average Nigerian, the Police represent the most visible epitome of established authority, legitimately empowered to intimidate, to suppress and sustain the whims and caprices of the government of the day.<sup>56</sup>

Further to this discourse is the idea which clearly shows that the relationship between democracy and human rights is founded on the notion that democracy promotes human rights. This notion is however debatable as most scholars<sup>57</sup> as well as Amnesty International disagree with it. This is because countries like Germany, United States, and Denmark have severally been accused by Amnesty International for human rights violations even though they received the

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<sup>53</sup> Baylay, D. A., *Patterns of Policing*, Rutgers University Press, New Brunswick (1985) p. 190 - 201

<sup>54</sup> Marenin, O., *The Police and the Coercive Nature of the State*, In: Greenberg E. S., & Mayer, T. F., (eds.) *Changes in the State: Causes and Consequences*, Sage Press, Newbury Park, (1990) p. 115-130

<sup>55</sup> Tinubu, K. O., *The Police and Administration of Justice in Nigeria*, in *Proceedings to the Conference of National Association of Law teachers*, University of Lagos, 24<sup>th</sup> March (1972) p.11 - 112

<sup>56</sup> *Ibid* p.113

<sup>57</sup> Huntington S., *The Third Wave: Democratization in Late Twentieth Century*, University of Oklahoma Press Oklahoma, Norman (1993) p. 29

highest scores in all of the democracy indexes. Consequently, it is our strong view that law enforcement is responsible for a higher proportion of human rights violation in any democracy and these violations are achieved through excessive use of force and other inhuman mechanisms like torture, illegal arrest and detention etc. Bayley<sup>58</sup> asserts that while promoting the safety of the community, police generally may legitimately use force in reasonable, limited and careful ways to protect themselves and others. However it is the unreasonable, unlimited and reckless use of force by the police that is of greater concern in recent times. This is why we advocate that policing theories should now be focused on the reasonable use of force and the negative consequences of rights violation. Even new policing models like community policing, designed to increase accountability and responsiveness of police, are concerned with the use of force and human rights issues.<sup>59</sup> According to Bracey, Human Rights Watch Organization described the frequency of police brutality indicating wanton violation of human rights while the departments responsible for the police failed to determinedly control or punish such acts or record the problem.<sup>60</sup> According to him, it is unpalatable and should be checked in concrete terms.

It is pertinent to not that human right is one of the democratic elements and therefore constitute part of policing standards. Most scholars agree on certain basic criteria that promote democracy in policing. Das<sup>61</sup> collected these criteria as follows: The rule of law, accountability to the public, transparency of decision making, popular participation in policing, minimum use of force, creating an organization that facilitates learning and observation of human rights and

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<sup>58</sup> Bayley, D. H., *Democratizing the Police Abroad: What to do and how to do it. NCJJ 188742*, US Department of Justice, Washington D.C

<sup>59</sup> Sammonds, N., *The show March towards Democracy*, Civilian Oversight of Security Forces Round Table 1, (2001) p.359-371

<sup>60</sup> Bracey, D. H., *Across-Cultural Consideration of Police and Human Rights*, Police Quarterly (2000) Vol. 5, p. 113 - 123

<sup>61</sup> Das K. D., Challenges of Policing Democracies: A World Perspective. In Das K. D., and Marinin O., (eds.), *Challenges of Policing Democracies: A World Perspective*, Overseas Publishers, Amsterdam, the Netherlands (2000) p. 3 - 22

internal democracy in the organization. Many other social and political scientists including research conducted by the Vera Institute in 2001 also supports the foregoing.

In order to truly observe human rights, democratic principles inherent in democratic policing must be preserved through controls placed on law enforcement. These controls may take different dimensions. Examples are laws and regulations like the Code of Conduct for Law Enforcement Officials which place controls on police, and judicial control which curtails some rash behavior of the police when issues of ‘Mandamus’ and ‘Judicial Review’ Comes to bear. Others are internal control placed by police administration on itself and external control place on the police by the community with which they serve. Control mechanisms therefore play a vital role in the democratization and human rights response of the police.<sup>62</sup> Granted that control mechanisms play a vital role, our pessimism however lies in their efficacy. Apart from judicial control which can be checked by contempt proceedings, others are mere admonitions. For example, violation of the Code of Conduct for Law Enforcement Official does not carry any legal sanction.

Also, there are rights essential to democratic political process. They include the right to freedom of thought, conscience and religion, the right to freedom of expression, the right to peaceful assembly and association. Crawshaw<sup>63</sup> therefore asserts that it is the function of the police to articulate, uphold and enable these rights to exists; to enable democratic political debate paramount to realizing these rights; to play a part in ensuring that the processes of social or political change are constitutional, legal and peaceful. All of these mean that when the citizens’ articulate demands on the democratic system, police are suppose to facilitate the realization of

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<sup>62</sup> Skolnick, J. H; and Woodworth, J. R., *Bureaucracy, Information and Social Control: A study of a Moral Detail*, In: Bordua D. J., (ed), *The Police: Six Sociological Essays*, John Willey & Sons, Inc. New York (1967) p. 99 – 117)

<sup>63</sup> Crawshaw, R., et al., *Human Rights and Policing: Standards for Good behavior and Strategy for Change*, Kluwer Law International, Dordrecht, The Netherlands, (1998) p. 33 - 39

those demands and not to suppress them. When the means or the ends of the government are at odds the rule of law, police are not to serve those means or ends. If they act in this manner, then the police can be said to be the conscience of democracy and constitutionality.<sup>64</sup>

Often in most emerging democracies, policing is understood in terms of law enforcement and certainly, this has become a common decimal within the realm of public discourse championed mostly by the media. State sovereignty has also been traditionally understood in these terms of considering the police as the 'state' in uniform. This fictional images of police work tend to centre on combating crimes and crimes alone. This law-enforcement approach, in my respected opinion, is flawed since police services perform a wide range of activities that go beyond law enforcement alone. While we agree that apprehension of criminals is historically the central rationale for policing, modern policing must be prepared to embrace a variety of roles, from problem-solving to counseling, provider of first aid amongst many others.

Note generally that the nature of policing can be deduced from the functions assigned to the police. According to Goldstein:

The police, by the very nature of their function are an anomaly in a free society. They are invested with a great deal of authority under a system of government in which authority is reluctantly granted and when granted, sharply curtailed. The specific form of their authority to arrest, to search, to detain, and to use force is awesome in the degree to which it can be disruptive of freedom, invasive of privacy.... And this awesome authority of necessity is delegated to individuals at the lowest level of the bureaucracy to be exercised, in most instances, without prior review and control...<sup>65</sup>

This nature constitute a complex pattern of relations between sources of authority, a set of goals, the selected means and available resources for achieving them and the environment with which such activities takes place. It is a 'set of particular interaction of interest, power and

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<sup>64</sup> Ibid p. 37

<sup>65</sup> Goldstein A. *Policing a Free Society*, Ballinger Publishing Co., Cambridge (1977) p.1

authority' exercisable to achieve specific or varying interest.<sup>66</sup> Policing can also exist everywhere and every time in multi-layered and pluralistic form. It can be centralized, pluralize, private, communitarian, transitional within general societal and international networks. In Brogden and Sheering's view<sup>67</sup> "*policing should be understood as a product of a network of interrelated institutions operating at different levels and with different knowledge and resources..... It is now something that is "owned" by, and done by, a variety of entities*".

It is acknowledged that policing is of types operating at different level and the dominant type is characterized by the legitimate use of force located in the state and can still be found in a variety of forms. Needful to say that in whatever form it does exist, there are policing objectives helpful in articulating the broad nature of policing which every police agency must imbibe especially in a democratic setting. Some of these objective includes prevention and controlling conducts threatening life and property; aiding crime victims and protecting people in danger of physical harm; protecting constitutional guarantees, such as the right of free speech and assembly; facilitating the movement of people and vehicles; helping those who cannot care for themselves, including the intoxicated, the mentally ill, the physically disabled, the old and very young who need help; resolving conflict between individuals, groups or between citizens and their government; and creating and maintaining a feeling of community security.

The Police must be understood in their historically given context if the nature of policing is anything to be relied upon. History has shown that the Police are a major nexus between civil society and the state, and they are often not neutral. This is why we agree with the views expressed by Brewer, et al. that:

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<sup>66</sup> Hebbenton, B. & Thomas, T., *Policing Europe: Co-operation, Conflict and Control*, St. Martin's Press, New York (1995) p.205

<sup>67</sup> Brogden, M., & Sheering, C., *Policing for a New South Africa*, Routledge, London (1993) p. 172-175

To portray public order policing as somehow insulated from political decisions about the choice and mix of state strategies to deal with disorder is not only misleading, it also obscures the chain of relations connecting the state, police and society. By the same token to treat the police as mere ciphers dutifully implementing whatever strategy has been arrived at by the state elite is equally proved to error and mystification... Their pivotal role at the junction of state-society relations leaves them with immense strategic significance.<sup>68</sup>

Again, the nature of policing is a window on the quality of life existent in a given society though this dependent on the system of government in operation. For instance, in a democratic system of government, democracy is not practically feasible unless the police behave democratically in their sphere of operations.<sup>69</sup> This argument is most clearly understood in transitional and developing countries for there the roles of the police in the protection of the state and the ordinary citizens is obvious and emphasized in practice in often brutal and dehumanizing ways. The roles are better observed in developed democracies with strong institutional frame works, but in a purely non democratic system, the police tend to exercise their power under the command and authority of the sovereign, monarch, or the Head of the military junta in power. Here too, the brutal use of force is much more common.

Police officers are street-level bureaucrats and this to a large extent affects the nature of the exercise of their discretionary powers.<sup>70</sup> They have varying levels of discretion in how, when, against whom and for what reason they wish to exercise their authority and powers. Discretion

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<sup>68</sup> Brewer J. D., Guelke, A., et al., *The Police, Public Order and the State*, St. Martin's Press New York (1988) p.233

<sup>69</sup> Marenin, O. *op cit.* 317

<sup>70</sup> Lipsky, M. *Street-Level Bureaucracy*, Russel Sage, New York, (1980) P.41

itself is defined as the freedom or power to decide what should be done in a particular situation.<sup>71</sup>

David Pollard *et al* gave a vivid explanation of policing discretion. According to them:

Every police officer, from the rank of Chief constable down, is daily concerned with the exercise of discretionary power. Thus the decision as to whether or not to arrest a person involves the exercise of discretion as does a chief constable's disposition of those police officers who are available for duty. Decision such as these may involve a great deal of thought and deliberation. Alternatively, it may be necessary that they are made on the spot because the circumstance requires a rapid response on the part of an officer. The discretionary powers which the police exercise are wide but importantly, they are not unfettered.<sup>72</sup>

Scholars have expressed concern on the nature of control of discretion by police officers, and attempts to eliminate discretion have proved abortive.<sup>73</sup> Goldstein<sup>74</sup> however reasoned quite correctly that discretion can at best be controlled by external factors and the major determinants of discretionary behavior are multiple in nature. Few examples include law, organizational priorities and rules, professional norms and codes, direct and indirect public demands, police culture, encounter conditions and attitude, individual personality and style of policing. All these go a long way in affecting the nature of policing either positively or negatively depending on the choices made. In sum policing is a complicated job, a set of government organization, a measure and symbol of human rights and universal values and an exercise of power and politics all working simultaneously, hence the nature of policing need to be approached from different theoretical perspectives – that is the knowledge of what they are, how they operate, and why they do what they do and by a clear view of the nature and determinant of their work. For O' Raw and

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<sup>71</sup> Oxford Advance Learner's Dictionary, (7th ed.) p.332

<sup>72</sup> Pollard, D., Parpworth, N. et al. *Constitutional and Administrative Law*, Oxford University Press, New York (2007) p.705

<sup>73</sup> Brewer J. D., Gelke, A., et al.: *The Police, Public Order and the State*, St. Martin's Press, New York (1993) p.71

<sup>74</sup> Goldstein, A.: *Op Cit* p.36

Moore,<sup>75</sup> something more fundamental is required for judging the nature of policing, namely how representative of society the police are, what training and general democratic principles recruits and practicing officers receive, what legal accountability mechanisms are in place, what democratic accountability mechanisms can be devised by society, and what structures work well. They also need to be approached from the context of the societal constraints which shape their design and powers and within which they operate, from their structured position, and through the analysis of their interconnections to civil society, state and the international system.<sup>76</sup>

While a complete analysis of policing may not be tenable, common characteristics found in most police organizations are that they embody formal and informal rules. The formal rules are those contained in the various police codes and regulations while the informal rules are the basic conventional procedures and practices which are often subjected to change as the need for reforms arises. Crank<sup>77</sup> posits that it has become conventional wisdom that informal rules, organizational cultures, work groups, or peer relation are as important in determining job behavior as are formal rules. He argues that all these helps in shaping the characteristics of policing one way or the other. With due respect to his scholarly view, we disagree with him in part and that is to the effect that conventional wisdom and informal rules without control amounts to nothing and often lead to abuse. It is our own reasoning however that characteristic of policing flows directly from the powers given to them by the enabling law.

Another inherent characteristic is that policing seeks to defend the interest of others but Reiner<sup>78</sup> argues that they are also interested in their own issues. For him, *“the police will not standby idly while their professional norms, political power and organizational priorities are*

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<sup>75</sup> O’ Raw, M. and Moore, L.: *Human Rights on Duty, Principles for Better Policing*, International Lessons for Northern Ireland, Belfast: Committee for the Administration of Justice (1997) p.11

<sup>76</sup> Marenin, O., *op cit* p. 318

<sup>77</sup> Crank J. *Understanding Police Culture*, Anderson Cincinnati, (1997) p.

<sup>78</sup> Reiner, R., *The Politics of the Police*, University of Toronto Press, Toronto (1992) p.

*challenged. They will seek to shape their job, mandate, policies, programmes, image and ideologies to suit their own conceptions of what the problem they are asked to deal with and what needs to be done.*

Should Reiner's view be the case, it is our view that policing may become a compromised phenomenon wherein the "rules of engagements" are jettisoned in favor of selfish and egoistic biddings which will in turn defeat the very essence to which policing was established. We however believe that for good policing to thrive, certain foundations are primarily necessary and they are that policing exists to prevent crime and disorder, policing is dependent on public approval, policing will secure the willing co-operation of the public in obeying the law, public co-operation diminishes the need to use physical force, policing can be secured through shared responsibilities with the public, policing can guarantee impartial service delivery in accordance with the dictates of law. It is instructive to note that the above can only find expression where democratic policing is practice and Couper<sup>79</sup> outlines the major characteristics of democratic policing as follows: accountability and transparency to the public, collaboration in solving policing problems, possessing the requisite education and training, effective and preventive in crime control, responsive to the policing environment, unbiased in judgment and professional in all respects among others

In Nigeria, not much has been desired in terms of democratic policing which is why Alderson<sup>80</sup> admonished that the police are responsible for the enforcement of law that promote the common interest in society and therefore should "*contribute towards liberty, equality and fraternity... help reconcile freedom with the security and uphold the rule of law... facilitate*

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<sup>79</sup> Couper D., *Qualities of Police in a free and Democratic Society*, Online Edition  
<http://improvingpolice.wordpress.com/2012/08/06> - last visited on 23/04/14

<sup>80</sup> Alderson, J. *Policing Freedom*, Macdonald and Evans, London (1979) p. xi

*human dignity through upholding and protecting human rights and pursuits of happiness... strengthened the security of persons or property...*

The reality however appears different as Adisa decried:

Many people thought that from being the enemies of the people the police would become friends of the people as well as the custodians of law and order in society. Regrettably, this has not turned out to be so... the police are yet to change its (Sic) orientation to a people oriented police force. Indeed some would agree that the reputation of the colonial police is (Sic) far better than that of the police we have today. Part of the problem is that democracy was never entrenched in the country.<sup>81</sup>

Thus, violation of human rights and others abound. Ajomo and Akagbue<sup>82</sup> confirmed this when they insisted that “the Nigeria Police Force is still endemic in corruption and human rights violation notwithstanding the operation of democracy in the country”. For Gahia<sup>83</sup>, Human rights abuse by the police is a phenomenon that is disturbing and worrisome to Nigerians. This has led to physical, psychological or mental injury from the hands of those whose responsibility is to protect them. There exist frightening experiences in which the citizens hardly have complement for the police and try as much as possible to detest interaction with police personnel as they see it as a prelude to arrest and this is ear aching. Besides, an editorial in The Guardian concluded that:

Sooner or later the Nigeria Police would overplay their hand in the often repeated charge that the brutalization and extrajudicial killing of citizens of this country by their operatives has become a matter of routine... Because of our long-running Insecure social environment, the Police regularly find an alibi in wantonly killing people on the pretext of chasing after criminals...Police brutality, extortion, intimidation, torture and corruption happens with such constant regularity...The police have acquired such notoriety in

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<sup>81</sup> Adisa, J. “*A New Nigerian Police Image. Its Role in the next Millennium*” Paper presented at a seminar organize for Assistant Inspectors- General and Commissioners of Police at the International Conference Centre, Abuja October 1999 p.7

<sup>82</sup> Op cit 108 -136

<sup>83</sup> Gahia, C., *Human Rights in Retreat*, Civil Liberties Organization Lagos (1993) p.23

lawlessness that the institution has sunk to a shrinking level of morbidity. Their profile in police stations, on highway, at checkpoints and at other points of contact with the public has made them an aberrant order with the reputation of craving for pursuits far removed from the demands of policing<sup>84</sup>

We need to however strike a balance between accusing the police of human right violations and the constraints of police duties particularly in a country like Nigeria where policing is not yet a serious priority. This is why we are more inclined with the views expressed by Prof. Odinkalu that:

...the police in Nigeria are called upon to do the most difficult job. They suffer severe constraints of inadequate training, poor appropriations, political interference, and resulting debilities in personnel, traditions, material and morale. Every year, a significant number of police personnel lose their lives on duty. Their families and survivors struggle along without with out hardly any acknowledgement or support from the society<sup>85</sup>

Ladan reasoned in like manner:

The public does not understand the problems of modern police work and frequently fails to provide adequate cooperation in the apprehension and prosecution of alleged criminals, tends to expect impossible results from the police, and neglects to give sufficient recognition to policemen who day after day render conscientious service often at the risk of their lives. And while modern society imposes enormous duties and responsibilities upon law enforcement agencies, it fails to provide them with a sufficient number of well trained, properly equipped and adequately paid personnel<sup>86</sup>

Several reasons account for these abuses and among them are the inadequacies of the Nigeria Police Act. Expounding on the historical account, Alemika traced the evolution and

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<sup>84</sup> The Guardian, 19<sup>th</sup> July 2005, p. 16

<sup>85</sup> Odinkalu, A. C., Changing Roles of Civil Society in Promoting Safety and Security in Nigeria, In: Alemika, E. E. O. and Chukwuma, I. C., (Eds.), *Crime and Policing in Nigeria*. Network of Police Reform in Nigeria, Lagos, (2004) p. 79

<sup>86</sup> Ladan, M. T. *Crime Prevention and Control and Human Rights in Nigeria, Justice Watch (1998) p.275*

character of the police force and argued that the Act is long overdue for review. He pointed out that before 1930, there was nothing like a national police force but several police forces scattered all over. By 1943, the colonial government enacted the Police Act and since then, no substantial review of the Act had taken place<sup>87</sup>. Though there were amendment to the provision of several laws that have impact on the police but there have been no attempt to undertake a comprehensive review on the law on police organizations, powers and functions. According to Alemika, police and policing in Nigeria are governed by the constitution and statutes, of which the central ones are; the Constitution, the Police Act, Criminal Code, Penal Code, Criminal Procedure Act, Criminal Procedure Code and the Evidence Act. All these laws except the constitution were enacted by the colonial government, and only piecemeal changes have been made since independence. He therefore called for the review of the Police Act and the objective of the review should be to make the Nigeria Police Force efficient, accountable, professional and civil. The revised law should conform to various international instruments on the operations and conduct of the police and law enforcement agencies as well as with the norms of democratic policing<sup>88</sup>. Amadi<sup>89</sup>, sees the police as being central to the protection of human rights and also affirms the correlation between police work and civil society in the area of protection of human rights. He argues that “the maintenance of “law and order” is crucial for the enjoyment of basic civil rights and the maintenance of even the most rudimentary forms of social intercourse”. On

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<sup>87</sup> Alemika, E. E., *The Nigeria Police Act; History and Imperative of Reforms*, Paper Presented on a One Day Interactive Forum on Review of Police Act and Regulations of the House of Representative Committee on Police Affairs in Collaboration with CLEEN Foundation, the Network on Police Reform in Nigeria and Open Society Justice Initiative, National Assembly. 8<sup>th</sup> November, 2004.

<sup>89</sup> Amadi, S., *Review of the Police Act; Civil Society Perspective*, Paper Presented on a One Day Interactive Forum on Review of Police Act and Regulations of the House of Representative Committee on Police Affairs in Collaboration with CLEEN Foundation, the Network on Police Reform in Nigeria and Open Society Justice Initiative, National Assembly. 8<sup>th</sup> November, 2004.

the violations in the Nigerian Police system, he lamented that the history of Nigeria can be retold along the theme of abuse of police power. In his words:

since 1914, Nigeria has remained a police state, a predatory state that treats citizens as subjects hence the challenges of anyone reviewing the police Act will include understanding the janus-faced character of the 'police force' as a necessary an important force for the effective protection of civil rights and at the sometime, a potential threat to such rights when abused or misused by powerful interest<sup>90</sup>

From the foregoing, it has become expedient to find a solution to the long ranged problem and in an attempt to finding a solution to the endemic problem, Trever<sup>91</sup> suggested that many formal aspects of police organizations including recruitment, training, in-service programmes, disciplinary mechanisms, internal control and other democratic measures be put in place to checkmate the excessiveness of the police in the primary discharge of their duties.

## **1.6 Organizational Layout**

Chapter one gives a general introduction of democracy, policing and human rights. It also encapsulates the statement of the research problem, scope of the research, aims and objectives of the Research, Research methodology, literature review and organizational layout.

Chapter two dwells on general overview of Policing and democracy. It follows a progressive x-ray of policing as a major component of democracy, policing as an instrument of law and order (an element of democracy) as well as operational standards of police investigation.

Chapter three deals with policing in Nigeria specifically and that includes the historical overview of the police, source of power and control. It also explores the judicial attitude to

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<sup>90</sup> ibid

<sup>91</sup> Trever, J., *The Policing and the Idea of Democracy*, British Journal of Criminal (1996) Vol. 36, 1:2, p. 182 - 199

policing in Nigeria as well as the relationship between the police Civil Society Groups in Nigeria.

Chapter four shows violations, challenges and enforcement of human rights in Nigeria  
Chapter five concludes the research with summary, findings/observations, and recommendations.

## CHAPTER TWO

### GENERAL OVERVIEW OF POLICING

#### 2.1 Policing as a Major Component of Democracy

The literature on democracy does not take policing seriously either as a theoretical issue or practical problem because policing is generally misinterpreted. Basically, policing is perceived more as the coercive instrument of control at the disposal of the government and that the police could be utilized for policing democracies but they could not be democratic themselves.<sup>1</sup> Even discussions of political development, changes in the state and democratic processes have more often gone on without considering the role of the police. Worst still, none of the contemporary literature on underdevelopment, modernization or democratization provides a consistently worked out and empirically sustainable analysis of the police as the major component of democracy despite their obvious presence and potential impact on the nature and direction of political change, the nature of group conflicts, or the prospect for democratization and the protection of human rights. In simpler words, failure of democracy - corruption, abuse of authority, violations of law, disruption of electoral competition, denials of human rights or outright killings and disappearances are the actions of the police nearly on a daily basis, yet very little attention has been paid to their remote causes. For example, Seidman and Seidman,<sup>2</sup> in their interesting and innovative analysis of the role of law and the state in promoting development and the failures of policy efforts, only mention the police as incidental accouterment of state power notwithstanding the fact that their argument centre's on law and its enforcement. There are

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<sup>1</sup> Bittner, E., *The Functions of the Police in Modern Society*, Government Printing Office, Washington DC, (1970) p.19

<sup>2</sup> Seidman, A. & Seidman, R., *State and Law in the Development Process: Problem Solving and Institutional Change in the Third World*, St. Martin's Press, New York (1994) p.2 60

however some consoling exceptions like the writings of Bayley<sup>3</sup> who asserted that “the police are the most visible manifestation of government authority performing the most obvious, immediate and intrusive task to ensure the well being of individuals and communities particularly in a free democratic society. (emphasis mine)

It is trite that every democratic country depends heavily on its police force. Goldstein<sup>4</sup> agrees when he posited:

Yet a democracy is heavily dependent upon its police despite their anomalous position, to maintain the degree of order that makes a free society possible. It looks to its police to prevent people from preying on one another. To provide a sense of security; to facilitate movement; to resolve conflict; and to protect the very processes and rights – such as free elections, freedom of speech and freedom of assembly on which continuation of a free society depends. The strength of a democracy and the quality of life enjoyed by its citizens are determined in large measure by the ability of the police to discharge their duties.

It is pertinent, however to consider the question whether a country running a democracy automatically qualifies her police force as part of its democratic existence? The answer to the poser is in the negative and this is premised on the fact that a country might be running a democratic government but having a police force that is lacking in democratic ideals or have not conform to democratic principles. For example, during the symposium on Challenges of Policing Democracies held in Onati Spain<sup>5</sup>, in 1995, the representatives from the various countries agreed that the adoption of a democratic form of government does not guarantee that the police will adopt a new organizational structure or change its rules and regulations. What matters is for the police to be willing to act according to law and imbibe democratic behaviour in their actions and

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<sup>3</sup> Bayley, D., *Democratizing the Police Abroad*, National Institute for Justice, Washington, D.C (2001) p.13

<sup>4</sup> Goldstein, A. *op. cit* p.2

<sup>5</sup> Das, K. D., *op. cit* p.3

operations. This is what is called democratic policing and it is from this perspective that this particular discourse will be considered.

Democratic policing in the abstract sense of it can easily be defined but becomes much more complex operationally due to the importance of cultural, legal and political context attached to it. It is however deducible, considering emerging international consensus of what constitute bad policing (e.g. torture to extract a confession) but good policing can take many forms and easily be identified. According to Marein, “there is no one look to good policing, no one set of practices which are valid in all places and times. What can be specified are general principles and their adaptation to the realities of politics, policing and societal relations in each situation<sup>6</sup>

There are two sources of norms to which democratic policing finds its general principles. Chiefly among them are International Regimes which are jus cogens of international law. Though, they are morally obeyed, they lack the force of law and there is no formal authority to enforce them. Regimes tends to work together effectively on common-sense notion of what it takes to work together effectively on common problems and issues; they rise to the level of obligation when they receive “widespread acceptance by the international community” and “have an undeniable moral force, providing practical guidance to states in their conduct”<sup>7</sup> Williams and Savona also agree that regime norms develop informally, often through the interactions of sub-national bureaucracies.<sup>8</sup> There are a lot of international policing regime norms which could be found in many UN resolutions, conventions, declarations and

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<sup>6</sup> Marein O., *op cit* p.319

<sup>7</sup> United Nations Criminal Justice Standard for Peace-Keeping Police, Handbook Prepared by Crime prevention and Criminal Justice Branch, Viena (1994) p.2

<sup>8</sup> Williams, P. and Savona E. U. (Eds.) *The United Nations and Transitional Organized Crime*, Frank Cass, London (1996) p.80-107

understandings which finds their justifications in international human rights thinking and agreements. Examples are:

## **2.2 Code of Conduct for Law Enforcement Officials**

All international human rights standards relating to law enforcement provide a sound basis for the operational apparatus of law enforcement officials, including the police, in terms of observing and upholding the principles of human rights. This is because rights in themselves are founded on the notion of respect for the inalienable and inherent dignity of the human person. Buttressing the foregoing, the United Nations General Assembly acknowledged the important task which law enforcement officials play and established the Code of Conduct for Law Enforcement Officials<sup>9</sup>. It urged that the code be part of the creed of every official through education, training and monitoring for optimum performance. The code maybe viewed as an ethical code, binding on all law enforcement officials and provides guidance on meeting legal obligations on the protection and promotion of human rights.<sup>10</sup> Apart from its obligatory assertions, the code is an ideal basis for the development of national code of ethics for the police. It consists of eight articles, each with an explanatory commentary and may be summarize as follows:

Law enforcement officials are to fulfill the duty imposed on them by law. The term “law enforcement officials” is defined in the commentary as including all officials who exercise police power, especially powers of arrest and detention. They are also to respect and protect human dignity and maintain and uphold human rights in all its ramifications. Besides, use of force only when necessary and to the extent required for the performance of their duty is equally emphasized. They are expected to keep confidential matters of a confidential nature which

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<sup>9</sup> United Nations Resolution 34/169 of 117<sup>th</sup> December, 1979

<sup>10</sup> United Nations, Human Rights and Law Enforcement, UN Publication, New York and Geneva (1997) p. 3

comes into their possession and should not disclose same unless the performance of a duty or the needs of justice strictly requires. The absolute prohibition of torture or other inhuman and degrading treatment is asserted and further states that no law enforcement official may invoke superior orders or exceptional circumstance such as war or a threat to national security as a justification for torture. The good health of a person in custody is of paramount importance hence law enforcement officials are under the mandate to ensure full protection of the health of persons in custody. Finally, the code did not only prohibit corruption but also enjoins law enforcement officials to respect the law, the code and report any violation of the code.

### **2.2.1 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>11</sup>**

This states that each State Party shall take effective legislative, administrative, judicial and other measures to prevent acts of torture in any territory under its jurisdictions as well as ensuring that all acts of torture are offences under its criminal law. It provides further that an order from a superior officer or a public authority may not be invoked as a justification for torture”. This provision applies to any public official or person acting in an official capacity hence it contemplates police officials

### **2.2.2 Basic Principles on the Use of Force and Firearm by Law Enforcement Officials<sup>12</sup>**

This includes three principles referring to individual responsibility as follows. Government and law enforcement agencies are to ensure that superior officers are held responsible if they know, or should have known that police officials under their command are resorting, or have resorted to the unlawful use of force and firearms, and did not take all measures in their powers to prevent, suppress or report such use. Again, government and law

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<sup>11</sup> Article 4 and 2, paragraph 3, Adopted by the United Nations General Assembly on 10<sup>th</sup> December, 1984

<sup>12</sup> Principles 24, 25 and 26, adopted by the Eight United Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27<sup>th</sup> August-7<sup>th</sup> September, 1990

enforcement agencies are to ensure that no criminal or disciplinary sanction is imposed on police officials who, in compliance with the code of conduct or basic principles, refuse to carry out an order to use force and firearms, or report such use by other officials. Further still, obedience to superior orders shall be no defense if police officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. The same provision stipulates that responsibility also rest on superior officials who give unlawful orders.

### **2.2.3 Principles on the Effective Prevention and Investigation of Extra Legal, Arbitrary and Summary Execution<sup>13</sup>**

This includes two Principles, each containing a number of provisions, referring to individual responsibility. Here, it is the government's responsibility to prohibits orders from superior officers or public authorities authorizing or inciting other persons to carry out extra legal, arbitrary or summary executions; it further requires that all persons shall have the right and duty to defy such orders and that police training shall emphasize these provisions. Without prejudice to the foregoing principle, an order from a superior or public authority may not be invoked as a justification for such executions. It allows superior officers or other public officials to be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts.

Within the domestic sphere, national standards have been formulated in line with the foregoing international regimes. On 13<sup>th</sup> January, 2013, the inspector General of police, IGP Abubakar Mohammed re-launched the police national code of conduct<sup>14</sup> with the aim of creating a discipline and ethical police force in Nigeria. The code is applicable to all officers (irrespective of rank) and reflects international conventions on law enforcement and states that police officers

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<sup>13</sup> Principles 3 and 19

<sup>14</sup> The Nation Law, Nation Newspaper, January 22<sup>nd</sup>, 2013 p. 29

shall conduct themselves, whether on or off duty, in accordance with the constitution of the Federal Republic of Nigeria and all applicable laws, ordinances and rules enacted or established pursuant to legal authority. According to the rules, police officers shall not knowingly exceed their authority in the enforcement of the law and shall not knowingly disobey the rules of criminal procedure in such areas as interrogation, arrest, detention, search, seizures, use of informants and preservation of evidence. They shall not also restrict the freedom of individuals, whether by arrest or detention, in violation of the constitution and laws of the Federal Republic of Nigeria. Officers, whether on or off duty, shall not knowingly commit any criminal offence under any laws of the Federal Republic of Nigeria or any state or local jurisdiction in which the officer is present, except where permitted in the performance of duty under proper authority,<sup>15</sup>

Apart from international regimes and the national police code, there are scholarly reflections (though too small) which tend to share more light on democratic policing. Sheptycki<sup>16</sup> begins by defining a democratic polity by three aspects, that is to say processes of political decision making must be transparent; decision-makers must be accountable and can be removed for failure or malfeasance; decision-making must be rule-governed or oriented to established law. To function effectively and become a stakeholder in democratic governance, these three must of necessity be incorporated in policing organization and practices. Jones et al<sup>17</sup> based on their analysis of democratic theory argue that seven thematic values must be institutionalized in democratic policing in some way: “equity, delivery of service, responsiveness, distribution of power, information, redress and participation. They did not however give details on how this can be made functional within the context of making policing impact to be felt in a democracy.

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<sup>15</sup> Principle 1 of the National Police Code for Nigeria.

<sup>16</sup> Sheptycki J. W. E.: *Transnational Policing and the Making of a Post Modern State*, British Journal of Criminology, (1990) p.64

<sup>17</sup> Jones T., Newburn, T.: *Policing and the Idea of Democracy*, Ibid p.190-197

International policing expert David Bayley<sup>18</sup> later expanded on these principles when he argued that, first, democratic policing means adherence to the rule of law rather than to the whims of public authority(s). Second, police must protect Civil rights-from the right of free speech and association to freedom from torture and other forms of abuse. Third, democratic policing should imply that police are externally accountable to government bodies, oversight commissions, and/or the courts. Finally, democratic policing should give top priority to meeting the security needs of private citizens.

Other writers have adopted similar positions on democratic policing. Greene<sup>19</sup> argued that policing is about the allocation of human rights: “the Police are at the forefront of securing, upholding, and reaffirming rights to assure the dignity of individuals, for peaceful assembly free of fear and reprisal, for free speech, for civic participation, for due process....” In a similar vein, Skolnick<sup>20</sup> wrote that democratic policing needs to maintain a balance between “the touchstones of public safety, openness and accountability.” While public safety centres on internal security and law enforcement, accountability expresses the continuing concern for checks and oversight, for surveillance and institutional constraints on the exercise of power. It embraces three different ways of preventing redressing abuse of political power. It implies “subjecting power to the threat of sanctions; obliging it to be exercised in transparent ways; and forcing it to justify its acts”<sup>21</sup>

Reiner equally stresses general principles as follows:

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<sup>18</sup> Bayley, D. H. *Police for the Future*, Oxford University Press, New York (2006) p.19

<sup>19</sup> Greene, J. R., “*Policing Through Human Rights*” *Ideas in American Policing*, Washington, D. C: Police Foundation, December 2010 p.5. [http://www.policefoundation.org/pdf/ideas\\_13\\_Greene](http://www.policefoundation.org/pdf/ideas_13_Greene)

<sup>20</sup> Skolnick, J. H., “*On Democratic Policing*” *Ideas in American Policing*, Washington, DC: Police Foundation August 1999 p.7

<sup>21</sup> Schedler, A. “*Conceptualizing Accountability*” In: Larry, D., et al (eds.), *The Self Restraining State-Power and Accountability in New Democracies*, Lynne Rienner Publishers, Boulder, Colorado,(1999) p. 13-14

By (democratic policing) I mean that (the police) respect due process rights, do not discriminate unjustifiably in enforcement practices, and follows priorities which are in line with popular sentiment where this is clear, or which discreetly balance contending priorities in a divided community.<sup>22</sup>

This priority transcends to representative and responsive policing. A democratic police is ‘representative and inclusive demographically of society in the composition of its personnel, especially of female officers’. This is key because a police force structured and composed without members of the community they serve is bound to produce counterproductive result in its set foals. Minority groups must be adequately represented through potent, fair and non discriminating recruitment policies designed to enable member of those groups to develop their careers. It will then be to the greater interest of society and of policing that police membership be as much as mirror-image of society so that the perception that responsive policing must be geared towards the needs of the community can be realized.

Responsive policing on the other hand connotes awareness amongst the rank and file of the great moral and ethical burden placed on the police and the need to respond effectively to the public need. This public need expects the police to prevent and detect crime as well as maintain public order and their commanders must exercise professional judgment when devising policing policies and strategies that will eventually affect the community they serve. It also requires that police take their cue about what they do from the disaggregate public and not from the state or any government of the day. The kind of issues the public brings to the police to resolve and how or the method the police use to respond are clear indications of the extent to which democratic policing practices have been adopted. This is why a police force is said to be democratic when it response to the needs of individuals and groups as well as the needs of government. Its organization is always made to be responsive downwards and the actions and inactions must be

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<sup>22</sup> Reiner, R.: *The Politics of the Police* (2<sup>nd</sup> Ed) University of Toronto Press, Toronto (1992) p.221

responsive to public scrutiny.<sup>23</sup> Ways in which this maybe secured includes scrutiny by a review board, a ministry, a specialized panel, an ombudsman a citizens committee, the judiciary or any combination thereof.

Another fundamental attribute of democratic policing is community involvement in police work, commonly refer to as community policing. Community policing is a philosophy of full service personalized policing, where the police work in close ties within the same community and in proactive partnership with citizens to identify crime related problems and map out strategies on how they can be solved. It has also been defined as:

A belief or intention held by the police that they should; (1) consult with and take account of the wishes of the public in determining and evaluating operational policing policy and practices and (2) collaborate with public whenever possible in solving local problems.<sup>24</sup>

This was founded on the principle that the police are entrusted by their fellow citizens to protect their fundamental rights to liberty, equality and justice under the rule of law. But to fulfill this role, the police must be part of the community they serve, must be fair, transparent, accountable and responsive.

All said and done, it is this writer's conviction that issues of human rights, representative, responsive, accountable and community policing are more theoretical than practical particularly in emerging democracies like Nigeria. The reason is because police departments here have been structured along colonial and military models by virtue of the country's history. The police authority have remained highly centralize, just as it was before the movement towards democracy. It is even ironic that the police are still being hated by the ordinary citizens because their responsive capabilities are rather negatively inclined. Accountability deficiencies are far

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<sup>23</sup> Bayley, D. H., *Patterns, of Police*, Rutgers University Press, New Brunswick, New Jersey (1985) p. 65

<sup>24</sup> Bertin R. F., *The Use and Effectiveness of Community Policing in a Democracy*, Online Edition <https://www.nejrs.gov/policing/use139.htm> (last visited on 28/12/13)

from being over and the community policing initiative has not really yielded the desired result. With all these endemic challenges still very much around the policing system, can it be rightly say that policing in Nigeria is democratic enough to warrant being referred to as a major factor in Nigeria's democracy? I think not. Policing is however a major component of democracy in developed or well established democracies where clear out institution exist. This is because once an agency is democratic within its sphere of authority, with all or near all the elements of democracy imbedded in it, the society as a whole will be founded on the rule of law and both the police and the citizenry will work and co-operate accordingly. Unfortunately, the Nigeria Police Force is still lagging behind.

### **2.3 Policing as an Instrument of Law and Order**

The importance of policing as an instrument of law and order cannot be over emphasized. This is because of the imperative necessity of peace in a society that is desirous of growth and development. Man is by nature selfish and self-centred hence in most cases, he needs the presence of state institutions of law enforcement like the police to act as a check on the excesses of his conduct. Besides, studies have shown there have been regulatory rules of conduct and laid mechanisms for enforcing same from time immemorial. The evolution of these mechanisms has taken different shapes in different setting depending on the socio-political and economic advancement of the people concerned. Thus, irrespective of the people or society concern, the presence of the police in the body polity of a state is a sine qua non for the safety of lives and property.<sup>25</sup> Alongside other law enforcement agencies, the police primarily provide and sustain

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<sup>25</sup> Tinubu, K. O., *"The Police and Administration of Justice in Nigeria, in proceedings of the Conference of National Association of Law Teachers, University of Lagos from 24<sup>th</sup> March 1972*

internal security of a state in order to secure law and order. This is why the absence of policing implies the absence of law and order.

Law and order is a state of society where vast majority of the population respect the rule of law and where law enforcement officials observe laws that limit their powers. From a deeper perspective, law and order is a policy area covering crime and justice. Within this, it is a group of big state-run 'agencies' like the police, court, prison, immigration, customs and other specialized security agencies. Further still, it is a much broader idea or attitude even to the point of sanctions. It is a belief in and practice of discipline in attitude, behaviour and choices in the home, the street and the work place. Scholars like Stuart et al have described the way that the former has broadened into the later as 'legitimizing the recourse to law, to constraint and statutory power under which society is stoned up and groomed for formal control.'<sup>26</sup> Law itself is conceptual device for the ordination of institutional activities. It is a 'kind of order system' that functions to allocate resources (by guaranteeing and protecting relationships, and by intervening to enforce policies and programmes); to regulate and resolve conflict (by providing principles and procedures for doing so); and to keep the peace (by establishing rules of behavior and enforcing violations with sanctions).<sup>27</sup> Order on the other hand 'entails proceeding according to an established sequence or customary practice. It is a method according to which things are understood to act or events take place. It is 'the condition in which laws or usages regulating the public relations of individuals to the community, and the public conduct of members or sections of the community to each other, are maintained and observed; the rule of law or constituted

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<sup>26</sup> Stuart, H. et al, *Policing the Crises" Mugging, the State, and Law and Order*, Macmillan Press, London (1978) p.278

<sup>27</sup> Weber, M., *On Law and Economy in Society*, Harvard University Press, USA (1954) p.13

authority; law-abiding state; absence of insurrection, riot, turbulence, unruliness, or crimes of violence!<sup>28</sup>

It is instructive to note that order is obtained through the application of law. Order in this sense imports a desirable state of affairs in the society by which confusion, violence, anarchy and other unwanted condition are excluded. So as to secure order through law, certain conditions are expressly prohibited, other conducts are necessarily regulated while absolute freedom of individual is not permitted. For example, unauthorized taking of somebody's property is prohibited as stealing; driving on the highway is regulated in that the person driving must possess a valid driving license and he must obey traffic regulations; a prospective property developer must apply to the relevant planning authority and obtain development permission and the nature of his development must be such that will not adversely affect the right of other property owners.

The law does not secure order only by stalling prohibition or providing regulations. It goes a step further through the creation of functional institutions like the police to not only ensure that orderliness is checked but violators are punished in accordance with the due process of law. Achieving this objective however is a task of no mean dimension due to the complex nature of policing and the difficulties associated with the society being policed. This is why Small<sup>29</sup> observed that the police force have a dual role to play in their efforts to maintain law and order in the society. According to him, police work is very difficult and very sensitive. Firstly, they are expected to protect the constitution of the society of which they are employed and perform other relevant duties in fulfillment of this statutory duty. Secondly, they should ensure

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<sup>28</sup> Ericson, R., Baranek, P., et al, *Representing Order: Crime, Law, and Justice in News Media* University of Toronto Press, Toronto (1991) p.6

<sup>29</sup> "Policing and Law Enforcement in Nigeria", Course Guide: National Open University of Nigeria, p.30 [www.nou.edu.ng/NOUN\\_OCL/pdf/pdf2/CSS%20341.pdf](http://www.nou.edu.ng/NOUN_OCL/pdf/pdf2/CSS%20341.pdf) (last visited on 17/6/2014)

stay away from pressure from special groups so as to maintain their integrity and public confidence, the absence of which will make conviction impracticable and their job very difficult. On his part Kennedy<sup>30</sup> opines that policing a multicultural world is a key challenge to the police, that this challenge is compounded by order on the one hand, and sustaining the freedom and wish of other members of the Society. Still on the subject, Hampton<sup>31</sup> stresses that the cross effect of globalization combine with the contemporary culture of economic and political integration have continually put to critical test the role of the institutional system of law and order. He worries that the growing crises of law and order, the rising wave of crimes in the society, and the ambers of disunity, flamed and perpetrated among different cultures and religion in the world are clear indication of the objective pitfalls in the law and order maintenance duty vis-à-vis the performance of the police.

Hampton went further to establish a link between police, crime and order. According to him, “the failure of police reflects on the state of the crime statistics and public order as well as generates fear and insecurity, thereby creating a crime-prone society.”<sup>32</sup> Viergwer<sup>33</sup> then asserts that the increasing demand of society on inherent problems that cannot be completely solve has, in no small way influence the development of the police. He maintained that the need for a sophisticated police force will not arise if everyone behaves reasonably but since the foregoing condition is impracticable to reach, there will always be need for the police. Accordingly, Bunyard<sup>34</sup> posits that the basic objectives of the police have not radically change since inception. He concludes that what has changed is in the way in which the force has responded to these policing objectives.

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<sup>30</sup> Ibid, p.30

<sup>31</sup> Ibid, p.30

<sup>32</sup> Ibid p.31

<sup>33</sup> Ibid p. 31

<sup>34</sup> Bunyard, R. S., Police: Organization and Command, Macdonald and Evans, Plymouth (1978) p. vii

Gillan<sup>35</sup> observes that the duty of the policeman in the contemporary world is no longer restricted to acting as a watchman and detectives, but has also expanded to include crime prevention by teaching people how to safeguard their own property, and the rule of law in order to divert them from breaking the law. However, Bunyard maintained that the resources at the disposal of the police and their implications for result oriented policing cannot be reconciled. This he claimed was as a result of the absence of an acceptance gauge or construct with which to measure crime prevention. Tamuno<sup>36</sup> opines further that the circumstances and situations in which the police perform their duties make it rather a hard process to evaluate the entire process of law and order maintenance. He goes on that a number of persons maybe resentful of the police but the society is generally handicapped to actually assess the extent to which the police perform its duties effectively. That the public expects much from the police which is often times ill-equip to actualize its set goals. Alemika<sup>37</sup> argues that the society creates the crime which the individual commits and that society where inequality exists is prone to criminal activities. He views this condition as a contradiction that a society which produces the objective condition for crime to exist should turn around to expect the police to prevent or reduce the level of crime in their bid in maintaining law and order. Notwithstanding, the attendant complexities and difficulties associated with policing, society and order maintenance, it is our candid view that policing remains an instrument of securing law and order in the society without which society will be the worst for it. This does not however mean that the arguments and opinion of the authors referred to in this instant discourse are not in issue. To say the least, they are in effect useful and very important to the diversity associated with the role of the police as instrument of law and order.

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<sup>35</sup> Ibid, p.30

<sup>36</sup> Tamuno, T. N., *The Police in Modern Nigeria*, Ibadan University Press, Ibadan (1970) p.26

<sup>37</sup> Alamika E. E. O, *Policing Contemporary Nigeria: Problems and Prospect*, Press, Jos, (1991) p.19

In Nigeria, the limitations and frustrations as it relates to policing are equally prevalent. This is why Mbosowo<sup>38</sup> maintains that policing a crime infested society is an enormous task for the Nigerian police and that the social system in Nigeria is fraught with influences which may destabilize and cause disorder. This limiting and frustrating situation are evident in the level of force equipment, the involvement of its personnel in corrupt activities and the likes. Be that as it may, the preservation of law and order remains one of the statutory duties of the Nigeria Police Force and we cannot agree less. According to Ehindero<sup>39</sup>, this aspect of police duty generally includes the enforcement of traffic laws and regulations, the regulation of public meetings and processions under the public Order Act. The Police Act<sup>40</sup> stipulates that “Traffic Wardens shall be employed to discharge functions normally undertaken by the police in connection with the control and regulation of or the enforcement of the law relating to road traffic”.

Consequently, traffic wardens, for instance shall be required to deal with the general control and direction of motor traffic on the highway; assist pedestrians to cross the road; and controlling vehicles stopping or parking in unauthorized places.<sup>41</sup> The objective, in the words of Abdul Ganiyu, is to prevent violation of transport laws by providing information to aid road users, ensuring compliance and possibly to apprehend and prosecute traffic offenders. The reality on ground however is that the police have not been very proactive in road traffic safely enforcement. The traffic wardens under police supervision are busy collecting bribes from perceived road offenders instead of handing them over for prosecution. Besides, they lack adequate personnel, equipment, training and motivation in the performance of road traffic control.

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<sup>38</sup> Mbosowo, T. J. *Policing an and Society*, Igian Press, Owerri,(1998) p. 29

<sup>39</sup> Ehindero, S. G., *op. cit* p.12

<sup>40</sup> Section 59(5), Police Act, Cap. p.19 LFN 2004

<sup>41</sup> Section 59 (6) Ibid

The Public Order Act<sup>42</sup> on the other hand empowers the Nigeria Police Force to regulate public assemblies meetings and processions throughout the Federal Republic of Nigeria. It was first enacted by the Federal Military Government and took effect on 16<sup>th</sup> February 1979 as a federal law. The reasons for enacting the Act were set out in the recital as follows:

Whereas there are in force in every state in Nigeria certain enactments providing for the conduct and control of public assemblies, meetings and procession.

And whereas the provisions of the said enactments are divergent and it is therefore expedient to make a single enactment having uniform application throughout the federation for the purposes of proper and peaceful conduct of public assemblies, meetings and processions and other matters connected therewith.

The Act was later amended by the Constitution of the Federal Republic of Nigeria (Adaptation of the Public Order Act)<sup>43</sup> substituting some sections and giving powers to the police to so act. In *Attorney General of Ogun State & 2 Others vs. Attorney General of Federation & Others*,<sup>44</sup> the plaintiffs by originating summons and statement of claim challenged the validity of the Public Order Act. The Supreme Court held, among others that since the Act were enacted first by the Military Government, it took effect, not as state law but as a federal law and is therefore deemed to be an act of the National Assembly. Being an Act of the National Assembly, the “appropriate authority” to make such modifications or changes in its provisions is the President of the Federal Republic of Nigeria. It held further that the operational control of the Nigeria Police Force (a federal force) is necessary in order to make the provisions of the Act effective, thus it was expressed that “the Public Order Act and the Nigeria Police Force are like Siamese Twins, living together and inseparable”<sup>45</sup>

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<sup>42</sup> Act No. 5 of 1979

<sup>43</sup> S. I. No 5 of 1981

<sup>44</sup> (1982) 2 FNR 4

<sup>45</sup> *Ibid* p. 16 and 27

From the foregoing, it is needless to argue that the Public Order Act has become purely a federal matter exercisable by the President through the police. The only negative concern however is the way and manner the application of the Act has been wantonly abused even in the face of the current democratic experience. The question then is how constitutional and democratic is the Public Order Act? Kunle Owolabi laments about the constitutionality of it when he said that the Act which was promulgated by the colonial power to subjugate Nigerians and prevent them from challenging colonialism gives the Nigeria Police broad powers to break up any meeting for which a police permit had not been obtained. This, according to him negates the letters and spirit of the constitution.<sup>46</sup> In his own frustration, Femi Falana opined that the Public Order Act and other Draconian Ordinances were imposed by the colonial imperialist to sustain their political and economic dominance in Nigeria. The Military bought into the idea and hoodwinked it into our domestic laws.<sup>47</sup>

The commencement of democratic governance in 1999 has not change the situation as the police is still relying on the Public Order Act as a means of maintaining law and order. For example on 5<sup>th</sup> April, 2006, the meeting of some political leaders, including former Vice President Atiku Abubakar and former Head of State, General Muhammadu Buhari scheduled to hold at Sheraton Hotel Abuja to oppose the third term bid of Chief Olusegun Obasanjo was stalled by the Police led by the then Inspector General of Police, Sunday Ehidenro and the Director General of the State Security Service under the pretext that a police permit was not obtained.<sup>48</sup> Some protesters got arrested and other were injured, as a result. Chinweze then wondered:

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<sup>46</sup> Owolabi, K., "*Public Order Act in the Court of Public Opinion*" Sunday Punch, 7<sup>th</sup> May 2006 p.47

<sup>47</sup> Ibid

<sup>48</sup> Ibid p. 28

If the touchstone of democratic values involve the freedom of interaction, freedom to exchange socio-intellectual ideas, then a law that seeks to circumscribe such liberty maybe accommodated under a colonial or military society, but would certainly run against one of the basic pillars of a democratic society, especially when the powers it purports to confer are exercisable arbitrarily by the recipient of that power.<sup>49</sup>

We are not at variance with the view express above which is why we are of the opinion that the Public Order Act as presently constituted, be abolish as it runs contrary to the Human Rights Provisions of the 1999 constitution of the Federal Republic of Nigeria (as amended). If on the other hand the Act cannot be completely abolished, it should be amended by the National Assembly to reflect the present democratic reality of Nigeria. This is one of the many ways in which impunity and other undemocratic tendencies can be eliminated in the polity.

#### **2.4 Operational Standards of Police investigation in Nigeria**

The necessity of this discourse is centered on the premised that human right abuses are more predominant during exercise of investigative powers by the police than any other because of its all encompassing nature. During investigation, the police can arrest, interrogate, detain, search, seize property, grant or refuse bail all at the same time. Criminal investigation is therefore one of the most important pre-trial components in the administration of the criminal justice. It is a function mostly carried out by the police arising from the statutorily duties prescribed on them by law and there are internationally recognized operational standards set out by the United Nations as models of investigation to which all national governments are encouraged to domesticate. In Nigeria, the statutory responsibility of criminal investigation is primarily vested in the Nigeria Police Force.

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<sup>49</sup> Chinweze, C., “*Unconstitutionality of the Public Order Act*” Daily Independent, 25<sup>th</sup> May, 2006 p.23

The Court of Appeal in **Al-Mustapha V. State**<sup>50</sup> held that: “in Nigerian system of administration of justice, when a crime is committed, it is the Nigerian Police that move in to investigate it. It is therefore a constitutional duty.” The power so conferred on the police and other agencies is however not limitless as they are supposed to operate within the rules permitted by law. According to Daudu:

... because accused persons have constitutional rights and are protected by bills of liberty and fundamental rights, investigative agencies cannot in gathering evidence with which such accused person will be prosecuted engaged in illegal and unconstitutional acts such as eliciting confessions by threats, force, torture, inducement or promise of temporal advantage.<sup>51</sup>

Having established the foregoing, the pertinent question is whether the Nigeria Police Force does carry out investigative activities in line with international standards? In other words, can operational standards presumption be held to be operative in Nigeria in the face of investigative gaps inherent in the Nigeria police system? The Court of Appeal, Per Chukwuma-Eneli JCA in **Jammal V. State**<sup>52</sup> had this to say:

But before making the financial order in this case I will say that it is glaringly obvious from the totality of the evidence before the trial court that the investigation of this case leaves much to be desired. The tragedy of it all is that a case so straight forward as this case could be so badly bungled up in the course of investigation. In practically every department of the case, the strain of shabby investigation is seriously felt. There is so much of factual gaps and unresolved flaws that call for little effort if not just sheer presence of mind on the part of the police to be close up or tied up to make the prosecution’s case stand on a fairly even ground.

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<sup>50</sup> (2013) 7 NWLR, (Part 1383) at 350

<sup>51</sup> Daudu, J. B., Criminal Investigations, Procedure and Evidence-Reform Imperatives, In: Daudu, J.B. and Adekunle, D., (eds.) *Reforming Criminal Law in Nigeria*, Nigeria Bar Association, (2012) p.93

<sup>52</sup> (1999) 12 NWLR (pt 632) @p 582

Rather than improve on the rules and procedures of investigation, the Nigeria Police is mostly known for impunity, arbitrariness and excessive use of force during investigations. In one of such instances, the Court of Appeal, Per Niki Tobi - JCA (as he then was) buttressed the point in a murder case involving a mobile policeman who had killed two brothers:

One of the functions of the police in this country and indeed in any democracy is the protection of the citizen and the prevention of crime. It is therefore paradoxical that the appellant, a police officer, instead of assisting in the dispersal of the crowd and arresting the suspects, took the uncouth and irregular action of killing the Dawodu brothers. There is evidence that after the gunshot, the appellant waved his rifle from side to side. This was an apparent show of 'victory' in a situation where there was no war' between the deceased persons and the appellant.<sup>53</sup>

To investigate means to carefully examine the facts of a situation, an event, a crime etc to fine out the truth about it or how it happened.<sup>54</sup> It also means to inquire into a matter systematically; to make a suspect the subject of a criminal inquiry.<sup>55</sup> Investigation therefore is an official, scientific or academic examination of the facts about a situation and or crime. From the above deduction of the meaning of investigation, criminal or police investigation has been defined as a lawful search for people and things to reconstruct the circumstance of an illegal act, apprehend or determine the guilty party and aid in the state's prosecution of the offender.<sup>56</sup> It is also define as a systematic collection of information about a crime and the assembly of physical and testimonial evidence within the rules allowed by law in order to identify the perpetrators of crime and provide evidence for a successful prosecution of criminal suspects.<sup>57</sup> In the words of

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<sup>53</sup> Ibe Vs. State 7 NWLR p. 187

<sup>54</sup> Oxford Advanced Learner's Dictionary 5<sup>th</sup> Edition 632

<sup>55</sup> Blacks Law Dictionary 8<sup>th</sup> Edition p. 844

<sup>56</sup> Bohm, R. and Haley, K., *Introduction to Criminal Justice*, (3<sup>rd</sup> Ed.) Mc Graw-Hill, US (2002) p.206

<sup>57</sup> Nmerole, C., *Police Interrogation in Criminal Investigation*, Halygraph Nig. Ltd., Minna, Niger State, (208) p. 89

Momodu;<sup>58</sup> “It embodies everything done by an authorized agency or person, within the law for the purpose of discovering what crime has been committed, who committed the crime, where the crime was committed, and how the crime was committed with a view to bringing the offender to book.”

The purpose of investigating a crime is to gather information, identify the suspect and present evidence before a court so that guilt or innocence may be established. This is however achieved only when certain operational standards are put in place to check abuses and ensure that law enforcement is compatible with respect for and obedience to the law, respect for the dignity of the human person and respect for and the protection of human rights. The United Nations’ Code of Conduct for Law Enforcement Officials represents these standards and this has been theoretically replicated by a National Police Code already discussed. To effectively carry out investigative activities that conform to these standards, certain tools are required. Some of them are:

**Trained Personnel:** Criminal investigation is a special department in every police force that requires highly specialized personnel who have been rigorously trained and equipped with the mental and physical alertness to confront investigative activities particularly with the current challenge posed by information technology and sophistication of criminals. Training and re-training in modern crime detective techniques, handwriting, fingerprint devices, intelligence gathering and surveillance are equally needed. An Investigative or detective personnel should be sound enough to draw hypothesis and draw reasonable conclusions from his instructive abilities to match up with his professionalism as an investigator. In the words of an author, an investigator is “someone with a strong professional training and solid experience that, by carefully

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<sup>58</sup>Momodu, B., Law, *Rules and Procedures of Criminal Investigation in Nigeria*, Evergreen Overseas Publications, Lagos, (2013) p. 1

completing every appropriate step in an investigation, leaves nothing to chance. By doing so, he or she forfeits no opportunity to develop evidence”.<sup>59</sup>

**Scientific/Technical Aids:** With the growing sophistication in crime, the police in modern times equally require such scientific and technical aids that can assist in the detection of crime. Finger print identification, blood or hormone stain, analysis as well as other microscopic examination of crime related materials including photographic blue prints are essentially needed to fight crime in modern times. Apart from this, the establishment of a forensic laboratory is another mandatory criminal investigation requirement if perpetrators must be identified.<sup>60</sup> This forensic laboratory is ‘expected to assist an investigator to establish element of crime, link the crime scene to the victim or criminal, corroborate or disprove an alibi, induce an admission or a confession, exonerate the innocent, confirm the guilt of the accused and provide expert testimony in court.’<sup>61</sup>

**Interrogation Techniques:** This technical skill is acquired through training research and practical experience and remains one of the valuable tools in the professional act of criminal investigation. It is a skill or technique mostly use to elicit information from unwilling suspects and witnesses, hence the ability to get results depends largely on the aptness, craftsmanship, logical and psychological insight of the investigator. Besides training, his positive disposition and ability to instinctively draw reasonable conclusion from a particular factual situation stands him out as a good investigator.

**Data of Crime and Criminals:** This serves as a nerve centre for the collection of criminal data for record purposes and subsequent use when the need arises. It also involves the collection and preparation of information from the data collected for usage as evidence in court or in the course of further investigation in a given case.<sup>62</sup> The essence is to assist detectives obtain or establish the fastest investigative leads particularly in crime of serious nature . Besides, hardened criminals who go back to commit crime after their release are easily traceable and arrest affected

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<sup>59</sup> Swanson, R., et al, *Study Guide for Criminal Investigation*, 8<sup>th</sup> Ed. Cram 101 Incorporated, (2006) p.29

<sup>60</sup> Onashile, Y., *Scientific Criminal Investigation, Detection and Prosecution*, Malijoe Soft-Print, Ibadan (2002) p.6

<sup>61</sup> Ibid p. 6 - 9

<sup>62</sup> Herper, R. R., *The Computer Games Detective, Suspect and Report of the Boston Police Dept: Management Review Committee*, 14<sup>th</sup> January, 1992

and this is often made easy if their previous criminal records are collated and stored in a criminal data bank.<sup>63</sup>

Also there are also three major stages in criminal investigation which generally enhances operational standards. These stages are not mutually exclusive but work together in order to enhance the overall objective of investigation. They include:

**Scene of Crime Management:** The scene of crime is the place or location where a criminal act or purported criminal act took place. The success or failure of most investigation starts and ends at the crime scene depending on measures put in place to safeguard the scene of crime. That is basically why most crime scenes are immediately cordoned off by the police as soon as they are identified. Here, detectives begin to formulate hypothesis relating to how the crime was committed, location and proximity of escape routes and the likely suspects.

A criminal act may take place in more than one crime scene. The primary scene is the location where the initial offence was committed while the secondary scene is the location of all subsequent connected events.<sup>64</sup> Preliminary investigation begins at the primary scene and the first officer who arrives must approach the scene cautiously, be alert of people and cars leaving the place, scan the entire area, maintain a safe distance and exclusively prohibit persons from entering the scene of crime. The purpose of this is to reconstruct what happened, determine the consequence of events, find out what the suspects did or didn't do, establish the modus operandi used by the suspect, determine what property was stolen and what articles the suspect left, reveal the motive, locate and interview witnesses, document and recover physical evidence.<sup>65</sup> All these must be handled with the highest amount of caution so that exhibits obtained will remain intact.

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<sup>63</sup> Nmerole, C. I., Op Cit p.106

<sup>64</sup> Lee, H. C., et al, *Crime Scene Handbook*, Academic Press, San Diego CA (2001) p. 2-3

<sup>65</sup> Barry A. J., *Techniques of Crime Scene Investigation* (6<sup>th</sup> Ed.), Boca Raton FL CRC Press, London (2000) p. 46

**Information Gathering:** While information gathering is important in criminal investigation, the major problem for the police is determining the utility of the information so gathered or collected. Much information maybe discovered or otherwise available to the police but only a small portion of it may be accurate, complete and relevant, and hence useful in establishing the identity and or where about of the culprit. This is why at this stage, the detective must showcase his professional competence in information gathering both at the preliminary and discreet stages of investigation. Information maybe gathered from physical evidence (knife, gun, crowbar etc). Physical evidence can be useful in the sense that it can help establish the element of a crime (example, a pry marks left on the window) and can also associate or link victims to the crime scene, offenders to the crime scene, offenders to instruments and so on.<sup>66</sup> Besides physical evidence, another major source of information is people, namely witnesses and suspects. In all, information may be quite powerful in establishing proof for the police but the problem is that eye witness or people's identification are often quite inaccurate and unreliable. This is because research has shown that many factors such as environmental conditions, physical and emotional conditions of the observer, expectations of the observer, perceived significance of the event, and knowledge of the person being described can significantly influence the accuracy of eyewitness statement.<sup>67</sup>

**Arrest and Detention of Suspects:** The arrest and detention of suspects is part of the statutory powers of the police<sup>68</sup> and this power is often exercised during police investigations. At this stage, the investigators may have fashioned a clue or may have established enough evidence linking the arrested person or would be arrestee with the possible commission of the crime. The

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<sup>66</sup> Peterson, J. L. et al. *Forensic Evidence and the Police: The Effects of Scientific Evidence on Criminal Investigations*, Washington, D. C: US Department of Justice, 1984 P.26

<sup>67</sup> Loftus, E.F. et al, '*The Psychology of Eyewitness Testimony*' In: *Psychological Methods in Criminal Investigation and Evidence*, Raskin D.C. (ed.) Springer, New York, (1989) p. 3 – 45.

<sup>68</sup> Section 4, Police Act, Cap P.19 LFN, 2004

arrest could be made immediately after the criminal act, or by invitation to the police station or anywhere with or without a warrant depending on the nature of the crime committed.<sup>69</sup>

From the foregoing, any public information that serves to initiate police investigation must be evaluated and acted upon in an unbiased and effective manner and must be based on reasonable suspicion of an actual or real commission of a crime.<sup>70</sup> When investigation finally commences and arrests are made, the caution rule (Judge's Rules) becomes imperative as a preliminary guideline and shall be in the following terms: "You are not obliged to say anything unless you wish to do so, but what you say maybe put into writing and given in evidence"

Generally, investigative officers must be committed to the presumption of innocence and act in accordance with due process of law. The implication here is that all persons under investigation must be treated as innocent persons whether they have been arrested, detained or released pending the outcome of the investigation. The Universal Declaration of Human Rights provides that "everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial which he has all the guaranties for his defense."<sup>71</sup> The rights and privileges of suspects must be taken into account. This is why it contemplates the fair trial principle whose minimum guarantee opines that a person must be inform promptly and in detail the charge against him or her, to be tried without undue delay, examine or have examine the witnesses against him or her and to be free from compulsion to testify against himself or herself, or to confess guilt.<sup>72</sup>

Furthermore, it is important to look at the legal framework surrounding the interview of victims and witnesses. Who has the power to conduct interview and in what circumstance?

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<sup>69</sup> Section 10, 25, Criminal Procedure Act, Cap C41, Laws of the Federation of Nigeria 2004

<sup>70</sup> Section 8, Council of Europe, Declaration on the Police, Part A., (1979)

<sup>71</sup> Article 11(1) United Nations Declaration of Human Rights (1949), Article 14, International Covenant on Civil and Political Rights

<sup>72</sup> Article 9, paragraph 2, International Covenant on Civil and Political Rights

Whether it is the court or the police, sound operational guidelines must be followed so as to ensure for example that interviews do not traumatize victims. Victims must be treated with compassion and respect in all circumstances as enshrined in the Declaration of Basic Principles of Justice for Victims of Crime and abuse of Power<sup>73</sup> Interviews of witnesses must be conducted in a language which the persons interviewed understands and the identity of the officers must be compulsorily disclosed. The interviewees need be informed of their right to contact a lawyer and to have the lawyer present during interrogation if the law so provides. Those who are suspects are to be informed of the charges against them and they must not be obliged to plead their case, to answer any question or to incriminate themselves or their next of kin nor to confess guilt at all cost. Cases of obtaining confessions or any other statement by the use of force, torture or the threat of using such means, or by using drugs must be prohibited and any police officer found wanting in this regard must be indicted and punished.<sup>74</sup> At the end of interview, records should systematically be kept of the time at which interviews started and ends, of any request made by the persons interviewed and of the persons present during the interview.<sup>75</sup>

Again, the sensibility and adaptability to the special needs of persons such as children, juveniles, women, the disabled, mentally ill and minorities is paramount during police investigation. Women, in particular, are in need of unbiased, immediate and empathic support in cases of domestic violence, sex crimes and trafficking hence, they deserve special attention.<sup>76</sup> For example, one of the United Nation resolution states that “contact between the police and juvenile must be managed in such a way as to respect the legal status of the juvenile, promote his

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<sup>73</sup> Paragraph 4.

<sup>74</sup> Mission in Kosovo, (OMIK), Human Rights and Law Enforcement, Booklet of Human Rights for Police (2000) p.13

<sup>75</sup> Section 39, Council of Europe, The CPT Standards, (1979) p. 7

<sup>76</sup> Council of Europe, Recommendation No. R (91) 11 Concerning Sexual Exploitation, Pornography and Prostitution of, and Trafficking in Children and Young Adults (1991)

or her well-being and avoid harm to him or her, with due regard for the circumstances of the case”<sup>77</sup>

In the course of investigation, police should not interfere with an individual right to privacy (including private life, family life, home and correspondence) unless when strictly and legally necessary and only to achieve a legitimate objective. Therefore it is expedient that all information and documents acquired by the police must be treated appropriately and with all necessary confidentiality.<sup>78</sup> To further consolidate the investigation process particularly as it relates to the information collated, strict control by a data protection official becomes imperative to ensure that the “collection, storage, and use of personal data by the police shall be carried out in accordance with international data protection principles, and, in particular, be limited to the extent necessary for the performance of lawful, legitimate and specific purposes. Particular attention must also be paid to rules on exchanging information between police and other elements of the criminal justice system.”<sup>79</sup> The police must provide necessary support to victims of crime devoid of discrimination taking into cognizance their respect and dignity. Victims should be carried along in terms of information exchange and awareness. The victim should be able to obtain information on decision made with regard to their case and on the outcome of the police investigation.<sup>80</sup>

A critical appraisal of operational standards and its applicability in Nigeria indicates that not much has been achieved in reality as criminal investigations have been turned to mere ritual

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<sup>77</sup> General Assembly Resolution A/RES/40/33. See Rule 10 (3), United Nations Standard Minimum Rules for the administration of Juvenile Justice, 29<sup>th</sup> November, 1985

<sup>78</sup> Article 12, UN Universal Declaration of Human Rights Article 4, UN Code of Conduct for Law Enforcement Officials.

<sup>79</sup> Principles 1 – 5 and 7 – 8, Council of Europe, Use of Personal Data in the Police Sector, Interpol Resolution No. AG-2003-REG-04, Rules on the Processing of Information for the purpose of International Police Co-operation.

<sup>80</sup> Article A.4 and A.6(e), UN, Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)

exercise. The common slogan, once a crime is committed is that “investigations are ongoing” after which little or nothing is heard about the case. Investigations, in most cases are not thorough, evidences not carefully collated and the end result is that suspects who may have been found are acquitted due to lack of diligent prosecution. In the recent case of **Al-Mustapha Vs State** wherein the appellant and one Lateef Sofolahan was arraigned on a two-count charge of conspiracy to murder and murder of Alhaja Kudirat Abiola, the Court of Appeal lamented thus:

The learned trial Judge should have observed that the police investigation (if any) into this matter was wishy-washy and leaves much to be desired. Apart from the unreasonable witnesses fielded, whose evidence was fraught with contradictions which was not explained, there is nothing to show that the crime was investigated properly anyway. This is because the bullet allegedly expended and was extracted from the deceased head was never tendered...For an offence such as murder, I wonder why the Nigerian Police did not promptly and wholly investigate this matter. There is no autopsy report as to the cause of death<sup>81</sup>.

Again, interviews of suspects are often conducted in dehumanizing manner as they are always intimidated, tortured and force to admit to the commission of crime. The Court of Appeal in **Al-Mustapha vs State** decried further: “*Kyari Jidai Gadjama, a retired Military personnel, and orderly of the appellant testified of how they attempted to compel or induce him to testify against the appellant as PW2 and PW3 had attempted to do. He was mercilessly beaten up with wire cables in furtherance of this during investigation.*”<sup>82</sup>

The privacy of citizens (be they suspects or victims of crime) is not often respected and suspects are treated without recourse to their constitutional rights. Reuben Abati remarked: “...*the Nigeria*

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<sup>81</sup> Op cit p. 359

<sup>82</sup> Ibid p. 361

*Police Force is one of the most unpopular institutions in Nigeria today; it is distrusted by the same people whose lives and property it is meant to protect, and this has resulted into a resort of self help in many ways. Every year both the Amnesty International and Human Rights Watch as well as local civil society organizations report on many cases of police brutality and inefficiency...*<sup>83</sup>

On the lack of trained personnel, it has been observed that “...apart from the mandatory basic training for police officers, there appears to be no special training for detectives before their first deployment. Most of the detectives (so called) are simply assigned to criminal investigation departments and expected to learn on the job.”<sup>84</sup> Besides, the absence of data of crime is another worrisome development. Ogunshakin laments:

The state of forensic investigation in Nigeria is very poor at the moment due to a severe lack of the necessary implement. For example, there is yet no computerized database for criminal records in the country. At the moment, the Nigerian Central Criminal Registry still makes use of outdated manually kept record. The enormity of the task of manually comparing and assessing the fingerprints of 150 million Nigerians is perhaps better imagine than described.<sup>85</sup>

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<sup>83</sup> This Day Newspaper, 30<sup>th</sup> June, 2014

<sup>84</sup> Daudu, J. B., Op Cit P.93

<sup>85</sup> Ogunshakin T., Scientific aids to Criminal Investigation, In: Arase, S.E. and Iwuofor, P. O., Policing Nigeria the 21<sup>st</sup> Century, Spectrum Books Ltd., Ibadan (2007) p. 100

## CHAPTER THREE

### POLICING IN NIGERIA: HISTORY AND CONTROL

#### 3.1 Historical Overview of the Nigeria Police Force

Prior to the advent of colonial rule, the societies that now constitute Nigeria had their system of crime prevention and control. Law enforcement was traditionally the responsibility either of the community as a whole or of the individual victim of some sort rather than something delegated to a specialized agency of the state.<sup>1</sup> Traditional African policing methods were rooted in the community and closely interlinked with social and religious structures. They also relied on a number of other secular and supernatural agencies that monitor social behavior and impose sanctions against deviation. The following groups were characteristically used in detection, resolution and punishment of offenses: the extended family, the lineage, age grades, women societies and other religious bodies like ancestral cults, spirit cults and other secrete societies. Through these diffuse system of crime control, law and order was maintained, largely without the use of violence.<sup>2</sup>

A good example of these pre-colonial societies is the Hausa/Fulani and Yoruba systems which we shall rely on because of their centralized and formal nature. In Northern Nigeria, the Jihad (Holy War) of Shehu Uthman Dan Fodio in 1804 led to the abolition of the Hausa kingdoms and the establishment of the Fulani Emirates. Each Emirate was headed by an Emir with Sokoto (the caliphate) and Gwandu as headquarters of all the emirates. The Emir as political, administrative and spiritual leaders of their people appointed a number of officials assigned with specific duties in the day-to-day running order and good government of the emirates. Among other officials, the Sarkiri Dogari or Sarki Yan Doka was the head or chief of

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<sup>1</sup> Tamuno, T. N., *The Police in Modern Nigeria (1861 – 1965)*, Ibadan University Press, Ibadan (1970) p.2

<sup>2</sup> Ibidapo-Obe, A., “*Police Brutality: Dimensions and Control in Nigeria*”, in Civil Liberties Organization Law Enforcement & Human Rights Project, Lagos (1994)

the traditional policing organization called the dogari. Apart from being bodyguards of the Sarki (Emir), the dogari performed full time policing function in the community. Their duties included the capture and discipline of offenders, guiding the town in conjunction with warders, and most importantly, preventing crime and bringing the criminal into judgment after a crime had been committed. The duties of the dogari was not therefore limited to crime prevention and control, but included the punishment of offenders.<sup>3</sup> Policing and judicial administration of these emirates was generally based on Sharia law anchored on the teachings of Prophet Mohammed. These Sharia laws dealt with marriage, divorce, inheritance, debt, custody of children, slander, stealing, etc. The Alkalis, well trained in principles of Islamic law presided over Alkali courts and administered justice accordingly. In all, the caliphate can be best describe as a strong political and religious unit in Northern Nigeria in both vastness and strength which is why the British colonial administration found this strong unit useful as a launching pad for the indirect rule system it subsequently launched.<sup>4</sup>

In the Yoruba kingdoms of western Nigeria, the Oba (King) was the supreme head of government considered the representative of Olodumare (God Almighty) and rule in conjunction with his Igbimo (Council of Chiefs). Each Igbomo member represented a quarter/ward (Adugbo). Collectively and in collaboration with the Oba, they developed laws for the whole community as approved by ancestral customs. Strictly speaking, there was no need to prescribe formal laws as deterrent against anti social behavior because everybody accepted implicitly that any departure from the behavior approved by the deities (Imale) and the ancestors (Osi) was punishable. Thus, when laws were promulgated by the Oba and his council of chiefs they were

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<sup>3</sup> Ahire, P. T., *Imperial Policing: The Emergence and Role of the Police in Pre-colonial Nigeria (1860 – 1960)* Milton Keynes, London (1991) p.5-24

<sup>4</sup> Okafor, L. M., *History of Nigeria for Senior Secondary Schools*, Jet Publishers (Nig Ltd) Onitsha (2004) p.264

invariably given a divine sanction.<sup>5</sup> However, the enforcement of laws, the maintenance of law and order and general policing duties was the primary responsibility of the chief who enforce them through their age grades. In Ile-Ife, for example, the Olomode Ife (Ife Youths) were the public enforcement officers. They acted as the police for the community and had underground dungeons (gberere) where they kept those who have been arrested for one crime or the other.<sup>6</sup> In other part of the western kingdom like Oyo and Oshogbo emese or agunven were responsible for apprehending or arresting criminals and executed the commands of justice.<sup>7</sup>

From the example cited above, we can easily justify that most communities in Nigeria had a policing structure imbedded in their own native system of government. Though the police structures were however not sophisticated in comparative terms with what is obtainable today, but at least, they existed and acted within the limit of their existence before colonial rule took over.

What can be termed a “modern police force” started when colonialism was introduced in Nigeria by Britain. The first British attempt to set up a government and a formal police force started in 1861 when Lagos was annexed. By this move, the colonial masters got the control of trade around Lagos in addition to its administration. To consolidate on this gain, a Consular Guard comprising of 30 men was established in Lagos. By 1863, this small body of men was identified as the “Hausa Guard”. It was further regularized in 1879 by an Ordinance creating a constabulary for the colony of Lagos. On 1<sup>st</sup> January 1996, the Lagos Police was created and armed like the “Hausa Constabulary” while the developments were taking place in Lagos and part of Yoruba heartland, the areas known as Edo, Delta, Akwa Ibom, Rivers and Cross River

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<sup>5</sup> Offong, D. A., *Witchcraft, Sorcery, Magic and Social Order among the Ibibio of Nigeria*, Fourth Dimension Publishing, Enugu (1991) p.39

<sup>6</sup> Bascom, W., *The Yoruba of Southwestern Nigeria*, Hot Publishers, Rinhart and Winston, New York (1965) p.

<sup>7</sup> [www.http://bellshaf88.paget/THE\\_PEOPLE\\_OF\\_NIGERIA.htm](http://bellshaf88.paget/THE_PEOPLE_OF_NIGERIA.htm) (last visited on 2/04/13)

state were declared Oil Rivers Protectorate in 1891. The Protectorate had its headquarters at Calabar and formed an armed constabulary for security purposes. In 1896, the area was proclaimed the Niger Coast Constabulary, modeled after the Hausa Constabulary that was earlier formed. It existed for six years and featured prominently in the British expedition to Benin in 1896.<sup>8</sup>

In the Northern Region of Nigeria the Royal Niger Company had set up the Royal Niger Constabulary in 1888 with headquarters at Lagos to protect its installations along the banks of the River Niger. In 1900, the Royal Niger Constabulary was divided into the Northern Nigeria Police, and Northern Nigeria Regiment. In the South, the Lagos Police and part of the Niger Coast Constabulary became the Southern Nigeria Police in the 1906, whilst the bulk of the Niger Cost Constabulary formed the Southern Regiment. After the amalgamation of Northern and Southern Nigeria in 1914, both Police forces continued to operate separately until 1<sup>st</sup> April 1930 when they were merged to form the Nigeria Police Force with national jurisdiction.<sup>9</sup>

It is instructive to note that the establishment of police force in colonial Nigeria reflected administrative interest and concerns. First the annexation of Lagos and subsequent establishment of a police force was to protect and foster the interest of the new colonial government. Second, the indirect rule system that was first introduced in Northern Nigeria was adopted as a means of reducing the cost of running the colonial bureaucracy. Police forces were therefore established along the line dictated by the indirect rule policy and not necessarily to maintain law and order for the benefit of the entire community. This is why the police were not accountable to the people but only to the colonial masters and their excesses against the community were not controlled. As a result, the colonial police forces behaved as an “army of occupation” killing,

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<sup>8</sup> Nmerole, C. I., *Police Interrogation in Criminal Investigation*, Halygraph Nig. Ltd., Minna (2008) p. 12 - 14

<sup>9</sup> Ehindaro, S. G., *The Nigeria Police and Human Rights*, Ehindaro Press, Jos (2005) p.12

maiming and depriving citizen's rights at will without any check.<sup>10</sup> A source succinctly captured it all:

.... The police, the most visible enforcer of colonial diktat remained immensely unpopular. The police, in the consciousness of people, became the symbol of dictatorial establishment rather than the protector of the people's right. As the people had no checks over the arbitrariness of the police they either avoided "police trouble" or mediated inevitable contacts with bribe offering.<sup>11</sup>

In a more subtle manner, Dambazau<sup>12</sup> observed that the colonial police served as agency of "socialization through which "colonized people could be brought close to civilization"... in terms of the acceptance of the colonizer's norms of order". Regrettably, the norms of behavior were purely colonial and alien to the African way of life from the onset and were also in total disregard to the traditional requirements. This fact was reflected in colonial police training programmes which the members were expected to use in making the members of their community subservient. In the words of Chukwuma<sup>13</sup>, this was to enable the British colonialist to be able to subject the estimated 400 Nigerian nationalities to their domination. This experience made the public to regard colonial police forces as their enemy, subjugators and extortionist to mention but these few. The negative perceptions of the people were further grounded in their excruciating experience of the use of constabulary forces during the later phase of colonial campaign to violently suppress worker's strike in 1945, 1947 and 1949; women's riots in 1929 to 1948 as well as communal riots in 1954 in Kano and 1959 to 1960 in Tiv land.<sup>14</sup>

All these could have been the reason why most public commentators and security expert often trace the anti-people ideals of the present Nigeria Police Force to our colonial heritage. It is

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<sup>10</sup> <http://bellshaf88.pagetl/THE-PEOPLE-OF-NIGERIA.htm> (last visited on 10/10/13)

<sup>11</sup> Onoge, O. F., *Social Conflicts and Crime Control in Colonial Nigeria*, University Press, Ibadan (1993) p.178

<sup>12</sup> Dambazau A. B., *Criminology and Criminal Justice in Nigeria Spectrum Book, Ibadan (1999) p.21*

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<sup>14</sup> Etannibi, E. O., et al; *A Desk Study of the Role of Policing as a Barrier to Change or Drive of Change in Nigeria*, Prepared for the Department for International Development (DFID) in the Clean Foundation, Lagos. P.9

however my firm view that the commentaries or assertions, as often relied on, would have been tenable if Nigeria was still under colonial rule or if the whole gamut of colonial police structure was adopted hook line and sinker into the present police system without any modifications. But this is not the case, because the Nigeria Police Force, though modeled after the British, has undergone several operational and structural changes that should warrant its evolvement to a much better and respected police force. If the Nigeria Police Force has refused or failed to emancipate itself in the manner expected of a modern police force, then the blame should not be heaped on our colonial past but on itself.

Between 1930 and 1966, the new unified police force coexisted with local police forces in Local Government Areas in Western Nigeria and the Native Authorities in Northern Nigeria. This dual system continued until 1966 when the first coup brought about military rule in Nigeria, thus opening a whole new chapter of events for the Nigeria Police Force. After the coup of 15<sup>th</sup> January, 1966, the Head of State, Major-General J. T. U. Aguyi Ironsi empanelled a “working party or committee called Gabir Panel (named after its chairman) on the Nigeria police, Local Government, Native Authority police and prisons in March 1966. The Panel was mandated to examine, among other issues, “feasibility of the unification of the Nigeria Police, Native Authority Police, Local Government Police and the unification of Prisons in Nigeria”. At the inauguration of the committee, the Head of State in his address observed that:

There is need for clarification of the general impression held in this country about the services provided by the departments of police and prisons. You will therefore have to examine the facts which have contributed in providing distorted image of the machinery for police administration in the minds of the Nigerian public and formulate concrete proposals for any deficiencies. It would be a more rational policy for Local Authorities to concentrate on development schemes which are designed to improve their communities rather than dissipate their energies and resources in maintaining ill-equipped organizations for Police and Prisons

administration which could be rather serviced by a central government authority.<sup>15</sup>

Following the counter coup of July 1966, the new Head of State accepted the recommendation of the Working Party that the Nigeria Police system be unified. As a result, the local police forces were dissolved and their qualified personnel absorbed into the Nigeria Police Force<sup>16</sup>. The dissolution of the local police forces was anchored on several points. Some of the points were that the members of the local police were ill-qualified, poorly trained and poorly behaved, and constituted an instrument of oppression in the hands of traditional rulers, local government officials and politicians. For example, in both the West and North, there were mass recruitment into the local forces of party thugs and stalwarts, and that political opponents were arrested by native authority police for holding private meetings to discuss political issues, handcuffed or chained and march through the street as an ocular demonstration of what fate awaited those who sought to exercise their rights.<sup>17</sup> One significant aspect of the period under review was the establishment of the Highway Patrol System and the Traffic Warden Service to curb the excesses of arm rubbers in the High Ways and control traffic respectively.

From the end of the civil war in January, 1970 to July 1975 when the Gown regime was overthrown, there was increase attention on the operational apparatus of the police in particular and other security outfits in general. The police underwent processes of changes which were dictated by the needs of a modernizing and growing state. The assassination of Murtala Mohammed in a botched military coup on 13<sup>th</sup> February, 1975 raised crucial security concerns. The tension created was however doused with the smooth military transition that ushered in the Gen. Olusegun Obasanjo administration. Subsequently, the police force was expanded and re-

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<sup>15</sup> The Report of the Working Party on Police and Prison Services in Nigeria, 1966 p.2

<sup>16</sup> Rotimi, K., *Federalism and Policing: The Nigerian Experience*, College Press Limited, Ibadan (2001) p.124-125

<sup>17</sup> Ohonbarnu, O., "The Dilemma of Police Organization Under a Federal System: The Nigeria Example", *The Nigerian Law Journal* (6) (1972) p. 75 - 76

organized in line with the operational needs of the time. It was after the transition to civil rule was announced that political tension across the country aroused but this was gradually managed by the police until the commencement of the second Republic.<sup>18</sup>

October 1<sup>st</sup>, 1979 witnessed the return to democratic government. The police did a lot to keep to its primary responsibility of maintaining law and order particularly curtailing the increasing activities of armed banditry and political violence. The force was however plagued by inexperience and unqualified personnel recruited in the post war era due to the withdrawal from the force of most qualified officers and men. As a result of the man power vacuum created and the attendant consequences, the government had to absorb 10,000 literate and semi literate soldiers into the Nigeria Police Force.<sup>19</sup> There were other operational problem ranging from inadequate equipments, lack of accommodation and general poor incentives for police personnel.<sup>20</sup> In spite of these problems, the police were able to protect the democratic government of the day (though not without partisan accusation by the opposition) and ensured a smooth civilian to civilian transition.

On 31<sup>st</sup> December 1983, the administration of the second Republic was overthrown by a military coup led by Major Gen. Muhammadu Buhari and for the first time the Inspector General of Police was appointed a member of the Supreme Military Council. He was also a member of the Council of State. Police Commissioners also became members of state Executive Councils. In line with the then government policy of 'War Against Indiscipline', there was a massive purge

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<sup>18</sup> Okiro, M. M., *Policing Nigeria in a Democracy*, Bharmus Venture Nig., Ltd., Port Harcourt (2009) p.34 - 35

<sup>19</sup> Ibid p. 37

<sup>20</sup> Inyang, O. E., *The Nigerian Police Force: Peace Keeping in Nigeria Since Independence*, The first 25 years, Vol. IV Government and Public Policy, Heinemann Educational Books, Ibadan (1980) p. 76

in the public service including in the police force which had a total of 2995 Officers and Men relieved of their jobs.<sup>21</sup>

Another coup led by General Ibrahim Babangida occurred 1985. The Babangida administration introduced some operational changes to the Nigeria Police Force to boost operational efficiency and reduce bureaucracy which hitherto had bedeviled the force. The original six departments of the force were compressed into five in 1986 namely, Finance and Administration, Criminal Investigation, Logistics and Supply, Operations and Training. In 1988, the Criminal Investigation Department was however renamed the Federal Intelligence and Investigation Bureau (FIIB) with headquarters at Alagbong Close, Lagos. Also State Intelligence and Investigation Bureau (SIIB) were replicated at the state level. To enhance further operational efficiency, the Police Force was decentralized into Zones. Area Commands were equally established at the state level to supervise and over see the Police Divisions at the local Government level.<sup>22</sup>

These structural changes notwithstanding, the common challenges of the force were still prevalent as nothing much was done to ameliorate the plight and predicaments of the personnel. Yet this period witnessed the emergence of series of crises which a neglected and unmotivated police force struggled to contend. Some of the crises include the May 1989 student riots, the Onitsha riots of 23<sup>rd</sup> July 1989, the Tiv-Jukun communal clashes of December 1991 to mention but a few. The climax of them all was the violent protest in sections of the country following the annulment of the June 12<sup>th</sup> Presidential Elections supposedly won by late Chief Moshood Abiola in 1993.<sup>23</sup>

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<sup>21</sup> Ibid p. 75

<sup>22</sup> Jemibewon, D. M., *The Nigeria Police in Transition*, Spectrum Books Limited, Ibadan (2001) p. 97 - 100

<sup>23</sup> Ibid p. 105

After the exit of the president on 27<sup>th</sup> August 1993, the moral of the police remained low keyed as a result of cumulative neglect and continuous structural decay. Several Reports showed that the police were owed salaries for months as this was confirmed by the former Inspector General of Police, Alhaji Ibrahim Coomasie who put the figure owed the police at 2 Billion Naira. The problem continued until General Sani Abacha took over power on 17<sup>th</sup> November 1993. In an attempt to solve the problems of the police, General Sani Abacha inaugurated a committee headed by a former Inspector General of Police, Alhaji Mohammed Dikko Yusuf with a view to revamping and rehabilitating the Nigeria Police Force.<sup>24</sup> The committee Report showed that:

For many years, the Nigeria Police was neglected, was deprived of the equipment needed.... Give them the equipment that they need, fire many rotten eggs' in the force now and train the remaining ones in a new orientation, so that we can have a new police force, not the type we are all complaining about.<sup>25</sup>

The Federal Government under General Abacha ignored the far reaching recommendations of the Yusuf's Committee and the problems of the police continued unabated. Generally, the Nigeria Police Force suffered neglect in the area of trained manpower, modern equipments, logistic as well as welfare which contributed to the deepening corruption in the force.

However when on 29<sup>th</sup> May, 1999, a new democratic dispensation was ushered after long years of military dictatorship, it became imperative that drastic measures be taken to salvage the already bastardized nature of the police and cloth it with civil ideals in line with democratic norms and principles. The Obasanjo led government announced Musliu Abdul Kareem Smith as the new Inspector General of the Nigeria Police Force. The first major task of the new police

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<sup>24</sup> Ibid p. 109 -113

<sup>25</sup> The Guardian, 29<sup>th</sup> February, 2000

administration was the need to increase the numerical strength of the police to meet up with the challenges of policing in a democracy. This is because there was a complete ban on recruitment right from 1993. The manpower had drastically reduced due to death, dismissal, retirement and withdrawal to the extent that the numerical strength stood only at 112,000 in a country with a population of more than 150 million people. With presidential approval, the policy of recruiting 40,000 policemen yearly for the next 5 years was introduced so that by 2005, the numerical strength of the police had tripled to 325,000.<sup>26</sup> As at 2010, the workforce of the police came to about 325,000. This is however still short of the United Nation Policing Policy of one police man to 40 civilians.<sup>27</sup> In all, the Obasanjo administration went the extra mile in ameliorating the plight of the Nigeria police through strengthening, reorganizing, restructuring as well as equipping the police for optimal performance. As part of measures to improve the capacity of the police, the Presidential Committee on Reform of the Police headed by Retired Deputy Inspector General of Police, Muhammed Dan Madami was formed in 2006 with the following terms of references: Review and recommend measure for the reorganization, administration, operations and control of the Nigeria Police Force with a view to enhancing effectiveness and efficiency in its operations and service delivery; reappraise existing strategies and methods of crime prevention and control including the intelligence and investigate capabilities of the force and make recommendations for a modern Nigeria Police; examine for recruitment policy, equipment, scope and standard of training and other personnel development activities and make recommendation for a modern Nigeria Police; examine ways and means of enhancing remuneration and welfare package of police personnel including provision of adequate office and

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<sup>26</sup> Ehindero S. G., The Nigeria Police Force in the Emerging Democratic Culture: Paper Delivered at the Trenchard Hall, University of Ibadan Alumni Annual Lecture on Friday 27<sup>th</sup> October, 2006 p.20

<sup>27</sup> Vanguard Newspaper, Online Edition

<http://www.vanguardngr.com/2010/01/2009-how-the-nigeria-polic-fared> (last visited on 12/05/2014)

housing accommodation with a view to boosting the morale of officers and men; ascertain the general and specific causes of the low public opinion and confidence in the police, particularly on corruption issues and proffer ways of restoring public trust in the institution; examine the provision of adequate logistic support for the force (including transportation, communication and technology); examine the issue of community policing and recommend how best it can be adopted and adapted in Nigeria; and to make any other recommendations for the improvement of the services of the Nigeria Police Force.<sup>28</sup> The panel report was not implemented and therefore extortion and other forms of corruption, illegal arrest and detention, human right abuses ranging from extra judicial killing, excessive use of force and general short fall in police service delivery was still the order of the day.

President Umaru Musa Yar' Adua on Thursday 3<sup>rd</sup> January, 2008 announced the setting up of a 16 member committee for the reform of the Nigeria Police Force with Mohammed D. Yusuf as chairman. When the committee submitted its report, government set up another committee which reviewed "the reports/recommendations by the M.D. Yusuf committee. The government went further to set up a white paper Committee which eventually came up with a White Paper which the government issued on the 2008 Committee.<sup>29</sup> Despite all the previous committees and their respective reports, President Goodluck Jonathan in January, 2012 again established another Presidential Committee for the Reform of the Nigeria Police Force, headed by Parry Osayande (Retired DIG). The terms of reference once again are almost identical to wit: to identify the challenges and factors militating against effective performance of the police force in Nigeria and make recommendations for addressing the challenges; to examine the scope and standard of training and other personnel development activities on the police to determine their

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<sup>28</sup> Ehindero S. G., Op cit p. xxx

<sup>29</sup> [http://www.nigeriafirst.org/article\\_7953.shtml](http://www.nigeriafirst.org/article_7953.shtml) (last visited on 11/ 12/13)

<http://ar-ar.facebook.com/nasirelrufai/post/10151266206715128> (last visited on 27/9/2013)

adequacy or otherwise; to determine the general and specific causes of the collapse of public confidence in the police and recommend ways of restoring public trust in the institution; to examine records of performance of officers and Men of the Nigeria Police Force with a view to identifying those that can no longer fit into the system due to declining productivity, age, indiscipline; corruption and/or disloyalty; and to make any other recommendations for the improvement of the Nigeria Police Force.<sup>30</sup> The Osayande committee finished their work and submitted the report to the Federal Government on Tuesday 13<sup>th</sup> November 2012. Thereafter, President Goodluck Jonathan constituted a ministerial committee to produce a white Paper on the report of the Osayande led Presidential Committee on re-organization of the Nigeria Police on Thursday, 15<sup>th</sup> November 2012.<sup>31</sup>

It is instructive to note that there had been several ‘Presidential Committees on Police Reforms’ since the return to democratic process in 1999 after 16 uninterrupted years of military dictatorship in Nigeria. Besides, the terms of reference of these committees are always the same. The only difference in this new one with the previous ones however is the requirement ‘to examine records of performance of officers and men of the Nigeria Police Force with a view to identifying those that can no longer fit into the system due to declining productivity, age, indiscipline, corruption and or disloyalty.

According to the Network on Police Reform in Nigeria (NOPRIN) (an umbrella of civil Society Organization), “...*police reform panels which have become a recurring decimal in the country annals were losing relevance because the government never implements the findings and decisions of the panels*”

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<sup>30</sup> Nigeria Police and the Burden of reform Committees, *The Punch Newspapers*, online edition <http://www.punchnig.com/wednesday, April4, 2012>

<sup>31</sup> <http://www.nairaland.com/1020110/gej-raises-white-paper-pa0nel>.

NORIN lamented further, and I agree with them that; *“What this circuit indicates is the lack of sincerity and political will on the part of government to implement genuine and fundamental reforms. Setting up of committees has become a means of distributing patronage, wasting public resources and evading responsibility.”*<sup>32</sup>

### **3.2 Policing Democratic Nigeria: 1999-2014**

The appointment of Musliu Smith as the new inspector-General 72 hours after the inauguration of a new democratic government in Nigeria was heralded with pump and pageantry but with very high expectation from the citizenry. By virtue of the daunting challenge before the new Inspector General of Police, a blue print for Police Reforms called a Five Year Development for the Nigeria Police Force (2000 – 2004) was conceived after extensive deliberation from stakeholders. Some of the proposal in the document included the need to increase the total strength of the police in order to cure the defect of the 1993 embargo on police recruitment, provision of barracks accommodation, rehabilitation of the existing four Police College and order training institution, maintenance of existing police communication network improvement of police transport facilities, establishment of an integrated Police welfare scheme, rehabilitation of existing medical and recreational facilities, improvement of funding for the police through the establishment of a National Police Trust Fund and finally improvement of the force image with the public.<sup>33</sup>

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<sup>32</sup> *Leadership Newspapers*, Online edition: [http://www.eadership/nga/articles/20641/2012/03/29/ossa\\_against\\_reforming\\_nigerian\\_police.html](http://www.eadership/nga/articles/20641/2012/03/29/ossa_against_reforming_nigerian_police.html) (last visited on 14/05/2014)

<sup>33</sup> Erase S., and Iwuofor, I., from Smith to Balogun op cit p. 3 – 5

Concerted efforts were made to implement these proposals. For instance, massive recruitments into the police force commenced and in August 2001, some military barracks were handed over to the police, the Police Headquarters (Louis Edet House) was commissioned and ₦2.5 Billion for the purchase of Patrol Vans, communication equipment and ammunition was released. Regrettably, some of these reform measures were overshadowed by continuous increase in violent robberies, assassinations and ethnic and religious conflicts for which the police was not able to curtail. Notable among them are the Sagamu Riots, the Umuleri/Aguleri communal conflict in Anambra State, the Kano and Kaduna riots of May 2000, the Odua Peoples' Congress and Hausa traders conflict in Lagos and the Ijaw, Urhobo and Itsekiri ethnic combatants in the Niger Delta. On violent robberies, and assassinations, the death toll included Chief Layi Balogun, Tony Ikhazibo (Retired Air force General) Chief Tony Erosesele, Chief Bola Ige, former Attorney General and Minister of Justice among others. The worst hit to these efforts was the strike action embark upon by members of the rank and file on 1<sup>st</sup> February 2012 to press home the demands for arrears amounting to N5 billion. Though the strike action was quelled, the image of the police was further dented marking the exit of Musliu Smith as Inspector General of police.<sup>34</sup>

On 6<sup>th</sup> march 2002, Mr. Tafa Balogun was appointed as the new Inspector General of Police. He came up with an Eight Point Reform Agenda which was not different from that of his predecessor except the massive onslaught against armed robbery, gruesome murder, assassination and other arms termed "Operation fire for fire". This measure help in reducing the growing menace of violent crimes across the country. Out of 1,857 cases of arm robbery reported from January 2002 to February 2003, a total of 4,189 armed robbery suspects had been arrested.

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<sup>34</sup> Ibid p. 8 - 10

1,248 were killed in shootouts, weapons and ammunition as well as nearly 227 Million Naira got recovered during this period.

His conflict management agenda ended the resolution of the Ife- Modakeke communal clashes, and managed the Tiv-Jukun crises to a reasonable degree. Balogun brought in a proactive dimension to policing when he championed the establishment of an all female unit of the Nigeria Police Force to complement their male counterpart in the enforcement of crime. Other innovations improved upon were comprehensive training programmes for both new and old officers, anti corruption crusades both within and outside the force with the arrest of 113 officers and 14 civilian for extortion by the anti monitoring unit at the force headquarters and the revitalized x-squad. There was robust public relations as well as enhanced community partnership in policing; improved condition of service and Enhanced Welfare Package. A comprehensive promotion scheme was put in place and the payment of insurance benefits to officers killed in active duty. During this period, “98,553 officers and men, from constables right up to Assistant Inspector General of Police were elevated in rank to clear a backlog of delayed promotion, which, apart from clogging up the ranking structure had led to how morale and inefficiency in the system”. The kitting of the junior rank and file re-surfaced among other packages.<sup>35</sup> Soon after, Mr. Tafa Balogun was enmeshed in serious allegation of embezzlement, abuse of office and diversion of police fund, leading to his sack as Inspector General of Police.

Mr. Sunday Ehindero became the new Inspector General of Police and in order to restore the lost confidence of the public on the police, he premised his 10 point agenda on a more human and civilized model of policing tagged “to serve and protect with integrity”. He called it a ‘parading shift’, to “reposition the force on the premise of being responsive, effective and accountable” which are the hall marks of democratic policing. His strategy was anchored on

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<sup>35</sup> Ibid p. 12-23

crime prevention rather than detection and this could be realized through “intelligence-led-policing”. He therefore, revamped the research, planning and statistics department for the production of reliable crime statistics and dissemination of adequate information for intelligence planning and operation.<sup>36</sup>

With incessant bank robberies and other violent crimes, Ehindero sought the intervention of all tiers of government including the private sector in purchasing Armored Personnel Carriers and other gadgets. The score card showed that massive successes were recorded in the reduction of crime on the highways and many attempted Bank robberies were foiled. He spear headed conflict prevention and resolution and in line with his “parading shift approach, community policing and Police-Public Partnership was taken to a much higher level. According to him:

The perception of the public is that we are not as effective and proficient as we ought to be... if we are to be worthy of such public trust, we are to be a service that enriches the quality of life and earns the confidence, satisfaction and active support of the population at large. This public trust demands that in exercising our authority as police we must:

- Respect human dignity, behave with integrity; act without prejudices to the rights of others, regardless of their race, ethnicity, gender, religion or other social circumstances
- Set the best example in our professional competence, in our fairness, compassion, restraint, civility and dedication
- Be responsive to community needs, perceptions and priorities.<sup>37</sup>

Besides, the public relations effort of the police was strengthened through outreach programmes in schools/higher institutions on function of the police and civic responsibilities of citizen. He also held interactive sessions with civil society organization on the need to improve the human right situation in the country.

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<sup>36</sup> Ibid p 23-39

<sup>37</sup> Ehindero S. G., Vision for the Nigeria Police Force Using the 10 Point Programme as a Platform; Paper Delivered at Workshop on Service Delivery and Corruption held in Jos, 17<sup>th</sup> June 2005.

The downside of policing during this period was the ‘Apo Six’ killings of 2006 and the allegation of numerous human rights violation by Human Right Watch which indicted the Police for using torture/inhuman and degrading treatment to illicit confessional statements from suspects. Ehindero retired from the police force on a low key as the police he presided was accused of conniving to rig the 2007 Presidential election which President Yar’ Adua acknowledged in his inaugural speech at the Eagle Square, Abuja.

Mike Mbama Okiro was appointed as the next Inspector General of Police by the late President Yar’ Adua administration. His policing agenda was as much the same as those of his predecessors but with much emphasis on increase funding for the police, accountability, human rights anti corruption, intelligence and crime data base and public image which he fought to sustained. One of the lasting legacies of the Okiro’s administration was the recalled or re-instatement of officers who were forced into early retirement as soon as he was appointed.<sup>38</sup>

The retirement of Mike Okiro brought in Ogbonnaya Onovo as the new Inspector General of the Nigeria Police Force in July 2009. In his maiden speech, he assured Nigerians that he was not a man of too many words and that the Nigeria Police under him would be accountable to the people. To this end, he assured that he would focus on capacity building; training and re-training; welfare of officers and men; respect for fundamental human rights; robust relationship with the local community and intelligence led policing. According to him:

In order to fulfill its obligations as the primary law enforcement institution in the country, the force under my leadership is focused on returning the Nigeria police to its core value of discipline and professionalism which are fundamental to our main roles of crime prevention and maintenance of law and order.<sup>39</sup>

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<sup>38</sup> Okiro M., *Work – Plan of the Nigeria Police Force* (Unpublished) August to December, 2007

<sup>39</sup> <http://www.vanguardngr.com/2012/01/2009-how-the-nigeria-police-fared/> (last visited on 9/5/2014)

As promising as this speech was, a dimension to crime called kidnapping became the most famous challenge of the new police administration. Incidents of kidnapping actually reared its ugly head in mid 2007 with the kidnap of two Chinese nationals, Nia Guigiange Eric and Feng Shenyi, and a Nigerian, Sylvester Urugwe, all employees of Innoson Company, Nnewi, Anambra State. Thereafter, it became a common decimal with the kidnap of highly placed individuals including politician and businessmen.

According to a report released by the then Minister of Police Affairs, Mr. Ibrahim Yakubu Lame in July 2009, Nigeria recorded a total of 512 kidnapping within this period losing 30 victims in the process. The police rose to the challenge and secured the release of some victims (sometimes not without paying a ransom) but the ugly trend continued fueling the impression that the police lacked the capacity to deal with the rampaging menace.

The ability of the police was once again put to question during the period under review because of a litany of religious cum political crises which claimed several lives and properties worth millions of Naira. For example, the political crises in Jos which later degenerated into a sectarian violence claimed several lives including those of defenseless members of the National Youth Service Corps. Then came the communal clash in Benue State followed by another one in Ogun State which claimed the life of Assistant Commissioner of Police, ACP Omolodun Oladokun in the third quarter of 2009.

The brutal killing of the Boko Haram leader, Mohammed Yusuf by the police after being handed over to them by the Nigeria military climaxed the insensitivity of the police towards human right protection. With other incidence of human right violations and crimes not cited, all these became a minus to Mr. Ogbonnaya Onovo's claim of intelligence-led and proactive

policing strategy he put in place.<sup>40</sup> And so the inability to checkmate the rising wave of kidnappings and killing led to his untimely exit from the Nigeria Police Force.

Next came Mr. Hafiz Ringim whose appointment was announced in acting capacity on 10<sup>th</sup> September, 2010. Among other issues, he promised to neutralize the Boko Haram sect that has besieged the country in no time. Soon after, trouble began. In September 2010, members of the Boko Haram Sect attacked and freed prisoners from a Maiduguri jail. In December 2010, the sect took responsibility for a bomb in Jos, the Plateau State capital, killing about 80 people. There have been several other bombings in the Northern part of the country particularly the Police Headquarters bombing on 6<sup>th</sup> June 2011, the bombing of the United Nations headquarters in Abuja in August 2011, the November bomb and gun attacks in Yobe, the Christmas day bombing in St Theresa's Catholic Church Madala in 2011 to mention but these few. Aside the bombings, the escape of Kabir Sokoto, a Boko Haram Kingpin from police custody was another sour taste to "swallow". Besides, the incessant tales of Bank robberies, highway robbery, particular Shagama-Ore road, and the robbery of several police stations/post in order to recover arms/ammunition became too worrisome. One of such robberies took place on Monday 19<sup>th</sup> December 2011 where robbers bombed a police station in Aiyetoro Gbede in Kogi State and looted the armory. All these were to prove the incapability of the police to decisively deal with the situation and find a solution to the Boko Haram insurgence in particular and security in general.<sup>41</sup>

Disappointed with the existing policing methodology, the federal government announced the Appointment of Mohammed Dahiru Abubakar as the new Inspector General of Police to

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<sup>40</sup> Ibid

<sup>41</sup> Nigeria Police Without Force, Nigeria Tribune Newspapers, Sunday 29<sup>th</sup> January 20012 online Edition <http://www.tribune.com.ng/sun/special-report/6217-nigeria-police-without-force-nid-abu> (last visited on 19/5/2014)..

bring in ideas on how the security situation can be improve and on assumption of office he said that *“this administration will be different from any other administration because every officer and men of the Nigeria Police will belong to the same page. This administration will not tolerate any, and I mean any acts of indiscipline and acts of corruption”*

He went further to assert that:

“I am not a newcomer to this Job, I cannot run away from the fact that I know some of the challenges but I know that we have a very challenging and uphill task” “There are erratic bombings by terrorist, communal clash, kidnapping, arm robbery, bunkering, assassinations and piracy....”<sup>42</sup>

This underscores the blueprint of the M.D Abubakar policing programme in addition to other ideals of democratic policing he has packaged. So far, he has unbundled police checkpoints and/or road block all over the country and has rather increase the number of police men on patrol on the highways. The ‘human face policing style have reasonably return and the police force is becoming more civil in its operations. On election matters the police have fared better with and are rather playing their primary role of ensuring that citizens exercise their civic duties with no connivance to snatch ballot boxes or rig elections with the support of the police. The recently concluded elections in Edo and Ondo States respectively serve as a case study.<sup>43</sup> Though patches of kidnapping, terrorism and other crimes are still common, the civility of the present police force will help the police combat crime with the support of the people and more funding from the government.

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<sup>42</sup> <http://www.nigerianpilot.com/index.php/crime/2601-any-hope-for-osayande-led-police-re...> (last visited on 15/5/2014)

<sup>43</sup> <http://naija2day.com/2012/01/tenures-of-inspectors-general-of-police-in-nigeria> (last visited on 2/3/2014)

### 3.3 Sources of control of the Nigeria Police Force

#### 3.3.1 Constitutional control

The importance of the Nigeria Police Force in the maintenance of law and order cannot be over emphasized. This is basically why the force is recognized by the constitution in order to justify its importance. The Constitution provides inter alia “*There shall be a police force for Nigeria, which shall be known as the Nigeria Police Force, and subject to the provisions of this section, no other police force shall be established for the federation or any part thereof.*”<sup>44</sup>

The constitutional arrangement presupposes that the Nigeria Police Force is an agency of the Federal Government and this has long been given judicial blessing in **Attorney General of Ogun State & 2 Others vs. Attorney General of the Federation & Others.**<sup>45</sup> Here, the Supreme Court held emphatically that the Nigeria Police Force is an agency of the Federal Government hence any attempt by any individual, body corporate or another tier of government to established, under any guise, another body to be known as police in any part of the federation is unconstitutional, illegal, null and void.

This provision has far reaching implication for proponents for the creation of state police who have jointly and severally considered the attendant loopholes in the structural formation and power distribution between the federal government and the various state governments that make up the Federation call Nigeria. Since the return to democratic rule in 1999, proponents of state police have articulated their views and increase their demand on the need for state police. Prominent among them is Chief James Ibori, former Governor of Delta State who said he is a vocal advocate of the restoration of the decentralization of policing and security responsibilities

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<sup>44</sup> Section 214(1) Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>45</sup> (1982) 2 FNR 4.

of government because it is an integral part of the federal system of government. According to him:

...the case for the restoration of State (regional) Police is overwhelmingly popular. First, the system was operated from the colonial times up to the First Republic of 1960 to 1966. Second, the experience with a unified police force has proved to be a monumental failure. The Federal Police are small in size, grossly underfunded and woefully ill armed to offer satisfactory services for the large country and population like Nigeria<sup>46</sup>

In the same vein, Efut SAN<sup>47</sup> opines:

“The debate on state Police is a debate on shared responsibility, decentralization of authority and devolution of power; because there is already in existence the Nigeria Police...If ours is federalism, then we should practice true federalism by strengthening the federating States. Each state of the federation is unique with unique security challenges, which can be best addressed by a police body that is equally unique to that state. Even before Nigeria came into being in 1914, we’ve had district or regional police...”

He gave other reasons in favour of State Police as poor funding of the Police by the Federal Government; some states of the federation are very rich and viable with the requisite resources to acquire communication equipment, transport, and weapons to combat the rising crime rate; low level of public confidence on the police; the complexities of recruiting, training, discipline and specialization; high level or increase level of offences against the person and property; offences against state laws are on the increase and the federal police have not been able to combat same.<sup>48</sup> And creation of employment as more people will be employed. For Nigeria’s

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<sup>46</sup> James Ibori “Challenges of Governance in a Democratic Dispensation” Nigerian Journal of Policy & strategy, vol.14, No.1, June 2004, p.64 at 73

<sup>47</sup> Okon, . N. E. “Is Nigeria Ripe for State Police?” Paper Presented at the Round Table Organized by Patriot for New Nigeria Initiative (PNNI) on Thursday, 15<sup>th</sup> November, 2012 at the PNNI Secretariat, No.4 Morija Close, off Adetokunbo Ademola Crescent, Wuse II, Abuja p.2 - 3

<sup>48</sup> Ibid. p.4

democracy and economy to develop as a federal state, it has to restore the system of decentralizing policing because the advantages are numerous:

The system will allow for state, local community and municipal police formations. They will be owned and maintained by the various authorities. The officers, rank and file of these formations will be drawn from local areas where they will operate. Their intimacy with the populace will enhance confidence and efficiency. The integration of the police into the cultural milieu will fortify their moral and morale as the dread of failure or professional misconduct will constantly inspire them to excel in order to earn the love, support and appreciation of those they serve. Corruption will be minimized and so will resort to brutality and superiority.<sup>49</sup>

The ineffectiveness of the Nigeria Police Force in combating crime and other social deviance is another reason for state police agitation. Abiodun agrees when he says “the springing up of vigilante groups and ethnic militias is a clear evidence of the inefficiency of the Nigeria Police”.<sup>50</sup> Again the fear of allowing the government at the centre to exert undue influence and politicized their action. Examples of this abound during the 2<sup>nd</sup> Republic where the Ruling Unity Party of Nigeria (NPN) politicized the police for their own due advantage. A clear case was the aborted UPN delegate conference scheduled on March 13,198 at the centenary Hall, by the Commissioner of Police on the pretence that the 24 hour notice given by the party was too short. There was also the question of partiality and neutrality by the police in the Kano Riot of 1981 where they refused to come out to combat the rioters because the state was ruled by PRP.<sup>51</sup> Also, the creation of state police will not in any way abolish federal police but will eliminate unnecessary bureaucratic bottleneck in seeking authorization of the Inspector-General of Police to restore law and order in the state in times of imminent ethnic and religious crises. For

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<sup>49</sup> Elaigwu E. A., *op cit* p.7

<sup>50</sup> Abiodun E., *Ethnic and Religious Disturbance in Nigeria*, Komalape Press Ibadan, (2002) p.16

<sup>51</sup> Muazu, H., A., “*State Police in Nigeria: Issues and Contestations*”, *Nigeria Journal of Policy and Strategy*. Vol 14 No. 2, December (2004) p.68 at 73

example, Chief Segun Osoba, former Governor of Ogun, blamed the escalation of Shagamu mayhem on the system which makes it impossible for him to order the police to wade into the crises with immediate effect. The mayhem would have been averted if the state had its own police force and had the constitutional power to deploy the police.

There are others who however feel that Nigeria is not yet ripe for state police and have advanced several reasons to that effect. One of the most domineering factors against the establishment of State police forces is the fact that some Governors would use such force as a yoke of suppression or repression against their perceived political opponents. This view was recently canvassed by the Governor of Edo State, Comrade Adams Oshiomole. He maintained that allowing state police will not only extract opposition parties from the various state but will make the citizen become helpless if the Governor becomes delusional<sup>52</sup>. Omotosho, however quickly discountenanced the foregoing and lamented that:

We have refused to thoroughly debate the issue with any degree of sincerity. What we have been doing is to resort to the same lazy excuses that the state Governors will misuse State Police for their social and political motives. But the question we should ask ourselves is that: is the Federal Government not misusing the Federal Police? What happened in the April 2003 elections in which the opposition accused the Federal Government of misusing the Police and other law enforcement agencies and rigged the elections? The Federal Government also used the same Police to harass, intimidate and even arrested some opposition figures in the last protest rally organized by the opposition groups in Abuja and Lagos with the view to expressing their dissatisfaction with the way government is being run by the present administration.<sup>53</sup>

It is pertinent to note that the fear of misuse of the police for suppressive purposes by governors may not be unconnected with past experience or the unpleasant memories of the First Republic. Here, Native Authority Police popularly referred to as YANDOKA where armed by

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<sup>52</sup> Channels Television Live Interview, 13 January, 2013

<sup>53</sup> Omotoshe A. O., *Police Under Democratic Government*, Omotaye Press, Lagos (2001) p.16

the then Northern People's Congress (NPC) to effectively suppress their opponent. The late Aminu Kanu led Northern Elements Progressive Union (NEPU) are testimonies. There was no difference in the Western Region as the excesses of the OLOPA led to the worst political turmoil in the region. The Wild West and operation wetie (wet your political enemies with patrol and set them on alight) are all examples. All these led to the abolition of regional Police by the central government.<sup>54</sup>

The inevitable conflict of duties between the Federal Police and the State Police and the inability to handle conflict situation between different forces or agencies is still another militating factor against state police. Even presently where all security agencies are still under the federal government, there are still growing tension between the police, the Civil Defense, the Army, Air force, Navy and other Para-Military bodies and the needed synergy to combat crime and fight security is lacking. The situation would worsen when state police is established as there would be conflict of duties and rivalry between the federal and state police. Even in the United States where State and Federal Police exist in mutually well coordinated arrangements, there are instances of role conflict which more often than not hampers investigation.<sup>55</sup> Nigeria will definitely become a case study of such conflicts if State is allowed.

Another envisaged problem is funding. Establishing a state police force is capital intensive and requires huge financial obligation in terms of payment of salaries, purchase of equipment and other operational cost. The Federal Government that has the financial muscle is even been accused of not adequately funding the police talk less of most State Government who entirely depend on Federal allocations to run their government. To add another burden to their already existing financial predicaments will only degenerate and expose the security situation to more

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<sup>54</sup> Muazu H. A., *Op. Cit.* p.78; Mohammed U., *Political Development in Nigeria*, Gaskiya Printing Press, Zaria (1999) p.12

<sup>55</sup> Southgate, A., *FBI and Challenges of Crime Detection*, Green Park Press, Philadelphia (1990) p.36

danger.<sup>56</sup> Unless and until the formation of state police is left optional to those states that have the economic viability to establish same, then the dream will continue to be a mere mirage.

The danger in creating state police in a heterogenous and multi ethnic country like Nigeria where citizen think first of their ethnic background would rather heighten division and sacrifice national integration at the altar of disunity. It will breed discontent among travelers and non indigenes from the hands of host state police officers who may become hostile to their perceived “strangers”. One would imagine for example, what the end result will be during the Shagamu communal clashes in Ogun state between the Yorubas and Hausa settlers if there is something like Ogun State Police Force<sup>57</sup>. There is no guaranty that indigenous policemen and women will operate better in their own communities by virtue of cultural prohibitions, primordial sentiments and values that may be repugnant to standard policing practices. Police officers who work in their communities in order to avoid the risk of embarrassment or blackmail, may likely compromise and do the bidding of their communities. Such compromises maybe refusal to arrest a suspect relation who commits a crime or refusal to conduct proper investigation if the suspect is arrested. At this juncture, the task of combating crime is trivialized and the very essence of establishing state police defeated.<sup>58</sup>

The argument for and against State Police remains relative and fluid and will continue unabated unless an objective view point is conceptually reached. According to professor Elagwu, everybody is aware of the poor performance of the Nigeria Police force that the police are poorly funded; that corruption is endemic in the system; that the federal government at some point abused and misuses the police (the Anambra State Saga where President Obasanjo ordered the withdrawal of Police Escort of Governor Chris Ngige). But will all these not replicate itself at the

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<sup>56</sup> Muazu, H. A, *Op Cit* p.79

<sup>57</sup> Osuagwu F., *Police and Society*, University Press, Ibadan (2002) p. 20

<sup>58</sup> *Ibid* p. 25

state level when state police is created? I respectfully and vehemently think so. After all, most institutions of various state governments are malfunctioning at the moment and adding another herculean burden of state police would only aggravate the already precarious situation.<sup>59</sup> What is therefore more cogent and objective in all these arguments is that more powers should be divested to state police commands in order to ensure efficiency and not that state police be established. This writer totally aligns against the creation of state police

In order to consolidate on its supremacy, the constitution established the Nigeria Police Council consisting of

- a. The President who shall be the chairman;
- b. The Governor of each state of the Federation;
- c. The Chairman of the Police Service Commission; and
- d. The Inspector General of Police.

It enumerates the functions of the police council as follows:

- a. The organization and administration of the Nigeria Police Force and all other matters relating to the use and operational control of the force or the appointment, disciplinary control and dismissal of the members of the force.
- b. The general supervision of the Nigeria Police Force
- c. Advising the President on the appointment of the Inspector General of Police.<sup>60</sup>

It should be noted also that the president shall consult with the Nigeria Police Council before appointing and or removing the Inspector General from office. This is a constitutional requirement to which the president must comply.<sup>61</sup>

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<sup>59</sup> Elaigwu, J. I., *“The Nigerian Constitution and the Challenges of Federation”* Nigerian Journal of Policy and Strategy, Vol. 14, No. 1, June 2004, p.130 at 163

<sup>60</sup> 3<sup>rd</sup> Schedule Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>61</sup> Section 216 (2) Ibid.

The constitution also established the Police Service Commission. It is one of the highest regulatory bodies of the Nigeria Police Force with wide ranging power. Its composition includes:

- a) Chairman; and
- b) Such number of other persons not less than seven but not more than nine as may be prescribed by an Act of the National Assembly.

The Commission reserves the constitutional power to do the following.

- a) Appoint persons to office (other than the Inspector General of Police in Nigeria Police Force; and
- b) Dismiss and exercise disciplinary control over persons holding any office refers to in subparagraph (a) of the paragraphs.<sup>62</sup>

Besides, the Police Service Commission (Establishment) Act<sup>63</sup> charge the commission with the responsibility of:

- a. appointing and promoting all official of NPF (other than the Inspector- General of Police, IGP);
- b. Dismissing and exercising disciplinary control over the same persons;
- c. Formulating policies and guidelines for the appointment, promotion, discipline and dismissal of officers of the NPF;
- d. Identifying factors inhibiting and undermining discipline in the NPF;
- e. Performing such other function as, in the opinion of the commission are required to ensure optimal efficiency in the NPF; and
- f. Carrying such other function as the president may from time to time direct.

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<sup>62</sup> 3<sup>rd</sup> Schedule Ibid

<sup>63</sup> Section 6, No. 15 of 2001

It cannot be said that the National Police Council and the Police service Commission have not done enough to justify their creation ab initio. In spite of the daunting challenges facing the Nigeria Police Force, the Commission has particularly carried out a number of important activities to include clearing the backlog of police officers who were due for promotion but were not promoted under the military era for more than ten years, readmission of officers who were dismissed during the military era in disregard to the due process of law, rehabilitation and construction of new police barracks across the country, general improvement in the welfare of officers and men of the force. However, one of the most controversial decisions of the Police Service Commission was the demotion of Malam Nuhu Ribadu from Assistant Inspector General of Police (AIG) to Deputy Commissioner of Police in November 2007 shortly after he was relieved of his appointment as Chairman of the Economic and Financial Crimes Commission. He was later dismissed from the Police Force alongside 139 officers and men for gross insubordination. Malam Ribadu subsequently challenged his demotion and dismissal at the Federal High Court and while the matter was still pending, the Police Service Commission announced his reinstatement as an AIG though retired.<sup>64</sup> in May 2010.

The controversy generated over this matter brings to the fore procedural requirement for the promotion and discipline of members of the Nigeria Police Force. Besides, it has put the independence and credibility of the commission to question. Is there a laid down procedure in the functions of the Commission or is it a matter of personal discretion? Why did the Commission rescind its decision to demote and eventually sack Ribadu? Was due process mechanism adopted? What happens to the other officers that were demoted alongside with him? Why retire Malam Ribadu when he has not reached the retirement age?<sup>65</sup> These and many more are the

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<sup>64</sup>www <http://pmnewsnigeria.com> (last visited on 2/11/13)

<sup>65</sup> [http://sundaytrust.com.ng/index.php/comment\\_debate](http://sundaytrust.com.ng/index.php/comment_debate) (last visited on 3/11/13)

questions being posed to which the Commission is yet to give a satisfactory answer. It is therefore hoped that the new Chairman of the Commission, Mr. Mike Okiro (appointed in June, 2013) will sanitize the system by ensuring that the constitutional and procedural requirements in carrying out the functions of the commission are religiously followed.

### 3.3.2 Legislative control

The legislative competence on the powers and duties of the Nigeria Police Force is vested in the National Assembly. The constitution provides:

- (a) *The Nigeria Police Force shall be organized and administered in accordance with such provision as may be prescribed by an Act of the national Assembly.*<sup>66</sup>
- (b) *The members of the Nigeria Police Force shall have such powers and duties as may be conferred upon them by law.*
- (c) *The National Assembly may make provisions for branches of the Nigeria Police Force forming part of the armed forces of the Federation or for the protection of harbours, waterways, railways and air fields.*

The National Assembly, in exercise of its legislative powers has enacted the Police Act which contains detailed provisions on how the police shall be organized and administered.<sup>67</sup> It also enacted the Police Service Commission (Establishment) Act which deals with management of the Commission, tenure of office, function of the Commission and funds of the Commission all in compliance with the first sub section of the constitution<sup>68</sup>

As per the second sub section, the pertinent question here is whether the phrase “as maybe conferred upon them by law” refers only to the laws enacted by the National Assembly alone or does it include laws made by other tiers of government? This question is further worsened in sub section three where the “National Assembly” is specifically mentioned. Going by the *expressio unius et exclusio alterius* (the inclusion of one thing is the exclusion of another)

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<sup>66</sup> Section 214 (2)(a), (b) and (c) op cit.

<sup>67</sup> Police Act, Cap. p.19, Laws of the Federation of Nigeria, 2004

<sup>68</sup> No.15 of 2001

cannon of interpretation, it can be interpreted that the mere mention of the phrase “National Assembly” excludes all other tiers of government from conferring powers on the Nigeria Police Force? It should however not be taken as saying that no house of Assembly of a state can make laws conferring powers and duties on members of the Nigeria Police Force. It is our view that a House of Assembly can competently confer enforcement of its laws on the police. Elaigwu concurs thus:

What any House of Assembly of a state cannot enact with respect to police and other government security services is specific law on police and other government security services. The House of Assembly of a state in the process of enacting law in respect of matters within its legislative competence can make provision conferring powers and duties on police as incidental or supplementary to such matter. It is within this perspective that powers and duties conferred on police under the Criminal Procedure Law and Criminal Procedure Code of various southern and Northern states of Nigeria can be located...<sup>69</sup>

What this therefore implies is that the National Assembly to the exclusion of any other legislative body can enact laws on the police, while the Houses of Assembly can confer powers and duties on the police in respect of laws within their legislative competence and no more. Isn't this a constitutional lacuna? We vehemently think it is.

### **3.3.3 Executive control**

The Executive control of the Nigeria Police Force is exercise by the President of the Federal Republic of Nigeria who constitutionally appoints the Inspector- General of Police Force from among serving members of the Nigeria Police Force on the advice of the Nigeria Police Council. Apart from the advice, the President shall consult the Nigeria Police Council before making any such appointment to the office of the Inspector- General of Police or removing him from office. The Commissioner of Police on the other hand shall be appointed by the Police

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<sup>69</sup> Elaigwu E. A., *The Nigeria Police Force: Democracy and Criminal Justice*, Elaigwu Apeh Law Publication, Benin (2006) p.2

Service Commission.<sup>70</sup> It is further provided that the President or such other minister of the Government of the Federation as he may authorize in that behalf may give to the Inspector General of Police such lawful directions with respect to the maintenance and securing of public safety and public order as he may consider necessary, and the Inspector General of police shall comply with the directions or cause them to be complied with. In the same vein, the Governor of a state or such Commissioner of the Government of the state as he may authorize in that behalf, may give to the Commissioner of Police of that state such lawful direction with respect to the maintenance and securing of public safety and public order within the state as he may consider necessary, and the commissioner of police shall comply with those directions or caused them to be complied with provided that before carrying out any such direction, the Commissioner of Police may request that the matter be referred to the President or such Minister of the Government of the federation as may be authorized in that behalf by the President for his directions.<sup>71</sup>

The above notwithstanding, we are genuinely worried by the enormous power of the President on the appointment and removal of the Inspector General of Police. Apart from the laid down provision that the Inspector General shall be appointed from among serving members of the force, no other special criteria is contemplated. Invariably, the President can subjectively appoint any of his cronies to the office even if the person does not have the requisite capacity to handle such a sensitive office. It is not even certain whether the caveat placed on Mr. President to seek the advice and consultation of the Nigeria Police council on the appointment and removal of the Inspector General of Police is been followed. Besides, the lawful directions with respect to the maintenance and security of public order as he may consider necessary which may

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<sup>70</sup> Section 215 (a) (b) and 216(2), Constitution op. cit.

<sup>71</sup> Section 215(3) (4) Ibid

be given to the Inspector General by the President are nebulous and vague. This is because ‘lawful directions as he considers necessary’ have no clear cut procedural ascertainment as everything is left to the personal whims and caprices of the President who may become abusive of such enormous powers. In the words of Elaigwu<sup>72</sup> *“the police are a cardinal institution in ensuring free and fair elections. No man can be fair judge in his own cause. A President, who only comes into office through election, cannot superintend the police as to ensure political neutrality and impartiality in law enforcement...”*

Akin to this is the provision relating to the powers of state Governors who have been made “toothless” chief security officers of their various states. Governors are empowered to give lawful directions with respect to the maintenance and securing of public safety and public order within the state provided that the Commissioner of Police before carrying out such directions must refer to the President for direction. To say the least, this negates the principle of true federalism and further exposes the inefficiency inherent in our federal system. No wonder crises that would have been brought under control by Governors get escalated because approval of the President is to be sort before any action can be taken in any part of the Federation. More often than not, Commissioners of Police do not receive “such lawful direction with respect to the maintenance and securing of public safety and public order within the state” from the Governor. Rather, their allegiance is to the Inspector General of Police and until he so directs, nothing different happens.

There are increasing agitations that the powers of the president as it affects the police should be whittle down even though the police are a federal force. Of particular mention is the power of appointment and removal of the Inspector General of Police, appointment of members

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<sup>72</sup> Elaigwu E. A., *op cit* p.22

of the Police Service Commission and his chairmanship of the Nigeria Police Council. It is the view of Elaigwu<sup>73</sup> and we agree with him, that the Inspector General of Police and members of the Police Service Commission should be appointed by the chief Justice of Nigeria and that the Chairman of the Nigeria Police Council should equally be the chief Justice of Nigeria who in all these shall rely on the advice of a new and expanded Nigeria Police Council. According to him, all these is to bring in the much desired professionalism in police work and ensure that institutional procedures are followed devoid of any political appendage.

The executive powers of the President have extended to the creation of the Ministry of Police Affairs. It was first created in 1999 and then merged with the Ministry of Interior in 2007. It was later demerge to become an independent ministry of its own in 2008. Generally, it is charged with the responsibility of overseeing the affairs of the police in Nigeria.<sup>74</sup> Ironically, the Ministry has severally come under serious criticism as being a ‘drained pipe’ on the nation’s resources. It is believed that the Nigeria Police Council and more specifically the Police Service Commission are enough bodies to handle police related issues and not by creating another ministry for the police whose only function is to award contracts and duplicate the duties already assigned to the Nigeria Police Council and the Police Service Commission by the constitution. This is why the Presidential Committee on the re-organization of the Nigeria Police Force in its report submitted to the President in January 2013, recommended that the Ministry of Police Affairs should be scrapped for contributing nothing to the development of the police and for being a ‘drained pipe’ to the nation.<sup>75</sup> May we therefore add our voice and vehemently support the need for the scrapping of the Ministry of Police Affairs without much ado.

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<sup>73</sup> Elaigwu E. A., *op. cit.* P. 20 - 22

<sup>74</sup> <http://www.policeaffairs.gov.ng/index.php/extension/brief.history> (last visited on 17/03/14 )

<sup>75</sup> [http://tribune.com.ng/index.php/politics/46280ibetween\\_osayande\\_and\\_police\\_affairs\\_minister...4/3/2013](http://tribune.com.ng/index.php/politics/46280ibetween_osayande_and_police_affairs_minister...4/3/2013) (lasted visited on 4/3/13)

### 3.3.4 Operational control

In order to sustain the federal nature of the force, the Nigeria Police Force was structured operationally to be under the control of the Inspector General of Police. The constitution clearly states:

The Nigeria Police Force shall be under the command of the Inspector General of Police and any contingent of the Nigeria Police Force stationed in a state shall, subject to the authority of the Inspector General of Police, be under the command of the Commissioner of Police of that state.<sup>76</sup>

The Inspector General of Police who is an appointee of the President is directly answerable to the President in its entire ramification. All orders, directives and instructions as to the operations of the force flows directly from his office located in the Force Headquarters Abuja. There are six Deputy Inspectors General (DIG) in charge of Administration and Finance ('A' Department); Operations ('B' Department). Logistics and Suppliers ('C' Department), Training and General Policy on Manpower Development ('E' Department); and Research and Planning ('F' Department).<sup>77</sup>

Apart from being the Head of a Department, a Deputy Inspector- General of Police is the second in command of the force and can act for and on behalf of the Inspector General of Police in his absence from Force Headquarter. The principle guiding such acting duties are as follows.

- a) All matters involving any change in force policy shall be held in abeyance pending the return of the Inspector General or if the matter is urgent, referred directly to the Inspector General for his instruction.

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<sup>76</sup> Section 215 (2), Constitution of the Federal Republic of Nigeria (as amended)

<sup>77</sup> *Annual Report of Nigeria Police Force*, F. Department, Nigeria Police Printing Press, FHQ Annex, Ikeja Lagos (2010) p.1-11

- b) All matters of importance dealt with by the Deputy Inspector General and or the Assistant Inspector General must be referred to the Inspector General on his return.<sup>78</sup>

The force is equally divided into zones. Each zone consists of a combination of between two – four states, and they are all under the command of Assistant Inspector General of Police (AIGs) who are directly answerable to the Inspector General of Police.

In each of the thirty six states and the Federal Capital Territory (FCT), Abuja, there is a police command headed by a Commissioner of Police (CP). The Commissioner of Police has a Deputy Commissioner (DC) to assist him in running the affairs of the Command. Directly under the Commissioner is an Area Commander in charge of all the Divisional Police Officers (DPOs), who also have the station officers and police post under them.<sup>79</sup> Currently, the Nigerian Police Force is divided into 12 Zonal Commands, 37 State Commands, 123 Area Commands, 1,115 Police Divisions, 5,515 Police Stations and 5,000 Police Post across the country.<sup>80</sup>

At this juncture, it is our strong view that the operational structure of the Nigeria Police is too rigid and does not allow for flexibility. For example, the delegation of power to the Deputy Inspector General to act on behalf of the Inspector General of Police in his absence is in order but the guidelines provided which is to the effect that all matters involving any change in force policy and all matters of importance dealt with shall be held in abeyance until his return or be referred for his instruction respectively makes the whole structure cumbersome and rigid. With respect to the good intentions of the frames of the Police Act, we believe the Nigeria Police Force is far bigger than a single individual for policy matters to be kept in abeyance until the return of the Inspector General or that important matters dealt with must be referred to him for

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<sup>78</sup> Section 7(1) and (2) Police Act, Cap., p.19, LFN, 2004

<sup>79</sup> Alemika E. O., and Chuckwuma, I. C., *Police Community Violence in Nigeria*, Lagos: CLEEN and NHRC (2000) p.17

<sup>80</sup> <http://seunfakze.wordpress.com/tag/police> (last visited on 12/02/13)

his instructions. This is because democratic policing theories have changed from individualism to building institutions where decisions are taken collectively based on laid down procedural frame works and not hinged on the whims and caprices of a single individual. In the words of Edwards, ‘individualism has given way to collectivism in the modern police world’<sup>81</sup> It is also our contention that the overwhelming authority bestowed on the Inspector General of Police wherein any contingent of the Nigeria Police Force stationed in a state is subject to his authority should be reduce. This reservation is founded on the need for the Commissioner of Police to Act in situation of extreme emergencies without necessarily having recourse to the consent and approval of the Inspector General of Police.

### **3. 4 Challenges of Policing Democratic Nigeria**

The fallout of policing in Nigeria since 1999 clearly shows that there are challenges and obstacles militating against effective police performance. These challenges as identified by Alemika, include: the influence of the autocratic philosophy left by colonial administration with tendencies of incivility, brutality, emphasis on order rather than security and safety of citizens, inclement political environment and poor economic management and performance.<sup>82</sup>

For Adekunle, the challenges of policing in Nigeria can be categorized as material inadequacies, human problems (quality of personnel in the force) and other factors such as absence of an overall crime prevention/control policy, body and planning; political interference;

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<sup>81</sup> Edwards, C., *Changing Policing Theories for 21<sup>st</sup> Century Societies*, Federation Press, Australia (1998) p.126

<sup>82</sup> Alnuka, E. O., “*Law Enforcement and Order Maintenance in a Democratic Transitional Society: The Challenges of the Nigeria Police*” The Nigeria Police and Civil Society S.G. Ehindero, et al (eds.) Jos Nigeria. Police and Civil Society, 143 – 164.

materialistic, greedy, corruption and indiscipline socio-economic environment and the inherited colonial legal system.<sup>83</sup>

**Lack of Proper resource Management:** The colonial right and heritage of the Nigeria police has a greater influence in the resource management capability of the force in term of selection, training and orientation of a majority of policemen. This practice has greatly impacted negatively on police efficiency. This management inadequacies according to Balogun<sup>84</sup> are both in quantity and in quality. The quantity is in terms of the number of personnel required and the quality in terms of those qualified to do the job. Alanika<sup>85</sup> also posits that poor crime and operational information management including inaccurate recording and collation of information, inadequate analysis and frequent publication of statistics affect the performance of the police and these are lacking in Nigeria.

**Inadequate Funding:** The police in Nigeria are generally underfunded. Okiro captures it all:

“The tendency among Nigerian is to blame the Nigeria Police Force as an institution for its shortcomings. The truth is that the situation should be attributed to the inadequate provisions of funds necessary to finance the operation of the force. The funds reaching the Nigeria Police have hardly been enough to ensure optimal effectiveness and efficiency”<sup>86</sup>.

**Poor remuneration, accommodation and other welfare packages:** The Nigeria Police has severally been described as the worst paid in the world. The low salaries coupled with poor retirement and welfare packages such as health and housing has contributed to making them one of the most corrupt groups in the country. Parry Osayande, former Chairman of Police Service

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<sup>83</sup> Adekunle, F., *Overview of Policing in Nigeria: Problems and Suggestions in Alenuka E. O and CHukwuma, I C. (eds.) Crime and Policing in Nigeria: Challenges and options.* Lagos Network on Police Reform in Nigeria (2004)

<sup>84</sup> Balogun, A. T., *Crime Control Strategy “8 – Point Strategies of the Nigeria Police force Programme Action, to Serve and Protect with Integrity* Yalian Press Ltd., Minna (2002) p.48

<sup>85</sup> Alanika, E. E. O; *Police Community Relation in Nigeria: What went wrong?*” Paper Presented at the Seminar on Role and Function of the Police in a Post-Military Eran, Organized by the Centre for Law Enforcement Education in Nigeria (CLEEN) and National Human Rights Commission Abuja (1999)

<sup>86</sup> Okiro, M. O., *Policing Nigeria in a Democracy, Bharmus Ventures Nigeria Ltd., Port-Harcourt (2009) p.293*

Commission admitted that policemen in Nigeria were the worst paid in the whole of the West Africa sub-region. According to him “*we are going to do a major overhaul; if we may use medical parlance, a complete dialysis of the force. Then, we will now take their welfare into consideration. They are underpaid, the worst paid in West Africa, ...*”<sup>87</sup>

Besides, accommodation for officers and men has also been immense challenge. The near shortage of decent accommodation has in no small way showed down easy mobilization of personnel in time of emergency for operational duties. With no option available officers and men are forced to line in the same environment and interact with prospective armed bandits and other criminal cohorts resulting to endangering their lives, loss of arms and ammunition.<sup>88</sup>

**Lack of operation equipment:** the Nigeria Police Force has inadequate equipment and therefore cannot perform optionally. This fact is re-echoed by former Inspector general of Police Service Commission, Mike Okiro thus:

The Nigeria Police Force lacks adequate communication gadgets, vehicle, computers and patrol boats. Though things have improved in the area of vehicles, a lot more is needed especially in the areas of fueling and maintenance. The police still need the services of helicopters, forensic laboratories, dogs, horses and so on, which are currently grossly inadequate. The present stocks of communication equipment are grossly inadequate and incapable of ensuring the effective maintenance of law and order in a vast nation like Nigeria.<sup>89</sup>

**Lack of Integrity:** Integrity is an essential element of public service delivery. It drives objectivity and isolate mediocrity and kleptocracy. The Nigeria Police is however still lacking in this respect. Most of the personnel are inconsistent bias, unreliable, brutish, cunning, and

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<sup>87</sup> <https://www.bellanaija.com/2012/05/22> (last visited on 19/08/14)

<sup>88</sup> Okiro p. 294 – 295

<sup>89</sup> Ibid p. 295

undemocratic in their approach to police work. Ikuomola enumerate it clear to include discourtesy, nonchalant attitude to reports of citizen complaints, dishonesty, abuse or misused of the authority to arrest, detain or use force etc.<sup>90</sup>

**Corruption Challenges:** “corruption debases human dignity, encourages miscarriage of justice, threatens the integrity of police institutions, weakens public confidence in the institution and endangers national security.<sup>91</sup> Suffice it therefore to say that the erosion of integrity and other virtue from public service in Nigeria has catapulted into massive corruption in the Nigeria Police Force. In the W\words of Dambazau:<sup>92</sup>

A major contemporary issue of regular discussion in relation to policing in Nigeria is the extent of corruption. In terms of their attitude and pattern of behavior as it affect either the constable on the road block, or the officer instigating crime or performing routine law enforcement duties, the police are generally believed to be corrupt and this is a major challenge.

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<sup>90</sup> Ikuomola, A. D., *Intelligence Information and Policing in Nigeria : Issue and Way forward*, The Journal of International Social research, Vol. 4 Issue 17 p.480

<sup>91</sup> Owohunwa, I., *Anatomy of Police Corruption* in: Arase E. A., and Iwuofor, I.P.O (eds) op cit p. 270

<sup>92</sup> Dambazau, A.B., op cit p. 256

## **APPENDAGE**

### **STRUCTURAL RANKING OF THE NPF**

The Inspector-General of Police

The Deputy Inspector-General of Police

The Assistant Inspector-General of police

The Commissioner of Police

The Deputy Commissioner of Police

The Assistant Commissioner of Police

The Chief Superintendent of Police

The Superintendent of Police

The Deputy Superintendent of Police

The Assistant Superintendent of Police

The Inspector of Police

Sergeant Major

Sergeant

Corporal

### **3.5 Judicial Attitude to Policing in Nigeria**

The judiciary is the arm of government charged with the responsibility of law interpretation and adjudicating disputes between persons or between government and any person in Nigeria. Judicial power is exercisable through the courts and the various courts are empowered to determine all proceedings, be they criminal or civil involving or relating to any penalty, forfeiture, punishment or other liability they may accrue against or in favour of a person or body of persons.<sup>93</sup>

In the administration of justice, the relationship between the judiciary and the police is essential if the ends of justice must be ascertained and accomplished. This is because the fundamental task of the Police in the prevention and detection of any crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws is geared towards securing justice in order to sustain the rule of law. This cannot however be achieved without the judicial system. The process may begin with a complainant at the police station to a police officer whose duty is to hear and investigate such complaint with a view to deciding whether the person against whom the complaint is laid should be summoned or arrested. On the other hand, it may start from the street when a report is made to a policeman on patrol or an arrest is made on reasonable suspicion that a crime has been committed. The arrest process, the search and seizure of natural evidence, detention and granting of bail as well as the course of investigation are all part of the pre-trial exercise by the police. The judiciary handles the actual trial and controls the decision, actions and inactions and/or omissions of the police before and during trial. The output of police operations in handling offenders and suspects largely determines the judicial attitude towards policing. Where the police act within the rules of engagements allowed by law, the judiciary and the courts, will always come to the aid of the

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<sup>93</sup> Chapter VII, Constitution of the federal Republic of Nigeria, 1999 (as amended)

police. Where on the other hand the police acts in contravention of the rule of law particularly as it relates to the fundamental rights of citizens the courts are more often ready to cut off those excesses. As has been right observed:

Judges lean in favour of the protection of the rights of citizens and will not support or condone unwanted arrest. The law assumes that the judge, who is looked upon as the repository of justice will act properly in protection of the rights of the citizenry and will not oppress or harass the citizen...<sup>94</sup>

One of such instances is the issuance of the Writ of Habeas Corpus. The Latin term habeas corpus means “you have the body”, and it is a writ issued against captors or custodians of a person and commanding him to produce the detainee so that the court will examine the legality of the detention and set him free if the detention is not legal or done according to the enabling law.<sup>95</sup> A habeas corpus is a writ for releasing a person from unlawful detention. The purpose of the writ is not to determine whether a detainee is guilty or innocent. The only question it presents itself for determination is whether the detainee is been detained under the due process of law. It is basically issued to challenge the detention of a person in official custody or even in private hands, for the captors to show cause why the prisoner should not be release.

Habeas Corpus is a common law doctrine and in the words of Lord Wright,<sup>96</sup> “*the Common Law adapted the old writ habeas corpus ad suscipiendum et recipiendum to the purpose of securing the subject’s right of immunity from imprisonment save by due process of law.*”

It is the most powerful and efficacious writ known to law for effecting release from all manner of illegal confinement. In R. V. Secretary of State for Home Affairs, Exparte O’Brien, Lord Birkenhead said:

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<sup>94</sup> Ikonne vs. C.O.P & Ors (1986) 4 NWLR (pt 36) 473 at 495

<sup>95</sup> Ojo: “*Some Views on the Scope of Habeas Corpus in Nigeria*” I Nig Journal of Contemporary Law (1970) p.33

<sup>96</sup> R. V. Governor Brixton Prison Ex Parte Green (1981)3 NCLR I SC

We are dealing with a writ antecedent to statute, and throwing its roots deep into the genius of our common law. It is perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement. It is of immemorial antiquity, an instance of its use occurring in the thirty-third year of Edward I. It has through the ages been jealously maintained by courts of law as a check upon the illegal usurpation of power by the executive of the cost of the lieg<sup>97</sup>

Habeas Corpus is an extra-ordinary remedy, which is issued upon cause shown in cases where the ordinary remedies are inapplicable or inadequate. In *R. V. Governor of Brixton Prison Ex parte Sarno*,<sup>98</sup> it was held that in a matter involving the liberty of the subject, the action of the crown, or its ministers or officials is subject to the supervision of the judges on habeas corpus.

Nigerian Courts have also invoked the habeas corpus principle in similar situation and circumstances. In *AGBAJE V. C.O.P*<sup>99</sup> it was held that where a court is satisfied that a detention is prima facie illegal, the custodian of the prisoner will be ordered to produce the prisoner and to justify the detention, and if he cannot do so under the purported enabling law, the person will be released. In the words of Mustapher JCA, in *GANI FAWEHINMI vs. ABACHA* “where the freedom of an individual is curtailed or abridged, it must be shown that such acts are brought within the confines of the law.”<sup>100</sup> It was concluded in *ABIOLA vs. ABACHA*<sup>101</sup> that the court is always prepared and will be quick to give relief against any improper use of power or any abuse of power by any member of the executive, the police or any person which results in an unlawful detention of a citizen.

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<sup>97</sup> (1923) AC 603 at 609

<sup>98</sup> (1916) 2 KB 742

<sup>99</sup> (1969) 1 NMLR 137 – See also *Eyo V. Chief of Staff, Arm Force* (1970) 2 ALL NLR 169

<sup>100</sup> (1996) 9 NWLR pt. 475, 710 at 742 CA

<sup>101</sup> (1998) HRLRA, Vol. 1, 453

The court have recognized the primary role of the police in a democratic set up, maintenance of public peace and order as required by law. It has however frown at the undemocratic manner with which the military is being used to carry out basic policing duties or being back up with the police in a non war situation as this does not depict the true characteristics of democratic policing. In **Alhaji Yusuf & Another vs. Chief Obasanjo & ORS**, Salami JCA (as he then was) stated:

It is up to the police to protect our nascent democracy and not the military otherwise the democracy might be willingly or unwillingly militarized. This is not what the citizenry bargained for after wrestling power from the military 1999. Conscious step or steps should be taken to civilianize the polity and thereby ensure survival and sustenance of democracy.<sup>102</sup>

Apart from the issue of illegal arrest and detentions, the courts have variously condemn the action of the police arresting friends or relatives of suspect on the pretext that he (the suspect) cannot be found or is on the run. This practice was succinctly condemned by the Court of Appeal in **A. C. B. V. Okonkwo**, per Niki Tobi JCA (as he then was):

I know of no law which authorizes the police to arrest a mother for an offence committed or purportedly committed by the son. Criminal responsibility is personal and cannot be transferred. While I am aware of cases of vicarious liability in criminal law, the instant case is certainly not one. A police officer who arrests “A” for an offence committed by “B” should realize that he has acted against the law. Such an officer in addition to liability in civil action must be punish by the police authorities... in fact, it bothers us so much for the police operating the laws of arrest after three decades of Nigeria’s independence to arrest and detained innocent citizens of this country for offences committed by their relations. That is a most uncivilized conduct and one that anybody with a democratic mind should thoroughly detest and condemn. I detest and condemned the uncouth practice.<sup>103</sup>

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<sup>102</sup> (2006) ALL FWLR (Pt. 294) 387 @ 451 CA

<sup>103</sup> (1997) 1 NWLR (pt. 480) 194

### 3.6 Civil Society Groups and Policing in Nigeria

What constitute civil society generally? The World Bank adopted a definition of civil society developed by a number of leading research centres as follows:

The Term civil society refers to a wide array of nongovernmental and not-for-profit organizations that have a presence in public life, expressing the interest and values of their members or others, based on ethical, cultural, political, scientific, religions or philanthropic considerations: Civil society organizations (CSOs) therefore refer to a wide of array of organizations: community groups, charitable organizations, faith-based organizations, professional associations and foundations<sup>104</sup>.

Nigerian Civil Society organizations or groups have come a long way in the democratization project of the country. Examples of some of them include:

Campaign for Democracy (CD)

Civil Liberties Organizations (CLO)

Committee for the Defence of Human Rights (CDHR)

Transition Monitoring Group (TMG)

Centre for Democracy and Development (CDD)

Centre for Constitutional Governance (CCG)

Constitutional Right Project (CRP)

Human Rights Information Network (HuRiNet)

Justice, Development and Peace Commission/Cantas (JDPC)

African Society Network etc.<sup>105</sup>

In collaboration with other professional bodies like the Nigerian Bar Association (NBA), Nigeria Medical Association (NMA), Nigeria Union of Journalist, Nigeria Labour Congress and

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<sup>104</sup> <http://go.worldbank.org/4CE7WO4KO> (last visited on 2/3/14)

<sup>105</sup> <http://www.commonwealth-of-nations.org/Nigeria/Organizations/Nat...> (last visited on 2/3/14)

Trade Union Congress, civil society groups have played vital roles in the consolidation of democracy in Nigeria. Among numerous other contributions, they have often condemned and protest against the illegality of the Nigerian Police at all times occasioned by arbitrary arrest, extra judicial killings, excessive use of force and the likes. The most recent of these protests was the subsidy removal strike action/protest in January 2012 wherein the Divisional Police Officer (DPO) in charge of Pen Cinema shot and killed one of the protesters-Ademola Aderitan. By virtue of the organized public outcry that followed, the Lagos State Commissioner of Police, Mr. Yakubu Alkali ordered the immediate arrest of the Divisional Police Officer (Mr. Segun Olubunmi) and personally handed him over to the Criminal Investigation Department for further investigation and possible prosecution.<sup>106</sup>

Apart from organizing rallies, campaigns and protest against various forms of violations perpetrated by the police, civil society groups have not only partner with the police to ensure internal peace and security but have also contributed immensely in the reform agenda of the federal Government of Nigeria aimed at improving a bastardized Nigerian Police Force. For instance on assumption of office, President Goodluck Jonathan, conscious of the deplorable state of the Nigeria police and the practice of abandoning police reform panels report in the past, came up with his own panel on police reform headed by Retired DIG Parry Osayande. Worried, however, that the President Jonathan Police Panel's report may go the way of his forebears, the Civil Society Organizations in the country came up with a parallel panel on police reform acting under the umbrella of the Network on Police reform in Nigeria, (NOPRIN) and coordinated by the CLEEN Foundation.

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<sup>106</sup><http://world.myjoyonline.com/pages/nigeria/201201/79564.php> (last visited 5/4/14)  
[http://jideojong.blogspot.com/2011/08/civil\\_society\\_and\\_democratic.html](http://jideojong.blogspot.com/2011/08/civil_society_and_democratic.html) (last visited on 5/4/14)

Like the federal government panel, the CSO came up with a final report which they submitted to the federal government in October 2012, trailing the submission of the report of the Osayande Panel. While presenting the report to the federal government, it affirmed that the CSO report on Police reform was meant to complement the report of the federal government panel and ensure that no stone was left unturned in the country's drive to transform the police. According to the chairman of the panel, Mr. Ayo Obe:

.... Being of the view that the task of reforming the police force is too important to be left to government alone, key non-governmental organization working on police reform issues in Nigeria decided to engage the process in a creative and proactive way through the establishment of parallel but complementary civil society panel on police reform in Nigeria, using the same terms of reference drawn by the federal government.

Just like the Osayande Presidential Panel Report, the CSO Panel Report came with far reaching reform recommendations amongst whom are:

(a) The inadequacy of the mission statement of Nigeria Police contained in the Police Act. It recommended that section 4 which has the police mission statement should be modified to reflect language that emphasizes that the police are an impartial service organization that respects human rights and works in partnership with the community.

(b) the panel identified lack of operational autonomy as one of the major challenges faced by the police, noting that this has led to the politicization and lack of professionalism in the police, hence they called for an amendment that would restrict the power of the president or its ministers in charge of police to policy directives and not operational directives.

(c) On the structure of the police, the SCO panel recommended the decentralization of the police. It proffered that power and resources should be devolved to the Zonal, States, Area and Divisional Commands for prompt response.<sup>107</sup>

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<sup>107</sup> [http://www.leadership.ng/nga/articles/38896/2012/11/01/xraying\\_civil\\_society\\_report\\_poli...](http://www.leadership.ng/nga/articles/38896/2012/11/01/xraying_civil_society_report_poli...) (7/4/14)

## CHAPTER FOUR

### ENFORCEMENT, VIOLATIONS AND CHALLENGES OF HUMAN RIGHTS IN NIGERIA

#### 4.1 Policing and Human Rights in Nigeria

In nearly all democratic countries, policing and the protection of human rights are very essential. Human Rights themselves are natural entitlements which every person as a human being possesses. From a historical perspective, the Magna Carta was the first important text on human rights. Its sixty-three articles clearly defined reciprocal rights of the sovereign and the nobles but strictly speaking, it was a catalogue of privileges rather than a declaration of rights, and its spirit inspired future generations. It provided that “no free man shall be taken, or imprisoned, or outlawed, or banished or in any way injured... except by the legal judgment of his peers or by the law of the land”<sup>1</sup>

The Habeas Corpus Act of 1679 is an essential part of English constitutional history and the procedure it labeled is still effective in England and all other countries it colonized. “Habeas Corpus” is a Latin expression meaning “you must have the body” and applies to anyone who is holding a person under arrest to produce him before a competent court. Also, the American Declaration of the Rights of Man and of the Citizen states that “no man can be indicted, arrested or held in custody except for offences legally defined and according to specific procedures”. It further states that “everyone must be presumed innocent until he is pronounced guilty. If his arrest and detention are thought necessary, no more force may be used than is thought necessary to secure his person. And, finally, the declaration holds that “the guarantee of the rights of man

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<sup>1</sup> Article 39

and of the citizen requires a police force, a force, therefore, which is instituted for the benefit of all and not for the particular use of those to whom it is instructed”<sup>2</sup>.

The Universal Declaration of Human Rights was unanimously adopted by the General Assembly of the United Nations in 1948. It expressly provides that “no one shall be subjected to arbitrary arrest” and that “everyone charged with a penal offence must prove his guilt according to law”<sup>3</sup>. The Universal Declaration of Human Rights is no more than an ideological and moral statement of principle and has no mandatory force. It is not a legally binding instrument and does not commit even those states who voted in its favour to abide by its provisions.<sup>4</sup> In addition, the United Nations Commission of Human Rights produced bill on civil and political rights and the other on economic social and cultural rights. The Bill on civil and political rights states in one of its article that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”

There are certain agreements drawn up specifically by a group of states linked by geographic proximity, cultural affinity or ideological systems designed to safeguard human rights. These regional conventions implement more precisely certain principles of the International Declaration of Human Rights. These include the European Convention for the protection of Human Rights and Fundamental Liberty, signed on November 4, 1950 in Rome, the American Convention on Human Rights and the African Charter on Human and Peoples Rights. The Conventions are intended to provide an international guarantee on the protection of human rights and some of these are the right to freedom of thought conscience and religion, right

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<sup>2</sup> Article 7, 9 and 11

<sup>3</sup> Article 9 and 11

<sup>4</sup> Walpen L., *The Impact of Human Rights on Identity Checks by the Police Swiss Perspective* In: Das, K. D., and Marenin O., *Challenges of Policing Democracy*

to freedom, the prohibition of torture, Inhuman and degrading treatment, slavery, servitude and force labour etc.<sup>5</sup>

Governments are under obligation to ensure that the rights and liberties of all those under their jurisdiction are protected. This has compelled some states to incorporate the agreement into their national or domestic laws, thus enabling every citizen whose right has been infringed to seek redress in a competent court of law. A clear example is the African Charter on Human and Peoples Right which Nigeria not only ratified but incorporated into her domestic laws.<sup>6</sup>

Besides, most other states have enshrined in their Constitution Human Rights provisions. In Nigeria for example, human rights are classified as Fundamental Rights under Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Accordingly, fundamental rights are part of human rights. They are those parts of human rights that are enshrined in the constitution and operate within the sphere of domestic law. In the words of Per Oputa Chukwudifu JSC:<sup>7</sup>

Not every civil or legal right is a Fundamental Right. The idea and concept of Fundamental Rights both derive from the premise of the inalienable rights of man-Life, Liberty and the Pursuit of Happiness. Emerging nations with written constitutions have enshrined in such constitutions some of these basic human rights and called them Fundamental Rights or Fundamental Human Rights. Each right that is thus considered fundamental is clearly spelt out.

In **Uzoukwo V. Ezeonu II**<sup>8</sup> it is reiterated thus:

What is entrenched in chapter IV of the constitution is Fundamental Rights. This has always been the correct title of these Rights from 24<sup>th</sup> October, 1959 when the Rights were first entrenched in the constitution of this country. Due to the

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<sup>5</sup> Ibid

<sup>6</sup> African Charter on Human and Peoples Rights, Cap. 10 Laws of the Federation of Nigeria 2004

<sup>7</sup> Ransome-Kuti and Ors vs. Attorney General of the Federation and Ors (1985) 2 NWLR (pt. 6) 211 @ 257

<sup>8</sup> (1991) 6 NWLR (Pt 20) 719 @ 760

development of constitutional law in this field distinct differences has emerged between 'Fundamental Rights and Human Rights'. It may be recalled that human rights were derived from and out of the wider concept of natural rights. They are rights which every civilized society must accept as belonging to each person as human being. These were termed human rights. When the United Nations made its declaration, it was in respect of 'Human Rights' as it was envisaged that certain rights belong to all human beings irrespective of citizenship, race, religion and so on. This has now formed part of International law and fundamental rights remain in the realm of domestic law. They are fundamental because they have been guaranteed by the fundamental law of the country that is by the constitution.

At this juncture, it is important to sequentially examine the fundamental right provision as provided in the constitution. It is also important to note that these fundamental rights are limitations on the exercise of legislative, executive and judicial powers of government and are all enforceable against the Government of the Federal Republic of Nigeria.<sup>9</sup>

#### **4.1.1 The Right to Life**

The right to life is guaranteed by the national constitution of almost all democratic countries of the world including Nigeria. It is the right upon which all other rights are founded by virtue of its sacred nature. Professor Nwabueze admirably pointed out that:

Human life is, indisputably entitled to be protected by the state because of its sacredness; it is sacred because it is God-given. It is completely beyond our power as human beings to bestow. Only God can bestow. It is sacred...it combines the dignity of the physical body and the human soul, the right to life is thus the ultimate of human rights<sup>10</sup>

This right however is not absolute to the extent that a person can be deprived of his life in execution of a sentence passed by a court in respect of a criminal offence of which he has been found guilty. Also, a person shall both be regarded as having been deprived of his life if he dies

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<sup>9</sup> Senate of the National Assembly & Ors V. Momoh (1982) 2 FNR 301 at 343

<sup>10</sup> Nwabueze, B. O., *Ideals and Facts in Constitutional Making*, Spectrum Books, Ibadan (1993) p. 52

as a result of the use, to such extent and in circumstances as are permitted by law of such force as is reasonably necessary for the defense of any person from unlawful violence or the defense of property, in order to effect a lawful arrest or prevent escape of a person lawfully detained, and for the purpose of suppressing a riot, insurrection or mutiny.<sup>11</sup>

#### **4.1.2 Right to Dignity of Human Person**

The dignity of the human person is guaranteed and no person shall be subjected to torture or to inhuman or degrading treatment. Also no person shall be held in slavery or servitude and no person shall be required to perform force or compulsory labour.<sup>12</sup>

What amount to inhuman and degrading treatment came under consideration in **Alhaji Abibatu Mogaja and others vs. Board Of Customs and Excise & Ors** where Market Women instituted an action against the Board of Customs in July 1982. Some women were maltreated by officials of customs & excise with the aid of the Police and Soldiers who used guns, horsewhips and tear gas to raid their shops, seized and detained their goods suspected to be prohibited. In the words of the Court:

I would make an order for a declaration that the action by customs men aided by police officers and soldiers with the use of guns, the firing of the same, the use of horsewhips and tear-gas for the apprehension, seizing and detention of goods suspected to be prohibited as was meted to first, second, third, fourth, fifth, sixth, seventh and eight plaintiffs witness and the removal of goods without due investigation violates the rights of the plaintiffs, under the constitution of the Federal Republic of Nigeria not to be subjected to any inhuman or degrading treatment.

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<sup>11</sup> Section 33 Constitution of the Federal Republic of Nigeria, 1999 (as amended)

<sup>12</sup> Section 34 Ibid

### 4.1.3 Right to Personal Liberty

The personal liberty of any person shall not be deprived save in the following cases and in accordance with the procedure permitted by law.<sup>13</sup>

What then is liberty?

Liberty denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge to marry, establish a home and bring up children to worship God according to the dictates of his own conscience and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.<sup>14</sup>

This section was invoked in **Onu Obekpa v. Commissioner of Police**, where the accused was held in custody on allegation of theft and the police opposed his application for bail.

The court said while granting him bail:

It appears the spirit behind the provision of section 32(4) (a) and (b) (now section 36 (4) (a) and (b) of the constitution is to keep an accused out of incarceration until found guilty through the process of court trial. It is a conditional privilege which he is entitled to under the constitution..... fact that unless the right to bail or to freedom before conviction is preserved, protected and allowed the presumption of innocence constitutionally guaranteed every individual accused of criminal offence would lose its meaning and force. It is the duty of the court to uphold the spirit of this constitutional guarantee and to give it flesh and blood in practical terms.

There are however six instances where a person may lawfully be deprived of his personal liberty. Three of these are judicial processes, that is to say, in execution of the sentence or order of a court in respect of a criminal offence of which a person has been found guilty; failure to comply with the order of the Court or in order to secure the fulfillment of any obligation imposed upon him by law; for the purpose of bringing him before a court in execution of the order of a court upon a reasonable suspicion of having committed a criminal offence or to such extent as

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<sup>13</sup> Section 35, Constitution op cit

<sup>14</sup> Meyer vs. Nebraska, (1923), 262, US. 390, 399, 43 S. ct – 625, 626

maybe reasonably necessary to prevent his committing an offence. The other instances are for the purpose of educating a minor, protecting those with disabilities and respect of unlawful entry and deportation of such persons.

The right to follow laid down procedure as permitted by law, to remain silent, to be inform in writing within 24 hours in the language he understands of the facts and grounds of arrest and to be brought to court within a reasonable time are all protection under this section.<sup>15</sup>

For example in **Victor Iyere vs. Simon Doru & Ors**<sup>16</sup>, it was held that a Justice of Peace signing a rimand in his private room does not act judicially when so doing and therefore police officers acting under the warrant are not acting in accordance with procedure permitted by law.

Per KAZEEM, JSC was more emphatic when he said:

It cannot be over-emphasized that Police Officers who in the performance of their duties find it necessary to apply for remand warrant must take cognizance of the provisions of section 32 of the constitution of the Federal Republic of Nigeria 1979 (now section 35, 1999). This section gives to every person a fundamental right to personal liberty which right is jealously guarded by every citizen of Nigeria. A person cannot therefore be deprived of such right except in the manner prescribed by that section and in accordance with a process permitted by law...

On the right to remain silent, the court in **Olosula Oyegbami Vs. A. G. Federation**<sup>17</sup> held that a person who is arrested or detained by the police in connection with any crime is entitled to remain silent until after due consultation with a legal practitioner of his choice. However, this right has come under intense criticism to the extent that it confers wide privileges to an accused person. Ehindero<sup>18</sup> lamented thus:

...the right of a suspect to refuse to answer police questions is a shield for professional criminals. The innocent do not invovke this

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<sup>15</sup> Section 35 (2) (3) (4) (5) Constitution op cit

<sup>16</sup> (1986) 5 NWLR (pt 44) 665 SC

<sup>17</sup> (1982) 3 NCLR 895

<sup>18</sup> Ehindero S. G.: *Police and the Law in Nigeria*, Time Press, Lagos (1986) p.66 - 67

provision, this law has been abolished in Britain and replaced by an entitlement on the part of the prosecution at trial to invite the jury to ask themselves why the accused did not reply. Similarly, the Judge will be able to add his comments. Why should an accused person have a right of silence in fraud or '419 cases?

It is in line with this excessiveness that the Supreme Court held in **Fred Dadere Gira Vs. The State**<sup>19</sup> that there are limitations to an accused right to remain silent. Accordingly,

Where a clear and direct accusation is made against a person in his presence, in circumstances which should warrant instant denial, regulation or protest from him and he does not deny, refute or protest against the making of the accusation, evidence of such could be given against him as evidence of admission by conduct.

#### **4.1.4 Right to Fair Hearing**

The right to fair hearing has many branches attached to it. It connotes that a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to ensure its independence and impartiality<sup>20</sup>. It is important to note that the right to fair hearing from time immemorial has two maxims attached to it.

#### **Audi ALterram Partem**

This means that all parties involved in a case must be given an opportunity to be heard. Put in more legal parlance, no one shall be condemned unheard and as Fortescue J. recanted in religious colouration:

The Laws of God and man both give the party an opportunity to make his defense as if he has any. I remember to have heard it observed by a very learned man upon such an occasion that even God Himself did not pass sentence upon Adam before he was called upon to make his defense. Adam where art thou? Have thou not eaten of the tree whereof I commanded thee that thou shouldst not eat? And the same question was put to Eve also

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<sup>19</sup> (1999) 4 NWLR (pt 443) 375

<sup>20</sup> Section 36 constitution op cit

### **Nemo Judex in Causa Sua:**

This presupposes that no one should be a judge in his own cause or in a case where his personal interest cannot be devoid from the case before him. In **Gani Fawehinmi vs. Legal Practitioner’s Disciplinary Committee**<sup>21</sup>, the Attorney-General of the Federation, as Chairman of Legal Practitioner’s Disciplinary Committee sat as chairman in an allegation he brought against Chief Fawehinmi. It was held that the right to fair hearing has been breached, since he was not competent to sit as chairman of the committee. Another aspect of the fair hearing principle is the presumption of innocence. An accused is to be presumed innocent until he is proved guilty. The presumption of innocence is defined as “*the fundamental principle that a person may not be convicted of a crime unless the government proves guilty beyond a reasonable doubt, without any burden placed on the accused to prove innocence.*”<sup>22</sup>

Other non expatiated elements of the fair hearing principle is the right of the accused person to be inform in the language he understands and in detail the nature of the offence, the right of an accused person to defend himself in person or by a Legal Practitioner of his choice, the non compellability of an accused person to give evidence at the trial and the right not to be tried under and unwritten law.

#### **4.1.5 The Right to Private and family Life**

This right is personal and allows the privacy of citizens, their homes, correspondence, telephone conversation and telegraphic Communications.<sup>23</sup>

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<sup>21</sup> (1982) 2 NCLR 719

<sup>22</sup> Black’s Law Dictionary, 8<sup>th</sup> Edition, p. 1225

<sup>23</sup> Section 37 Constitution op cit

#### **4.1.6 The Right to Freedom of Thought, Conscience and Religion**

Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief and freedom to manifest and propagate his religion or belief in worship, teaching, practice and observance.<sup>24</sup>

#### **4.1.7 Right to Freedom of Expression and the Press**

The 1999 constitution (as amended) provides and protects the right of every person to freedom of expression, including freedom to hold opinion and to receive and impart ideas and information without interference. Such rights extends to the freedom to own, establish and operate any medium for the dissemination of information, ideas and opinion: provided that only the Federal Government or a state or a person or body authorized by the President can own establish or operate a television or wireless broadcasting station.<sup>25</sup>

#### **4.1.8 Right to Peaceful Assembly and Association<sup>26</sup>**

Individuals are given the freedom to assemble and associate with other people, to belong to a political party, trade union or any other association for the protection of his interest. In

**Agbai Vs. Okogbue**, the Supreme Court held that:

It is the law that nobody can be compelled to associate with other person against his will. The constitution of the Federal Republic of Nigeria guarantees every citizen that freedom of choice. Accordingly, any purported drafting of any person into an association against his will even if by operation of customary law is in conflict with the provision of the constitution and is void<sup>27</sup>

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<sup>24</sup> Section 38 Ibid

<sup>25</sup> Section 39 Ibid

<sup>26</sup> Section 40 Ibid

<sup>27</sup> (1991) 7 NWLR (pt. 204) 391 @ 432

#### **4.1.9 The Right to Freedom of Movement<sup>28</sup>**

Every person is enabled by this section to move freely throughout Nigeria and to reside in any part thereof and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit there from. Nothing shall however invalidate any law that is reasonably justifiable in a democratic society for the purpose of imposing restrictions on residence or movement of any person who has committed or reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria.

#### **4.1.10 Right to Freedom from Discrimination**

This provides that no citizen shall be discriminated against on grounds of belonging to a particular community, ethnic group, place of origin, sex, religion or political opinion. Accordingly, no law or executive action can discriminate any citizen on the foregoing grounds. Also, no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.<sup>29</sup>

#### **4.1.11 Right to Acquire and Own Immovable Property**

Every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria<sup>30</sup>.

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<sup>28</sup> Section 41 Constitution of Nigeria

<sup>29</sup> Section 42 Ibid

<sup>30</sup> Section 43 Ibid

## 4.2 Balancing Constitutional Derogation from Human Rights

To every general rule, there is an exception. Same goes for human rights or fundamental rights as the case maybe. A number of human rights treaties contemplates derogation hence state parties to such as treaties are allowed to temporally after their obligation in rare or extreme situations when there is a public emergency threatening the continuous existence of a nation.

The international convention on civil and political rights (ICCPR) states that in Nigeria the 1999 constitution makes an omnibus provision dealing with derogation o the rights guaranteed under the constitution. Consequently it provides as follows:

*Nothing in section 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society*

*(a) in the interest of defence, public safety, public order, public morality of public health; or*

*(b) for the purpose of protecting the rights and freedom or other persons.*

It equally provides as follows:

*An act of the National Assembly shall not be invalidated by reason only that it provides for the taking, during periods of emergency, of measures that derogate from the provisions of section 33 or 35 of this Constitution; but no such measures shall be taken in pursuance of any such act during any period of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency:*

*Provided that nothing in this section shall authorize any derogation from the provisions of section 33 of this Constitution, except in respect of death resulting from acts of war or authorize any derogation from the provisions of section 36(8) of this Constitution.*

It further provides as follows:

*Section 45(1), (2), (3), In this section, a “period of emergency” means any period during which there is in force a Proclamation of a*

*state of emergency declared by the President in exercise of the powers conferred on him under section 305 of this Constitution.*

It is important to note that section 37, 38, 39, 40 and 41 reference in Section 45(1) of the constitution relate to the provisions on the right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression and the press and right to freedom of movement respectively. The import of section 45(1) is that there can be no derogation from the very rights guaranteed under section 38, 38, 39, 40 and 41 unless there is a law passed to that effect. Furthermore, such derogation has to be reasonably justifiable in a democratic society in the interest of justice, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedom of other persons.

However, it is usually difficult to ascertain what is reasonable justifiable in the interest of justice, public safety,, public order, public morality or public health. In this regard, Professor Nwabueze expressed the opinion that in view of the opening phrase of the section, there is presumption of validity in favour of the validity of the law made under section 45, thereby placing the burden of proof on whoever asserts the contrary.<sup>31</sup> Ogbu<sup>32</sup> however disagrees with Nwabueze and opines that the onus of proving that a law is reasonably justifiable and that it is made in the public interest lies on the authority that made the law. It is the view that whoever asserts must prove.<sup>33</sup> Consequently, the burden of proof lies on whoever asserts that a law is not justifiable in a democratic society. This is because there is the presumption of the validity of laws made by the legislature, as the Constitution vests on the National Assembly the power to make laws for the peace, order and good government of the Federation.<sup>34</sup>

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<sup>31</sup> B. O Nwabueze. *“A Constitutional History of Nigeria”* (London: C. Hurst and Co Ltd. 1982) p.18

<sup>32</sup> Osita Ogbu, *Human Rights Law and Practice in Nigeria: 1999*, Enugu, Nigeria, p.233

<sup>33</sup> Section 131 Evidence Act, CAP E14, 2011

<sup>34</sup> Section 4 of the Constitution of the Federal Republic, 1999 (as amended)

In determining whether a law is reasonably justifiable, the test required for the restricting law is an objective on the standards include (i) *whether there is a grave risk of harm to a larger section of the community*, (ii) *whether the risk of harm is imminent and demanding grave urgency*; and this should not depend on the subjective view or opinion of the Governor of the state. The case of *State v. Ivory Trumpet*<sup>35</sup> is quite instructive on this question. It emphasizes that the test of reasonable justifiability depends vitally on the historical circumstances, as well as the factual mischief which necessitated the promulgation of that law.

The Court, in the above case, in appreciating the word “reasonably justifiable” restated the position of the Supreme Court of India in the case of **Superintendent Central Prison Fatehgrah Vs. Ram Manohar Lohia**<sup>36</sup> and state that the limitation imposed in the interests of public order to be reasonable restriction, should be one which has a proximate connection, or nexus with the public order, but not farfetched, hypothetical or problematical or too remote in the chain of its relation with public order. In the same vein, in **Chike Obi v Director of Public Prosecution**<sup>37</sup>, the Court held that its role was not merely to rubber stamp the acts of the Legislature and the Executive; that the court must be the arbiter of whether or not any particular law is reasonably justifiable.

In **Olawoyin v Attorney General of Northern Nigeria**<sup>38</sup>, the Court held that a restriction upon a fundamental human right, before it may be considered justifiably must (a) be necessary in the interest of public morality and (b) not be excessive or out of proportion to the object which it is sought to achieve. A typical example of a law that derogates from the freedom of expression and the press entrenched in section 39 of the constitution is section 51 of the

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<sup>35</sup> (1984) 5 NCLR 736 at 750 - 751

<sup>36</sup> (1960) 2 SCR 821

<sup>37</sup> (1961) 1 All NLR 186

<sup>38</sup> (1961) All NLR 269

Criminal Code Act<sup>39</sup> which prohibits the altering, printing, publishing, selling, distributing or reproducing of any “ seditious” words or materials.

Furthermore, by virtue of section 45(2) of the 1999 constitution (as amended), no act of the National Assembly shall be invalidated by reason of the fact that it provides for measures that derogate from the right to life and the right to personal liberty guaranteed under section 33 and 35 of the constitution. However, such derogation from the right to life and the right to personal liberty is restricted only to periods of emergency.

Section 45 (3) of the constitution provides that a period of emergency means any period during which there is in force a Proclamation of a state of emergency declared by the President in exercise of the powers conferred on him under section 305 of the constitution. Accordingly, derogation from the right to life and the right to personal liberty during periods of emergency is only permissible when it is reasonable justifiable for the purpose of dealing with the situation that exists during that period of emergency.

#### **4. 2.1 The Need for Balance**

Although there is scant jurisprudence on the manner of balancing fundamental rights in Nigeria, a few general principles can be advanced relying on the universal practice of other democratic societies. The first appreciative point is that all rights are equal and none is inherently superior to the other. The second is that a number of factors can be used as a basis for balancing the rights. They include the nature of the right, the importance or the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and its purpose and the

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<sup>39</sup> Cap 57 LFN, 2004

less restrictive means to achieve the purpose.<sup>40</sup> What this signifies is that the objective of the impugned provision must be of sufficient importance to warrant overriding a constitutionally protected right or freedom; it must relate to concern which are pressing and substantial in a free and democratic society before it can be characterized as sufficiently important.

Assuming that a sufficiently important objective has been established, the means chosen to achieve the objective must pass a proportionality test; that is to say they must:

*(a) be “rationally connected” to the objective and not be arbitrary, unfair or based on irrational considerations;*

*(b) Impair the right or freedom in question as “little as possible”, and*

*(c) be such that their effects on the limitation of rights and freedoms are proportional to the objective.*

Primarily, derogation aims at striking a balance between the protection of individual human rights and protection of national needs and interests in times of crises or insurrection by placing reasonable restrictions. Consequently, a balance must be struck between the protection of the rights guaranteed in section 33, 35, 36, 37, 38, 39, 40 and 41 and the protection of national needs in times of crisis or insurrection by placing reasonable and proportional limits on emergency powers.

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<sup>4040</sup> These principles are laid down in section 36 of the Constitution of South Africa, 1996 (Act No. 108 of 1996). They are helpful for the development of the jurisprudence on Section 45 of the Constitution of the Federal Republic of Nigeria, 1999

### 4.3 Violation of Fundamental Rights by the Police

The Nigeria Police Force is a creation of the constitution and it is statutorily bestowed with varying duties such as the prevention and detection of crime, apprehension of offenders, preservation of law and order, protection of life and property and due enforcement of all laws and regulations with which they are directly charged.<sup>41</sup> In the course of the enforcement of these duties, the police enjoy a wide range of powers: Power of arrest and detention, of search and seizure, to grant bail, to take measurement, photograph and finger print impression and finally power to regulate Assemblies. But do the police consider issues of fundamental rights when carrying out these duties? In other words, what is the position of fundamental right provisions vis a vis the exercise of police powers? Ehindero answers it in the way an average policeman thinks (and this is quite unfortunate). According to him, ‘police do not enforce all laws. They enforce only those with which they are directly charged. However unpopular a law is, even if it derogates from the fundamental rights of the citizen, he must enforce it provided he is directly charged.’<sup>42</sup> Though not much criticism has trailed this negative exposition, Eliagwu<sup>43</sup> lamented that the:

Above statement by Ehindero shows that by Police training and orientation issues of Fundamental Right is subordinate to enforcement of all laws they are directly charged. What will naturally agitate one’s mind is whether this is borne out of ignorance or deliberate institutional mindset to undermine the primary of Fundamental Rights in the performance of its duties

Continuing and we absolutely agree with him:

The attitude of Nigeria Police to Fundamental Rights would have been justifiable if Fundamental Rights provisions are in legislative subordination to those laws “however unpopular a law is”. But in

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<sup>41</sup> Section 4, Police Act Cap p.19, LFN 2004

<sup>42</sup> Ehindero, S. G., *op. cit* p.12

<sup>43</sup> Eliagwu, E. A. *op cit* p.145

truth, as is well known, Fundamental Rights are provisions of the constitution, which all other laws derive their source and validity.<sup>44</sup>

To say the least, it has been held that where one of the Fundamental Rights enshrined in the constitution has been denied or withheld, it is a fundamental defect, not a mere irregularity but an illegality of constitutional proportion.<sup>45</sup> From the foregoing, the police are obliged to promote and protect fundamental rights. Whether rights are protected or violated depends primarily on the ability of the police to exercise its powers in accordance with the rule of law not in accordance with “however unpopular a law is. Policing must be carried out in full compliance with the law and not to place primacy of its legislation (Police Act, Police regulations, Criminal Procedure Act/Law, Criminal Procedure Code, Traffic Law/Regulations, and Public Order Act) over the Constitution. Besides, Nigeria is a signatory to all international instruments on human rights particularly the already ratified African Charter on Human and Peoples Rights. Therefore her human rights records generally ought to be optimally high. Regrettably, the reality on ground is not encouraging despite the presence of both fundamental laws enshrined in the constitution and the ratification of most international human right instruments. We premised our conclusion on the fact that the country’s police force is still enmeshed in serious human rights violations 13 years into democratic rule. To be more specific, the United States, Department of State in its 2005 report had described Nigeria’s human right records as “poor”. The police were similarly accused of ‘serious abuses’ including politically motivated killings and the use of lethal force on suspected criminals. More indicting is the position of the Commonwealth Human Right Initiative (CHRI) and Christian Solidarity Worldwide (CSW), which in its 2008/09 Report made a long list of allegations of gross human right violation against Nigeria Police and took their cases directly

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<sup>44</sup> Ibid

<sup>45</sup> Ozulonye vs. State (1983) 4 NCLR 205 at 208

to the United Nation Universal Periodic Review (VPR) created on 15<sup>th</sup> March, 2006 as the first ever UN mechanism to assess the human right records of all countries.<sup>46</sup> Further still, the World Annual Report on Human Rights (2009) castigated the Country's Senior Police Officials of "condoning criminality and perversion of the rights of the electorates". Soon after the Report was released, the Federal Government adopted a National Action Plan for the promotion and protection of Human Rights as well as an Inter-Ministerial Group on Human Rights to deal with the menace. This was in response to the United Nations Human Right Council which asked Nigeria to address 32 allegations of right abuses leveled against her. At the 11<sup>th</sup> session of the United Nations Human Rights Council that was subsequently held, it took the then Minister of foreign Affairs, Chief Ojo Madueke strenuous efforts and time to convince the international community that the true picture was not as bleak as was painted<sup>47</sup>. In spite of this seeming intervention by the federal government, cases of human right violation did not stop. Alemika's categorized the violations in many folds and they include: Incivility to citizens involving verbal assault, threat of or actual physical restraint without lawful grounds, brutality against citizens, including physical assault, excessive use of force amounting to torture and degrading treatment, frivolous searched and arrest in order to intimidate or harass individuals, extortion and corruption, long pre-trial detention either due to frivolous arrest aimed at facilitating extortion or due to incompetence and ineffectiveness in investigation, torture of suspects as a means of obtaining confessional statements etc.<sup>48</sup>

Apart from the foregoing, one of the major violations perpetrated by the police is the principle of Holding Charge. Holding Charge is a criminal charge of some minor offence filed to

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<sup>46</sup> Resolution 60/251, UN General Assembly, 15<sup>th</sup> March, 2006

<sup>47</sup> Police Brutality and Human Right, Daily Independent (Lagos) 25<sup>th</sup> May 2010. Online edition <http://allafrica.com/stories/201005260445.html> (last visited on 12 /08/13)

<sup>48</sup> Alenika E. E.: *Overview of Patterns of Human Right Violations by Law Enforcement Agencies in Nigeria*, Paper presented at Workshop on Presentation of Rights Violation in Nigeria, August, 2006

keep the accused in custody while prosecutors take time to build a bigger case and prepare serious charges.<sup>49</sup> It has however being held that the principle is unconstitutional as it negates the letters and spirit of Nigerian law. In **Enweke Vs. COP**<sup>50</sup> the Court of Appeal opined that “*a ‘holding charge’ is unknown to Nigerian Law and an accused person detained there under is entitled to be released on bail within a reasonable time before trial more so in non capital offence.*”

It was also held in **Akokhia Vs. COP**<sup>51</sup> that the practice of preferring a holding charge against an accused person pending the completion of investigation by the police has no place under section 32 (4) of the 1979 Constitution: (now section 35 (4), 1999 constitution as amended) for the preferment of a charge against any person for a criminal offence within the provisions of section 32 (now 35 ) and 33 (now 37) of the constitution postulates that the police or the law enforcement agent has obtained sufficient evidence that would support a prima facie case against the accused for the offence for which he stands charged.

In no specific order, violation of human rights can be categorized into the following:

#### **4.3.1 Extra-Judicial, Summary and Arbitrary Executions**

The term “extra-judicial killing” is use to refer to executions other than those carried out by the state as permitted by the operating law of a country. Summary execution on the other hand is a variety of extra-judicial killing in which a person is killed or shot on the spot without trial.<sup>52</sup>

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<sup>49</sup> Black’s Law Dictionary 8<sup>th</sup> Ed. P.749

<sup>50</sup> (1993) 6 NWLR (pt. 299) 335

<sup>51</sup> (1984) 5 NCLR 836 at 845

<sup>52</sup> Black Law Dictionary, 8th Edition, p. 624

A number of people in Nigeria have been subjected to “extra judicial, summary and arbitrary executions in situations in which police carry out their immediate “sentencing” without trial. International Society for Civil Liberties and the Rule of Law, Nigeria in a report asserted:

It is widely believed that the Nigeria Police Force carries out an average of 1,500 extra judicial executions annually in Nigeria since 1999, resulting from custody and road block killings. There are also unlawful killings by the Police Force, which are associated with torture, high handed crowd control and conflict management. Many, if not most of these killings originate from Special Anti Robbery Squad (SARS), The Joint Task Force (JTF) and the Anti Riot Police Personnel (Mobil Police). The latter mount road blocks on Nigerian Roads and engage in killing and maiming those who resist their extortionist and other graft activities...<sup>53</sup>

Another report states:<sup>54</sup>

Police put forth various pretexts to justify extrajudicial executions. When a victim is killed in custody, an attempted escape maybe cited. When the victim is killed before being taken into custody, his status as an armed robber may be cited. While armed robbery plagues much of Nigeria, the label of “armed robber” is very often used to justify the jailing or extrajudicial executions of innocent individuals who have come to the attention of the police for reasons ranging from a refusal to pay a bribe to insulting or inconveniencing the police. Extrajudicial executions are also facilitated by the impunity the police force enjoys

Based on interviews and research conducted between July 2007 and July 2009, Amnesty International published killings at will and other unlawful killings by the police in Nigeria and documented 39 cases of enforce disappearances. The report indicates that national police conducted hundreds of extrajudicial executions, other unlawful killings and enforced disappearances each year. In a country where “bribe guarantee safety”, those who could not

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<sup>53</sup> International Society for Civil Liberties and the Rule of Law, Nigeria, Report, 2011, International Journal of Humanities and Social Sciences, Vol. 4, No. 4, February, 2014 p. 262

<sup>54</sup> Alton, P., 2009 Amnesty International, *Supra* Note 40 at 41

afford to pay risked being shot or tortured to death. Authorities did not investigate the majority of cases or punish perpetrators. When investigations occurred, they did not comply with international standards, and officers suspected of extra judicial executions generally were sent away on training or transferred to other states instead of undergoing prosecution<sup>55</sup> on 16<sup>th</sup> May, 2004, police and members of the Joint Task Force in Kano reportedly beat and shot to death Gadaffi Salisu Soda as he passed a police station. Neighbors claimed Soda attempted to identify himself to police but they continued to beat him before shooting and killing him. Police announced they had begun an investigation, although there were no developments by year end. The family tried to sue the police, but on 24<sup>th</sup> May, the court dismissed the suit, ruling it could not enforce fundamental rights after death. On 15<sup>th</sup> June, 2008, Abubarkar Olalekan Omofade (14 years) was shot and killed in their sitting room by police men in Minna, Niger State. Also, Irate youths of Ungwan Bolewa in Potiskum, Yobe State got the hit of the security attached to former Governor Mamman Ali. In the process, Mohammed Bate, Mohammed Bashir were killed on unsubstantiated circumstances. The “Apo six saga” of 2005 where the police shot and killed 6 innocent persons and tagged them as “Armed Robbers” in the Apo District of the Federal Capital Territory is still a mystery. Mathew Adedeji (30) was shot and killed by Corporal Damilola Olubiyi of Osun State Police Command at a checkpoint on the 8<sup>th</sup> June 2008. Mohammed Yusuf, leader of the dreaded Boko Haram Sect was gruesomely murdered by the police in 2009 after the Nigerian military handed him over alive to the Nigeria police. Victor Emmanuel equally met his untimely death when he was shot by the Police in Yenagoa, Bayelsa

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<sup>55</sup> Country Report on Human Rights Practices for 2012, United States Department of State, Bureau of Democracy, Human Rights and Labour

State on circumstances bordering on police extortion.<sup>56</sup> Decrying the alarming rate of extra-judicial killings recently by the police, the Chairman Governing Council of the National Human Rights Commission, Prof. Chidi Odinkalu observed at the Workshop on the Nigerian Criminal Justice system in Abuja that police executes over 5,000 detainees summarily every year and concludes that officers responsible for the killings were never punished.<sup>57</sup>

#### **4.3.2 Torture, Cruel, Inhuman or Degrading Treatment**

The African Charter on Human and Peoples Rights ratified in 1983 and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ratified on 28<sup>th</sup> June 2001 all prohibits the use of Torture.<sup>58</sup>

The term torture means any act by which severer pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by at the instigation of or with consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from inherent in or incidental to lawful actions

According to a 2007 report by the United Nations Special Rapporteur on Torture, Nigeria Police routinely torture suspects, shooting them in the legs, driving nails into suspects' hands or heads, tear gas applies to eyes or genitals, clubbing the soles of the feet, burning with cigarettes, hot iron or a flame, sexual torture by rape or violation, psychological manipulation, sleep

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<sup>56</sup> 2010 Human Rights Report of the National Human Rights Commission, Abuja p.25-30; The News Magazine 21<sup>st</sup> July 2008; Guardian Newspapers 5<sup>th</sup> September, 2008; Nigerian Tribune Newspapers, 21<sup>st</sup> October 2011; The Punch Newspapers, 21<sup>st</sup> October 2011.

<sup>57</sup> Daily Post, 12<sup>th</sup> March 2012 (Online Edition): <http://dailypost.com.ng/2012/03extra-judicialkilling-police-den> (last visited on 5/4/2014)

<sup>58</sup> Article 1, Convention Against Torture, Cruel, Inhuman or Degrading treatment or Punishment, General Assembly Resolution 39/46, 10<sup>th</sup> December 1984

deprivation, water of food deprivation, shoving pins into the genitals, beating suspects and hanging from the ceiling or wall for long periods.<sup>59</sup>

As a result of the over-stressed nature of the police force, they rely heavily on confessions and torture to solve crimes. Amnesty International asserts that almost 80 percent of inmates in Nigerian prisons say they have been beaten, threatened with weapons or tortured in police cells<sup>60</sup> in the words of Umeagbalasi:<sup>61</sup>

The number of people who died as a result of torture in the hands of Nigeria security forces is in torrents. Five, out of every five persons arrested by the Nigeria Police Force, on suspicion of commission of criminal offences are tortured. The degree of torture meted to felony suspects are the same degree meted to a simple offence and misdemeanor suspects.

For example, a 23 year old construction worker who was arrested from his home town at Agbani, Enugu State on 18<sup>th</sup> June, 2004 narrated his ordeal:

At the police station, we were put in an open cell with over twenty people. Our hands and legs were chained. We slept in the cell on the floor. In the morning at 11:30am, they came to take me first. They took me to the “torture room”. It was a small room. They asked me to tell the truth, that I was a rubber. I said I am not a rubber so they started to torture me. They handcuffed me and tied me with my hands by my knees, a wooden rod behind my knees and hung me from hooks on wall, like a goal post. Then they started beating me. They got a broomstick hair (bristle) and inserted into my penis until there was blood coming out. Then they put tear gas power in a cloth and tied in around my eyes....<sup>62</sup>

Besides, an Ikeja High court on 10<sup>th</sup> September 2008 sentenced a Police Inspector, John Onwe to death by hanging for torturing Ndudiri Onyekwere to death. Onye, formally attached to

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<sup>59</sup> Press Release, Manfred Nowak, *Special Rapporteur on Torture Concludes Visit to Nigeria: The Special Rapporteur was invited by the Government of Nigeria to undertake a visit to the Country from 4<sup>th</sup> to 10<sup>th</sup> 2007*, Press Release HR/07/35 (25<sup>TH</sup> June, 2010)

<sup>60</sup> Olori, T., IA Supra Notes 107, at 32

<sup>61</sup> Umeagbalasi, E., Country’s Unlawful Killings- a Challenge for our Justice System, *Vanguard Newspaper*, 25<sup>th</sup> March, 2010. Available at <http://allafrica.com/stories/201003251219.html> (last visited on 16/05/2014)

<sup>62</sup> Human Right Watch Interview, Enugu Prisons, 4<sup>th</sup> March 2008, Human Rights Watch, Vol. 17, No. 11 (A) p.26 - 27

the State Special Anti-Robbery Squad (SARS) was the leader of a six man police team that killed the diseased on 17<sup>th</sup> June, 2002, a day after he was handed over to the them (SARS) hale and hearty by the Alausa Police Station. The diseased was tied with a rope and suspended in the air before several blows, gun butts and other hard objects were smashed on his body. In the recent case of AL-MUSTAPHA vs. STATE wherein the appellant and one Lateef Sofolahan was arraigned on a two-count charge of conspiracy for the murder of Alhaja Kudirat Abiola, the Court of Appeal decried on the rate of torture:

Kyari Jidi Gadjama, a retired Military Personnel, and orderly of the appellant testified of how they attempted to compel or induce him to testify against the appellant as PW2 and PW3 had attempted to do. He was mercilessly beaten up with wire cables in furtherance of this during investigation<sup>63</sup>

#### **4.3.3 Prison and Detention Centre Conditions**

The Nigerian Prison Service released statistics at the end of March 2012 indicating that the prisons held 50, 920 inmates. Of the total population,, 72 percent were pretrial detainees. The prison system included 12 maximum-security prisons, 83 satellite prisons, 10 farm canters, two women prisons, eight zonal offices and six directorates, all of which held prisoners and detainees. Although national capacity stood at 47, 284, an imbalance in the use of prisons resulted in underutilization at some facilities. Some newer prisons had no inmates, while others were at 600 percent of their designed capacity. For example, the Owerri Federal Prison had a capacity of 548 prisoners but held more than 1,784. Ogwuashi-Uku prison in Delta State, with a

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<sup>63</sup> (2013)7 NWLR, (Part 1383) at 350

capacity 64 prisoners housed 541, while Port Harcourt prison, with a capacity of 804 prisoners held 2,955. Ijebi-Ode prison in Lagos, with a capacity of 49 prisoners held 309<sup>64</sup>

Most of the country's 234 prisons, built 70 to 80 years earlier are severely overcrowded and lacks basic facilities like portable water, adequate sewage facilities leading to dangerous and unsanitary conditions. Detainees are being routinely packed into small, poorly-ventilated police cells with up to 30 to 40 other suspects at the same time. Many normally sleep on the floor without mattresses or beddings and in some cases are forced to lie over each other to sleep in shifts. Sanitation and hygienic facilities are limited and in most other cases, there is only one toilet and a little or no water for washing. The combination of poor hygiene, nutrition and overcrowding has led to several illnesses and diseases. Skin rashes and stomach infections are common and medical facilities are not available and where they are provided, they remained grossly inadequate. As a result, victims who suffer injuries arising from torture and bullet wounds inflicted by the police are left untreated.<sup>65</sup> Disease remained pervasive with chronic shortage of medical supplies. During a June 22<sup>nd</sup> visit to prisons in Enugu State and Owerri, Imo State in 2012, an observer noted cells designed for 20 inmates held 80 and authorities conducted no routine screening for tuberculosis, other infectious diseases, or pregnancy test. To say the least, they had not established isolation wards, adequately equipped clinic facilities, or proper sewage disposal systems. Only those prisoners with money, or whose relatives brought food regularly, had sufficient food; prison officials regularly stole money provided for food for prisoners. Poor inmates often rely on handouts from others to survive. Prison officials, police, and other security forces' personnel often deny inmates food and medical treatment as punishment or to extort money.

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<sup>64</sup> Country Report on Human Rights Practices for 2012, United States Department of State, Bureau of Democracy, Human Rights and Labour, p. 32.

<sup>65</sup> Ibid p.15-52

Domestic and international human rights groups reported the existence of unofficial prison, including the Giwa military barracks in Maiduguri, Borno State. Those interviewed claimed families and lawyers did not have access to suspects detained in these facilities, and authorities move detainees frequently and without notice, making difficult for families or lawyers to locate detainees. Boko Haram suspects were reportedly held in inhuman conditions at the Special-Anti Robbery Squad (SARS) detention, also known as the “abattoir”, in Abuja not until suspected Boko Haram militants attacked the SARS detention centre and freed most of the detainees sometimes in November, 2013<sup>66</sup> All these violate international minimum standards which states that “*all persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.*”<sup>67</sup>

#### **4.3.4 Arbitrary Arrest and Excessive Use of Force**

The police reserve the power to arrest with or without a warrant depending on the circumstance of each case. This does not however confer on them the absolute power of arrest if there are no reasonable grounds for suspecting that a crime has been committed.

Arrest means the act of apprehending a person for the alleged commission of an offence or by the action of an authority.<sup>68</sup> The power of arrest can only be justified if it is lawful and necessary because it is hinged on the deprivation of a person’s right to liberty. This is why rights instruments declare that no one shall be subjected to arbitrary arrest, detention or exile. Further still, everyone has the right to liberty and security of person. No one shall be subjected to

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<sup>66</sup> *Punch Newspaper*, 26<sup>th</sup> November, 2013, p. 8

<sup>67</sup> Article 1, Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment, United Nations Resolution 43/173, 9<sup>th</sup> December, 1988.

<sup>68</sup> Black’s Law Dictionary, 8<sup>th</sup> Edition p 116.

arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.<sup>69</sup>

Also, the use of force by law enforcement officials has minimum standards. These standards are an attempt to reconcile the requirement for the maintenance of public order and safety with respect for both personal safety of security officials and the protection of human rights. To this extent, the principles of necessity and proportionality are generally emphasized hence force should be used only when strictly necessary and that the application should be proportionate for the legitimate ends of law enforcement.<sup>70</sup>

In spite of the restrictions and prohibitions, violations of the right in question have continued unabated. Needful to say that the Nigeria Police has a fearsome reputation for arbitrary arrest and excessive use of force and corroborating this view, the Deputy Inspector-General of Police in charge of “E” Department, Mr. Declan Uzoma in an interactive conference of the Benue State Police Command, Makurdi lamented the rising cases of police brutality, arbitrary arrest and excessive use of force warning that a stop should be put to the ugly development as it was giving the Nigerian police a bad name.<sup>71</sup>

Reports indicates that police from Ketu Anti robbery Squad arrested persons attending a 2008 community party and released only those who could pay a certain amount of money demanded by the police. One of the detainees who was unable to pay the ransom died after being beaten with an iron bar and rifle butt. On the 29<sup>th</sup> June 2009, Salisu Ahmadu was arbitrary arrested for driving a motor cycle during a crackdown on commercial motorcycle drivers. His body was later found in a Jos mortuary with bullet wounds after he was declared missing for five days. The worst case scenario is the arbitrary arrest and subsequent detention of relatives or

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<sup>69</sup> Article 9, Universal Declaration of Human Rights 1948, Article 9, Para.1, ICCPR

<sup>70</sup> Article 3, Code of Conduct for Law Enforcement Officials.

<sup>71</sup> Punch Newspaper, 16<sup>th</sup> November, 2013.

friends of suspects when the police cannot find the supposed suspects or when they are on the run under the pretext that they (suspects) will show up when they hear that their relatives or friends have been arrested in place of them. This is a clear negation of criminal law which makes criminal liability personal.<sup>72</sup>

On excessive use of force, the police have not fared better either. The police use excessive and most times deadly force to quell civil unrest and inter-ethnic violence. For example in October 2009, in Biu, Borni State, two of 100 motorcycle riders protesting the enforcement of a requirement to wear crash helmets were killed during a confrontation with the police with several riders injured. No investigation was conducted into the 2008 police killing of more than 50 persons in Ogaminana, Kogi State where police reportedly attacked the people in reprisal for the killing of a colleague by local youths. Violence and lethal force at unauthorized police roadblocks and checkpoints are common. Police often stop commercial drivers and asked them to pay a bribe and those who refused to pay or who argue with them over the price tag are often shot and killed. In September 2009 in Festac, Lagos, five police officers stopped the car of Michael Egwu at a checkpoint and demanded documentation which Egwu produced. The officers subsequently demanded money and an argument ensued, during which one of the officers shot and killed Egwu.<sup>73</sup>

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<sup>72</sup> 2009 Report of Amnesty International (Online edition) <http://www.state.govt/documents/organization/160138.pdf> (last visited on 18/5/2014)

<sup>73</sup> Ibid p. 7 - 9

## CHAPTER FIVE

### CONCLUSION

#### 5.1 Summary

This chapter is a summary of the entire research. It considers the findings and observations of the research and some recommendations which if implemented could enhance the observance of human rights by the Police in the Nigerian democratic order. Suffice it to say that in most democratic societies, the police are the agency of government charged with the statutorily responsibility of maintaining internal peace and protecting the rights of citizens. They are the most visible manifestation of government authority performing the most obvious, immediate and intrusive task of ensuring the well-being of individuals and the society at large. In exercise of these functions, they have the power to deprive individual or group liberty by invoking the authority of the state<sup>1</sup> but this is not without limitation particularly in a democratic setting. To this extent, if the police carry out its primary responsibility in a way that reflects respect for human rights and other democratic values, then the course of democracy is advance. This is basically why democracy, policing and human rights are closely interrelated and there exist a significant positive correlation between them. It is from this perspective that most applications that are classified as democratic policing practices are design to promote human rights. Some of these include accountability to the people, community policing, problem oriented policing, protection of life and property, human dignity, non partisanship and nondiscrimination.

Democratic policing methods encourage authorities to operate in accordance with the principles of democracy. Actualizing this means that the police need to be trained and retrained in order to appreciate these methods and in such a contest that guaranty societal cooperation and

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<sup>1</sup> Jeremy, T., *Policing in Transition, Plenary Address at the Fourth Biennial Conference: International Perspective on Crime, Justice and Public Order*, Budapest, Hungary (1998) p.2

wellbeing. But the police must be considered as professionals whose ethics were to be guided by a code of professional ethics reflecting the highest ethical standards. This is exemplified internationally by the United Nation's Code of Conduct for Law Enforcement Officials and other internationally instruments already discussed.

Assuming a broad consensus around the fore-going principles of democratic policing and notwithstanding the provision of a National Code of Conduct For the police, the pertinent question to ask is whether these principles were being observed by the Nigeria Police Force? The answer is definitely in the negative. There is no denying the fact that the police in Nigeria have their primary functions in pursuit of personal gains with Nigerian citizens as their prey. To say the least, the relationship between citizens and the police is very often characterized by confrontation, discourtesy, brutality, distrust and above all exploitation. This research established that the use of violence by the police against citizens in Nigeria is widespread. Of 637 respondents to a survey carried out in 14 states, 14.8 percent said they had been beaten by the police, 22.5 percent said police had threatened to shoot them in the past, and 73.2 percent said they had witnessed the police beating another person. A sample of 197 prison inmates revealed higher figures of police abuse; 81 percent of respondent confirmed that they had been beaten or slapped and 39 percent burnt with hot objects.<sup>2</sup> It is therefore our conviction that issues of human rights, representative, responsive, accountable and community policing are more theoretical than practical. The reason is because police departments here have been structured along colonial and military models by virtue of the country's history. The police authority has remained highly centralized, just as it was the advent of democracy. It is even ironic that the police are still being hated by the ordinary citizens because their responsive capabilities are rather negatively inclined.

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<sup>2</sup> Research conducted in 2000 by the Centre for Law Enforcement and Education (CLEEN) Lagos. Also Etannibi, A., and Chukwuma, I., Police Community Violence in Nigeria, Centre for Law Enforcement Education, Lagos, February, 2000

Accountability deficiencies are far from being over and the community policing initiative has not yielded the desired result. In the midst of all these, the Nigeria Police Force remained the worst hit in terms of neglect and abandonment in the hands of the colonial and military government and the challenges grew bigger by the day. Some of these challenges include acute shortage of manpower in the force, grossly inadequate funding, lack of security equipments, vehicles, communication gadgets, near absence of accommodation and other welfare incentives.

The return to democratic rule in 1999 ushered in a glimmer of hope as this research work has x-rayed the various police administrations and the efforts made at bringing back the lost glory of the police in Nigeria beginning from Inspectors General Musliu Smith to M. D. Abubarka. From the research findings, it can be deduced that bold efforts were made to tackle the endemic problems of the police but much is still needed because the woes of the police seems to be growing from grace to grass despite the resources that had been invested since 1999. This downward trend was recently emphasized by Inspector General of Police, Mohammed Abubakar in his maiden address to Senior Police Officers where he publicly admitted the situation of the Nigeria police force:

The police force has fallen to its lowest level. ...Police duties have become commercialized and provided at the whims and caprices of the highest bidder... our police stations, state CID and operations offices have become business centers and collection points for rendering returns from all kinds of squads and terms set up for the benefit of superior officers. Our special anti-robbery squads (SARS) have become latter teams engaging in deals for land speculators and debt collectors. Toll stations in the name of checkpoints adorn our highways with Policemen shamefully collecting money from motorists in full glare of the public. Police connive with suspects to turn against complainants and investigations are usually not conducted unless those involved pay money to the police. Justice has been perverted, peoples' rights denied, innocent souls committed to prison, torture and extra judicial killings perpetrated

and so many people arbitrarily detained in our cells because cannot afford the illegal bail monies we demand.

Illegals thrive under your watchful eyes because you have compromised the very soul of our profession. Our respect is gone and the Nigerian Public has lost even the slightest confidence in the ability of the police to do any good thing”<sup>3</sup>

With a budgetary allocation of N328.5 Billion Naira in 2011 and N331.2 Billion Naira in 2012, the predicament of the Nigeria Police Force is still founded on the foregoing lamentations of the IGP.<sup>4</sup> It is however hope that the needed change in the force may or could still come if there is increase funding in the yearly budget, the implementation of the White Paper on Police Reforms, the passage into law of the The Nigeria Police Service Bill, 2006, Administration of Criminal Justice Bill 2013 and other control measures put in place. This is because as Sherman and Trautmen indicate, where effective controls are placed on the police, corruption and various forms of abuses are minimized if not diminished.<sup>5</sup>

## **5.2 Observations**

The peace and security of life and property are a necessary condition for progress and development of any society hence the principal agency charged with the responsibility of maintaining internal peace and security of a nation is the police. And because most countries have embraced democracy, policing is undergoing rapid changes to meet up with the challenges posed by democratic governance where the rule of law, democratic policing and the inalienable right of the human person are generally emphasized. Consequently, powers and duties of the police, including the extent with which such powers can be used, are very clear and provided for

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<sup>3</sup> <http://seunfakze.wordpress.com/tag/police> (last visited on 21/03/14)

<sup>4</sup> Ibid

<sup>5</sup> Sherman, L. W., *Controlling Police Corruption, The Effects of the Reform Policies*, National Institute of Law Enforcement and Criminal Justice Summary Report Washington D.C., US Department of Justice (1978)  
- Trautman, N., *The Corruption Continuum*, Public Management International City Management Association V.6, 1:2 p. 82-103

in the national laws of every country and it is appropriate for the police to work in tandem with such laws. Our findings however showed that in Nigeria, police power is preserved by legislation but the exercise of this power has not achieved the desired objective. This is not unconnected with inefficiency and ineffectiveness in the operations and execution of the police, the prevalence of the violations of human rights and official malpractices against the public, inadequate or the near absence of a democratic political culture and weak policy and administrative oversight. Part of these problems is traced to Nigeria's colonial history where the fundamental purpose of establishing a police force was to sustain and promote the socio-economic and political interest of the British Empire. This is why at independence in 1960, a structural police force without functional reforms was transferred. Soon after, the new leadership turned the police to an agency that engendered repression, impunity, human right abuses, lack of transparency and accountability, corruption and other uncouth practices. Again, series of military interventions in Nigeria from 1966 to 1999 compounded the woes of the police. They deliberately neglected and under-funded the police in all its ramifications and as a result, there was acute shortage of office and barracks accommodation, poor salaries and other welfare packages to mention but these few. Since the return to democracy in 1999 however, efforts have been put in place to ameliorate the precarious situation but much of what has been provided is still not enough.

Apart from the foregoing historical factor, our findings reveal that one of the major issues inhibiting effective democratic policing in Nigeria are the loopholes found in the Police Act. Firstly, there is insufficient articulation of the mission of the police force in the Police Act. It is our firm view that, the Police Act, being the enabling law of policing in Nigeria ought to be apt and state as clear as possible the mission of the Nigeria police force. It should guide the

operation of the force as well as define its culture and values. The Police Act attempts this mission in its general duties when it states:

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 and outside Nigeria as may be required of them by, or under the authority of this or any other Act.<sup>6</sup>

From a legal point of view, the section shows what the police can validly do but from a public management point of view, this is the mission statement of the police in Nigeria. It captures the organizational culture, ethical values and the relationship between the police and the people. But does section 4 really capture the kind of police that Nigeria need and does the police really have a codified mission statement at all? This question is expedient owing to the fact that for an organization to be effective and efficient it must have a mission statement and the police cannot be an exception. According to the CLEEN Foundation<sup>7</sup>, “when an organization is about to be redesigned or reengineered for more efficiency and effectiveness, the mission statement is the first consideration”. It cited the example of the British whose mission statement for the prison service was considered first and redefined from a custodian of convicted criminals to an institution that provides services of custodial and remedial nature with the values of fairness, justice and dignity. In reality therefore it would appear that the mandate carried by section 4 is grossly inadequate to “capture the expectation of the new kind of policing we require in the context of the disheartening experience of police brutality and hope for a democratic society of freedom and liberty”<sup>8</sup> Secondly, there is no streamlined and codified provision in one Act as all

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<sup>6</sup> Section 4, Police Act, Cap. P.19 LFN, 2004

<sup>7</sup> Review of the Nigerian Police Act, 1943: Legal Diagnoses and Draft Bill, CLEEN Foundation, Lagos (2009) p.6

<sup>8</sup> *ibid*

of them are scattered in different Acts unlike what is obtainable in Britain where all laws relating to police and policing are codified in one Act<sup>9</sup>. The scattered provisions create an atmosphere where the provision relating to policing conflict. For example, section 214 of the constitution of the Federal Republic of Nigeria 1999 (as amended) seems to have invested the power of law enforcement on the police, an agency created by the constitution itself. The Police Act, which is a creation of an Act of the National Assembly, expands on such functions. But under the influence of economic and financial crimes, many other agencies have been created with different kinds of law enforcement powers invested on them, most times undermining the general powers and functions of the regular police force and this has negative impact on the rights of citizens. Some of these provisions, found for example in the Economic and Financial Crimes Commission Act and the Independent Corrupt Practices and other Related Offences Act<sup>10</sup> empower the agencies to curtail citizens rights in various ways than the police Act does.

Thirdly, the excesses inherent in the exercise of discretionary powers by the police particularly in Nigeria has led to abuse. This is viewed from the fact that the rule of law and the protection of human rights sets out rules to the extent that officials who exercise power on behalf of the state must do so objectively and not be carried away by personal prejudices, biases and interest. This is where administrative guidelines become germane in order to checkmate these excesses and ensure valid and objective exercise of police work. Regrettably, the police Act and other legislations on policing failed in many critical ways to lay down any objective procedure on the exercise of discretion. Discretion here has to do with when a person is arrested without a

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<sup>9</sup> See Police and Criminal Evidence Act (PACE), 1984 (as amended)

<sup>10</sup> See Section 6, Economic and Financial Crimes Commission (Establishment) Act 2004 and Section 6, Independent Corrupt Practices and other Related Offences Act, 2002.

warrant and whether bail can be granted to such a person or not<sup>11</sup> The deficiency in allowing full discretion in the police Act is wrong because if the police must operate under the law, the same law must find a way to balance the need to allow for flexibility in the midst of objective control mechanism. Our argument is hinged on the fact that “absolute power corrupts absolutely” and in the world of today, there is no greater threat to freedom than an agency whose exercise of power is not properly checked and delineated. Fourthly, the police Act have not established governance and administrative processes that make for effective and efficient policing. What is the standard benchmark in measuring efficiency if considered from the perspective of centralization of authority, command and control, structure of information management and allocation of resources? All these are glaringly lacking. Fifthly, a concrete perusal of the police Act shows that it provides far less or non existing democratic accountability of policing and this can be deduced from it failures. One of such failings is that which makes the office of the Inspector General of Police dependent on the President of the Federal Republic of Nigeria both in terms of appointment and management of police resources. What this means is that the police are subject to the direction of the President in its daily operations and the attendant consequence is that its independence is impliedly compromised. According to Savage, “the act fails to distinguish between needful political oversights of the police by the political authority in “ensuring the efficiency” of the force and the managerial oversight of the “direction and control” of the force which should reside in a police authority”<sup>12</sup> we therefore need to stress here that by subordinating the police force to the operational direction of the President, the Act makes the police the servant of the government and not the protector of the rights of citizens. Alderson<sup>13</sup> argued and we agree with him that “police in relation to politics pose the greatest potential threat

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<sup>11</sup> See Sections 24, 25 27, Police Act, Cap. P. 19, LFN 2004

<sup>12</sup> Savage, P., Political Control or Community Liaison , Political Quarterly Review, (1984) 55 (1) p. 48-51

<sup>13</sup>

to individual liberty where they are considered to be an extension of political power”. He further states that “a superior democratic police system must recognize the danger of too direct a link between a political machine and the day-day police operation; for even in democracies police can be abused by being made to serve the narrower political purposes of those occupying political office for the time being”

Sixthly, the police act does not in any form protect civil rights and liberties. A comprehensive view of the act does not suggest we have a police force that helps to respect the rights of citizens as guaranteed by the constitution or other international instruments that Nigeria have ratified and domesticate into its national laws. Suffice it to say that our concern here is in two fold. Apart from guaranteeing violations of human rights by virtue of the couching of section 4, the act does not provide sufficient and clear legal criteria to the exercise of police power and thereby encourage violations of these rights by all standards.

In the course of this research, it was discovered that painstaking efforts have been put in place to enhance the operational capacity and democratic viability of the Nigeria Police Force through legislative reform attempts. One of such attempt is the Nigeria Police Service Bill 2006 which was presented to the House of Representative for consideration by stake holders after a one day interactive forum in 2004. The Bill was subsequently published in the legislative journal of the House of Representatives in October 2006 and went through first reading, second reading and was at the committee state before the lifespan of that assembly ended in May 2007. This was the last time the bill was heard of and we cannot fathom why the next Assembly, inaugurated in June, 2007 and other subsequent ones did not and have not deemed it fit to reconsider the this all important bill and pass it to law. Another bold step that will positively impact our police force and other units of the criminal justice system is the Administration of Criminal Justice Bill 2013

currently before the National Assembly. The Bill seeks to merge the provisions of the two principal legislations, Criminal Procedure Act and Criminal Procedure Code into one federal legislation and goes further to make landmark changes on procedure for arrest, detention, interrogation, investigation and other relevant ones. It is however unfortunate that this bill is equally still pending legislative approval.

### **5.3 Recommendations**

Much has been said about policing a democratic state, the need to observe human rights in the performance of police duties and the abuses found in the system. In order to ensure the evolvement of a modern, effective and regenerated police force, a comprehensive blue print compatible with international democratic best practices becomes imperative. The Nigeria Police Force should be overhaul with the following specific and general recommendations.

Since most of the reasons for police anti democratic conduct and human right abuses have been traced to Nigeria's colonial and military history and therefore cannot be reverse, the onus is now on all stake holders (police and the citizens) to realize that Nigeria is now a democracy hence there is the urgent need to adjust to the new democratic culture through behavioral change. The fact that Nigeria was caught in the "web" of colonial and military rule for so many years is not a justification to remain tied down to the apron-string of colonial and military conduct. We believe that in our new democracy, courteous, decent and respectful behavior from the police has the potential of converting the entire public to an auxiliary police service in terms of support to the police and vice versa. Attitudinal change in police service delivery especially in the way police officers relate with members of the public should be improve and the way police authorities react to allegation of police human rights abuses through

denials or rebuttals must be stopped. To this end, sensitization exercise should be taken as a priority in addressing relationship that exists between the public and the personnel of the force. This can be achieved if the training curriculum of the Nigeria Police is reviewed to reflect contemporary democratic policing theories and practices, though peculiar to our local circumstance and environment.

In more specific terms, we recommend that section 215 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) wherein the President appoints the Inspector-General of Police on the advice of the Nigeria Police Council be amended. It is our firm view that the appointment of the Inspector-General of Police should not be left to the prerogative of the President alone but must be done through an established process that guarantees not only the independence of the office but also his tenure in office. His tenure should be four years renewable term and must be confirm by the National Assembly whereas his removal must be supported by two third majorities. This is far democratic than relying on the advice of the Nigeria Police Council majority of whom are appointees of Mr. President. Again, sub section (3) of the foregoing section (akin to Section 10 of the Police Act) that authorizes the President or such other Minister to give to the Inspector-General of Police such lawful directions with respect to the maintenance and securing of public safely and public order as he may consider necessary should be deleted. This is because subordinating the police force to the lawful direction and control of the President makes the police a servant of the President and or a lackey of his government and given the crises of abuse of police powers by Chief Executives in Nigeria, it is a grave error to have placed the lawful direction of the police on the President. Besides, what is ‘lawful directions with respect to the maintenance and securing public safety and public order’ is often better appreciated by an Inspector-General who is trained in police matters than the

President. This same mistake is repeated by Part 1, 3<sup>rd</sup> Schedule of the Constitution on the functions of the Nigeria Police Council which is re-echoed by Section 9 (2) of the Police Act. The functions of the Council include the organization and administration of the Nigeria Police Force and all other matters related thereto (not being matters relating to the use and operational control of the Force, or the appointment, disciplinary control or dismissal of members of the Force). We make bold to say that the Police Council is an important organ which should be allowed to share the operational control of the police to a certain degree with the Inspector-General of Police while the disciplinary and dismissal control should be left to the Inspector-General and the Police Service Commission. Sub Section 4 of Section 9 of the Police Act which says that ‘the President shall be charged with the operational control of the Nigeria Police Force’ should equally be deleted based on the fears earlier expressed.

The Nigeria Police Act should be reviewed to include a mission and value statements that conforms to the tenets of democratic policing. The mission and value statement should preferably be framed as follows "*our mission and aspiration is to promote democratic policing which involves commitment to efficient safeguard of the safety of citizens and security of their property, civility to citizens, partnership with citizens as co-determinants of safety and security policy initiative, protection of human rights, professionalism and integrity.*

Though an attempt has been made in the past to change the nomenclature “Nigeria Police Force” in vain, it has become expedient to change it to either the Nigeria Police Service or the Nigeria Police simpliciter. This because the word “force” does not ordinarily appeal to the senses when considered from the kind of public service the police ought to render and to this extent sounds like a “force of occupation” devoid of human service. Besides, if “force” is remove as

proposed, it will give the police more acceptability and the phrase “police is your friend” will become concretized.

Section 4 of the Police Act states that- “The Police shall be employed for the prevention of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of laws and regulations with which they are charged...”. We strongly posit that this should be redrafted in such a way that the culture of civility and protection of human rights is stated upfront as the anchor of policing. In addition to these functions, we propose additional functions to include (a) protection of the rights of citizens (b) prompt response to call for assistance during emergencies. (c) Service delivery policing

Section 24 of the Police Act (analogous to Section 10 of the Criminal Procedure Act) which authorizes a Police Officer to arrest without warrant any person who “he reasonably suspects of committing or about to commit any felony or misdemeanor” should drastically be reviewed. This power is not articulated in such a manner that respects the core essence of liberty and the dignity of human person as guaranteed by Section 35 of Constitution. Instead, the power to arrest without warrant should be imbued with safeguards, code of conduct and judicial review so that such power does not deteriorate into a license to invade the liberties of citizens at the slightest opportunity. Also section 37 of the Police Act needs to be reviewed. It creates offences and mandates Magistrates to require a person to show cause why he should not be ordered to enter into a recognizance, with sureties, for his good behavior for such period, not exceeding three years, as the Magistrate thinks fit. Regrettably, none of these offences deals with misconduct against excessive use of force or violation of human rights in the performance of official police work. This is wrong and should be corrected. Furthermore, the whole of Section 18-20 dealing with supernumerary policing should be reconsidered. This is because there is

potential danger in allocating policemen to corporate interest and the attendant loss of control of the police authority. Instances abound where police officers attached to corporate entities become more loyal to the organizations than the police itself.

In general terms, the controversy surrounding the reliance on the Public Order Act (1979) to stop peaceful assemblies as guaranteed by the Constitution should be addressed and that the judicial pronouncement declaring it unconstitutional must be obeyed in the spirit of the rule of law. Consequently, all other enactments which are in violation of the constitutional right of citizens to the dignity of the human person, freedom of association and assembly must be expunged. Apart from the need to emphasize the observance of the United Nation's Code of Conduct for Law Enforcement officials, it is important to not only implement the 2013 National Code of the Nigeria Police but to back it up with legislative approval. This will go a long way in controlling the excesses of overzealous police men and women who hide under the auspices of their positions to cause havoc to unsuspecting members of the society. Also, a comprehensive mechanism for fighting corruption within the rank and file as well as officer cadre of the force must be put in place. Disciplinary measure as well as effective oversight must be put in place to checkmate the system. This is why the National Assembly, The Nigeria Police Council as well as the Police Service Commission must rise up to their responsibilities of making effective their oversight functions. Furthermore, the police should decentralize its management system to ensure devolution of power to the Zonal Commands, State and Area Commands. This devolution of powers should be backed up with budgetary allocation to enable them function effectively especially in times of emergency.

For the police to regain its effectiveness, the government should equip the police with modern ICT and scientific equipment like computers, finger print machines, forensic

laboratories, computerized crime centres and camera systems. This can be achieved only through increase funding and funding alone. The relevancy of the foregoing ICT and Scientific Security Equipments can only become concretize in Nigeria if the laws are updated to make electric data admissible in Court. To achieve this objective, the National Assembly should legislate and make all electronic evidence admissible in court so that police investigations patterning to electronic evidence will not be in vain. The police management team like the Police Service Commission and Ministry of Police Affairs must judiciously implement Government White Paper on Police Reforms which, we belief can positively impact and transform the police.

Recruitment and placements in the Nigeria Police Force should be re-organized to ensure that quality people are recruited into the force. Having been recruited, their training must be thorough, comprehensive and detailed in line with what is obtainable in other democratic climes. The Police needs adequate transportation, communication, armament and logistic technologies to be able to respond to the growing sophistication in criminal activities across the country particularly the Boko Haram insurgency and bunkering that has ravaged the country in recent times. It is equally important that the officers and men should be paid proper remuneration and other welfare packages so as to improve their working conditions and general wellbeing. This total welfare packages must include the review of insurance, injury and death benefits payable to their dependants in case of any unforeseen eventualities.

Finally, we commend the efforts of various stakeholders agitating for legislative reforms to transform the Nigeria Police into a democratized and responsible organization. Currently, there are a number of Bills before the National Assembly and some of them include, Nigeria Police Service Bill, 2006, Administration of Criminal Justice Bill 2013, The National Human Right Commission (amendment) Bill, Community Service Bill and The Victims of Crime

Remedy Bill. From all intent and purposes, the bulk of the problems associated police activities in Nigeria will be resolved to the barest minimum if the Bills are passed into law. We therefore recommend that the Bills be immediately passed into law by the National Assembly and assented to by the President of the Federal Republic of Nigeria for the better and democratic growth of the Nigeria Police Force.

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