

## ENFORCEMENT OF LAW: REVIEW POWERS AND CHALLENGES OF THE POLICE IN NIGERIA\*

### Abstract

*Progress and development are only attainable in an atmosphere of peace and security. This explains why every society needs the Police in this modern time. Where security of lives and property is elusive, the Hobbesian state of nature will re-enact itself. Irrespective of the powers conferred on the Police under the relevant laws, the Police has not delivered on its mandate of protecting life and property of Nigerians. Arms peddling, banditry, kidnapping, herdsmen attacks, serial killings, general insecurity, etc, now reign supreme in Nigeria. The researchers therefore employed doctrinal research methodology to law enforcement powers and challenges of the Nigerian Police focusing on the Nigerian jurisdiction. It was found, inter alia, that the Nigerian police still thrives on the colonial mentality of suppression and has stood aloof from the citizenry whom they are meant to protect; that corruption, under funding, lack of training, among others, have similarly put a cog in the wheel of police' law enforcement, thereby rendering the police' public image stale; that an objective police reform is imperative to bring the police institution in tune with modern democratic realities. Among other things, police reform, training, welfare, review of qualification for recruitment into the Force and proper funding were recommended.*

**Key Words: Law, Police, Police Powers, Law Enforcement, Nigeria.**

### 1. Introduction

The origin of Police institution was traceable partly to the Greece and to the Roman world. The development of modern Police in Britain therefore can be traced to the Roman Empire. Sir Robert Peel was reputed to have found the first organized modern Police in 1829 and the Metropolitan Police was established on his initiative in Lincoln the same year.<sup>1</sup> Although, in the pre-colonial Nigeria, various ethnic societies had their own peculiar system of police,<sup>2</sup> formal Police in Nigeria is of colonial creation. From 1861 and beyond, Caskey and Freeman's thirty consular guards in Lagos,<sup>3</sup> the Royal Niger Armed Constabulary, the Niger Coast Constabulary, laid the foundation and subsequently shaped the development of modern police in Nigeria. This was borne out of the desire to protect British trade interests and quell rifts between the natives and the imperial merchants as well as the apparent motive to suppress native chiefs rearing the slightest resistance against British interests and advancement into their hinterland.<sup>4</sup> From its initial formation therefore, the police was conceived basically to fight and suppress the perceived enemies of colonialism and they viewed with resentment any form of uprising against the colonial policies or administration.<sup>5</sup> The native chiefs and the educated elites were particularly tagged enemies of the colonial government and had to be controlled or crushed.<sup>6</sup> Franklyne Ogbunwezeh gave an insight to this when in an Email to his associate, he volunteered the following words:

The Nigerian police was contained in oppression and brutal suppression of freedom and self determination. The colonial masters deployed a force of conscripted illiterates

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<sup>1</sup>B Whitaker, *Police in Society*, 35 - 36 cited in B. C. Okoro, *The Police, Law and Your Right* (Princeton Pub. Co; 2013) 2

<sup>2</sup>This was known by various names. The Northern Hausa/Fulani referred to the Police institution as the "Dogari" or "Yan Gadi" and later as "Yan Doka". The Yoruba referred to the Police as the "Akoda" or "Olopa" while the Igbo called it the "Ohu" or "Kotima".

<sup>3</sup>MC Caskry and H.S. Freeman were granted permission to maintain in the Colony of Lagos consular guards. This marked the nation of organized police in Nigeria.

<sup>4</sup>BC Okoro, *The Police, Law and Your Rights* (Princeton Pub. Co., 2013), 6 - 7

<sup>5</sup>Ibid, 7.

<sup>6</sup>This hostile pose informed the use of the Police for such expeditions against Benin in 1897 and the attack of the Andemeno in Calabar, the suppression of the coal miner's strike in Enugu in 1949 and quelling of the Aba Women Riot of 1929.

and psychological Lilliput's to police and suppress the legitimate of their brothers, who bore the excruciating weight of colonial oppression<sup>7</sup>

According to Oluyede:

Apart from the fact that most of the newly recruited policemen under the new Lagos/British administration were freed slaves, it was alleged that with the exception of very few, the men were derived from the vent lowest off scouring of peoples found about Lagos, chiefly inferior people and of the class known as alarms sleeping in market shades and living the most precarious life'. Some of the policemen were not only apathetic timid and unfit but also co-operated with thieves<sup>8</sup>

This was the foundations on which the colonial administration built the Nigerian Police, which police, was bequeathed to the independent Nigeria in 1960.

The post independent Police did not break loose from its colonial antecedents. Even in the 21st Century, the foundation upon which the Nigerian Police evolved cum its organization renders the Nigerian Police as a professional body set apart from the general public they are meant to serve. Social distancing was also accentuated by the modern use of patrol vehicles which displaced the traditional foot patrol. Also worrisome is the level of extortion of money from the citizens, especially at check points, arrest of relations to suspects, arbitrary arrest and intimidation of the innocent citizens, arbitrary denial of bail to deserving citizens, extortion of money before suspects could be released on bail, detention of suspects under inhuman conditions, torturing of suspects to extract confessional statement, etc.

Only recently, general insecurity threatened the root of Nigerian existence. The Boko Haram insurgency, kidnapping, Fulani herdsmen attack, armed robbery, militancy in the Niger Delta region, rape, traffic in persons, drug peddling and general breakdown of law and order are recurrent decimal in Nigeria. Secondly, law has been enforced lopsidedly in modern Nigerian society in such a way that the citizens have now nursed the popular view that only the poor are subject to the law while the rich buy their way out of the grips of the law. These trends, if allowed to flourish, would plunge the Nigerian society into the Hobbesian, *Contra Omnia Omnes* and consequently anarchy will be let loose to reign supreme in Nigeria. It is given the foregoing that the researcher sets to explore the police challenges in the enforcement of law in modern Nigeria with a view to advancing measures that will reposition the Nigeria Police for efficient performance in modern democratic era.

## **2. Conceptual Framework**

### **2.1 The Police and Policing**

The word *police* is of such common usage that a definition of it might seem irrelevant. For the benefit of the unapprised as well as of those to whom the meaning of the word may appear lost, we endeavour to define the term *police*. According to the Oxford Advanced Learners Dictionary, Police is seen in terms of 'an official organization whose job is to make people obey the law and to prevent and solve crime; the people who work for this organization'. The Police similarly means to go around a particular area to make sure that nobody is breaking the law there or to make sure that a particular set of rules is obeyed.<sup>9</sup> Furthermore, police is the Governmental Department charged with the preservation of public order, the promotion of public safety, and the prevention and detection, of crime; the officers or members of this department.<sup>10</sup> The word *police* is etymologically derived from the Greek word 'polis' meaning the city – state or the body of the citizens.<sup>11</sup> The police is so not only an organization but rather includes an act. In this wise, the police therefore *polices* a particular geographical area to ensure that laws are obeyed and that there is peace and orderliness in such area.

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<sup>7</sup><http://www.globalpolitician.com/articles.aap/ID=1266&cid=8&sid=55>; accessed on 13<sup>th</sup> October 2023.

<sup>8</sup> P Oluyede, *Constitutional Law in Nigeria* (Evans Brothers, 1992), 437 - 438.

<sup>9</sup> A Hornby, *Oxford Advanced Learner's Dictionary*, 6<sup>th</sup> Edn, (Oxford: Oxford University Press, 2000), 898

<sup>10</sup> B.A Gardner, *Black's Law Dictionary*, 7<sup>th</sup> Edn, (St. Paul Minn:West Group Pub.,1999), 1179

<sup>11</sup> <<http://www.en.m.wikipedia.org/wiki/polis>> Accessed last on 14<sup>th</sup> October 2023.

In early times, policing was linked with non ecclesiastical administration like health care delivery, safety, law and order in a state. The Greek ‘politeria’ and the Roman ‘politia’ all denoted the police.<sup>12</sup> These words were employed to denote the art of governing and regulating, in the interest of the public, the welfare, security needs, peace and order of the city-state. Police is noted to have originated from the Greek but it was the Roman who developed it to the current standard; the first organized police being the one organized by Caesar Augustus from the rank of his body guards in the days of the Roman Empire. The metropolitan police in London was however founded on the initiative of Sir Robert Peel who formed the first organized police in 1829.<sup>13</sup>

Policing similarly means the activity of keeping order in a place with police and/or the activity of controlling an industry, an activity.<sup>14</sup> For instance, when the police by means of the authority conferred upon them combats or fights crime in order to ensure peace and order in a nation or polity, they are said to be policing the nation or polity.

## 2.2 Crime

The concept of crime is one which engaged and has continued to engage scholars of the social science and many other disciplines as it does the legal discipline. Crime as a concept has been conceived as activities that involve breaking the law, an illegal act or activity that can be punished by law.<sup>15</sup> It is a social harm that the law makes punishable; the breach of a legal duty treated as the subject-matter of a criminal proceeding.<sup>16</sup>

Under the Nigerian legal system, the two principal operational codes<sup>17</sup> used in criminal proceedings made references to the word “offence” instead of crime. They however, had no problem by the use of the word “criminal”. It could indeed be inferred that both words (offence and crime) can be interchanged or simultaneously used. S. 2 of the Criminal Code defines offence as “an act or omission which renders the person doing the act of making the omission liable to punishment under this code or under any Act or law...” Also S. 3 (1) of the Penal Code defines an offence as “every act or omission contrary to the provisions thereof which he shall be guilty within northern Nigeria.” By virtue of S. 24 of the Criminal Code, an offence is a willed act. According to Okonkwo, an offence is an act or omission which is rendered punishable by some legislative enactment.<sup>18</sup> It is also an act or omission done or omitted to be done in a particular state of mind.<sup>19</sup> In totality a crime is a wrong done by one member of the state/society against another which is punishable under the criminal law of the country. It can as well be defined as those breaches of the law resulting in special accusatorial procedure controlled by the state and renders the offender upon conviction liable to sanction. A crime is proscribed by the state via laws which clearly define such offences and prescribe punishment thereof. The state enforces criminal laws through instrumentality of the law enforcement agents.<sup>20</sup>

The distinction between criminal wrong/crime and civil wrong and their proceedings show the peculiar characters of crime as opposed to civil wrongs as follows:

- a. A crime is a wrong against an individual and the society state.
- b. The state takes action against the offender, that is, the state prosecutes.
- c. The individual so offended cannot withdraw proceedings unless the offence is compoundable.
- d. The trial is governed by the criminal procedure code, criminal procedure Act and the penal code. This last characteristic is unique to the Nigerian legal system.

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<sup>12</sup> BC Okoro, *The Police, Law and Your Rights* (Lagos: Princeton Pub. Co., 2013), 1

<sup>13</sup> Ibid

<sup>14</sup> A Hornby (note 9), 899.

<sup>15</sup> A Hornby (note 9), 276.

<sup>16</sup> Ibid, 377.

<sup>17</sup> The Criminal Code Act Cap C 38 LFN 2010 and the Penal Code Act Cap P 3 LFN 2010.

<sup>18</sup> CO Okonkwo, *Okonkwo and Naish: Criminal Law in Nigeria* (Lagos; Spectrum Book Ltd, 2012), 43.

<sup>19</sup> Ibid.

<sup>20</sup> That is, the Police.

To qualify as crime, most legal systems recognize that the elements of action/act and intention must be available and concur in some cases, only. The cases which require both action and intention represent the traditional notion of constituent elements of a crime. In this light Okonkwo<sup>21</sup> wrote:

But if the definition of any particular offence is examined carefully, it will be seen that it nearly always consists of two sorts of elements - physical and mental... For example, in the offence in section 394 of the Criminal Code, the physical element is the killing of an animal capable of being stolen; the mental element is the intent to steal the skin or carcass. In English law, the two terms which stand for the physical and mental elements of an offence are, respectively *actus reus* (Latin for "guilty act") and *mens rea* ("guilty mind").<sup>22</sup>

Furthermore, the cases or instances where the mental element - *mens rea* is not required; are such offences termed strict liability or absolute liability offences/crimes. These crimes represents such offences in which the mental element or *mens rea* is immaterial, examples of these offences includes possession of hard drugs such as cocaine; over speeding which results to the death of another; and offences of negligent act, etc.

The Nigerian legal system requires that for an act or omission to qualify as a crime it must be contained in a written law and must have a punishment stated for it. This is the purport of S. 36 (12) of the Constitution of Federal Republic of Nigeria 1999<sup>23</sup> to the effect that '... a person cannot be convicted of a criminal offence unless that offence is defined and a penalty therefore is prescribed in written law...' This means that acts and omissions which under the unwritten customary laws and prior to this enactment/amendment were or amounted to criminal acts can no longer be regarded as such as far as the Nigerian legal system is concerned. It also means that for any statutory prohibited act or omission there must always be a prescribed punishment for its commission and where this is not done such violation falls short of a crime as it concerns the legal system in Nigeria.<sup>24</sup> Conclusively, crime as a social issue has been in the air and has occupied the minds of thinkers for centuries. The trend has always been to discuss what constitutes crime procedurally and not its substance. Brett<sup>25</sup> has offered that the reverse should be the case and it is in this light that Okonkwo opined:

The real difficulty about trying to discover some substantive, as opposed to procedural, hallmark of crime, is that the criminal law is so variable in content a variability due to the fact that any human conduct, however noble or outrageous, can be categorized as criminal simply by being forbidden on pain of punishment by the legislative power in any particular community.<sup>26</sup>

### **3. Origin of Policing.**

The origin of policing is traced to the Greek and the Roman. The word police is derived from the Greek word "polis", meaning that part of non ecclesiastical administration having to do with the safety, health and order of the state. The Greek 'politeria' meant the art of governing and regulating the welfare, security needs and order of the city state in the interest of the public. Although police is derived from the Greeks, it was the Romans who perfected the system.<sup>27</sup> The Roman 'politia' meant the same thing as the Greek 'politeria'. It was a symbol of power residing in central authority. During the duration of the Roman Empire, police in Rome was organized from the ranks of Caesar Augustus' body guards. There was the Roman *prefect* who had under his control fourteen Magistrates, each responsible for a district and assisted by *vigiles* who patrolled the streets, *lictors* who were law enforcement officers and *stationarii* who were residents of the city blocks.

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<sup>21</sup> CO Okonkwo, (note 18).

<sup>22</sup> Ibid.

<sup>23</sup> As amended 201.1

<sup>24</sup> Aoko v. Fagbemi (1961)1 All NLR 400.

<sup>25</sup> C. O. Okonkwo (note 18), 21.

<sup>26</sup> Ibid.

<sup>27</sup> SG Ehindero, *The Nigeria Police and Human Rights* (Jos: Ehindero (Nig.) Ltd, 1998), 1-2.

In Britain, policing developed as a local affair around the responsibility of all citizens to maintain law and order. This role is rooted in history and common law tradition of Britain that each citizen had a duty to suppress crime and disorder within his area. Failure to do so entailed the imposition of fines on such defaulters. The burden of policing was placed on every adult citizen. It was a vocational obligatory policing, manifesting itself in the forms of *Iyth Ingman* of the Saxon police, the *Frankpledge* in the South and East of England after the Norman Conquest of 1066 and later as the parish constable system after the enactment of the statute of Winchester 1285.<sup>28</sup> Policing and police work did not start as a paid profession. It started as a noble, incorruptible profession with considerable responsibility and dignity. It was the Justices of the Peace system which corrupted the parish constable system.<sup>29</sup>

When the first paid professional police force was proposed in Britain, it was strongly opposed by those who feared that such force would lead to repression and threat to the freedom of the individual and to democracy. The police as we know it today went through three distinct stages before it became a profession. As Ehindero puts it:

At first the populace, though small was responsible for maintaining law and order. Then Justices of the Peace emerged on the scene to provide both the law and order and justice at the bar. Then, in the present era, paid professional police were established to maintain law and order...<sup>30</sup>

Urbanization resulting from the industrial revolution brought a great strain on the extent that they were incapable of meeting the demand of peacekeeping. There was the problem of itinerant criminals which needed regional crime squad.<sup>31</sup>

In the late eighteenth century Lord Peel made proposals for the establishment of a paid professional police force in Britain to keep the peace and enforce the law. In so doing, he was motivated by the prevailing social unrest and disorder, moral, political as well as philosophic consideration.<sup>32</sup> At that time there was a move away from the centralization of power in the hands of a few people towards a democratic system of government as is known today. These were political and philosophic considerations having far reaching effects on policing. The development of a large middle class and the emphasis of law as a basis of social interaction rather than force influenced the formation of the modern police.<sup>33</sup>

#### **4. Historical Evolution of the Nigerian Police**

The History of the police force in Nigeria is traceable even to the pre-colonial era. Societies existing in the geographical area later amalgamated in 1914 and named Nigeria by Lord Frederick Lugard was organized in various forms. There was the Emirate system in northern Nigeria; various Kingdoms in the Western and Eastern Nigeria which were either centralized or republican in nature. In those societies, there were people who served the traditional rulers, such as chiefs, *Obas*, *Obis* and *Emirs* to maintain peace, law and order. These people were also used by their masters as personal guards, and to enforce compliance with native laws and judgments and were known in various nomenclature. In the emirate north, they were called “Dogari” or “Yan Gadi” and later “Yan Doka.” Among the Yoruba they were known as “Akoda” or Olepa while the Igbo referred to them as “Ohu” and later “kotima” services of youthful age grade member were also sometimes employed to enforce compliance with native laws.<sup>34</sup>

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<sup>28</sup> B Whitaker, *Police in Society* (London: Methuen, 1979), 35 -36.

<sup>29</sup> Ibid.

<sup>30</sup> SG Ehindero, (note 37), .2

<sup>31</sup> Ibid, 5.

<sup>32</sup> Ibid, 6.

<sup>33</sup> Ibid.

<sup>34</sup> BC Okoro, (note 4),.2.

In Nigeria the development of the police force was on a tangential direction to that of the British force, British trade interest and the need to prevent squabbles between the native chiefs and the imperial merchants were the impetus for the formation of the force.<sup>35</sup> The origin of organized police in Nigeria was however, traceable to 1861 when the then Governors of Lagos, Mc Caskry and H.S. Freeman, having established effective control of the colony of Lagos, were granted permission to maintain in the colony of Lagos, consular guards comprising thirty men.<sup>36</sup> In 1863, this guard matured into the Hausa police<sup>37</sup> consisting of six hundred men including captives and slaves.<sup>38</sup> In 1879, the Hausa police was again renamed “Hausa Constabulary and enlarged by recruitment of more men most of who were Hausa. The new look police was military in character but performed mainly civil duties. It consisted of one Commissioner, two Assistant Commissioners, one Superintendent, one Assistant Superintendent, one Pay and Quartermaster, one Master Tailor and two hundred and fifty other ranks.<sup>39</sup>

In 1886, the Royal Niger Company established in Lokoja and armed constabulary modeled on the Hausa Constabulary. The task of this force was essentially to protect its trade interests along the River Niger. The constabulary was made up of five officers and four hundred and fifteen rank and files. This number was later to increase in the year 1898 to fifteen officers and one thousand and three rank-and-file. Until 1900 when this force was disbanded by reason of the proclamation of the protectorate of northern Nigeria, it recorded remarkable success in punishing slave dealers in Ilorin and Bida<sup>40</sup>

Another form of police force “the Niger Coast Constabulary of 1894” was been organized for southern Nigeria. This force started in 1891 when the Oil River Protectorate was declared with headquarters at Calabar.<sup>41</sup> This was the handiwork of Annete whose mode of administration was a conflict model and who found it increasingly difficult to carry out consular orders which were invariably anti-chief interests.<sup>42</sup> According to Okoro, in order to effectively carry out consular orders in the area, the Niger Coast Constabulary was formed to deal with local chief and other elements whose interest conflicted with British commercial interest in the area.<sup>43</sup> The constabulary attacked the palace of Andemeno in Cross River and took part in the notorious British expedition against Benin in 1897.<sup>44</sup> This force survived for six years until 1900 when the Colony and Protectorate of Southern Nigeria was proclaimed. With the proclamation of the Protectorate of Southern Nigeria in 1906, a lot of the men of the Niger Coast Constabulary defected to the southern Nigeria Regiment.<sup>45</sup> And Nigeria had three separate police forces, one in the north and two in the south. The forces were the northern police force in the north, the Lagos police force and the southern police force both of which existed in the south of Nigeria. The two police commands in the south were however fused into one single force in the later part of 1906, when the Colony and Protectorate of Lagos was merged with the Protectorate of Southern Nigeria.<sup>46</sup> This force was headed by an inspector general of police John Stones and performed paramilitary duties.

In 1914 the Colony and Protectorate of Southern Nigeria and the Protectorate of Northern Nigeria were merged to form the Colony and Protectorate of Nigeria.<sup>47</sup> However, the southern and northern police forces remained separate and no amalgamation took place until 1930. On 1<sup>st</sup> April, 1930 came the existence of the Nigeria police force with headquarters in Lagos.<sup>48</sup> It was headed by C.W. Duncan who

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<sup>35</sup> SG Ehindero, (note 37), 10

<sup>36</sup> *Loc. Cit*

<sup>37</sup> *Loc. Cit*

<sup>38</sup> BC Okoro, (note 4)

<sup>39</sup> *Ibid*, 3.

<sup>40</sup> *Ibid*.

<sup>41</sup> SG Ehindero, (note 37).

<sup>42</sup> *Ibid*.

<sup>43</sup> BC Okoro, (note 4).

<sup>44</sup> *Ibid*.

<sup>45</sup> *Loc. Cit*.

<sup>46</sup> *Loc. Cit*.

<sup>47</sup> SG Ehindero, (note 37)

<sup>48</sup> SG Ehindero, (note 37)

was appointed as the first Inspector- General of Police.<sup>49</sup> During the colonial period, greater parts of the police were associated with local governments (i.e. native authorities). In the 1960, under the first Republic, these forces were first regionalized and thereafter, nationalized. At that time, the Nigeria police force, generally performed conventional police functions and was responsible for internal security, as well as supporting the prison, immigration, and customs services: it also performed military duties within and outside Nigeria as may be directed. Police officers, at this time, were not usually armed but were issued weapons when required for specific mission or circumstances. They were often deployed throughout the country until 1989 when General Babangida changed the policy. He announced that a large number of officers should be posted to their native areas so as to facilitate police-community relations.<sup>50</sup>

In the year 1954, following the adoption of the new constitution, the Nigeria police force became federal force. In 1963, it was divided into five regional commands, each headed by a commissioner of police. The regional commands were Lagos, northern region, western region, eastern region and Mid Western Region. The inspector-General of police remained the overall head at the force headquarters Lagos.<sup>51</sup> Following agitation by nationalists force for the nationalization of the police force since the country was longer a British colony, Mr. Louis Orok Edet was in 1964 appointed the first Nigeria Inspector-General of Police.<sup>52</sup>

In 1967, General Yakubu Gowon created twelve state police commands in conformity with the new political structure of the country as at then. The subsequent creation of more states has culminated in the creation of additional state police commands presently, Nigeria has 38 police command structure including the Federal Capital Territory, Abuja.<sup>53</sup>

### **5. Statutory Authority of the Police**

The statutory foundation of the Nigerian police is traceable to the Constitution of the Federal Republic of Nigeria 1999 (as amended). The position of the constitution is such that it forms the basis for the definition and allocation of governmental powers and the modus operandi for exercising same. Section 1 establishes the mandate of the constitution and places it at the zenith of all laws in Nigeria. It is therefore safe to say that the constitution is the grundnorm in the hierarchy of laws in Nigeria. Section 214 (1) establishes the Nigerian Police Force as follows: ‘There shall be a police force for Nigeria, which shall be known as the Nigerian police force and subject to the provision of this section no other police force shall be established for the federation or any part thereof.’ Section 214 (2) provided for the organizational structure of the police thus: ‘The Nigeria police force shall be organised and administered in accordance with such provisions as may be prescribed by an Act of the National Assembly.’ The subsection further vests on the Nigerian police such powers and duties as may be conferred upon them by the law.

Section 4 of the Police Act provides for the general powers of the Nigeria Police Force. Accordingly the police shall be employed for the prevention and detection of crime, the apprehension of offenders, preservation of law and order, protection of life and property and due enforcement of all laws and regulations which they shall be directly charged. They shall similarly perform such military duties within and outside Nigeria as may be required or authorized by any law. Section 5 also mandates the police to enforce the Constitution of the Federal Republic of Nigeria including the human rights provisions in chapter IV therein.

The powers and duties of the police therefore flow from the law. According to Amadi;

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<sup>49</sup> BC Okoro, (note 4)

<sup>50</sup> Ibid

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> BC Okoro, (note 4)

The constitution provides that the members of the NPF shall have such powers and duties as may be conferred upon them by law. The law which provides for such powers and duties is the Police Act. Accordingly, it vests in the police the power to arrest any offending citizens, the powers to detain and search his person, the powers to search his property, the powers to take his finger print, the powers are quite expansive, but they must be exercised within the law.<sup>54</sup>

Several other roles of the police were identified to control of traffic, rendering advice to disputants and offenders, assistance in emergencies like flood, fire fighting, ambulance services, etc. Amadi observed further that

What is noticeable from these powers and duties is that while the later involves work which a police officer is employed to do, the former is the instrument with which he carries out the work. Their complementary characteristics make it rather difficult to say which one-power or duty-takes precedence over the other in the mind of a police officer ... the exercise of his powers entails a response to the call of duty.<sup>55</sup>

The powers and duties of the police are often exercised in complementary manner. A police officer may be thought to be exercising his powers at a time but would at the same time be said to be rendering his duties. As a learned writer puts it: '... a police officer exercising his power of arrest is concurrently, performing his duty to maintain law and order. This may be interpreted simply either that he is exercising his power or that he is doing his duty, either construction is correct.'<sup>56</sup>

Dambazau in the same vein noted that the powers and duties of the police is peculiar:

The police are the biggest most visible and important sub-system of the criminal justice system. The police provides the entry point into the criminal justice system either through crime reports from the public or its own discovery. The police organisation is the main institution which provides regular direct contact with the public, a situation that makes it unique among the other components of the criminal justice system.<sup>57</sup>

The National Assembly may by virtue of Section 214 (2) (c), make provisions for branches of the Nigeria Police forming part of the Armed Forces of the federation or for the protection of harbours , water ways, railways and airfields.

The President is empowered under the constitution of Nigeria to give lawful directives to the Inspector General of Police with respect to the maintenance and securing public safety and public order as he may consider necessary. The IGP shall comply with those directives or cause them to be complied with.<sup>58</sup> Section 215 (4) expects the same relationship between the Governor of a state and the Commissioner of Police in charge of such state command. While S. 215 (5) removes from the courts the power to enquire into any issue bordering on this directions. This aligns with S. 9 (5) of the Police Act which charges the IGP with the responsibility to command the police force subject to the directive of the president.

## **6. The Police Powers**

The gamut of the powers of police lies in the prevention and detection of crimes.<sup>59</sup> Flowing from this are incidental powers as arrest of offenders, detention of offenders, investigation of crimes, arraignment and prosecution of criminals. For purposes of carrying out the above duties as well as for purposes of procedure and meting out punitive measure to culprits, crimes or offences generally are classified into the following:

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<sup>54</sup>GOS Amadi, *Police Power in Nigeria* (Nsukka: Afro-Orbis Pub. Co. Ltd., 2000), 14. These powers enumerated in his excerpts are provided for in SS. 3 – 11 CPA, 23 -27, 29 and 30 PA.

<sup>55</sup> Ibid, 15.

<sup>56</sup> Ibid.

<sup>57</sup>AB Dambazau, *Criminal Justice* (Ibadan: Spectrum Books Ltd., 2002), 178

<sup>58</sup> CFRN 1999 as amended, Section 215 (3).

<sup>59</sup> Police Act 2020 Sections 4 and 5.



**1. Crime against Property:** this crime is committed when a person damages, destroys or steals someone else's property, such as car, furniture or other things capable of being stolen, or vandalizes a building or such other property.

**2. Crime against Person:** this occurs when someone cause harm or attempts to harm threaten harm or conspires to harm someone else. This crime involves force or threat of force<sup>60</sup>

However, crime can further be classified into

- a. Felony
- b. Misdemeanor
- c. Simple offences

Misdemeanors are offences for which punishment is less than three years, they may or may not be compoundable. They are called boilable offences-5.340 of the Penal Code. They can as well be simple offences and can be tried summarily also, in misdemeanors offences; a private person has no power of arrest. A felony on the other hand, is an offence punishable with minimum imprisonment of three (3) years felonies are non-compoundable. Felonies are non-boilable offences, that is, they ordinarily are not boilable but ban may be granted at the discretion of the court. Section 341 of the penal code provides for non- boilable offences. It states that offences attracting more than 3 years imprisonment are ordinarily not boilable but ban can be granted at the judge's court's discretion. A felony cannot be tried summarily and a private person has the power of arrest in leser felonious offences.

Crime according to BC Okoro has further been classified as follows:

- i. Indictable offences: any criminal offences for which on conviction, a person may be punished by a term of imprisonment exceeding two years, or by imposition of fine exceeding ₦400 (Four Hundred Naira)
- ii. Felony: any offence debased by law as felony or is punishable without proof of previous conviction with death or imprisonment for three (3) years or more.

Any other criminal offence other than these two above, fall under non-indictable offence, misdemeanor or simple offence.<sup>61</sup> Writing on the classification of offences, Okonkwo and Naish<sup>62</sup> wrote;

Offences can be classified in a number of ways some classifications may be made merely for the sake of convenience and may have no legal significance. For instance, the division of offences into those against the person, those against property, and those against the state... in Nigeria all crimes are now statutory... form the point of view of substantive law, the only classification of importance is contained in S.3 of the criminal code. Offences are there divided three fold into felonies, misdemeanors, and simple offences. The terms "felony" and "misdemeaour" derive from English law, but any distinction between them have now been abashed in England ... the division very roughly corresponds to the gravity of the offence, because opart from the legislative provisions where an offence is expressly declared to be of a particular type, felonies are those offences which are punishable with three years imprisonment or more; misdemeanours, those with six months imprisonment up to three years, and simple offences, those punishable for any period less than six months...<sup>63</sup>

Conclusively, Okonkwo based on the classification of offences; advised that the roughness of this classification should be kept in mind for at times a misdemeaour (e. g. A seditious pamphlet advocating the overthrow of the government) may be far more serious in its effects than a felony (e.g., the stealing of six kobo). The fact that the court may feel that a felony merits little or no punishment does not alter

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<sup>60</sup> BC Okoro, (note 4), 25

<sup>61</sup> BC Okoro, (note 4).

<sup>62</sup> CO Okonkwo (note 18), 64.

<sup>63</sup> Ibid, 64 – 65.

the fact that it is a felony and the consequences which attend on a felony, but not on a misdemeanor or a simple offence, must apply.<sup>64</sup>

## **7. Challenges of the Police in Nigeria**

### **7.1 The Challenges of a Colonial Inherited Police Institution**

What exists today as the Nigeria Police Force was an establishment of the British colonial government.<sup>65</sup> The Hausa Constabulary of 1861, the Royal Niger Constabulary of 1886, the Niger Coast Constabulary of 1894 and the Southern Police Force of 1906, all metamorphosed into the Nigeria Police Force in 1930.<sup>66</sup> Since then, the successive constitutions of Nigeria<sup>67</sup> all made provisions retaining the force as part of the executive arm of government. The force was basically constituted as a tool of oppression and brutal suppression of the Nationalist activities of the few elites clamoring for freedom and self determination during the colonial era. The origin of the police force therefore was deeply rooted in colonial exploitation and brutal repression of natives.<sup>68</sup>

Similarly, the military incursion into administration of Nigeria between 1966 and 1999 also infused military mentality into the Nigerian police. The implication of the above is that the Nigeria police was nurtured in environment devoid of democracy, rule of law and fairness. Politicians, since independence have maintained the police as instrument of intimidation, harassment and suppression of political opponents. This is why no government has seen any need for serious reform of the police. The police, even in the modern times, sees itself as an instrument used to protect the government and as a paramilitary outfit. This removes all issues of civilians' rights at all from the thought of an average Nigerian police officer, hence the cliché "bloody civilian". The use of excessive force in quelling students' disorders and even peaceful protests by trade unions are manifestations of this police negative poses. A commentator accordingly lamented that what we are experiencing is an upshot of military era. The police is behaving the way the military has conditioned it. They have not emerged from that era.<sup>69</sup> Another commentator also asserted: 'with this circle dalliance with the government instead of obedience to the laws of the land, a supposed neutral institution was positioned to embrace the ephemeral political agenda of each government, of the day. To this and, the police establishment becomes susceptible to taking great liberties.'<sup>70</sup>

### **7.2 The Challenges of Corruption.**

The issue of corruption is one which has eaten into the Nigerian state and economy to earn for us the recent title of "most fantastically corrupt nation in the world". Corruption has been defined in several ways. Black's Law Dictionary defines corruption as depravity, perversion, or taint, an impairment of integrity, virtue, or moral principle; especially, the impairment of a public official's duties by bribery.<sup>71</sup>

In Nigeria, most police officers indulge in corrupt practices and acts. Research has shown that the Nigerian Police Force is filthy due to the corrupt nature of officers of the force, ranging from embezzlement of funds, extortion, expropriation of money from drivers and cyclists, procurement of arrests and charges of innocent citizens, refusal of bail for non-payment of money, tip off and brutal treatment of citizens to maiming of citizens,<sup>72</sup> etc, all for personal gains.

### **7.3 The Challenges of Motivation/Low Morale**

There is manifestly no motivation on the part of police officers. Lack of motivation stems from the fact that most of the applicants for police job do so for lack of better things to do. Others get into the police to get the

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<sup>64</sup> Ibid, 65.

<sup>65</sup> We have demonstrated this when we traced the history of the Nigerian Police earlier in this work.

<sup>66</sup> Okoro, (note 4) 3-4.

<sup>67</sup> The Nigerian Constitution of 1960, 1963, 1979, defunct 1989 and of 1999.

<sup>68</sup> Supra, n 49.

<sup>69</sup> Chidi Ajaegbu-a member of the Board of the institution of chartered Accountant of Nigeria, *Vanguard Newspaper* of Monday, 17<sup>th</sup> 2004.

<sup>70</sup> Ogbu Nwezeh, (note 7).

<sup>71</sup> BC Okoro, (note 4).

<sup>72</sup> Ibid.

protection of the uniform. Only a few had the desire of doing the police job. The implication is that to the former group, job satisfaction is obviously not there. Low morale is one of the militating factors to police optimum performance. Low morale is a product of other factors such as poor remuneration, delayed salary, lack of patriotism, illiteracy, lack of incentives, bad leadership, ethnic factors, etc.<sup>73</sup>

Other quotients of low morale among Police Officers include insufficient appropriation to police, poor emolument, lack of office equipment, arms and ammunitions are grossly insufficient; vehicles are over-used, unserviceable and hardly maintained.<sup>74</sup> It is estimated that only about 25.5% of the total police population is accommodated in the police Barracks, other 65.5% are squatters. Low morale also stems from the fact that some officers are stagnated for a long time while others are given undeserved accelerated promotion.<sup>75</sup>

### 3. Conclusion and Recommendations

The police has had some daunting challenges in the enforcement of law in Nigeria. This is abysmal, especially given the security threats starring the country on the face currently. If the Nigeria Police will measure up with the social expectations and their counterparts in developed countries, these challenges need to be effectively tackled without ado. It is given this position that the researcher recommends as follows:

**a. Increase Budgetary Allocation:** the federal government should increase budgetary provision to the police in order enable the police deal with the challenges of quality arms acquisition, vehicle purchases and maintenance, provision of logistics, acquisition of modern technological equipment, helicopters, etc, to ensure effective policing of the nation.

**b. Objective Recruitment:** the recruitment into the police should be based on objective criteria and standards. The practice whereby quota for recruitment is shared among politicians and the remaining placed for the highest bidders should stop. Patriotic citizens should be employed into the force for optimum performance.

**c. Training and Re-Training:** officers and men of the Nigeria Police should be trained and re-trained on regular basis on the use of latest technology, tactics of law enforcement, air operations, etc, to meet with the demands of modern policing.

**d. Stepping up Qualification for Appointment:** qualification for appointment into the police should be stepped up to at least Ordinary National Diploma. Recruitment of bachelor degree holders in special professions – sociology, psychology, forensic analysts, computer science, law, medicine, etc, will no doubt, reposition the police for better result.

**e. Welfare Scheme:** welfare scheme that will help take care of the officers' health, finances and life assurances to take care of officers' dependants in the event of loss of life in active service should be put in place. This will boost officers' morale and reduce corruption among officers and men of the police.

**f. Objective Fight against Corruption:** the fight against corruption in all aspect of life, especially in the police should be intensified. Rotten eggs among the police should be rooted out to pave way for the good ones to take the police force to the next level.

<sup>73</sup>Ehinola - Formerly Deputy Commissioner of Police Zone 5, once commented that there is neglect of the welfare of officers and men of the force... police personal make use of public hospitals and pick up their hospital bill.

<sup>74</sup>Statistics buttressing poor remuneration in the police shows that a Constable earned ₦10, 000.00; a Corporal – ₦13, 000.00; a Sergeant – ₦15, 000.00 before the Late President Yar Adua's 100% increment of 2008.<sup>74</sup> Consequent on the increment, a Constable now takes N22, 000.00 – N27, 000.00; a Corporal takes between N27, 000.00 to N28, 000.00; a Sergeant now take N55, 000.00. Take home for ASP is now N80, 000.00 to N85, 000.00; DSP takes N90, 000.00; SP – N100, 000.00. see The Punch of Wednesday, 16-2008, 5

<sup>75</sup> Okoro, (note 4), 209