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## Sailing Against the Tides? Re-Examining the Challenges Plaguing the Nigerian Police Force in the Administration of Criminal Justice

Rilwan F. Mahmoud

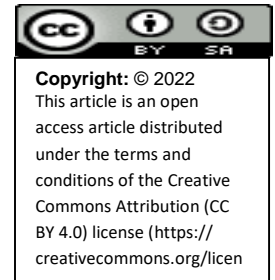
Lecturer of the Department of Public law,  
Faculty of Law, University of Ilorin, Nigeria

LL. B, LL. M (University of Ilorin)

BL (Nigerian Supreme Court)

Ph. D (University of Kwazulu-Natal, South Africa)

mahmoudesq@yahoo.com



### Abstract

*Insecurity in Nigeria is at an all-time high seeing the rise of homicide, kidnapping, armed robbery and corruption. This has revealed a dire breakdown of the structure and the total absence of a functional criminal justice system in the Country. Kidnapping has grown into a multi-billion Naira industry as it has been left relatively unchecked while the rise in killings proves an ineffective law enforcement system. This paper examines the challenges hindering the Nigerian Police Force from effectively undertaking their duty as the last line of defense against civil unrest and the disruption of law and order. The paper achieves this by evaluating the extent to which the country measures up to a functional criminal justice system. This paper shows that despite the best efforts of the federal and state government to ensure accountability in the Nigerian Police force, there remains a significant lacuna where these functions are not being performed adequately. The paper concludes that a primary cause of the inadequacy includes insufficient financing, equipment, and infrastructure, poor training and a shortage of qualified training staff. It recommends that the Government should prioritize the welfare of the members of the Nigerian Police force to help build a functioning criminal justice system.*

**Keywords:** Nigerian Police, Criminal justice, Institutions, Judiciary

## Introduction

As at April 2022, Nigeria was ranked the 17<sup>th</sup> least peaceful country in the world on Global Peace Index.<sup>1</sup> This aptly reflects the overwhelming surge in kidnappings, armed robberies and homicide in the country over the past few years.<sup>2</sup> The majority of killings from 2021 to 2022 took place in Northern Nigeria (75%) and was primarily caused by insecurities as a result of terrorism.<sup>3</sup> The homicide rate in this same period stood at 34 per 100,000 persons (about 70,000 people).<sup>4</sup> The main objective of a functional criminal justice system is to ensure public peace, order, punishment of offenders and maintaining public confidence.<sup>5</sup> The Nigerian police is the major security outfit established for the purpose of ensuring peace and order and securing the lives and properties of citizens.<sup>6</sup> Unfortunately, the Nigerian police force has faced numerous challenges in recent times particularly including the abuse of power lack of accountability, absence of transparency and inadequate funding.<sup>7</sup> This has largely impacted the forces ability to adequately cater to the administration of criminal justice in Nigeria.<sup>8</sup>

## Development of the Nigerian Police Force

African societies and specifically, Nigerian pre-colonial societies had customary standards and norms regulating conduct as well as sanctions for breaches on the path of offenders.<sup>9</sup> The people of Nigeria had their own unique and informal mechanisms adopted to maintain law and order and, they were embedded in the culture and traditions of the different ethnic groups in Nigeria.<sup>10</sup> Before the advent of the colonialists in Nigeria, the country maintained indigenous institutions and customary criminal laws responsible for crime control.<sup>11</sup> Traditional policing found its root in the community and the structures were closely linked with social and religious institutions.<sup>12</sup> There was an absence of codified laws and social structure

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<sup>1</sup> World Population Review “Most Peaceful Countries 2022”

[www.worldpopulationreview.com/country-rankings/most-peaceful-countries](http://www.worldpopulationreview.com/country-rankings/most-peaceful-countries) (Last accessed on the 2<sup>nd</sup> of April, 2022)

<sup>2</sup> Hogan Guards “Security Intelligence Report (Nigeria April 2022)” [www.hoganguards.com](http://www.hoganguards.com) 2022

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Akinsulore A, ‘The Nigeria Police Philosophy and Administration of Criminal Justice Post 2015: Interrogating the Dissonance,’ (2020) 4(2) Sriwijaya Law Review.

<sup>6</sup> Ibid.

<sup>7</sup> Umar M.A, ‘Police Corruption and Administration of Criminal Justice System in Nigeria,’ (2018) 9(1) NAUJILJ, pp.198-208

<sup>8</sup> Ojedokun U.A, Ogunleye Y, Aderinto A. A, ‘Mass Mobilization for Police Accountability: The Case of Nigeria’s #EndSARS Protest,’ (2021) 15(3) Policing: A Journal of Policy and Practice 1894-1903.

<sup>9</sup> Onyeozili E. and Ebbe O.N, ‘Social Control in Pre-Colonial Igboland of Nigeria,’ (2012) 6(1&2) African Journal of Criminology and Justice Studies.

<sup>10</sup> Arisukwu O.C, ‘Policing Trends in Nigeria Since Independence (1960-2012),’ (2012) The Police Journal: Theory, Practice and Principles.

<sup>11</sup> Olayode A, ‘Restorative Justice and Pre-colonial Justice Practices in Nigeria: A Comparative Analysis,’ (2017) Internet Journal of Restorative Justice, 5 Year Celebration Special Issue. s

<sup>12</sup> Arisukwu O, Igbolkwu C, Oye et al., ‘Community Participation in Crime Prevention and Control in Rural Nigeria,’ (2020) 6(9) Heliyon.

that formed the basis of regulation of human conduct in pre-colonial Nigerian societies. Basically, institutions also administered criminal justice.<sup>13</sup> These institutions were responsible for crime detection and prevention in different parts of Nigeria and they include age-grades, societies, messengers and palace guards.<sup>14</sup> Pre-colonial African communities were ethnically, religiously and culturally diverse and the region did not have a dominant ethnic, religious or cultural group.<sup>15</sup> Customary laws were largely unwritten and they formed the corpus of procedures adopted by local communities to resolve disputes.<sup>16</sup> These laws were based on common cultural belief and ethical codes that were collectively accepted as binding.<sup>17</sup> While Nigeria did not maintain a unified social-control system, there were control systems embedded in different parts of Nigeria and ethnic groups.<sup>18</sup>

However, a common trend was that obligations were placed on communal structural levels of government like the family heads, the heads of extended families, the village, village groups, Town heads or community of towns.<sup>19</sup> These stratifications were based on well-understood geographical, subject matter differences and jurisdictional considerations.<sup>20</sup> At each traditional governmental levels, there were provisions for security maintenance, crime prevention, law enforcement and general social control by the community acting collectively under a communal capacity or as the case may be, through appointed representatives like the heads of these social structures.<sup>21</sup> In pre-colonial Igbo land, there was the Young Men's Age Grade who were charged with the responsibility of ensuring security and law enforcement in different regions in Igbo land. Members of Young Men's Age Grade have the power to sanction in a bid to prevent crimes by "identifying, apprehending and processing" suspected offenders.<sup>22</sup> These functions are very similar to the statutory functions of the modern-day police man in Nigeria. The Age grades also carried out additional duties like enforcement of judicial decisions. Such enforcements usually come in form of retrieving judgment fine called *oriri iwu*, or inflicting public punishment like

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<sup>13</sup> Oghi F.E, 'Reflections on Africa's Security Situation: An Examination of Nigeria Police Force, 1999-2011', (2014) 2(4) AFFREV IJAH: An International Journal of Arts and Humanities.

<sup>14</sup> Inyang J.D. and Abraham U.E, 'Policing in Nigeria: A Case for Partnership between Formal and Informal Police Institutions,' (2013) 1(4) Merit Research Journal of Art, Social Science and Humanities.

<sup>15</sup> Salihu H.A., 'Possibilities for the Incorporation of African Indigenous Procedures and Mechanisms of Dispute Resolution in the Administration of Criminal Justice in Nigeria,' (2020) 23(4) Contemporary Justice Review: Issues in Criminal, Social and Restorative Justice.

<sup>16</sup> Ibid.

<sup>17</sup> Otu N, 'The Development and Growth of the Nigeria Police Force from a Social Context Perspective.' (2004) The Police Journal: Theory, Practice and Principles.

<sup>18</sup> Ibid.

<sup>19</sup> Ikuteyijo L. and Rotimi K, 'Community Partnership in Policing: The Nigerian Experience,' (2012) The Police Journal: Theory, Practice and Principles. <https://doi.org/10.1350/pojo.2012.85.2.549>

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Okafor N, 'Law Enforcement in Post-Colonial Africa: Interfacing Indigenous and English Policing in Nigeria', (2007) International Police Executive Symposium, Working Paper No. 7

shaming and humiliating a criminal, which was referred to as *igba ekpe*.<sup>23</sup> In the Hausa community, the methods of social control were primarily the responsibility of indigenous institutions.<sup>24</sup> These institutions were saddled with the responsibility of fighting crimes. The regulation of behaviors and social control found roots in the Islamic legal system and the social structure existing in the North at that period.<sup>25</sup> The pre-colonial forms of policing included vigilante groups and palace guards that carried out crime prevention and detection functions.<sup>26</sup>

The British colonial era brought about the established of local and decentralized police forces.<sup>27</sup> The first policing force was created for the Lagos colony in 1861.<sup>28</sup> Other constabularies were subsequently established in regions that later became known as the northern and southern protectorates.<sup>29</sup> These police forces were constituted in differing manners largely depending on the location. In the Lagos colony, most of the police officers deployed to region were from the Hausa ethnic group in the North. As a result, in 1863, the 30-member consular guard was renamed the Hausa Guard. Later in 1879, there was an ordinance creating a constabulary for the Lagos Colony. The 1879 Ordinance regularized the Hausa Guard and it became known as the Hausa Constabulary.<sup>30</sup> The Royal Niger Constabulary was set up in 1888, established by the Royal Niger Company which had its headquarters at Lokoja during that period.<sup>31</sup> The policing outfits introduced by the British was majorly a decentralized system of policing as each region had different policing outfits established by different British governments.<sup>32</sup> The separate operation of the different police forces continued even after the amalgamation of the Northern and Southern Protectorates in 1914. The Nigerian Police Force as a national force was established in 1930 via the amalgamation of the Northern and Southern police forces.<sup>33</sup>

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<sup>23</sup> Okereafoezeke N, '*Law and Justice in Post-British Nigeria: Conflicts and Interactions Between Native and Foreign Systems of Social Control in Igbo.*' (Greenwood Press Westport, Connecticut USA 2002)

<sup>24</sup> Rotimi K, 'The Police in a Federal State: The Nigerian Experience', (College Press Limited, Ibadan Nigerian2001).

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Bakare A. R. and Aderinola G.T, 'The Nigeria Police and Internal Security Management in Nigeria,' In: Oshita O, Alumona I and Onuoha, F. (eds) '*Internal Security Management in Nigeria*', (Palgrave Macmillan, Singapore, 2019)

<sup>28</sup> Aborisade R. A and Fayemi J.A, 'Police Corruption in Nigeria: A Perspective on its Nature and Control,' (2015) 17(2) Nigerian Journal of Social Studies, pp. 246-261

<sup>29</sup> Robinson, C.C, Scaglione, R. and Olivero J.M. 'Police in Contradiction: The Evolution of the Police Function in Society,' (Westport, Conn. Greenwood, 1994).

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Alemika E.O, 'Colonialism, State and Policing in Nigeria,' (1993) 20, 187-219 Crime, Law and Social Change.

<sup>33</sup> Ibid.

Following Nigeria's independence in 1960 the pre-existing policing structure remained. Under the first republic, the forces were nationalized. The regional police forces existed alongside native authority or local government police. In 1968, all the policing outfits in Nigeria were merged to form the Nigerian Police Force as we now have it.<sup>34</sup> Despite a series of organizational reforms in the Force, there is still a glaring continuity in the past policing traditions. Policing in the colonial and post-colonial eras is characterized by the maintenance of law and order and, defense concentrated in a few powerful and wealthy groups of people that are in charge of the country's political and economic system.<sup>35</sup>

### **The Criminal Justice System in Nigeria**

A criminal justice system is a system that encompasses practices and institutions channeled towards social control, crime deterrence and, sanctioning of people who commit offences against established laws with criminal penalties or rehabilitation of such offenders.<sup>36</sup> Criminal justice starts from the point of commission of an offence.<sup>37</sup> It, therefore, points at collective institutions an alleged criminal must come in contact with and pass through right from the point of the alleged commission of an offence to the point at which the claims against him must have been disposed of or when he is punished accordingly.<sup>38</sup> These institutions consist of the police, judiciary, prosecutors, correctional services and legal aid schemes.<sup>39</sup> These institutions have pronounced powers and distinct roles to play in the administration of criminal justice. Although, at the long run, their roles are complementary as these institutions must work in harmony to achieve a functional criminal justice system.<sup>40</sup> The Nigerian police is the major security outfit established for the purpose of ensuring peace and order and securing the lives and properties of citizens.<sup>41</sup>

For the effectiveness of these institutions, the importance of cooperation and harmony in carrying out their duties cannot be over-emphasized this is because the police, like the courts, play a dominant role in the administration of justice.<sup>42</sup> They have statutorily recognized powers to arrest a person suspected to have committed a

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<sup>34</sup> Alemika E.E.O and Chukuwma I, 'Police –Community Violence in Lagos,' (Lagos: Center for Law Enforcement Education, 2000).

<sup>35</sup> Alemika E.O, 'Policing and Perceptions of Police in Nigeria,' (1988) 161 Policing and Perceptions of Police in Nigeria.

<sup>36</sup> Daudu J.B, 'Criminal Investigation, Procedure and Evidence- Reform Imperatives' in Daudu J.B and Adekunle D. (eds.), *Reforming Criminal Justice in Nigeria*. (Nigerian Bar Association, Abuja 2012)

<sup>37</sup> Van Schaack B and Slye R, *International Criminal Law and its Enforcement- Cases and Materials*, 2<sup>nd</sup> ed. (Thomas Reuters Press, London 2010)

<sup>38</sup> Ibid.

<sup>39</sup> Eme O. and Okoh C, 'The Police and Criminal Justice System in Africa: Agenda for reform', (2009) 4(1) 166-181 International Journal of Development and Management Review.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Sa'ad, A.M, 'Human Rights, the Police and Criminal Justice Process in Nigeria,' (1995) 2 (1) Journal of Social and Management Studies.

crime<sup>43</sup>, they can duly investigate and interrogate persons in relation to a crime<sup>44</sup> and, they can prosecute suspects.<sup>45</sup> Unfortunately, the Nigerian police force has faced numerous challenges in recent times particularly involving the abuse of power.<sup>46</sup> This has largely impacted the forces ability to adequately cater to the administration of criminal justice.<sup>47</sup> Other challenges include the lack of accountability, absence of transparency and inadequate funding.<sup>48</sup>

### **Characteristics of a Functional Criminal Justice System**

For a criminal justice system to function effectively, it is necessary that the primary actors including the judiciary, law enforcement agencies as well as legislators contribute adequately.<sup>49</sup> Accountability, the enactment of relevant laws and the implementation of the rule of laws are some of the key elements required for an effective criminal justice system.<sup>50</sup> For the purpose of this paper, the primary actor that shall be considered are the law enforcement agencies particularly the Nigerian Police Force.

### **Accountability**

Arguably the most critical requirement for the effective administration of criminal justice, accountability of the Police is indispensable for law enforcement to thrive.<sup>51</sup> Unfortunately, this is the area in which the Nigerian Police Force is in dire need of reform. The proper exercise of statutory duties by the police has been marred by allegations of indiscriminate use of force against civilians, bribery, the use of intimidation tactics, false imprisonment and a lot more.<sup>52</sup>

The well-documented arbitrary use of powers by the now defunct Special Anti-Robbery Squad (SARS) were but a fraction of the absence of adequate accountability in law enforcement.<sup>53</sup> The special unit of the Nigerian Police force was responsible for extra judicial killings, kidnapping, armed robbery and corruption among others revealing a dire breakdown of the structure and the total absence of a functional criminal justice system.<sup>54</sup>

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<sup>43</sup> Section 32 of the Nigerian Police Act, 2020

<sup>44</sup> Section 31 of the Nigerian Police Act, 2020

<sup>45</sup> Section 66 of the Nigerian Police Act, 2020.

<sup>46</sup> Umar M.A, 'Police Corruption and Administration of Criminal Justice System in Nigeria,' (2018) 9(1) NAUJILJ, pp.198-208

<sup>47</sup> Ojedokun U.A, Ogunleye Y, Aderinto A. A, 'Mass Mobilization for Police Accountability: The Case of Nigeria's #EndSARS Protest,' (2021) 15(3) Policing: A Journal of Policy and Practice 1894-1903.

<sup>48</sup> Ibid.

<sup>49</sup> Osasona T, 'Time to Reform Nigeria's Criminal Justice System,' (2015) 3(2) Journal of Law and Criminal Justice, 73-79

<sup>50</sup> Ibid.

<sup>51</sup> Stone C, 'Tracing police accountability in theory and practice: From Philadelphia to Abuja and Sao Paulo,' (2007) Theoretical Criminology.

<sup>52</sup> Auerbach J.N., 'Police Accountability in Kenya,' (2003) 3(2) African Human Rights Law Journal

<sup>53</sup> Ojedokun U.A, Ogunleye Y, Aderinto A. A, 'Mass Mobilization for Police Accountability: The Case of Nigeria's #EndSARS Protest,' (2021) 15(3) Policing: A Journal of Policy and Practice 1894-1903.

<sup>54</sup> ibid

### **Fair and Speedy Trial**

While sections 35 and 36 require that timeous and fair trials be afforded to criminal suspects, the Nigerian Judiciary system remains fraught with clogs in the wheels of justice such as undue and incessant adjournments as well as delays in producing accused persons during trials.<sup>55</sup> There are also hindrances caused by slow and inadequate investigations by the police as well as red tape and delays in the overwhelmed ministries of justice.<sup>56</sup> These factors go a long way in hindering the effective administration of criminal justice in Nigeria. It should be noted also that fair and speedy trial processes including in the delivery of judgment are indispensable in ensuring a proper administration of criminal justice while protecting the rights of an accused, the interests of the victims and the sanctity of the society at large.<sup>57</sup>

### **Implementation of the Rule of Law**

The rule of law requires that everything done in a State must be done in accordance with the law and following due process.<sup>58</sup> It is characterized by respect for fundamental rights, equity, the supremacy of the law and actions according to the law.<sup>59</sup> For a criminal justice system to run efficiently, all citizens of a nation are treated equally irrespective of the age, religion, ethnicity and financial status.<sup>60</sup> A society that does not implement the rule of law is liable to become a failed state and has the potential to fall to the brink of disorderliness and injustice.<sup>61</sup>

### **Funding and Management of Law Enforcement Agencies**

Another factor that negatively impact the administration of criminal justice is the inadequate funding and management of law enforcement agencies.<sup>62</sup> The Nigerian police is grossly underfunded with unreasonably low salaries, inadequate work equipment, logistics and housing.<sup>63</sup> There is also a significant understaffing and

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<sup>55</sup> Uwaezuoke C.N., 'Limits to Duration of Criminal Trials in Nigeria: Time for the Courts to Coalesce Right to Fair Hearing with Right to Personal Liberty,' (2016) 2(1) Port Harcourt Journal of Business Law.

<sup>56</sup> Ibid.

<sup>57</sup> Mahmoud, R. F. (2020): Evaluation of Judicial Control of Administrative Discretion in Nigeria. *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*. 11(1); 149-160.

<sup>58</sup> Zaliereute M, Moses L.B and Williams G, 'The Rule of Law and Automation of Government Decision-Making,' (2019) 82(3) *The Modern Law Review*, 425-455

<sup>59</sup> Awhefeada U and Ezi O.I, 'Adherence to the Rule of Law in Nigeria: Legal Issues Arising,' (2019) 1(1) *International Journal of Comparative Law and Legal Philosophy*.

<sup>60</sup> Obilor O. et al., 'Democracy and National Development: A Focus on Nigeria,' (2018) 1(2) *GNOSI: An Interdisciplinary Journal of Human Theory and Praxis*.

<sup>61</sup> Salihu H.A. and Gbolami H, 'Corruption in the Nigeria Judicial System: An Overview,' (2018) *Journal of Financial Crimes*.

<sup>62</sup> Omoroghomwan O.B and Abanimebon A. C, 'Evaluateing Government Funding and Performance in the Nigerian Police. (2020) 3(2) *International Journal of Intellectual Discourse*.

<sup>63</sup> Ibid.

insufficient training of personnel.<sup>64</sup> A 2018 research conducted in Ilorin, Kwara State reveals that police stations are in bad conditions and they lack basic infrastructural facilities and equipment that can help in ensuring effective policing.<sup>65</sup> This obviously takes a significant toll on the effectiveness of the Nigerian Police and their role in the administration of criminal justice.<sup>66</sup>

### **The Role of the Police in the Administration of Criminal Justice in Nigeria**

The police force are the enforcers of the criminal justice system in Nigeria and the defender of law and order.<sup>67</sup> Their primary duties include the prevention and detection of crime, protection of rights and freedom of citizens, and the maintenance of public safety, law and order.<sup>68</sup> The Police Act, 2020 provides various roles that the Nigerian Police Force should play in the administration of criminal justice.<sup>69</sup> These roles include the prosecution of criminal offences,<sup>70</sup> the investigation of crimes, apprehend offenders, interrogate and prosecute suspects, granting of bail to suspects and, serving summons.<sup>71</sup> They are also entrusted with the role of searching and seizing properties suspected to be stolen, collection and recording for identification, the measurement, photographs and fingerprints of people in their custody.<sup>72</sup>

### **The Role of Police in Crime Prevention and Detection**

The police are expected to carry out both proactive and reactive measures in order to ensure a safe environment for all citizens as well as the protection of lives and properties while at the same time maintaining people's trust.<sup>73</sup> Effective crime prevention entails collective actions on the path of the community and law enforcement agencies to detect the probability of a crime being committed and take effective actions to prevent it from happening.<sup>74</sup> Crime prevention is a proactive and very effective method of reducing the occurrence of deviant and criminal behavior in the society. The Nigerian police force is empowered to take proactive steps in order

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<sup>64</sup> Danbazau A. B, 'Criminology and Criminal Justice', (Spectrum Book Ltd, Ibadan 2007).

<sup>65</sup> Gholami H and Abdulrauf S.H., 'Inside Force: An Examination of the Condition and Facilities at the Police Stations in Ilorin Metropolis of Kwara State Nigeria,' (2018) 2(1) International Journal of Humanities & Applied Social Sciences.

<sup>66</sup> Ibid.

<sup>67</sup>Oghi F.E, 'Reflections on Africa's Security Situation: An Examination of Nigerian Police Force, 1999-2011', (2014) 2(4) AFFREV IJAH: An International Journal of Arts and Humanities.

<sup>68</sup> Section 4 of the Police Act, 2020

<sup>69</sup> PART VII- Powers of police officers. See generally section 31-70.

<sup>70</sup> Section 66 of Police Act, 2020

<sup>71</sup> Ibid.

<sup>72</sup> Mahmoud, R. F, Abdulazeez, H. O. & Wuraola, O. T. (2019): An Assessment of the Legal Recognition and implementation of Electronic Evidence in the Tanzanian and Nigerian Legal Systems. *The Public and International Law Journal*. 1(1); 61-82.

<sup>73</sup> Section 4 of the Police Act, 2020

<sup>74</sup> Weisburd D., Farrington D.P and Gill G, 'What Works in Crime Prevention and Rehabilitation,' (2017) 16 (2) Criminology & Public Policy.



to stop a crime from occurring. Therefore, it will be negligence of police duty to allow an evitable crime to be committed.<sup>75</sup>

On the other hand, crime detection is a process of uncovering criminal activity<sup>76</sup>. Crime detection can occur while a criminal activity is in progress or after it has been committed. So, while crime prevention is largely pro-active, crime detection is mostly reactive in nature. There are three distinct stages in crime detection which are the discovery and uncovering of a crime that has been committed and, acquiring evidence that will help in the third stage of identification of suspects<sup>77</sup> and prosecution of perpetrators.<sup>78</sup>

### **The Role of the Police to Investigate and Arrest Suspected Criminals**

The right to personal liberty is a fundamental and statutorily guaranteed right and must be protected at all times, however, there are exceptions to the absoluteness of the right to personal liberty.<sup>79</sup> The exceptions stipulated in Section 35 of the Constitution 1999 must however, be in accordance with due process of the law and a breach thereof is a serious violation that is condemned by the court of law.<sup>80</sup> The Court of Appeal in *Anogwie & Ors V. Odom & Ors* stated that the Nigerian courts will not hesitate in declaring a wrongful action of the police as null and void if there has been an improper use of power on their part under the guise of the exercise of the power of investigation and crime prevention.<sup>81</sup>

Section 32(1) of the Police Act allows the police to arrest any person alleged or charged with committing an offence recognized under the law.<sup>82</sup> It also allows the investigation and trial of a suspect in accordance to the provisions of the Act.<sup>83</sup> The Administration of Criminal Justice Act (ACJA) provides for arrest, bail and preventive justice.<sup>84</sup> The powers of the police to arrest is so broad and overreaching that the police can arrest a suspect with or without a warrant. Although, there are certain conditions that must be met or certain circumstances that must be in

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<sup>75</sup> Ogunode S.A, 'Criminal Justice System in Nigeria: For the Rich or the Poor?' (2015) 4(1) Humanities and Social Sciences Review

<sup>76</sup> Gatpandan M.P. and Ambat S.C, 'Mining Crime Instance Records of Philippines: An Exploratory Study to Enhance Crime Prevention Programs,' (2017) 2 (3) JARSSH.

<sup>77</sup> Kaplan L.J, 'Chemistry and Crime: Investigating Chemistry from a Forensic Science Perspective,' In: *Teaching Chemistry with Forensic Science* (American Symposium Series Vol. 1324, 2019)

<sup>78</sup> *ibid*

<sup>79</sup> Section 35(1) of the 1999 Constitution of the Federal Republic of Nigeria.

<sup>80</sup> See *Falade V. Attorney General of Lagos* (1980) 2 NCLR 771, where the Court held that it will always be quick to provide relief to victims of improper use of power of the police. Also in *Anogwie & Ors V. Odom & Ors*, (2016) NGCA 90, the court held that it was wrong for the trial court to refuse a claim of damages where the fundamental right to personal liberty of the appellants was trampled upon by the police.

<sup>81</sup> (2016) NGCA 90

<sup>82</sup> Police Act, 2020

<sup>83</sup> *Ibid*, at section 31.

<sup>84</sup> Sections 3-34 are under PART 2 of the Administration of Criminal Justice Act, 2015

existence before a suspect can be arrested without a warrant.<sup>85</sup> It is pertinent to note that the role and duties of the police to investigate crimes and make arrests in upholding a functional criminal justice system must be conducted lawfully.

### **The Role of the Police in Granting Bail to Accused Persons**

After an arrest is made by the police, an accused person has an opportunity to apply to the police for bail pending investigation. This is because an accused person enjoys a constitutional right to liberty<sup>86</sup> and to be presumed innocent until proven guilty.<sup>87</sup> The Constitution states that any person arrested or detained shall be brought before a court of competent jurisdiction within reasonable time otherwise he shall be released either conditionally or after meeting specific conditions which are necessary in order to ensure that he is present at trials held at later date.<sup>88</sup>

Sections 30 and 31 of the ACJA, 2015 give the police the power to grant bail application to suspects. By Section 30, a suspect is entitled to release on bail upon recognizance where the arrest was made without a warrant and the offence is not of a serious nature, punishable by death. Section 31 (1) provides that where a suspect is detained or taken into custody and it appears to the officer that investigations cannot be completed forthwith, he may discharge the suspect on the condition of entering into a recognizance, with or without sureties for a reasonable amount of money.<sup>89</sup> Granting bail to an accused represents a form an agreement of insurance or guarantee<sup>90</sup> that if the accused person is released pending determination of the case instituted against him, he will appear before the Court when necessary for trial and he will not frustrate the course of justice.<sup>91</sup> However, the Court must exercise this discretion judicially and judiciously as this is key in the proper administration of criminal justice.<sup>92</sup>

### **The Role of the Police in the Prosecution of Criminal Offences**

The police involvement in criminal proceedings and the authority to institute criminal proceedings is an area of police power that has been subject to debates and controversies even in Court decisions. Sections 174 and 211 of the Constitution vest in the Attorney-General of the Federation and of a State, the powers to institute, undertake and continue or discontinue criminal proceedings against any person

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<sup>85</sup> See Section 38(1) of the Police Act, 2020. This section states about fifteen instances that can warrant the arrest by a police officer without warrant. It is important to note that in absence of these instances, an arrest without warrant or order of court is illegal. The instances are however disjunctive and not conjunctive.

<sup>86</sup> Section 35 (1) of the 1999 Constitution.

<sup>87</sup> Section 36 (5) of the 1999 Constitution of Nigeria.

<sup>88</sup> Section 35 (4) of the Constitution, See also Section 158 of ACJA, 2015

<sup>89</sup> Section 30 and 31 of Administration of Criminal Justice Act, 2015

<sup>90</sup> Chiedozie A.B, 'Counteracting the Menace of Corruption Occasioned by Police Bail Under the Nigerian Criminal Justice System, (2020) 2 (1) CARI Journals.

<sup>91</sup> Ibid.

<sup>92</sup> See Section 118 (2) of the Criminal Procedure Act.

before any court of law in Nigeria. The Nigerian Police force, however, enjoys a statutory delegation of the power to prosecute criminal cases in Nigeria.<sup>93</sup> Prior to the enactment of the Nigerian Police Act, 2020, there was no requirement for prosecuting police officers to be a legal practitioners. These judicial decisions will be discussed as well as the provision of the Police Act, 2004; the Police Act, 2020; the 1999 Constitution and the Administration of Criminal Justice Act, 2015 in order to determine what the position of the law is on the police power to institute criminal proceedings. The Court of Appeal in *Olusemo V. C.O.P* interpreted Section 23 of the previous Police Act as stating that any police officer could validly prosecute in superior courts of record but advised that such officers should have been called to the Nigerian Bar (that is, qualified legal practitioners).<sup>94</sup>

This opinion was also held in *Federal Republic of Nigeria V. Osahon*, where the Supreme Court reiterated that all police officers whether they were qualified legal practitioners or not, were permitted to appear and prosecute criminal cases in all courts in Nigeria (whether superior or inferior courts of record).<sup>95</sup> The Nigerian Police Act of 2020 has put the infamous provisions to rest as it makes clear that only police officers who are legal practitioners can prosecute criminal cases in the Nigerian Courts.<sup>96</sup> The Act also requires that there should be a police officer who is a qualified legal practitioner, assigned to every police division whose responsibility is the protection of human rights and compliance of the division.<sup>97</sup> A joint reading of the ACJA, 2015 and the Police Act, 2020 strips the police off the powers to prosecute criminal proceedings except if such an officer is a qualified legal practitioner. Both Acts are also subject to the Constitution which generally establishes the powers of the Attorney General of the Federation and of the State, to prosecute criminal proceedings.

### **Challenges of the Nigerian Police Force in the Administration of Criminal Justice**

The Nigerian Police Code of Conduct has set out important rules of professional conduct for police officers but the officers saddled with the responsibility of administering the rules are also responsible for breaking them.<sup>98</sup> The Inspector General of Police, Public Complaints Bureau in the police–public relations

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<sup>93</sup> Udemezue S, ‘Disengaging Lay Police Officers from Criminal Prosecution for a More Efficient Criminal Justice Administration in Nigeria, (2019) 3 (1) African Journal of Constitutional and Administrative Law.

<sup>94</sup> (1998) 11 NWLR (PT 575) 547

<sup>95</sup> (2006) 5 NWLR (pt. 973) 361

<sup>96</sup> Section 66 of the Nigerian Police Act, 2020. See also Section 106 of ACJA. A joint reading of the provisions of S. 106 and 110 (1) of the Act shows that any police officers, private prosecutors or other persons involved in criminal prosecution under the ACJA must be duly called to the Nigerian bar and in essence, qualified legal practitioners.

<sup>97</sup> Section 66 (3) of the Nigerian Police Act, 2020.

<sup>98</sup> Ojedokun U.A, Ogunleye Y.O, and Aderinto A.A, ‘Mass Mobilization for Police Accountability: The Case of Nigeria’s #EndSARS protest, (2021) 15(3) Policing: A Journal of Policy and Practice.

departments, Police Supervisors and commandants among others are directly responsible for the enforcement of the police code of conduct rules.<sup>99</sup> There are multiple allegations of police corruption that include these senior officers begging the question, how effective are the accountability mechanisms?<sup>100</sup> For instance, police checkpoints have been turned to roadblocks for use for extortion of motorists in exchange for looking away from expired licenses or just avoiding time wasting.<sup>101</sup> The police often employs instrument of physical force, threat of arrest, detention or physical injury after such drivers are made to stop at official or semi-official checkpoints.<sup>102</sup> In 2008 alone, these nefarious checkpoints and roadblocks were estimated to have amerced up to 540 million naira in illegal tolls from about 70 police checkpoints in Anambra State.<sup>103</sup> Police accountability especially with regards police corruption is an issue of serious concern and it formed the basis of the nationally organized public protest (EndSARS) in 2020. Between November 2017 and October 2020, online and offline campaigns were organized and were held under the tag #EndSARS campaign. The campaign was undertaken against the activities of the SARS (Special Anti-Robbery Squad) unit of the Nigerian police force.<sup>104</sup>

Another primary challenge to the effective administration of criminal justice in Nigeria are delays in the judicial process.<sup>105</sup> While the delays are not entirely caused by law enforcement agencies, the Nigerian Police has contributed to undue delays in the completion of criminal trials in Nigeria.<sup>106</sup> There have been countless documented incidences of arbitrary detentions, counter intuitive investigations, bribery and corruption by the Police which has affected the timeous conclusion of criminal trials.<sup>107</sup> In the case of *Justice Akpor & Ors V. Ighorigo*, the Supreme Court set aside

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<sup>99</sup> Karimu O, Osunyikanmi A. F, 'A Comparative Analysis of Police Accountability in Nigeria and United States,' (2012) 2 (11) International Journal of Humanities and Social Science.

<sup>100</sup> Adisa W.B, Alabi T. & Adejoh S, 'Corruption on the Road: A Test of Commercial Drivers' Encounters with Police Extortion in Lagos Metropolis, (2020) 35 (1) Journal of Police and Criminal Psychology.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

<sup>103</sup> Human Rights Watch interview with Emeka Umeagbalasi, chairman of the International Society for Civil Liberties and the Rule of Law (Intersociety), Onitsha, Anambra State, April 16, 2009. See also "Official Armed Robbery: How Anambra-Based Police Personnel Reportedly 'Generated' N3,3 Billion From Illegal Tolls in Past Nine Years," Intersociety statement, November 17, 2008 (on file with Human Rights Watch). Intersociety estimated in 2008 that there were approximately 70 police checkpoints located on Anambra State roads and that approximately 1,000 commercial minibuses and motorcycle taxis passed through each checkpoint per day. Based on an average "toll" of ₦20, they estimated that the average checkpoint makes ₦20,000 per day. They therefore found that the 70 checkpoints collected approximately ₦1.4 million per day, ₦42 million per month, and ₦504 million per year.

<sup>104</sup> Ojedokun U.A, Ogunleye Y.O, and Aderinto A.A, 'Mass Mobilization for Police Accountability: The Case of Nigeria's #EndSARS protest, (2021) 15(3) Policing: A Journal of Policy and Practice.

<sup>105</sup> Agbonika J, 'Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint,' (2014) 26 (1) Journal of Law, Policy and Globalization.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

the judgement given in that case because there was a delay of two years and nine months between conclusion of trial and judgement.<sup>108</sup> Also, in the case of *Agiende Ayambi V. The State*, the court held that a criminal trial which lasted for over two years could not be said to have been conducted within a reasonable time.<sup>109</sup> Research conducted on prison inmates in Ebonyi State of Nigeria revealed that in 2019, 78.4% of the inmates in Ebonyi State were identified to have been awaiting trial.<sup>110</sup> These identified problems are usually caused by delays from the time of arrest of an accused to the time of prosecution.<sup>111</sup> The delays are as a result of bureaucratic institutional processes that are involved during the process of the arrest of a suspect, transfer of cases and trial of suspects in the courts.<sup>112</sup>

Prisons in Nigeria are generally congested and the limited facilities are used to serve a large number of inmates. Most of the awaiting-trial inmates were not charged to court because they were unable to hire lawyers to represent and defend them.<sup>113</sup> A basic reason for the high rate of awaiting-trial inmates in Nigeria is as a result of poor policing practices.<sup>114</sup> These practices include arrests before the investigation which is very rampant, poor prosecutorial practices including excessive delays in providing legal advice, delays in pre-trial proceedings and use of holding charge to detain suspects.<sup>115</sup> Another reason for the slow and unfair trial process in Nigeria is the stalling of cases by persecutors including the Nigerian Police and the lawyers of the accused persons.<sup>116</sup> This is usually done by seeking unnecessary adjournments of court proceedings based on frivolous grounds.<sup>117</sup> Furthermore, delayed and incomplete investigations by the police have also contributed to the high numbers of awaiting-trial inmates whose trials have been delayed.<sup>118</sup>

Prior to the enactment of the Nigerian Police Act of 2020, there was no requirement for only police officers who are qualified lawyers should prosecute criminal cases. This led to significant procedural defects. Capital offences such as armed robberies and

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<sup>108</sup> 2SC, 115 (1972)

<sup>109</sup> 6 NCLR 141 (1985)

<sup>110</sup> Ajah B.O and Thompson O.J, 'Digitization as a Solution to the Problem of Awaiting-Trial Inmates in Ebonyi State, Nigeria' (2019) 14 (2) International Journal of Criminal Justice Sciences.

<sup>111</sup> *ibid*

<sup>112</sup> *ibid*

<sup>113</sup> Onyekwere J, 'Poor Legal Representation and Prison Decongestion' (2018) The Guardian. Retrieved from <https://guardian.ng/features/poor-legal-representation-and-prison-decongestion>.

<sup>114</sup> Ajah B.O and Thompson O.J, 'Digitization as a Solution to the Problem of Awaiting-Trial Inmates in Ebonyi State, Nigeria' (2019) 14 (2) International Journal of Criminal Justice Sciences

<sup>115</sup> *Ibid*.

<sup>116</sup> Agbonika J, 'Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint,' (2014) 26 (1) Journal of Law, Policy and Globalization.

<sup>117</sup> *Ibid*.

<sup>118</sup> Ladapo O.A, 'Effective Investigations, a Pivot to Efficient Criminal Justice Administration: Challenges in Nigeria' (2016) 5 (1&2) African Journal of Criminology and Justice Studies.

murders are routinely filed at the magistrate courts, proper witnesses are not produced and ultimately, the cases are delayed and eventually lost.<sup>119</sup>

## Conclusion

The proper functioning of the Nigerian criminal justice system is dependent on an accountable police force. This paper reveals that despite the best efforts of the federal and state government to ensure accountability in the Nigerian Police force, there is still a lot left to be done. The police is the primary body saddled with the responsibility of maintaining peace and order and, ensuring citizens' confidence.<sup>120</sup> There remains a significant lacuna where these functions are not being performed adequately.

This paper reveals that there is a lack of adequate training in the Nigerian Police force. This is primarily due to factors such as inadequate financing, insufficient equipment and infrastructure, poor training and shortage of qualified staff in police training institutions.<sup>121</sup> The paper also reveals that there is a low level of trust and confidence in the Nigerian Police. The history of corruption, police brutality and unnecessary use of force, the exercise of bad discretion in the course of investigations, stress, questionable internal procedures of recruitment and promotion and, poor police-community relations are some challenges of the police force that has negatively damaged the reputation and integrity of the Nigeria police.<sup>122</sup>

It is therefore recommended that the police force should adopt the incorporation of members of the community into their activities. Members of the community are more aware of their surroundings and happenings in the vicinity. When they work with the police, they make the work of the police easier and more effective. That way, the desired results will be gotten coupled with increasing citizen trust and image of the police.<sup>123</sup> It is also recommended that the funding of the police should be restructured in the welfare of the Nigerian Police officers. Poor salaries and living conditions are a major contribution to the extortions by police officers. It is necessary that the Government prioritize the improvement of the welfare of law enforcement agencies as this is strongly correlated with the rampant level of corruption in the Country.<sup>124</sup>

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<sup>119</sup> Ajah B.O and Thompson O.J, 'Digitization as a Solution to the Problem of Awaiting-Trial Inmates in Ebonyi State, Nigeria' (2019) 14 (2) International Journal of Criminal Justice Sciences

<sup>120</sup> Ogaga A.O, 'The Nigeria police force and the Crisis of Legitimacy: Re-defining the Structure and Function of the Nigeria Police,' (2014) 10 (8) European Scientific Journal.

<sup>121</sup> Onyepuemu O.C, 'The Quest for Democratic Sustenance in Nigeria: Role of the Police Force' (2015) 20 (1) IOSR Journal of Humanities and Social Science.

<sup>122</sup> Ojo M. O, 'The Nigeria Police and the Search for Integrity in the Midst of Diverse Challenges: An Effective Police Management Approach' (2014) International Journal of Police Science & Management.

<sup>123</sup> Pam Sha D, 'Evaluation of Community Policing Forum Project Implemented by CLEEN Foundation', Department of Political Science, University of Jos Plateau State- Nigeria.

<sup>124</sup> Kpae G. and Adishi E, 'Community Policing in Nigeria: Challenges and Prospects,' (2017) 3(3) International Journal of Social Sciences and Management Research.