

POWER OF POLICE TO PROSECUTE CRIMINAL CASES: NIGERIA AND INTERNATIONAL PERSPECTIVES

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ABSTRACT

This paper which begins with the historical background of the Nigerian Police delves holistically into the powers of the police to prosecute criminal cases in the courts of law in Nigeria, which power does not include debt recovery or debt collection. It also focus on the position in other jurisdictions. This paper reveals some of the challenges in this area of the law. The concluding remarks however, contain some useful recommendations.

Keywords: police, prosecution, court, criminal cases, Nigeria.

Introduction

Before the advent of the British and the introduction of colonial rule in the geographical areas presently known as Nigeria, both customary and Islamic criminal laws and practice were in use. The various communities and the ethnic nationalities thus ensured the protection of lives and properties, the maintenance of law and order and the observance of the ethical values of the society. There was also in existence the traditional and customary policing system.

The administration and dispensation of justice in general and that of criminal justice in particular plays an important role in governance irrespective of the system of government put in place. For if the society must remain in peace, individuals with criminal tendencies must be put under close checks and their activities monitored and checkmated. If and when their activities therefore offend against the social norms and standards and the established law, criminal law must intervene to do justice to all and sundry involved- the criminal deviant, the victim and the society at large.²²

The police is the very first institution that a criminal suspects comes in contact with.²³ Whether or not the suspect will obtain justice depends on how the police go about its duty.²⁴ One area where the Nigerian Police has been bitterly criticized is the area of criminal justice. In Nigeria, we have a failing criminal justice system and the police, the courts and the prison institutions all have their various shares of blame.²⁵

The main focus of this paper is the role of the police in crime prosecution before superior courts. This paper begins with the origin of police in Nigeria, it proceeds to do a jurisdictional survey; it further examines the personnel and institutions in public prosecution and finally the problems with the Nigerian police and useful suggestions thereof.

Brief History of the Nigerian Police

In most nations, the police is a unit of the armed forces established for the maintenance of law and order. Police is a branch or department of the government which is charged with the preservation of public order and tranquillity, enforcement of laws, promotion of public health, safety and morals, prevention, detention and prosecution of offenders.²⁶

The history of the Nigerian Police is closely related to the evolution of the Nigerian Army and the State itself. It dates back to 1861 shortly after the subjugation of Lagos through bombardment by the British. The Nigerian Police started as a Consular Guard of 30 men in 1861 in Lagos.²⁷ For their security and effective administration, the British Colonial Authority established the Hausa Police, Constabulary for the Lagos Colony, the Niger Coast Constabulary for the Oil Rivers Protectorates in the South-East and the Royal Niger Constabulary in the Northern part of Nigeria. Even after the amalgamation of Northern and Southern Nigeria by Lord Lugard in 1914, the Northern and Southern Police Forces continued to operate

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²² Dele Peters (2005), "Public Prosecution and the Concept of Restorative Justice in Nigeria" in *Fountain Quarterly Law Journal* (A Publication of the Ekiti State Ministry of Justice, Ado-Ekiti) Vol. 2, No, 1, May, P. 79. Dele Peters is now a Judge of the National Industrial Court of Nigeria.

²³ Olisa Agbakoba SAN and Willy Mamah "Towards A People's Constitution in Nigeria" A Civil Education Manual for the Legal Community, (The Human Rights Law Services (HURILAWS) P. 32.

²⁴ Ibid.

²⁵ Ibid. Note that justice is said to be tripartite: justice to the State, justice to the accused and justice to the victims.

²⁶ See Black's Law Dictionary (1979) 5th ed. West Publishing Co. Minnesota, P. 1041.

²⁷ See W.A Adebayo, "Nigerian Police: Structure, Powers and Functions" in T.F Yerima & B. Abegunde (Eds) Essays on Administrative Law in Nigeria, 2006, Petoa Educational Publishers, Ado-Ekiti, P.251.

separately until April 1st, 1930 when they were eventually merged to form a single body that is today known as The Nigerian Police²⁸ with headquarters in Lagos.

It is pertinent to mention that the creation of the Police Force has been given constitutional flavour in Nigeria. Hence, the Constitution of the Federal Republic of Nigeria, 1999 provides thus:

*There shall be a Police Force for Nigeria which shall be styled 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.** The members of the Nigeria Police Force shall have such powers and duties as may be conferred upon them by law.*²⁹

One of such laws is the Police Act Cap P. 19 Laws of the Federation of Nigeria 2004, Section 4 of which confers on the police the power to prevent commission of crime, apprehend offenders and conduct prosecution of criminals.

The foregoing makes it explicitly clear that Nigeria operates a Federal Policing System to the detriment of the state police as well as traditional policing methods.³⁰ The constitution is unambiguous in saying that no other police force shall be established for the federation or any part thereof.

Jurisdictional Survey of Police System

Every society needs a police force as part of its institutional mechanisms to ensure the maintenance of law and order and for the good of the public. The systems of policing worldwide are not stereotyped neither do all countries have an identical police practice. Rather, the police institution in one country presents a pattern peculiar to its circumstances depending on its size, population, economic and political development.³¹

However, across the globe, there is a standard practice of performing police duties. All over the world, police officials or officers are expected or bound to carry out their duties under some important international instruments, rules and codes, such as the United Nations Declaration of Human Rights 1948; The Torture Convention 1987, the United Nations Code of Conduct for Law Enforcement Officials and the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials adopted by Resolution of 34/169 of the U.N. General Assembly on 17th December, 1979.

In France, there is a highly centralized National Police Forces with the largest number of personnel.³² Policing in France is provided by two National Police Forces namely, the Police Nationale and Gendarmerie Nationale. A third, much smaller force called the Police Municipale is employed directly by local authorities to perform the duties of local town mayors, including traffic control and enforcement of bye-laws.³³ The Police Nationale is an urban civil police force. It has a mobile support force usually deployed to areas where there is public disquiet or disorder. While Gendarmerie Nationale is responsible for policing in the rural areas.

In Belgium there are two main forces which provide general policing- the Police Communal and the Gendarmerie. Each is an independent force. While police communal operates in local communities, the Police Gendarmerie operate in the National territory at a “supra level” Belgium police consists of officers who are well trained and highly specialised in their various fields of policing.

²⁸ See Idowu, A.A. (2003) “The Role of the Police in Elections: The Nigerian Situation” in *University of Ado-Ekiti Law Journal*, Vol 2, PP 97-98, Prof, Tekena Tamuno, The Police in Modern Nigeria 1861-1965 (1970), University of Ibadan Press, Ibadan, Chapter 1.

²⁹ Section 214 (1) Constitution of Nigeria, 1999. See *Willie v Ibiok* (2012) 52 WRN where the court elaborate on the establishment and powers of the Nigerian Police.

³⁰ See Akin Ibidapo Obe, (2002) *Essays on Human Rights Law in Nigeria*, Concept Publications Ltd, Lagos PP.295-299.

³¹ See Jemibewon D. M. (2001) *The Nigeria Police in Transition: Issues, Problems and Prospects*, Spectrum Books Limited, Abuja, P. 150.

³² Brodeur, Jean Paul (eds) *How to Recognise Good Policing: Problems and Issues* (1998) Sage Publications, California, Chap. 1.

³³ Jemibewon, op. cit. P. 152.

Australia runs a Federal Police. Aside the Australian Federal Police (AFP), policing is also organized at the state level. The AFP was formed in 1979 pursuant to a report by the former Metropolitan Police Commissioner, Sir Robert Mark, which recommended the creation of a new force by amalgamating the Australian Capital Territory Police and the Commonwealth Police.³⁴ The Narcotics Bureau was also incorporated into the AFP.

A few member of the AFP are deployed to general duties of maintaining law and order while majority are specially trained for security operations with modern sophisticated weapons and good condition of service.

Denmark operates a decentralized state police force, but strong national police are employed to cover Danish territory, the Faroe Islands and Greenland.³⁵

Germany also operate a state police with about sixteen state police forces.³⁶ The 2nd World War actually provided Germany with an opportunity to design a strong policing system for the safety of lives and property. Germany police officers are well educated , skilled and equipped. Mental, physical, moral and professional fitness constitute the hallmark of the German Police Force.

The British police is an old security institution which is well organized, trained, equipped and catered for in terms of government and condition of service . the role of the police in Britain is multidimensional.³⁷ There are more than fifty police forces in U.K alone.³⁸

The Police System in America is one of the most organized, well equipped and educated in the world.³⁹ Each state in America has its own police which maintains law and order within the territorial jurisdiction of each state under the Mayor of every state who is the Chief Security Officer.⁴⁰ One interesting feature of the US police is the specific area of security specialization aside from the general duty of maintaining law and order.

In many of the Commonwealth countries such as Canada, South Africa, India etc there are various level of Local, Municipal, provincial (State) and Federal Police agencies and the police in each of these countries is more effect than it is in Nigeria.⁴¹

From the foregoing, one can conveniently conclude that decentralization of policing does not automatically destroy any country's political unity.⁴² There are over 1,700 police agencies in the United State with a population of 300 million people and one language in contrast with one police force for Nigeria and a population of 150 million speaking over 200 languages.⁴³

Personnel and Institutions Responsible for Public Prosecution

In the business of public prosecution, certain personnel and institutions of government are very visible and they play a significant role in the process. The Ministry of Justice at both the states and federal levels are at the forefront of public prosecution in Nigeria usually the personnel of these Ministries in the Department of Public Prosecution conduct prosecution of criminal cases.⁴⁴ The Attorney General is the

³⁴ Ibid. P. 151.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Bradley, David, Walker and Co, "Managing the Police: Law, Organization and Democracy," Great Britain (1986)Wheatshef Books Ltd, Chaps 1 & 11.

³⁸ The Nation, December 9, 2007, P. 9.

³⁹ See Brodeur, Jean Paul (eds) op.cit. Chap. 1.

⁴⁰ This Day (Nigeria), "Police in other Lands" September 29, 1999 (editorial column), e-mail thisday@nigel.net.ng.

⁴¹ The Nation December 9, 2007, P. 9.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ See Dele Peters, op.cit P. 82.

Chief Prosecutor of the State. He is conferred with powers to initiate, conduct, take over or discontinue any criminal prosecution in any court of law in the country except in the court martial.⁴⁵

The Director of Public Prosecution (DPP) and other counsel often assist the Attorney General in his chambers. Perhaps until very recently, with the institution of democracy, the problems confronting Ministries of Justice across the country ranges from poor remuneration of staff, lack of requisite working tools to the inability of the Ministries to attract competent professional staff.

It is important to stress that there are yet other institutions and agencies of government which are also empowered to conduct public prosecution. Indeed, some of these include the National Drug Law Enforcement Agency (NDLEA), National Agency for Food Drug Administration and Control (NAFDAC)^{25(a)} the Independent Corrupt Practices and Related Offences Commission (ICPC), the Economic and Financial Crimes Commission (EFCC), and indeed, the three arms of the Armed Forces (Army, Air force and Navy) Conduct Prosecution in relation to offences committed by their members.

The Nigerian Police is a major stakeholder in the administration of criminal justice system in Nigeria. The police is the very first institution that a criminal comes in contact with. And so, whether or not the suspect will obtain justice depends on how the police go about its duty. The Police is a creation of the constitution,^{46(b)} and the responsibility for the maintenance of law and order securing public safety and public order falls on the police.⁴⁷ The force is to be organized and administered in accordance with such provisions as may be prescribed by an Act of the National Assembly.⁴⁸

The Police Act⁴⁹ is one such Act of the National Assembly, which deals directly with the organization, administration, powers and responsibilities of the Nigerian Police. The Police Act also deals with the special constabulary and the Traffic Wardens.^{50(a)}

The General Duties or Roles of the Nigerian Police Force.

The general duties and roles which the Nigerian Police Force is expected to perform can be found in the Police Act. Section 4 of the Police Act provides for the general duties of the police as follows:

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

Section 23 of the Police Act provides:

Subject to the provisions of Section 174 and Section 211 of the Constitution of the Federal Republic of Nigeria (which relates to the power of the Attorney General of the Federation and of the State to institute and undertake, takeover and continue or discontinue criminal proceedings against any person before any court of law in Nigeria) any police officer may conduct in person all prosecutions before any court whether or not the information or complaint is laid in his name.^{29(b)}

⁴⁵ Ibid.

^{25(a)} The Court held in *Umezinne v FRN (2013) 42 WRN* that any officer of NAFDAC can conduct criminal prosecution in respect of offences under this Act or regulations made under this Act. In this same case it was specifically held that both police and NAFDAC officers can conduct criminal proceedings in the High Court.

^{46(b)} Section 214(1) Constitution of Nigeria 1999

⁴⁷ Section 215(3) Ibid.

⁴⁸ Section 214(2) Ibid.

⁴⁹ Cap 359, Laws of Federation of Nigeria 1990 now 2004

^{50(a)} See Part X (Section 49-58) and Part XI (Section 59-69) Police Act. Ibid.

In maintaining security, the police in Nigeria is given powers to arrest, detain, search, detect and prosecute. For instance, under the Criminal Procedure Act⁵¹ any police officer may arrest with or without warrant, search any person or premises, detains, grant bail and ultimately prosecute.⁵²

Apart from the above cited provisions on powers of the police, the Nigerian Police Act also has an additional analogous provisions.

Thus, the Police Act gives the police power to arrest without warrant,⁵³ power to serve summons lawfully issued by a court,⁵⁴ power to grant bail to person arrested,⁵⁵ power to search a person, house, shop, ware house or other premises,⁵⁶ power to detain,⁵⁷ power to take finger prints.⁵⁸

Added to the foregoing is the responsibility of the police to conduct prosecution of offenders before any court whether or not the information or complaint is laid in the name of the prosecuting police officer.⁵⁹

The statutes (Criminal Procedure Act, Police Act and the Constitution) expect the police to play visible role in the administration of criminal justice. In much the vein, individual and the society at large equally expect a lot from the police especially in the prevention of crime, protection of lives and criminal deviants.

Whether it is Compulsory for Prosecution Police Officer at Superior Court to be a Legal Practitioner

This issue has been exhaustively dealt with and finally laid to rest by the Supreme Court of Nigeria in the landmark case of *FRN, v Osahon*⁶⁰ were the court held:

From colonial period up to date, police officers of various ranks have taken up prosecution of criminal cases in Magistrates and other courts of inferior jurisdiction. They derived their powers under Section 23 Police Act. But when it comes to superior courts of record, it is desirable though not compulsory that the prosecuting police officer, ought to be legally qualified. This is not deleting from the provisions of Section 174(1) of the constitution, rather it maintains age long practice of superior courts having counsel rather than non-lawyers prosecuting matters. The confusion that this matter has caused is rather unfortunate for trial of criminal cases, it has caused a disturbingly long delay. Previous constitution before 1979 provided for the post of Director of Public Prosecutor, an independent officer, with powers in a statute. The absence of this vital office from subsequent constitutions has created this dilemma.

For the foregoing reasons ...I hold that a police officer can prosecute by virtue of Section 23 Act, Section 56 (1) Federal High Court Act, and Section 174 (1) of the Constitution of the Federal Republic of Nigeria. Per Belgore JSC (PP. 50-51.)

Police authority can by virtue of Section 174(1) of the Constitution prosecute any criminal suit either through its legally qualified officers or through any counsel they may engage for that purpose.

29(b) Section 23 Police Act LFN (2004). See also *Tawakalitu v FRN (2011) 9 WRN* where the court reiterate on the power of the police to conduct all prosecution before any court of law in Nigeria.

⁵¹ Cap 80 Laws of Federation of Nigeria (LFN) 1990 now 2004.

⁵² Section 2 2-10, 17-20 Ibid.

⁵³ Section 24 & 25 of the Police Act, LFN 2004

⁵⁴ Section 26 Ibid

⁵⁵ Section 27 Ibid

⁵⁶ Section 28 & 29 Ibid.

⁵⁷ Section 29 Ibid

⁵⁸ Section 30 Ibid

⁵⁹ Section 23 Ibid

⁶⁰ (2006) 24 WRN 1 at PP. 18-19, see also *The Punch*, Wednesday August 8, 2007, PP. 7-8, *The Punch*, Thursday August 9, 2007 P. 43.

Authority to Initiate and Prosecute Criminal Proceedings in the High Court.

The following persons have the right to practice in the Federal High court:

- a. *All persons admitted as legal practitioners to practice in Nigeria (subject to the provisions of the constitution) and the Legal Practitioner Act.*⁶¹
- b. *Law officer*
- c. *State Counsel*
- d. *Any legal practitioner duly authorized in that behalf by or on behalf of the Attorney General of the Federation*
- e. *Police Officers*
- f. *Any other authority or persons.*

*One can safely say that the people mentioned under (a) (b) (c) and (d) above must necessarily be legal practitioners admitted to practice in Nigeria, while those under (e) and (f) need not be legal practitioner at all. But if they are the better.*⁶²

It is observed that both the Federal High Court Acts and the Police Act are Federal Acts and or Legislations. It is therefore unthinkable to talk of one being superior to the other. The two Acts must therefore be read together jointly with the provisions of section 174 of the constitution. The only irresistible conclusion to be reached is that section 56 (1) of the Federal High Court Act and section 23 of the Police Act when read together with section 174 (1) (b) & (c) of the Constitution makes it clear that the police officer, any police officer has the power to conduct criminal proceedings before the Federal High Court.⁶³

With respect to the power of the Attorney General in of Criminal Proceedings, Section 174(1) of the Constitution of the Federal Republic of Nigeria provides that the Attorney General of the Federal shall have power:

- a. *To institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court martial, in respect of any offence created by or under Act of the National Assembly,*
- b. *To take over and continue any such criminal proceedings that may have been instituted by any other authority or person, and*
- c. *To discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.*⁶⁴

The Attorney General of the Federation and the State as the case may be are themselves empowered to institute and undertake any criminal proceedings in any court in Nigeria and if any other person or authority instituted or undertook any such criminal proceedings in any court in Nigeria, within their respective jurisdictions, they have the power to take it over, continue or discontinue at any stage of the proceedings.⁶⁵

⁶¹ Section 57 Federal High Court Act, LFN 2004.

⁶² FRN v Osahon (supra) Per Kutigi JSC P. 54

⁶³ *Ibid.* Pp 55-56. See also *Tawakalitu v FRN (2011) 9WRN, p.58* where Court held that police can prosecute criminal prosecutions in an court in Nigeria. See also Sections 26, 27, 37, 38, 39, 40, 44 and 45 of the Criminal Procedure Code of Nigeria on the powers and duties of the police officers.

⁶⁴ Section 174(1) Constitution of Nigeria, 1999

⁶⁵ *FRN v Osahon (Supra) Per Kutigi JSC PP 55-56*

Whether the Office of Attorney General has Monopoly to Prosecute Criminal Proceedings

No principle of interpretation of statutes is more firmly settled than the rule that the court must deduce the intention of Parliament from the words used in the Act. The implication of the intendment of section 174 (1) of the constitution is that the office of the Attorney General does not have the monopoly of prosecution though it has the power to take over any case in any court and decide whether to go on with it or not.⁶⁶

The expression “any other authority or person” as used in section 174 of the 1999 Constitution is wide enough to include and actually includes police officers as the said section 174 of the 1999 Constitution recognizes the power of any officer to institute criminal proceedings in any court subject, of course, to the power to Attorney General of the Federation to take over and continue any such criminal proceedings and to discontinue, at any stage before judgment is delivered, any such criminal proceedings.⁶⁷

Neither section 23 of the Police Act which grants the power to any police officer to institute criminal proceedings in any court in Nigeria nor Section 174 (1) (b) of the constitution which recognized the right of “any other authority or person” to institute criminal proceedings in Nigeria state that such a police officer or any “other person” must be a legal practitioner to be qualified.⁶⁸

Hence, if it was the intention of the framers of the 1999 constitution to exclude those without legal training from the group of those recognised to institute criminal proceedings in any part of Nigeria they could have clearly state so in section 174 of the 1999 constitution. Their not so stating leaves us with no other option than to hold that by the expression “any other person” used in Section 174 (1) (b) of the 1999 constitution, the framers meant what they said, that is any other person whether learned in law or otherwise provided he is of course a person.⁶⁹

Also the phrase “any other authority” pre-supposes that authority could be represented by a legally qualified person either in that authority, or engaged for the purpose by the authority. For instance, in cases of negative averment whereby a person has defaulted in paying his taxes, the Board of Inland Revenue can engaged services of a legal practitioner or legally qualified employee of the Board to prosecute the defaulter. It does not mean however that in all cases, a legally qualified person must appear. It is only desirable, because superior courts of record have attained the tradition of only legal practitioner, in the main, prosecuting cases whether civil or criminal before them.⁷⁰

The powers of police officer under section 23 of Police Act to conduct prosecution before any court is subject only to the provisions of sections 174 and 211 of the constitution which relates to the powers of the Attorney General of the Federation and the State to institute and undertake, take over and continue or discontinue criminal proceedings against any person before any court of law in Nigeria. The Section is unambiguous.

Apart from the police any other authority or person can definitely institute criminal prosecution. The power of Attorney General to prosecute is not exclusive to the Attorney General alone, but Attorney General can take over or continue or discontinue same. Other Nigerian agencies/authorities who can institute and prosecute criminal proceedings include Economic and Financial Crimes Commission (EFCC) National Drug Law Enforcement Agency (NDLEA) National Agency for Food Drug Administration and Control (NAFDAC), Federal Inland Revenue Service (FIRS) etc.

⁶⁶ Ibid. Section 23 of Police Act is subject to the provisions of section 174 and section 121 of the 1999 Constitution of the Federal Republic of Nigeria which relate to the power of the Attorney-General of the Federation and of the State to institute, undertake, take and continue or discontinue criminal proceedings.

⁶⁷ See Kofi, A.S. (2002), “Law, Order and Vigilante in Nigeria” Published in *Federations Vol. 2, No 4*.

⁶⁸ Ibid. See also The Punch, Wednesday August 8, 2007, PP.7-8, The Punch, Thursday August 9, 2007 P. 43

⁶⁹ Ibid PP. 92-93

⁷⁰ Ibid. PP. 46-47.

Duty of Police and Interpreter during Trial

It is the duty of police prosecution to prove the case against the accused persons beyond reasonable doubt as provided by Section 137(1) of the Evidence Act.⁷¹ The burden on the prosecution never shifts. This is brought into special prominence by the constitutional right of the accused person to the presumption of innocence as expressly provided by Section 36 (5) of the constitution.⁷²

The police officer detailed or directed to obtain a statement from the accused person may not understand the language spoken by the accused person, and so, the services of an interpreter is needed. The interpreter acts as interpreter between the police officer and the accused person. The interpreter understands the language spoken by the accused person and the English language. He speaks to the accused person in the accused person's local dialect and tell the police officer in English Language, exactly what the accused person said. The police officer records it in English and that is the statement of the accused person.⁷³ Usually, the statement is recorded in the local dialect with English translation and both documents are admissible evidence as the statement of the accused.⁷⁴

Before these documents are admissible in evidence, the police officer who recorded the statement and the interpreter must testify in court. This is vital testimony, failure to call both the interpreter and the officer who recorded the statement is fatal and renders same as hearsay and inadmissible.⁷⁵

Whether the Police can Enforce Debt Settlement

By virtue of Section 33 of the police Act, the Police have the power to conduct in person all prosecutions before any court of competent jurisdiction. The exercise of such power is strictly subject to the far-reaching powers accorded the Attorney-General of the Federal (or State) under Sections 174 and 211 of the constitution of the Federal Republic of Law 1999 as amended.⁷⁶

The police is not a collecting organization and should not in any community of civilised people be used as debt or levy collectors, or in the resolution of disputes, amongst people.⁷⁷ The attitudinal disposition to use police as debt collector is to say the least despicable and reprehensible. The provisions of the Police Act Cap. P. 19 Laws of the Federation of Nigeria, 2004 are very unequivocal as regards the duties and power of the police in maintaining peace, law and order in the society. Most certainly, debt collection or loan recovering is not within the preview of the statutory duties and powers of the police.

The police has no business in enforcement of debt settlements or recovering of civil debts for banks or anybody. Only recently, in the unreported case of *Ibiyeye & ors v Gold & ors* appeal No. CA/1C/M. 95/2010 delivered on 7-12-2011 the Court of Appeal, Ilorin Judicial Division in Nigeria had cause to scream thus:

I have to add that the resort to the police by parties for recovery of debt outstanding under contractual relationship has been repeatedly deprecated by the court. The police have also been condemned and rebuked several times for abandoning its primary duties of crime detection, prevention and control to dabbling in enforcement or settlement of debts and contract between quarrelling parties, and for using its coercive powers to breach citizens, rights and or promote legalities and oppression. Unfortunately, despite all the decided cases on this issue, the problem

⁷¹ Section 137(1) Evidence Act LFN 2011.

⁷² Section 36(5) Constitution of Fed. Rep. of Nigeria 1999. See also *FRN v Usman* (2012) WRN, P.P. 4-6, S.C

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.* See also *R v Gidado* 6 WACA P. 60; *Nwaeze v The State* (1996) 2 NWLR (Pt 428) P.1.

⁷⁶ *Arab Contractors (Nig) Ltd v Umanah* (2012) 28 WRN P.P 91-92.

⁷⁷ *Ibid.*

*persists and the unholy alliance between aggrieved contractors/ creditors with the police remains at the root of many fundamental rights breaches in our court*⁷⁸

Duty of Magistrate, Police Officer and the Director of Public Prosecutions in Criminal Proceedings.

It is the duty of the magistrate to direct the prosecuting police officer to transmit the police case file to the Attorney General who will then direct the Directorate of Public Prosecution (DPP) and other law officers in his office, to prepare the proofs of evidence.⁷⁹ It is the duty of the police officer or any other police officer acting under the general or specific instruction of the State Commissioner of Police to transmit the police case file and the inventory to the Attorney General.⁸⁰ Upon receipt of the police case file and the record made under section 243; it is the duty of the Director of Public Prosecution, and other law officers, acting under and in accordance with the general or specific instructions of the Attorney General to prepare the proofs of evidence.⁸¹

Police Prosecution of Criminal Cases in International Context

In many countries, prosecution fall under the ministry of justice or the Attorney General⁸². The responsibility to investigate and prosecute crimes in the United States rests on the executive branch of government which includes the Police. All federal prosecutors are parts of the United States Department of Justice. The federal government and each states has its own criminal statutes, court system, prosecutors and police agencies.⁸³ More recently, police officers have stepped in to initiate criminal prosecutions.⁸⁴

In Australia, all states and territories (other than the Australian Capital Territory) employ police prosecutors to work in their summary courts. These police prosecutors are sworn police officers who are trained to act as advocates in Summary Prosecutions. In Western Australia, the police prosecutors work in concert with that State's Director of Public Prosecutions.⁸⁵ Some police prosecutors hold legal qualifications, however, this is not a requirement to perform the role of a prosecutor.

In the Judicial System of New Zealand, a police prosecutor is a lawyer employed by the police to present cases in district court as the counsel for the prosecution. These police prosecutors may be sworn member of the police or a civilian lawyer. In certain jurisdictions, police prosecutors are employed by the police, as counsel to present cases in court.⁸⁶

In Britain, the criminal justice system is currently going through what is probably its biggest upheaval in a century, and as in so many other public services reforms and changes are largely driven by cost. Plans for police to deal with 50% of cases heard by magistrates might save on paperwork, but will increase staff costs. Magistrates deal with around 95% of all criminal cases, so police will be prosecuting a high proportion of the total.⁸⁷ The Home Secretary announced that police prosecution powers were restored, so as to take over nearly half of the cases that are heard by the Magistrates' courts.⁸⁸ The

⁷⁸ *OSIL v Balogun (2012) 38 WRN P. 150. See Yusuf Umar V.A.A Salami & ors (2001) 1 CHR 413.*

⁷⁹ *COP v Okoye (2011) 48 WRN PP. 131-134. See also Section 243 of the Criminal Procedure Law.*

⁸⁰ Section 244 of the Criminal Procedure Act

⁸¹ Section 246 of the Criminal Procedure Act.

⁸² Worrall, J.L (2008) *Prosecution in America*, State University of New York.

⁸³ www.oas.org/juridico/mla/en/usa/en

⁸⁴ www.sunypress.edu/pdf/61690.pdf

⁸⁵ See, Article titled "Police Prosecutor" from Wikipedia free Encyclopedia

⁸⁶ *Ibid*

⁸⁷ Richard Bristow, the guardian.com Tuesday 22 May,2012

⁸⁸ *Ibid*

Crown Prosecution Service is responsible for prosecuting crimes, while the police have the power to prosecute some uncontested low level traffic offences. The British government new policy has given British police more discretion to prosecute some high volume offences, which cause serious harm to the communities, quickly and effectively through the criminal justice system.⁸⁹

In South Africa, essentially, there are two separate police powers – the power to arrest and the separate power to prosecute.⁹⁰

All over the world, the police have a measure of power to prosecute crime so as to compliment efforts of criminal justice system of the country. The police power to prosecute varies from one country to another. Also, International Criminal Police Organisation (INTERPOL) has been very effective at international scene by ensuring that criminals are apprehended and handed over for prosecution.

Problems Militating Against Effective Performance by the Police Prosecutors

Despite the society's high expectation from the police, the government (society) itself is not prepared to pay the "price" for effective and efficient police system. The police in Nigeria is ill-equipped for effective discharge of its statutory responsibilities. Nigeria police still make use of out moded equipments, the force lack modern communication gadgets and other relevant technologies to effectively police the society. The most important challenged of the police is the syndrome tagged corruption. The police is also short of manpower⁹¹ as well as bedevilled by poor welfare package. The level of disenchantment in the force reached its peak when in February, 2002 Junior Officer and men of the force under the auspices of the National Union of Policemen embarked on strike due to poor condition of service and general welfare.⁹²

An assessment of the force was aptly captured by kofi Akosah-Sanpong thus:

*The Nigerian Police Force has indeed been overwhelmed by worsening domestic insecurity and undermined by its own internal problems including indiscipline, poor training, lack of expertise, specialized fields, poor pay and frequent strike, corruption and dishonesty is widespread, failure to report crimes.*⁹³

Sometimes the alleged criminals are allowed to go scot-free while the complainant or other innocent individuals are arrested and detained for a long period and atimes prosecuted.

One cardinal area where the Nigerian Police has been bitterly criticized is the area of criminal justice. The Nigerian Police has been severally criticized for its shoddy conduct of investigation usually fraught with errors sometimes deliberates.⁹⁴ There are allegations that police arraign suspects in court before looking for evidence to prosecute them. Another awful practice by the police is the persistent use of the "holding charge" to detain awaiting trial suspect⁹⁵

Another problem with the Nigerian Police is that it is saddled with the responsibility of building political unity which ought to be reserved entirely for the politicians.⁹⁶

⁸⁹ See Gov.Uk, Crime and Policing. Policy: Police led prosecutions, Reducing re-offending and Improving Rehabilitation.

⁹⁰ Brodgen, M and Shearing, C.D (1993) "Policing for a New South Africa" Taylor and Francis publishers.

⁹¹ See Ajomo & Okagbue (eds) (1991) Human Rights and the Administration of Criminal Justice in Nigeria, Nigerian Institute of Advanced Legal Studies (NIALS) Research Series No. 1.

⁹² See Human Dignity, a Newsletter of the Human Rights Club Vol. 3, No, 1, January –April, 2002, P. 6.

⁹³ See Kofi, A.S. (2002) "Law, Order and Vigilante in Nigeria" *Published in Federations Vol. 2. No 4.*

⁹⁴ See *Millar v. State (2005) 16 WRN, P. 45 ratio 18.* Note also that this explains the long list of unresolved murders and assassinations in Nigeria ranging from Chief Bola Ige, Funso Williams, Dele Giwa, Alfred Riwane, Seliat Adedeji and Hon. Oladimeji Segun (a.k.a. Segelu) See *The Punch 22nd September, 2007 P. 11.*

⁹⁵ Poor Prosecution: Lawyers back CJN against Police, *Punch* October 19, 2013

75. See the Article titled: "Towards a New Police" *Published in The Nation of December 9, 2007, P. 9.*

Concluding Remark

Looking at the various provisions of the Laws cited earlier on the general duties of the Nigerian Police Force, it is obvious that some of the provisions are so wide and nebulous as to give police officers indefinite or absolute power in their duties of apprehension, detection, arrest, search, detention and prosecution of offenders. Hence, there is a need to reposition our laws in line with the laws in other jurisdictions noted for tradition of adequate policing.

The time is overdue to overhaul the present day police in Nigeria and re-package the force. This requires re-thinking and re-conceptualizing the character and function of the police in a country that refers to itself as a democracy and a federation.

Hence, the decision of the late President Umaru Yar'Adua to invite the British back to Nigeria to assist in re-inventing the police is a welcome development as well as an acknowledgement at the apex of power of the failure of this important institution in living to the expectations of Nigeria and Nigerians.

The then Inspector General of Police in Nigeria, Mr, Mike Okiro was so excited about the request made by his boss to the United Kingdom. Mr. Okiro's words;

The police have no ill feeling about the Federal Government's decision to invite the British Police to train their Nigerian counterparts... there is nothing wrong if a child went back to its mother. The British police need to repackage retrain and give the Nigerian policemen what it takes to combat crime in the modern world.⁹⁷

The training, retraining and repackaging coupled with improved condition of service and welfare will enhance effectiveness and efficiency in the police performance and this will have a spill over effect in their conduct of criminal prosecution and all other functions.

The police should also stop dissipating energy on debt recovery and concentrate on its primary/statutory duties.

The ratio of policemen in Nigeria today is relatively small compared to the ever increasing population of Nigerians, hence, there is a need to recruit and train more sane people into the police.

Also, the idea of having only one Federal Police Force in Nigeria is no longer tenable especially in view of the upsurge of terrorist attacks and wide spread insecurity. This is the best time to create state police, local police and community police which should be given constitutional backing. Lastly there should be compulsory and continuous legal education for police to enable them function better in enforcement of the law, and prosecution of criminal proceedings.

⁹⁷ See Cory Doctorow. "Total Compton: Organised Crime Infiltrated and Compromised UK Courts, Police, HMRC, Crown Prosecution Service, Prisons and Juries. The Independent, Saturday, January 11, 2014