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THE DILEMMA OF LAW ENFORCEMENT AGENTS IN THE REMIT OF ADMINISTRATION OF CRIMINAL JUSTICE IN NIGERIA

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Abstract

Nigeria is both a heterogeneous and multi-cultural society as well as a country with a democratic system of government. Its constitution has a supreme status that is found on rule of law. Predicated on the foregoing, the administration of criminal justice is reflective of the diverse socio-cultural assortment of the society. Consequent on the later, the procedures for the administration of criminal laws and the enforcement of laws in general is laid down and codified in Nigeria. Often times, the procedures are not followed by law enforcement agencies. This has attracted a long held public condemnations and criticisms. Notwithstanding, the apparent challenges, the injustice pervades. It is against this backdrop, that the authors strive to examine the inter-relatedness of the strange but malignant issues in the administration of criminal justice in juxtaposition with the duties of the law enforcement agents in Nigeria. The paper argues that the significance of this approach will operate to narrowing the gap between the expectations of members of public and the performances of the law enforcement officers. The authors therefore maintains the need for a deliberate consummating policy-thrust involving legal reforms, training and retraining of the law enforcement agents for better service delivery in the overall attainment of justice, more particularly criminal justice, and holistic re-orientation as well as public enlightenment cum-crusade for members of the public, in order to be in abreast with the prevailing modern reality, encompassing and appreciative of the efforts of the law enforcement officers.

Key Words: Criminal Justice, Enforcement-agency, Offences, Crimes, Rights

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1. Introduction

The routine interaction in the administration of criminal justice¹ and the consequent dilemma of the law enforcement agencies in the pursuit of criminal justice, ostensibly arising from inherent challenges in the operation of the ACJA cannot be over-emphasised. The emerged challenges have created obvious gaps between the procedures laid down by law and the adopted procedures of the law enforcement agents² on the one hand and a performance that is below the expectations of Nigerians on the other hand. Very often, these required and detailed procedures contained in the ACJA are breached.

This sad reality is considered a gap and has not only resulted to the unpleasant outcomes of violating the laws and the fundamental rights of many citizens but also created a very high degree of disaffection and dissatisfaction amongst Nigerians in respect of the performances of the law enforcement agents, which many Nigerians have adjudged and considered to be far below expectations. This is worrisome and sad in the face of the remit of the ACJA and the specific procedures to be followed by the law enforcers.³ The very content of the provisions of the ACJA are substantially codified in our laws of procedure.

It is imperative at this juncture to remark that prior to 2015 there was no uniform criminal procedure in Nigeria.⁴ In other words, there was neither a single enactment that contained all the criminal procedures nor any law of criminal procedure that was applicable in all judicial proceedings throughout the country. While the criminal procedure in the States of the Southern part of Nigeria was guided principally by the Criminal Procedure Act,⁵ the States in the Northern part of Nigeria operated the Criminal Procedure Codes.⁶ The non-uniformity of criminal procedures in Nigeria and the fact that many of the provisions in the inherited criminal procedure laws were no long in tune with the present reality amid the urgent need for

¹ [Hereafter, The ACJA]

² Law enforcement agents are the agents of the State employed in the various government agencies charged with the responsibility of securing life and property through the enforcement or implementation of the laws, rules and regulations made by the government. In Nigeria, they include the: Nigeria Police Force, Nigeria Security and Civil Defence Corps, Customs Service, Correctional Service, Department of State Service, Economic and Financial Crimes Commission, Nigerian Army, Nigerian Navy, Nigerian Air-force, and etcetera

³ In this article, we shall use the Nigeria Police Force being the lead security agency in the internal security of Nigeria to represent all other security agencies.

⁴ Criminal procedure in Nigeria was governed by the legislations that were handed down to us by the British Colonial Administration.

⁵ [Hereafter, The CPA] The Criminal Procedure Act, Cap. C41, Laws of the Federal Republic of Nigeria, 2004.

⁶[Hereafter, The CPC] The Criminal Procedure Code, Cap. C42, Laws of the Federal Republic of Nigeria, 2004.

the criminal justice system to respond quickly to the needs of the society culminated into the enactment of the ACJA⁷ although with some obvious limitations.⁸ Apart from the principal statutes mentioned above, other very important laws that regulated criminal procedures in Nigeria are the Constitution⁹ and the Evidence Act.¹⁰ Given the fact that the procedures are clearly stated in the law, the fundamental question that comes to mind is, “why the low adherence to procedures?”

2. Nature Scope and essence of the Administration of the Criminal Justice Act

It is imperative to appreciate the concept details of the instant investigation, namely: criminal justice, criminal justice system, administration of criminal justice and law enforcement agents.

- I. Criminal Justice: The criminal justice of a particular country is all about how the parties to a crime namely, the perpetrator of a crime, the victim of a crime and the State are treated so as to secure justice for or ensure that justice is done to all of them.
- II. Criminal Justice System: This refers to all the institutions¹¹ that are put in place to administer criminal laws for the purpose of ensuring that justice is done to all the parties.
- III. Administration of Criminal Justice: The ways, methods or procedures of dealing with the parties to a crime by the institutions or agencies for the purpose of doing justice to them are collectively referred to as the “administration of criminal justice.”
- IV. Law Enforcement Agents: The employees of the institutions or the agents or personnel used by the institutions or agencies¹² to enforce the law on the parties to a crime are known as the law enforcement agents.

⁷ Administration of Criminal Justice Act, 2015

⁸ Although the law is an Act of the National Assembly, it applies only to Federal Courts. See section 2 of the ACJA.

⁹ The Constitution of the Federal Republic of Nigeria, 1999, (as amended)

¹⁰ Formerly, Cap. E14, Laws of the Federation of Nigeria, 2004 and now, Evidence Act, 2011.

¹¹ The Agencies or Institutions put in place for the administration of criminal justice in Nigeria are the Nigeria Police Force, the Judiciary or Courts and the Correctional Service.

¹² It is pertinent to state here that all the agencies are the establishments of statute. While some of the agencies derived their establishment status from the Constitution, others derived their existence from Acts of the National Assembly. For instance, the establishment of the Nigeria Police Force is traceable to section 214 of the Constitution of the Federal Republic of Nigeria, 1999, as amended and section 3 of the Police Act, 2020, the

Until recently, apart from the non-uniform procedure in criminal administration in Nigeria, the criminal justice system in Nigeria has been bedevilled with problems ranging from undue delay in justice delivery, increase in crime and the consequent increase in the number of persons arrested and standing trials, congestion in the correctional facilities, disregard for the rule of law, impunity in the enforcement of laws by the law enforcement agents and the violations of the fundamental rights of the citizens. Other reasons why the enactment of the ACJA became very necessary were the facts that Nigeria is a democratic State and it must be seen as upholding the tenets and demands of democracy, the rule of law and of course the Constitution which requires the elimination of impunity and unacceptable delays in the disposals of criminal cases as well as guaranteeing freedoms to the citizens of Nigeria.

A. Enforcement of Criminal Laws in Nigeria

Law enforcement agencies are bodies or institutions established to assist the government, particularly its executive arm in implementing the laws that are enacted by the legislature. Their duties are as defined by their establishment Acts and other enabling laws. Thus, by the nature of their statutory roles, law enforcement agents typified in this study by police officers¹³ are concerned with the promotion of compliance with the law and in the event of the violation of the law, the investigation and prosecution of the offenders. The supreme law¹⁴ which created the Nigeria Police Force empowered one of its derivatives to assign responsibilities to it.¹⁵ The Police Act¹⁶ being one of the derivatives from the Constitution has identified and assigned the primary functions of the Police Force as follows:¹⁷

The Police Force shall - (a) prevent and detect crimes, and protect the rights and freedom of every person in Nigeria as provided in the Constitution, the African Charter on Human and Peoples Rights and any other law; (b) maintain public safety, law and order; (c) protect the lives and property of all persons in Nigeria; (d) enforce all laws and regulations without any prejudice to the enabling Acts of other security agencies; (e) discharge such duties within and outside Nigeria as may be required of it under this Act or any other law; (f) collaborate with other agencies to take any necessary action and provide the

Economic and Financial Crimes Commission has its establishment traceable to an Act of the National Assembly of 2004.

¹³ In this study we shall represent all law enforcement agencies in Nigeria with the Nigeria Police Force because it is statutorily charged in section 4(d) of the Police Act, 2020 with the enforcement of all laws and regulations without prejudice to the enabling Acts of other security agencies. Thus, even when an agency is specifically established for the enforcement of a particular law in Nigeria, the Nigeria Police Force is not precluded from enforcing the same law.

¹⁴ The Constitution of the Federal Republic of Nigeria, 1999 as amended.

¹⁵ *Ibid.*, at S. 214 (2) (b)

¹⁶ The Nigeria Police Act, 2020

¹⁷ *Ibid.*, particularly at S. 4

required assistance or support to persons in distress, including victims of road accidents, fire disasters, earthquakes and floods; (g) facilitate the free passage and movement on highways, roads and streets open to the public; (h) adopt community partnership in the discharge of its responsibilities under this Act or under any other law; and (i) vet and approve the registration of private detective schools and private investigation outfits. Added to the above primary duties are the responsibilities of enforcing certain constitutional provisions etc¹⁸ and power to prosecute offenders in any court of law in Nigeria.¹⁹

B. Law Enforcement and Rules of Engagement

In the course of its enforcement of the law, the police are involved in different types of operations which include patrols, stop and search, riot control, investigation, crowd control and arrest. While some of the operations may not require specific operation orders being drawn, others may require specific operation orders being drawn which must indicate five sections as follows: (1) introduction which refers to the situation on ground that necessitated the operation and in it, friendly forces such as the sister security agencies and unfriendly forces such as armed robbers, kidnappers and other criminal elements are identified; (2) the mission which highlights how the police intend to actualise the purpose of the operation and in it, the manpower needed and how they are to be sourced are mentioned; (3) the execution which specifies the command structure for the operation and allocation of responsibilities; (4) administration wherein dressing, equipment, timing, briefing / debriefing and rules of engagement / code of conduct are mentioned; and (5) command / control wherein the coordination, communication, ground commander(s), coordinator, overall commander and stand down order are mentioned.²⁰ It is important to remark here that irrespective of the type of operation and whether or not a specific operation order is drawn, there are rules of engagement and code of conduct that guide operatives in every police operation. These rules of engagement are expected to be observed or applied for their operations to be seen as complying with the due process model of law enforcement.

Rules of engagement are those internal rules or directives within an organisation that give operational guidelines, direction or guidance to the personnel of that organisation in the performance of their duties so as to ensure that their operations are conducted within the legally defensible framework. Although rules of engagement do not dictate the results to be

¹⁸ *Ibid.*, S. 5

¹⁹ *Ibid.*, S. 66. See for instance, the cases of: *Sunday Olusemo v. Commissioner of Police* (1998) 11 NWLR 547 and *FGN v. George Osahon & 7 Ors.* (2006) 5 NWLR 366 R2 SC for the judicial confirmation of the provisions of this section

²⁰ C. F. L. Membere, *Police and Law Enforcement*, 2nd ed., (Membs Foundation Books, 1982), P. 221

achieved, they must define the circumstances, conditions, degree and manner in which the application of force or actions which may attract the condemnation of members of public may be used. The rules provide authorisation for and or limits on the use of force among other things and indicate what measure that is unacceptable. Philemon I. Leha²¹ states that, “rules of engagement dictate where, when and against whom force may be used, what forms of activity are appropriate and acceptable and what evidence is required to support an action or decision.”

Rules of engagement that are frequently applied in the police in the course of their operations include: (i) the use of firearms must be in compliance with Force Order 237;²² (ii) officers and men should be courteous but firm in dealing with members of the public; (iii) vigilance, discipline and a high sense of responsibility and professionalism to be observed; (iv) to establish and maintain a cordial relationship with other sister security agencies and all law abiding citizens; (v) they must be focused and to watch their utterances during the operations; (vi) must not grant interviews except when authorised otherwise interviews are to be left for the police public relations officer or an officer delegated to do so; (vii) men bearing batons are to keep their batons at undrawn position until it is necessary to use them; (viii) where there is a written operation order, officers and men are expected to adhere strictly to its contents; and (ix) everything must be done in accordance with the rule of law which protects and promotes fundamental human rights.

C. Criminal Justice and Law Enforcement Models

The criminal justice of a particular country refers to the ways or methods of dealing with the parties to a crime in that particular country while the criminal justice system is about the

21 Leha, P. I., *Policing and Leadership in Democratic Nigeria*, (DVS Global Publishers, 2015), p. 82

22 Force Orders are administrative instructions that are expected to guide the conduct and performance of the Officers and Men of the Nigeria Police Force. Disobedience to them can be fatal as such erring officers are departmentally tried or queried which in some serious cases can lead to dismissal and prosecution. Force Order number 237 specifies when a police officer is justified to use his firearm. The occasions are as follows: (a) when a police officer is attacked and his life is in danger and there is no other way of saving his life; (b) when defending a person who is attacked and he believes on reasonable grounds that he cannot otherwise protect him from death; (c) when necessary to disperse rioters or to prevent them from committing serious offences against lives and property. We must note that 12 or more persons must remain riotously assembled beyond a reasonable time after the words of proclamation have been made before the use of firearms can be justified; (d) if he cannot by any other means arrest a person who being in lawful custody escapes and takes to flight in order to avoid re-arrest, provided that the offence for which he is charged or has been convicted of is a felony or misdemeanour; and (e) if he cannot by any other means arrest a person who takes to flight in order to avoid arrest, provided that the accused may be punished with death or imprisonment for seven years and above. See Okpako, O., *Policing – The Science of Discretion*, (Nereva Publishing and Educational Services, 2021), Pp. 217, 218

agencies and institutions which are established by the State to administer the law on the parties. The parties to a crime are the offender, the victim and the State. Securing justice for the offender involves his presumption of innocence and the pillars of natural justice as enshrined in the fair hearing provisions of our Constitution being observed and held sacrosanct. Justice for the victim of crime connotes that he be compensated for the injury caused him while justice for the State connotes a situation where impartiality is observed and the laws of the land are followed.

One of the challenges facing the criminal justice system in Nigeria is how to balance the interest of the parties to a crime because it is only when the interests of the parties are balanced that there can be “true fairness.” This challenge offers two options for accomplishing the desired balance namely the due process model and the military or high-handedness model. Justice Emmanuel Olayinka Ayoola²³ puts it thus:

... It is a misconception to think, as many do, that the right to fair hearing within a reasonable time by an impartial tribunal is a code of justice for the person accused of crime only. It is as well a code of justice for the victim. Fairness to the suspect as well as to the victim and to society is one of the challenges that the criminal justice faces. It is a challenge which prescribes options such as that between fairness to the suspect as against protection of society from “evil” which crime represents or between the need for stringent, military model of crime control and the due process model.

I. The Proper or Due Process Mode.

The due process model of criminal law enforcement or criminal justice administration is where the enforcement of the law is in accordance with the dictates of the law and laid down rules as contained in the law of procedure. Due process is the legal requirements which the State (and its agents) must respect and follow in its actions. It deals with the administration of justice by limiting or checking the power of the government or its agents in the discharge of their responsibilities and acting as a safeguard to the individuals from arbitrary denial of rights (life, liberty, or property) by the government or its agents outside the approval or authorisation of the law. It balances the power of the law of the land and protects the individual person from the law.

23. He is a retired Justice of the Supreme Court of Nigeria and a one-time Chairman of the Independent Corrupt Practices Commission, Abuja. He made the above assertion and comment in his work titled, “Law, Morals and Criminal Justice” which was published in chapter one of the *Law, Politics and Legal Profession in Nigeria*, being essays in Honour of Hon, Justice Augustine Nnamani, for the 2006 Law Students Society, University of Ibadan, Ibadan.

II. The Improper or Military Model.

Where the law is set aside or ignored in its enforcement or the government and or its agent harms a person without following the exact course or procedure of the law with a view of achieving certain pre-determined targets or goals, it is a violation of a due process and may be referred to as the “military model” of crime control. For example, the law²⁴ provides as follows:

Any magistrate or, in his absence, any police officer of or above the rank of Assistant Superintendent or any commissioned officer in the Naval, Military or Air Force of Nigeria in whose view a riot is being committed or who apprehends that a riot is about to be committed by persons assembled within his view, may make or cause to be made a proclamation in the name of the Federal Republic in such form as he thinks fit,²⁵ commanding the rioters or persons so assembled to disperse peaceably.²⁶

The law also requires twelve or more persons to continue riotously assembled together after a reasonable time when the proclamation has been made or prevented by force before any person authorised to make proclamation or any police officer or any person acting in aid of such person may do all things necessary for dispersing the rioters or persons so assembled.²⁷ Where and when all the above “conditions” or rules given by law are followed before the riot is dispersed, due process is said to be observed but where there was no proclamation and it was not prevented by force; or twelve or more persons were not continuously and riotously assembled whereas they were dispersed by force, due process is said to be violated.

3 Relational impacts of the Models on the Criminal Justice Delivery prior to the ACJA

Drawing attention from the above, it is obvious that the law gave the police enormous powers to ensure that responsibilities proper by them are achieved. In donating these powers to the

24 Criminal Code, Cap. C38, Laws of the Federation of Nigeria, 2004.

25 The words of proclamation may take two forms which are the long and short words of proclamation. The long words of proclamation are often used when unlawful assembly has not started the riot or when the riot is not yet serious and may be in the following words: Heehhhhhiiii (for the purpose of drawing the attention of the rioters) in the name of the Federal Republic of Nigeria, all persons assembled here are commanded to disperse peacefully and to go to their homes or about their lawful duties or businesses. Persons who disobey this order are liable to be dispersed by force and to be imprisoned for five years. God save Nigeria. See Membere, C. F. L., *Police and Law Enforcement*, 2nd ed., (Membs Foundation Books, 1982), p. 241. On the other hand when the riot has started or has taken a serious dimension and there is no time for the long words of proclamation, the short words are used which may be in the form: Go home and about your lawful duties and businesses or force will be used to disperse you.

26 Justice Emmanuel Olayinka Ayoola, *supra*, with respect to S. 72

27 *Ibid.*, with respect to S. 73

police, the procedures to be followed in exercise of the powers and in the performance of the their duties especially as they relate to arrest, search of persons and property, detention, recording of statements, granting of bail and other investigations as well as the prosecution of offenders are clearly stated in the various procedural laws especially the Evidence Act,²⁸ CPA²⁹ and CPC.³⁰

However, despite the fact that the procedures to be followed are laid down in the various adjectival laws, many operatives of the law enforcement agencies often operate outside the law and in the process violating the fundamental rights of members of public even with impunity. The non-compliance with procedures has continued almost unabated. This has given rise to the formation of negative opinions, prejudices and preconceptions by almost all members of the public against the law enforcement agencies especially the NPF. The dissatisfaction on the part of some members of public about the level of performance of the Police in Nigeria is hinged on the realisation that: (i) the Police Force is funded with public money which essentially comes from taxes paid by the members of public; (ii) Police Officers being law enforcement agents ought to obey the law and live by example; (iii) Police Officers ought to remain impartial in the enforcement of the law and to perform their duties without fear or favour; and (iv) be above board and incorruptible.

The wide gap between the expectations of members of public and the performances of some members of the force has given rise to the perception of the Nigeria Police Force as an unfriendly, inefficient, corruption, brutal and an uncivil organisation. Consequently, the operatives are seen by many members of the Nigerian public as persons who do not deserve support, cooperation and assistance.

On the part of some members of the Nigeria Police Force, they see members of the public as (i) law breakers who are always at war with persons who want the law preserved; (ii) difficult persons who are always antagonistic to law enforcers; (iii) persons who have always misunderstood and misrepresented them; (iv) persons who can never be satisfied with whatever thing that is done by the law enforcement officers.

28 Evidence Act, 2011

29 Criminal Procedure Act, Cap. C41, Laws of the Federation of Nigeria, 2004.

30 Criminal Procedure Code, Cap. C42, Laws of the Federation of Nigeria, 2004.

This intense mutual distrust that has engulfed the relationship between the police and the members of the public has done more harm than good in the security of life and property of Nigeria inhabitants and their general welfare. Both parties may be right and wrong from different perspectives depending on the angle from which one examines this relationship. We shall have insight into the merit or propriety of the position of both parties through the examination of the various dilemma faced by our law enforcers.

Furthermore, there is need to examine the impact of Application of the ACJA on the Criminal Justice Delivery. The Administration of Criminal Justice Act was enacted in 2015 and for close to ten years now, not much has been achieved in terms of adherence to procedures on the part of law enforcement agents. Human rights are still being violated and it may not be strange to hurriedly say so far that the objectives for the introduction of the ACJA have not been met. This will of necessity compel us to inquire into what must be wrong with or what constitutes the dilemma of the law enforcement agents in Nigeria that they are so adamant in violating procedures.

4. The Relational Dilemma of the Police in Law Enforcement

It may not be controverted to say that the actions and inactions of the executive arm of any government are used to assess the performance of such government globally. This is because its deeds and activities are more visible and publicly seen than those of the legislature and judiciary. Similarly, the law enforcement agencies especially the Nigeria Police Force is the most visible agency of the executive arm of the government of the Federation of Nigeria and so, its actions and inactions are often used to gauge the level of the performance of the entire government. For example, if the operatives of the police force are following the due process of enforcing the law and they are performing well, the government would be adjudged in that light. However, where the due process is sacrificed and brutality, corruption, indiscriminate arrest, prolonged detentions and extra-judicial killings are the order of the day, it may be presumed that the script of the government is being acted by the police force.

It is to be noted that public dislike and criticism of the police force predated the birth of the Nigeria Police Force. This is because at inception, the police force was put in place for the purpose of protecting the interest of the colonial masters such that whoever was against the British interest would have the police to contend with. Over the years, various efforts have been made by the leadership of the Nigeria Police Force to turn the situation around but it is

very sad to note that members of the Nigeria Police Force have not been able to overcome and bring the sources of the public odium under effective control. The moral turpitude for which the Nigeria Police Force is hated by members of the public include: brutality, corruption, incivility, ineffectiveness and impunity in the violation of the fundamental rights of members of public. The above vices for which the Nigeria Police Force is stigmatised have formed topics of discourse in both private and public functions.

It is neither intended here to join issues with those who are of the views that the NPF is so corrupt and therefore good for nothing nor defend an obvious bad case. Rather, this study intends to examine the dilemma of the police as law enforcers. This will bring to mind the following fundamental questions: are the members of the police deaf, blind and so insensitive that they prefer to be attached to those vices? Where have they gotten it wrong that their problems seem to have no solution? We shall attempt to answer the above questions in the course of examining some of their dilemma in law enforcement in Nigeria but perhaps it is apposite at this juncture to refer to the words of Etannbi E. O. Alemika:³¹

The role-demand of the police is sometimes in conflict with their role-expectation by the public. This conflict is sometime at the root of police-public mistrust. For example, circumstances where the police are expected by the public to adopt law enforcement approach, but they choose to adopt peace-making approach ... lead to accusation of incompetence, corruption or bias ... when the police choose to adopt a law enforcement approach rather than peace-making approach contrary to the expectation of the public, they may be accused of high-handedness, brutality and corruption. These illustrate the fact that policing is a very difficult task in which issues of performance (effectiveness and productivity); conduct (corruption and brutality), transparency and accountability are constantly in focus.

Significantly, there is need to consider some of the factors responsible for the confused state of things.

A. Dilemma of Evolution and the Military Duties of the Police.

Perhaps the first port of call in identifying factors responsible for the gap between expectation and performance of the operatives of the NPF is its evolution and responsibilities. The men of the police forces that operated first in the territories later known as Nigeria were foreigners who had military training. The operatives constituted “army of occupation” saddled with the responsibility of protecting the colonial masters and the British interest especially through

31 E. O. Alemika Etannbi ., “Police and Policing in Nigeria: Mandate, Crisis and Challenges” in V. T. Jike, et al (eds), *The Nigeria Police and the Crisis of Law and Order*, (NISS Publications, 2003), p. 20.

repression as against the protection of the interest of the masses. As time went on, some natives became enlisted into the police forces especially after the amalgamation of the police forces to form the Nigeria Police Force. Regimentation and martial art still form the nucleus of the training of the Officers and Men of the Nigeria Police Force and were involved in the performance of duties which were confrontational with the masses such as their being used for the collection of taxes. The policemen were like masters and were prepared to exploit Nigerians at any given time to enrich themselves and were consequently corrupt and oppressive.

The above made the early police force an unwelcomed organisation. Following the exit of the colonial masters and the transformation of the police force into a true “Nigeria Police Force” whose operatives are Nigerians, attempts were made to identify the duties of the police which were codified in the Police Act (now the Nigeria Police Act, 2020). One of the duties assigned to the Officers and Men of the Nigeria Police Force by section 4 of the old Police Act is, “the performance of such military duties within and without Nigeria as may be required by them, or under the authority of, this or any other Act.” Although this has been whittled down by section 4 (e) of the Nigeria Police Act, 2020 in the following words, “discharge such duties within and outside Nigeria as may be required of it under this Act or any other law,” the duties which may be required of the members of the police force outside Nigeria no matter the name by which it is known such as peace keeping mission are militarily inclined. This is because it is countries at war that normally require peace keepers.

Thus, by statute, the operatives of the Nigeria Police Force are expected to acquire military training which has been of great assistance in their involvement in various peace keeping operations and management of some internal crises. The dilemma from the above analysis is in where and when to activate the military training and when to deactivate same in their dealings with the civil populace as well as how to jettison the inherited vices from the colonial police forces knowing well that, “old flames die hard.”

Now that the Police Force is entirely “Nigerian,” it is expected that it would have a new orientation whereby the virtues for which our cultures are known such as respect, love, honesty, hard-work, obedience, tolerance, loyalty, courtesy, reliability and efficiency will be imbibed. Much effort has been made by successive management of the Nigeria Police Force to transform the police force into a “people oriented force” through a variety of actions such as the establishment of a police public relations department, introduction of community

policing, the establishment of the police community relations committee, establishment of the x-squad and monitoring units as well as provost marshal office for the arrest and punishment of erring personnel etc. Although as remarked by S. G. Ehindero, “the image of the Police in Nigeria today can be described as improving”³², much needs to be done within and without the NPF towards the achievement of a flamboyant and attractive image.

A. The Dilemma of Difficult Procedures and Tacit Encouragement of Crime.

Many of the procedures to be followed by law enforcement agents as specified by law are hard, faulty and unsafe in certain circumstances. For example, the law³³ provides with respect to how arrest is made as follows, ‘In making an arrest, the police officer or other persons making the arrest shall actually touch or confine the body of the suspect, unless there is a submission to the custody by word or action.’³⁴

This is the standard and due process form of effecting arrest and there is no categorisation of the cases where this form or mode of arrest can be adopted. Thus, the law expects that suspects in cases of assault and armed robbery can be arrested by “actually touching or confining the body of the suspects” unless there is submission to the custody by word or action. It follows that where there is submission to custody by word or action, the law enforcement agent needs not to “touch” him. The questions that come to mind are: can the present day armed robbers or kidnappers in Nigeria who are in operation submit to custody by word or action? While in operation, can a law enforcement officer safely reach them for the purpose of touching or confining them? Certainly, the answers to those questions must be in the negative and of a truth, discretion through the invocation of other principles of law must come in as regards how such arrest can be made. Where this happens, biased persons who may even be lawyers can come out and start faulting the mode of such arrests for not complying with the dictates of the law.

Similarly, in the recording of the statements of suspects, the law provides as follow:

Where a suspect who is arrested with or without a warrant volunteers to make a confessional statement, the police officer shall ensure that the making and taking of the statement shall be in writing and shall be recorded electronically on a retrievable video comp disc or such other audio visual means.³⁵

32 S. G. Ehindero, *Police and the Law in Nigeria*, (Lagos: Times Press, 1986), p. 127

33 Edo State Administration of Criminal Justice Law, 2016

34 *Ibid.*, S. 4

35 *Ibid.*, in S. 15(4)

Notwithstanding the provision of subsection (4) of this section, an oral admission of the offence by an arrested suspect shall be admissible in evidence.³⁶

Where a suspect is arrested on allegation of having committed an offence, his statement shall be taken, if he so wishes to make a statement.³⁷ (2) Such statement may where the suspect so elect, be taken in the presence of a legal practitioner of his choice, or where he has no legal practitioner of his choice, in the presence of an officer of a legal Aid Council of Nigeria or an officer of a Civil Society Organisation or a Justice of the Peace and any other person mentioned in this subsection shall not interfere with the suspect making his statement, except for the purpose of discharging his role as a legal practitioner or such other person.³⁸

Examining the above provisions bring the following fundamental questions to mind: have retrievable video comp discs or other audio visual means been provided for such duties in all the police formations at the moment? The answer is in the negative. What happens where and when a suspect in a serious crime is arrested in a locality at night and he wants to make statement and there is no retrievable video comp disc or other audio visual means? It must be remarked here that the proviso in subsection 5 of section 15 refers to the oral admission of the crime by the suspect in the court.

Further questions that come to mind are: given the fact that there is always a time lag which may even span to a year or more between arrest and eventual trial of suspects in capital offences, can a suspect who actually committed a crime in Nigeria who has consulted a lawyer and who is aware that his statement was not recorded electronically as provided in section 15 (4) admit before the court that he committed the crime? The answer is obviously NO. Again, given the requirement of law that an arrested suspect is to be notified of the cause of his arrest and also to remain silent until after consultation with his lawyer and statement should be taken in the presence of his legal practitioner, and etcetera, if he so wishes, which suspect especially now that we have so many educated and enlightened criminals will not exploit these loopholes to evade justice? This writer is of the opinion that these provisions constitute part of the dilemma of the law enforcement officers. This is against the backdrop that despite the fact that the first duty of the lawyer is to the society by ensuring that justice is done, some lawyers will subordinate that duty which they owe the society to the duty which

³⁶ *Ibid.*, S. 15 (5)

³⁷ *Ibid.*, S. 17 (1)

³⁸ *Ibid.*, S. 17 (2)

they owe their clients (provided his fee is paid) by exploiting all avenues including technicalities to set their clients free even at the expense of justice.

Again, interference with the recording of the statement cannot be ruled out because the lawyer will try as much as possible to impress his client who pays his fee and where the officer recording the statement objects to such interference, that will form a veritable avenue for quarrel and for the lawyer to claim that the statement was not freely taken.

C Dilemma of Enormity of Power

The Constitution and some of its derivatives have invested the NPF with enormous powers some of which interfere and or limit the rights and privacy of some members of public during their usage or exercise. The powers given to the police by law include but not limited to powers of arrest with or without warrant;³⁹ search of the body of a person, premises, building, aircraft, carriage, motor vehicle, receptacle and ship; detention of persons and recovered articles; investigation; bail and prosecution. No doubt, many of these powers affect the freedom and privacy of members of public and where their exercise is without due process or “human face”, conflict is inevitable.

It is instructive to remember at this stage the famous remark of Lord Acton⁴⁰ in 1887 in the following words, “Power tends to corrupt, and absolute power corrupts absolutely. Great men are almost always bad men.” Although the powers of the police are not absolute, there is the tendency of persons in possession of power especially those without conscience to be corrupt and become “power drunk.” Flowing from the above, it is obvious that some police officers do not see themselves as servants but masters despite the effort of the top echelon of the force in trying to make all police officers know that they are servants to the members of the public.

39 Search warrant can be issued for the searching of a place, premises, building, ship, carriage and receptacle any day including Sunday or public holiday. However, while the CPA, Cap. C41, Laws of the Federation of Nigeria, 2004 in section 111 limits the time of execution between the hours of five O’ clock in the forenoon and eight O’ clock at night except when endorsed otherwise, the Edo State ACJL, 2016 in section 148 permitted the execution of a search warrant any time on any day including Sunday and public holiday.

40 John Emerich Edward Dalberg Acton popularly known as Lord Acton was born in Naples, Italy on January 10, 1834 and died on June 19, 1902. He was considered one of the most learned Englishmen of his age, unmatched for the breadth, depth and humanity of his knowledge and was described as “the magistrate of history”, having made the history of liberty his life's work. He is fondly remembered by succeeding generations for his observation which he learned through many years of study and first-hand experience that “power tends to corrupt, and absolute power corrupts absolutely.”

D Dilemma of the Use of Discretion

Discretion is defined as the freedom or power to decide what should be done in a particular situation.⁴¹ However, judicial definition has been provided by Lord Halsbury in the case of *Shape v. Wakefield* as follows:

Discretion means, when it is said that something is to be done within the discretion of the authorities that something is to be done within the rules of reason and justice and not according to private opinions; according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular.⁴²

With profound respect to his Lordship, exercise of discretion ought to be guided by law but it essentially depends on the opinion of the person exercising that power of discretion as to what is right or necessary at that material time. Successful performance of police duties requires a very good understanding of the law and a good application of discretion because a good exercise of discretion can save life and as a matter of fact, discretion is the better part of valour. For example, a traffic police officer performing traffic control who sighted a vehicle running away after knocking down a pedestrian has two optional duties to perform at that material time of which he must exercise discretion depending on the circumstances of the case, namely: (i) to take the victim to the hospital for treatment; and (ii) to pursue the driver. Where he decides to take the victim to the hospital, some persons who want the offending driver adequately punished will fault that decision and the reverse is also true.

Similarly, one of the methods of performing the police statutory duty of prevention and detection of crime is through stop and search. While at the venue of such duties, the police may encounter much human and vehicular traffic. It may not be feasible for the police to stop and search every person or vehicle moving on the road especially in busy areas. It must therefore be incumbent on the police officers to decide on who and what to search. The police may settle down on searching flashy car or vehicles conveying persons who may be reasonable suspected of having committed or being about to commit crimes. The dilemma is that such discretion may not go un-faulted by persons who are “victims” of such stop and search especially where such persons are in a hurry.

41 A. S Hornby., *Oxford Advanced Learner's Dictionary*, 7th ed., (Oxford University Press, 2005), p. 417

42 (1891) AC 173

E. Dilemma of Investigation and Prosecution.

The first duty of the police is to prevent crime which is proactive in nature and where it fails to prevent crime, then, it would react by way of investigation. The outcome of investigation may be submitted for judicial inquiries through prosecution. Investigation may be commenced through the receipt of complaints or information from victims of crimes or through information generated by the police *suo motu*. In the process of investigation, arrests are made, search warrants are executed and medical examinations are carried out where necessary. Parties are interviewed and identification parades conducted where necessary. Confessional statements are attested by superior police officer and exhibits are registered. Where experts' opinions and examinations are necessary, such experts are contacted. Exhibits for scientific analysis are taken to the forensic laboratory.

The objective of investigation is to assemble pieces of evidence which may assist the court in doing justice. Upon the completion of investigation, a report is written and where the arrested person(s) is (are) deemed to have committed the offence or there is evidence that can sustain a charge, the case is charged to court for its scrutiny and determination. Where there is no evidence that can sustain a charge, such case ought to be terminated at the police level so as not to constitute abuse of court process. In performing these duties, the power and discretion of the police are only subject to the overriding powers of the Attorney-General of the Federation or of the State who has the constitutional mandate to prosecute, continue or discontinue any criminal case even if it is being handled by the police.

Within the limits of its powers, the police force has the discretion as to who to prosecute, when to prosecute and how to prosecute the suspect. Where after investigation, the police are of the opinion that the prosecution of a suspect will not be in the interest of justice probably due to its trivial, vexatious, frivolous, malicious nature or the complainant is not willing to go ahead with the prosecution in a compoundable matter, the police are empowered to terminate the case accordingly.

Now the dilemma in this process is that for example where five persons who were probably reported by a complainant are arrested and at the end of investigation only one person is indicted and charged to court, it may be construed by the complainant to mean that the person charged to court has no means of buying his way out and that the police have compromised their position otherwise all of them ought to be arraigned. It is important to remark here that some persons who have taken laws into their hands may run to the police to report and if after

investigation when the facts of the case are laid bare to the police who decide charging such a complainant to court, persons who are not conversant with the true facts of the case would think corruption has made the police to turn the case up-side down.

F. Dilemma of Inequality in the Society

The social structure theorists of crime attributed the causes of crime to the existence of conflict among different classes of people in the society. There are variants of this theory which include the social disorganisation theory, the social ecology theory and the strain theory but their common theme is that crime is a product of the existing conflict in the social structure of our society. The theory holds that crime results from the conflicts in society among the different social classes and that law actually arises from the necessity of protecting the elites or the upper class for the purpose of maintaining the status quo and not a general consensus.

Thus, the social structure theory is of the view that law is not in favour of the lower class and that even where a member of the lower class and a member of the upper class commit the same offence, the law is manipulated in favour of the member of the upper class for instance, street crimes such as minor monetary theft by a pick pocket may be routinely punished quite severely than a member of the upper class who is involved in a large scale financial and business crimes who may be treated much more leniently. Thus, a theft of a television set whose value is just about twenty thousand naira by a less privileged person who is of the lower class might receive a longer sentence or higher term of imprisonment than the theft of goods worth millions of naira through illegal business practices by a privileged person who is a member of the upper class and who may enter into a plea bargain.

The significance or relevance of the role of the police cannot be separated from the form or shape of the society where the police operate. Thus, in a society where there is equality or where there is no pronounced inequality, the police force is viewed as an impartial and neutral law enforcer who enforces laws that promote the common interests of everyone irrespective of gender, age, class or status in the society. However, in a society that is stratified into different classes and groups with conflicting interests and where inequality is on the high side, the police force is often viewed as an organisation that is out to serve the interest of the rulers against the ruled with a view of preserving the status quo.

The question that comes to mind at this juncture is, “which of these two groups does Nigeria belong”? Without fear of contradiction, Nigeria as a capitalist country is among the countries of the world with pronounced inequality. Thus, rightly or wrongly the police force will continue for some times to come to be seen as a body that is oppressive and saddled with the responsibility of supporting the few elites in the name of preserving law and order against the vast majority. Consequently, as soon as the police arrive some quarters, although citizens may be reassured of their safety even when they have not performed any duty, their presence is synonymous with the arrival of oppressors, brutes, corrupt and undesirable persons as a result of the opinion that must have been formed by persons in such quarters.

G. Dilemma of Confronting Anti-Government Forces.

Very often, the government of the day encounters opposition to its policies and laws if they are adjudged to be defective or anti-masses. The antagonists of the government may see the actions of the government to be lacking in utility and may start mobilising forces against the government through criticisms, protests which may be peaceful or violent all with the aim of change in policy or running down the government. It is to be noted that no matter the merit of the case of the antagonists of the government, the police cannot join them otherwise their action may be construed as mutiny. This is more so when preservation of law and order is one of the general duties of the police which is endowed by statute.

It follows that the police can never be a catalyst of any change in the existing political and social structures (even when the personnel are not comfortable with the policy or law) since it ought to act as a shield for those institutions. Thus, the police being the most visible symbol of government’s power, authority and shield constitute a barrier to anti-government forces which must be confronted and subdued before their intended target can be reached. In other words, the police must be brought into the dispute that did not originally concern it and as Alemika observed it while quoting Blumberg:

Politically, the police constitute a social lightning rod. Protests of all kinds, directed at any of the varied institutional subsystems of ... society, invariably become confrontations with the police before they clash with the intended target of their grievances. In the process the anger and fury of a protest movement are diverted, diluted and sometimes even extinguished. The initial quotient of hostility is redirected at the police, who become the barrier that must be surmounted and subdued before the movement can address itself to the programs and priorities of its original agenda. It is in this role that the police

serve their most important function in society - that of acting as a buffer in insulating and protecting existing political and social structures.⁴³

It is to be noted that in a democratic setting, it is lawful for citizens to embark on peaceful protests. However, a peaceful protest can transform into a violent protest at any given time since the leaders of such anti-government forces may not be able to control large crowd and very often, hoodlums may hijack the occasion to unleash terror on innocent citizens thereby becoming violent. This is the reason why the police must be present to monitor the situation with a view of protecting life and property but the dilemma is that the mere presence of the police is perceived as the “presence of the enemies” who are there to frustrate their effort.

This may heighten their indignation and feelings of embarrassment with the possibility of a resort to coercion and violence.⁴⁴ The police may end up being at the receiving end because (i) it is the police that are seen and not the government; (ii) where there is a violent clash, attention of members of public shifts from the dispute between the government and its antagonists to the police who were brought into the matter out of necessity; and (iii) the role of the police comes in focus and judicial panel of enquiry is set up to investigate same.

There is need to consider inter-jurisdictional perspectives to the Administration of Criminal Justice. Countries all over the world have their own criminal justice system and consequently, their respective administration of criminal justice. The type of government (whether military or democracy, and etcetera), the culture (whether mono or multi ethnic groups), social values as well as the period of existence of the entity or country constitute however, some of the contributing factors that determine the nature and quality of the criminal justice administration of a particular country.

The success of a criminal justice administration may become visible when the rights of the citizens are not violated or when the violations are not significant to warrant an outcry. To a reasonable extent, human rights are observed and outcry of violations highly reduced in the USA, the UK and Ghana. In the US and the UK, the necessary equipment for the enforcement of criminal justice administration laws such as camera and other electronic recording devices and facilities are available. Detention facilities are well equipped to protect and guarantee the rights of detainees. Law enforcement officers are adequately monitored. Their long existence

43 Alemika Etannbi, *supra*, at p. 22

44 *Ibid.*, at p. 24. See also Ehindero, S. G., *Police and the Law in Nigeria*, (Times Press, 1986), p. 136

as independent nations,⁴⁵ technological advancement, large resources and enough budgets for the provision of all that are necessary for the implementation of the criminal justice administration laws may have been responsible for their huge successes. In the case of Ghana, the unitary system of government may have boosted the performance of its criminal justice administration.

5. Challenges and Critique of the ACJA

The ACJA prohibited many unlawful pre-trial practices such as arrest of proxies, arrests in civil wrongs, arrest of suspects without notification of the cause of arrest and prolonged detention. Regrettably, those practices are still very prevalent in Nigeria. Besides, it must be remarked here that criminal law is on the concurrent legislative list such that both the States and the Federal government have powers to make laws including procedural laws on the subject. The implication of this is that it is not automatic that all the States must adopt and implement the ACJA. This notwithstanding, it is noteworthy to say here that with the recent assent of the ACJL on 25th August, 2022 in Bauchi State, 27th May, 2023 in Niger State and 6th September, 2023 in Borno State, all the States in Nigeria now have their own ACJL.⁴⁶ The implementation of the ACJA / ACJL is the present challenge facing the administration of criminal justice in Nigeria because it is one thing to enact or domesticate the law and it is another thing to implement the law in the spirit of its enactment. So far, only a few States have inaugurated monitoring committees to oversee the implementation of the ACJLs.⁴⁷

6. Recommendations and Conclusion

It is an incontrovertible fact that law enforcement duties are full of many challenges some of which are created by law while others are as a result of the imperfection in humanity. These problems can be addressed through legal reforms, establishment of effective monitoring teams / committees for the enforcement of the ACJA / ACJL and adequate provisions of the needed resources on the one hand and a deliberate policy trust to re-orientate the workforce of the NPF through sustained training and re-training of its personnel on the other hand. Again, the management of the Force should undertake all within its capacity and law to ensure better service delivery while members of the public are to sincerely cooperate with the police and

⁴⁵ America gained her political independence from the Great Britain on 4th July, 1776 while the existence of the United Kingdom is traceable to the 11th Century

⁴⁶ <<https://www.partnersnigeria.org/acjl-tracker/>> Accessed on 2nd October, 2023

⁴⁷ The States that have inaugurated monitoring committees for the implementation of the ACJL include Anambra, Kaduna and Ondo. Visit: <https://punchng.com/taking-the-acja-revolution-further/> accessed on 2nd October, 2023 at 2:55 am.

also avoid overblowing genuine mistakes that may be made. It is hoped that the adoption of the above recommendations will of a necessity narrow the gap between the expectations of the members of public and the performance of the Police Force which will ultimately result to a safer security situation in our society.



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