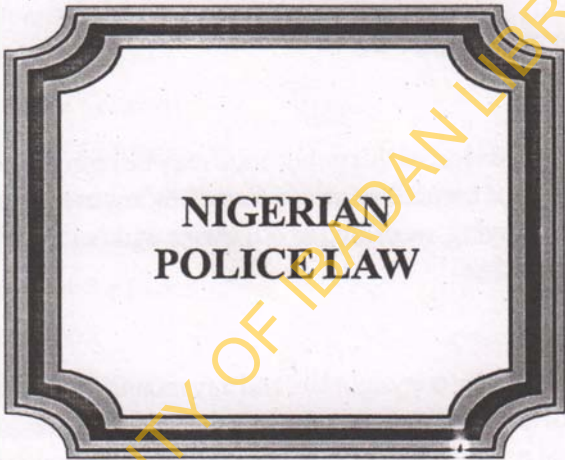




**THE NIGERIAN POLICE LAW**  
with  
**POLICE ACT &  
CODE OF CONDUCT**

**KUNLE AINA**

THE  
NIGERIAN



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THE

NIGERIAN

POLICE LAW

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CHAPTER 2

General Duties of the Nigerian Police

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## THE NIGERIAN POLICE LAW

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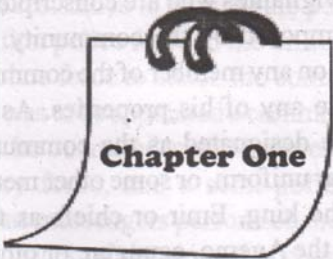
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**Chapter One**

**HISTORY AND STRUCTURE OF THE NIGERIA  
POLICE FORCE**

**Introduction**

In almost all societies in the world today we have one form or the other of ensuring that the societal rules and laws are obeyed and sanctions are enforced. The group of people who engage in this activity on behalf of the society are known as the police.

The modern police have emerged from these groups many of which were vigilantes or volunteers, but have emerged as the primary means for promoting and maintaining the social order. Formalized police agencies have grown rapidly in size and number from the volunteer groups in the 1800s. The London Metropolitan Police force was created in 1829, while the professional police force in the United States originated in New York City in 1844.

**Origin of the Police in Traditional Societies In Nigeria**

Prior to the British Colonial rule in Nigeria, traditional communities have developed peculiar societal norms and beliefs which over time have metamorphosed into customary laws; these customary laws are backed by sanctions which follow breach of these societal norms. Initially there are



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groups of volunteers and vigilantes who are conscripted by the community to enforce any sanction imposed by the community. For instance, if the community imposes a fine on any member of the community, and he refused to comply, they may seize any of his properties. As time goes on there emerged a group who are designated as the community police who are allowed to wear a particular uniform, or some other means of identification. They are controlled by the king, Emir or chiefs as the case may be. In Yoruba land, members of the Agemo, egungun, or other secret cults, were responsible for enforcing customary law, just as the oreku mask did among the Akpoto in the idoma division and the mumuo societies did among the Igbo; other communities in traditional Nigerian societies have similar organizations for enforcing sanctions in the community. The pre-colonial methods of policing and maintaining law is quite different from today's modern Nigeria. The traditional police never employ violence in carrying out their purpose. The aim of traditional policing was never to punish or take vengeance, but for the rehabilitation and correction of the offender, and compensate the victim.

### **Advent of Modern Police**

The advent of modern police in Nigeria could be traced to the development and role of British traders at the inception of colonial rule.

After the abolition of slavery, the British maintained a squadron in West African countries which intercepted slave trading ships, serving as an early example of a maritime police.

In 1849, the British government appointed a Consul-General for the Bight of Benin and Biafra on the Atlantic Coast of West Africa in the person of John Becraft to promote the so called legitimate trade and prevent quarrels and misunderstandings, between African chiefs and British merchants operating

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in the area. When the resistance to British rule persisted, the Acting Consul Annesley set up the first police force in the oil Rivers protectorate in 1890. He used the small police force to attack the communities in the old calabar areas. In 1896, Moor was to be appointed a commissioner and consul-General of the protectorate, he recruited some natives to create the oil Rivers irregulars, a military force, and a semi-police force known as court messengers. The court messengers performed the duties of "military police force executed the orders of the consular courts, arrested and escorted prisoners and protected the vice-consuls when required.

Between 1897 – 98 their total strength was 123. We must note that at this time the police force was used more for military purposes than for civil police duties. At the same time the Royal Niger Company established a constabulary in the area under its control beginning from 1886.

In Lagos, after the annexation of the territory in 1861, the Consul-General established a police force and built a jail. It was the first modern police force in the history of Lagos.

In 1895, the Police ordinance was enacted, creating what was known as Lagos police; its responsibilities included "the prevention and detection of crime, the repression of internal disturbance and the deterrence of the colony and protection against external aggression".

By May 1906, there were three different police forces serving the British protectorates of Northern and Southern Nigeria and the Lagos colony. When Lagos merged with the protectorate of Southern Nigeria in that month, their forces came under one command, with the amalgamation of the Northern and Southern protectorates in 1914 the control government came under Governor-General. The police force did not merge immediately; however, in 1917 the government enacted the police ordinance of that year which provided uniform rules for the police force in Nigeria.

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1st April – 1930 it was known as Nigerian Police Force (NPF) and the Northern and Southern protectorates police force were legally merged.

In 1951, under the Macpherson constitution, the Nigerian police force was now reorganized and placed under regional commands answerable to the Inspector – General. In 1960, when Nigeria became independent with the republican constitution there were further changes in the police structure, and the police was only answerable to the president, though the regional police presence was still evident. This was exemplified in the powers given to local authorities to control their own local police principally for the maintenance of law and order within the different localities.

In January 1966, the military coup suspended the Constitution, and decreed that all local police forces are to be placed under the overall command of the Inspector-General of police. By the end of 1969, the military has completed the total unification of all police formations in Nigeria, and placed them under the control of the Inspector-General of police and controlled by the Federal Government of Nigeria.

From all indications, the present police force have evolved from a checkered history from the military police of colonialist to enforce the laws of colonialist and their rule to the current status of maintaining law and order. Clearly, the refusal to have state police today contrary to many people's expectations by Nigerian government was to avoid the mistakes of the past.

### **Establishment of The Modern Nigeria Police Force.**

The Nigeria Police Force was established by virtue of Section 3 of the Police Act.<sup>1</sup> This Section is a re-enactment of the constitutional provision in Section 214(1) of the Constitution of the Federal Republic of Nigeria<sup>2</sup>

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1 Cap P19 Laws of the Federation 2004

2 Cap C23 Laws of the Federation 2004

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which not only established the Nigeria Police Force, but also provided clearly that no other Police Force shall be established for the Federation or any part thereof. This clearly shows that the states cannot form or maintain a State Police. There have been many arguments and discussions even agitations by some State Governments for the establishment of State Police. However this cannot be done without constitutional amendments. The most important reasons for the establishment of only one Police Force for the country is to ensure uniformity of purpose, prevent the Force from being used as a political weapon in the hands of the State Governors or other local authorities and to place the entire security of the country in the hands of the President. The agitations for a State Police will be reduced if the Governor of each state were allowed to have some form of control over the Commissioner of Police within the State. Of course, the Constitution clearly provides that the State Governor may instruct the State Commissioner of Police or give him directions with respect to the maintenance and securing public safety and public order within the State as he may consider necessary' and the Commissioner of Police "shall" comply with those directions or cause them to be complied with. However the proviso to the Section 215 derogates from the effectiveness of the Section by stating that the Commissioner should request for the matter to be referred to the President or Minister for his directions. The effect is that, the authority to obey lawful directions resides in the President or Minister in charge of Police Affairs. Where there are urgent matters of state security, the intervention of the President or Minister is needed for the Commissioner to comply. The main advantage of this Section is that the Governor cannot easily manipulate the Commissioner of Police of the State. However it is not all lawful directions from the Governor that must first be referred to the President, only those instructions that are of doubtful basis, or are improperly motivated. If the instructions are only for security purposes the Commissioner should act promptly to ensure that lives and properties are secured.

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There have also been calls to change the name of the Nigeria Police Force to "Nigeria Police Service", the argument is that "force" implies application of force in the operations of the Police, whereas, their duty does not necessarily involve the use of force at all, but the duty is also in the form of service to the Nation. The point is that, whether you call them a force or service, their duties are constitutional and not assumed, so far as they are guided by law and regulations in which case, the name or nomenclature may not be of much importance.

## Structure

The Nigerian Police is composed of both internal and external structures. The external structure comprises of constitutionally established bodies saddled with the proper control and management of the Police, while the internal structure comprises of the organization, commands, and branches of the Nigeria Police.

## External Structures

### 1. Nigeria Police Council.

The Nigeria Police Council was established by virtue of Section 153(1)(c) of the Constitution of the Federal Republic of Nigeria 1999; the Nigeria Police Council is constituted by the following members<sup>3</sup>

- (a) the President, who shall be the Chairman
- (b) Governor of each State of the Federation,
- (c) the Chairman of the Police Service Commission, and
- (d) The Inspector-General of Police.

The major functions of the Council are three fold, and these are,<sup>4</sup>

- (a) the organization and administration of the Nigeria Police Force and all other matters relating thereto (not being matters relating to

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3. See section 27 and 28 of 3rd Schedule part 1 of the Constitution of the Federal Republic of Nigeria 1999

4. Section 28 of the 3rd Schedule part 1, Constitution of the Federal Republic of Nigeria 1999

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- the use and operational control of the Force, the appointment, disciplinary control and dismissal of the members of the force;
- (b) the general supervision of the Nigeria Police Force; and
  - (c) advising the President on the appointment of the Inspector-General of Police.<sup>5</sup>

Consultation with the Council by the President on the appointment as well as removal from office of the Inspector General of Police.

The Police Act further provides that the Permanent Secretary in the Police Affairs Office which is in the Presidency, shall be the secretary to the Council, whose Secretariat is in the Police Affairs Office in the Presidency.

The roles and duties of the Nigeria Police Council are broad enough to give the Council opportunity to make wide ranging reorganizations and changes in the Police for effective deployment and organization of the Force. All State Governors are members of the Council. This allows for their input as they can bring up suggestions for the most appropriate way to tackle the peculiar problems confronting their individual States and finding solutions to them and in the process fashioning out a more effective operational structure for the Police Force in each State. The duties of the council does not include operational control of Force operatives or appointment of the members of the Force, but it is an opportunity for the States to seek to re-organize the State Command for more effective policing. Presently, some States have discovered that there is need for joint military and Police patrols for increased

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5. See also Section 9 of the Police Act Cap. P19, LFN 2004.

security in the State. They have enough opportunities through the Council to make those suggestions to the President or the Inspector-General and such decisions such as establishing joint patrols or special patrol units will be within the powers of the Council.

The appointment of the Inspector General of Police is an important duty of the Council. The Inspector-General of Police has the overall control and supervision of the Police Force subject to the powers of appointment and control by the President. The advantage served by the inclusion of the Governors of the states in the appointment of the IGP is that it removes the appointment from being partisan since all Governors of the Federation are members of the Council and this implies that all sectional interests in the Country are taken into consideration.

The Inspector-General of Police must be appointed from the serving members of the Nigeria Police Force. This means that the President or Council cannot appoint a person that is retired, or from outside the Police Force to the Office of the IGP. However, nothing stops the Council from appointing anybody who is not the most senior member of the Force to the office. The Council is not therefore constrained in any way from choosing the most competent and efficient person whether he is the most senior member of the Police Force or not.

It is mandatory that the President consult with the Council before appointing the IGP and conversely before removing him from office,<sup>6</sup> however, the Constitution does not make it mandatory that the President must abide with the position of the Council which he does not agree with. Where the President

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6 Section 216(2) 1999 Constitution

decides to appoint a particular person and the members of the Council disagree, there is no Constitutional provision to resolve such conflict, but the clear wording of the Constitution is that he should 'consult' with the Council. This is tantamount to merely informing, giving notice and asking for opinion or views of the Council on the choice of the person, it is therefore not mandatory for the President to obey or bow to the dictates or desire of the council. We may argue that if the Council cannot change the position already taken by the President, their role can be dispensed with and at best their role is advisory only. A great advantage the consultation with the Council will serve is that it enables all the Governors to have a sense of belonging and feeling that they also participated in the appointment or removal of the IGP, it also helps the President to listen to different views from other parts of the country to ensure greater percentage of the States support the appointment of the IGP or his removal.

The Council may delegate any of its powers to any of its members, or the IGP or any member of the Police Force. Such delegation of its constitutional powers must be with the approval of the President. The Council, while delegating its powers may impose conditions upon such delegation or limit the exercise of the delegated authority. This is necessary in order not to allow for excessive or arbitrary use of powers by the delegated authority. The Council may, by necessary implications thus serve as supervisory and approving body over all delegated authorities or persons. The power to delegate their powers is very useful as the Council may not be able to meet regularly due to the important state duties the individual members may also be saddled with, but may schedule their meetings in such a way as to enable them only to meet at intermittent periods to approve or disapprove exercise of delegated powers.



The Council is also responsible for confirming the appointment of officers on probation. Section 65 of the Police Regulations provides as follows:- An officer serving on probation may, on completion of the probationary period, be confirmed in his appointment and made substantive in rank by the Nigeria Police Council if:-

- (a) his service and conduct have been in every way satisfactory; and
- (b) he has obtained, or has been exempted by the prescribed authority from obtaining, the requisite pass in the prescribed examinations.

This duty of confirming the appointment of Officers on probation is better done and now within the statutory duties of the Police Service Commission which is the appropriate authority with responsibilities for the discipline, control and general welfare of the Police Force Personnel <sup>7</sup>

### **Police Service Commission**

The Police Service Commission (PSC) is established pursuant to Section 153 of the 1999 Constitution <sup>8</sup> and the Police Service Commission (Establishment) Act 2001. The PSC is constituted by a Chairman, and such other persons, not less than seven and not more than nine as prescribed by the Act of the National Assembly. The appointment of the Chairman and the members of the PSC shall be made by the President subject to confirmation by the National Assembly <sup>9</sup>.

The PSC is primarily responsible for the appointment of police officers other than the Office of the IGP. (This is the duty of the Council). We may note that the appointment of Officers ( to pensionable age) of Officers to the

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7 Section 29, 3rd Schedule, (m) Nigeria Constitution 1999

8 As we shall soon discuss

9 Section 29, 3rd Schedule, paragraph m

rank of Assistant Superintendent of Police (ASP),<sup>10</sup> appointment by direct entry to the rank of assistant superintendent of Police on probation, of a cadet assistant superintendent of Police who has successfully completed a Police training course,<sup>11</sup> technical duties appointment to the rank of assistant superintendent of Police<sup>12</sup> of the members of the Force Inspectorate<sup>13</sup> or direct entry appointments and general duties or technical duties appointment are generally appointment made or supervised by the PSC.

It is also the responsibility of the PSC to advise the President to authorize the IGP as the prescribed authority to do the following:-

- (a) setting up of new Police Area Commands, districts and divisions and the closure of Police Area Commands, districts and divisions;
- (b) setting up of new Police Stations, and Police Post;
- (c) setting up of new Police formations and their closure;
- (d) fixing of personnel establishments for Police formations.

The PSC is also responsible for the welfare of the members of the Police Force, the transfer of Officers from one location to the other, salaries, appointments and promotions of the members of the Police Force and for all establishment matters.

The PSC has power to make standing orders with respect to any matter relating to appointment of officers in the Force, as well as their promotion, transfer, dismissal and discipline within of the Force.<sup>14</sup> The PSC with the

10 Section 154(1) Constitution 1999.

11 Section 38(1)(a) Police Regulations.

12 Section 38(1)(b) Police Regulations.

13 Section 38(1)(c) Police Regulations.

14 Section 38(1)(d) Police Act.

approval of the President, may also make standing orders as they consider proper with respect to any matter relating to the duties and operational control of the Force.<sup>15</sup> The Standing Order is binding on all police officers and need not be published in the Federal Gazette<sup>16</sup>. The standing order is generally for ease of administration and operational control within the Police. It has the advantage of making the members of the Force to be aware that all such standing orders, rules and regulations within the Force are for their own benefit such as ensuring for proper operational control as well as welfare of the members of the Force. It helps them to comply with these rules when properly disseminated and applied, whilst the PSC must ensure that every Police Officer is made aware of its rules and orders and also sensitize them of the importance of obeying them. The rules must be published and made easily accessible. In fact, the standing orders should be made a subject to be taught in the Police Colleges and Schools, this will enable all officers to be aware of conduct and discipline acceptable within the force, career opportunities available to officers, criteria for assessment for promotion. The Standing orders therefore must be made an issue of common knowledge within the Force, though it is not the general Police regulations, it is important enough to get them published and widely circulated for the overall improvement and proper conduct of the members of the Force.

### **Inspector General Of Police**

The Inspector General of Police (IGP) is the highest ranking Police Officer in Nigeria. The Office of the IGP was established under the Constitution of the Federal Republic of Nigeria. Section 215(1)(a) of the Constitution provides that the Nigeria Police Force shall be under the Command of the Inspector

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15 Section 47, Police Act.

16 Section 47(2) Police Act.

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General of Police who shall have authority over and control of the contingents of the Police Commands in the States. Only the President or Minister of the Government of the Federation in charge of Police Affairs as the President may direct can issue lawful directions with respect to maintenance and security of public safety and public order to the IGP and the IGP must comply with such or cause them to be complied with.

The directions from the President to the IGP must be lawful directions and not illegal, unlawful or arbitrary. The question is whether the IGP may disobey the directions of the President that are not lawful? And who decides whether directions from the President to the IGP are lawful or not? Moreover, where the IGP refuses to obey such directions, which he believes to be unlawful, are there any Constitutional guarantees that protect him? These questions may seem academic since, the Constitutional powers of the President to appoint and remove<sup>17</sup> is virtually without any check except that he is enjoined to consult with the Nigeria Police Council<sup>18</sup> and as we already discussed above, he is only expected to consult but not bound to obey the Council where the Council disagrees with him. Therefore, with the enormous powers of appointment and removal inherent in the President, the IGP who refuses to obey the President's directives whether lawful or not stands the risk of being removed from office. The IGP do not have any opportunity to express his grievances or otherwise, or to complain that the reason for his removal was that the directives from the President was unlawful and contrary to the Constitutional provisions. The Constitution in Section 215(e)(5) sealed the hope of any IGP that may decide to go to court to enforce his rights, as the section provides that, 'The question whether any, and if so, what, directives have been given under this Section shall not be inquired into in any Court of

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17 Section 47 (3) Police Act.

18 Section 216, 1999 Constitution.

Law'. He does not have any right to enforce his rights in any Court in Nigeria; or put in another way, no Court in Nigeria is allowed to inquire into any complaint as to the lawfulness or unlawfulness of any directives given by the President. Section 215(3) which provides as follows,

- (3) The President or such other Minister of the Government of the Federation as he may authorise in that behalf may give to the Inspector-General of Police such lawful directions with respect to the maintenance and securing of public safety and public order as he may consider necessary, and the Inspector-General of Police shall comply with those direction or cause them to be complied with.

The lawfulness or otherwise of a Presidential directives is superfluous; the practical implication is that the IGP has no option in the matter and he risks his job if he does not carry out the directive whether lawful or not, and when he is removed, he has nowhere to complain or seek legal redress.

### **Duties of The Inspector General Of Police**

The Inspector General Police is charged with the supreme command of the Force and with the maintenance of public safety and order.<sup>19</sup> The general duties of the Police as stated in Section 4 of the Police Act are as follows:-

"The Police shall be employed for the prevention and detection of crime, the apprehension of offenders, preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act"

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19 Section 216(2) 1999 Constitution.

It is of paramount importance that the IGP keep the President informed of the State of public security in the Federation. The President must be informed whenever there is a breach of the peace anywhere in Nigeria, so that he would be able to act appropriately and intelligently.

The IGP is expected to give a report on all aspects of the work and activities of the Force performed or carried out during the year. This report is designated as the Nigeria Police Annual Report. The report is published every January to cover the Police activities in the preceding year and it is submitted to the President. When the President approves it, it is then published as an official publication of the Force.<sup>20</sup>

The IGP is also duty bound to prescribe detailed orders governing the duties of a Police officer in charge of a duty post where there are no prescribed or laid down Standing Orders or where such are not prescribed in the Police Regulations.

It is also the responsibility of the IGP to delineate Police areas of responsibility. The IGP must where he considers it necessary for the efficient policing of administrative area commands, establish a Police Area Command that conforms to the territorial boundaries of area commands, districts or divisions. Territorial boundaries of a Police district are determined by the IGP,<sup>21</sup> acting within the prescribed approval.<sup>22</sup> The territorial boundaries and areas of responsibility of each Police Station or formation are determined by the IGP. He is also responsible for territorial adjustments and boundaries as the occasion demands.

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20 Regulation 309 Police Regulations.

21 Section 4 Police Act.

22 Section 310 Police Regulations.

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The IGP subject to the approval of the President in writing may delegate any of his powers to his subordinates.

### **General Administration**

For ease of administration and in an effort to ensure that the whole country is effectively policed, the Nigeria Police Force is divided into Police Area Commands covering the entire country. The office of the Inspector General of Police is deemed a Police Area Command or may be referred to as Force Headquarters and is now situate at the Federal Capital Territory, Abuja.

### **Force Headquarters**

Force Headquarters has been further divided into departments as follows:-

1. *'A' Department – Finance and Administration consisting of;*

- (i) Administrative branch
- (ii) Secret Registrar Branch
- (iii) Personnel Branch and
- (iv) Welfare Branch

2. *'B' Department – Operations consisting of;*

- (i) Operations Branch
- (ii) Traffic Branch

### **Force Signals**

Force Mechanical Workshops Transport Branch

Marine Branch and;

Force Animals Branch

3. 'C' Department – Logistics and Supply consisting of;
  - (i) Supply Branch
  - (ii) Works Branch
4. 'D' Department (Federal Bureau of Investigation and Intelligence) consisting of;
  - (i) Investigations Branch
  - (ii) Technical Aids to Investigation (C.I.D)
- C.I.D training Branch**
  - Interpol Branch
  - Fingerprints Branch
  - Central Registry Branch,
  - Central Registry of Offenders Branch
  - The force training Department,
5. 'G' Department Public Relations consisting of;
  - Press and Publication Branch
  - Employee Information Branch
  - Community Relations and Publicity Branch
  - Complaints Bureau

All the departments except the 'G' Department is headed by Deputy Inspector General of Police. Whilst the 'G' Department may be headed by officer of the rank of assistant commissioner of police and above.

23 See Section 8 Police Act generally.  
24 Approval is normally to be given by the Police Council.



The various Departments may also be divided into branches which are to be headed by superior Police Officers of the rank of Inspector and above. <sup>23</sup> The Inspector-General for the purpose of control and administration may in his discretion designate any particular Police formation as a Force Headquarters and such formation will immediately come under his operational control. <sup>24</sup> This power given to the IGP is important in many respects, this is because sometimes, there may be need for the Office of the Inspector-General to personally take over or assume control of formations for strictly security purpose. The Inspector-General has the sole responsibility of ensuring, maintaining and securing public safety and public order, and also receives directions from the President in this respect. Where the President so directs, it is within his discretion to personally carry out the directions through his office or to give instructions to the formation or area command within the territory where there is breakdown of law and order. In cases where the local formation is compromised or incapable of effecting such directives, or has failed to do so, the office of the Inspector-General is empowered under the law to take over or re-designate such formation as Force Headquarters formation and thereby take over the formation and give appropriate directives accordingly.

### **Commands of The Force.**

The entire country is further divided into Zones, which are better known as Police Zonal Commands. A Zone comprises of one or more States and is headed by an Assistant Inspector-General of Police. The Zonal Command Headquarters are to be situated in the city where the zonal Headquarters is situated. The Zonal Command is superior to the State Command and may takeover matters being handled by the State Command or any Command within the state for proper investigation and control.

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<sup>23</sup> See Section 8 Police Act generally.

<sup>24</sup> Approval is normally to be given by the Police Council.

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### **State Command**

Each state of the Federation has a State Area Command generally referred to as State Command, which is headed by a Commissioner of Police for the State. The duties of the Commissioner of police for the state are quite enormous and important, some of the duties are:

1. The general administration of the State as well as maintenance of Force discipline.
2. He is responsible for the preservation of peace, the prevention and detection of crime, the prosecution of offenders and law enforcement generally within the state.
3. The State Commissioner of Police is directly responsible to the Inspector-General of Police, who must be informed or kept abreast of events in his state, most especially he must ensure that the Inspector-General of police is kept informed of the commission of any serious offence within the State Command and of the apprehension of offenders, or any major disturbance of peace within the State.
4. The Commissioner of Police also co-ordinates the activities of the Police Divisions within the State Commands. This aspect of his work is important as he must ensure that the Police Divisions are properly managed and the officers who must work closely with the citizens, comply with the law and do not abuse their office. The breach of security is always within the local divisions and therefore he must not only ensure that he gets informed of such breach of security but he must act as well as inform the Inspector-General of Police for necessary action and further directions.
5. He must ensure that Force returns and statistical reports called for by the office of the Inspector-General are submitted punctually and in the correct form.

6. The Commissioner has control over the supernumerary constables in the State command, and subject to any delegation of powers by the Nigeria Police Council, the enlistment of the supernumerary constables. He is also in charge of Area Command special constabulary detachments.
  7. The Commissioner, by virtue of the Police Regulations, also appoints the special constabulary superior Police Officers and Inspectors for the service of the State Command.
  8. He is generally expected to give confidential reports to the Inspector-General on the work and conduct of Superior Police Officers and Inspectors under his Command. He may also recommend to the Inspector-General outstanding police officers within the Command for special awards or decorations.
  9. The re-engagement for the continued service of the members of the rank and file serving under his Command.
  10. Subject to any necessary delegation of powers by the Nigeria Police Council, the maintenance of the State Command, establishments of non-commissioned Officers at the appropriate level by promotions from within the rank of the members of the rank and file serving in the police Area Command.
  11. He also has responsibility for the postings and transfer of both superior officers and the members of the ranks and file within the State Area Command. This is however subject to the instructions of the Inspector-General and the Police Service Commission.
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12. Subject to any necessary delegation of powers by the Nigeria Police Council and acting in accordance with the powers conferred upon him by such delegation, he is responsible for adjudication of disciplinary offences and of appeals against disciplinary convictions and punishments and the reviews of disciplinary convictions and punishments.
13. The Commissioner receives petition on behalf of the Inspector-General of Police and scrutinizes same before forwarding it to the Inspector-General. This duty is not clear, there is nothing in the regulation to suggest whether the Commissioner can refuse to forward a petition to the Inspector-General, or act on the petition. In cases, where the petition is directed against the Commissioner himself, what are the options available to him, can he refuse to forward such petitions to the Inspector-General. In practice, most petitioners will be advised to forward their petition to the Inspector-General Office directly.
14. The Commissioner also approves leave applications by officers within the Command, forwarding such records to the Inspector-General's Office for the computation of gratuities and pension of the officers within the Command.
15. The Commissioner also supervises the Police State Command refresher course school as well as the selection of personnel who will attend the promotional and refresher courses. He is also responsible for the systematic instructions of Junior Officers under this Command in their professional duties.

We must note that most of the duties relating the discipline, training and pensions are handled by different departments within the Nigeria Police Force and the Commissioner's office is only a clearing house for forwarding the necessary documents to the relevant departments.<sup>25</sup>

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25 Section 33 Police Regulations.

### **Police Area Command**

The Police Area Commander is subject to the instructions, control and directions of the Commissioner of Police within the State. An Officer not below the rank of Assistant Commissioner of Police is in charge of the Area Command and he is designated as Police Area Commander.<sup>26</sup> The duties of the Area Commander are as follows:

1. He is charged with the direction and administration of the Police Area Command and the maintenance of Force discipline within the Area Command.
2. He is directly responsible to the Commissioner of Police of the State Command for the preservation of the peace, the prevention and detection of crime, the prosecution of offenders and law enforcement generally in the Police Area Command.<sup>27</sup> It is permissible in exceptional situations and where specific instructions are given to this effect, the Area Commander may by-pass the Commissioner of Police of the State and give immediate and direct information to the Inspector-General of the commission of criminal offences within the Area Command or about the occurrence of major disturbance in the Police Area Command. Generally, the Area Commander has a duty to give immediate information to the Commissioner of Police of the State of the commission of any serious offence within the Area Command and of the apprehension of or the occurrence of any major disturbance of the peace within the Area Command.<sup>28</sup>
3. He must be conversant with the territorial jurisdiction of his Command and must understand the topography of the area Command.

<sup>26</sup> Section 36 Police Regulations.

<sup>27</sup> Section 37 Police Regulations.

<sup>28</sup> See generally Section 316 Police Regulations.

4. He coordinates all the Police work of the area command as well as supervise the divisional Police stations within the Command. This includes the direction and supervision of the Motor Traffic Division of the Area Command. He must inspect the Area Command regularly and at least once in every three months, visit each Police station and post within the command. He must maintain good public relations with the public and ensure that the personnel under his command adopt a civil attitude in their dealings with the public.
5. He must see to the total well-being of the personnel within the command, their training and discipline, recommendation for promotions, prepare confidential reports on the personnel of the Command, clothing and equipment of the personnel.
6. He must ensure that the laws, orders and instructions within the Force are properly observed in all formations of the Area Command. He must implement all Force instructions and ensure statistical and Force returns are properly attended to.
7. He must also exercise control and supervision over the supernumerary constables employed in the Area Command.

#### **Divisional Police Officer**

The Divisional Police Officer is subject to the control of the Area Commander as well as to the direct instructions and supervisions of the Commissioner of Police. The Divisional Police Officer in charge of the Divisional Police Office must be a Superior Police Officer not below the rank of Assistant Superintendent of Police. (ASP).<sup>29</sup>

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29 Section 13 Police Regulations.

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The general duties of the Divisional Police officer includes the following:

1. He must understand his area of responsibility and study and know the leading personalities within his Area of Command. He must set up efficient patrol beats system covering the Police Station Area of responsibility and the enforcement of crime prevention measure generally.
  - a. The Divisional Police Officer must ensure that suspects arrested and held in Police custody in the Police Station are charged before the Magistrate Court within 24 hours of the arrest. He must also make adequate arrangements for the enforcement of law and order within the area of responsibility and also to ensure safe custody of prisoners appearing before the courts.
  - b. He must scrutinize all charge sheets in respect of serious offences prepared by the Police Station for lodgment in the courts.
  - c. He must ensure the prosecution of serious criminal offences committed in the Police Station Area. This responsibility is important as greater number of crimes are committed within the locality and it is the duty of the Divisional Police Officer to supervise the due arrest, investigation and arraignment of persons suspected of committing such crimes but without breaching the fundamental Rights of the suspects.
2. He must also take necessary action in case of complaints against the Police.
3. Finally, he must Supervise the Supernumerary Constables employed in the Police Station Area, as well as the regular police duties and constabulary attached to the Police Station.<sup>30</sup>

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30 Section 318 Police Regulations.

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#### 4. Inspection Duties

The Divisional Police Officer shall on a daily basis inspect the Police Station Registers. These are;

- (a) the crime and incidents Diary,
- (b) the Routine Diary,
- (c) the Register of Arrest,
- (d) the charge Register.

Twice a week he must inspect the operations of the Police Station Day beats and Patrol system. Twice a week he must inspect the operation of the Police Station night beats and patrols system. This is to be done in the midnight. He must also consistently on every Wednesday inspect the arms and ammunition in the Police Station. Every Sunday, he must inspect the Police Station while on a monthly basis carry out full inspection of each Police Station. Once a month, he must inspect and sign the Police Notebook of each member of the Police Station.<sup>31</sup>

#### 5. Training duties of the Divisional Police Officer.

The Divisional Police Officer must also carry out basic and further training in Police duties to refresh and update members of the rank and file under his Command. To this effect he must organize regular systematic lectures on-

- (a) General Police duties.
- (b) The laws, orders and instructions governing the Force.
- (c) The State of crime in the Station area and in the Area Command generally.
- (d) Matters of general Police interest in the Area Command and in the Federation.

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31 Section 319 Police Regulations.

31 Section 319 Police Regulations



- (e) The responsibilities of all Police Officers concerning the collection of intelligence of criminal and subversive activities<sup>32</sup>

The duties of the Divisional Police Officer are quite enormous and require day to day supervision of Officers and their duties and activities on a daily basis.

### **Other officers of the Station**

There are other Officers of the Station recognized under the law to carry out specific duties within the Station and who carry out specialized roles to assist the Divisional Police Officer.

#### **1. The Administrative Officer**

The administrative officer acts subject to the direction and control of the Divisional Police Officer. He assists in the Administrative duties within the Station and these include, publication of the Station Duty Roaster, which details the routine duties to be performed by the personnel of the Station. He maintains the service register of the members serving in the Station. He keeps all properties of the Station including exhibits used in courts, putting other properties in safe custody and ensuring that force returns and statistical reports called for by force Headquarters are punctually and correctly submitted.

#### **2. The Crime duties Officer/2i/c of Police Station**

He is generally responsible for the prosecution of criminal offence committed in the Police Station area. His duties commences from the point when a complaint is lodged in the station. He personally supervises

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32 Section 14 Police Regulations

32 Section 14 Police Regulations

the investigation of serious crimes and directs the investigation of lesser offences. He authorizes the release on bail of suspects and signs the charges emanating from the Station which are intended to be filed in the courts.<sup>33</sup>

### 3. *The Charge Room Officer*

The charge room officer supervises the front desk Office of the Station. He supervises the Station writer, ensures that all records, diaries and movements are fully and properly monitored and recorded; movement of personnel within and outside the station patrols and beats are properly monitored and recorded. He records complaints from the public. He refers promptly to the Divisional Police Officer all complaints made against the Police.<sup>34</sup>

### 4. *The Station Writer*

The Station Writer is normally seated at the Charge Desk in the Charge Room in a position immediately opposite to the Police Station main entrance<sup>35</sup>

The primary duty of the Station writer is to maintain the Police Station register of record-(a) Duty Roster

(b) the Crime and incidents Diary

(c) the Routine Diary<sup>36</sup>

The Station Writer normally listens to the complaints from members of the public and records same in the crime Diary. He thereafter assigns the complaints to an Investigation Police Officer (IPO) who takes up the matter

33 See generally Section 325 Police Regulations.

34 Section 329 Police Regulations.

35 *ibid.*

36 Section 331 Police regulations.

from there. He keeps record of persons in the cell and the properties of such persons which he records in his books. He must be in the Station at all times and should not leave his duty post without any reasonable excuse, which is only for a short time.

### **Other Police Formations**

Within each Police Division, there is the Police Station, which is headed by an Officer not below the rank of Inspector. The Police Station is headed by an Officer designated as Officer in charge of the Police Station or Station Officer.

**The Police Post:** A Police post is a subdivision of the Police Station and is headed by Officer not below the rank of Corporal. He is to be designated as Officer in charge of the Police Post.

**The Village Post:** The Village Post is a subdivision of a Police Post. It is under the control of the Police Station of which the village post forms a subdivision. It is headed by a Police Officer not below the rank of Corporal or by a Police constable with not less than five years in service. He is designated as Officer in charge of Village Post.

### **The Ranks of the Force and Procedures**

The ranks of the Nigerian Police Force are as follows;

1. Inspector-general of Police
2. Deputy Inspector-General
3. Assistant Inspector-General
4. Commissioner
5. Deputy Commissioner
6. Assistant Commissioner
7. Chief Superintendent

8. Superintendent
9. Deputy-Superintendent
10. Assistant Superintendent (Substantive Rank)
11. Assistant Superintendent (on probation)
12. Cadet Assistant Superintendent

#### The Force Inspectorate Rank

13. Chief Inspector
14. Inspector (Substantive)
15. Inspector (Probation)
16. Cadet Inspector (2<sup>nd</sup> 6 months of training)
17. Cadet Inspector (1<sup>st</sup> 6 months of training)
18. Sergeant
19. Corporal.

#### Appointments

##### 1. Superior Police Officers:

There are five basic ways superior Officers are appointed pursuant to the Police Regulations. Section 38 of the Regulations provides thus:

The type of appointment that may be made to the pensionable establishments of the Superior Police Officers of the Force are as follows; that is to say-

- (a) a general duties appointment to the rank of Assistant Superintendent of Police of a member of the Force Inspectorate on trial.
- (b) a general duties appointment by direct entry to the rank of Assistant Superintendent of Police on probation of a Cadet Assistant superintendent of Police who has successfully completed a Police training course;
- (c) a technical duties appointment to the rank of Assistant Superintendent of Police on probation of-

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- (i) a member of Force Inspectorate, or
  - (ii) a direct entry appointment; and
  - (iii) a general duties or technical duties appointment, in a rank, and on terms of service to be specified by the Nigeria Police Council, of an Officer transferred from the Civil Service of the Federation or State.

The regulation makes provisions for superior Police Officers to be appointed into the Nigeria Police through five modes as mentioned above.

1. By promotion of personnel from the Inspectorate Cadre. The promotion to the post of ASP is made on trial and will only be confirmed to the substantive position of ASP after the observation and confirmation that the Officer is capable of assuming the position and the attendant responsibilities that goes with the post.
  2. By what the regulation refers to as direct entry appointment. This is sequel to the completion of officers training at the Police College which involves a period of both theoretical and practical training, after which all deserving Cadet Officers are appointed into the Force. The appointment is on probation and upon a satisfactory period of probation the officer may be confirmed to the full position as ASP.
  3. Thirdly, appointment may also be made into the technical Cadre up to the rank of ASP on probation from amongst the members of the Inspectorate who is qualified.
  4. A direct entry appointment may be made to the technical Cadre, and also made to the technical Cadre from the superior Officer level of Officer transferred from the Civil Service of the Federation or State. The regulations do not specify whether these appointments shall be on
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probation or trial. It is suggested that the regulations be amended to reflect this. The position should be the same for appointment to general duties ASP. Where the appointment is from the Inspectorate, it ought to be on trial, while if it is from the Cadet Officer cadet should be on probation. The difficulty may arise when an officer from the Federal or State Civil Service is appointed. Since there is an assumption that the Officer must have been confirmed into the Civil Service before the transfer of service, then such appointment should be a substantive appointment.

There may also be appointment where there is a vacuum that cannot be filled from the above modes, and then the Inspector-General shall inform the Nigeria Police Council that there is no available suitable candidate by promotion and the Council may give directives to appoint Officers by direct entry.<sup>37</sup> This may be strange. The direct entry appointment is usually made only by drawing from Officers who had completed a training programme either into the general duties or technical Cadre. The circumstances when this may be done are rare. The regulation do not limit promotion from Inspectorate Cadre to the ASP Cadre to Chief Inspectors only, since it mentioned Inspectorate, anybody on inspectorate level may be promoted on trial to the post. In addition, the trainee Officers are quite adequate to fill this position at every point in time.

Recruitment of overseas Officers on contract may also be made where there are no suitable indigenous candidates for appointment to a particular Post. We should note that this mode is not limited to position of ASP only. The Nigeria Police Council may authorize the Inspector-General to fill the Post

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37 Section 332 Police Regulations.

by direct entry of overseas Officers on contract terms. Of course, the possibility of engaging expatriates into the Nigeria Police Force is most unlikely today. This is because, where there is need for technical improvement, the Force has found it much easier and more conducive to send members of the Force aboard for further training than to engage personnel from abroad<sup>38</sup>

### **Probationary Period**

The probationary period for Cadet Officers on probation appointment is two years.<sup>39</sup> This applies also to the technical officers appointed on probation.<sup>40</sup> The period of probation may be increased if an officer's performance is not satisfactory. After the probation period, the Police Service Commission may confirm the Officer to the substantive rank if his service and conduct have been in every way satisfactory and he has obtained, or has been exempted by the prescribed authority from obtaining, pass in the prescribed examinations.<sup>41</sup> The Assistant Superintendent of Police on trial may be confirmed after a period of twelve months service in that rank, his rank will thereafter be made substantive. However, he must satisfy the Nigeria Police Council,<sup>42</sup>

1. that he has obtained, or has been exempted by the prescribed authority from obtaining the requisite pass in the prescribed examination for superior officers;
2. his service and conduct as an Assistant Superintendent of Police on trial have been satisfactory in every way; and
3. at the date of his appointment to the rank of Assistant Superintendent of Police on trial, he had put in not less than five years continuous service in the Force.<sup>43</sup>

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38 Section 333 Police Regulations.

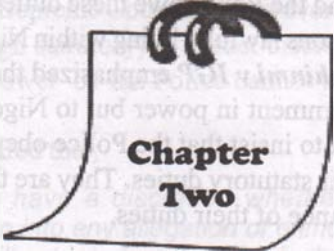
39 Section 335 Police Regulations.

40 Section 336 Police Regulations.

41 Section 39 Police Regulations.

42 Section 40 Police Regulations.

43 Section 40 Police Regulations.



## Chapter Two

### GENERAL DUTIES OF THE NIGERIA POLICE

**W**e shall now examine the statutory and general duties of the Nigeria Police Force.

Section 4 of the Police Act provides as follows:

"The Police shall be employed for the prevention and detection of crime, the apprehension of offenders, preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act"

The courts have on many occasions considered the statutory duties of the Police as provided in Section 4 of the Police Act. In the first instance, the general duties of the Police could be summarized as follows:

- a. prevent crime
- b. detect crime
- c. apprehend offenders
- d. preserve law and order
- e. protect life and property
- f. enforce all laws and regulations with which they are directly charged.



The duties are statutory and the Police owe these duties to the generality of Nigerians and all other persons lawfully living within Nigeria.<sup>1</sup> The Supreme Court in the case of *Fawehinmi v IGP* emphasized the fact that the duties are not owed to the Government in power but to Nigerians generally and any Nigerian has the right to insist that the Police obey the law and ensure that they comply with their statutory duties. They are therefore answerable to the law in the performance of their duties.

A pertinent question to ask is whether the police must at all times abide by the law and comply with their statutory duties or they have a discretion either to comply or not. While it is their statutory duty to investigate crime and apprehend offenders, does the Police have a discretion to do this in any case reported to them? The answer to this question is important because, if the duty is merely discretionary, then, the Police cannot be compelled to do their duty. Can the Police be compelled to comply with the law. This was the question that came before the Supreme Court for answer in the case of *Fawehinmi v I.G.P*<sup>2</sup> in this case, Chief Gani Fawehinmi petitioned the Police to prosecute Senator Ahmed Tinubu the former Governor of Lagos State for swearing falsely that he possesses certain qualifications of which he cannot produce the original certificates. The Police refused to prosecute the Senator Ahmed Tinubu and Chief Gani Fawehinmi thereafter applied to the Court for an order of mandamus to compel the Police to investigate the allegations and prosecute Senator Tinubu. The Supreme Court after considering all the arguments was of the view that Police power is the exercise of the sovereign right of a Government to promote order, safety, health, morals and general welfare within constitutional limits and is an essential attribute of

1 *Fawehinmi v I.G.P*(2002) 7 NWLR (pt 767) 606 at 670.

2 (2002) 7 NWLR (pt 767) 606.

3 Per UwaforJSC at p. 673 *ibid*.

Government.<sup>3</sup> The Supreme Court was however of the view that the exercise of the duties (though statutory) is in fact discretionary and the exercise of the discretionary power by the Police cannot be questioned by the court.

NWAFOR JSC declared that,

*The Police have a discretion whether or not to conduct investigation into any allegation of crime made to them. And the court will not interfere if on the facts of a particular case, the discretion is properly exercised. There is therefore nothing in section 4 of the Police Act which denies the Police of any discretion whether or not to investigate any particular allegation, or when they decide to investigate to do so to its logical conclusion. Thus, the Police have discretion in appropriate circumstances in the way they carry out their duty. The need to exercise a discretion in such a matter may arise from a variety of reasons or circumstances, particularly having regard to the nature of the offence, the resources available, the time and trouble involved and the ultimate end result. It may well be balancing options as well as weighting what is really in the public interest. The discretion is not limited to the method of enforcement of Police powers. Thus it is unconscionable that such wide powers and duties of the police must be exercised and performed without any discretion left to responsible Police operations. Therefore, when so exercised, it is only in very obvious and exceptional circumstances that the court may interfere with the discretion*

*The Learned Justice of the Supreme Court with whom other Justices agreed<sup>4</sup> relied on the judgment of LORD DENNING M.R in the case of **R v. Commissioner of Police of the Metropolis Exparte Blackburn.**<sup>5</sup>*

4 Wali JSC presided, Ogundare JSC, Mohammed JSC, Onu JSC, KatisnaAlu JSC, Kaligo JSC agreed.

5 (1968) 2 Q.B. 118.

The discretion is actually not limited to the method of enforcement of the Police powers but includes how the discretion should be exercised, which includes whether to investigate a crime or not. In the exercise of their statutory duties therefore, the Police may have to take into consideration the circumstances of the case, the persons involved, the strategies to adopt, the cost of investigation and inherent conflicts with other laws if they carry out their duties. For instance the Supreme Court in *Fawehinmi v I.G.P* was of the view that the Police in trying to investigate the allegations leveled against the Senator Ahmed Tinubu who happens to be a Governor at the time may unknowingly contravene Section 308<sup>6</sup> of the Nigerian constitution, which will inevitably militate against their powers of investigations.

Generally, in law, the public "duty of the Police to take due measures for the purpose of enforcing the law is potentially enforceable by mandamus"<sup>7</sup>. There is still a very wide margin of discretion left for the Police to determine their options and such exercise of discretion cannot be questioned. While exercising their statutory duties, the Police duties under the Section is not ministerial which permits of no discretion whatsoever, and so could be enforced by order of mandamus; but it is discretionary, the order of mandamus cannot be available to enforce such duties. This is because the court cannot possibly supervise exercise of such duties, and equity will not act in vain. UWAIFO JSC concludes it, all when he said,

'I think it will be a denigration of the aura of authority they represent and a disservice to society to suggest that they can exercise no discretion in their duty of the maintenance of law and order, or to be specific, in their investigation of any particular allegation of crime even if it were to be an obvious wild-goose chase. I am

6 The immunity provisions in respect of the Governor.

7 De Smith, *Judicial Review of Administrative Action*, 4th ed. P.549.

satisfied that in the performance of their duty to maintain law and order, to investigate allegations of crime and to arrest, the Police have and can exercise some measure of discretion. It all depended on the circumstances of every occasion, the best of their capability, the image of the Police Force and the overall interest of the society'.

### **Ultra Vires Acts of Police**

The duties of the Police are clearly stated in Section 4 as we earlier noted. The Courts have interpreted the law to give the Police discretion in the performance of their duties but what is the position where the Police go beyond their scope of duties?.

The Police in the exercise of their powers in the performance of their duties cannot extend those powers beyond their statutorily recognized limit, that is where they go beyond their statutory powers or authority, they will be held personally liable for their actions.

In the case of *Mclaren v Jennings*,<sup>8</sup> the Plaintiff had filed the suit after the respondent had travelled out of Abuja with Policemen, to arrest the plaintiff over a debt his company was owing the defendants. He informed them that he was only an employee of the company but they refused to listen to his plea, and after taking him to his house and bank they forcefully took him to Abuja from Kano and detained him in an hotel overnight before they finally released him the following day. He sued them for false imprisonment. The defendants argued that they merely lodged a complaint at the Police Station and nothing more. The High Court found the Police liable. On Appeal the Court of Appeal was of the view that if a citizen merely lodged a complaint

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8 (2003) 3 NWLR (pt 808) 470

with the Police, and the Police exercised their discretion to investigate and arrest, the Police had acted within their powers. However, in this case, the Police had acted beyond mere exercise of discretion to intervene in a matter that is only civil and not criminal. Moreover, they acted outside their powers when they travelled to Kano, effected an arrest, travelled back to Abuja and detained the plaintiff in a hotel instead of in a police formation. In such circumstances, they cannot claim to be exercising their statutory rights in the performance of their statutory duties.

The police will be acting beyond their powers if they involve themselves in investigations or arrest of a citizen in purely civil matters. Police do not have the powers to intervene in civil matters. **SALAMI JCA** in *Mclaren v Jennings*<sup>9</sup> explained the position of the law when he said, after analyzing the general duties of the Police under Section 4 of the Police Act:

*I have scrutinized the provisions of the Section and I am unable to see a provision providing for or empowering Police to enforce contract or collect common debts. The appellants and the policemen they pressed into duty were not in Kano to prevent or detect a crime nor was the respondent an offender. It is equally not the case of the appellant that there was a breakdown of law and order; the preservation of which took them to Kano. The court has also not been told of the law or regulation the group went to enforce in Kano. In short, the appellants and the Policemen they took to Kano were there to collect debt which is not one of the several duties assigned to the Police under the provisions of Police Act to which the court was directed and the court has not been able to find another provision of the Act empowering or instituting the Nigeria Police Force to one of debt or rent*

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<sup>9</sup> *ibid.*

*collector. It follows that the Policemen who accompanied the appellants to Kano and assisted them in the arrest of the respondent were on a frolic of their own.*

The fact is that there is no provision that empowers the Police to go beyond their statutory general duties in Nigeria. In the case of *Ezeibe v State*<sup>10</sup>, the court was of the view that while in the performance of their statutory duty, the Police cannot exceed their powers, and commit crime or do other acts not in furtherance of their statutory duty.

UBAEZONU, JCA declared as follows:

*Learned senior Counsel for the appellant in his brief raised an issue as to whether the appellant was acting in the course of his employment or whether he was on a frolic of his own. I must confess that such an issue is new to me in the realm of criminal law. I know of no principle in our criminal law which permits a person to commit crime, or as in this case, to kill because he is on official duty. If anything, the appellant is not only not permitted to commit a crime but he is enjoined to prevent it. It makes no difference whether the appellant was acting in the course of his employment or on a frolic of his own.*

Quite instructive is that even while trying to prevent crime, the Police would be going beyond his powers to commit crime, either to kill or do any other act that is not in furtherance of his statutory duty.<sup>11</sup>

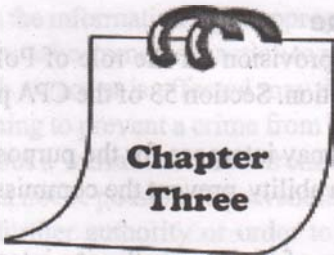
It is part of the statutory duty of the Police to enforce laws of the Nation and State Assembly. This is important as in practice powers to enforce most laws are entrusted to the Police, especially where the laws prescribed criminal

10 (1993) 7 NWLR (pt 304) 185.

11 See *Afribank (Nig) Plc v Onyima* (2004) 2 NWLR (pt 585) 654.

liability for breach of the provisions of the law. The enforcement of judgments, for instance, even though within the powers of the Deputy Sheriffs of the Court, may require the active involvement of Police. It is therefore the duty of the police to ensure maintenance of order and protection of property during compliance with the order of the court.<sup>55</sup> The law however, does not directly allow the police to enforce all laws in Nigeria, that will be too vast and unmanageable. The law allows the Police only to enforce "all laws and regulations with which they are directly charged". The relevant law must therefore specifically charge the police for its due enforcement, and where this is not so specified, only the court can give direct and specific order for the Police to act.

12 Christled v Majekodunmi (2008) 16 NWLR (pt 1113) 325.



## Chapter Three

### POWERS OF THE POLICE

The Nigerian Police is conferred with some important powers necessary for the proper execution of their duties. We shall discuss these powers in this chapter.

#### Power of Arrest

The Police Officer is conferred with powers to arrest any person suspected to be committing, or to have committed or about to commit, a crime. The Police acts by virtue of Section 4 of the Police Act. A cardinal duty of the police is the prevention and detection of crime and the apprehension of the offenders. In the exercise of their duties to prevent crime, the Police have inherent powers to investigate any complaint that they received from the general public or any other information that they may receive from any other source and carry out proper investigation with all facilities and resources at their disposal and ensure that crime is prevented. In this respect they may exercise their powers of arrests and detention of persons suspected to have committed the offence for possible prosecution.

In this chapter we shall discuss the Police powers to investigate and detect crime with a view to prevent crimes from being committed, the right to receive complaints from the public and the power of arrest and detention and the treatment of persons in their detention center.



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## Prevention of crime

The law<sup>1</sup> makes ample provision for the role of Police in prevention of crime within their jurisdiction. Section 53 of the CPA provides thus:

1. Every Police Officer may interpose for the purpose of preventing, and shall to the best of his ability, prevent the commission of any offence.
2. A Police Officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal of or injury to any public landmark or buoy or other mark used for navigation.

The law thus allows all Police Officers, irrespective of rank or position, to intervene and prevent crime within their jurisdiction. This power may be exercised independently by any Police Officer and need not follow any protocol or order from a superior authority or officer. However, where the Police Officer receives information that there is a plot or plan to commit a crime within the jurisdiction, he is enjoined to report to a superior Police Officer or any other Officer whose duty is to prevent or take cognizance of the commission of the offence.<sup>2</sup> The law recognizes that there are branches and divisions within the Police formation where it is the duty of a Police Officer who receives the information or complaint for instance, that a crime was being committed or about to be committed, to forward it to the appropriate Officer who will be able to take charge of the situation. Where the Police

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1 Criminal Procedure Act, Administration of Criminal Justice Law of Lagos State 2011, Criminal Procedure Law of Ogun State Cap. C787 Laws of Ogun State 2006, all the states have enacted Criminal Procedure Laws for the States all the provisions are very similar to each other.

2 Section 54, CPA.

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Officer who receives the information is the appropriate person to take action, it is expected of him to take immediate action to prevent the crime. The way and manner in which an arrest is effected may depend on the case. Where the Police is intervening to prevent a crime from being committed, an arrest could be made without a warrant of arrest from the Magistrate Court or, if it appears that it might not be possible to prevent the crime, the Police Officer does not need any further authority or order to intervene to prevent any injury or destruction of public property, whether such property is movable or immovable. But, of course, this can only be done where the attempt to commit the crime was being made in the presence of the Police Officer.<sup>3</sup>

The power to prevent the commission of crimes may also require judicial intervention. In some cases, the Police or some other person may swear on an oath that someone is likely to commit a breach of the peace or to disturb the public tranquility, or do any wrongful act that may probably occasion a breach of the peace or a disturbance of public tranquility. The Magistrate may thereafter, if satisfied as to the allegation, order that the person show cause why he should not be ordered to enter into recognizance with or without sureties to keep the peace for a fixed period. The length of time given is at the Magistrate's discretion.<sup>4</sup>

Where it is established that a person is an habitual offender the Police may swear to an oath to that effect and then bring such a person before a Magistrate Court. The Magistrate may require that such a person show cause why he should not be ordered to enter into recognizance, with sureties, for good behavior for a period not exceeding one year. Again, the length of

3 Section 53(6) CPA.

4 Section 35 CPA.

time is at the discretion of the Magistrate.<sup>5</sup> The provisions of Section 35 and 37 of the CPA may be employed not only by Police officers but also by other persons especially if they are resident within the locality.

Prevention of crime involves intelligence gathering and the use of technology. It also needs much collaborative efforts by all. The security agencies as well as the general public supplying needed information. The telephone numbers of the Police within a particular locality must be advertised and conspicuously placed where members of the public may easily access them, for example in market places, supermarkets, street corners and also through banners. There must be competent Police personnel to receive calls and forward the information to the appropriate or designated authorities who must be equipped enough to take immediate steps. What all this means is that the Police must develop a comprehensive data on habitual offenders which they must circulate and update from time to time. This will ensure that habitual offenders moving from one locality to another are quickly identified and taken before the appropriate Magistrate Court to be bound over to keep the peace. The police may also employ the provisions of Section 35 and 37 of the CPA for this purpose. Happily, times have changed. In the not too distant past, people were afraid to give valuable information to the Police because the Police themselves could not be trusted. Many a time, the Police officer who receives information from an informant might pass information about the informant to the suspected criminal thereby putting the life of the informant in danger. Now the Police are aware that it is very important that the public, particularly informants, have confidence in the Force and its operatives. Absolute secrecy is the watchword in dealing with informants if the public is to cooperate.

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<sup>5</sup> Section 7 CPA.

### Receiving Complaints from the Members of the Public

Any member of the general public may make a complaint to the Police against any other person alleging that the other person is about to commit or is committing or has committed an offence. <sup>6</sup> The complaint may be made orally and not necessarily written or on oath except where there is an enactment, that makes it mandatory that the complaint must be in writing. <sup>7</sup> The appropriate officer who receives complaints from the members of the public in the Police station is the Charge Room Officer. The Charge Room Officer receives members of the public who intend to lodge complaints to the Police station, he attends to them courteously, patiently listens to their complaints. He may conclude as to the nature of the complaint. Where the complaint is not a criminal matter, he may courteously explain the position; or where the complaint do not fall within the territorial jurisdiction of the Police station, he may advise the complainant as to the proper place to go. After noting the nature and details of the complaint, he will direct the Station Writer (who usually works closely with the Charge Room Officer) to enter in concise language, into the Station Crime and Incidents Diary the details of the complaint and incident reported. <sup>8</sup> The Charge Room Officer is also required to enter into the Station Crime and Incidents Dairy in his own handwriting a record of complaints refused on the ground that they will not serve any useful purpose. He must also refer it to the Station Officer where the complaint is made against the Police. All other complaints must be immediately forwarded to the Station Crimes Duties Officer <sup>9</sup> who in turn

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6 Section 59 CPA Section 57 Administration of Criminal Justice Law of Lagos State 2011- (hereinafter called A.C.J.L. 2011).

7 Section 59 - CPA.

8 Section 333(v) of Police Regulations.

9 Section 333(viii) of Police Regulations.

assigns the complaint to an officer usually called the Investigating Police Officer (IPO). The IPO will investigate, take statements of the complainant, and any suspect arrested as well as any witness after which the matter is reported to the D.P.O. for further directives and action.

### **Investigative Powers**

Upon the receipt of a complaint and assignment to the Investigating Police Officer, he, that is, the IPO will thereafter start investigation into the allegation. This may entail taking down statement of the complainant, witnesses and the arrested suspect. Before a matter is charged to the court, it is the responsibility of the Police to carry out a thorough and detailed investigation in order to ascertain the truth, which must be proved with credible evidence that is beyond reasonable doubt when presented in court or strong enough to get a conviction.

While it is a paramount duty of the Police to investigate any allegation of crime, it is however at their discretion or liberty to investigate any allegation of commission of an offence made by any person.<sup>10</sup> It must be emphasized that it is in fact the duty of the Police to investigate all allegations of commission of crime, or in the words of **GARBA JCA**,<sup>11</sup>

*The respondent through its agency; the Nigeria Police is charged by the law with the duty to investigate all allegations of commission of crimes reported to it by members of the Nigeria public. Investigations of crimes particularly serious*

10 Per Sanni JCA in *Fajemirekun v C.B.(CL) Nig Ltd*(2002) 10 N.W.L.R (pt 774) 95 at 110.

11 *Atiku v State* (2010) 9 NWLR (pt 1199) 241 at 281.

capital offences such as the one with which the appellants were charged, which are to be presented in the law courts are required to be professional, thorough and diligent.<sup>12</sup>

Whilst it is the duty of the police to conduct a thorough investigation into all allegations of commission of crime, the Police are at liberty or at their discretion to investigate any allegation of crime. Naturally, when the police view all the circumstances of a case, they may decide not to investigate and they cannot be compelled by order of mandamus to investigate, arrest or charge anybody based on any allegation made before the Police. This was the position taken by the Supreme Court in the case of *Fawehinmi v I.G.P.*<sup>13</sup> where **UWAIFO JSC** explained the seemingly contradictory position of the law when he said,

*"It follows that their duty to detect crime, allegations of crime committed by any person should normally be investigated by the Police. But I can see nothing in section 4 of the Police Act which denies them of any discretion whether or not to investigate any particular allegation, or when they decide to investigate to do so to its logical conclusion. The need to exercise discretion in such a matter may arise from a variety of reasons or circumstances, particularly having regard to the nature of the offence, the resources available, the time and trouble involved and the ultimate end result. It may well be a question of balancing options as well as weighing what is really in the public interest".<sup>14</sup>*

12 See also *Jammal v State* (1999) 12 NWLR (pt 632) 582, *Aigbadion v State* (2000) 7 NWLR (pt 666) 686.

13 (2002) 7 NWLR (pt 767) 606.

14 (2002) 7 NWLR (pt 767) 606 at 670-671.

Other justices of the Supreme Court on the panel agreed with this position.<sup>15</sup> Though the power and duty to investigate is discretionary, once the Police exercise the discretion in favour of conducting an investigation into the allegation of crime made before them, they must ensure that they conduct a thorough and diligent investigation into the allegations before them. There is no substitute for a thorough and diligent investigation if the guilty are not to be freed for lack of evidence. It leaves the prosecutor helpless and prevents the court from reaching a proper decision in the case before them. The courts have on many occasions lashed out at the Police for shoddy investigation of cases. In the case of *Jammal v State*,<sup>16</sup> the Court of Appeal per **CHUKWUMA-ENEH J.C.A**<sup>17</sup> proclaimed thus,

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

A good investigation should seek to establish the following:-

1. That an offence has been committed.
2. When, where and how the offence was committed.
3. The person or persons linked to the commission of the offence.
4. Every available evidence linking the suspects to the offence.

<sup>15</sup> Wali JSC, presided, Ogundare JSC, Mohammed JSC Onu JSC, Katsina-Alu JSC, Kalgo JSC.

<sup>16</sup> (1999) 12 NWLR (pt 632) 582.

<sup>17</sup> (1999) 12 NWLR 9(pt 632) 582 at 599.

Generally, in Nigeria today, the general public have lost faith in the investigative competence of the Police, because most obvious cases have been destroyed which have consequently allowed the guilty escape as a result of the careless way the Police embarked on the investigation. In the case of *Oforlette v State*<sup>18</sup> AYoola JSC explained,

*"The truth of the matter is that the whole case was improperly investigated and poorly prosecuted. Proper investigation should have revealed some degree of continuity between the blow to the deceased's head resulting in a swelling on the head and eventual resort to medical treatment three months later."*

In investigating a complaint, the Police are empowered to invite for questioning or interrogation any witness or suspect in order to obtain useful information. The Court of Appeal in the case of *Joshua v State*<sup>19</sup> observed thus,

When a Police Officer is trying to discover whether or by whom an offence has been committed, he is entitled to question any person whether suspected or not from whom he thinks that useful information may be obtained. This is so whether or not the person in question has been taken into custody so long as he has not been charged with the offence or informed that he may be prosecuted for it.

### **Use of Force Or Torture**

In investigating an allegation of crime, the Police is not allowed to use any force at all, either to obtain statements or to extract information and if the suspect alleges or claims that the statement he made was under duress (or

18 (2000) FWLR (pt 12) 2081 at 2102.

19 (2009) FWLR (pt 242) 450, see also *Nwachukwu v State* (2002) 2 NWLR (pt 751) 366.



force) such a statement will be rejected in court as inadmissible evidence. Police officer is not allowed to torture, intimidate or force the suspect or subject him to any inhuman treatment whilst investigating a crime as such evidence will be rejected by the court if it is proved that indeed the statement was not voluntarily made by the suspect, that is, any type of force was used. Section 29 of the Evidence Act 2011 provides;

1. In any proceedings, a confession made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.
2. In any proceedings where the prosecution proposes to give in evidence a confession made by a defendant, if it is represented to the court that the confession was or may have been obtained:-
  - (a) by oppression of the person who made it; or,
  - (b) in consequence of anything said or done which was likely, in the circumstances existing at the time to render unreliable any confession which might be made by him in such consequence.

the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained in a manner contrary to the provisions of this section.

Oppression is defined in Section 29(5) of the Evidence Act as including, torture, inhuman or degrading treatment, and the use or threat of violence whether or not amounting to torture.

Clearly, the use of such method as torture or threat of violence or brutality to aid confession is barbaric and inhuman, and the court will as a matter of law reject such illegally obtained confession.

### **Power of Arrest**

The Police Officer has the power to arrest any person suspected to have committed or about to commit an offence. In making an arrest, the Police Officer shall actually touch or confine the body of the person to be arrested unless there is a submission to the custody by word or action.<sup>20</sup> In effecting arrest, the Police Officer must refrain from the use of handcuffs or from subjecting the person to be arrested to unnecessary restraint except by order of court or Justice of the Peace unless there is reasonable apprehension of violence or of an attempt to escape or unless the restraint is considered necessary for the safety of the person arrested.<sup>21</sup> Upon actually confining the person arrested or coming in contact with him and after identifying himself as a Police Officer and pronouncing that the person is being arrested, the Police Officer must then inform the person the reason for the arrest. This may be dispensed with if the person is being arrested while committing the offence or immediately afterwards, or escape from custody.<sup>22</sup> The Police Officer effecting the arrest is at liberty to search the arrested person if he suspect him to be in possession of weapons, stolen articles, instruments of violence or poisonous substance, or tools connected with the kind of offence which he is alleged to have committed or other articles which may furnish evidence against him in regard to the offence which he is alleged to have committed.

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20 Section 3, CPA.

21 Section 4, CPA.

22 Section 5, CPA.

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A Police Officer is empowered under the law to arrest anyone without a warrant or order of court in the following circumstances;

- (a) any person whom he suspects upon reasonable grounds of having committed an indictable offence against a Federal, or against the law of any State unless the law creating the offence provides that the offender cannot be arrested without warrant <sup>23</sup> We may note that an indictable offence is one which on conviction may be punished by a term of imprisonment exceeding two years, or which on conviction may be punished by imposition of a fine exceeding four hundred Naira only. <sup>24</sup>
- (b) any person who commits an offence in the presence of a Police Officer.
- (c) any person who obstructs a Police Officer while in the execution of his duty, or who escaped or attempts to escape from lawful custody
- (d) any person in possession of stolen property or who may reasonable be suspected of having committed an offence with reference to stolen property
- (e) a person suspected upon reasonable grounds of being a deserter from any of the armed forces in Nigeria.
- (f) any person who he suspects upon reasonable grounds of having committed an offence at any place outside Nigeria an act which if committed in Nigeria would have been an offence.
- (g) any person in possession of implement of house breaking.

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23 Section 10(1)(e), CPA.

24 Section 2, CPA.

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- (h) any person who he believes to have been issued a warrant of arrest by a court of competent jurisdiction in the State,
- (i) any person who has no ostensible means of subsistence and who cannot give a satisfactory account of himself, and
- (j) any person concealing himself in circumstances that may lead to conclusion that he was doing so in order to commit a crime.<sup>25</sup>

The Police power of arrest is quite enormous and wide, but the Police must exercise restraint and professionalism in the way and manner as to how the power is exercised. The courts have consistently insisted that the power of arrest must be exercised reasonably. However, we must note that in most cases where people resist arrest there is always resort to violence and sometimes extreme violence, the law provides that the Police Officer may use such force as it is necessary to effect the arrest or overcome the resistance. Section 261 of the Criminal Code provides thus,

It is lawful for a person who is engaged in the lawful execution of any sentence, process or warrant, or in making any arrest, and for any person lawfully, assisting him, to use such force as may be reasonably necessary to overcome any force used in resisting such execution or arrest.

If an offender resists arrest and becomes violent in the process of his arrest, the Police may apply such force as is necessary and if death is occasioned, provided the police officer had applied only a commensurate force, he will not be held liable for the death of such suspect. The Constitution of the Federal Republic of Nigeria provides in section 33(2) thus,

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25 Section 10, CPA.

A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use of such force as is reasonably necessary;

- (a) for the defence of any person from unlawful violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained, or
- (c) for the purpose of suppressing a riot, insurrection or mutiny.

The point is, what type or level of violence or force should the Police apply in effecting arrest or preventing person arrested from escaping that will be justified under the law? The Supreme Court answered this question in the case of *Adegboye Ibikunle v The State*<sup>26</sup>. The appellant was convicted and sentenced to death by the High Court and affirmed by the Court of Appeal Benin Division. The Appellant appealed to the Supreme Court. The facts of the case is that the appellant a Police Sergeant was one of the Police Officers engaged in operation against armed robbers terrorizing Asaba township. After the Police had successfully arrested some of the armed robbers at two hotels, the Divisional Police Officer (DPO) led some of the Police Officers including the appellant to a house within the town, on the trail of the "Nonso" a notorious armed robber. On reaching the house and unknown to them, he had relocated from the house about 2 weeks earlier. They knocked the door and no one answered from inside. The Police identified themselves and ordered that the door be opened. The fellow in the house refused to open the door in spite of gun shots warning being fired by the Police outside. The Police team thereafter tried to break down the door,

<sup>26</sup> SC220/2005 delivered on the 12th day of January 2007.

when this was not possible; the appellant entered the house through one of the windows. The fellow in the house refused to open the door but instead locked himself in a room and kept boasting that he would not open the door and that he will kill any Police Officer who tried to arrest him. After about two hours inside, the appellant fired a single bullet at the lower part of the door in order to gain access and effect his arrest but the gunshot turned fatal, and killed the fellow who turned out not to be Nonso whom they were in search of. The Supreme Court agreed with the concurrent findings of the lower courts that:-

- (a) the appellant smashed the door and windows of the residence of the deceased and even threw tear gas canisters into the room of the deceased;
- (b) no Policeman was under any threat of injury neither did any policeman sustain injury;
- (c) the shooting into the bedroom of the deceased was a unilateral act of the appellant;
- (d) there is no evidence of the life of the appellant being endangered, which would have suggested that the shooting was in self-defense.

Having agreed with the findings of the lower courts, the Supreme Court did not find it difficult in affirming the conviction of the appellant. **ONNOGHEN JSC** explained that Section 33(2) of the 1999 Constitution and section 7(1) and (2) of the Criminal Procedure Act do not avail the appellant, the learned Justice of the Supreme Court explained that the appellant having gained access into the house by smashing the windows could as well use the same method to gain access into the room; but used a lethal weapon which cannot be classified as reasonable use of force by the appellant. The

learned Justice commented on the unreasonable use of force generally exhibited by the Police in the country when he said,

*I am compelled by the facts and circumstances of this case coupled with the now notorious extra judicial killings of innocent people by members of the Nigeria Police to condemn the inability of some members of the Police force to realize that the foundation the police institution is preservation of life and property.*

*There is the urgent need to revisit the criteria used in recruitment of Policemen. The appellant failed in his duty as a Policeman to protect the people but has no regard for human life.*

Clearly, in the circumstances, the use of fire arm was totally unreasonable more so when there is no evidence that the deceased was armed or was shooting at the Police. That a Police Officer may carry arms in effecting arrest is not in contention but where he shoots at an unarmed person and kills him, the Police Officer will be guilty of murder as the use of firearm will be held unreasonable in the circumstance.

In Lagos State by virtue of Section 4 of the A.C.J.L. 2011, it is unlawful and illegal for the Police to arrest another person in place of the real suspect with the hope that such suspect will surrender himself for arrest. Police Officers are not allowed under the law to take any person as hostage, it is in fact not permitted under any law. The circumstances enumerated under Section 10 of the CPA above do not permit such arrest.

### **Steps to take after lawful arrest**

Upon a suspect being arrested, the arresting Police Officer, must take the following steps:

1. The Police Officer must inform the suspect of the cause or reasons for his arrest except when he is caught in the course of committing the

offence or escaping there from.<sup>27</sup> The Police all over the world have adopted a style of cautioning the suspect to refrain from saying anything, because whatever he says will be used as evidence in court. (generally known as judges rule). However, we should not forget that there is a constitutional guarantee and directive that;

“any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice”.<sup>28</sup>

In effect, refusal to answer questions from the Police is not an indication of guilt, the Police must oblige the suspect if he elects to consult his legal practitioner before he answers any question from the Police. The suspect may also elect to have his legal practitioner present during interrogation or questioning.

2. Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention.<sup>29</sup> It is however sad that this constitutional provision is nearly never complied with by the Police. The suspect is entitled to be informed in writing of the details of the cause of arrest and his detention, in practice this provision is also never complied with by the police.

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27 *Ikonne v C.O.P and Nana Wachukwu* (1980) 4NWLR (pt 36) 473, *Abu Ankwa v State*. (1969) 1 ALLN.L.R. 133, see also Section 5, CPA.

28 Section 35 of 1999 Constitution of Nigeria (as amended).

29 Section 35(3) of 1999 Constitution of Nigeria (as amended).

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3. The suspect must be charged before a competent court of law within twenty-four hours of his arrest, and where the court is far from the place of arrest within two days of the arrest or such larger period as the court may consider reasonable in the circumstances. There is therefore nothing in our law that permits unreasonable detention of suspects in the Police cells.

While admitting that the law granted the Police extensive powers of arrest and detention of persons suspected to have committed or caught committing offences, there are however legal safeguards and rules which must be strictly adhered to or followed, failure of which the police will be found liable in tort for trespass to person and unlawful imprisonment. In effecting arrest, the Police must use commensurate force and not unreasonable force, or violence. While in detention, there are statutory provisions as to how a suspect may be treated and these rights are enshrined in the constitution which if breached the Policeman will be held personally<sup>1</sup>



## Chapter Four

### POWERS TO RELEASE ON BAIL

Any person arrested by the Police whether with or without a warrant of arrest, must be taken to a Police Station within a reasonable time, or as soon as possible. The operative word is "with all reasonable dispatch".<sup>1</sup> This is important, the suspect arrested by the Police must not be taken to a private home, hotel or any other place. In fact, the suspect must not be diverted to any other building even within the premises of the Police Station. In some cases, even if the suspect is taken into the Police Station the arrest is not formally recorded in the diary of the Police Station. Such an arrest and detention, having not been formally and properly treated according to the law and procedure of the Police in the treatment of arrested persons is unlawful and illegal.

Again the suspect must be informed of the offence for which he is being arrested and informed if the Police intends to detain him in the Police Station. He is then afforded the opportunity of calling his Solicitor and family members to inform them of his detention at the Station. It is not legally allowed for the Police after effecting arrest and detaining a suspect to also deny him access

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1. Section 89, CPA.

to his Solicitors and family members. The right step is to release him on bail. In some cases, the Police will prefer to continue to detain the suspect without releasing him on bail immediately for various flimsy excuses. What is the position of the law as to why, when and how the Police should release a suspect on bail? Section 35(1) of the 1999 Constitution of the Federal Republic of Nigeria provides that:

Every person shall be entitled to his personal liberty and no person may be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law:-

For the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.

The constitution therefore allows a person to be denied of his right to personal liberty if it was for bringing him before a court in execution of the court's order or he is suspected of having committed an offence, however, the suspect is not to be detained endlessly. The detained person or suspect must be charged before a court of law within 24 hours or 48 hours where the court is not within reach. This is the 'reasonable time' contemplated in Section 35(4) of the Constitution. However, an exception is made to this rule where the person is detained on suspicion of having committed a capital offence.

### **Bail**

The Police Officer is empowered to release a suspect on bail where it will be impracticable to arraign him before the court within 24 hours or 48 hours as the case may be. Where the investigation is still in progress and there is no sufficient evidence yet upon which the Police may arraign the suspect

before the Court, the Police officer in charge of the station has the power to release the suspect on bail pending arraignment before the court, or if at the conclusion of investigation, and no criminal or implicating evidence is found against him, to release the suspect unconditionally.<sup>2</sup> The power to release on bail persons arrested by the Police without warrant<sup>3</sup> is further reinforced by Section 27 of the Police Act which provides thus,

When a person is arrested without a warrant, he shall be taken before a magistrate who has jurisdiction with respect to the offence with which he is charged or is empowered to deal with him under section 34 of the Criminal Procedure Act as soon as practicable after he is taken into custody.

Provided that any Police Officer for the time being in charge of a Police Station may inquire into the case and-

- (a) except when the case appears to such officer to be of a serious nature, may release such person upon his entering into a recognizance, with or without sureties, for a reasonable amount to appear before a magistrate at the day, time and place mentioned in the recognizance;
- (b) if it appears to such officer that such inquiry cannot be completed forthwith, may release such a person on his entering into a recognizance with or without sureties for a reasonable amount, to appear at such Police Station and at such times as are named in the recognizance, unless he previously receives notice in writing from the superior Police officer in charge of that Police Station that his attendance is not required, and any such bond may be enforced as if it were a recognizance conditional for the appearance of the said person before a magistrate.

<sup>2</sup> Section 35 (7) 1999 Constitution.

<sup>3</sup> Section 17, CPA.

Bail is simply a term used when a person charged or arrested for a criminal offence is released from Police custody until he next appears in court or at a Police Station. The Police is allowed to release a suspect on bail where investigation cannot be completed within the time prescribed by law for bringing a suspect before the court. The release may be with or without surety or depending on the circumstances of the case, the suspect may be released on self-recognizance. There is nothing in the provisions of the CPA or Police Act permitting the Police to charge a fee or negotiate payment with the suspect or his lawyers for payment of fees to release on bail, such payment, if made, is bribery. The Police Regulation actually prohibits the collection of gifts in form of money, goods, free passages or other personal benefits by a Police Officer. The Police Officer who collects money in order to release a suspect on bail is corrupt and if reported the matter may lead to severe disciplinary action against him. Members of the public are also advised to refrain from giving such gifts and should stand on their rights and if possible, report the matter to a Superior Police Officer in the Station or to the Commissioner of Police for the State.

Members of the Police Force must note carefully that the power to release on bail is not a discretionary power. The law as stated in Section 17 of the Criminal Procedure Act and Section 27 of the Police Act does not give the Police Officer any discretion in the matter.

The only exceptions are if the offence is a capital offence, in which case the matter must be charged before a competent court within a short or reasonable time.

### **Holding Charge**

A holding charge may be described as a charge filed against an accused person before a court that has no jurisdiction to try the matter, only with the purpose of using the machinery of the court to keep the accused person in

prison custody pending when the appropriate charge may be brought against him before a competent court. The police officer who framed and filed the matter before the lower court (most usually a magistrate court) is quite aware that the court lacks jurisdiction to entertain the matter brought before it, therefore there is no other reason for filing the charge before the court except for the reason of having the court remand the accused in a prison custody pending the time when a proper charge may be brought in the appropriate court. There is no law in Nigeria that permits the Police to file this form of charge in a court and is therefore illegal and unlawful. It may be argued that since there is no law under which holding charge may be permitted in Nigeria, the Magistrate Court does not even have the power to remand the accused person in prison custody since she has no jurisdiction to entertain the matter in the first instance. The courts have declared severally that holding charge is "unknown to Nigeria Law".<sup>4</sup> Before an accused person is brought to court, all the available evidence to prosecute the matter must have been gathered, all statements taken from witnesses, proper and exhaustive investigation conducted and concluded, and we can safely assert that the matter is ripe for court under our laws, a man is presumed innocent until proved guilty, an innocent person therefore is still entitled to his right to freedom of movement in Nigeria.<sup>5</sup> The machinery of justice is not supposed to be activated against a Nigerian Citizen based purely on suspicion. The process of court should not be commenced, for the purpose of continuation of further investigation. The proper step to take is that the Police should release the accused person on bail if it seems that they will require more time to investigate the matter. The court has held that it is not proper, and in fact unlawful, to charge a suspect before the court on a holding charge pending the completion of investigations.<sup>6</sup> In the case of *Johnson v Lufadeju*<sup>7</sup> the court

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4 Section 17, CPA.

5 Regulation 354 Police Regulations.

6 Per Sanusi JCA in *Shagari v C.O.P* (2007) NWLR (pt 1027) 272 at 298.

7 Section 35, 1999 Constitution.

was of the view that a Nigeria Citizen can only be deprived of his liberty under circumstances and procedure permitted by law. A holding charge is not allowed to hold like a sword of Damocles over a person. The fact of the case was that, the appellant was arrested with eleven others and were detained by the Police. They were thereafter charged before the Chief Magistrate Court Grade 1, Ikeja, Lagos State, for conspiracy to commit treason and treasonable felony. The Chief Magistrate refused an oral application for their bail and she ordered the accused to be remanded in prison custody because she had no jurisdiction to entertain the matter. The appellants thereafter applied to the High Court for their bail which was refused. They then applied to the Court of Appeal and contended that Section 236 (3) of the Criminal Procedure Law of Lagos State is inconsistent with Section 32(1) of the 1979 Constitution<sup>8</sup> the Court of Appeal agreed that the Section 236 (1) of the Criminal Procedure Law of Lagos State is in conflict with the constitution and therefore not permissible. The Court held further that the Magistrate Court is bound to release the appellants from the Police cell in the absence of any other justifying evidence that would allow the Police to continue to hold the appellants in police custody.

Also, in the case of *Shagari v C.O.P.*<sup>9</sup> the appellants numbering 109, were arrested by the Police in Nasarawa State and Federal Capital Territory between 3rd and 10th of May, 2003. They were all alleged to have committed murder and other offences under the Penal Code. From the time of their arrest, the appellants were kept in Police custody until 2nd of September when they were arraigned before the Chief Magistrate Court in Lafia, Nasarawa State. The Chief Magistrate who lacked jurisdiction to try the

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8 *Johnson v Lufadeju* (2005).

9 *Supra*.

appellants on the said offences, refused to admit them to bail and therefore remanded them in prison custody. The appellants filed motion for bail in the High Court and after arguments, the Court dismissed their application. They thereafter appealed to the Court of Appeal. The Court of Appeal held inter alia that,

- (1) a holding charge is unknown to Nigerian Law and any person or an accused person detained there under is entitled to be released on bail within a reasonable time before trial (more so in non-capital offences), 'A holding charge has no place in Nigeria judicial system;
- (2) persons detained under an 'illegal' 'unlawful' and 'unconstitutional' document tagged 'holding charge' must unhesitatingly be released on bail.<sup>10</sup>

**SANUSI JCA**, explained the position of the law further when he said,

*"As at the time the appellants were arraigned before the Lafia Chief Magistrate ... there was no formal charge framed against them. As well, when the High Court heard the motion for bail, there was also no formal charge framed against them accompanied by proof of evidence. Such in my view amounts as special circumstance for the lower court to admit them to bail, and if it had done so it could be said that it exercised its discretion judicially, and judiciously. But by continuing to hold them on "holding charge", that is not a judicious and judicial exercise of discretion."*

10 Now Section 35 of the 1999 Constitution.

11 (2007) 5 NWLR (pt 1027) 272.



We must note that in *Shagari v C.O.P.* and *Ogori v Kolawole*<sup>12</sup> the High Court fell into the same error by giving as an important reason why they, could not release the accused on bail, the fact that they need to afford the Police time and opportunity to conduct or conclude their investigation. The Court of Appeal in both cases ruled that there was no place for a holding charge in Nigeria, and that the accused person ought not to have been charged when the Police do not have any conclusive evidence to prosecute them.

From the authorities it is quite clear that there is no place in our laws for 'holding charge'. The Police should therefore refrain from the practice, which is not only unlawful but unconstitutional. The Police must release a suspect on bail whenever they do not have enough evidence to work with, or enough to establish a *prima facie* case against the suspect. The Police may have a strong suspicion but suspicion no matter how strong, cannot take the place of concrete evidence before the court.

### **Conditions for granting of Bail**

From the discussion above, the power of the Police to release a suspect on bail pending conclusion of investigation or arraignment in court is not in doubt. The pertinent question to ask is, under what circumstances can the suspect be released on bail? or when should the Police refuse to release on bail?

Bail has been described as an assurance or undertaking given by an authorized person that a suspect would appear at a certain place or particular day and at a given time in response to a request that he should be present to respond

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12 See also the following cases, *Enwere v C.O.P.* (1993) 6 NWLR (pt 299) 333, *Jimoh v C.O.P.* (2004) 17 NWLR (pt 902) 389, *Ogori v Kolawole* (1985) 6 N.C.L.R 534, *Onagoruwa v State* (1993) 7 NWLR (pt 308) 49, *Oshinaya v C.O.P.* (2004) 17 NWLR (pt 901) 1.

to criminal allegations leveled against him.<sup>13</sup> It involves delivering a person (suspect) to a third party called 'surety' on the understanding that the 'surety' would ensure that the suspect is produced wherever his presence is needed.

<sup>14</sup> Osipitan<sup>15</sup> explained the procedure this way,

*There is, therefore a device whereby an accused person is granted a temporary release from police custody while he is awaiting his trial. The accused person is required to give an undertaking by recognizance that in return for being granted a temporary release he will appear in the court at any specific time and if he does not so appear, he will pay a certain sum of money fixed by the court or Police. This undertaking of the accused is usually guaranteed by another third party produced by him and acceptable to the court. Such a person is known as a surety. He binds himself to pay a sum of money also fixed by the court if the accused person fails to appear in court when required. More than one surety may be required where the offence is a serious one.*<sup>16</sup>

### **Rationale for granting bail by Police**

1. A very important reason the police should grant bail to a suspect is that the suspect is presumed innocent until proved guilty under our laws. It is therefore important that the innocent should not be made to suffer needlessly. The constitutional protection must also be borne in mind by the Police. Where the suspect cannot be taken before a court within 24 hours or 48 hours in cases where the court is far from the place of arrest, then the suspect must be released on bail pending the time the Police will conclude their investigations.

<sup>13</sup> *Shagari v C.O.P* (supra) at page 298.

<sup>14</sup> (1985) 6 NCLR 534.

<sup>15</sup> Osipitan, T. A New Lease on Bails, sureties as Lagos reforms Criminal Law retrieved from, <http://nigerianlawgow.com> on 8th May, 2013.

<sup>16</sup> See also, Kenny.C.S. 1847-1930, *Outlines of Criminal Law*, Cornell University Library: Macmillan Company.

2. The Police must release the suspect detained on bail as they have no discretion in the matter. Being a constitutional provision the suspect should be released within the prescribed period under the law.
3. No purpose is served in endlessly detaining a suspect where there is in fact no evidence upon which he could be prosecuted.
4. Immediate release of suspect helps to decongest the Police cell which in Nigeria has assumed another dimension. The Police cells has been turned into torture center, where hardened criminals are freely detained with minor offenders, the result is that the minor offenders are beaten, tortured or maltreated in the Police cells. Most Police cells in Nigeria are not properly kept clean, the sanitary situation is pathetic, not because it could not be kept clean but because the cells are not equipped to cater for the very large number of inmates detained in them at a particular time. Many inmates of the cells will prefer to plead guilty to a crime they did not commit than to continue to stay in these cells.

### **Power to release suspects unconditionally**

Where the Police discover at the end of their investigations that the suspect did not commit any offence, the appropriate step to take is not to grant bail but to release unconditionally. The practice of releasing every suspect on bail when in fact the Police have concluded that he is not guilty of any crime or when the Police have concluded not to file any charge against the suspect is irregular and not supported by law. Section 19 of the Criminal Procedure Act provides as follows:-

When any person has been taken into custody without a warrant, for an offence other than an offence punishable with death, the officer in charge of the Police Station to which such person is brought shall, if after the inquiry is completed he is satisfied that there is no sufficient reason to believe that the person has committed any offence, forthwith release such person.

The Police ought not to arraign a suspect after discovering that he has not committed any offence but quite often they have done so simply because they want to please the complainant or they want the suspect to go and prove his innocence in court and nothing more. This type of prosecution has unnecessarily compounded largely the congestion of cases before the court. It has led also to congestion of the prisons and increased the number of persons awaiting trials. This is all brought about because the prosecutors having no evidence upon which to prosecute continues to ask for adjournments while the accused person continues to be remanded in prison custody.

However, where the suspect is detained for a capital offence, the police may not grant bail but ensure that the file is dispatched to the Director of Police Prosecutions office for immediate arraignment in the High Court.

### **Surety**

By virtue of Section 27 of the Police Act, the Police Officer in charge of a Police Station where the suspect is detained may release the suspect on bail if the offence is not of a "serious nature". The suspect may be released upon entering into a recognizance, with or without sureties for a reasonable amount to appear before the magistrate at the day, time and place mentioned in the recognizance. It is clear that the release of a suspect is not compulsorily based on the production of a surety. The Police may release the suspect without requesting that he be released to a surety. The suspect may be released on self-recognition.

Before the Police decide to release a person on bail, they must consider:

- (1) the seriousness of the offence committed.;
- (2) the evidence before them, whether the evidence is so strong, and a prima facie case has been established, in which case, there is no reason for bail. The matter should be charged before the court immediately.

- (3) the character of the offender, whether he is an habitual offender or first offender, that is, after reviewing his criminal record, there is no danger of his escaping if he is granted bail;
- (4) if there is the likelihood that he may repeat the offence if granted bail;
- (5) whether there is evidence that if he is granted bail, he may interfere with the prosecution witnesses or block them from coming to testify against him in court;
- (6) whether if he is granted bail, he may fail to attend court when he is eventually charged before the court.<sup>17</sup>

It is also important to emphasise that the police are not allowed to discriminate as to the choice of the surety in respect to the age, sex, religion or ethnic origin. The refusal of a surety based on these grounds will amount to a gross breach of the constitution.<sup>18</sup> Bail ought not be refused on the ground that the suspect can only produce his wife, or adult child as surety.

Bail is a constitutional right. It is not discretionary by the Police, it is a basic right of every citizen arrested by the Police. The police should explore the avenue of bail to decongest their cells and ensure that the innocent is not unduly punished. The use of "holding charge" should be stopped totally as the practice, is unlawful and unconstitutional.

17 Nwadialo, F. 1988. *The Criminal Procedure of the Southern States of Nigeria*, Lagos; MiiJ Publisher, p 368.

18 *Onyirioha v I.G.P* (2009) 3 NWLR (pt 1128) 342.



## Chapter Five

### POWER OF PROSECUTION

Prosecution is simply the power and the legal authority to represent the State or Police to conduct criminal trial before a competent court. The person or authority who conducts the prosecution is referred to as the prosecutor and the person being tried or charged before the court is referred to as the accused person or the defendant.<sup>1</sup> When the Police is satisfied that a suspect is guilty of an offence or that a *prima facie* case is established against such a person or there is enough evidence against the person based on the investigation they have conducted, they will proceed to prepare a charge against the suspect.

#### Charge

A charge is a document filed in court detailing the offences committed by the accused person. It may be divided into several counts. Section 152 of the Criminal Procedure Act provides thus,

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1. Section 371 of the Administration of Criminal Justice in Nigeria (Repeal and Re-engagement) Law 2011 (Lagos State), see also Adebayo A.M, 2010. Administration of Criminal Justice in Nigeria, Lagos; Princeton.

- (1) the charge shall contain such particulars as to the crime, and place of the offence and the person, if any, against whom or the thing, if any, in respect of which it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged.<sup>2</sup>

The charges filed in the magistrate Courts are drafted by the Police where the offence was investigated and signed by a Senior Police officer. The essential components of a good charge are:-

- (1) the time when the offence was committed;
- (2) the place where the offence was committed;
- (3) the offence that was committed. The offence must be known to law, therefore the Section of the Criminal Code or Penal Code, or any other law under which the offence was committed must be clearly stated in the charge;
- (4) the person who is alleged to have committed the offence must be clearly stated by his names and other names by which he is known;
- (5) the names of the complainant or the person against whom the offence was committed;
- (6) nature of the offence must be stated in such a way as to give the accused person sufficient notice of the matter with which he is being charged;<sup>2</sup>

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2 Section 152 (4) CRA, see Owasanoye and Ani, Improving Case Management Coordination Amongst The Police, Prosecution and Court available at [http://www.nials.nigeria.org/journals/Bolaji Owasanoye and Chinyere.pdf](http://www.nials.nigeria.org/journals/Bolaji%20Owasanoye%20and%20Chinyere.pdf) accessed on 2-06-2013.

- (7) the charge must also contain the particulars of the manner, or form in which the offence was committed.
- (8) the charge must follow the words of the provisions of the law under which the charge is laid.<sup>3</sup> It follows that the details of the offence should be given in a concise manner.<sup>4</sup>

### Prosecution by Police

After the charge has been prepared, the charge sheet and the police case file will be taken to the court with the accused person. The charge is thereafter registered at the court and the matter will be given a charge number. The charge is thereafter handed over to the court, and copies will be delivered to the Police Prosecutor attached to the Magistrate Court. The prosecutor will serve a copy of the charge sheet on the accused person or his Counsel and the matter will be dealt with by the court.

The power to prosecute criminal cases before a court in Nigeria is provided for under Section 23 of the Police Act which provides as follows:

Subject to the provisions of Section 194 and 211 of the Constitution of the Federal Republic of Nigeria 1999 (which relate to the power of the Attorney-General of the Federation and of the State to institute and undertake, take over 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.

3 *Ofuano v Nigerian Navy* (2007) 8 NWLR (pt 1037) 470.

4 C.O.P. Agi (1980) 1 N.C.R. 234.



The provisions of this law <sup>5</sup> are quite clear; the law empowers any police officer to prosecute any matter before any court in Nigeria. This may raise a lot of issues and in fact has led to a number of cases in court where the courts have tried to interpret the provisions of this confusing legislation.

In the first instance, the law authorizes any Police Officer to prosecute any matter in any court; there is no specification as to the category of Police Officers who may prosecute criminal matters in court. We must understand that the Police Force is divided into divisions and departments. Does the law permit a corporal or new recruit to embark on prosecution? The qualification of the Police officer or his cognate experience is not also specified in the law. The Police may recruit a school certificate holder, can such a person go to court and prosecute criminal matters? Again since the Section 23 provides that the Police Officer may prosecute in any court does this include the Superior Courts, such as the High Courts, Court of Appeal and the Supreme Court? This has been an issue that has come before the courts for proper interpretations. There seems to be conflict between Section 23 <sup>6</sup> and Section 2(1) <sup>7</sup> of the Legal Practitioners Act which stipulates that only Lawyers who have been called to the Bar and whose names are on the Roll of Legal Practitioners in Nigeria can appear in the Superior Courts and sign or file court processes in the court. <sup>8</sup>

In the case of *Olusemo v C.O.P.*<sup>9</sup> in interpreting Section 23 of the Police Act, the Court of Appeal was of the view that,

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5 Section 25, Police Act.

6 Police Act.

7 Legal Practitioners Act.Cap.L11. Laws of the Federation., 2004.

8 *Thomas v Mande* (2007) ALL FWLR (pt 361) 1749.

9 (1998) 11 NWLR (pt 525) 547.

It is very clear and without any doubt that, the Attorney-General of the Federation has not exercised his power under Section 160 of the constitution in the instant case, therefore, the Police Officers' power to prosecute in this criminal proceedings in this case is not limited, restricted or controlled. Mr. Ehindero qua Police officer is competent to prosecute in these proceedings in any court in Nigeria including the High Court, **EJIWUNMI JCA** (as he then was) held thus, <sup>10</sup> "it is self-evident from the legislation to which reference has been made that the only way to fetter in law the prosecution of cases by a Police Officer lies in the exercise of power of the Attorney-General of the Federation or that of the State to which reference has been made above". Lower court was therefore right to have held that the Police Officer who appeared for the respondent had the right to so appear and conduct criminal prosecution against the appellant <sup>11</sup>

In the case of **Ajakaye v F.R.N**, <sup>12</sup> the Court of Appeal in interpreting the provisions of Section 23 of the Police Act agreed with the position taken by the Court in **Olusemo v C.O.P** <sup>13</sup> and held that the power of the Police to prosecute criminal matters in the courts is only limited or restricted by the powers of the Attorney-General by virtue of the provisions of the constitution <sup>14</sup>, where the Attorney-General has not exercised his powers under the Section, the powers of the Police under Section 23 is not "limited, restricted or controlled" in any way. <sup>15</sup>

The important point that may seem to have weighed much in the mind of the Justices of the Court of Appeal in the **Olusemo v C.O.P** and **Ajakaye v F.R.N** was the fact that in both cases the Police Officers involved in the

10 Now Section 174 of the 1999 Constitution.

11 **Olusemo v C.O.P** (1998) 11 NWLR (pt 575) 547.

12 Ibid pg. 564.

13 (2010) 11 NWLR (pt 1206) 500.

14 (1998) 11 NWLR (pt 575) 547.

15 Sections 174 and 211 of the 1999 Constitution.

prosecution of the matters were also Legal Practitioners. The argument therefore is that since Legal Practitioners must be given a right of audience in the Superior Court there is nothing preventing the Police officers appearing qua lawyers in the courts to prosecute matters as Police Officer under Section 23 of the Police Act. This was why the Learned Justice of the Court of Appeal said,

*...that Saidu Kazeem Atteh, apart from having been a Senior Police Officer, was also a qualified Lawyer and Legal Practitioner in Nigeria within the meaning and contemplation of the provisions of the Legal Practitioners Act. <sup>16</sup> He is by virtue of the law in question alone, entitled and has the absolute right and privilege to appear and be accorded an audience in any court of law or tribunal throughout the country.*

He therefore concludes by saying that,

*"Mr. Atteh had the right to appear and prosecute cases both criminal and civil, in any court, the lower court inclusive without the authorization or fiat of the Attorney-General, Federal or State, or any body for that matter.*

We must quickly note that power to prosecute under Section 23 of the Police Act does not include civil cases, and the Learned Justice of the Court of Appeal was in error by including civil matters within the ambit of the law.

However, the Supreme Court had opportunity to examine this matter earlier in the case of *Osahon v F.R.N.*<sup>17</sup> The appellant was standing trial before the Federal High Court, Lagos on a six count charge under the Miscellaneous Offences Decree No. 20 of 1984 (as amended). A Police Officer who also

<sup>16</sup> Per Saulawa J.C.A, *ibid* p. 526.

<sup>17</sup> Cap. 207, Laws of the Federation of Nigeria 1990, Cap. C.23 Laws of the Federation 2004.

signed as the prosecutor initiated the charge; moreover, the prosecution was being conducted by Police Officers representing the Federal Republic of Nigeria. However although qualified in law as legal practitioners the Police Officers were not armed with a fiat or any authority from the Attorney-General of the Federation to initiate and undertake the exercise. The appellant thereafter filed an application before the trial court seeking to quash the charge preferred against them on the ground that by virtue of Section 174(1) of the 1999 Constitution only the Attorney-General and officers of his department can institute and undertake criminal proceedings against him, and the prosecuting Police Officers do not come within the ambit of (1) law officer (2) State Counsel or (3) Legal Practitioners duly authorized, by the Attorney-General of the Federation as stipulated in Section 56(1) of the Federal High Court Act,<sup>18</sup> or fall within the Section 3 of the Law officers Act. The Police Officers, therefore, lack the competence to prosecute the matter.

The trial court, after hearing the arguments, overruled the objections and ruled that the police officers had the power to initiate and prosecute the charge.

The Court of Appeal considered the provisions of Section 23 of the Police Act as a general provision while that of Section 56 of the Federal High Court Act as a specific provision, by the rules of interpretation the Section 56 of the Federal High Court Act will supersede. The Court therefore held that the Police Officers cannot prosecute a criminal matter in the Federal High Court. In the words of, **CHUKWUMA-ENEH JCA**,

*I, therefore, conclude that under Section 56(1) of the Federal High Court Act 1990, Police Officers not having been listed as persons to represent the State in the Federal High Court lack the standing to initiate and to undertake criminal proceedings before the Federal High Court.*

18 (2006) 5 NWLR (pt 973) 3 361.

The Police appealed to the Supreme Court. The Supreme Court lay to rest all the issues involved in this matter but still left room for reforms. In the first instance, the Supreme Court seemed to have decided finally that any Police Officer may prosecute criminal matters in any court of law in Nigeria and there is no limitation as to qualification as Legal Practitioner or any other whatsoever, the **ONOGHEN JSC** declared,

*It is my considered view that neither Section 23 of the Police Act which grants the power to any Officer to institute criminal proceedings in any court in Nigeria nor Section 174(1) which recognizes the right of "any other authority or person" to institute criminal proceedings in Nigeria States that such a Police Officer or any other to be so qualified.<sup>19</sup>*

**ONOGHEN JSC** went on to conclude based on the literal interpretation of the constitution, that

*"the law being as it stands by virtue of the constitutional provisions which is Supreme, I hold the view that any Police Officer, irrespective of the fact that he is a qualified Legal Practitioner, has the power under Section 23 of the Police Act and Section 174(1)(b) of the 1999 constitution to institute criminal proceedings in any court in Nigeria".<sup>20</sup>*

It follows that unless the Attorney-General decides to exercise his powers under Section 174 of the 1999 constitution, the Police or in fact "any other person" may institute criminal proceedings in Nigerian Courts.<sup>21</sup>

19 Per Onoghen JSC in *Osahon v FRN* (2006) 2 Sc9ptIJ) 1 at 20.

20 *ibid.*

21 *Pharma Deko Plc v N.S.T.I.F*(2010) LPELR-CA.

The power of the Police to prosecute an accused person in court is a discretionary power, and the Police has the right to decide whether to prosecute or not and cannot be compelled by an order of mandamus to prosecute when in fact they had exercised their discretion not to prosecute. The Section 23 of the Police Act actively used the term "may conduct in person all prosecutions before any court". Quite clearly, the power is discretionary and not mandatory. Just like the power to investigate an allegation, the courts do not have the jurisdiction to interfere in the exercise of the discretion. This was the position that the Court of Appeal was confronted with in the case of *Atta v C.O.P.*<sup>22</sup> In the case, the appellant wrote a petition to the Police to prosecute his brother Alhaji Ado Ibrahim. When the Police refused to prosecute his brother, he filed an application for an order of mandamus to compel the Police to prosecute. The trial court refused the application, and the appellant being dissatisfied with the judgment of the Court appealed to the Court of Appeal. The Court of Appeal held that the Police retain very considerable freedom to formulate and implement general policies and to decide what to do in a particular case without incurring the risk of judicial intervention. In addition, this will be considered by the court when considering an application for mandamus.<sup>23</sup> In the instant case, the Attorney-General of Kogi State had intervened to state that the Attorney-General office is not interested in prosecuting the matter at all. It follows, that apart from the exercise of the discretion by the Police, the Attorney-General's office was not interested in prosecuting the matter. This fact actually helped the court in arriving at its decision to dismiss the appeal. The fact that Section 23 of the Police Act is subject to the exercise of the Attorney-General's powers under Section 211 of the 1999 Constitution. From the

<sup>22</sup> (2003) 17 NWLR (pt 849) 250.

<sup>23</sup> *Atta v C.O.P.* (2003) 17 NWLR (pt 849) 250 at 266, see also *R v Metropolitan Police Commissioner exp. Blackburn* (1986) 2 Q.B.118 at 139.

authorities,<sup>24</sup> whenever the law gives a person the power to exercise his discretion over a matter, the court do not have jurisdiction to question the exercise of that discretion. The power to prosecute which is granted the Police is a discretionary power to be exercised at their discretion and refusal to prosecute cannot be questioned by the court neither will the Court compel the Police to prosecute when they have decided, based on their discretionary powers, against doing so.

### **Should the Power be removed?**

Recently in Nigeria there has been agitations whether to amend the law and remove the power to prosecute given to the Police by virtue of Section 23 of the Police Act.<sup>25</sup> The Nigeria Bar Association (NBA) unanimously agreed that Lawyers should have exclusive right to prosecute criminal cases in Nigerian courts. Prosecution is a skill. Only trained Lawyers who have been trained in the University and the Law School and called to the Nigerian Bar have the technical skills to successfully prosecute criminals in courts. It is on account of this that there is currently, a bill before the National Assembly to amend the provisions of Section 23 of the Police Act.

We must state that there are formidable reasons why the law ought to be amended to remove the power to prosecute from the Police. In the first instance, the most important duty of the Police as stated in Section 4 of the Police Act is 'prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged'<sup>26</sup> there is nowhere the prosecution of persons suspected

24 See for example *Chief Gani Fawehinmi v Col. Halilu Akili and anor.* (1987) 4 NWLR (pt 67) 787, *R v Metropolitan Police Commissioner exp. Blackburn* (1986) 2 Q.B.118 at 139.

25 The Nation of 11-04-2008.

26 Section 4, Police Act.

to have committed crimes is listed. In other words, though the power to prosecute is recognized in the Police Act but it is not a recognized Police duty. We must also realize that the art of prosecuting an accused person is the sole prerogative of trained Lawyers who are trained for the purpose. It involves the interpretation of laws, and knowledge of regulations, procedures and court etiquettes. It also requires keeping of records good knowledge of current case laws, (local and foreign authorities), keeping up to date with the law and sound reasoning and arguments. Only the lawyer is adequately trained for all this the average policeman is not trained for this purpose, and is left at a serious disadvantage when he has to face a trained lawyer who will only make the Policeman to look inadequate. While prosecution is not a do or die affair, but it is disheartening that many criminals are released by the courts not because they are innocent but simply because the Police prosecutor does not know the law or understand procedure.

It offends the rule of fair hearing that the person who investigated the offence and invariably is the accuser and also the prosecutor. This has caused the Police in most cases to feel that they have a personal stake to send the offender to jail at all cost, simply because they believe in the outcome of their investigations. Thus Police functions have unfortunately been allowed to intrude into organized administration of justice.

As we have observed, the whole array of Police prosecution in Nigeria, is a discretionary exercise of the power and is not mandatory for the Police to prosecute, where the power to investigate and also to form a decision whether to prosecute resides within the same person, in Nigeria, it is the source of serious concerns as it opens door for corruption. The system is easily corrupted and the decision to prosecute can easily be manipulated and since the court cannot compel the police to prosecute, the complainant is left

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without a remedy and he is left at the mercy of the Police discretionary use of power. This ought not to be allowed to continue. The Committee Report on the Evaluation of the DPP Summary Presentation Pilot Project in New South Wales, Australia <sup>27</sup> advocated the wholesale transfer of the Police prosecution power to office of DPP when they reported thus,

The desirability of having the prosecution process separate from the investigation process does not depend on evidence of misconduct or corrupt behavior on the part of the police prosecutors. It rests essentially on the principles of independence and impartiality which are relevantly affected in the present context by:

- i. the fact that Police prosecutors are not answerable to their superiors in the chain of command;
- ii. they do not own a legal duty to the court in the same way that Solicitor and Barristers do; and
- iii. they are not subject to the Code of behavior and professional discipline as members of the Legal Profession.<sup>28</sup>

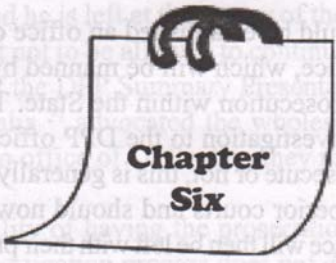
The preceding report is relevant to the present situation with respect to prosecution roles of the police in Nigeria. We suggest that the power to prosecute under Section 23 of the Police Act be amended by deleting the

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27 Prosecution Departments, Prosecuting Summary Matters in New South Wales. Progress Report on the evaluation of the DPP Summary prosecution pilot project October 1996. This pilot program ran at Campbelltown and Dubbo Courts by staff from the OPP starting 1st July 1996 for 6 months to 31 December 1996.

28 Ibid.

power entirely. There should be established an office of public prosecutor (OPP) within the DPP office, which will be manned by qualified Lawyers to handle all matters of prosecution within the State. The Police will only forward their files after investigation to the DPP office, it is the DPP that will decide whether to prosecute or not, this is generally the current position but it is limited to the superior courts and should now be extended to the magistrate courts. The Police will then be left with their primary responsibility, whether they are lawyers or not is of no consequence. The justice administration might profit by the Australian model to see what they can learn from it particularly with a view to separating the discretionary prosecuting powers of the police and transferring these to a more professional body.



## Chapter Six

### DISCIPLINE IN NIGERIA POLICE

The issue of discipline within the Nigeria Police has been a major concern in the profession of policing. Over the years rampant cases of police misconduct had seriously downgraded and embarrassed the value of the tremendous achievements within the Nigeria Police Force. Misconduct of very few members of the force had cast deep aspersions on the great work and service being rendered by the majority of the faithful and law abiding members of the force. The result of gross indiscipline and blatant refusal to obey simple rules, regulations and laws guiding the police profession has also caused serious limitations to the achievement of the cardinal duties of the Police under Section 4 of the Police Act.

#### **Creating the Right Environment.**

Admittedly, there is gross indiscipline within the Nigeria Police Force. The environment in which they operate encourages indiscipline. If we are to find solutions to problems of indiscipline in the Force, we must first examine the environment in which it carries out its Constitutional roles or duties which has engendered such level of indiscipline. The environment in which the Police operate in Nigeria goes a long way to contribute to indiscipline in the Police Force. Parry Osayande, former Chairman of the Police Service Commission

identified the following problems which usually open doors for indiscipline in the Police Force <sup>1</sup>. His paper he identified the following.

### 1. External Factors;

- i. Military intervention in Government 1966-1979 and 1983 to 1999.
- ii. Poor funding and mismanagement of available funds.
- iii. Under- budgeting and non-release of estimated budget funds in full.
- iv. Creation of parallel security organizations.

### Internal Factors:

- i. Inappropriate deployment of Police personnel for protective-security.
- ii. Factors inherent in the Nigeria Police Force.
- iii. Organized corruption.
- iv. In-fighting among senior officers for promotion/posting.
- v. Non- compliance with some laid down regulations, procedures, manuals and traditions at all levels of Police operations.
- vi. Unacceptable and decayed state of discipline.
- vii. Inadequate basic continuous training of Police personnel.

What then are the environmental deficiencies that had encouraged indiscipline in the Police and why has it been difficult to stamp such indiscipline? We are going to isolate some of the factors and examine them.

### 1. The Hiring process

The present hiring process of police officers into the Force encourages fraud and indiscipline and need to be reviewed. The process of hiring does not allow for men and women of quality and of good moral character. The Police Force must ensure that the right caliber of people are employed into

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1 Parry B.O Osanyande, Factors inhibiting Police Performance in Nigeria, in Paper presented at the occasion of the Retreat with the theme: "Understanding the mandate and operations of the Police Service Commission in context of the Rule of Law" August, 2008.

the force. Employment standards must be clear and unambiguous leaving no room for loophole through which people of very low moral character may be inadvertently employed. For example, how do we identify applicants with previous record of drug abuse or illegal use of drugs, or criminal records generally. The selection process must be such as can identify these kind of persons, problems of indiscipline within the force obviously originates from employing a wrong personnel from the onset.

## **2. Training**

Officers must have the skills and knowledge required to effectively perform their jobs. High-quality entry level qualification, field and in service training programs are key to ensuring that the police officer not only understands the Nigeria Police Force expectations, but have the skill level to meet them.

## **3. Clearly written and publicized expectations;**

The Police Force must clearly identify its purpose, duties, vision, values and ethical statements, all these must be properly stated and well publicized within the force. Training the new Officers, and teaching them the basic goals, and expectations as well as duties and objectives of the Police Force. These must be written in clear, understandable language but must also be reinforced in daily operations.

## **4. Effective Supervision**

There are important assignments that need effective supervision by more experienced and senior officers. The senior officers must in their interactions with the new or junior officers offer a more effective supervision of the junior officers, and must translate the visions, and values, rules and regulations of the force into operational practice. By practical and oral dissemination of these ideals they are able to inculcate the culture of these vision and values into the junior officers which in turn guide their behaviours and approach to duties.

## 5. Performance Standards and Review

The Police Force must initiate a regime of evaluation of the expected standard of performance within each department and formation. This will not only affect the formations but also individual officers. Setting standards in the force may be very challenging given the workload and types of problems encountered on a daily basis by the Police with little or no infrastructure in place to adequately assist in the implementation of stated duties, it is imperative that the superior officers review the assigned outcome of specified duties of each officer for the purpose of helping them to achieve these assignments.

## 6. Complaint Reception and Investigative Procedures

There must be well laid out and published complaint procedures. The general public having complaint against the Police Officer must be given opportunity of laying his complaint against the Police Officer. Complainants also must be informed of steps to take to follow up on their complaints and should be informed of the outcome of such complaints. The investigative process should be defined and time frames for completion of investigation should be stated, and the complainant informed of the outcome of the investigation and actions taken.

## 7. Technology

The Police Force must employ technology in order to aid them do their work much more effectively. In most advanced countries, the Police departments are daily turning to the use of technology to enable them discover the excesses of their officers. With the use of Automatic Vehicle Locators, and in-car camera systems, automatic recording of telephone conversations over the walkie talkie, head mounted cameras that record what the officer see and hear when they are handling a matter or arresting a suspect, their actions can easily be reviewed and played back for proper assessment and evaluation.

Paying attention to the above will assist in creating a proper and right environment for discipline in the Nigeria Police Force. We will now examine the procedure for the enforcement discipline in the Nigeria Police Force.

### **Role of Police Service Commission in Discipline.**

The organization that is responsible for Discipline within the Force is the Police Service Commission (PSC). The Police Service Commission is an Agency of the Federal Government,<sup>1</sup> established under the 1999 Constitution. The PSC was (pursuant to the constitutional provisions) established under the Police Service Commission (Establishment) Act 2001.<sup>2</sup> Part II of the Act,<sup>3</sup> spells out the functions of the PSC, Section 6 of the Act provided as follows:-

- 1 The Commission shall-
- (a) Be responsible for the appointment and promotion of persons to offices (other than the office of the Inspector-General of Police) in the Nigeria Police Force,
- (b) Dismiss and exercise disciplinary control over persons (other than the Inspector-General of Police) in the Nigeria Police Force;
- (c) Formulate policies and guidelines for the appointment, promotion, discipline and dismissal of officers of the Nigeria Police Force.
- (d) Identify factors inhibiting or hindering discipline in the Nigeria Police Force.

2 Section 153(1)(m) Constitution of the Federal Republic of Nigeria, 1999 (as amended) and part 1, 3rd Schedule of the Constitution makes provision for the establishment of the Police Service Commission (PSC) as a Federal Executive Body.

3 Laws of the Federation of Nigeria 2004.

- (e) Formulate and implement policies aimed at the efficiency and discipline in the Nigeria Police Force.
- (f) Perform such other functions which in the opinion of the commission are required to ensure the optional efficiency of the Nigeria Police Force.

It is clear that the issue of discipline within the Police in Nigeria is of paramount importance, and ensuring discipline in the Force is one of the main functions of the PSC. In fact, the general indiscipline within the force could be argued to be a failure on the part of the PSC not only to do their statutory duty but also to effectively create the right environment for maintenance of discipline.

### **Guidelines for Discipline in the Nigeria Police Force.**

#### **Senior Police Officers.**

Part XV<sup>4</sup> of the Police Regulations makes provision for the Code of Conduct for Senior and Junior Police Officers. These are Code of Conduct or best practices expected from the members of the Police Force. Where there is a breach of the Code of Conduct provision of the Regulations, the procedure for discipline of Senior Police Officers is as prescribed by chapter 4 of the General orders for officers holding offices in the Civil Service of the Federation. Where the Police Officer is charged with any misconduct contrary to the provisions of part XV of the regulations or of chapter 4 of the General Orders, the conduct of any disciplinary proceedings is generally in accordance with the rules specified in chapter 4 of the General orders.<sup>5</sup> Under the Regulation, the competent authority is the Nigeria Police Council.<sup>6</sup> However

4 Police Service Commission Act 2001.

5 Section 354 to 368 of Police Regulations.

6 Section 369 Police Regulations.



we must understand that statutorily, by virtue of Section 6 of the Police Commission Act 2001, it is the Police Service Commission that now has the statutory authority to oversee disciplinary matters within the Police Force.

### **Discipline of Officers Junior Police Officers**

The procedure for discipline of junior officers is as specified in the regulations. The officers concerned are officers from the rank of Inspectors and below. Where an officer within these junior ranks is charged and found guilty, the punishments that may be imposed are as follows:

- (a) dismissal;
- (b) reduction in rank;
- (c) withholding or deferment of promotion;
- (d) reprimand;
- (e) fine not exceeding N10,<sup>7</sup> but now reviewed upwards to between N5000-N50,000.;
- (f) confinement to barracks for any number of days not exceeding fourteen days;
- (g) fatigues or other duties or punishment drill not exceeding a total of ten separate hours.<sup>8</sup>

The Police Service Commission<sup>9</sup> included Community service in the list of punishments available. The type of punishment ought not to be closed, and the delegated officer who tried the officer should be given the discretion to add any other punishment, which in his view could best be appropriate in the circumstances. These may include tendering apology, refund of money or articles where it involves stealing or unlawful detention of someone else's property, etc.

7 Section 369(2) Police Regulations.

8 Now N5,000-N50,000.

9 Section 371, Police Regulation.

### **Delegated Officer.**

As we have noted above, the statutorily empowered organ of Government with the sole responsibility for discipline of the Nigeria Police Force is the Police Service Commission<sup>10</sup>. Section 372 of the Police Regulations however states that the competent authority is the Nigeria Police Council. However, this regulation will in view of the Police Service Commission Act 2011 stand amended accordingly. For ease of administration, effectiveness and speedy administration of justice a superior Police Officer or Inspector is delegated by the Police Service Commission to handle cases of discipline within their formations. Such an officer in charge of discipline is be regarded as the 'delegated officer' such officer is responsible for the discipline and trial of any offender reported to him for adjudication.

### **Reporting of Offences**

It is a mandatory duty for every Police Officer (whether Superior, Inspector or Non-Commissioned Officer) to report promptly every case of indiscipline by any Police Officer which comes to his knowledge within the Police formation he belongs. All cases must be reported to the Superior Officer who is senior in rank to the Officer being reported.<sup>11</sup> The report must be in writing, and must be transmitted to the Superior Police Officer in charge of the Police formation.<sup>12</sup> It is an offence against discipline for any Police Officer to make a report of another Police Officer out of malice or ill will or without good and sufficient reasons or grounds.<sup>13</sup>

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10 Bulletin on Guidelines for Discipline (minor offences) in the Nigeria Police Force, prepared by the Police Service Commission.

11 Section 6 Police Service Commission Act 2001.

12 Section 376 Police Regulations.

13 Section 376(1) Police Regulations.

After receiving the report, the Superior Police Officer who received the report is to conduct preliminary inquiries into the allegations, this will involve asking for explanations from the alleged offender and also gathering further evidence to support or rebut the allegation. After the preliminary investigations, if the Senior Officer is satisfied that there are no sufficient grounds to make a formal charge, he will make a note to that effect on the papers used in reporting the offence and take no further action.<sup>14</sup> If however, he is in doubt, he must forward all the papers and his observations to his own Superior officer, who will decide in the circumstances.<sup>15</sup> The Inspector-General also has the power to cause preliminary inquiries to be made into any offence of indiscipline made against any officer.<sup>16</sup>

### Summary Investigation

There are two types of summary investigations that may be conducted by a delegated officer.

The first type is:-

- (a) when the Junior Officer has been convicted of any offence before any court;
- (b) when he has had an order made against him by any court of justice for the payment of money or for doing or refraining from doing any act;
- (c) where a judgment has been passed against a junior officer in any court action, and the delegated Officer has procured the judgment of court.

14 Section 375 of Police Regulations.

15 Section 377(a) of Police Regulations.

16 Section 377(b) of Police Regulations.

In the above circumstances, the delegated officer will confront the Junior Officer with the proof of the judgment, and ask him to show cause why he should not be punished under regulation 37. If the Junior Officer is unable to show cause why he should not be punished, the delegated officer will then order the officer to be punished with "one or more" of the punishments contained in regulation 372. The regulation permits the delegated Officer to combine one or two of the punishments. The likely defense to the allegations will be that the judgment was not against the Junior Officer but someone else, that, though judgment of court is binding, but he was not aware of the matter in court, and that he was not aware of the judgment. The problem is that the Constitution of Nigeria do not permit a man to be tried or punished twice for the same offence, this is known as double jeopardy. We may argue that since the Officer has been duly punished where it is a criminal matter, he ought not to be punished again as this will amount to double jeopardy. The fact is that he is not being tried again, he is being punished for allowing this to happen in the first instance, it is the fact of the judgment that is an offence and not the crime itself. We may also note that it involves civil and criminal matters in which the officer was involved, the Police Force therefore will not look with favour at any Officer who allows himself to be involved in a court process that will lead to conviction, order or judgment,<sup>17</sup> in order to escape or mitigate the punishment we suggest that the Officer who has been sued in a court of law should notify his superior officers of the circumstances of the matter, and his own involvement from the onset. We must also note that the regulation specifically notes only cases where the officer is convicted, or judgment is made against him. Where therefore, the Officer is found not guilty and the matter against him dismissed or he is acquitted, there can be no summary investigation conducted against the officer.

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17 Section 378 of Police Regulations.

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The second form of summary investigation not within the categories above, is provided for under Section 383 of the Regulations.

The junior officer will be properly charged before the trial is conducted, that is, he will be charged for an offence of indiscipline. This must be in writing and must state the following:-

- (1) Name of the offender;
- (2) The rank;
- (3) The appropriate provision of the Regulations under which the charge is brought;
- (4) The date when the offence was committed;
- (5) The description of the act or omission constituting the offence;
- (6) Whether the officer admits or denies the charge;
- (7) The officer is also notified that he may deny or admit the charge; if he admits the charge, the delegated Officer will deal with the matter under Regulation 371 without further trial;
- (8) If he denies, then he will be subject to summary investigation.

He must reply within three days the charge is served on him. It must be signed by the Officer who prepared the charge with date of the charge and rank of the officer.

Where the officer wishes to deny, he only needs to state this and nothing more. However, where he admits, he may go ahead and make statements in admission. Where he admits the allegation, the delegated Officer will deal with the matter summarily and order punishment based on Regulation 371.

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In the event the accused Officer denies the charge, the delegated Officer must fix a date and time for the conduct of the summary investigation. The summary investigation must however be concluded within three months from the date of service of the charge or the date of the ending of the period of postponement granted at the request of the junior officer.<sup>18</sup> Any summary investigation not completed within the three months as prescribed in regulation 383(8) will become void and the Police Officer charged will be 'deemed acquitted of the charges or charge' made against him.<sup>19</sup>

### **Orderly Room Proceedings**

It is the duty of the delegated Officer to select the venue for the hearing of the charge. However the venue must be within the Police district or division in which the Police Officer charged is serving. The room or place where the proceedings is to take place is referred to as **Orderly Room**, while the proceedings are known as **Orderly Room Proceedings**.<sup>20</sup> The junior officer charged is referred to as "defaulter"<sup>21</sup>

The Orderly Room proceedings is not a court trial, therefore the defaulter is not entitled to be represented by any person whatsoever<sup>22</sup> he is therefore not entitled to be represented by a lawyer, or since the Regulation says 'any person whatsoever' it follows that even when the junior officer engages a Police Officer who is also a lawyer, to represent him, the delegated officer may refuse such representation as it is not permitted under the regulation. The rationale for this provision is not clear. Though it is not a court of law, but since the outcome of the proceedings is likely to lead to punishment and

18 Section 381 of Police Regulations.

19 Section 383(8) of Police Regulations.

20 Section 383(9) of Police Regulations.

21 Section 384(2) of Police Regulations.

22 Regulation 384(3) of Police Regulations.

bearing in mind the constitutional provisions(Section 36) which safeguards the right to fair hearing, some form of representation ought to be allowed. However, all the rules of fair hearing will still apply.

- (1) The defaulter is entitled to call material witnesses to give evidence on his behalf during the proceedings.
- (2) The delegated officer may also require any Police Officer to attend the proceedings as a witness.
- (3) The delegated Officer may request any person to attend the proceedings, for the purpose of giving evidence or producing any document important to the proceedings.
- (4) The delegated officer must first state the charge to the defaulter and ask for a plea whether he admits to the charge or not.
- (5) The defaulter will be allowed to state his case after evidence has been given to substantiate the charge.
- (6) The defaulter is entitled to cross-examine the witnesses called by the delegated officer in proof of the allegations and he is entitled to defend himself by calling his witnesses.
- (7) The defaulter may object to the charge, that the evidence adduced do not prove the charge and if the delegated officer finds the objection well taken, he may amend the charge as it appears to him to be desirable in the interest of justice<sup>23</sup>

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23 Regulation 384(6) of Police Regulations.

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- (8) The delegated officer may dismiss the charge if he is of the opinion that the evidence in support of the charge is insufficient to sustain the charge before he calls upon the defaulter to give evidence.
- (9) Where the defaulter declines to give evidence, or remains silent the delegated officer is required to record a finding of guilty against him.
- (10) The delegated officer must take notes of the evidence adduced. He need not take full notes, but a summary of the evidence adduced, at the end of which the Delegated Officer and the defaulter and the witnesses are required to sign the notes taken by the delegated officer.
- (11) The rules as to the admissibility of evidence shall as far as possible be those followed by the civil courts in Lagos State.<sup>24</sup> This provision may be problematic and difficult for the delegated Officer or the defaulter to observe. There is no requirement that the delegated officer should be a lawyer or someone versed in the law. It is therefore difficult for him to understand let alone know how to apply the rules of admissibility that are not only very technical but totally inapplicable or alien in summary trials of this type. The rules as to admissibility of evidence that are followed in the High Court of Lagos State are simply the law of evidence as applicable within the state. The laws of evidence may contradict most of the provisions of the regulations on summary investigation, such as, calling of witnesses, examination of witnesses, admissibility of documents and evidence generally. We may also observe that the regulations have a national application, but the delegated officers

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24 Section 384(16) of Police Regulations.



in other parts of the country cannot be expected to be aware of the rules of evidence applicable in Lagos State. This portion of the regulation needs to be urgently amended to simply state as follows:-

“the rules of admissibility of evidence to be adopted shall be in conformity as much as possible with the Evidence Act 2011”.

- (12) As we have mentioned earlier, the delegated officer may, if he finds the charge proved, pronounce punishment on the defaulter by awarding one or more of the punishments combined as he is empowered to do. <sup>25</sup>
- (13) Where the delegated officer finds that the defaulter merits a more severe punishment than he is empowered to award, he shall forward the investigation papers together with his findings and comments to a delegated officer who is superior in rank for adjudication. Where this is done, the superior officer, may take any of the following steps:
  - (a) alter or reserve the finding
  - (b) refer the case back to the delegated officer for further evidence to be taken; or
  - (c) instruct a competent delegated officer, his subordinate in rank (other than the subordinate officer who conducted the investigation), to conduct a new investigation into the offence or offences charged. <sup>26</sup>

### **Punishment**

The defaulter is to be notified of the punishment against him informally as well as in writing in terms of regulation 385. The effective date of punishment shall be from the date the punishment is ordered <sup>27</sup>. However if the

<sup>25</sup> Section 384 (21) of Police Regulations.

<sup>26</sup> Section 384(29) of Police Regulations.

<sup>27</sup> Section 385(3) of Police Regulations.

punishment entails dismissal, the effective date will be the date when the officer is notified. The records of punishment must also be published in Force Orders. Where the punishment entails only confinement to barracks, fatigues or other duties or punishment drill, then it is not required to be published.<sup>28</sup>

### Appeal

The Junior Officer who has been found guilty has a right of appeal against the verdict. He must, however, appeal within seven days<sup>29</sup> of the receipt of the notification of the punishment. The Junior Officer appealing must state clearly in writing, the particulars of the charge and the notification of the punishment and the grounds of his appeal. Upon receipt of the appeal, the delegated officer must forward all the papers, including his comments to a "competent appellate authority". The competent appellate authority has power to increase, confirm, reduce or annul any punishment imposed in respect of the offences. He may do any of the following:

- (a) Deal with the appeal with or without hearing the appellant in person.<sup>30</sup> The modalities for hearing the Officer is not stated in the Regulations, whether a fresh investigation or trial is envisaged, re-hearing, or calling of fresh evidence is not clear, but the fact is that he is sitting as an appellate authority with powers to only review the entire proceedings and the punishment ordered.
- (b) Refer the persons back to the delegated officer who conducted the investigations for further evidence to be taken.<sup>31</sup> This may be strange, because the delegated officer had taken all available

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28 Section 386 of Police Regulations.

29 Section 387 of Police Regulations.

30 Section 391 (2) of Police Regulations.

31 Regulation 392 (a).

evidence at the initial trial and had come up with his verdict. He cannot do better than what he had done and even if fresh evidence were to come up, the proper order would be to allow another person look at the entire proceedings.

- (c) Order that a new investigation be made by another competent delegated officer.<sup>32</sup>

The Regulations do not make provision for the position of the Junior Officer pending the outcome of the appeal. We suggest that the position should be made clear, so that, the appeal will operate as a stay of execution of the punishment. Though the regulation made provision as to the number of days within which the whole summary investigation is to take place there is no limitation as to time of appeal. This ought also to be specified, as the life and career of an Officer is uncertain, and he may be denied some basic rights and therefore his fate should be quickly and speedily determined, this is important where the Junior Officer has been interdicted from duty.

### **Interdiction from Duty**

A Junior Officer may be interdicted from duty under the following circumstances:-

- (a) where it appears that the punishment that may be ordered for an offence against discipline will involve dismissal, or reduction in rank;
- (b) when the nature of the charge against the Junior Officer is such that his continuing to perform his duty may be prejudicial to the public interest;

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32 Regulation 392 (b).

- (c) where it will be prejudicial to the investigation into the charge; or
- (d) where the Junior Officer is facing a criminal charge in a court of law. (see Section 394 of the Regulations)

The period of interdiction will last until the determination of the charges against the Junior Officer. He will then be released from interdiction only when he is acquitted of the charges. We may differentiate between when the Junior Officer is facing a criminal charge in a court of law and when he is facing summary investigation within the Police Force. On the other hand, where he has been charged for a criminal offence before a court of law the interdiction period will lapse immediately after he is acquitted of the charge. Where he is facing the summary investigation, the period of interdiction will lapse if no case is proved against him. If however, he is found guilty and punished without being dismissed from the Police Force, his period of interdiction will lapse upon the punishment being pronounced.

During the period of interdiction, the Officer is entitled to half his salary, but all powers, privileges and immunities vested in a Junior Officer are to be held in abeyance. He is still subject to the same authority and discipline as if he had not been interdicted.<sup>33</sup> However, when all charges against him have been determined, and he is acquitted, his full pay is restored, and the outstanding half pay will also be paid.

### **Judicial Review**

We must here emphasise that the provisions for and the practice, of disciplining all Officers of the Nigeria Police Force is subject to the Constitution of the Federal Republic of Nigeria and all other Laws applicable

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<sup>33</sup> Regulation 392(c).

to discipline of Officers in Nigeria. The rules of natural justice are also inherent and must be observed. Where this is not followed strictly, the Officer is entitled to redress in a court of law. There is nothing in the laws and regulations that preclude an Officer from seeking protection or redress in a court of law. In the case of *William Imade v Inspector General of Police and two others*<sup>34</sup> the appellant herein is a Senior Police Officer, he was charged for corrupt practices and of discreditable conduct. The matter was dealt with in the manner of Police Orderly Room proceedings at the end of the trial, the delegated Officer who conducted the trial found that the appellant was completely innocent of the charges. However recommended that the appellant be reprimanded because he lacked sense of supervision which enabled the Junior Officers he was required to supervise to collect money (unlawfully) from motorists.

The appropriate authority after considering the report and the recommendation dismissed the appellant. Aggrieved by the dismissal from the Nigeria Police Force, the appellant instituted the action. The trial court dismissed the appellant's case he thereafter appealed to the Court of Appeal. The court held inter alia, that where a Police Officer disobeys a Police regulation or directive, he can be dealt with for disciplinary reasons in a Police Orderly Room Proceedings. However, if such disobedience amounts to an allegation of crime, such Officers must in the first instance be tried in a court of law or criminal tribunal before any disciplinary action can be taken against him in any Orderly Room Proceedings.<sup>35</sup>

The Police Orderly Room Proceedings, while appropriate, proper and legitimate, in order to discipline members of the Police Force, it will be inappropriate in cases where there is allegation of crime, in which case the constitutional provisions will be breached if the matter is allowed to proceed

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34 (1993) 1 NWLR (pt 271) 608.

35 Regulation 395.

in the Orderly Room Proceedings. Section 33(4) of the Constitution guaranteed the right of any person charged with a criminal offence to be tried by a court or other tribunal established in the manner prescribed by the Constitution. In effect, the Officer who is alleged to have committed a criminal offence cannot be charged before the Orderly Room Proceedings, and where this is done the entire proceedings is null and void and of no effect.<sup>36</sup>

In another case, the Court of Appeal in the case of *Michael Agha v I.G.P and two others*,<sup>37</sup> the appellant was a Corporal in the Nigeria Police Force, he was charged before an Orderly Room Proceedings for improper dressing. He was not served any memorandum of charges. He was intermittently subjected to intimidation and threats by the delegated officer; he was not allowed to cross-examine witnesses called to prove the charge. He was thereafter found guilty and verbally informed that he had been dismissed from the Nigeria Police Force. When he wrote to protest such treatment, he received a letter formally dismissing him from the Police Force. The appellant sued the Inspector-General of Police for wrongful dismissal. The trial court dismissed his case and he appealed to the Court of Appeal. The Court of Appeal used the opportunity to look into the legal effect of the Police Regulations and the Orderly Room Proceedings. The Court agreed that the only procedure to be followed when a Junior Officer is to be tried for offences against discipline is the Orderly Room Proceedings as provided under the Nigeria Police Regulations. The court ruled on the status of the Nigeria Police Regulations as a subsidiary legislation to the Police Act, and it has as much efficacy as the enabling Act when the provisions do not contradict the principal or enabling Act. It follows that the procedure laid down for trials in Police Orderly Room is statutory and must be complied with.

<sup>36</sup> See the judgment of Adio JCA *ibid*.

<sup>37</sup> (1997) 10 NWLR (pt. 524) 317. See also *Denloye v Medical and Dental Practitioners Disciplinary Committee* (1968) 1 All NLR 306, *Federal Civil Service Commission v Laoye* (1989) 2 NWLR (pt 106) 652, *Sokefun v Akinyemi*(1980) 5 S.C. 1

The Police Officer who acts as delegated officer ought to be well trained and knowledgeable in the procedure of the Orderly Room trials. This is important, because the Junior Officer always has a right to challenge the procedure and the abuse of the process. A cardinal issue in the preceding case was the refusal by the delegated Officer to adopt a procedure that guarantees fair hearing. The Court had laid down the test of fair trial in all judicial and quasi-judicial proceedings as follows:-

The defaulter must be allowed:-

- (a) to be present all through the proceedings and hear all the evidence against him;
- (b) to cross-examine or otherwise contradict all the witnesses that testify against him;
- (c) to have read before him all the documents tendered in evidence at the hearing;
- (d) to have disclosed to him the nature of all relevant material evidence including documentary and real evidence prejudicial to the party save in recognized exceptions;
- (e) to know the case he has to meet at the hearing and have adequate opportunity to prepare for his defense, and
- (f) to give evidence by himself, call witnesses if he likes and make oral submission either verbally or through counsel of his choice.<sup>39</sup>

The court held further, that when the Orderly Room Proceedings is not conducted in accordance with the above tests, the trial will fall short of the required standard, and it will be declared unconstitutional and therefore declared null and void.

38 (1997) 10 NWLR (pt 524) 317

39 *Baba v N.C.A.T.C* (1991) 5 NWLR (pt 192) 388 at 443-424, (pt 524) 317, *Agha v I.G.P&ors* (1997) 10 NWLR (pt. 524) 317.



## Chapter Seven

### CODE OF CONDUCT

The Code of Conduct for the Officers and all members of the Nigeria Police Force is spelt out in Section 356-368 of the Police Regulations.<sup>1</sup> The Code of Conduct for the Nigeria Police Force is a very important aspect of the machinery to build and maintain a credible disciplined and effective Police Force for the service to the country and the citizen. It is the only way the general public can trust and cooperate with the Police and also assist them in their constitutional duties. Consistent breach of the code had over the years resulted in down grading and further creating a distance between the Police and the citizens they serve. We think it was to emphasise this point that the Inspector-General<sup>2</sup> of Police also published another Code of Conduct for Officers and men of the Nigeria Police Force<sup>3</sup> all in an attempt to further instill a sense of purpose and direction in the members of the Force.

1. Part XV, Nigeria Police Regulations 1968, made Pursuant to Section 46 of the Police Act, Cap. P19 Laws of the Federation 2004.

2. Mohammed D. Abubakar.

3. Dated September 2012.



This is because the whole process of discipline of the Police is based on the breach of the Code of Conduct provisions of the Regulations. The point is that where the Code of Conduct provisions are properly understood and observed, there will be no need for disciplinary actions, it will also generally raise the standard of behaviour and more importantly acceptance of the Police by the citizens. The importance of the Code of Conduct far outweighs that of the disciplinary actions to be taken against the breach.

### **Failure of Discipline**

Police disciplinary process has failed to bring any change in Police behaviour, in spite of much emphasis on discipline and dismissal of a large number of Police personnel, for misconduct and other offences. The reasons why disciplinary procedure will always fail to bring the much needed change in orientation and behavior in the Police Officers will include the following:-

1. Disciplinary cases are always viewed with mistrusts. Most members of the Police believe that it is biased sectional and full of favoritism. While some others are perpetrating the same vice that others are being tried and punished for, while some senior officers are the backbone for some Junior Officers to collect bribes because they are "settled" others are being tried for the same offence and dismissed. Discipline will not help therefore to eradicate misconduct generally.
2. Another problem with discipline is that its main focus is predominantly punishment and never behavioural change. It may be argued that punishment will deter future misconduct by the officer involved and serve as example to others that such behaviour will not be tolerated. The focus of punishment had never been behavioural change, deterrent option is only accidental. Alternative courses of action that would lead to behavioural change are seldom part of the sanctions imposed on officers who had faced misconduct charges.

3. The disciplinary process does not identify the group of Officers that are prone to misconduct so as to put a policy in place to correct them and bring about behavioural change. We should understand that before the defaulter officer is eventually reported and disciplined, he could have caused much havoc to the Police image and affected many innocent citizens that come in contact with him until they are dismissed from the Police Force, they receive their punishment to go back and continue their misconduct and not be caught again.
4. Senior Police Officers are not given a mandate to train and counsel junior ones, especially those involved in cases of misconduct, rather they swiftly initiate the disciplinary process. The officer may in most cases never really understand what they have done wrong. This is very common in excessive use of force cases rampant in violent neighborhoods.
5. The appeal process often exposes the weakness of the disciplinary structure. This is so because most decisions made at the disciplinary committee level are often overturned on appeal. This has further undermined the entire process of discipline in the Police Force. This is further compounded by the fact that most cases of misconduct that have reached the court have been decided in favour of the defaulting officer, thus setting aside the Orderly Room Proceedings. The effect is to further encourage misconduct, and the purpose of punishment is lost.
6. The process takes interminable time to complete. The regulation prescribes only three months, yet in practice, it takes longer period of time, by the time process grinds to the end, the culprit may have completely lost sight of the main reason why he was being punished in the first place.
7. The disciplinary process and the outcome are never seen as fair to the officers involved. This is due to many reasons, in the first instance; the process is always shrouded in secrecy, the regulation even provides that

no one who is not directly involved or who is not part of the proceedings should be allowed to witness the proceedings.<sup>4</sup> The reason or rationale for the decisions is not disclosed to the officer or other officers who may thereby learn how to behave.

Secondly, there are always variations in the types of punishments meted out for the same offence or misconduct. This is more apparent where different delegated authority sits on the same type of misconduct, different punishments are passed down. There is no specific type of punishment for particular offence, the manner of award is totally discretionary and mostly viewed as disproportionate, uncoordinated and totally faulty. Thirdly, the lapse of time allows the officers to continue his work while the disciplinary process is still being pursued; where in the meantime he had put in all his best and even commended by his superior officer, will not block the delegated officer from punishing the officer. This may be the reason why the regulation provides that the Inspector-General of Police may order any entry of punishment in the record of service of a Junior Officer to be deleted in recognition of a subsequent specific act of good service or bravery<sup>5</sup> the ultimate punishment therefore is viewed by officers as very unfair act.

8. The disciplinary process in some cases is influenced by publicity and public opinion, where there is serious public interest in the outcome of a disciplinary process, the process is always speeded up and the decision always very harsh and well publicized, while others that are not too exposed takes well over three years and decisions never publicized and always less severe in punishment than the publicized ones.

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4 Section 384(5), Police Regulations.

5 Section 389, Police Regulations.

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9. The administration of discipline in the Police Force has taken on the characteristic of a criminal trial in the way the investigation is conducted, the testimony and evidence are taken and the sanctions imposed. There is no sense of correction but punishment of the offender. The environment and the language used are hostile, and no one is left in doubt that the officer will remain a criminal.

#### **Need for a new Code of Conduct <sup>6</sup>**

In view of the above, there is need for a new Code of Conduct for Police Officers, a Code of Conduct not entirely premised on discipline but an education-based behaviour-molding, **Code of Conduct** for its Officers. This will not only instill discipline but also give the Officers a sense of belonging, a full understanding of the rationale, purpose and effect of adopting good behaviour worthy of emulation.

The Code of Conduct is a standard of behaviour expected from the Police Officer, the standard is the minimum acceptable standards and every officer must endeavor to maintain it. Such an education-based behaviour-molding Code has the following advantages:

1. It helps to give the Officer a sense of belonging within the Police family.
2. It instills a sense of pride, comradeship and a full attachment to the Police Force, and this will engender an attitude of self-worth within the organization.

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6 See the following: Paul Chevigny. 1969. *Police Power Police Abuses* in New York, Pantheon Books: New York, Gibbons D.C. 1968. *Society, Crime, and Carrers*, New Jersey:Prentice Hall Inc, Harding, R W. 1972. *Police Disciplinary Procedures in England and Western Australia*. UWA Law Rw 1.

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3. It should not be every misconduct that leads to activating the disciplinary process, but should be seen as a mistake, an infraction based on misunderstanding of the Officers role and duties, and should only entail advise, counseling and education.
4. All disciplinary procedures should be refocused towards obtaining behavioural change rather than punishment. An effective Code of Conduct ought to be structured in such a way that every infraction becomes an opportunity to retrain reeducate and reform the officer involved.
5. The process must give the Officer the opportunity to voluntarily participate in a properly designed remedial plan that will include training, education and lectures specifically to address the misconduct issue, which will include writing of research papers on the code of conduct and best practices for Police Officers in Nigeria, the advantages of good behaviour etc.
6. It will focus on correction and not only punishment. All disciplinary procedure should have the end result as correction and reformation, emphasize training and education throughout the process.
7. It will also encourage more officers to participate in the disciplinary process, so that an indicted officer does not see himself as a victim at the mercy of a few wicked superiors bent on destroying him and his career. Opinions of other officers who can advise their friends openly, correct and encourage him may be of help in molding his behavior than only pronouncing punishment.
8. Lastly, an open discussion on the Code should be encouraged, public lectures, seminars, and other means should be organized on the code of conduct and the standards expected from the officers. When this is applied it will have a profound effect in molding the behaviour of officers and it can be expected that such a new code of conduct will encourage them to perform optimally for the benefit of the Police Force and the general public that they serve.

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## **CODE OF CONDUCT FOR OFFICERS AND MEN OF THE NIGERIA POLICE FORCE**

**CODE OF CONDUCT  
FOR OFFICERS AND MEN OF  
THE NIGERIA POLICE FORCE**

as published by

**MOHAMMED D. ABUBAKAR, CFR, FCE, FCPA, FCAL, NPM, mni**  
**INSPECTOR GENERAL OF POLICE**

SEPTEMBER 2012

**VISION AND MISSION OF THE NIGERIA POLICE FORCE  
UNDER THE ADMINISTRATION OF MOHAMMED D.  
ABUBAKAR; CFR; FCE, FCPA, FCAL, NPM, mni**  
**INSPECTOR-GENERAL OF POLICE**

He that will not apply new remedies must expect new evils; for time is the greatest innovator” Francis Bacon (1561-1626) Essays (1625)

**VISION:**

To make Nigeria safer and more secured for economic development and growth; to create a safe and secured environment for everyone living in Nigeria.

**MISSION:**

1. partner with other relevant security Agencies and the public in gathering, collating and sharing of information and intelligence with the intension of ensuring the safety and security of the country
2. To participate in efforts to address the root causes of crime while ensuring that any criminal act is investigated so as to bring the criminals to justice in a fair and professional manner

**VALUES:**

Working together with people, irrespective of religious, political and social affiliations to:-

- a: Deliver quality Police service that is accessible to the generality of the people;
  - b: Build a lasting trust in the Police by members of the public;
  - c: Protect and uphold the rights of persons, to be impartial and respectful in the performance of Police duties;
  - d: Continuously evaluate and improve Police services;
-



- e: Provide equal opportunities for career development for all members of the Force;
- f: Co-operate with all relevant Government Agencies and other stakeholders;
- g: Liaise with the Ministry of Police Affairs and the Police Service Commission to formulate and implement policies for the effective policing of Nigeria.

### **CODE OF CONDUCT AND PROFESSIONAL STANDARDS FOR POLICE OFFICERS:**

To achieve the Mission and Vision as well as imbibe the values illustrated above, it is expedient to formulate a Code of Conduct for all Police Officers employed into the service of the Nigeria Police Force. The Code will be regarded as an accountability manual that will apply to all Officers (irrespective of rank) and will reflect International Conventions for Law Enforcement Agents, the provisions of sections 353-368 of Part XV of the Police Act (cap 359) and other relevant Force Orders as well as Public Service Rules.

The purpose of having a Code of Conduct is to provide all members of the Nigeria Police Force with a set of guiding principles and standards of behavior while on or off-duty. It is intended to be used by Police Officer in determining what is right and proper in all their actions. The Code shall set out an outline which every member of the Force can easily understand. It will enable Policemen to know what type of conduct by a Police Officer is right and what is wrong. The Code will encompass the following:-

- \* **Primary Responsibilities of a Police Officer** - A Police Officer acts as an official representative of Government who is required and trusted to work within the law. The Officer's powers and duties are conferred by statute. The fundamental duties of a Police Officer include serving the community, safeguarding lives and property, protecting the innocent, keeping the peace and ensuring the rights of all to liberty, equity and justice.
- \* **Performance of duties as a Police Officer**- A Police Officer shall perform all duties impartially, without favour of affection or ill will and without regard to status, sex, race, religion, political belief or aspiration. All citizens will be treated equally with courtesy, consideration and dignity. Officers will never allow personal feelings, animosities or friendships to influence official' conduct. Laws will be enforced appropriately and courteously and in carrying out their responsibilities Officers will strive to obtain maximum co-operation from the public. They will conduct themselves both in appearance and composure, in such a manner as to inspire confidence and respect for the position of public trust they hold.
- \* **Discretion** - A Police Officer will use responsibly, the discretion vested in his position and exercise it within the law.
- \* **Use of Force** - A Police Officer will never employ unnecessary force or violence and will use only such force in discharge of duty, as is reasonable in all circumstances. The use of force should be used only after discussion, negotiation and persuasion having been found to be inappropriate or ineffective. While the use of force is occasionally unavoidable, every Police Officer will refrain from unnecessary infliction of pain or suffering and will never engage in cruel, degrading or inhuman treatment of any person

- \* **Confidentiality** - Whatever a Police Officer sees, hears or learns which is of a confidential nature, will be kept secret unless the performance of duty or legal provision requires otherwise. Members of the public have a right to security and privacy, and information obtained about them must not be improperly divulged.
- \* **Integrity** - A Police Officer will not engage in acts of corruption or bribery, nor will an Officer condone such acts by other Police Officers. The public demands that the integrity of Police Officers be above reproach. Police Officers must therefore, avoid any conduct that might compromise integrity and that undercut the confidence reposed by the public, in the Police. Officers will refuse to accept any gifts, presents, subscriptions, favours, gratuities or promises that could be interpreted as seeking to cause the Officer to refrain from performing official responsibilities honestly and within the law. Police Officers must not receive private or special advantage from their official status. Respect from the public cannot be bought; it can only be earned and cultivated.
- \* **Cooperation with other Police Officers and Agencies**  
Police Officers will co-operate with all legally authorized Agencies and their representatives in the pursuit of justice. An Officer or Agency may be one among many organizations that may provide law enforcement services to a jurisdiction. It is imperative that a Police Officer assists colleagues fully and completely with respect and consideration at all times.
- \* **Personal Professional Capabilities** - Police Officers will be responsible for their own standard of professional performance and will take every reasonable opportunity to enhance and improve their level of knowledge and competence. Through study and experience, a Police Officer can' acquire the high level of knowledge and competence that is essential

for the efficient and effective performance of duty. The acquisition of knowledge is a never ending process of personal and professional development that should be pursued constantly. Academic pursuits must however be processed through approved channels in the Force.

- \* **Private life** - Police Officers will behave in a manner that does not bring discredit to the Force or themselves. A Police Officer's character and conduct while off duty must always be exemplary, thus maintaining a position of respect in the community which he or she lives and serves. The Officer's personal behavior must be beyond reproach.

## **OFFICER REQUIREMENTS UNDER THE CODE**

### **PRINCIPLE ONE**

Police Officers shall conduct themselves, whether on or off duty, in accordance with the Constitution of the Federal Republic of Nigeria and all applicable laws, ordinances and rules enacted or established pursuant to legal authority.

#### **Rules**

- \* Police Officers shall not knowingly exceed their authority in the enforcement of the law;
- \* Police Officers shall not knowingly disobey the law or rules of criminal procedure in such areas as interrogation, arrest, detention, searches, seizures, use of informants and preservation of evidence;
- \* Police Officers shall not knowingly restrict the freedom of individuals, whether by arrest or detention, in violation of the Constitution and laws of the Federal Republic of Nigeria;

- \* Police Officers, whether on or off duty, shall not knowingly commit any criminal offense under any laws of the Federal Republic of Nigeria or any State or local jurisdiction in which the Officer is present, except where permitted in the performance of the duty under proper authority.

### **PRINCIPLE TWO**

- \* Police Officers shall refrain from any conduct in an official capacity that detracts from the public's faith in the integrity of the criminal justice system.

#### **Rules**

- \* Police Officers shall carry out their duties with integrity, fairness and impartiality;
- \* Police Officers shall take no action knowing it will violate the constitutional rights of any person;
- \* Police Officers must obey lawful orders, but must refuse to obey any orders that are manifestly unlawful.

### **PRINCIPLE THREE**

- \* Police Officers shall perform their duties and apply the law impartially and without prejudice or discrimination.

#### **Rules**

- \* Police Officers shall provide every person in our society with professional, effective and efficient law enforcement services;
- \* Police Officers shall not allow their law enforcement decisions to be influenced by race, religion, or any other, sentiment whatsoever.

### **PRINCIPLE FOUR**

- \* Police Officers shall not whether on or off duty, exhibit any conduct which discredit themselves or the Force or otherwise impairs their ability or that of other Officers or the Force to provide law enforcement services to the community.

#### **Rules**

- \* Police Officers shall not consume alcoholic beverages or intoxicating substances while on duty, except as permitted in the performance of official duties, and under no circumstances while on uniform, except as otherwise exclusively permitted by an enabling authority
- \* Police Officers shall not consume alcoholic beverages' to the extent the Officer would be rendered unfit for the Officer's next scheduled shift. A Police Officer shall not report for work with the odour of an alcoholic beverage on the Officer's breath;
- \* Police Officers shall not commit any act which constitutes sexual assault or indecent exposure. Sexual assault does not include a frisk or other search done in accordance with proper Police procedures;
- \* Police Officers shall avoid regular personal associations with persons who are known to engage in criminal activity where such associations will undermine the public trust and confidence in Officer or the Force.

### **PRINCIPLE FIVE**

- \* Police Officers shall treat all members of the public courteously and with respect

**Rules**

- \* Police Officers shall exercise reasonable courtesy in their dealings with the public, fellow officers, superiors and subordinates;
- \* No Police Officer shall ridicule, mock, deride, taunt, belittle, willfully embarrass, humiliate, or sham any person to do anything reasonably calculated to incite a person to violence;
- \* Police Officers shall promptly advise any inquiring citizen of the Department's complaint procedure, and shall follow the established Department policy for processing complaints.

**PRINCIPLE SIX**

- \* Police Officers shall not compromise their integrity nor that of the Force, by accepting, giving or soliciting any gratuity which could be reasonably interpreted as capable of influencing their official acts or judgments, or by using their status as Police Officers for personal, commercial, or political gain.

**Rules**

- \* Police Officers shall not use their official position, identification cards (1) for personal or financial gain, for themselves or another person; - (2) for obtaining privileges not otherwise available to them except in the performance of duty and (3) for avoiding consequences of unlawful or prohibited actions;
- \* Police Officers shall not lend to another person their identification cards or badges or permit items to be photographed or reproduced without approval of the Inspector-General of police except as required by Supervising Government Ministries or for recognized public services;

- \* Police Officers shall refuse favours or gratuities which could be reasonably interpreted as capable of influencing official acts or judgments.

**Police Officers shall:**

- a not authorize the use of their names, photographs or titles in a manner that identifies the Officer as an employee of the Force in connection with advertisements for any product, commodity or commercial enterprise;
- b maintain a neutral position with regard to the merits of any labour dispute, political protest, or other public demonstration while acting in an official capacity; nor make endorsements of political candidates, while on duty, or in official uniform, nor in their private capacities, while remaining in the service of the Force.

**PRINCIPLE SEVEN**

Police Officers shall not compromise their integrity nor that of the Force, by talking, or attempting to influence actions when a conflict of interest exists.

**Rules**

- \* Police Officers shall, unless required by law or policy re- frain from becoming involved in official matters, or influencing actions of other Police Officers in official matters, impacting the Officer's immediate family, relatives; or' persons with whom the Officer has or has had a significant personal relationship;
- \* Police Officers shall, unless required by law or policy, refrain from acting or influencing official actions of other police officers in official matters impacting persons with whom the Officer has or has had a private relationship



- \* Police Officers shall not use the authority of their position as Police Officers, or information available to them due to their status as Police Officers, for any purpose of personal gain including, but not limited to initiating, or furthering personal and or intimate of any kind with persons with whom the Officer has had contact while on duty;
- \* Police Officers shall not engage in any off duty employment if the position compromises or would reasonably tend to compromise the Officer ability to impartially perform the Officer's official duties

### **PRINCIPLE EIGHT**

Police Officers shall observe the confidentiality of information available to them due to their status as Police Officers.

#### **Rules**

- \* Police Officers shall not knowingly violate any legal restriction for the release' or dissemination of information;
- \* Police Officers shall not, except in the course of official duties or as required by law, publicly disclose information likely to endanger or embarrass victims, witnesses or complainants;
- \* Police Officers shall not divulge the identity of persons giving confidential information except as by law or Force policy.

### **IMPLEMENTATION OF THE CODE**

- \* Effort shall be made to ensure that the principles embodied in this Code are reflected in appropriate legislations guiding in Nigeria Police Force
- \* The code shall be made applicable to all police Officers regardless of their jurisdiction
- \* Necessary measures will be emplaced to instruct, in basic training and subsequent training and refresher courses, police Officers of all cadre, on the principles of the Code and the implication of their violation
- \* Principles of the Code will be given the widest possible publicity and translated into the major National languages to enable public participation in the monitoring of police conduct across the country
- \* Effective mechanism shall be established to ensure the internal discipline and external control as well as the supervision of police Officers;
- \* Particular provisions shall be established to ensure the processing of complaints against police Officers, made by members of the public and the result of the outcomes of such procedures will be not considered classified.

The fundamental duty of every police Officer and indeed every law enforcement official is to serve mankind; to safeguard lives and property; to protect the innocent against oppression or intimidation, and the peaceful against violence or disorder and to respect the constitutional rights of all men to liberty; equity and justice.

*NOTE: A Police Officer must be of professional conduct and abide by all laws that are binding on citizens of Federal Republic of Nigeria.*

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The Nigeria Police Officer, in the performance of his duty will keep his private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn or ridicule develop self restraint and be constantly mindful of the welfare of others. Honest in thought and deed both in his personal and official life and exemplary in obeying the law of the land, regulations of the Force and the Code of Conduct and professional standards as illustrated herein.

OFFICE OF THE INSPECTOR-GENERAL OF  
POLICE, FORCE HEADQUARTERS,  
LOUIS EDET HOUSE, ABUJA.

SEPTEMBER 20 12

**In order to prevent the misuse of firearms the important points of FORCE ORDER NO 237**

Are hereby restated for your guidance

**A POLICE OFFICER MAY USE FIREARMS**

- a When 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 that person attacked from death;
- c When necessary to disperse rioters or to prevent them from committing serious offences against life and property
- d If he cannot by any means arrest a person who, being in lawful custody escapes and takes to flight in order to avoid re-arrest; provided the offence with which he is charged, or has convicted of, is a felony or misdemeanor;
- e If he cannot by any means arrest a person who takes to flight in order to avoid arrest; provided the offence is such that the accused may be punished with death or Imprisonment for 7 years or more.

Remember, the main objective is to shoot to maim or disable and not to kill.

**You may be call upon to justify your action.**

**NOTE: A Police Officer must be of professional conduct and abide by all laws that are binding on citizens of Federal Republic of Nigeria.**

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## Police Act and Regulations

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NOTE: A Police Officer must be of professional conduct and abide by all laws that are binding on citizens of Federal Republic of Nigeria.

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## POLICE ACT

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## CHAPTER P19

## POLICE ACT

*An Act to make provision for the organization, discipline, powers and duties of the police, the special constabulary and the traffic wardens.*

[1967 No. 41.]

[1st April, 1943]

[Commencement]

## PART I

*Short title and interpretation*1. **Short title**

This Act may be cited as the Police Act.

2. **Interpretation**

In this Act, unless the context otherwise requires —

[1979 No. 23.]

“**Commissioner**” means a Commissioner of Police, a Deputy Commissioner of Police or an Assistant Commissioner of Police;

“**constable**” means any police officer below the rank of corporal;

“**court**” means any court established by any law in force in Nigeria;

“**the Force**” means the Nigeria Police Force established under this Act;

**“inspector”** includes a chief inspector and an inspector of police;

**“Inspector-General”**, **“Deputy Inspector-General”** and **“Assistant Inspector-General”** means respectively the Inspector-General of Police, the Deputy Inspector-General of Police and an Assistant Inspector-General of Police;

**“non-commissioned officer”** means a police sergeant-major, a police sergeant or a police corporal as the case may be;

**“police officer”** means any member of the Force;

**“superintendent of police”** includes a chief superintendent of police, a superintendent of police, a deputy superintendent of police, and an assistant superintendent of police;

**“superior police officer”** means any police officer above the rank of a cadet assistant superintendent of police;

**“supernumerary officer”** means a police officer appointed under section 18, 19 or 21 of this Act or under an authorization given under section 20 of this Act.

## PART II

### *Constitution and employment of the Force*

#### 3. **Establishment of Police Force.**

There shall be established for Nigeria a police force to be known as the Nigeria Police Force (in this Act referred to as **“the Force”**).

#### 4. **General duties of the police**

The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act.

[1979 No. 23.]

## 5. Constitution of the Force

There shall be an Inspector-General of the Nigeria Police, such number of Deputy Inspectors-General, Assistant Inspectors-General as the Nigeria Police Council considers appropriate, a Commissioner for each State of the Federation and such ranks as may, from time to time, be appointed by the Nigeria Police Council.

[1979 No. 23.]

## 6. Command of the Force.

The Force shall be under the command of the Inspector-General, and contingents of the Force stationed in a State shall, subject to the authority of the Inspector-General, be under the command of the Commissioner of that State.

## 7. Duties of the Deputy Inspector-General of Police

- (1) A Deputy Inspector-General is the second in command of the Force and shall act for the Inspector-General in the Inspector-General's absence from Force Headquarters.
- (2) When acting for the Inspector-General, the Deputy Inspector-General shall be guided by the following -
  - (a) all matters involving any change in Force policy shall be held in abeyance pending the return of the Inspector-General or, if the matter is urgent, referred directly to the Inspector-General for his instructions;

- (b) all matters of importance dealt with by the Deputy Inspector-General during the absence of the Inspector-General shall be referred to the Inspector-General on his return.

#### **8. Duties of an Assistant Inspector-General**

- (1) An Assistant Inspector-General shall be subordinate in rank to the Deputy Inspector-General but shall be senior to all commissioners.
- (2) An assistant Inspector-General shall act for the Inspector-General in the absence of both the Inspector-General and the Deputy Inspector-General and when so acting, the provisions of paragraphs (a) and (b) of subsection (2) of section 7 of this Act shall, with all necessary modifications, apply to him.

#### **9. Establishment of the Nigeria Police Council**

- (1) There is hereby established a body to be known as the Nigeria Police Council (in this Act referred to as "the Council") which shall consist of-
- (a) the President who shall be chairman;
  - (b) the Governor of each State of the Federation;
  - (c) the chairman of the Police Service Commission;
  - (d) the Inspector-General of Police.
- (2) The functions of the Council shall include -
- (a) the organization and administration of the Nigeria Police Force and all other matters relating thereto (not being matters relating to the use and operational control of the Force, or the appointment, disciplinary control and dismissal of members of the Force);
  - (b) the general supervision of the Nigeria Police Force;

(c) advising the President on the appointment of the Inspector-General of Police.

(3) The Permanent Secretary in the Police Affairs Office, in the Presidency, shall be the Secretary to the Council and the Secretariat of the Council shall be in the Police Affairs Office, the Presidency.

[1990 No. 47.]

(4) The President shall be charged with operational control of the Force.

(5) The Inspector-General shall be charged with the command of the Force subject to the directive of the President.

#### 10. Public safety and public order

(1) The President may give to the Inspector-General such directions with respect to the maintaining and securing of public safety and public order as he may consider necessary, and the Inspector-General shall comply with those directions or cause them to be complied with.

(2) Subject to the provisions of subsection (1) of this section, the Commissioner of a State shall comply with the directions of the Governor of the State with respect to the maintaining and securing of public safety and public order within the State, or cause them to be complied with:

Provided that before carrying out any such direction the Commissioner may request that the matter should be referred to the President for his directions.

#### 11. Delegation by Inspector-General

The Inspector-General may, with the consent of the President by writing under his hand, delegate any of his powers under this Act (except this power of delegation) so that the delegated powers may be exercised by the delegate with respect to the matters or class of matters specified or defined in the instrument of delegation.



**12. Command of police in case of active service.**

When required to perform military duties in accordance with the provisions of section 4 of this Act, such duties entailing service with the armed forces of Nigeria or any force for the time being attached thereto or acting therewith, the police shall be under the command and subject to the orders of the officer in command of the forces in Nigeria, but for the purposes of interior economy shall remain under the control of a superior police officer.

**PART III****General administration***Oaths for officers***13. Oaths to be taken by officers on appointment**

On the appointment or promotion of any person as a member of the Force to or above the rank of cadet sub-inspector, the provisions of the Oaths Act shall apply; and such person shall forthwith take and subscribe to the official oath, the police oath and, in proper case, the oath of allegiance.

[Cap. 01.]

*Enlistment and service***14. Enlistment**

Every constable, shall, on appointment, be enlisted to serve in the Force for three years, or for such other period as may be fixed by the Police Service Commission to be reckoned in all cases from the day on which he has been approved for service and taken on to the strength.

**15. Extension of term of enlistment in special cases**

(1) Notwithstanding the provisions of section 14 of this Act, where a constable on or after his appointment opts or is selected for duties other than general duties and engages in those duties, he shall be deemed to have agreed to

extend his period of enlistment by an additional period not exceeding six years, the extent of the additional period to be fixed by the Police Service Commission, and the enlistment of the constable shall have effect accordingly.

- (2) Where any person to whom subsection (1) of this section applies re-engages for service with the Force, this section shall have effect in respect of the re-engagement, and notwithstanding the fact that on or after the re-engagement the person concerned is or may be a non-commissioned officer.

## 16. Declarations

Every non-commissioned officer, constable or recruit constable on enlistment, and every such police officer if re-engaged for a further period of service, shall make and subscribe to the police declaration prescribed by the Oaths Act.

[Cap. 01.]

## 17. Re-engagement

- (1) Any non-commissioned officer or constable of good character may, within six months before completion of his first period of enlistment and with the prescribed approval, re-engage to serve for a further period of six years, and may similarly re-engage for a second period of six years and may thereafter similarly re-engage either to serve until the expiration of a third period of six years or until he reaches the age of 45 years (whichever is earlier).
- (2) Upon completion of such third period of six years, or if he has re-engaged until reaching the age of 45 years then upon reaching such age, the non-commissioned officer or constable may if he so desired and with the prescribed approval continue in the Force in the same manner in all respects as if his term of service were still unexpired, except that he may be discharged or may claim a discharge upon six months' prescribed notice thereof being given to or by him.

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- (3) The prescribed approval referred to in subsections (1) and (2) of this section shall be that of the Police Service Commission or of a superior police to whom the Police Service Commission has duly delegated the power to give such approval, and the prescribed notice referred to in subsection (2) shall be given by or to the Police Service Commission or by or to a superior police officer to whom the Police Service Commission has duly delegated the power of giving or receiving such notice.
  - (4) If a non-commissioned officer or constable offers to re-engage within six months after having received his discharge he will, if his offer of service is accepted, on re-engagement be entitled to the rank which he was holding at the time of his discharge, provided there is a vacancy in the establishment of that rank at the time he re-engages.
  - (5) The service of a non-commissioned officer or constable who has re-engaged under this section shall be deemed to be continuous for the purposes of the pension or annual allowance or gratuities, as the case may be, the non-commissioned officer or constable being regarded as being on leave without pay during the period between discharge and re-engagement.
  - (6) No non-commissioned officer or constable may re-engage after a period of six months has elapsed since his discharge, but a non-commissioned officer or constable may be permitted to re-enlist subsequent to that period if his offer of service is accepted.
  - (7) The question of the reinstatement of a re-enlisted non-commissioned officer or constable to the rank he held prior to his discharge shall be decided by a superior police officer.
  - (8) Any non-commissioned officer or constable whose period of service expires during a state of war, insurrection or hostilities, may be compulsorily retained and his service prolonged for such period, not exceeding twelve months, as the Police Service Commission may direct.
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(9) Subject to the provisions of section 7 (1) of the Pensions Act and to the provisions of subsection (2) of this section, no police officer other than a superior police officer shall be at liberty to resign or withdraw himself from his duties without the approval of the Police Service Commission or any police officer authorised in writing by the Police Service Commission.

[Cap. P4.]

*Supernumerary police officers*

**18. Appointment of supernumerary police officers to protect property**

(1) Any person (including any government department) who desires to avail himself of the services of one or more police officers for the protection of property owned or controlled by him may make application therefore to the Inspector-General, stating the nature and situation of the property in question and giving such other particulars as the Inspector-General may require.

(2) On an application under the foregoing subsection the Inspector-General may, with the approval of the President, direct the appropriate authority to appoint as supernumerary police officers in the Force such number of persons as the Inspector-General thinks requisite for the protection of the property to which the application relates.

(3) Every supernumerary police officer appointed under this section—

(a) shall be appointed in respect of the area of the police province or, where there is no police province, the police district or police division in which the property which he is to protect is situated;

(b) shall be employed exclusively on duties connected with the protection of that property;

(c) shall, in the police area in respect of which he is appointed and in any police area adjacent thereto, but not elsewhere, have the powers, privileges and immunities of a police officer; and

(d) subject to the restrictions imposed by paragraphs (b) and (c) of this subsection and to the provisions of section 22 of this Act, shall be a member of the Force for all purposes and shall accordingly be subject to the provisions of this Act and in particular the provisions thereof relating to discipline.

(4) Where any supernumerary police officer is appointed under this section, the person availing himself of the services of that officer shall pay to the Accountant-General-

(a) on the enlistment of the officer, the full cost of the officer's uniform; and

(b) quarterly in advance, a sum equal to the aggregate of the amount of the officer's pay for the quarter in question and such additional amounts as the Inspector-General may direct to be paid in respect of the maintenance of the officer during that quarter, and any sum payable to the Accountant-General under this subsection which is not duly paid may be recovered in a summary manner before a magistrate on the complaint of any superior police officer:

Provided that this subsection shall not apply in the case of an appointment made on the application of a department of the Government of the Federation.

(5) Where the person availing himself of the services of any supernumerary police officer appointed under this section desires the services of that officer to be discontinued, he must give not less than two months' notice in writing to that effect, in the case of an officer appointed in respect of a police area within that part of Lagos State formerly known as the Federal territory, to the Inspector-General or, in the case of an officer appointed in respect of a police area within a State, to the Commissioner of Police of that State; and on the expiration of such notice the services of the supernumerary police officer in question shall be withdrawn.

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- (6) Where the services of a supernumerary police officer are withdrawn in pursuance of subsection (5) of this section in the course of a quarter for which the sum mentioned in subsection (4) (b) of this section has been paid to the Accountant-General, the Accountant-General shall pay to the person by whom that sum was paid a sum which bears to that sum the same proportion as the unexpired portion of that quarter bears to the whole of that quarter.
- (7) In this section, “the Accountant-General” means the Accountant-General of the Federation: “government department” means any department of the Government of the Federation or of the Government of a State; and “quarter” means any period of three months; and any reference in this section to the person availing himself of the service of a supernumerary police officer appointed under this section is a reference to the person on whose application the officer was appointed or, if that person has been succeeded by some other person as the person owing or controlling the property for the protection of which the officer in question has appointed, that other person.

**19. Appointment of supernumerary police officers for employment on administrative duties on police premises**

- (1) The appropriate authority may, at the request of any superior police officer, appoint any person as a supernumerary police officer in the Force with a view to that person's employment on duties connected with the administration or maintenance of premises occupied or used for the purposes of the Force, but shall not do so in any particular case unless satisfied that it is necessary in the interests of security or discipline that persons performing the duties in question should be subject to the provisions of this Act relating to discipline.
- (2) Every supernumerary police officer appointed under this section-
- (a) shall be appointed in respect of the area of the police area command or where there is no police area command, the police division in which the premises in connection with whose administration or maintenance he is to be employed are situated;
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- (b) shall be employed exclusively on duties connected with the administration or maintenance of those premises;
- (c) shall, in the police area in respect of which he is appointed, but not elsewhere, have the powers, privileges and immunities of a police officer; and
- (d) subject to the restrictions imposed by paragraphs (b) and (c) of this subsection and to the provisions of section 22 of this Act, shall be a member of the force for all purposes and shall accordingly be subject to the provisions of this Act and in particular the provisions thereof relating to discipline.

**20. Appointment of supernumerary police officers where necessary in the public interest**

- (1) If at any time the President is satisfied, as regards any police area, that it is necessary in the public interest for supernumerary police officers to be employed in that area, he may authorize the appropriate authority to appoint persons as supernumerary police officers in the Force under and in accordance with the authorization.
- (2) Every authorization under this section shall be in writing and shall specify the police area to which it relates and the maximum number of supernumerary police officers who may be appointed under that authorization.
- (3) Every supernumerary police officer appointed under an authorization given under this section -
  - (a) shall be appointed in respect of the police area to which the authorization relates;
  - (b) shall, in the police area in respect of which he is appointed and in any police area adjacent thereto, but not elsewhere, have the powers, privileges and immunities of a police officer; and

- (c) subject to the restriction imposed by paragraph (b) of this subsection and to the provisions of section 22 of this Act, shall be a member of the Force for all purposes and shall accordingly be subject to the provisions of this Act and in particular to the provisions thereof relating to discipline.

## **21. Appointment of supernumerary police officers for attachment as orderlies**

- (1) The appropriate authority may at the request of the Inspector-General or of the Commissioner of Police of a State appoint any person as a supernumerary police officer in the Force with a view to that person's attachment as an orderly to-
- (a) a Minister; or
  - (b) a Commissioner of the Government of a State; or
  - (c) a police officer of or above the rank of assistant commissioner.
- (2) Every supernumerary police officer appointed under this section-
- (a) shall be employed exclusively on duties connected with the activities of the person to whom he is attached;
  - (b) shall, while so employed, have throughout Nigeria the powers, privileges and immunities of a police officer; and
  - (c) subject to the restriction imposed by paragraph (a) of this subsection and to the provisions of section 22 of this Act, shall be a member of the Force for all purposes and shall accordingly be subject to the provisions of this Act and in particular the provisions thereof relating to discipline.

## **22. Provisions supplementary to sections 18 to 21**

- (1) Every supernumerary police officer shall, on appointment, be enlisted to serve in the Force from month to month, and accordingly a supernumerary police officer may at any time resign his appointment by giving one month's



notice in that behalf to the superior police officer in charge of the police area in respect of which he is appointed, and his appointment may be determined by the appropriate authority on one month's notice in that behalf or on payment of one month's pay instead of such notice.

- (2) The ranks to which supernumerary police officers may be appointed shall be prescribed by regulations made by the President under section 46 of this Act on the recommendation of the Police Service Commission.
- (3) A supernumerary police officer shall have no claim on the Police Reward Fund; and, without prejudice to any liability under the Workmen's Compensation Act, to pay compensation to or in respect of any person by virtue of his employment as a supernumerary police officer, a person's service as such as officer shall not render him or any other person eligible for any pension, gratuity or annual allowance under this Act or the Pensions Act.

[Cap. W6. Cap. P4.]

- (4) In sections 18 to 21 of this Act and this section -

**“the appropriate authority”**, in relation to any power to appoint or determine the appointment of supernumerary police officers, means the Police Service Commission or any superior police officer to whom that power has been delegated in accordance with section 216 (1) of the Constitution of the Federal Republic of Nigeria 1999;

[Cap. C23.]

**“police area”** means any police Area Command, police district or police division;

**“Area Command”, “police district” and “police division”** means respectively an Area Command, police district or police division established under the provisions of standing orders made under section 47 of this Act.

#### PART IV

#### Powers of police officers

#### 23. Conduct of prosecutions

Subject to the provisions of sections 174 and 211 of the Constitution of the Federal Republic of Nigeria 1999 (which relate to the power of the Attorney-General of the Federation and of a State to institute and undertake, take over 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.

[Cap. C 23.]

#### 24. Power to arrest without warrant

(1) In addition to the powers of arrest without warrant conferred upon a police officer by section 10 of the Criminal Procedure Act, it shall be lawful for any police officer and any person whom he may call to his assistance, to arrest without warrant in the following cases -

[Cap. C41.]

- (a) any person whom he finds committing any felony, misdemeanour or simple offence, or whom he reasonably suspects of having committed or of being about to commit any felony, misdemeanour or breach of the peace;
- (b) any person whom any other person charges with having committed a felony or misdemeanour;

- 
- (c) any person whom any other person –
- (i) suspects of having committed a felony or misdemeanour; or
  - (ii) charges with having committed a simple offence, if such other person is willing to accompany the police officer to the police station and to enter into a recognizance to prosecute such charge.
- (2) The provisions of this section shall not apply to any offence with respect to which it is provided that any offender may not be arrested without warrant.
- (3) For the purposes of this section the expression felony, misdemeanour and simple offence shall have the same meaning as they have in the Criminal Code.

**25. Power to arrest without having warrant in possession**

Any warrant lawfully issued by a court for apprehending any person charged with any offence may be executed by any police officer at any time notwithstanding that the warrant is not in his possession at that time, but the warrant shall, on the demand of the person apprehended, be shown to him as soon as practicable after his arrest.

**26. Summonses**

Any summons lawfully issued by a court may be served by any police officer at any time during the hours of daylight.

**27. Bail of person arrested without warrant**

When a person is arrested without a warrant, he shall be taken before a magistrate who has jurisdiction with respect to the offence with which he is charged or is empowered to deal with him under section 484 of the Criminal Procedure Act as soon as practicable after he is taken into custody:

[Cap. C41.]

Provided that any police officer for the time being in charge of a police station may inquire into the case and –

- (a) except when the case appears to such officer to be of a serious nature, may release such person upon his entering into a recognizance, with or without sureties, for a reasonable amount to appear before a magistrate at the day, time and place mentioned in the recognizance; or
- (b) if it appears to such officer that such inquiry cannot be completed forthwith, may release such person on his entering into a recognizance, with or without sureties for a reasonable amount, to appear at such police station and at such times as are named in the recognizance, unless he previously receives notice in writing from the superior police officer in charge of that police station that his attendance is not required, and any such bond may be enforced as if it were a recognizance conditional for the appearance of the said person before a magistrate.

## 28. Power to search

- (1) A superior police officer may by authority under his hand authorize any police officer to enter any house, shop, warehouse, or other premises in search of stolen property, and search therein and seized and secure any property he may believe to have been stolen, in the same manner as he would be authorised to do if he had a search warrant, and the property seized, if any, corresponded to the property described in such search warrant.
- (2) In every case in which any property is seized in pursuance of this section, the person on whose premises it was at the time of seizure or the person from whom it was taken if other than the person on whose premises it

was, may, unless previously charged with receiving the same knowing it to have been stolen, be summoned or arrested and brought before a magistrate to account for his possession of such property, and such magistrate shall make such order respecting the disposal of such property and may award such costs as the justice of the case may require.

- (3) Such authority as aforesaid may only be given when the premises to be searched are, or within the preceding twelve months have been, in the occupation of any person who has been convicted of receiving stolen property or of harbouring thieves, or of any offence involving fraud or dishonesty, and punishable by imprisonment.
- (4) It shall not be necessary on giving such authority to specify any particular property, provided that the officer granting the authority has reason to believe generally that such premises are being made a receptacle for stolen goods.

#### **29. Power to detain and search suspected persons**

A police officer may detain and search any person whom he reasonably suspects of having in his possession or conveying in any manner which he has reason to believe to have been stolen or otherwise unlawfully obtained.

#### **30. Power to take fingerprints**

- (1) It shall be lawful for any police officer to take and record for the purposes of identification the measurements, photographs and fingerprint impressions of all persons who may from time to time be in lawful custody:

Provided that if such measurements, photographs and fingerprint impressions are taken of a person who has not previously been convicted of any criminal offence, and such person is discharged or acquitted by a court, all records relating to such measurements, photographs and fingerprint impressions shall be forthwith be destroyed or handed over to such person.

- (2) Any person who shall refuse to submit to the taking and recording of his measurements, photographs or fingerprint impressions shall be taken before a magistrate who, on being satisfied that such person is in lawful custody, shall make such order as he thinks fit authorizing a police officer to take the measurements, photograph and fingerprint impressions of such person.

## PART V

### *Property unclaimed, found or otherwise*

#### **31. Court may make orders with respect to property in possession of police**

1. Where any property has come into the possession of the police as unclaimed property or property found or otherwise, a court of summary jurisdiction may, in application either of a member of the police force or by a claimant of the property, either order the delivery of the property to the person appearing to the court to be the owner thereof or, if the owner cannot be ascertained, make such order with respect to the property as to the court may seem meet.
2. Without prejudice to the generality of subsection (1) of this section and subject to the provisions of subsection (2) of this section and of section 32 of this Act, an order made under the said subsection (1) with respect to any property the owner of which cannot be ascertained may direct –
  - (a) in the case of property that has not previously been sold in pursuance of section 32 of this Act, that the property be sold; and
  - (b) in any case, that the proceeds of sale be paid into the Police Reward Fund, after deduction of the cost (if any) of the sale and of any sum which the court may direct to be paid as a reward to any person by whom the property was delivered into the possession of the police.

(3) An order under this section shall not affect the right of any person to take within six months from the date of the order legal proceedings against any person in possession of the property delivered by virtue of the order for the recovery of the property, but on the expiration of those six months the right shall cease.

**32. Perishable articles:**

Where the property is a perishable article or its custody involves unreasonable expense or inconvenience it may be sold at any time, but the proceeds of sale shall not be disposed of until they have remained in the possession of the police for six months; and in any other case the property shall not be sold until it has remained in the possession of the police for six months.

**PART VI**

*Miscellaneous provisions*

**33. The Police Reward Fund**

- (1) There shall be established a fund to be called "**the Police Reward Fund**" (in this section referred to as "**the Fund**") into which shall be paid the following -
- all pay forfeited by order of a superior officer on members of the Force for offences against discipline;
  - all fines levied for assaults on members of the Force;
  - one third of any fees paid by members of the public in respect of extracts from reports of accidents made by the police;
  - one third of any fees paid in accordance with standing orders for the services of police officers who would otherwise be off duty;

(e) all sums ordered to be paid into the Fund under section 31 (2).

(2) Subject to the rules for the time being in force under section 23 of the Finance (Control and Management) Act with respect to disbursements from the Fund, the Fund shall be applied at the discretion of the Inspector-General for any of the following purposes, that is to say -

[Cap. F26.)

- (a) to reward members of the Force for extra or special services;
- (b) for procuring comforts, conveniences or advantages for members of the Force which are not authorised to be paid for out of moneys provided by the Federal Government;
- (c) for payment of ex gratia compassionate gratuities to widows or children of deceased members of the Force;
- (d) for making ex gratia payments towards the funeral expenses of any member of the Force who dies in the service of the Force.

**34. Crying down credit**

A superior police officer shall, upon first arrival at any place where police are to be stationed, cause public proclamation to be made that if the inhabitants suffer constables to contract debts, such debts are not removable from their due or accruing pay and will not be discharged by the officers.

**35. Pay of constables not to be withheld for debt: exception**

The pay of any constable shall not be withheld upon any civil process except in respect of any debt or liability which he may have incurred within three years next before being appointed to the Force, and for



such debt or liability when constituted by decree his pay may be withheld to an extent not exceeding one half of any monthly payment thereof; and when an order for payment of such debt or satisfaction of such liability is made, the court making the order shall give due notice thereof to the superior police officer in charge of the detachment to which the judgment debtor belongs, and thereupon the amount ordered shall be stopped out of the judgment debtor's pay until the amount of the decree is made good:

Provided that no amount shall be withheld on an order made by a native tribunal.

### **36. Police officers not to engage in any private business**

No member of the Force shall, while he holds such appointment, engage in any private business or trade, without the written consent of the Nigeria Police Council or any person to whom such power is delegated.

## **PART VII**

### *Offences*

### **37. Offences**

- (1) Any police officer other than a superior police officer who
  - (a) begins, raises, abets, countenances, or excites mutiny;
  - (b) causes or joins in any sedition or disturbance whatsoever;
  - (c) being at any assemblage tending to riot, does not use his utmost endeavour to suppress such assemblage;
  - (d) coming to the knowledge of any mutiny, or intended mutiny or sedition, does not without delay give information thereof to his superior officer;

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- (e) strikes or offers any violence to his superior officer, such officer being in the execution of his duty;
  - (f) deserts or aids or abets the desertion of any constable from the Force; or
  - (g) on enlistment falsely states that he has not been convicted or imprisoned for a criminal offence or that he was never employed by the Government of the Federation or Government of any State shall be liable to imprisonment for two years.
- (2) Any police officer may be proceeded against for desertion without reference to the time during which he may have been absent, and thereupon may be found guilty, either of desertion or of absence without leave:

Provided that a police officer shall not be convicted as a deserter or of attempting to desert unless the court shall be satisfied that there was an intention on the part of such officer either not to return to the Force, or to escape some particular important service.

### **38. Apprehension of deserters**

Upon reasonable suspicion that any person is a deserter, any constable or other person may apprehend him and forthwith bring him before a court having jurisdiction in the place wherein he was found, which may deal with the suspected deserter or remand him to a court having jurisdiction in the place in which he has deserted.

### **39. Assault on police officer**

Every person who assaults, obstructs or resist any police officer in the execution of his duty, or aids or incites any other person so to assault, obstruct or resist any police officer or any person aiding or assisting such police officer in the execution of his duty, shall be guilty of an offence and, on summary conviction thereof before a magistrate, shall be liable to a penalty of fifty naira or to imprisonment for a term of six months.

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**40. Refusing to aid police officer assaulted**

If any person is called upon to aid and assist a police officer who is, while in the execution of his duty, assaulted or resisted or in danger of being assaulted or resisted, and such person refuses or neglects to aid and assist accordingly, he shall be guilty of an offence and, on summary conviction thereof before a magistrate, shall be liable to a penalty of fifty naira or to imprisonment for a term of six months.

**41. Harboursing constable**

Every person who knowingly harbours or entertains, or, either directly or indirectly, sells or gives any intoxicating liquor to, any constable when on duty, or permits any such constable to abide or remain in his house (except in case of extreme urgency); and any person who, by threats or by offer of money, gift, spirituous liquors, or any other thing, induces or endeavours to induce any constable to commit a breach of his duty as constable or to omit any part of such duty, shall be guilty of an offence and, on summary conviction thereof before a magistrate, shall be liable to a penalty of ten naira or to be imprisoned for a term of one month.

**42. Personation of police officer**

Every person not being a police officer who puts on or assumes either in whole or in part, the dress, name, designation, or description of any police officer or any dress, name or designation, resembling and intended to resemble the dress, name or designation of any police officer, or in any way pretends to be a police officer, for the purpose of obtaining admission into any house or other place, or of doing any act which such person would not by law be entitled to do of his own authority, shall be guilty of an offence and, on summary conviction thereof before a magistrate, shall be liable to a penalty of N200 or to imprisonment for a term of one year.

**43. Obtaining admission into Force by fraud**

- (1) Any person who knowingly uses or attempts to pass off any forged or false certificate, character, letter, or other document for the purpose of obtaining admission into the Force, or who, on applying for enlistment, shall make any false answer to any question which shall be put to him by a police officer, shall be guilty of an offence and, on summary conviction thereof before a magistrate, shall be liable to imprisonment for a term of six months.
- (2) Any police officer may arrest without warrant any person whom he reasonably believes to be guilty of an offence against this section.

**44. Ordinary course of law not to be interfered with**

Nothing in this Act shall be construed to exempt any police officer from being proceeded against by the ordinary course of law when accused of any offence punishable under any other Act or law.

**45. Persons acquitted by court not punishable on some charge under this Act, nor if convicted, except by reduction**

- (1) No person who has been acquitted by a court of any crime or offence shall be tried on the same charge or suffer any punishment on account thereof under this Act.
- (2) If any member of the Force has been convicted by a court of any crime or offence, he shall not be liable to be punished for the same offence under this Act, otherwise than by reduction in rank or grade or by dismissal from the Force.

## PART VIII

### *Regulations and standing orders*

#### **46. Power to make regulations**

The President may make regulations on the recommendation of -

- (a) the Nigeria Police Council with respect to the policy, organization and administration of the Force, including establishments and financial matters, other than pensions within the meaning of the Pensions Act;

[Cap. P4.]

- (b) the Police Service Commission with respect to appointments to offices in the Force, promotion, transfer, dismissal and disciplinary control of officers.

#### **47. Standing orders**

(1) The President may make standing orders for the good order, discipline and welfare of the Force after consultation with -

- (a) the Nigeria Police Council with respect to the policy, organization and administration of the Force, including establishment and financial matters other than pensions within the meaning of the Pensions Act;

[Cap. P4.]

- (b) the Police Service Commission with respect to any matter relating to appointments to offices in the Force, promotion, transfer, dismissal and discipline of members of the Force.

- (2) The Police Service Commission, with the approval of the President, may make such standing orders as they may think fit and proper with respect to any matter relating to the duties and operational control of the Force.
- (3) Such standing orders shall be binding upon all police officers but need not be published in the Federal Gazette.

#### PART IX *Application*

#### 48. Application of Act to persons already serving

All the provisions of this Act shall extend to all persons who at the commencement of this Act shall be serving in a police force established under an Act repealed by this Act as if such persons had been appointed under this Act, and service under any such repealed Act shall, for the purposes of gratuities and pension, be deemed to be service under this Act.

#### PART X *Special constables*

#### 49. The Nigeria Special Constabulary

- (1) There shall continue to be a Nigeria Special Constabulary (in this Act called "the special constabulary").
- (2) The special constabulary shall be, and be deemed always to have been, part of the Nigeria Police Force, and accordingly references in this Act to the police force established under this Act shall, subject to the provisions of this Act, include, and be deemed always to have included, references to the special constabulary.
- (3) The special constabulary shall consist of -
  - (a) special constables appointed in normal circumstances under section 50 of this Act; and

- (b) such emergency special constables as may be appointed from time to time under section 4 of this Act.
- (4) In so far as any enactment (whether passed or made before or after the commencement of this Act) requires police officers to perform military duties or confers power (whether expressly or in general terms) to require police officers to perform such duties, that enactment shall not, in the absence of express provision to the contrary, extend to members of the special constabulary.
- 50. Appointment of special constables in normal circumstances**
- (1) Subject to the provisions of this section, the competent authority may appoint as a special constable any person (whether male or female) who -
- (a) has attained the age of 21 years but has not attained the age of fifty years; and
- (b) is of good character and physically fit; and
- (c) has signified his willingness to serve as a special constable.
- (2) The President shall, from time to time, by notice published in the *Federal Gazette* fix the maximum number of persons who may at any one time hold appointments under this section; and a person shall not be appointed as a special constable under this section if his appointment would cause the number for the time being so fixed to be exceeded.
- (3) Before fixing any number under subsection (2) of this section, the President shall obtain from the Nigeria Police Council a recommendation with respect thereto.
- (4) Subject to subsection (2) of this section, the Inspector-General may from time to time -

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- (a) with the approval of the President fix the maximum number of persons who may at any one time hold appointments under this section in any territory; and
- (b) at his own discretion fix the maximum number of persons appointed under this section who may at any one time hold any particular rank in the special constabulary in any territory.

and may, in either case, fix different numbers with respect to different territories; and it shall be the duty of every competent authority to secure that the numbers fixed under this subsection are not exceeded.

(5) Every special constable appointed under this section -

- (a) shall be appointed to serve as a special constable for one year or such longer period as may be agreed between him and the authority by whom he is appointed, and shall on appointment sign an engagement in the prescribed form to serve as a special constable for that period;
- (b) shall be appointed in respect of the police Area Command or, where there is no police Area Command, the police division in which he resides or is employed;
- (c) shall within the territory in which the police area in respect of which he is appointed is situated, but not elsewhere, have the powers, privileges and immunities of a police officer; and
- (d) subject to the provisions of this Act, shall be a member of the Nigeria Police Force for all purposes:
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Provided that a special constable appointed in respect of a police area within the Federal Capital Territory, Abuja shall have the powers, privileges and immunities of a police officer not only within the Federal Capital Territory, Abuja but also within any police area adjacent to the Federal Capital Territory, Abuja.

- (6) A special constable appointed under this section shall have such rank as may be assigned to him by the competent authority; and where the rank of assistant superintendent or any high rank is assigned to a special constable under this subsection, the assigning authority shall cause notice thereof to be published in the *Federal Gazette*.
- (7) A special constable appointed under this section may within three months before the end of his first or any subsequent period of engagement, and with the permission of the competent authority, re-engage to serve for a further period of one year or such longer period as may be agreed between him and that authority and, if he does so, his appointment under this section shall be deemed to have been extended accordingly; and without prejudice to the right of the competent authority to refuse permission in any case, a person shall not be permitted to re-engage under this subsection unless he would, if not already a special constable, be qualified for appointment as such under subsection (1) above.
- (8) Every special constable appointed under this section shall, on appointment, be issued with a certificate of appointment in the prescribed form, and on the determination of his appointment (whether by the passage of time or under section 51 of this Act) shall be issued with a certificate of discharge in the prescribed form.
- (9) In relation to constables appointed under this section -

- (a) section 16 hereof (which relates to the making of a declaration on enlistment or re-engagement) shall have effect as if for the reference to enlistment there were substituted a reference to appointment; and
- (b) section 17 of this Act (which relates to re engagement) shall not apply

**51. Resignation, suspension and dismissal of constables appointed under section 50**

- (1) A special constable appointed under section 50 of this Act may at any time give to the superior police officer in charge of the police area in respect of which he is appointed notice in writing to the effect that he desires to resign his appointment on a date (not being less than fourteen days later than the date on which the notice is given) mentioned in the notice.
- (2) On receipt of a notice under the foregoing subsection the superior police officer in question shall refer it to the competent authority; and if, but only if, the competent authority consents to the notice having effect, the appointment of the special constable by whom the notice was given shall determine on the date mentioned in the notice or the date on which he is notified that the competent authority has given his consent under this subsection, whichever is the later.
- (3) The competent authority may at any time, for reasons appearing to him to be sufficient, by notice in writing forthwith suspend or determine the appointment of any special constable appointed under section 50 of this Act and may, if he thinks fit, do so without informing the special constable of the reasons for his action, but shall in every case immediately report his action and the reasons therefore to the Inspector-General.

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- (4) A special constable whose appointment is suspended or determined under subsection (3) of this section otherwise than by the Nigeria Police Council, may appeal against the suspension or determination to the competent authority; and any such appeal shall be heard and determined by the competent authority to whom it is made.
  - (5) Any delegation of the powers of the Nigeria Police Council under subsections (3) and (4) of this section shall be such as to secure that in every case the competent authority having power to hear and determine an appeal under subsection (4) of this section is a police officer of higher rank than the police officer against whose action the appeal is brought.

## **52. Appointment of emergency special constables**

- (1) If at any time the Commissioner of Police for a State is satisfied, as regards any police area in that State, that an unlawful assembly or riot or breach of the peace has taken place or may reasonably be expected to take place in that area, or that by reason of other special circumstances it is necessary in the public interest for emergency special constables to be appointed in respect of that area, he may authorize the superior police officer in charge of that area or any chief superintendent of police to appoint persons resident or employed in that area (whether male or female) as emergency special constables.
  - (2) An authorization under this section need not be in writing, but must specify the maximum number of emergency special constables who may be appointed under that authorization.
  - (3) Where a superior police officer proposes to appoint any person as an emergency special constable under an authorization given under this section, he shall cause to be served on that person a notice in the prescribed form requiring him to present himself at a time and place specified in the notice for appointment as an emergency special constable.
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- (4) Every person on whom a notice is served under subsection (3) of this section shall present himself at the time and place specified in the notice and shall there, on being required to do so by the superior police officer proposing to appoint him, make and sign a promise in the prescribed form to serve as an emergency special constable until such time as his appointment is determined under this section; and immediately after he has made and signed that promise, the superior police officer shall hand to him a document in the prescribed form appointing him as an emergency special constable in respect of the police area to which the authorization under which he is being appointed relates.
- (5) Every emergency special constable appointed under this section-
- (a) shall, in the police area in respect of which he is appointed, but not elsewhere, have the powers, privileges and immunities of a police officer; and
  - (b) subject to the provisions of this Act, shall be a member of the Nigeria Police Force for all purposes and shall accordingly be subject to the provisions of this Act.
6. The superior police officer in charge of the police area in respect of which an emergency special constable is appointed may at any time, and shall if so directed by the Commissioner of Police for the State in which that police area is situated, by notice in writing forthwith, or with effect from a future date specified in the notice, determine the emergency special constable's appointment; and on the determination of his appointment under this section an emergency special constable shall be issued with a certificate of discharge in the prescribed form.
- (7) Any person without reasonable excuse (proof of which shall lie on him)-
- (a) refuses or fails to comply with the requirements of a notice served on him under subsection (3) of this section; or
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- (b) refuses to make and sign a promise to serve on being required to do so under subsection (4) of this section.

Shall be liable on summary conviction to a fine not exceeding forty naira.

- (8) The foregoing provisions of this section shall apply in relation to the Federal Capital Territory, Abuja as they apply in relation to a State, subject to the modification that, in relation to the Federal Capital Territory, Abuja any reference to the Commissioner of police shall be construed as a reference to the Inspector-General of Police.
- (9) The foregoing provisions of this section shall have effect subject to section 53 (2) and (3) of this Act.

### 53. Provisions Supplementary to Section 52

- (1) The Commissioner of Police for a State or the Inspector-General -
- (a) on giving an authorization under section 52 of this Act, shall forthwith inform the President of his action and of the circumstances which led him to take it, and shall as soon as possible cause notice of the giving of the authorization to be published in the appropriate *Gazette*; and
- (b) as soon as possible after all emergency special constables appointed under that authorization have been discharged, shall cause notice of that fact to be published in the appropriate *Gazette*.

In this subsection "*the appropriate Gazette*", in relation to the Commissioner of Police for a State means the State *Gazette*, and in relation to the Inspector-General means the Federal *Gazette*.

- (2) The President may by order published in the Federal Gazette declare persons of any class or description specified in the order to be exempt from appointment as emergency special constables under section 52 of this Act, and the power to appoint persons as emergency special constables under that section shall not extend to persons of any class or description for the time being so specified.
- (3) Any power to make or determine appointments under or by virtue of section 52 of this Act shall be exercisable only while there is in force the necessary delegation of that power by the Nigeria Police Council.
- (4) Section 16 of this Act (Which requires certain police officers on enlistment to make and subscribe the police declaration prescribed by the Oaths Act) and section 17 of this Act (which relates to re-engagement) shall not apply to emergency constables.

[Cap O1.]

#### **54. Equipment**

- (1) The Inspector-General may provide for use by special constables such batons, clothing and other equipment as he considers necessary for the proper carrying out of their duties.
- (2) Any expenses incurred by the Inspector-General under this section shall be defrayed out of moneys provided by the Federal Government.

#### **55. Instruction of Special Constables**

- (1) Regulations made by virtue of section 46 (a) of this Act with respect to the organization and administration of the Force shall not require special constables to attend for instruction on more than four days in any one month or for periods amounting in the aggregate to more than 24 hours in any one month.

- (2) Any person responsible for giving instruction to special constables under regulations made as aforesaid shall have regard as far as possible to the convenience of special constables who are to attend for instruction and also, where applicable, to that of the employers of such special constables.

**56. Allowances, pensions, etc.**

- (1) Except as expressly provided by this section or by regulations made by virtue of subsection (3) of this section, a person's service as a special constable shall not render him or any other person eligible for any pay, allowance, pension or gratuity under this Act or the Pensions Act.

[Cap. P4]

- (2) A special constable shall have no claim on the Police Reward Fund established under section 33 of this Act and shall not as such be entitled to occupy living accommodation provided at the public expense.
- (3) Regulations made by virtue of section 46(a) of this Act may provide for allowances to be paid to special constables –
- (a) in respect of expenses incurred by them in connection with their attendance at periods of instruction;
  - (b) as compensation for loss of earnings during periods of full-time duty; and
  - (c) in respect of the use by special constables of or of this subsection the rank of inspector of their own vehicles while on full-time duty.

but shall not provide for the payment of any other allowances to special constables; and the amount of any such allowance as is mentioned in paragraph (a) or (b) of this subsection shall be fixed by the regulations, and shall not be calculated by reference to the actual expenses or loss of earnings of the person to whom it is payable.

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- (4) Without prejudice to the generality of the said section 46 of this Act, regulations thereunder may make provision for enabling any such allowance as is mentioned in subsection (3) of this section to be withheld by a superior police officer if, in his opinion, there are good reasons for withholding it.
- (5) Subject to subsection (7) of this section, section 6 of the Pensions Act (which contains corresponding provisions applicable to police officers above the rank of constable) shall apply to special constables as they apply to regular police officers.
- [Cap. P4]
- (6) Subject to subsection (7) of this section, paragraphs (1) and (2) of regulation 24 of the repealed Pensions Regulations (which make provision for the payment of pensions to officers in respect of permanent injuries received while on duty) shall apply to special constables as they apply to regular police officers, so however that, for the purposes of the application of those paragraphs to special constables, references, to retirement shall be construed as references to retirement from employment other than employment as a special constable.
- (7) If a special constable is killed or sustains injuries at a time when he holds some other office in the public service of the Federation of a State, his duty as a special constable shall, for the purpose of the Pensions Act, be deemed to form part of his duty as the holder of that other office, and subsections (5) and (6) of this section shall not apply in his case.
- (8) Any pension granted by virtue of subsection (5) or (6) of this section shall be subject to the provisions of the Act under which it is granted and shall be liable to cease or be otherwise dealt with accordingly.
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- (9) In this section, “regular police officer” means a police officer who is neither a special constable nor a supernumerary police officer.

## 57. Interpretation

In this Part, except where the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say –

“competent authority”, in relation to any power to appoint special constables, or to approve their re-engagements, or to suspend or determine their appointments, or to assign ranks to or exercise disciplinary control over special constables, or to hear their appeals against suspension or dismissal, means the Nigeria Police Council or any superior police officer or inspector to whom the power in question has by notice published in the Federal Gazette been delegated in accordance with the Constitution of the Federal Republic of Nigeria 1999, and any such notice may, as regards any such power, make different provision with respect to different ranks in the special constabulary.

[Cap. C231.]

“emergency special constable” means an emergency special constable appointed under section 52 of this Act;

“police area” means any police province, police district or police division;

“police Area Command” 46

“police district” and “police division” mean respectively a police Area Command, police district or police division established under the provisions of standing orders made under section 47 of this Act;

“prescribed” means prescribed by regulations made under section 46 of this Act;

“Special constable” includes an emergency special constable;

“territory” means a State or the Federal Capital Territory, Abuja.

#### 58. Repeal and Transitional Provisions

(1) The Special Constables Act 1959 is hereby repealed, and Government Notice No. 1598 (Approval of Maximum Personnel Establishment) dated 30<sup>th</sup> July, 1960 and the Special Constables (Training and Allowance) Regulations 1960, are hereby revoked.

[1959 No. 23. L. N. 116 of 1960]

- (2) Subject to subsections (1) and (4) of this section, anything done under or by virtue of the Special Constables Act shall be deemed to have been done under or by virtue of the corresponding provision of this Act; and anything begun under or by virtue of the said Act of 1959 may be continued under or by virtue of this Act as if begun under or by virtue of this Act.
- (3) Without prejudice to the generality of subsection (2) of this section, any person who immediately before the commencement of this Act held an appointment as a special constable under the Special Constables Act shall be deemed to have been appointed under and in accordance with the corresponding provisions of this Act on the date and for the period on or for which he was actually appointed; and service under that Act shall, for the purposes of any pension for which a special constable is eligible by virtue of this Act, be deemed to be service under this Act.
- (4) Nothing in this Act shall affect any pension which as before the commencement of this Act granted under the Special Constables Act; and the Provisions of that Act shall continue to apply to any pension so granted as if this Act and not been made.

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**PART XI**  
**Traffic warden Service**

**59. Establishment of the Traffic Warden Service**

- (1) There is hereby established a Traffic Warden Service (in this Act referred to as "the warden service").
  - (2) The warden service shall consist of traffic wardens appointed from time to time under this Act.
  - (3) The warden service shall be a part of the Nigeria Police Force, and accordingly references to the police force established under this Act shall, subject to the provisions of this Act, include references to the warden service.
  - (4) Notwithstanding subsection (3) of this section, in so far as any enactment (whether passed or made before or after the commencement of this Act) require police officers to perform military duties, or confers any power on any person (whether expressly or in general terms) to require police officers to perform such duties, that enactment shall not, in the absence of express provision to the contrary, extend to traffic wardens.
  - (5) Traffic wardens shall be employed to discharge functions normally undertaken by the police in connection with the control and regulation of, or the enforcement of the law relating to, road traffic and shall in that connection act under the direction of the police.
  - (6) Without prejudice to the generality of the foregoing subsection, a traffic warden shall be required to deal *inter alia* with the following, that is to say
    - (a) general control and direction of motor traffic on the highway;
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- (b) assisting pedestrians to cross the road; and
- (c) controlling vehicles stopping or parking in unauthorized places.

#### 60. Appointment of traffic wardens

- (1) Notwithstanding anything to the contrary in any enactment, the Inspector-General is hereby vested with the power to appoint, confirm such appointment, promote, transfer, dismiss or exercise any disciplinary control over any traffic warden.
- (2) Subject to the provisions of this Act, a person may be appointed a traffic warden if he –
  - (a) is not less than nineteen nor more than 21 years of age;
  - (b) is in possession of a minimum educational qualification of primary six;
  - (c) is not less than 167.64 centimetres and 162.56 centimetres tall respectively for men and women;
  - (d) in the case of men, has not less than 86.36 centimetres chest measurement when fully expanded;
  - (e) is of good character and is physically fit; and
  - (f) has signified his willingness to serve as a traffic warden.
- (3) The President shall, from time to time, by notice published in the Federal Gazette, fix the maximum number of persons who may at any one time hold appointments under this Act; and a person shall not be appointed as a traffic warden if his appointment would cause the number for the time being so fixed to be exceeded.

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- (4) Before fixing any number under subsection (3) of this section, the President shall obtain from the Nigeria Police Council recommendation with respect thereto.
- (5) The Inspector-General may from time to time-
- (a) with the approval of the President, fix the maximum number of traffic wardens who may at any one time hold appointments in any state;
  - (b) at his own discretion fix the maximum number of traffic wardens who may at any one time hold any particular rank in the warden service in any State; and
  - (c) in either case fix different numbers with respect to different States.
- (6) In relation to traffic wardens appointed under this Act -
- (a) section 16 of this Act (which relates to the making of a declaration for enlistment or re-engagement) shall have effect as if for the reference to enlistment or re-engagement there were substituted respectively a reference to appointment or re-appointment; and
  - (b) the form of the police declaration prescribed by the Oaths Act shall be adapted by the substitution -

[cap. O1.]

- (i) for the words "police officer" where they occur in the fifth line, of the words "a traffic warden"; and.
  - (ii) for the words from "for the preservation of peace" to the end of the declaration, of the words "to discharge all the duties of my office according to law".
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**61. Period of Service**

- (1) Every traffic warden appointed under this Act shall be appointed to serve as a traffic warden for a period of one year; and only in the police province, district or division in which he resides.
- (2) Such a traffic warden may, subject to satisfactory conduct and service, be reappointed for further periods of three years each until the expiration of the tenth year of his appointment in the warden service when he may elect to determine his appointment or elect that his service be allowed to continue until he is 55 years of age.

**62. Powers, etc., of a traffic warden**

A traffic warden appointed under this Act shall, when on duty, in uniform and within the police province, district or division in which he is appointed to serve, but not elsewhere, have the powers, privileges and immunities of a police officer under any law relating to the regulation of road traffic.

**63. Certificate of appointment and of discharge**

Every traffic warden shall, on first appointment, be issued with a certificate of appointment in a form approved by the Inspector-General and on the determination of that or any subsequent appointment (whether by effluxion of time or under section 10 of this Act) shall in like manner be issued with a certificate of discharge.

**64. Ranks of Traffic Wardens**

A traffic warden shall have such rank as may be assigned to him by the Inspector-General within the following grades, that is –

- (a) Traffic Warden Grade III;
- (b) Traffic Warden Grade II;
- (c) Traffic Warden Grade I;
- (d) Senior Traffic Warden.

**65. Resignation**

- (1) A traffic warden appointed under this Act may at any time give to any superior police officer under whom he is serving, notice in writing of his intention to resign his appointment on a date mentioned in the notice (not being less than 28 days later than the date on which the notice is given).
- (2) On receipt by the superior police of the notice referred to in subsection (1) of this section, the superior police officer shall immediately thereafter refer such notice to the commissioner having control over him and the traffic warden, and if the Commissioner consents to the notice having effect, the appointment of the traffic warden shall determine accordingly.

**66. Discipline**

- (1) In so far as the context so admits, but subject to the provisions of this Act, a traffic warden shall be subject to the provisions of the Police Regulations for purposes of discipline.
- (2) In the application to traffic wardens of the Second Schedule to the Police Regulations, references to Constables, Corporals, Sergeants and Inspectors shall include respectively references to Traffic Wardens Grade III, Traffic Wardens Grade II, Traffic Wardens Grade I, and Senior Traffic Wardens.

**67. Provision of equipment**

- (1) The Inspector-General may provide for use by the traffic wardens such equipments as he considers necessary for the proper carrying out of the duties of traffic wardens under this Act.
- (2) Any expenses incurred by the Inspector-General under this section shall be defrayed out of moneys provided by the Federal Government.

**68. Delegation of power by Inspector-General**

- (1) The Inspector-General may delegate any of his powers under this Act to the Commissioner of a State or the Commandant of a police college (except this power of delegation) so that the delegated powers may be exercised by the delegate with respect to the matters or class of matters specified or defined in the instrument of delegation.
- 69. Instruction of traffic warden, etc.**
- (1) Every person appointed into the warden service shall be required to undergo a course of training at the traffic training school of a police college for a period of twelve weeks or such other or further period as the Inspector-General may determine.
- (2) A traffic warden appointed under this Act shall have allocated to him a service number with the letters "TW" and the service numbers of all traffic wardens employed in the Federation shall appear on the register kept for that purpose by the Inspector-General.
- (3) It shall be the duty of every traffic warden to whom a service number has been allocated under subsection (2) of this section, whenever on duty to wear such service number on the shoulder flaps of his uniform.



## ABOUT THE BOOK

- First of its kind in Nigeria
- Provides the most comprehensive, simple, easy to understand and straight forward coverage of those areas of the law and legal proceedings applicable to police officers
- A highly accessible text, which assumes no prior legal knowledge.
- Fully up-to-date, with in-depth analysis of the relevant statutes, regulations, case law and Constitutional provisions applicable to the police.
- Comprehensive analysis of the duties and powers of the police in Nigeria.
- Nigeria Police Law is an indispensable everyday reference book for police officers, and is the only book covering all areas of police law. The book also provides a good source of information for members of the police who wish to refer to a legal text written in an accessible way,
- READERSHIP – All police officers and police trainers and police colleges, Lawyers and Law officers, Security agencies, and officers ,academics, sociologists, law students, and the general public
- This book is written in a clear and direct style, with a unique exploration of basic concepts essentially readable for the general public.

## ABOUT THE AUTHOR

The author is a Senior Lecturer in Law and a Legal Practitioner of many years standing. He has taught and researched into the law on the Police in Nigeria amongst other areas of the law for over twenty years and has written many books and articles in learned journals. He is a former Head of Department Private and Business Law, Faculty of Law, University of Ibadan, Nigeria.

