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Faculty of Law, University of Nigeria, Enugu Campus, Nigeria

Phone: 234 803 4529597

E-mail: nigerianlawjournal@gmail.com

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A CRITICAL REVIEW OF THE REGULATORY FRAMEWORK FOR POLICE ACCOUNTABILITY IN THE NIGERIA'S JUSTICE SYSTEM

By

M. A. Araromi* and S. A. Oke*

Abstract

The Police are recognised all over the world as one of the major instruments of enforcing law and order in society. By this function, the police are often empowered by the law to carry out this responsibility. The Nigeria Police Force (NPF) is constitutionally recognised to carry out the functions of policing in Nigeria. Thus, the police are endowed by the Constitution and other recognised laws with powers of surveillance, arrest, seizure, interrogation, detention, bail and prosecution of offenders, among others. These powers are further expanded by the discretions enjoyed by the police in law enforcement- which include when to arrest, who to arrest, where and whom to search, and how much force to be used in any particular case. In the exercise of these wide powers and discretions, there is a natural tendency that the police personnel may act contrary to the dictates, discretions and beyond the powers conferred by the law. Hence, there are measures put in place to checkmate the excessive or misuse of police powers, authority and discretions. There are basically two categories of police accountability measures or framework for controlling the use of the powers conferred on the police. These may be external to the police organisational framework, or may be internal mechanisms adopted by the police authority itself to regulate its functions, in order to ensure its accountability. It is the purpose of this work to review these two methods of police

* Lecturer, Department of Public and International Law, Faculty of Law, University of Ibadan
* Legal Practitioner

accountability and determine their effectiveness and therefore suggest the way forward.

1. Introduction

The problem of how to make the Police effective and accountable to the community it serves has continued to be of major concern to policing policy makers, the police forces themselves, the community which they serve, scholars and civil society groups in many democratic societies, as well as societies in transition.¹

Central to this concern is the timeworn question of how and who to monitor or oversee police exercise of the enormous, coercive and often intrusive powers and discretion entrusted to them under the law? To this question, there have not been simple answers but continuing debates and dilemmas.²

Three issues stand out in the considerations:

- (a) How do you make the Police more accountable without impeding the legitimate pursuit of their duties? Accountability is not intended to eliminate or undermine the power; but rather, to control it from becoming an instrument of repression and exploitation, and to ensure that power is exercised in a transparent manner, and according to rules.³
- (b) What form or forms of accountability processes and mechanisms do you put in place?
- (c) Do you rely on the police internal controls processes, external ones, or a hybrid?

According to Alemika, discussions of police accountability tend to be dominated by the controversy over whether mechanisms should be internal or external.

Accountability and oversight are not mere tools for condemnation and criticism; but for institutionalised mechanisms

¹ Chukwuma, Innocent: "Preface" in Alemika, E.O., Chukwuma I.C. (Eds), *Police Internal Control in West Africa*, (Lagos, CLEEN FOUNDATION, 2011) 5.

² Ibid.

³ Alemika E.E.O., "Police Accountability in Nigeria: Framework and Limitations" in Alemika E.E.O. and Chukwuma I.C. (Eds.) *Civilian Oversight and Accountability of Police in Nigeria*, (Centre for Law Enforcement Education, and Police Service Commission, Abuja, 2003) 46.

for enforcing answerability to democratic authorities with regard to performance, cost and conduct by the Police. The outcome of accountability and oversight may be commendation or institutional capacity building and strengthening for better performance, or condemnation, leading to restructuring for greater organisational performance and legitimacy. Hopefully, this insight will engender police cooperation with accountability and oversight agencies, and thereby earn legitimacy for their roles, conduct and performance from the Police and the citizens.⁴

The aim of this work is to identify the various mechanisms of police accountability in Nigeria, which are categorised under external and internal mechanism. These mechanisms are carefully analysed to determine how effective they are in making the Police accountable for its actions or inactions in the performance of its duty.

2. External Mechanisms of Accountability: Civilian Oversight of Policing

“Oversight” is defined as “the state of being in charge of somebody or something”.⁵ The concept of oversight denotes overseeing, supervision, or control. The need for oversight arises to prevent the abuse of powers.⁶

Civilian oversight, which is also referred to as ‘external accountability’, involves people from outside the police organisation taking a role in calling the Police to account for their actions, policies and processes. Reviewing the literature on civilian oversight, Joel Miller points out that most civilian oversight of the Police are in three key areas: complaints, misconduct and broader police policy.⁷

Central to the many forms of oversight identified by commentators is the oversight of Police misconduct. The necessity to oversee the affairs of the Police by an authority

⁴ Alemika, E.E.O., “Police Internal Control System in West Africa: An Introduction,” in Alemika E.E.O. and Chukwuma, I.C. (Eds) *Police Internal Control in West Africa*, (Ikeja, CLEEN FOUNDATION, 2011), p.7.

⁵ Hornby, A.S., *Oxford Advanced Learner's dictionary*, 7th Edition, Oxford University Press.

⁶ Igbuzo, Oitive, “Oversight Agencies and Effectiveness of the Police Accountability System in Nigeria: A Critical Reflection”, in *Enhancing Police Accountability in Nigeria*, Monograph series 8 ,(Lagos, CLEEN FOUND, 2010) 56.

⁷ Ibid.

outside the Police organisation is underscored by the desire for fairness, objectivity and accountability. According to Tijani Mohammed, it is against the principle of natural justice for Police to investigate their own misconduct where it is called into question; *nemo debet esse judex in propria causa*.⁸ But the overriding reason is to subordinate the Police to civilian authorities in a democratic setting.⁹

Aligning with the above position, Alston Philip states that, internal police disciplinary mechanisms can be inadequate, not just because they might be poorly structured or under-resourced, but because, by their nature, they are susceptible to bias.¹⁰

Philip notes that as a complement to internal disciplinary mechanisms, 'external oversight can provide an important, independent check on purely internal mechanisms, as an alternative forum to which affected citizens may complain about police abuses, thereby giving individuals access to justice that otherwise would often be unavailable to them. Moreover, an independent and effective complaints system is essential for securing and maintaining public trust and confidence in the Police.'¹¹

According to Igbuzor, it has become a settled matter that civilian oversight is a necessity for effective policing.¹²

2.1 Forms of External Police Accountability Mechanisms

In Nigeria, the Constitution of the Federal Republic of Nigeria establishes two principal organs for the control of the Nigeria Police Force. In essence, the Police are directly accountable to the organs. These are the Nigeria Police Council (NPC) and the Police Service Council (PSC).

⁸ Meaning "no one should be a judge in his own cause"

⁹ Mohammed, Tijani: "The Law as a Safeguard for the Oversight Functions of the Police Service Commission", Paper presented at a Police Retreat entitled *Understanding the Operations of the Police Service Commission in the Context of the Rule of Law* held at the MicCom Golf Hotels and Resorts, Ada, Osun State from 18th-20th August, 2008.

¹⁰ Alston, Philip, "Study on Police Oversight Mechanisms," Vol. No A/HRC/14/24/Add.8, A Report Submitted to the Fourteenth Session of the UN General Assembly, May 2010, p.8.

¹¹ Ibid

¹² Igbuzo, Oative, Op Cit. p. 57

2.1.1 The Nigeria Police Council

The functions of the Council are the organisation and administration of the Police and all such matters, except those relating to the use and operational control of the Force, or the appointment, disciplinary control and dismissal of members of the Force. It also has responsibility for the general supervision of the Police and advising the President on the appointment of the Inspector-General of Police.¹³

In theory, the Nigeria Police Council is an independent Federal executive body. However, the 39 members of the Council are almost entirely political office holders. The Council has the President as Chairman, while the other members are the 36 State governors, the Chairman of the Police Service Commission and the Inspector-General of Police. The danger in the composition must be realised, as it is capable of turning the civil police to a political police – that which is an instrument of the President and Governors, rather than being a public agency pursuing common good. Moreover, the two who are not political office holders owe their appointments to the President. In every sense, therefore, the Nigeria Police Council is a political institution whose actions and decisions will in all likelihood be highly political.¹⁴

The Council, as the highest organ of the state responsible for the policy on organisation and administration of the Police in the Country, could be an important organ of police accountability if it acts proactively by closely monitoring the reports on police by the public, mass media and other civil society organisations; and in that light undertakes annual evaluation of the Police with a view to dealing with structural and organisational factors that engender police abuse of power, and hold the Police accountable for the implementation of policies and programmes that it introduced. But as at present, there appears to be no political will to establish strong mechanisms for accountability at this level.

¹³ Ibid S. 28

¹⁴ Ojo, Edaetan, "The Role of the Media in Ensuring Police Accountability in Nigeria" in *Civilian Oversight and Accountability of Police in Nigeria* (Lagos, CLEEN FOUNDATION and Police Service Commission, 2003) 79.

2.1.2 Ministry of Police Affairs

Some of the responsibilities of the Police Council have been delegated to the Minister of Police Affairs whose Ministry is in charge of national policy on policing.¹⁵ During his tenure, a former Minister for Police Affairs, Mr. Broderick Bozimo, set up an administrative interagency committee called the 'Police Performance Monitoring Unit' (PPMU) with membership drawn from the Ministry of Police Affairs, the Police Service Commission, the Nigeria Police, Organised Labour, Non-Governmental organisations and community based organisations, to respond to citizens' complaints against police abuse of power, as well as commendations for exemplary service in Nigeria. The PPMU, in collaboration with CLEEN Foundation, developed some materials for the Police and National Union of Road Transport Workers (NURTW). The posters read 'This Station does not accept BRIBE, OBEY the LAW!', whilst the stickers read 'OBEY THE LAW don't offer me BRIBE' for the Nigeria Police Force. Stickers that read 'Do not ask me for BRIBE, I don't give' for the National Union of Road Transport Workers.

The Ministry can potentially serve as an institution for holding the Police accountable for allocated public funds, if it is on its own part transparent. However, the bureaucratic structure of the Ministry gives the impression that its responsibilities are limited to sourcing funds for the payment of salaries and pensions for police personnel, and for executing capital projects like building and renovating barracks, purchasing vehicles, etc.

2.1.3 Police Service Commission

The Police Service Commission (PSC), which is the main body involved in the external oversight of the Nigeria Police, is an independent body created by the 1999 Constitution.¹⁶ It is the very embodiment of the concept of civilian oversight for the Nigeria Police Force.

The Commission has a blend of membership, including representatives of the civil society organizations. Its membership consists of a chairman, who is the chief executive of the

¹⁵ Isima, Jeffrey, "Police Internal Control System In Nigeria" in Alemika E.E.O. and Chukwuma, I.C. (Eds) , *Police Internal Control in West Africa*, (Ikeja, CLEEN FOUNDATION, 2011) 41.

¹⁶ Section 153 of the Constitution of the Federal Republic of Nigeria 1999.

Commission; a retired Justice of the Supreme Court or of the Court of Appeal; a retired police officer not below the rank of a Commissioner of Police; and one representative each of women interest, the Nigerian press, non-governmental human rights organisations in Nigeria and the organized private sector. Since there is no stipulation in the Act as to how the representatives of these interest groups are to be selected, the nomination is left to the discretion of the President, although subject to confirmation by the Senate.¹⁷

The functions of the Commission are: to appoint persons to offices (other than the office of the Inspector-General of Police); and dismiss and exercise disciplinary control over persons holding any office other than the office of the Inspector-General of Police.¹⁸

Although the Police Service Commission is apparently more immune from political interests than the Nigeria Police Council, its independence is undermined by the broad discretionary powers given to the President by the Police Service Commission Act which provides that: "A member of the Commission may be removed by the President if he is satisfied that it is not in the interest of the Commission or the interest of the public that the member should continue in office."¹⁹

In addition to this, despite the disclaimer contained in section 6(2) of the Act that "the Commission shall not be subject to the direction, control or supervision of any other authority or person in the performance of its functions other than as is prescribed in this Act", the law goes on to provide that the Commission shall "carry out such other functions as the President may, from time to time, direct."²⁰

It also provides further that: "Subject to the provisions of this Act, the President may give to the Commission directives of a general nature or relating generally to matters of policy with regard to the performance by the Commission of its functions and

¹⁷ Odinkalu, C.A. & Smith, J: "Reforming the Police in Nigeria" in Alemika, E.E.O. and Chukwuma, I.C.: *Civilian Oversight and Accountability of Police in Nigeria*, (Ikeja, CLEEN FOUNDATION, 2003) 89.

¹⁸ Constitution of the Federal Republic of Nigeria, 1999, Third Schedule, Part I, section 30. See also Section 6 of the Police Service Commission (Establishment) Act, No 15.

¹⁹ Section 4(2) Police Service Commission (Establishment) Act, No 15.

²⁰ Ibid Section 6(1)(g).

it shall be the duty of the Commission to comply with the directives.”²¹

Unlike the 1999 Constitution and the Police Act which were made before it assumed office and over which it had no control, the Police Service Commission Act was proposed to the National Assembly by the Obasanjo Administration and enacted into law in 2001 – two years after it came to power. The only conclusion one can reach, therefore, is that by including these provisions in the law, the President intended to have control over the Police Service Commission, despite the intention in the Constitution that it should be an independent Federal Executive body.²²

On a practical level, there is also the question of the willingness of the police authorities to accept, and subject themselves to, the oversight of the Police Service Commission and the ability of the Commission to impose its will on the Force given that it has no powers of its own to implement its decisions and requires the President to take action. Since the Inspector-General of Police, who has command of the Force, takes instructions directly from the President, the Commission may find itself unable to perform its oversight functions effectively.

Under the Constitution, the Police are controlled by the President, and where police abuse occurs in service of the interests of the President, his political party, or his associates, there is no incentive to ensure accountability. The jurisdiction of the Police Service Commission (PSC), which has oversight and disciplinary powers over the police, does not extend to the conduct of the President or the Inspector-General of Police, who exercise supreme operational control over the Nigeria Police Force. Even where the PSC does have jurisdiction, the Police have been notoriously unwilling to cooperate with it.²³ PSC oversight capabilities remain primarily symbolic so long as the President maintains operational control over the Police Force and has the at-will power to appoint and remove the I-GP.²⁴

²¹ Ibid.

²² Ojo, Edaetan, *Op Cit.* pp.80-81.

²³ “Criminal Force Torture, Abuse, and Extrajudicial Killings by the Nigeria Police Force” (NOPRIN and Open Society for Justice Initiative, New York, 2010) 93.

²⁴ Ojo, Edaetan, *Op Cit.* p. 82.

According to the powers granted by the Act, the Police Service Commission is mandated to conduct investigations into cases of misconduct by the Police in order to recommend internal disciplinary action against officers found guilty. The PSC has no authority to refer cases to the prosecutor. In reality, the Commission lacks the political will to conduct investigations into cases of misconduct. All complaints of police misconduct, including serious human rights abuse, are currently referred to the Police for further investigation. In 2004, the Police Service Commission received over fifty complaints of ill-treatment by the Police from members of the public or human rights organisations, all of which were forwarded to the Inspector-General of Police. In addition, the PSC can recommend internal disciplinary action once an officer has been charged or found guilty of an offence. But it has rarely performed this function. Rather, the PSC merely ratifies recommendations of disciplinary actions which have been made by the police authorities.²⁵

Where an errant police officer is also involved in criminal conduct, complementary criminal recourse responsibilities against such officer reside also with the Police and the office of the Attorney-General.²⁶ Thus, in *Theophilus Uwalaka vs. Police Service Commission*, Justice Kuewumi of the Abuja High Court held that the respondent's duty does not include the investigation of crimes.²⁷

2.1.4 National Human Rights Commission

The National Human Rights Commission (NHRC) is a parastatal established in 1995, and it is charged with the promotion and protection of human rights in Nigeria. It is granted powers to monitor and investigate cases of human rights violations, including torture. The Commission is fundamentally handicapped in two ways: it is acutely under-resourced, and lacks power to enforce redress; and can only make recommendations to the

²⁵ "Rest in Pieces: Police Torture and Deaths in Custody in Nigeria *Human Rights Watch* July 2005 Vol. 17, No. 11(A) 63.

²⁶ Odinkalu, C. A. and Smith, J, "Reforming the Police in Nigeria" in Alemika, E.E.O. and Chukwuka, I.C., *Civilian Oversight and Accountability of Police in Nigeria*, (Ikeja, CLEEN FOUNDATION, 2003) p. 90.

²⁷ Unreported suit No FHC/ABJ/CS/570/2006.

government.²⁸ Despite efforts to publicize its role, the NHRC is still relatively inaccessible to ordinary Nigerians. Many people are not aware of its existence and regional offices are understaffed. This is reflected in the low number of complaints of torture that the Commission receives. Once Commission investigators have verified the facts of each case, details are sent to the Inspector-General of Police via a Police/Human Rights Commission Committee. Through their intervention, a number of officers have been dismissed or given corporate sanction for perpetrating abuses, including torture, although none have been prosecuted.

2.1.5 Legislative Intervention

Pursuant to its oversight functions, the National Assembly (particularly its relevant standing committees) or each of the respective State Assemblies entertains petitions from aggrieved victims of police action in serious cases for legislative intervention, requesting that the wrong done to them be rectified. On receipt of such petitions, the National or State Assembly either discusses the matter on the floor of the house or refers it to the Committee on Police Affairs for investigation on condition that the report of findings be submitted to the House at the nearest possible. Alternatively, the House may refer the petition to the Police Service Commission for appropriate action.²⁹

Where the protested action assumes the proportion of national outrage in circumstances necessitating urgent legislative action in the form of corrective order, the National or State House of Assembly may invite the leadership of the Nigeria Police or the head of the affected police formation to appear before the House to give satisfactory explanation in defence of the allegation, and to give further assurances that proactive action would be taken to forestall its further occurrence.

In the exercise of its discretion, the legislature could pass a motion ordering the wrong complained about to be rectified

²⁸ Section 22(1) of the National Human Rights Commission Act (as amended) requires the Commission to register its reports and decisions for enforcement with the Federal High Court.

²⁹ Ijalana, E. F., *The Exercise of Police Powers and Discretions Under the Nigerian Laws*, an M.Phil. Degree Thesis of the Obafemi Awolowo University, Ile-Ife, August, 2012, p. 3.

forthwith, in order to ensure that the *status quo ante* be maintained, or may pass a vote of no confidence on the affected officers and men of the alleged police formation. Though, the order which the legislature could make vary in form as circumstances permit, it is sufficient to state that the legislature is empowered to make such law or order as may be reasonably necessary to do justice in the individual cases. Further legislative intervention includes enactment of legislations and spelling out the procedure for performing such duties by the Police in such a way as to enhance effectiveness, as well as protect the rights of citizens from being abused³⁰

As at today, the Police Act (Amendment) Bill, which seeks to provide for a strict code of police conduct in line with global standards of democratic policing is pending before the Senate and the House of Representatives of the National Assembly, at different stages of the legislative process. The non-passage into law of this bill is adversely affecting the prospect of police accountability and human rights.

2.1.6 Judicial Mechanism – The Civil Process

Police officers who abuse their powers are liable to civil and/or criminal proceedings, depending on the nature of the abuse. In the case of criminal liability, either the Nigeria Police Force or the Attorney-General of a State or of the Federation will have to invoke the process. They will do this only in a case they consider serious and in which the power exercised by an officer is considered unjustified.³¹

In the case of *AG Anambra State v. Okafor*³², the Supreme Court held that in a matter involving the exercise of statutory power, the function of the court begins only when it is alleged that the power has not been exercised in accordance with the law. In the recent case of *Dabo v Abdulahi*³³, the Supreme Court held that the exercise of statutory power cannot be questioned unless it is shown that such exercise is contrary to the law.

³⁰ Ijalana, E.F., Op Cit. p.4.

³¹ Alemika, E.E.O., "Enhancing Police Accountability Systems in Nigeria: the missing link" in *Enhancing Accountability Systems in the Nigeria Police Force*, Monograph series No. 8, (Lagos, CLEEN FOUNDATION, 2010), p. 23.

³² (1992) 2NWLR (Pt. 224) 396 at p.401.

³³ (2005) 4 SCM p. 52 at 63-64.

It is sufficient to state here that the exercise of police power and discretion can only be absolute, when it is exercised fairly and not prejudicial to the citizens' right.³⁴

In a bold and courageous imposition, the Constitution of the Federal Republic of Nigeria opens a leeway to the citizens to ventilate their causes of action arising from breach of constitutional rights under Chapter IV of the Constitution, and provides that any person who alleges that any of the provisions of this chapter (Chapter IV) has been, is being or likely to be contravened in any State in relation to him may apply to the High Court in that state for a redress.³⁵

This constitutional provision, according to Ijalana, gives the judiciary the power to intervene in cases of the slightest threat to people's fundamental rights.

In March, 2012, The Federal High Court, Lokoja, Kogi State, ordered the Police to pay the sum of N11 million to twenty-three leaders and members of the Action Congress of Nigeria (ACN) over their detention in Kogi State in September and October 2011.³⁶ They had sued the Inspector-General of Police (IGP) for N15 billion for allegedly preventing them from entering the Federal Capital Territory (FCT) on September 21 and on October 25 and 26 2011, in violation of their right to freedom of association and freedom of movement under the Nigerian Constitution.³⁷

In 2011, an Abuja High Court sitting in Abuja awarded the sum of 15 million naira against the Nigeria Police Force to be paid as compensation in a case involving the arrest in Ogun State of one Ishola Shodiya, a centenarian and four others, and for detaining them in Abuja for six months without preferring charges against them.³⁸ A legal practitioner, Mr. Nnaemeka Ejiofor, who was attracted by the plight of the victims had taken the matter to court, seeking the enforcement of the fundamental human rights of the detainees.³⁹

³⁴ Ijalana, E.F. *Op Cit.* pp.11-12.

³⁵ Section 46(1) of the Constitution of the Federal Republic of Nigeria, 1999.

³⁶ Chibueze, Joseph: Court Awards N11 million to Arrested ACN Members. Available in http://thenationonlineng.net/2011/index_p1-2 Accessed on 05/08/2012.

³⁷ See Sections 40 and 41 of the Constitution of the Federal Republic of Nigeria, 1999.

³⁸ "Court slams N15 million on police for detaining 100 year old unjustly" Available in http://www.nigeriapolicewatch.com/?attachment_id=689 pp.1-2 Accessed 14/10/2011.

³⁹ *Ibid.*

Meanwhile in *I-GP v ANPP*,⁴⁰ the Court of Appeal declared that the requirement of police permit or other authority for the holding of rallies or processions in Nigeria as contained in provisions of the *Public Order Act (Cap 382) Laws of the Federation of Nigeria 1990* is illegal and unconstitutional as it violates section 40 of the 1999 Constitution and article 11 of the *African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap 10) Laws of the Federation of Nigeria (1990)*.

Consequently, it went ahead to declare that the defendant (the I-GP) is not competent under the *Public Order Act (Cap 382) Laws of the Federation of Nigeria 1990* or under any law whatsoever to issue or grant permit for the holding of rallies or processions in any part of Nigeria and thereby granted an order of perpetual injunction restraining the defendant whether by himself, his agents, privies and servants from further preventing the plaintiffs and other aggrieved citizens of Nigeria from organising or convening peaceful assemblies, meetings and rallies against unpopular government measures and policies.⁴¹

2.1.7 Judicial Mechanism – The Criminal Process

The criminal law jurisdiction commands universality of action in that its provision is extended to the armed forces, the police and the generality of the public with the same vigour of sanctions, even though members of the armed forces and the police are subject to special law relating to the forces to which they respectively belong.⁴²

The penal action is justifiable on two grounds. The first being that, as an officer who enforces the law with requisite skill and knowledge of the position of law on crime, who is presumed to possess a high moral decorum, ought to face stiffer sanction for any breach of the law to which he has undertaken an oath to preserve. The second reason has to do with the past image of the police, which has been battered by a number of its officers' convictions in court for grievous crimes ranging from armed robbery and gruesome murder, to rape and allied offences, etc.

⁴⁰ *Inspector-General of Police v All Nigeria Peoples Party and Others* (2007) AHRLR 179 (NgCA 2007).

⁴¹ *Ibid.*

⁴² Section 15 of the Criminal Code Act Cap C38, Laws of the Federation of Nigeria, 2004.

In *Benjamin Oyakhirev the State*,⁴³ a Lokoja High Court within sixty-six days, sentenced Benjamin Oyakhire to death, having been found guilty of conspiracy, murder, robbery and mischief by fire and explosive substance. The three accused persons who were police men attached to Mobile Force Unit, Kogi State, had on the 17th day of February 2001, armed with their service guns, shot one of the passengers travelling in a commercial bus on its way to Benue State from Osogbo dead and set the rest with the vehicle ablaze after dispossessing them of their money. Their conviction was affirmed by the Supreme Court.

In *Solomon Adegunle v the State*⁴⁴, the appellant, a police sergeant, was on patrol along Sagamu-Benin high way when he fired at a moving bus, resulting in the occupants sustaining varying degree of gunshot wounds from which one of them, a little girl, Alice Gbeminiyi, died the following day as a result of the wound. The appellant was charged to court with murder where upon he raised a defence of accidental discharge. His conviction was affirmed by the Supreme Court.⁴⁵

Also in the list were Sgt. Desmond Ezeja and ASP NgbabedeItu⁴⁶, ASP John Agbo⁴⁷, Sgt. Adegboyega Ibikunle⁴⁸ and Cpl Oguonzee,⁴⁹ who were convicted of murder; while decades earlier, Odojin Bello, a Commissioner of Police, was convicted of official corruption. Meanwhile, DSP Iyamu was also earlier convicted of armed robbery.

In the face of a condemnable circumstance, as gathered in each of the above cases, the only compelling action the Police can take is to invoke penal intervention, considering the sufficiency of incriminating and indicting evidence against the accused person, coupled with the disparaging comments from the generality of the public, and image dampening publication by the media, especially in sensitive cases where administrative intervention may be perceived as inadequate.

⁴³ See *Benjamin Oyakhirev The State* (2006) ALL FWLR Pt. 305, p. 703.

⁴⁴ See *Solomon Adegunle v The State* (2006) ALL FWLR (Pt. 332), p.1452.

⁴⁵ Ibid.

⁴⁶ See *Ezeja v The State* (2008) 7 SCM 28.

⁴⁷ See *John Agbo v The state* (2008) All FWLR pt. 309 p.2008.

⁴⁸ See *Adegboyegalbikunle v. The State* (2007) & SCM 73.

⁴⁹ See *Oguonzee v. The State* (1998) 4SCNJ p.226.

2.1.8 The Media

The media have no formal or direct oversight relationship with the police. It cannot sanction police officers for misconduct or abuse of power or corruption. The power of the media lies in its ability to place the issue in the public domain and provide a platform for public debates and discussions. In so doing, the media puts the police authorities under pressure to take action against its own men or "forces" institutions with formal oversight responsibilities to take action against errant police officers. In cases where policy reform is required, political authorities may also come under pressure to initiate the necessary reform.⁵⁰

One major way in which the media performs the role of ensuring police accountability is in reporting police abuses. According to Ojo, most cases of disciplinary measures taken against police officers for abuse of power or violation of human rights have been in response to public outcry, echoed in the media. Examples are cases of Apo, Okitipupa and Lokoja killings.⁵¹

The media is a viable option for people who have lost confidence in police internal investigation or who could not afford the inherently unpredictable, expensive and unduly prolonged legal process to have their grievances heard and possibly, redressed.⁵²

For instance, various media houses maintain one form of police accountability related programmes or the other, where people have ample opportunities to air their grievances against police actions, notable among which are the *Police Diary* of the FRCN, *Gbangba Dekun* of the Broadcasting Corporation of Oyo State, *Agbofinro* of Radio Nigeria, Moniya, Ibadan and the *Police and You* of Splash FM Radio. Telephone numbers are distributed by police authorities for use by members of the public for easy contact.

3.0 Police Internal Accountability Mechanisms

Internal accountability or departmental/administrative control mechanisms refer to the rules and processes within police

⁵⁰ Ojo, Edaetan, Op Cit. p.85.

⁵¹ Ibid.

⁵² Ibid.

departments that are used to ensure compliance with rules, to investigate complaints, determine culpability of officers and to enforce dispositions/sanctions. Mechanisms within the police are meant to enhance police integrity, which is an essential requirement for public confidence and to enforce discipline within the force which is also necessary for effectiveness and efficiency. Effective internal police disciplinary regime enhances accountability to external authorities and audiences.

Internal processes have the inherent advantages of being better informed than external mechanism, in that a desperate police officer can hide almost anything it wants from outside inspection to the extent of frustrating the effort of external supervisors. Second, internal regulation can be more thorough and extensive. It can focus on the whole gamut of police activities, not simply on the more dramatic and visible aberrations. Third, internal regulation can be more varied, subtle and discriminating than external. It can also use informal as well as formal mechanisms that are omnipresent in the professional lives of police personnel.

Both the internal and external disciplinary mechanisms on the police are not only necessary but complementary to each other. In fact the two must collocate in order to be effective.

Osse posits that effective accountability requires a system of multiple actors, carefully keeping each other in balance. According to him, notwithstanding the fact that the internal mechanisms tend to receive little attention from human rights advocates, yet the internal aspect is crucial to ensuring accountability, since any external mechanism requires internal commitment to be effective. In his words:

If police managers turn a blind eye to police misconduct, external measures to address misconduct will have little effect because they will face obstruction at the stage of investigation or implementation of recommendations..... The truth of citizen oversight mechanisms is that they have not proven sufficient by themselves to bring about the institutional changes needed. A complaints bureau will almost certainly be necessary (...) but its recommendations would have much greater

impact if the internal systems were in place to deal with them (...) Internal and external aspects of the accountability structure should mutually reinforce each other to ensure maximum effect.⁵³

However, for the internal disciplinary systems of the police to play the expected complementary role, they need to be effective, rigorously enforced through both formal and informal means and more and more importantly internalised by the officers. Moreover, Police/ Community Relations Committees in the various Police Divisions are good examples of hybrid mechanism accepted by both the Police and the community in which it operates. The legal frameworks and structures of internal control systems of police accountability will now be reviewed.

3.1.1. The Police Act

The legal foundation of internal control mechanisms are provided for in the Police Act and Regulations, in terms of the Code of Conduct for Police Personnel. The Act provides that in the individual exercise of his powers as a police officer, every police officer shall be personally liable for any abuse or misuse of his powers, or for any act done in excess of his authority, for individual liability of police officers for any misconduct relating to abuse of powers⁵⁴, and lists several acts of misconduct which are referred to as offences constituting indiscipline and which are subject to internal disciplinary processes and sanctions,⁵⁵ and a machinery or procedure in connection with the investigation of complaints against the Police and the discipline of its members.⁵⁶

The Police Regulations provide that the superior police officer, in addition to the Code of Conduct set out in Part XV of the Police Regulations shall, where applicable, be subject to the discipline prescribed by the Public Service Rules for officer holding offices in the civil service of the Federation except that where provisions are made in respect of the same matter by both

⁵³ A. Osse, *Understanding Policing*, 3rd Edition, (DrukkerijGiethothen Brink, Netherland, Amnesty International, 2007), p. 185.

⁵⁴ Section 341 of the Police Act Cap P19, L.F.N., 2004.

⁵⁵ Ibid. Part VII First Schedule.

⁵⁶ Ehindero, S. G. "Investigation and Discipline of Police Personnel by the Nigerian Police Force" in *Civilian Oversight and Accountability of the Nigerian Police*, (Lagos, CLEEN FOUNDATION, 2003) 93.

the said Public Service Rules and Part XV of the Police Regulations, Part XV of the Police Regulation shall apply⁵⁷.

The Regulations further provide that where a superior police officer is charged with any misconduct contrary to chapter XV of Police Regulations, or of Public Service Rules, the conduct of any disciplinary proceeding shall be in accordance with the Rule specified in Public Service Rules, and the competent authority shall be the Nigeria Police Council of the Federation. By the application of the Constitution of Nigeria 1999, the competent authority is now the Police Service Commission⁵⁸.

3.1.2 Force Orders

These are policies, police administrative and operational procedure and records as made by the Inspector-General of Police to regulate activities of police personnel within the Force. These laws are accompanied with appropriate sanctions for any violation.

The provisions of Force Order 237 (Rules for guidance in use of firearms by the police) have, however, resulted in numerous unlawful killings and facilitated extra-judicial executions, while police officers go largely unpunished, using it as a justification as well as cover-up for the use of lethal force. Force Order 237 which practically provides the police *carte blanche* to shoot and kill at will, thereby underscoring the need for immediate amendment to bring it in conformity with what is required by international standards.⁵⁹

There are various structures or mechanisms within the Nigeria Police Force that are established to ensure internal discipline of erring police personnel and to ensure that complaints against the police by members of the public or by one police officer against another are investigated internally and appropriately dealt with.

⁵⁷ Police Act, supra, Police Regulation 369 (1).

⁵⁸ Ibid paragraph 2 Police Regulation 369.

⁵⁹ A. Ojomo, "Historical Reflections on Internal Control Systems in the Nigeria Police Force." CLEEN FOUNDATION Monograph Series No.8, 2010, in *Enhancing Accountability Systems in the Nigeria Police Force*, p. 29.

3.2 Challenges of Police Internal Control Mechanisms

Some of the challenges militating against effectiveness of police internal control mechanisms are as follows:

- a. **Political Control:** In a situation whereby the Inspector-General (IGP) is 'hired and fired' by the President, police abuse of power in the interest of the President, his political party or associates, could be rampant; and since the tendency is for such erring officers to enjoy an unwritten protection from the ruling elite, there will be no incentive to ensure accountability. Under such conditions, the police have no incentives to curb its indiscipline because there is no political pressure.
- b. **Lack of Will by Police Authorities:** Citing cases of Apo Six, Emmanuel Victor and Okitipupa Killings and the murder of Col. Ezra Rindam as example, critics of internal control have expressed the view that petitions that ever attract ORT are those that are extreme and have generated national political or media attention, pressure or outcry, or when the victim is a 'prominent' person. The source adds that under such pressure, the police would quickly convoke an ORT promptly and dismiss the erring officers in order to diffuse the pressure.
- c. **Non-Publicity:** Where internal disciplinary mechanisms are invoked, it is usually shrouded in extreme secrecy and lacks enough transparency to command the satisfaction and trust of the public. The lack of public access to information about disciplinary measures resulting in dismissals of hundreds of officers for corruption and other forms of abuse of power inadvertently creating the impression of a police force that is complacent towards public complaints against abusive exercise of power.
- d. **Susceptibility to Influence:** The internal administrative process of ORT, if not properly administered, could be tutored and skewed to arrive at predetermined outcomes, which does not guarantee fair trial.

- e. **Mediocrity:** Where the adjudicating officer is not skilled in adjudication, the proceedings may occasion grave injustice. For instance, the application of the doctrine of vicarious liability, which involves, punishing a superior officer for the offence committed by a junior officer under his or her command has been abused by most officers administering discipline across board. The case of Zakari Biu and that of former Inspector-General of Police, Hafiz Ringim, offers a classical example. Reacting to the application of this doctrine, Ijalana stated that it is now settled in law that a member of the police force in whatever rank, when carrying out his official duties is an officer of the state or better still an officer of his employer (in Nigeria the Police Service Commission), his superior officers cannot be vicariously liable for the erring officer's misconduct. The Inspector-General of Police and any member of the Force of whatever rank are both members of the Force and there is no principal or agent relationship existing between them.

Notwithstanding the aforementioned challenges, it is pertinent to state that the NPF is one of the few organisations in the Country which showcase internal discipline and publicly exposes its officers and men who commit acts of wrong doing. The arraignment of the killers of the Apo Six traders and the killers of Mallam Mohammed Yusuf, the Boko Haram leader, is an eloquent testimony to this fact. Moreover, while the issuance of official query against misconduct in the civil/public service is seen as abnormal in which people plead for the withdrawal rather than address it, in the police, there is prompt caution of police misbehaviour by the police authority.⁶⁰

The legal framework for police internal control, which derives largely from the colonial 1943 Police Act, no doubt is partly to blame and requires a thorough review to bring the legal framework up to date with democratic ideals. It must, however, be stated that the legislative framework is neither weak nor irrelevant. But its effectiveness depends on the discretion of the officer enforcing it. Its enforcement, therefore, demands a high

⁶⁰ Babatunde, Jimoh: "Boko Haram: Police to Arraigns Officers Next Month" Available in <http://www.vanguardngr.com> p.2 Accessed 05/08/2011.

degree of sternness and strictness on the part of the officer in charge of enforcing discipline to effectively deploy the existing mechanisms of internal discipline to ensure that officers and men are held accountable for misconducts, and that policing is conducted in a manner that is more consistent with the democratic requirements of due process, transparency, fundamental freedoms and dignity of the human person.

In order that anomalies in the police sector are addressed, there is a need for improvement of police conduct by training, the prohibition of extra-judicial killings, the need to keep complainants informed of the progress of investigation of disciplinary action taken against defaulters.

4.0 Conclusion and Recommendations

The concept of accountability is a *sine qua non* to the organisation, command and control of the Nigeria Police Force and a fulfillment of the State's obligations to provide justice for the victims of police brutality and extra-legal application of force, and their families, with a view to preventing future arbitrary use of power through administrative and judicial sanctions.

In assessing the Police Act and Regulations,⁶¹ special attention was devoted to the provision which states that in the individual exercise of his powers as a police officer, every police officer shall be personally liable for any abuse or misuse of his powers, or for any act done in excess of his authority for individual liability of police officers for any misconduct relating to abuse of powers,⁶² which this study considers as a signal to every police officer to be ready to account for his individual action and an indication that the era of vicarious liability is over. Although the Act had undergone minor modifications since 1943 when it was enacted by the colonial masters, the fact that some police officers still engage in human rights violation does not suggest its weakness or irrelevance, but it has to do with the nature of commanding officers implementing it at one time or the other. It is, however, submitted that there is a need to review it comprehensively, and amend it to conform to the democratic

⁶¹ Cap P. 19 Laws of the Federation, 2004.

⁶² Section 341 of Police Act Cap P19, L.F.N., 2004.

requirements of due process, transparency, fundamental freedoms and dignity of the human person.

In resolving the age-long controversy as to the ideal form or forms of police accountability processes and mechanisms, it is submitted that both the internal and external disciplinary mechanisms on the police are not only necessary but also complementary to each other, in view of the fact that, without the involvement of the police authority, external measures to address police misconduct will fail, especially at the stage of investigation or implementation of recommendations and as such both structures should mutually reinforce each other to ensure maximum effect.

Given the composition of the Police Council in which the only two members who are not political office holders owe their appointment to the President, there is the tendency for actions and decisions of the Council to be highly political, a trend that is capable of turning the civil police to political police. Moreover, complete executive control over the I-GP's appointment and removal without any constitutional requirement of actual third-party approval or confirmation by the Nigeria Police Council has the tendency of making the appointee dance to the tune of the President in his career interest.

It is also shown that the Police Service Commission which appears apolitical is not an independent body, as it is subject to presidential control despite the intention in the Constitution that it should be an independent federal executive body. Moreover, the Commission enjoys limited police co-operation in the area of implementation of decisions taken against errant police officers and suffers from low budget priority which is a fall out of inadequate political support. Besides, the Commission is denied the capacity to investigate complaints of police misconduct as serious human rights abuse are often referred to the Police for further investigation whose recommendations it ratifies.

Although various legislative houses, both at the State and Federal levels, often summon police officers to account for some of their sensitive decisions, they are yet to pass into law the Police Act Amendment Bill which is expected to provide for a strict Code of Police Conduct in line with global standards of

democratic policing, which is an indication of lack of political will.

In its review of judicial intervention in police arbitrary use power, the study shows that the judiciary has lived up to expectation in discouraging impunity through a series of its decisions, provided the victim approaches it for remedy or that the police prosecutes the offender. Notable cases are *IGP v ANPP*,⁶³ where the Court of Appeal declared the *Public Order Act (Cap 382) Laws of the Federation of Nigeria 1990* as illegal and unconstitutional.⁶⁴

Despite its effectiveness, police internal control mechanisms are, however, hindered by challenges like political control, non-funding, undue influence by superiors and mediocrity on the part of officers administering discipline.

However, in order for the Nigeria police to meet the challenges of policing a democratic society in the 21st century and beyond, the Nigeria Police Force should adopt the following measures:

It is recommended that recruitment into the Nigeria Police Force should be reorganized to ensure that people of impeccable character are recruited into the police and that corruption is eliminated in the recruitment process; while the training curriculum should be reviewed to contain human rights principles and elements that will produce the respectful police of the 21st Century. Moreover, there is need to organize constant retraining for police officers in the handling of arms in line with best practices. Against this background, the incorporation of some provisions of international instruments like the *United Nations Code of Conduct for Law Enforcement Officials*, which spells out stricter rules for the handling of firearms into our national legislation is strongly recommended.

Moreover, an attitudinal change in police administration and law enforcement, especially in the way police officers relate with members of the public and the way police authorities react

⁶³ *Inspector-General of Police v All Nigeria Peoples Party and Ors* (2007) AHRLR 179 (NgCA 2007).

⁶⁴ Other notable decided cases include *Benjamin Oyakhirev. The State* (2006) All FWLR (Pt. 305), p. 703; *Solomon Adekunle v. The State* (2006) All FWLR (Pt. 332), p. 1452; *Adegboyegalbikunle v. The State* (2007) 8 SCM 73; and *Oguonzee v. The State* (1998) 4 SCNJ 226, where the erring police officers faced the full wrath of the law.

to allegations of Police brutality through denial and/or rebuttal, is strongly recommended. In this connection, any officer that acts contrary to the provisions of the law, Force Orders and Police Regulations should be given appropriate sanction; while victims of any arbitrary exercise of power must be informed of the progress of investigation of disciplinary action taken against the defaulters.

In addition, police internal control mechanism and disciplinary procedure should be strengthened through proper funding and training; while commanding officers should be encouraged to raise the standard of discipline in their various formations. It is also suggested that relevant oversight bodies like the Police Service Commission should be properly funded; while the laws which tend to make them a mere symbolic body or which tend to subject them to the control of the President should be amended to enable them effectively perform their legitimate functions autonomously.

The Police should put in place a comprehensive strategy to fight corruption within the Police Force and in the larger society. The strategy should be systematic, comprehensive, consistent, focused, publicized, non-selective and non-partisan. This must be supported with adequate remuneration for Police Officers and provision of adequate logistics for policing work. The recent policy of the police hierarchy to keep policemen off the road has no doubt reduced cases of police violence and corruption allegations against the police to the barest minimum. As an image-laundering measure, the police are enjoined to imbibe the concept of respectful policing and step up the implementation of community policing in line with the culture and tradition of our people.

It is high time government implemented the Government White papers on Danmadami (2006) and M.D. Yusuf (2008) reports on Police Reforms which suggested transparency in the appointment to the office of the Inspector-General of Police to insulate the office from political partisanship.