

A CRITICAL APPRISAL OF POLICE POWER TO PROSECUTE IN NIGERIA

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**BEING A LONG ESSAY IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR
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JULY, 2021

CERTIFICATION

I, **BLESSING UVIE OKITI** with **Mat No. LAW1504379** hereby certify that apart from references to other people's work which has been duly acknowledged, the entire project is a product of my personal research and that this project has neither in whole or in part been submitted for another degree elsewhere.

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APPROVAL

This Project has been read and approved as meeting the requirement for the award of a Bachelor of Laws (LL.B Hons) in the Faculty of Law of the University of Benin, Benin City, Nigeria.

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DEDICATION

This research work is dedicated to the Almighty God who gives strength, inspiration and wisdom to those who seek him. He has been my helper in everything and by his grace only am I here today. I also dedicate this work to my parents for their unflinching love and support throughout this program which helped bring me to this point.

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Administration of Criminal Justice (Repeal and Re-enactment) Law of Lagos State 2011

Constitution of the Federal Republic of Nigeria 1999 (as amended).

Economic and Financial Crimes Commission Act Cap E1 Laws of the Federation of Nigeria
2004.

Independent Corrupt Practices and other Related Offences Act, 2000.

National Security Agencies Act Cap N75 Laws of the Federation of Nigeria 2004.

Nigeria Police Act 2020

Public Order Act Cap P42 Laws of the Federation of Nigeria 2004.

TABLE OF CASES

- Afribank Plc v Onyima* [2004] 2 NWLR (pt 858) 654.
- Ajakaiye v FRN* (2010) LPELR-4884(CA) 24-26.
- Augustine Eda v COP Bendel State* [1982] 2 NCLR 21
- Dele v The State* [2011] 1 NWLR (pt 1229) 508
- Fawehinmi v. I.G.P* [2002] 7 NWLR (pt 767) 606.
- Federal Republic of Nigeria v Jimmy Itaumah Akpan & 20 Ors* (2003) 2 FHCLR 119.
- FRN v Osahon & Ors* (2006) LPELR-3174(SC).
- George v FRN* [2011] 16 NWLR (Pt. 1254) 1.
- Ibidapo v Lufthansa Airlines* [1997] 4 NWLR (Pt. 498) 124.
- Ibikunle v The State* [2007] 2 NWLR (pt 1019) 546
- Ibiyeye & Anor v Gold & Ors* [2012] All FWRL (pt 659) 1074
- Igweokolo v Akpoyibo & Ors* [2017] LPELR-41882 (CA)
- INEC v Musa* (2003) 3 NWLR (Pt.806)72
- Inspector General of Police v All Nigeria Peoples Party & Ors* [2007] 18 NWLR (pt 1066) 457.
- Jammal v The State* [1991] 12 NWLR (pt 632) 582
- Joshua v The State* [2009] 5 NWLR (pt 475) 1626
- Mayaiki v The State* [2008] 15 NWLR (pt 1109) 173
- Ogbonna v Ogbonna* (2014) 23 WRN 48.
- Oludamilola v The State* [2010] 8 NWLR (pt 1197) 565.
- Olusemo v. COP* (1998) 11 NWLR (Pt. 575) 547
- Onyirioha v IGP* [2009] 3 NWLR (pt 1128) 342

OSIL Ltd v Balogun [2013] All FWLR (pt 677) 653

Tonga v State (2017) LPELR-43327(CA) 9-10.

Udeogu v FRN SC.622c/2019 (unreported). Delivered On 8th May 2020.

TABLE OF ABBREVIATIONS

ACJA	Administration of Criminal Justice Act
CA	Court of Appeal
FRN	Federal Republic of Nigeria
LFN	Laws of Federation of Nigeria
LPELR	Law Pavilion Electronic Law Report
NPF	Nigerian Police Force
NWLR	Nigerian Weekly Law Report
SC	Supreme Court

ABSTRACT

The issues surrounding the power of the Nigeria Police Force to prosecute offenders alleged to have committed crimes has been greeted with a lot of heated contestations. Basically, under the repealed Police Act 2004, a police officer (whether being a lawyer or not) was empowered to prosecute an offender in any court in Nigeria whether the complaint was laid in his name or not. This position had also been judicially affirmed in the case of *Federal Republic of Nigeria v. Osahon* where the Supreme Court held *inter alia* that a police officer (irrespective of being a lawyer) can prosecute criminal cases in all Nigerian courts. Despite clear statutory provisions and detailed judicial decisions on the police power of prosecution, controversy still existed about the nature and extent of that power. The controversy as to whether police officers who were not qualified lawyers should be allowed to prosecute criminal cases. It was however settled that the police officers who are qualified lawyers are qualified to prosecute criminal cases, subject only to the powers of the Attorney General. The enactment of the Administration of Criminal Justice Act 2015 intensified this controversy with its provision that appeared to exclude police officers. Also, under the extant police Act 2020, the position taken by the legislature on the repealed Police Act 2004 and the case of *Federal Republic of Nigeria v. Osahon* has been altered. S.66(1) provided that before a police officer can competently prosecute he/she must be a lawyer. However, in subsection 2, the law also permitted police officers who are not lawyers to also prosecute offences which non-lawyers can prosecute. This invariably contradicts the position of the former paragraph. The *Administration of Criminal Justice Act and the Police Act* also seem to be conflicting on their respective provisions for the police power of prosecution.

This research work aims to examine the prosecutorial power of the police using the case of *Federal Republic of Nigeria v. Osahon* as a standpoint. It also takes into account the relevant

provisions of Administration of Criminal Justice Act 2015 and the recently enacted Police Act 2020 looking at the implications and effectiveness of these laws. This would be done by utilizing the doctrinal and analytical methods.

In conclusion, this research work looks at the seemingly controversy prosecutorial power of the police from history down to recent times accentuating the differences. It submitted that the position in *Osahon's case* is no longer good law and can be validly challenged on the strength of the newly enacted Police Act, 2020. It further identifies the problems in police prosecutorial powers and offers recommendations towards ensuring that the power is exercised efficiently and effectively in the overall interest of administration of criminal justice in Nigeria.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

The administration and dispensation of justice in general and that of criminal justice in particular plays an important role in government irrespective of the system of government in place. For if the society must remain in peace, individuals with criminal tendencies must be put under close checks; and their activities monitored.¹ If and when their activities therefore offend against the social norms, standards and the established law, criminal law must intervene to do justice to all and sundry involved- the criminal deviant, the victim and the society at large.² Man is inherently criminal and no society is free of crime. Every society needs a police force as part of its institutional mechanisms to ensure maintenance of law and order and for the good of the public. The Nigerian Police Force is a major stakeholder in the administration of criminal justice system in the country. The police are the very first institution that a criminal comes in contact with. Whether or not the suspect will obtain justice depends on how the police go about its duty.³ The Nigerian Police Force is an agency established by law for the preservation of law and order, prevention and detection of crime and also the protection of its citizens. The role of the police in the administration of criminal justice is diverse and multifaceted. The Constitution of Nigeria confers on the Nigerian Police Force powers and duties for effective performance, oversight functions and accountability.⁴ The Constitution states that an Act of the National Assembly may

¹ A. Babalola, 'Power of Police to Prosecute Criminal Cases: Nigeria and International Perspectives' (2014) 2 European Journal of Business and Social Sciences 127.

² Ibid, 27.

³ Ibid, 28.

⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 214(2)(b).

provide for the organization and administration of the police.⁵ In light of this, the Nigerian Police Act⁶ provides for the duties and powers of the police. One of the cardinal powers of the police is the power to prosecute. Before the commencement of the new Police Act, there existed the controversy on the nature and extent of the prosecutorial power of the police. Though the repealed Police Act gave the police prosecutorial powers before all courts in Nigeria and the Supreme Court affirmed the law in the case of *Federal Republic of Nigeria v Osahon & Ors*,⁷ controversy still existed as to whether non-qualified lawyers were covered by this power and could prosecute criminal cases before all courts. It seems the Police Act 2020 has laid this controversy to rest with its provision which allows only qualified lawyers to prosecute criminal cases before all courts. It aligns with the provisions of the Administration of Criminal Justice Act which excludes non-qualified lawyers from prosecuting criminal cases in higher courts. This chapter discusses the historical evolution and organization of the Nigeria Police Force, the objective of its establishment amplifying some of its primary functions and powers for better appreciation.

1.2 Statement of Research Problem

The Police Act 2004 gives police officers the power to prosecute criminal cases in all courts in Nigeria. Prosecution of cases by the police dates back to the colonial days when the Nigeria Police Force upon its establishment in 1861 was solely responsible for the enforcement of all laws, prevention of crimes, arrest, investigation and prosecution. The police prosecuted on their authority in all Magistrate Courts, Customary, Native and Area Courts also called courts of inferior jurisdiction. Prosecution of criminal cases by the police was limited to these courts.

⁵ Ibid, Section 214(2)(a).

⁶ Nigeria Police Act 2020 (hereinafter referred to as the Police Act 2020).

⁷ [2006] 5 NWLR pt 973, 361.

However, by the Supreme Court's decision in the locus classicus of *Federal Republic of Nigeria v. Osahon & Ors*,⁸ police officers (irrespective of being a lawyer) can prosecute criminal cases in all Nigerian courts. This decision by the Supreme Court changes the pattern of police officers prosecuting criminal cases in only courts of inferior jurisdiction. Despite clear statutory provisions and detailed judicial decisions on the police power of prosecution, controversy still exists about the nature and extent of that power. The controversy as to whether police officers who are not qualified lawyers should be allowed to prosecute criminal cases became intensified by the enactment of the Administration of Criminal Justice Act 2015. By virtue of section 106 of that Act, the police were excluded from the category of those to prosecute criminal cases at federal courts where the act applies.

It is however settled now by the Provisions of section 66 of the Police 2020 that police officers who are qualified lawyers are qualified to prosecute criminal cases, subject only to the powers of the Attorney General. Therefore, in addition to the Administration of Criminal Justice Law of some states which took the position of the ACJA 2015. There seems to be conflicting provisions on the Prosecutorial power of the Police.

Taking into account the extant Nigerian laws, this work sets to examine the legal framework of the prosecutorial power of the police.

1.3 Aim & Objectives

The aim of this research is to critically examine the legal framework on the power of police to prosecute criminal cases in court in Nigeria.

The specific objectives of the research are:

1. To examine the history of police power to prosecute criminal cases in Nigeria.

⁸ (2006) LPELR-3174(SC).

2. To analyze the different legislations giving the police power to prosecute.
3. To discuss the case law and statutory interpretation of the prosecutorial power of the police in Nigeria.
4. To consider the challenges militating against effective performance by police prosecutors and ways to tackle these problems.

1.4 Research Methodology

This study will adopt the doctrinal method. This will involve the use of primary and secondary sources. The primary sources will include case laws, the Constitution of the Federal Republic of Nigeria 1999 (as amended), statutes (Administration of the Criminal Justice Act 2015 and Police Act 1943) and international instruments. While the secondary source will include textbooks, articles in journals, internet materials and newspapers.

1.5 History of the Nigeria Police Force

The police are a unit of the armed forces established for the maintenance of law and order. Police is a governmental department charged with the preservation of public order, the promotion of public safety, and the prevention and detection of crime.⁹ The word Police generally is derived from the Greek word *polis*, meaning that part of an ecclesiastical administration having to do with the safety, health and order of the state. The Greek *politeria* means the art of governing and regulating the welfare, security needs and order of the city-state in the interest of the public. Even though the word Police is derived from Greeks, it was the Romans who perfected the system.¹⁰ The Roman *politia* means the same as the Greek *politeria* which is the symbol of

⁹ *Black's Law Dictionary* (8th edn, 2004) 3673.

¹⁰ B. B. Okereke, 'The Role of Nigeria Police Force in the Administration of Justice: Issues and Challenges' (LL.M thesis, Ahmadu Bello University 2012).

power residing in the central authority.¹¹ The history of the Nigerian Police Force dates back to 1861 shortly after the domination of Lagos by the British. Before this period, there were already some features of crime prevention and security in tribal communities in Nigeria. Traditional rulers had able-bodied men attached to them with the aim of guarding them, and in some instances assist in arresting wrongdoers. This was a common practice amongst majority of the tribes. Traditional law enforcement institutions that were put in place in most communities during the pre-colonial time or period discharged their responsibilities creditably in ensuring the existence of a lawful and orderly society.¹² It should, however, be noted that pre-colonial policing in Muslim areas of pre-colonial Nigeria and non-Muslim areas were very different.¹³ Although Allah is regarded as supreme lawmaker, Islamic law was and is still enforced by human agencies such as the members of the Shurta (police). Policing in non-Muslim areas of pre-colonial Nigeria appealed to supernatural beings by the priest; Juju practices, ancestral worship are all features of pre-colonial policing machinery.¹⁴ In the colonial period, for the purpose of enforcement of consular orders and execution particularly against uncooperative chiefs and to stop the slave trade, there was the need to have a police system by the British colonial masters.¹⁵ After the annexation of Lagos in 1861, William McCosky, the first acting Governor of Lagos established a small police force consular guard consisting of about 30 men. The force was later enlarged to about 113 men. Another group of liberated Hausa slaves was also

¹¹ Ibid.

¹² S. E. Arase, *Law on Prevention and Detection of Crimes by the Police in Nigeria* (Lagos: Malthouse Press Limited, 2017).

¹³ B. B. Okereke, *'The Role of Nigeria Police Force in the Administration of Justice: Issues and Challenges'* (LL.M thesis, Ahmadu Bello University 2012).

¹⁴ Ibid.

¹⁵ T.C. Nwano and B. J. Bamidele, 'Defining the agency of the police: Conflicting Legal Approaches' (2018) 9 Nnamdi Azikiwe University Journal of International Law & Jurisprudence 22.

constituted into about 100 Hausa constabulary.¹⁶ The Royal Niger Company on its own part established the Niger Constabulary to protect its business in 1886. These men were armed. This force was disbanded in 1900 when the protectorate of Northern Nigeria with headquarters in Lokoja was proclaimed.¹⁷ At the Oil River Protectorate at Calabar, acting Consul Annesley raised a small police force of about 22 men with arms. Late consul Claude Macdonald formed a police force called Court Messengers at the Niger Coast Protectorate which replaced the Oil River Protectorate in 1892. Alongside the Court Messengers was a fairly strong military force of about 497 men used for difficult expeditions. This force was later disbanded with the formation of the Niger Coast Constabulary in 1894 which lasted until 1900 when the Colony and Protectorate of Southern Nigeria was proclaimed.¹⁸ By the police ordinance of 1895, a small police force was established in the Colony of Lagos called the Lagos Police. The ordinance of 1897 declared it an armed force charged with the usual police duties and the defense of the colony against external aggression. At the beginning of the twentieth century, three separate police forces existed in Nigeria. There was the Lagos Police Force, the Northern Police Force and the Southern Police Force. In 1906, the colony of Lagos was merged with the Southern Protectorate. In 1914, the Northern Colony and the Southern Colony were amalgamated to form the Protectorate of Nigeria. But the Police Force remained separate until 1st April 1930 when both Police Forces were merged to form The Nigeria Police Force under an Inspector General of Police called Duncan by Ordinance No 2 of 1930.¹⁹ During the colonial period, most police were associated with local governments (native authorities). In 1951, under the Macpherson

¹⁶ Ibid, 22.

¹⁷ Ibid, 23.

¹⁸ W.A Adebayo, 'Nigerian Police: Structure, Powers and Functions' in T.F Yerima & B. Abegunde (Eds), *Essays on Administrative Law in Nigeria* (Ado Ekiti, Petoa Educational Publishers 2006) 251.

¹⁹ Ibid, 251.

Constitution, the Nigeria Police Force was now reorganized and placed under the regional commands answerable to the Inspector General of Police. 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.²⁰ It established the Nigeria Police Force²¹ as a federal force²² charged with the responsibility of maintenance of law and order.²³ However, 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 their different localities.²⁴ Accordingly Native Authority Forces were established in the North and Local Government Police Forces were established in the Western Region & Mid-West Region respectively.²⁵

As Native Authorities, the chiefs had their police powers extended and consolidated under the Laws of 1916 and 1924. The Native Authority Ordinance (No. 4 of 1916) conferred on the Native Authorities the responsibility for maintaining order in their respective areas. Under it, they were allowed to prevent crime and arrest offenders by employing *any person* to assist them in carrying out their police duties. Their police powers were increased under the Protectorate Laws (Enforcement) Ordinance (No. 15 of 1924).²⁶

²⁰ K. Aina, *The Nigerian Police Law* (Princeton Publishing Company 2014) 4.

²¹ Constitution of the Federal Republic of Nigeria 1960, Section 98(1).

²² Ibid, Section 98(4).

²³ Ibid, Section 98(1).

²⁴ Ibid, Section 98(7).

²⁵ Nwano and Bamidele (n 14) 24.

²⁶ E.E.O Alemika, 'History, Context and Crises of the Police in Nigeria' (Repositioning the Nigeria Police to Meet the Challenges of Policing a Democratic Society in the 21st Century and Beyond, Uyo, November 2010) 2 & 3; T.N Tamuno, *The Police in Modern Nigeria* (University of Ibadan Press 1970).

The police powers given to Native Authorities after the 1914 amalgamation was therefore of greater relevance to western and northern Nigeria than to the south eastern parts of the country.²⁷ Under these laws and overtime, the palace messengers were recognized. The traditional police constituted the nucleus of local police forces of colonial era. In unison, the 1963 Constitution also provided for a federal force known as the Nigeria Police Force.²⁸ However, the Native Authority and Local Government Police Forces could no longer effectively play their complimentary role of enforcement of law and order. A panel setup to consider the desirability of dual (local and national) or centralized (unified) police, recommended the abolition of local police forces.²⁹ According to the committee they were poorly trained, corrupt and used for partisan purposes, including the repression of opponents by traditional rulers and politicians.³⁰ In January 1966, the military coup suspended the Constitution and decreed that all local police forces were to be placed under the overall command of the Inspector General of Police. By the end of 1969, the military 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.³¹ The 1979 Constitution established for the whole country a single police force expressly forbidding the establishment of any other police force for the Federation.³² The Nigeria Police Force performed conventional police functions and was responsible for internal security generally, supporting the prison, immigration and customs services and performing military

²⁷ Ibid.

²⁸ The 1960 and 1963 Constitution are basically identical in this aspect of law except the wordings and section numberings.

²⁹ Alemika (n 25) 6.

³⁰ Ibid.

³¹ Aina (n 19) 4.

³² Constitution of the Federal Republic of Nigeria 1979, Section 194(1)

duties within and outside Nigeria as directed.³³ Police officers were not usually armed but were issued weapons when required for specific missions or circumstances. The Nigeria Police Force is a creation of the Constitution. It provides that ‘There shall be a police force for Nigeria, which shall be known as the Nigeria Police Force, and subject to the provisions of this section no other police force shall be established for the Federation or any part thereof’.³⁴ Notwithstanding that Nigeria is a federation, the Constitution provides for a unitary structure of the police with exclusive jurisdiction throughout the country. It is unambiguous in saying that no other police force shall be established for the federation or any part thereof. Constitutional provisions however exist for the establishment of separate Nigeria Police Force branches forming part of the armed forces of the federation or for the protection of harbors, waterways, railways and airfields e.g port security.³⁵ Nigeria operates a federal policing system to the detriment of state policing system. Clearly the refusal to have a state police today is to avoid mistakes of the past. There have been arguments and discussions even agitations by the State Government for the establishment of state police. The reason for only one force is to ensure uniformity of purpose, prevent the force from being used as a political weapon in the hands of State Government and other local authorities and to place the entire security of the country in the hands of the President.³⁶ Until it is amended, the agitation for state police cannot be achieved.

1.6 Organization of the Nigeria Police Force

The Nigeria Police Force is the principal and leading law enforcement organization in Nigeria. It operates a vertical system of organizational structure which is basically intended to enhance discipline. As a regimented organization, the flow of authority is from top to bottom while the

³³ ‘Nigeria Police Force’ <https://en.m.wikipedia.org/wiki/Nigeria_Police_Force> accessed 19 July 2021.

³⁴ Constitution of the Federal Republic of Nigeria, 1999, Section 214(1).

³⁵ Ibid, Section 214(2)(c).

³⁶ Aina (n 19) 5.

reporting process is from bottom to top.³⁷ This type of organizational structure promotes internal control mechanism, improves monitoring and evaluation, enhances increased level of supervisory efficiency and accountability which are all geared towards enhancing discipline and control.³⁸ It is structured in such a way that the unit of command at the federal, state and local level is placed under a police officer in order of seniority. The Inspector General of Police (IGP) being the head at the Federal level, the Commissioner of Police (CP) at the State level and the Divisional Police Officer (DPO) at the Local level. As aforementioned the 1999 Constitution provides that, ‘the Nigeria Police Force shall be organized and administered in accordance with such provisions as may be prescribed by an Act of the National Assembly’.³⁹ In the exercise of this power, the National Assembly enacted the Police Act which provides for the command structure of the force. The Nigeria Police Force maintains a three-tier administrative structure of department, zonal and state commands. The 1999 Constitution also provides that the Nigeria Police Force shall be under the general command of the Inspector General of Police and its contingents stationed in a state shall be under the command of the Commissioner of Police of that state subject to the authority of the Inspector General of Police.⁴⁰ The Nigerian Police Force is under the general operational and administrative control of the Inspector General of Police appointed by the President and responsible for the maintenance of law and order.⁴¹ This means that all orders, directives and instructions for the administrative, financial and operational control of the Force originates and flows from the Inspector General of Police to any subordinate designated to implement such orders. Disobedience or failure to carry such order attracts

³⁷ ‘History, Roles and Organizational Structure of the Nigeria Police Force’
<[https://afsc.mil.ng/afsc/organizational structure of the Nigeria Police Force](https://afsc.mil.ng/afsc/organizational%20structure%20of%20the%20Nigeria%20Police%20Force)> accessed 29 May 2021.

³⁸ Ibid.

³⁹ Constitution of the Federal Republic of Nigeria 1999, Section 214 (2)(a).

⁴⁰ Ibid, Section 215(2).

⁴¹ Police Act 2020, Section 7(1) & (3).

disciplinary measures. He is supported by Deputy Inspectors General of Police (DIGs). The Police Act provides that on recommendation by the Inspector General of Police, the Police Service Commission shall appoint such number of Deputy Inspectors General of Police as are required for the efficient performance of police functions.⁴² There are presently eight Deputy Inspectors General manning eight major departments of the Force.⁴³

By this nature, the police operational crime fighting function is felt by the populace. The whole weight of the powers and duties of the police are spread on the balance of these structures.⁴⁴ A periodic assessment and review of these structures to determine their relevance in the scheme of the nation's defense mechanism has remained a traditional exercise in the force in order to catch up with current global policing strategies as prescribed in international defense policies. It also provides avenue for getting along with other national security outfits.⁴⁵

1.7 Objectives of the Establishment of the Nigerian Police Force

The growth of the country was accompanied with the development of her police force. The Nigeria Police Ordinance 1930 made provisions for the organization, discipline, powers and duties of the police.⁴⁶ Section 3 of the Ordinance provided that the force was to be known as the Nigeria Police Force and Section 4 provided that the police shall be employed for the preservation and of law and order, the protection of life and property, the due enforcement of all laws and regulations with which they are directly charged.⁴⁷ The 1999 Constitution provides that, 'the Nigeria Police Force shall be organized and administered in accordance with such

⁴² Police Act 2020, Section 11(1).

⁴³ I. Odoh, 'Police Undergo Major Reorganization with 8 Departments, 8 DIGs, 17 Zonal Commands and 4 Annexes' Business Day (Lagos, 28 May 2020) <<https://businessday.ng/top-stories/article/police>> accessed 21 May 2021.

⁴⁴ 'Nigeria Police Force' <www.npf.gov.ng/aboutus/Force_Structure.php> accessed 21 April 2021.

⁴⁵ Ibid.

⁴⁶ Okereke (n 9) 27.

⁴⁷ Ibid.

provisions as may be prescribed by an act of the National Assembly;⁴⁸ the members of the force shall have such powers and duties as may be conferred upon them by law'.⁴⁹ Constitutional validity is therefore given to the Police Act which is an Act of the National Assembly that provides for their duties and powers. The Supreme Court emphasized that the police owe these duties not to the government in power but to the generality of Nigerians and all other persons lawfully living in Nigeria and any Nigerian has the right to insist that they obey the law and comply with their statutory duties.⁵⁰ The functions of the police were first outlined statutorily in the Police Act of 1943.⁵¹ However, corresponding adjustments have been made in the re-enacted Police Act 2020⁵²

Section 4 of the Police Act 2020, provides thus: The police force shall:

- a. prevent and detect crimes, and protect the rights and freedom of every person in Nigeria as provided in the Constitution; the African Charter on Human and Peoples Rights and any other law;
- b. maintain public safety, law and order;
- c. protect the lives and property of all persons in Nigeria;
- d. enforce all laws and regulations without prejudice to the enabling Acts of other security agencies;
- e. discharge such duties within and outside Nigeria as may be required of it under this Act or any other law;
- f. collaborate with other agencies to take any necessary action and provide the required assistance or support to persons in distress, including victims of road accidents, fire disasters, earthquakes and floods;
- g. facilitate the free passage and movement on highways, roads and streets open to the public; and
- h. adopt community partnership in the discharge of its responsibilities under this Act or under any other law; and
- i. vet and approve the registration of private detective schools and private investigative outfits.

⁴⁸ Constitution of the Federal Republic of Nigeria 1999, Cap. C23 Laws of the Federation of Nigeria 2010, Section 214(2)(a).

⁴⁹ Ibid, Section 214(2)(b).

⁵⁰ *Fawehinmi v. I.G.P* [2002] 7 NWLR (pt 767) 606.

⁵¹ Cap P19 Laws of the Federation of Nigeria 2004.

⁵² Police Act 2020, Section 4.

A mutual relationship exists between powers and functions; therefore, powers are incidental to the performance of these functions of the police. Powers are vested on the police with which to carry out those functions. They are contained in Part VII of the Act. Some major powers of the police are as follows:

a) The Prevention and Detection of crime

It is the primary duty of the police to prevent an offence from being committed especially when there are threats of impending crime or security issues. Priority is placed here, given the fact that crime must be combated seriously and reduced to its barest minimum, since humans are crime inherent. Although, there are other agencies saddled with the responsibility of crime detection in specific cases such as the Economic and Financial Crimes Commission (EFCC),⁵³ State Security Services (SSS),⁵⁴ Independent Corrupt Practices Commission (ICPC)⁵⁵ among others yet none is conferred with such enormous powers as the police. Prevention is better than cure hence priority must be placed in nipping crime in the bud instead of expending resources, time, energy and efforts in fighting crimes at the periphery afterwards. The Police Act provides that, ‘Every police officer may intervene for the purpose of preventing, and shall to the best of his ability prevent, the commission of any offence’.⁵⁶ It also empowers a police officer to arrest a suspect without warrant upon reasonable suspicion of a design to commit an offence if it otherwise cannot be prevented.⁵⁷ It further provides that, ‘A police officer receiving information of a design to commit any offence, shall communicate such information to the police officer to whom he is

⁵³ Economic and Financial Crimes Commission Act Cap E1 Laws of the Federation of Nigeria 2004.

⁵⁴ National Security Agencies Act Cap N75 Laws of the Federation of Nigeria 2004.

⁵⁵ Independent Corrupt Practices and other Related Offences Act, 2000.

⁵⁶ Police Act, Section 84(1); Administration of Criminal Justice Act 2015, Section 50(1).

⁵⁷ Police Act, Section 86; Administration of Criminal Justice Act 2015, Section 52.

subordinate, and to any other officer whose duty is to prevent or take cognizance of the commission of the offence.⁵⁸ It is quite evident that the police have legal backing to use all lawful means to avert or suppress the commission of crime. Deterrence is one mechanism in effective maintenance of law and order in the society. In a developing country like Nigeria, insecurity of lives and property is always on the increase thus the police need to be alert by evolving strategies, policies and technological knowhow to avoid or reduce to the minutest the commission of crime.⁵⁹ This duty involves a lot of information gathering which has to do with a lot of intelligence work. The role of the public in providing information to security agents is very important. A lot of collaborative effort is needed. In ensuring the prevention and detection of crime, police officers are posted to areas to forestall possible breakdown of law and order. Furthermore, the police force are is mandated to protect citizens rights and freedom as enshrined in Chapter IV of the 1999 Constitution, Chapter 1 of African Charter on Human and Peoples Rights and any other law (local and international which Nigeria is a signatory to). This will engender trust between the force and citizens, encourage reporting of crime thus combating it more effectively and enhancement of justice for victims.

b) Maintenance of Public Safety, Law and Order

The police are principally responsible for the maintenance of law and order in a society. All duties are centered on this as it brings about continuity and smooth running of the society. The Police Act gives police officers the responsibility for maintaining and securing public safety and public order.⁶⁰ Also, the Commissioner of Police of a state has the responsibility for maintaining

⁵⁸ Ibid, Section 85; Ibid, Section 51.

⁵⁹ Okereke (n 9) 33.

⁶⁰ Police Act 2020, Section 83(1).

security, public safety and order within the state.⁶¹ Provision is made for police personnel to provide security coverage for public meetings, rallies or processions held in places where the public has access to.⁶² The police ensure order through the apprehension of offenders who intend to provoke civil unrest from such public gatherings. This can be executed in several ways through enforcement of laws and regulations governing unlawful assemblies. The Public Order Act⁶³ is one of the laws governing unlawful public gatherings and assemblies. However, the law has been repealed by the Court of Appeal⁶⁴ as it was held to be unconstitutional and inconsistent with provisions of section 40 of the 1999 Constitution which gives every citizen the right of free assembly and association with other persons.

c) Protection of Lives and Properties

The police are saddled with the responsibility of protecting the lives and properties of the citizens within their jurisdictions. They do this by posting men on guard duty to strategic places and locations. The Police Act vests on police officers the duty to prevent injury to public properties whether movable or immovable or removal of or injury to any public landmark buoy or other mark used for navigation.⁶⁵ Series of trainings, guns, weapons, ammunition are given to the force by the government to ensure that the protection of lives and properties of the citizens are carried out effectively.

d) Enforcement of all Laws and Regulations

⁶¹ Ibid, Section 83(3).

⁶² Ibid, Section 83(4).

⁶³ Public Order Act Cap P42 Laws of the Federation of Nigeria 2004.

⁶⁴ *Inspector General of Police v All Nigeria Peoples Party & Ors* [2007] 18 NWLR (pt 1066) 457.

⁶⁵ Police Act 2020, Section 84(2); Administration of Criminal Justice Act 2015, Section 50(2).

The police are mandated to enforce all laws and regulations. However, they do not enforce laws with which they are not directly charged. The police do not enforce civil matters or contracts agreements between individuals.⁶⁶ This would mean them exceeding their statutory powers as stipulated by law as was seen in the case of *Ken McLaren & Ors v James Lloyd Jennings*⁶⁷ where the Court of Appeal per Salami JCA(as he then was) quipped:

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... 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 the Police Act to which the Court was directed and the Court has not been able to find another provision of the Act empowering or constituting the Nigeria Police Force to one of a debt or rent collector...

The above dictum was affirmed in the case of *Ogbonna v Ogbonna*⁶⁸ where the court held that “the police have no business helping parties to settle or recover debts”. Various security agencies exist to prevent and monitor different forms of crimes e.g National Drug Law Enforcement Agency⁶⁹ which is charged with eliminating the growing, processing, manufacturing, selling, exporting and trafficking of hard drugs. These agencies come with different functions and powers which may sometimes collide with one another in the performance of such duties. The police can enforce all crime laws contained in these criminal legislations and are expected to carry out this duty without prejudice or irrational attitude of hostility towards other security agencies that are also enabled by their various Acts.

e) Discharge of Duties as may Be Required of Them

⁶⁶ Police Act 2020, Section 36; Administration of Criminal Justice Act 2015, Section 8.

⁶⁷ [2003] 3 NWLR pt 808, 470; *Afribank Plc v Onyima* [2004] 2 NWLR (pt 858) 654; *Ibiyeye & Anor v Gold & Ors* [2012] All FWRL (pt 659) 1074; *OSIL Ltd v Balogun* [2013] All FWLR (pt 677) 653.

⁶⁸ (2014) 23 WRN 48.

⁶⁹ National Drug Law Enforcement Agency Act Cap N30 Laws of the Federation of Nigeria 2004.

Section 4(e) of the Police Act states that, ‘the police shall discharge such duties within and outside Nigeria as may be required of it under this act or any other law’. Furthermore, the Act also provides that, ‘When required to perform military duties in accordance with the Armed Forces of Nigeria or any force for a 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 Armed Forces in Nigeria...’⁷⁰ The police is charged with the duty of performing military functions within and outside the country particularly during states of emergency. The Peacekeeping Office of the Nigeria police was established in 2005.⁷¹ The police force first participated in peacekeeping missions in 1960 with the deployment of personnel to Congo. Other countries include Namibia, Sudan, Mali, Liberia, Sierra Leone, Cote D’Ivoire, Somalia, Angola, Burundi to mention but a few.⁷² Nigeria has been a major contributor of troops to the United Nations peace operations. All this is geared towards global peace.

f) Power of Investigation

The power of investigation is statutorily vested in the police.⁷³ When an allegation of crime is reported, it is the duty of the police to investigate such to find out the truth and merit of such allegation and who committed the crime. Investigation of a crime entails a lot of things like observance, noting of scene, suspecting and interrogating persons, profiling criminals etc. During the course of investigation, the police are empowered to question or interrogate any suspect or witness in order to obtain useful information.⁷⁴ However, they are to do this within the ambits of

⁷⁰ Police Act 2020, Section 8.

⁷¹ ‘Nigeria Police Force’ <www.npf.gov.ng/info/peace_keeping.php> accessed 29 May 2021.

⁷² Ibid.

⁷³ Police Act 2020, Section 31.

⁷⁴ *Joshua v The State* [2009] 5 NWLR (pt 475) 1626 at 1651 (Denton–West JCA).

the law.⁷⁵ Before a matter is charged to court, the police have 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.⁷⁶ As a result of the improper and careless way the police embark on investigation, criminals escape the law and many criminal cases are lost. In the case of *Oforlette v The State*, Ayoola JSC observed that, “The truth of the matter is that the whole case was improperly investigated and poorly prosecuted...”⁷⁷ It is a duty of the police to investigate any allegation of crime. And this has been given judicial credence in the case of *Fawehinmi v IGP* where Uwaifo JSC explained the 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”.⁷⁸ In the case of *Joshua v State*,⁷⁹ the court held that 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 inform that he may be prosecuted for it.

g) Power of Arrest

The police in maintaining law and order and public safety have been vested with the power to arrest.⁸⁰ There exists however no statutory definition of this term. It is however a seizure or

⁷⁵ *Igweokolo v Akpoyibo & Ors* [2017] LPELR-41882 (CA) per Onigbanjo JSC.

⁷⁶ *Aina* (n 19) 46.

⁷⁷ [2000] All FWLR pt 12, 2081 at 2102; *Jammal v The State* [1991] 12 NWLR (pt 632) 582; *Dele v The State* [2011] 1 NWLR (pt 1229) 508 at 541 per Omoleoye JCA.

⁷⁸ *Fawehinmi v IGP* [2002] 7 NWLR pt 767, 606 at 670-671.

⁷⁹ *Joshua v The State* [2009] 5 NWLR pt 475, 1626.

⁸⁰ Police Act 2020, Section 32.

forcible restraint.⁸¹ It can also be defined as the taking or keeping of a person in custody by legal authority, especially in response to a criminal charge; specifically, like the apprehension of someone for the purpose of securing the administration of law, especially of bring that person before a court.⁸² Arrest is a truncation of a person's right to liberty and freedom as contained in Section 35(1) of the 1999 Constitution. Exceptions exist to this proviso albeit as it also recognized when arrests can be made.⁸³ 'A suspect or defendant alleged or charged with committing an offence established by an Act of the National Assembly or under any other law shall be arrested, investigated and tried or dealt with according to the provisions of this Act, except otherwise provided under this Act'.⁸⁴ A police officer cannot make an arrest based on civil wrong.⁸⁵ In carrying out an arrest, a police officer is allowed to touch or confine the body of the suspect, unless there is a submission to the custody by words or action.⁸⁶ However, a suspect may not be handcuffed, bound or subjected to restraint except there is reasonable apprehension of violence or an attempt to escape the restraint is considered necessary for the safety of the suspect or by order of the court.⁸⁷ The police must inform arrested suspects of the right to remain silent or avoid answering any question until after consulting his lawyer or any other person of his choice.⁸⁸ Any arrest made outside the ambit of the law is unlawful.⁸⁹ The police should not resort to torture in arresting a suspect. The police have to apply restraint and professionalism in exercising this power. However, where a person resorts to violence in resisting an arrest, the

⁸¹ *Black's Law Dictionary* (8th edn, 2004) 333.

⁸² *Ibid*

⁸³ 1999 Constitution, s 35(1)(a-f)

⁸⁴ Police Act, Section 32(1); Administration of Criminal Justice Act, Section 3.

⁸⁵ *Ibid*, Section 32(2); *Ibid*, Section 8(2).

⁸⁶ *Ibid*, Section 33; *Ibid*, Section 4.

⁸⁷ *Ibid*, Section 34; *Ibid*, Section 5.

⁸⁸ *Ibid*, Section 35(2); *Ibid*, Section (6)(2).

⁸⁹ *Mayaiki v The State* [2008] 15 NWLR (pt 1109) 173; *Oludamilola v The State* [2010] 8 NWLR (pt 1197) 565.

police officer may use such force as is necessary to overcome such resistance and if death occurs provided the police had applied commensurate force, he will not be liable.⁹⁰ A police officer should inform a suspect of the reason for his arrest except he was caught in the act or is apprehended immediately after its commission or has escaped from lawful custody.⁹¹ An arrested person shall be informed in writing within 24 hours of the facts and grounds for his arrest⁹² and shall be brought before a court of law within a reasonable time.⁹³ Another person shall not be arrested in place of a suspect.⁹⁴ A police officer may arrest without an order of court and without a warrant as stipulated by the Act.⁹⁵

h) Power to serve summons and execute warrants

Any summons lawfully issued by a court may be served by any police officer at anytime during the hours of daylight, which is between 6am-6pm.⁹⁶ No controversy exists as to the exercise of this power since they are carrying out judicial orders. A warrant of arrest can be executed on any day including a Sunday or public holiday.⁹⁷ A police officer can execute a warrant at anytime and in any place in any state other than within the actual courtroom in which a court is sitting.⁹⁸ A police officer executing a warrant of arrest shall, before making an arrest, inform the suspect of the warrant for his arrest unless there is reasonable cause for abstaining from giving the

⁹⁰ Constitution, Section 33(2)(b); See also Robbery and Firearms (Special Provisions) Act Cap R11 Laws of the Federation of Nigeria 2004, Section 8(1); *Ibikunle v The State* [2007] 2 NWLR (pt 1019) 546 where the Supreme Court per Onnoghen JSC commented on the use of unreasonable force by police officers in effecting an arrest;

⁹¹ Police Act 2020, Section 35(1); Administration of Criminal Justice Act, Section 6(1).

⁹² Constitution of the Federal Republic of Nigeria 1999, Cap. C23 Laws of the Federation of Nigeria 2010, Section 35(3); Police Act, Section 43(1).

⁹³ *Ibid*, Section 35(4); *Ibid*, Section 32(3); Administration of Criminal Justice Act 2015, Section 8(3).

⁹⁴ Police Act 2020, Section 36; Administration of Criminal Justice Act, Section 7.

⁹⁵ *Ibid*, Section 38(1)(3); *Ibid*, Section 18(1)(2).

⁹⁶ *Ibid*, Section 65.

⁹⁷ *Ibid*, Section 77(1).

⁹⁸ *Ibid*, Section 77(2).

information on the ground that it might occasion escape, resistance or rescue.⁹⁹ A warrant can be executed notwithstanding that it is not in possession of the person at the time of executing the warrant, but shall be shown to the suspect on demand within 24hours.¹⁰⁰

i) Power to grant bail

A suspect arrested without a warrant for an offence shall be released on bail after due inquiry into his case by an officer in charge of the station, where it will be impracticable to bring the suspect before a court having jurisdiction with respect to the offence alleged, within 24 hours after the arrest.¹⁰¹ This is subject to the suspect entering into a recognizance with or without sureties for a reasonable amount of money to appear before the court or at the police station at the time and place named in the recognizance.¹⁰² This allows a suspect to be released on self cognizance. This provision does not apply to capital offences. Bail has been described as a security such as cash or bond; especially, security required by a court for the release of a prisoner who must appear at a future time.¹⁰³ It is also the process by which a person is released from custody either on the undertaking of a surety or on his or her own recognizance.¹⁰⁴ an assurance or undertaking given by an authorized person that a suspect would appear at a certain place or a particular day and at a given time in response to a request that he should be present to respond to criminal allegations leveled against him. Where a suspect is taken into custody and inquiry into the case cannot be completed immediately, he can be granted bail on his entering into a recognizance with or without sureties for a reasonable amount to appear at a station at such time

⁹⁹ Police Act 2020, Section 77(3).

¹⁰⁰ Ibid, Section 78.

¹⁰¹ Ibid, Section 62(1).

¹⁰² Ibid, Section 62(2).

¹⁰³ Black's Law Dictionary (8th edn, 2004) 425.

¹⁰⁴ Ibid, 426.

as are named in the recognizance, unless prior to the time, he receives a notice in writing from the police officer in charge of the station that his attendance is not required.¹⁰⁵ Where a person granted bail by the police remains in police custody because he is unable to fulfill the conditions of his bail, then his continued remand in police custody will not be in contravention of the constitutional provisions.¹⁰⁶ It is the duty of the suspect to comply with the conditions of his bail. An application for bail may be made orally or in writing.¹⁰⁷ Bail is a constitutional right and the police are not allowed to discriminate as to the choice of the surety in respect to age, sex, religion or ethnic origin. This would amount to gross breach of the constitution.¹⁰⁸ This power is not a discretionary one. It should be pointed out that bail is free and not to be paid for. The Act does not permit police officers to charge fees to release suspects on bail. Such payments are seen as bribery.

j) Power to Search Persons and Premises

A police officer is allowed to seize and retain anything in the course of carrying out a search.¹⁰⁹ In all cases, the person on whose premises it was at the time of the seizure or the person from whom it was taken, if different from whose premises it was, may be summoned or arrested and brought before a court to account for his possession of the property.¹¹⁰ A premises is only allowed to be searched if it is or within the preceding twelve months had been in the occupation of any person convicted of receiving stolen property or of harboring thieves, or of any offence involving fraud and dishonesty, and punishable by imprisonment.¹¹¹ While conducting a search, human rights of

¹⁰⁵ Police Act 2020, Section 63(1).

¹⁰⁶ *Augustine Eda v COP Bendel State* [1982] 2 NCLR 21.

¹⁰⁷ Police Act 2020, Section 64(3).

¹⁰⁸ *Onyirioha v IGP* [2009] 3 NWLR (pt 1128) 342.

¹⁰⁹ Police Act 2020, Section 48(1).

¹¹⁰ *Ibid*, Section 48(2).

¹¹¹ Police Act 2020, Section 48(3).

persons found in the premises being searched are not to be violated.¹¹² Police officers also have the power to stop and search.¹¹³ An arrested suspect may be subject to search by a police officer.¹¹⁴ An arrested suspect who has furnished bail shall not be searched unless as provided for.¹¹⁵ A police officer having authority to arrest and has reason to believe that a suspect has entered or is within a house or place, shall on demand, be granted access by the person in charge of the place to search for the suspect sought to be arrested.¹¹⁶ Where after notification of his authority and purpose and demand of admittance duly made, a police officer may break any door or window of any house or place to effect entry and search it for suspect to be arrested, if admittance cannot be obtained otherwise.¹¹⁷ To ensure the efficiency and effectiveness of the vision and mission statements and strategies of the force.

CHAPTER TWO

¹¹² Ibid, Section 48(4).

¹¹³ Ibid, Section 49.

¹¹⁴ Ibid, Section 52(1), (2)

¹¹⁵ Ibid, Section 52(3).

¹¹⁶ Ibid, Section 55(1).

¹¹⁷ Ibid, Section 55(2).

LEGAL FRAMEWORK FOR THE ESTABLISHMENT OF THE POLICE POWERS TO PROSECUTE CRIMINAL CASES IN NIGERIA

2.1 The Constitution of the Federal Republic of Nigeria 1999¹¹⁸

The constitution¹¹⁹ is the *fons et origo*, it is the ground norm from which all other laws derives their validity¹²⁰, that is, the source and the origin of all laws in operation in Nigeria.¹²¹ Any law that is contrary to the provision of the Constitution of the federal Republic of Nigeria 1999 is to the extent of such inconsistency null and void.¹²²

The Nigerian Police Force is a creation of the constitution. It has a unitary structure even though Nigeria is a Federation. The powers and duties are conferred on it by the constitution and by other enactments.

Section 214 (1) of the 1999 constitution stipulated that: “there shall be a Police Force for Nigeria which shall be known as the Nigeria Police Force and subsequent to the provisions of this section no other Police Force shall be established for the Federation or any part thereof”.

By the above provisions, constitutional validity is given to such enactments as the Police Act and other laws like the Administration of Criminal Justice Act which confer on the police its functions and duties.

It is germane to note that the constitution as the ground norm does not make or go into details. It merely states the general guidelines and leaves the details to the enabling laws made pursuant to the constitutional provision.

¹¹⁸ Constitution of the Federal Republic of Nigeria 1999, Cap. C23 Laws of the Federation of Nigeria 2010.

¹¹⁹ Ibid.

¹²⁰ Ibid, Section 1(3).

¹²¹ *INEC v Musa* (2003) 3 NWLR (Pt.806)72.

¹²² Constitution of the Federal Republic of Nigeria, 1999 (As Amended), Section 1(3).

Notably, however, the constitution provide for the power of the Attorney General of the Federation and the State to institute criminal proceedings and if possible delegate the power to other persons to prosecute on his behalf. In the case of *Federal Republic of Nigeria v Osahon & Ors*,¹²³ the supreme court while giving credence to provisions of sections 174(1)(b) of the 1999 Constitution held that a police officer can prosecute on behalf of the Attorney General in that the Attorney General does not have monopoly of prosecutorial powers.

According to the court, section 174(1)(b) of the 1999 Constitution recognizes the right of “any other authority or person” to institute criminal proceedings in Nigeria. A Police Officer is such “person” who can institute criminal proceedings. Therefore a 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.

It is humbly submitted that the Supreme Court would have decided this case differently if the case is to be decided under the new Police Act 2020 at best the court would have held that the Police officer taking into consideration that he is a legal officer can prosecute a criminal case within the provisions of section 174(1)(b) of the 1999 Constitution.

2.2 Administration of the Criminal Justice Act 2015

Generally the ACJA is in 49 parts, divided into 495 sections with 4 Schedules, which scrapped the Criminal Procedure Act, the Criminal Procedure Code and Administration of Justice Commission and condensed them into ACJA made applicable in all Federal Courts and courts in the Federal Capital Territory (FCT), Abuja, Nigeria.

¹²³ Ibid.

The purpose of this Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim.¹²⁴ The provisions of this Act apply to criminal trials for offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja. However, the provisions of this Act do not apply to a Court Martial.¹²⁵

The implication of the above provision is that the Act is clearly not applicable to State High Courts in Nigeria. Any state that wish to enforce the provisions if the Act will have to first reenact the Act in the State.¹²⁶

The ACJA 2015 responds to Nigeria's dire need of a new legislation that will transform the criminal justice system to reflect the true intents of the Constitution and the demands of a democratic society, eliminate unacceptable delays in disposing of criminal cases and improve the efficiency of criminal justice administration in the country. It is not a hyperbolic statement to say that the ACJA 2015 contained so many commendable innovations. For example, By section 10(1) of the Criminal Procedure Act,¹²⁷ the police could arrest without a warrant, any person who has no ostensible means of sustenance and who cannot give a satisfactory account of himself. This particular provision has been greatly abused by the police who use it as a ground to arrest people indiscriminately. The ACJA 2015 has deleted this provision. Section 7 of the ACJA 2015 specifically prohibits arrest in lieu. The ACJA also made elaborate provision for the protection of

¹²⁴ Administration of the Criminal Justice Act 2015, Section 1.

¹²⁵ Ibid, Section 2.

¹²⁶ *George v FRN* [2011] 16 NWLR (Pt. 1254) 1 at 72-73.

¹²⁷ Cap. C41 LFN 2004.

the constitutional rights of an arrested person. For instance, Section 6 of the Act provides that a suspect shall be informed of the reason for the arrest.

Section 8(1) of Administration of Criminal Justice Act 2015 provides that a suspect shall not be subjected to torture or cruel treatment in the hands of any law enforcement agent or a private person that has made a lawful arrest and shall be accorded humane treatment, having regard to his right to the dignity of his person. Furthermore, Section 8(2) address the issue of illegal detention and the use of police for A suspect shall not be arrested merely on a civil wrong or breach of contract.

Section 15 of the ACJA 2015 makes provisions for mandatory record of personal data of an arrested person. Subsection 2 provides that the process of recording arrest shall be concluded within a reasonable time, not exceeding forty-eight hours. Section 15(4) of the Act provides that where a suspect volunteers to make a confessional statement, the confessional statement shall be in writing or may be electronically recorded on a retrievable video compact disc or such other audio visual means.

Section 16 of the Act makes provision for the establishment, within Nigeria Police, a Central Criminal Record Registry of all arrest made by the police. The registry is to be located at the Police Headquarters and at every state police command. The Act further states that every state including the Federal Capital Territory is to ensure that the decisions of the court in all criminal trials are transmitted to the Central Criminal Records Registry within thirty-days after delivery of judgment. This Act mandates the Inspector-General Police and heads of every agency authorised by law to make arrest to remit quarterly to the Attorney General of the Federation a record of all arrests made in relation to federal offences or arrests within Nigeria⁸. The Commissioner of Police of a State is also mandated to remit to the office of the Attorney-General of that State a

similar record of all arrests in relation to state offences or arrests within the state. Such record is to contain the full particulars of the person arrested which must include the following: the alleged offence, date of arrest, full name, occupation, address and others means of identification which should include the height, photograph and finger print of the suspect. Section 29(5) empowers the Attorney-General of the Federation to establish an electronic and manual database of all records of arrested persons at the Federal and State level.

Section 33 of the Act directs the police to remit report on the last working day of every month to the nearest magistrate the cases of all suspect arrested with or without warrant within the limit of their respective stations or agency whether the suspect has been admitted to bail or not. Upon receipt, the magistrate is to forward the report to the Administration of Criminal Justice Monitoring Committee. The Committee shall analyze the report and advice the Attorney-General of the Federation as to the trends of arrests, bail and related matters. The Attorney-General of the Federation upon request shall also make the report available to the National Human Rights Commission, Legal Aid Council of Nigeria or NGOs. Section 34 of the Act provides that the Chief Magistrate or any magistrate designated by the Chief Judge for that purpose to conduct an inspection of police stations and other places of detention every month.

Essentially the provision of the Act in respect of modes of instituting criminal proceedings is a hybrid of what was obtainable under the CPA and CPC. Section 109 of the Act unified the existing procedures.

It is worthy to note that the Act in section 110(1) (a) stipulates that the signing of the charge sheet should be done by any of the persons mentioned in section 106 of the Act. Another interesting innovation of the Act is the introduction in section 196 (2) that a charge sheet shall be filed with the photograph of the defendant and his finger impression, however where the

photograph and finger impression are not available this requirement shall not invalidate the charge.

Section 167 (3) provides that “no person shall be denied, prevented or restricted from entering into any recognizance or standing as surety for any defendant or applicant on the ground only that the person is a woman”. This provision is commendable as it is in line with the provisions of section 42 of the Constitution of the Federal Republic of Nigeria 1999.

The Act in section 396 makes provision for day-to-day trial of criminal cases. Where day-to-day trial is impracticable after arraignment, parties shall only be entitled to five adjournments from arraignment to final. The interval between each adjournment must not exceed fourteen days. Where it is impracticable to conclude a criminal proceeding after the parties have exhausted their five adjournments each, the interval between one adjournment to another shall not exceed seven days. The court may award costs in order to discourage frivolous adjournments.

The section 396(7) of the ACJA 2015 states that a Judge of the High Court who has been elevated to the Court of Appeal shall have dispensation to continue to sit as a High Court Judge for the purpose of concluding any part-heard criminal matter pending before him at the time of his elevation and shall conclude same within a reasonable time. This provision is intended to address the problem of trial *de novo*. However, this section has been declared void by the supreme in the case of *Udeogu v FRN*¹²⁸ for being inconsistent with section 290(1) of the Constitution of the Federal Republic of Nigeria 1999.

Section 232 of the Act permits the trial of some offences in camera. These include: (a) sexual related offences, (b) terrorism offences, (c) offences relating to economic and financial crimes, (d)

¹²⁸ SC.622c/2019 (unreported). Delivered On 8th May 2020.

trafficking in persons and related offences, and (e) any other offence in respect of which an Act of the National Assembly which permit the use of such protective measures.

By virtue of this provision, the name and identity of the victims of such offences or witnesses shall not be disclosed in any record or report of the proceedings. The Court in order to protect the identity of the victim or a witness may take any or all of the following measures:

- (a) receive evidence by video link.
- (b) permit the witness to be screened or masked.
- (c) receive written deposition of expert evidence.

Subsection (5) makes the contravention of the provisions of section 232 an offence punishable to a minimum term of one year imprisonment.

Section 364 of the Act states that court proceedings shall be recorded electronically. Similarly, section 362 of the Act provides that where a person who is seriously ill or hurt may not recover, but is able and willing to give material evidence relating to an offence and it is not practicable to take the evidence during trial, the Judge or Magistrate shall take in writing the statement on oath or affirmation of the person.

The ACJ Act in sections 453, 460 and 468 attempted to address the problem of excessive use of imprisonment as a disposal method by introducing some alternatives to imprisonment. These include the introduction of suspended sentence, community service, parole and probation

Of all the innovations, the one that is related to this research is section 106 of the Act. According to the provisions of Section 106 of the Administration of the Criminal Justice Act 2015 prosecution of all offences in any court shall be undertaken by only the following persons; Attorney General of the federation, the law officer in the office of the ministry of justice or department, a legal practitioner authorized by the Attorney General of the federation, a legal

practitioner authorized to persecute by this Act or any other Act or National Assembly. The Section provides thus:

Subject to the provisions of the Constitution, relating to the powers of prosecution by the Attorney-General of the Federation, prosecution of all offences in any court shall be undertaken by:

- (a) the Attorney-General of the Federation or a Law Officer in his Ministry or Department;
- (b) a legal practitioner authorised by the Attorney- General of the Federation;
- (c) a legal practitioner authorized to prosecute by this Act or any other Act of the National Assembly.

While this section completely excluded the police from among those who can prosecute cases before any court in Nigeria. By implication the decision of the Supreme Court in the case of *Osahon v Federal Republic of Nigeria*¹²⁹ with respect is no longer a good law. In that case the Supreme Court held upon a community reading of Section 56(1) of the Federal High Court Act, Section 23 of the Police Act¹³⁰ and Section 174(1)(b) of the 1999 Constitution that a Police Officer has the power to initiate criminal proceedings before any court in Nigeria. It is rightly submitted without any equivocations that a police officer cannot prosecute a criminal before any federal court of which the ACJA is applicable unless such a Police Officer is a legal practitioner and fall within the list of persons stated in section 106 of the ACJA. Any argument to the contrary will make a fool of the law. The legislature in their wisdom and being knowledgeable of the current position in the ACJA deemed it to bring the provisions of the Police Act in conformity with the ACJA by substantially eroding the lay Police Officers of the power to prosecute in the new Police Act 2020.

¹²⁹ (2006) LPELR-3174(SC).

¹³⁰ Cap. P19 LFN 2004.

With the enactment of Section 66 of the Police Act 2020, it therefore, means that a police officer who is a legal practitioner can prosecute under the ACJA as it would fall under the list of person authorized to prosecute by an Act of the National Assembly.

It is observed that both the ACJA and the Police Act are Federal Acts and or Legislations. It is therefore unthinkable to talk of one being superior to the other. The two Acts must therefore be read together jointly with the provisions of section 174 of the constitution. The only irresistible conclusion to be reached is that section 106 of the ACJA and section 66 of the Police Act when read together with section 174 (1) (b) & (c) of the Constitution makes it clear that any police officer who is a legal practitioner has the power to conduct criminal proceedings before some court in Nigeria.

2.3 The Police Act 2020

The Nigeria Police Force (Establishment) Bill 2020 was signed into law by the President of the Federal Republic of Nigeria on the 16th of September 2020. The Act¹³¹ repealed the Police Act Cap. P19 Laws of the Federation of Nigeria, 2004. Its objective is to provide an efficient and effective framework for the Police, ensure cooperation and partnership between the Police and host communities in maintaining peace, protecting liberties, life and property and for other related matters.

Furthermore, the Act provides a more efficient and effective police service that is based on the principles of accountability and transparency, protection of human rights and fundamental freedom and partnership with other security agencies.¹³² Moreover, it seeks to establish an appropriate funding framework for the Police force in line with what is obtainable in other

¹³¹ Police Act 2020.

¹³² Ibid, Section 1.

Federal Government key institutions in a bid to ensure that all police formations nationwide are appropriately funded in to enable them carry out their duties effectively.¹³³

The Police Act 2020 is embodied with so commendable innovations. Of particular interest is section 4 of Police Act 2020, which lists the primary duties of the Nigerian police. It can be observed that the primary functions of the police force contained in Section 4 of the old Act have been expanded as new paragraphs have been included in Section 4 of the new Act. These include amongst others prevention and detection of crime, protection of the rights and freedom of every person in Nigeria as provided in the Constitution, the African Charter on Human and People's Rights and any other law. 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. In addition these duties shall be performed within or outside Nigeria as may be required of them by, or under the authority of the Police Act or any other Act.

The Police is also obligated to collaborate with other agencies to take any necessary action and provide the required assistance or support to persons in distress, including victims of road accidents, fire disasters, earthquakes, and floods, facilitate the free passage and movement on highways, roads and streets open to the public.

In consonance with public demands, Section 4(h) of the Act adopts community partnership in combating crime, together with sections 113 to 119 which provide for the establishment of community policing. The Act establishes a Community Police Committee to ensure the operation of community partnership in prevention and detection of crime and its objectives include maintaining a partnership between the community and the Police Force. This gives the

¹³³ Ibid, Section 2.

State Executive Council and members of the Communities a stake and voice in their state security affairs.

Furthermore, Section 5 of the new Act has saddled the Police Force with responsibility of promoting and protecting the Fundamental Rights of persons in police custody as guaranteed by the Constitution of Federal Republic of Nigeria 1999 (as amended). They are mandated to collaborate with and maintain close working relationships with any Government agency or relevant private initiatives in achieving the said responsibility. They are also responsible for promoting and protecting the fundamental rights of all persons as guaranteed under the African Charter on Human and People's Rights (Ratification & Enforcement) Act and other international legal instruments on human rights to which Nigeria is a signatory. This section is a laudable provision as it obligates the Police to respect human rights of individual.

It is noted that Section 7 of the New Act has vested the command and operational control of the Police Force and all its departments/units solely in the Inspector General of Police unlike Section 9(4) of the repealed Act that separated the command and operational control of the Nigerian Police Force and vested same in the President of the Federal Republic of Nigeria and the Inspector General of Police respectively. This provision will enhance the autonomy/independence of the Force and reduce partiality in carrying out its functions.

The Act promotes transparency and accountability whose primacy is seen in the provisions of section 8 (2) (c) and 8 (3) where the Inspector General of Police is mandated to publish via gazette and submit an audit (which shall show the activities of the police in terms of its professional efficacy and compliance with rule of law) to the Attorney General of the Federation and the National Assembly yearly.

The erstwhile Police Act was silent on the power of the Police to arrest for a civil wrong, this void was abused by a lot of police officers and citizens alike as Police meddled in and even became an instrument of torment or oppression in purely civil matters. The new Act has specifically prohibited the Police from arresting a person merely on a civil wrong or breach of contract.¹³⁴ This is to further give effect to the provisions of Section 8(2) of the Administration of Criminal Justice Act, 2015 which has a similar provision.

In the new Act, the police officer in charge of a police station has a duty to make a report to the nearest Magistrate on the last working day of every month on cases of persons arrested without warrant whether they have been granted bail or not. The Magistrate shall forward the report to the Criminal Justice Monitoring Committee who shall analyze and forward the reports to the Attorney General. The Chief Magistrate or any other Magistrate who has been appointed by the Chief Judge is now also required to conduct an inspection of Police Station within his territorial jurisdiction.¹³⁵

Section 138(1) of the Act is in consonance with principles of International Policing by granting junior officers grounds to disobey unlawful orders by their superiors. Furthermore, it prohibits gender discrimination of any form.

Of interest to this research work is the power of the Police to prosecute criminal matters as contained in Section 66 of the Police Act 2020 which provides thus:

Subject to the provisions of sections 174 and 211 of the Constitution of Nigeria, 1999 and Section 106 of the Administration of Criminal Justice Act 2015 which relates to the power of the Attorney-General of the Federation and the State to institute, take over and continue or discontinue criminal proceedings against any person before any court of law in Nigeria, a police officer who is a legal

¹³⁴ Ibid, Section 32 (2).

¹³⁵ Ibid, Sections 69 and 70.

practitioner may prosecute in person all prosecutions before any court whether or not the information is laid in his name.¹³⁶

(2) A police officer may, subject to the provisions of the relevant criminal procedure laws in force at the federal or state level, prosecute before the courts those offences which non-qualified legal practitioners can prosecute.

(3) There shall be assigned to every Police Division at least one police officer:

- (a) who is qualified to practice as legal practitioner in accordance with the Legal Practitioners Act; and
- (b) whose responsibility is to promote human rights compliance by officers of the division.

It is the practice that once police are carrying on or have completed the investigation, the suspect would be charge to court which could be High Court or Magistrate Court, Sharia Court, Customary or Area Courts depending on the jurisdiction of the Court to entertain such a case. It is worthy to note that not every Police officer can now prosecute a defendant/accused in all Courts in Nigeria. Section 66(1) of the new Act provides that a Police officer, who is a Legal Practitioner, may prosecute in person before any Court whether or not the information or complaint is laid in his name. For applicability of (1) of this section subsection (3) provides that that at least one police officer who is qualified to practice as a legal practitioner in accordance with the Legal Practitioners' Act shall be assigned to every Police Division. This would help in advancement of Nigerian Criminal Law system. It will also enhance the capacity, knowledge, efficiency, and relevance of legal practitioners in the service of Nigeria Police Force. Now offenders will be duly prosecuted in Court as competence of the prosecutors will prevent or reduce situations where justice is been eroded due to technicalities in relation to admissibility of evidence and procedural issues.

Subsection (2) only provides that any Police officer may subject to the provisions of the relevant Criminal Procedure Laws in force at the Federal/State level prosecute before the Courts those offences which non-qualified legal practitioners can prosecute.

¹³⁶ Police Act 2020, Section 66.

This subsection further complicated the issue. While the Act intends to stop non-lawyers from prosecuting suspects, it still talks about “those offences, which non-qualified legal practitioners can prosecute.”¹³⁷ The question is; are there offences that non-qualified legal practitioners can prosecute? The answer is no. the second question is who are those qualified to persecute matters in court? We either have the Attorney General of the federation, the law officers of the of ministry of justice as the case may be, Attorney General of the state, legal practitioners acting under the authority of the Attorney General of the federation, a public officer prosecuting in official capacity, and any other person so authorized by the Attorney General of the federation, private prosecutor and a police officer who is equally a lawyer.

In federal level, we have the Administration of Criminal Justice Act (ACJA). Section 106 of ACJA, which states clearly that prosecution of all offences in any court shall be undertaken by only the following persons; Attorney General of the federation (AGF), the law officer in the once of the ministry of justice or department, a legal practitioner authorized by the AGF, a legal practitioner authorized to persecute by this Act or any other Act or National Assembly.

At the state level under the Administration of Criminal Justice Laws (ACJL) of the various states that has domesticated the ACJA with little or no modifications. Police officers are not listed as prosecutors in the ACJL that many states have.¹³⁸ But this New Act says subject to the provisions of the relevant criminal procedure laws in force in the federal and the State level. So if this new police Act is saying that it is subject to those laws, it means that we must definitely have recourse to those laws. And what are the extant laws guiding prosecution in our courts? They are the ACJA in the federal courts and the ACJL in the state courts as the case may be. So if there are no

¹³⁷ Ibid, Section 66(2).

¹³⁸ For instance, Section 104 of Administration of Criminal Justice Law (ACJL) of Abia State, Enacted in 2017 copied the position in Administration if criminal justice Act 2015.

policemen provided for in the ACJA, and the ACJL, are there offences where laymen can prosecute? I have not found such and I stand to be corrected. This is more of a challenge to the already complicated issue.

A question that might also arise from the provision of Section 66 of the Police Act is to what extent is the Police Act 2020 applicable to Magistrate Court? The Police Act applies to all Courts, according to the definition section of the Police Act 2020, Court as used in the Police Act 2020 means “any court established by any law in force in Nigeria”.¹³⁹ Magistrate Courts are established by Magistrate Court Law of the various States in Nigeria. A community reading of Sections 66(1)¹⁴⁰ and 141 means the police officer who is not a legal practitioner cannot prosecute in the Magistrate Court. Also it must be noted that the Magistrate Court Laws of Various State provides that the practice and procedure of the court in its criminal jurisdiction shall be regulated in accordance with the provisions of the Criminal Procedure Law of the State.¹⁴¹ The question still boils down to what is available in the Administration of Criminal Justice Laws of most States, can a layman prosecute under the law, the answer is no.

The effect of the foregoing statutory provision is that the police are empowered to institute and conduct criminal proceedings in all courts in Nigeria, including the Supreme Court, so long the police officer is a legal practitioner and the provisions of section 66(2) of the Police Act 2020 is an addendum with no relevance but a complication to an already convoluted waters. The legislature should amend the Police Act to either expunge it or enact an Act that provides for offences Layman can prosecute.

¹³⁹ Section 141 of the Police Act 2020.

¹⁴⁰ Section 66(1) provide that “a police officer who is a legal practitioner may prosecute in person all prosecutions before any court whether or not the information is laid in his name”.(emphasis is mine)

¹⁴¹ See Section 49 of the Magistrates’ Courts Law of Edo State.

While it is now settled that a police officer can prosecute criminal proceedings, however, it is should be noted that the power of the police to “conduct in person all prosecutions before any Court whether or not the information or complaint is laid in his name” is subject to the overriding powers of the Attorney-General of the Federation and States respectively under Sections 174 and 211 of the 1999 Constitution.

Section 174 of the 1999 Constitution provides:

- 174(1) The Attorney-General of the Federation shall have power –
- (a) to institute and undertake criminal proceedings against any person before any Court of Law in Nigeria, other than a court martial, in respect of any offence created by or under any Act of the National Assembly;
 - (b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; or
 - (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.

Section 211 provides:

- (1) The Attorney General of a state shall have power
 - (a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court-martial in respect of any offence created by or under any law of the House of Assembly;
 - (b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and
 - (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.
- (2) The powers conferred upon the Attorney-General of a state under subsection 1 of this section may be exercised by him in person or through officers of his department.
- (3) In exercising his powers under this section, the attorney-General of a state shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process

The Attorney General of the Federation and the State as the case may be are themselves empowered to institute and undertake any criminal proceedings in any court in Nigeria and if any other person or authority instituted or undertook any such criminal proceedings in any court in

Nigeria, within their respective jurisdictions, they have the power to take it over, continue or discontinue at any stage of the proceedings.

2.4 Administration of the Criminal Justice Law of other States

In Edo State, the Administration of Criminal Justice Law was enacted into law in 2016 and came force in the year 2018. This law repeals the Criminal Procedure Law (Laws of Bendel state of Nigeria 1976) as applicable in Edo State.¹⁴²

The Administration of Criminal Justice Law brought innovations that are quite different from the repealed statute regulating administration of criminal justice, hence at the initial time, stakeholders in the administration of criminal justice were confronted with problems of adapting to the provisions of the Administration of Criminal Justice Law.

The law reenacted the Administration of Criminal Justice Act 2015 with little modifications. On the power to prosecute the ACJL differ considerably from the ACJA. Section 106 of the Administration of Criminal Justice Law provides thus:

Subject to the provisions of the Constitution, relating to the powers of prosecution by the Attorney-General of the State, prosecution of all offences in any court in Edo State shall be undertaken by:

- (a) the Attorney-General of the Federation or a State Counsel in his Ministry or Department;
- (b) a legal practitioner authorized by the Attorney- General of the Federation within the ambit of the authority granted by the Attorney-General ;
- (c) a legal practitioner authorized to prosecute by this Law or any other Law of the State House of Assembly;
- (d) a Police Officer or other Officer authorized by any other law of the state or Act of the National Assembly.

¹⁴² Administration of the Criminal Justice Law of Edo State 2016, Section 493.

The provisions of the ACJL of Edo State is directly the opposite of the Provisions of the ACJA. While the provisions of the ACJA excluded police officers the ACJL included police officers among the list of those who can prosecute a case before any court in the State.

Though the two are at variance, the provisions of the ACJA has no effect on the ACJL on the grounds that the ACJA which is a criminal legislation is not among the list on the exclusive nor the concurrent list, therefore it is within residual power of the State to enact a law on criminal matters, while the Federal legislature might enact laws with regard to criminal matters such laws are only applicable to the federal capital territory Abuja.¹⁴³ So when the federal government and the state government make laws on any matter on the residual legislative list which are both consistent, the doctrine of covering the field will not apply in such circumstance.¹⁴⁴ While commenting on this point in the case of *George v FRN*¹⁴⁵ the Court of Appeal, per Ogunbiyi JCA held as follows:

The power of the Lagos state house of Assembly to legislate on criminal matters is derived from the residual list in the 1999 constitution. This is the reason why the National Assembly cannot legislate on a criminal code for the whole country but for the Federal Capital Territory in respect of its residual power to make laws for the federal Capital Territory.

Similarly, Lagos state has its own Administration of Criminal Justice (Repeal and Re-enactment) Law 2011 which was enacted in 2011 and came into force on the 8th day of August 2011.¹⁴⁶

The Law in Section 70 provide for who can prosecute crime under the law. The section reads thus:

¹⁴³ Administration of Criminal Justice Act 2015, section 2.

¹⁴⁴ E. G. Ekhaton, 'An Overview of the Doctrine of Covering the Field and Its Application in Nigeria' (2018/2019) 4 (1) ABUAD Law Students' Society Journal 195.

¹⁴⁵ [2011] 16 NWLR (Pt. 1254) 1 at 72-73.

¹⁴⁶ Administration of Criminal Justice (Repeal and Re-enactment) Law 2011, Section 373.

Where any person other than the Attorney-General of the State initiates or prosecutes in any criminal proceedings for an offence against a Law of the State on behalf of the State or where any public officer initiates or prosecutes in his official capacity in any such criminal proceedings, such person or public officer shall initiate or prosecute such case subject to such general or specific direction as may be given by the Attorney-General of the State.

So under the ACJL of Lagos State, a private prosecutor or public officer can prosecute any criminal proceedings for an offence against a Law of the State on behalf of the State. This section is broad and can be interpreted to include the police, because the police are public officers.

One area of interest in the above provision is that the Law never gave the legal qualification of the private individual nor the public officer. Thus one might be tempted to ask. Can a police officer who is not a legal practitioner prosecute any criminal proceedings for an offence against a Law of the State on behalf of the State in Lagos state without offending the provisions of section 66 of the Police Act 2020 which is of a federal character and might. Situations such as this have further complicated the issue with regard to the power of the police to prosecute criminal cases in Nigeria. While it might be argued that the provisions of Section 70 of this Law corroborates the position of Section 66(2) of the Police Act 2020. Such an argument cannot hold water because for a private prosecutor to be able to prosecute such a private prosecute must have first obtained a fiat from the Attorney General of Lagos State and virtually all cases that private prosecutor have prosecuted a case before a court, such private prosecute are legal practitioner and not a layman.

CHAPTER THREE

JUDICIAL INTERPRETION OF THE STATUTORY PROVISIONS ON THE PROSECUTORIAL POWER OF THE POLICE

3.1 Review of the Case of *Federal Republic of Nigeria v Osahon & Ors*¹⁴⁷

The case of *Federal Republic of Nigeria v Osahon & Ors*,¹⁴⁸ resolve before the enactment of the ACJA 2015 and Police Act 2020 the long standing controversies with relation the police power to prosecute criminal cases before any courts (both inferior and superior courts) in Nigeria.

The controversies with regards to the Police officer power to prosecute though resolve in this case were also portrayed from the decisions of the Justices of the Supreme Court in this case.

Mustapha, JSC in his dissenting adumbrated thus:

Historically, the police on their authority, especially at the Magistrate and Area Courts where prosecution may also begin by a complaint or by an aggrieved person against anybody ... Police Act was promulgated, the Magistrate Courts were manned by laymen mostly District Officers and the police had the infettered powers of prosecution in Magistrate Courts and later Customary, Native and Area Courts”.

Corroborating this position, Belgore, JSC in his emotion laden dictum quipped also that:

From the colonial period up to date, police officers of various ranks have taken up prosecution of criminal cases in Magistrates and other courts of inferior jurisdiction. They derive their powers under section 23 of the Police Act. But when it comes to superior courts of record, it is desirable, though not compulsory that the prosecuting Police Officer, ought to be legally qualified.

In the case of *Federal Republic of Nigeria v Osahon & Ors*,¹⁴⁹ the case *Olusemo v. C.O.P* was distinguished and not followed. The facts of this cases is stated as follows;

¹⁴⁷ (2006) LPELR-3174(SC).

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

In the Osahon's case, the six Appellants were standing trial before the Federal High Court on a six count charge under the Miscellaneous Offences Decree No. 20 of 1984 (as amended).

The charge was initiated by a Police Officer who also signed as the prosecutor. The prosecution was done by the Police without the fiat or authority of the Attorney General of the Federation.

The Appellants subsequently filed an application before the court seeking to quash the charge preferred against them on the ground that by virtue of Section 174(1)(a) of the 1999 Constitution, it is only the Attorney-General and Officers of his department that can institute and undertake criminal proceedings against them. Since 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, nor Section 3 of the Law Officers Act, they were incompetent to institute and undertake the Criminal Proceedings.

The trial Judge overruled the objection by the Appellant and held that the Police Officers have power to institute and prosecute the charge in the Federal High Court.

The appellant appealed to the Court of Appeal. In allowing the appeal the court held inter - alia as follows: that the Police Officers are not law officers under the Attorney-General's Department. By virtue of Section 56(1) of the Federal High Court Act, in the case of a prosecution by or on behalf of the Government of the Federation or by a public officer in his official capacity the Government of the Federation or that Officer may be represented by a Law Officer, State Counsel, or by any Legal Practitioner duly authorized in that behalf by or on behalf of the Attorney-General of the Federation. Accordingly Police Officers, not having been mentioned as persons to represent the State in the Federal High Court, lack the standing to initiate and undertake criminal proceedings before the court. And in the instant case, the Police Officers

prosecuting the Appellants lack the competence to conduct the proceedings. The case of *Olusemo v. C.O.P.* was distinguished. The State appealed against the judgment of the Court of Appeal to the Supreme Court.¹⁵⁰

At the Supreme Court, the issue that was at stake was "Whether the Court of Appeal was right when interpreting section 56(1) of the Federal High Court Act, section 23 of the Police Act and section 174(1) of the 1999 Constitution came to the conclusion that the Police Officer prosecuting the respondents lack the competence to initiate or conduct prosecution before the Federal High Court. However, the learned Counsel for the appellant appeared to have encapsulated the issue by singularly narrowing it to this question in his brief, *id est* 'can a Police Officer (being a qualified legal practitioner) institute or undertake a criminal prosecution in the Federal High Court without the fiat of the Attorney-General'.

The full Court of the Supreme Court¹⁵¹ by majority, allowed the appeal and held that a Police Officer qua Police Officer can prosecute criminal matters in any court in Nigeria by virtue of Section 23 of the Police Act. They do not need the fiat of the Attorney General of the Federation. It must quickly be stated that all of the justices based their arguments on Section 174(1)(b) of the 1999 Constitution which recognizes the right of "any other authority or person" to institute criminal proceedings in Nigeria. Section 23 of the Police Act and Section 56(1) of the Federal High Court Act. For the five Justices that held that the Police officer can prosecute criminal cases up to the supreme court, they all agreed that upon a community reading of Section 23 of the Police Act and Section 174(1)(b) of the 1999 Constitution, it is clear that a Police Officer has

¹⁵⁰ (2006) LPELR-3174(SC).

¹⁵¹ Salihu Modibbo Alfa Belgore, Idris Legbo Kutigi, Aloysius Iyorgyer Katsina-Alu, Dahiru Musdapher, Ignatius Chukwudi Pats Acholonu, Mahmud Mohammed, Walter Samuel Nkanu Onnoghen, JJSC.

the power to initiate criminal proceedings before the Federal High Court without first and foremost obtaining the Attorney General of the Federation's fiat.

It is worthy at this juncture to examine the various reasons proffered by the justices in arriving at their decisions.

According to Belgore, JSC who delivered the lead Judgment, the provisions of section 56 Federal High Court Act have not closed the category of those who could prosecute criminal cases in the Federal High Court? have they purported to do so, they will conflict with section 174(1) of the Constitution. The Police Act in section 23 is made subject to section 174 and 211 of the Constitution. The Constitution cannot be trivialised or be in terrorem of any law. The use of the phrase "subject to" as in section 23 of the Police Act is a very clear manifestation of the provisions of the Constitution vis-à-vis any other law.

Having taken this position, the learned Justice proceeded to acknowledge the fact that while it might be necessary for the police officer to be legally qualified it is however not mandatory for him to be legally qualified as a practitioner.

It must be noted that while asserting that the Police officer can prosecute, he however, failed to also hold whether or not the Police officer needed a fiat from the attorney general to prosecute. given the fact that in the argument of the plaintiff at the supreme court that it is only a police officer that is a qualified practitioner and has gotten a fiat from the attorney general that can prosecute. it behooves on the learned Justice who gave the lead judgment to have given a verdict on that point.

For him to have broadly said that the police officer can prosecute to the researcher did not fully clear the air on what has to be done before the police officer can prosecute.

Kutigi, JSC, on the other hand started his by first clarifying the phrase “any other authority or person”. According to the learned Justice:

“any other authority or person” must be an authority or person authorised by law to institute or undertake criminal proceedings who ... may not necessarily be legal practitioners such as Police Officers under the Police Act in this case.

The 1999 Constitution is no doubt as expected far ahead of both the Federal High Court Act and the Police Act when it provided for "any other authority or person" as above. It is observed that both the Federal High Court Act and the Police Act are Federal Acts and or legislations. It is therefore unthinkable to talk of one being superior to the other. The two Acts must therefore not be read in isolation of one another. They must be read together jointly with the provisions of section 174 of the Constitution. And once that is done, the conclusion is inescapable that Police Officers mentioned in section 23 of the Police Act easily come under and covered by “any other authority or person” contained in section 174 of the Constitution.

In agreement with the lead judgment of learned Belgore JSC, Kutigi, JSC, held that the only irresistible conclusion that can be reached is that section 56(1) of the Federal High Court Act and section 23 of the Police Act when read together with section 174(1)(b), (c) of the Constitution make it clear that a Police Officer, any Police Officer, has the power to conduct criminal proceedings before the Federal High Court. He also agreed with the fact that the Police Officer need not be a legal practitioners at all. But if they are, the better.

The learned Justice just like Belgore JSC failed to state whether or not the police officer needs a fiat from the Attorney General before he can prosecute.

Pats Acholonu JSC, started his judgment with a caution, for him in trying to understand or appreciate the laden words of either section 56(1) of the Federal High Court Act or section 23 of the Police Act, a construction that does not take into consideration the tenor and intendment of section 174(1) of the Constitution which is really the *fons et origo* of the matter would be obtuse, undiscerning and “I dare say phlegmatic as it would not hit the nail on the head”.¹⁵²

¹⁵² (2006) LPELR-3174(SC).

His lordship further held that there are three elements ingrained in the provisions of section 174(1) of the 1999 Constitution namely:

(a) Power of the Attorney-General to institute and undertake criminal proceedings before any Court of law in Nigeria;

(b) a recognition that power to institute criminal proceedings is not exclusively vested in the Attorney-General, *id est*, it impliedly admits of initiating of criminal proceedings by other authorities, agencies and persons;

(c) The office of the Attorney-General can use its discretion to do any of the things mentioned in that section. Because he shall have a discretion to do any of these things mentioned therein if he so chooses or desires, it then means that he ought not be unduly over zealous in taking over or continue to prosecute a case, initiated by any other body, thereby tacitly recognising that the Attorney-General does not have the monopoly of instituting criminal prosecutions, fiat or no fiat. Pats Acholonu JSC adopted the liberal rule of construction in reaching his decision according to him the “issue being agitated by the parties can truly be resolved by subjecting section 56(1) of Federal High Court Act and section 174(1) of the Constitution to a liberal construction”.¹⁵³

Although he agreed with the lead judgment, a care perusal of Pats Acholonu’s judgment reveal that he was majorly on a police officer who was a legal practitioner. This can be gleaned from his statement where he said that:

The implication of the intendment of section 174(1) aforesaid of the Constitution is that the office of the Attorney-General does not have the monopoly of prosecution though it has the power to take over any case in any Court and decide whether to go on with it or not. Generally speaking, any legal practitioner not disbarred except under some restriction recognised by the primary law of the land has the right of audience in any Court. This equally implies or denotes that in appropriate cases such a legal practitioner coming under the description as contained in the Legal Practitioners Act has the right of appearance which term

¹⁵³ (2006) LPELR-3174(SC).

includes prosecuting a case, and can due to the wide open door of section 174(1) initiate criminal prosecution on behalf of the agency he works for, particularly as in this case, an institutional body vested with power to check, prevent and investigate crimes and even to prosecute. Can it therefore be said that since a Police Officer more particularly a qualified Legal Practitioner belongs to the security apparatus that can or is empowered to prevent and investigate crimes, that he cannot initiate prosecution on behalf of the State. The question that this Court is called upon to resolve is not whether any police officer as referred to in section 23 of the Police Act can prosecute but whether a police officer legally qualified can prosecute a matter in the High Court. It is important to understand that section 56(1) of the Federal High Court Act was made long before the current Constitution. With the tenor of the Constitution, vide section 174(1) it is definitely inappropriate and unacceptable to have a provision in a statute made by the National Assembly that seeks by its intendment to thwart or do violence to section 174(1) of the Constitution. It is difficult for one to endorse a law that dictates as to which legal practitioner may practice in the Federal High Court in a discriminatory manner.

While other justices went farther in deciding that the police officer need not be legal qualified he avoid to dive into that arena as that was not the issue before the court. It is humbly submitted that his lordship is of the view that a legally qualified police officer can prosecute but for the not legally qualified he might not be allowed though not clearly stated in his judgment but by the fact that he agreed with the lead judgment it means that he agreed with the holdings thereof.

As far as Mohammed, JSC, a community reading of section 174(1) of the 1999 Constitution, section 56(1) of the Federal High Court Act and Section 23 of the Police Act, the police as an authority of the Federal Republic of Nigeria or as a person, has power to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court-martial. So basically he agreed on all fours with Belgore, JSC's judgment.

According to Justice Onnoghen: "The fact that such a Police Officer is a lawyer, is a bonus or excess luggage".¹⁵⁴ For his lordship since the both Counsel are agreed that section 23 of the Police Act provides that any Police Officer may conduct in person all prosecutions before any

¹⁵⁴ (2006) LPELR-3174(SC).

court subject, of course to the power of the Attorney-General of the Federation to take over, continue or discontinue the prosecution under section 174 of the 1999 Constitution. Police officer can prosecute cases before any court in Nigeria.

He went further to hold that the right to institute criminal proceedings by any police officer is created and conferred by section 23 of the Police Act. I therefore hold the view that the expression "any other authority or person" as used in section 174 of the 1999 Constitution is wide enough to include and actually includes Police Officers and that the said section 174 of the 1999 Constitution recognises the power of any Police Officer to institute criminal proceedings in any court subject of course to the powers of Attorney-General of the Federation

From the majority judgment the following points can be gleaned from the majority decision in this case ;

1. That the constitution supersedes any law in Nigeria being the *fons et origio*.
2. That where there are Conflicting provisions of two federal laws, the doctrine of implied repeal cannot hold any water if they have the same subject matter with the constitution as the constitution will always supersede.
3. That the constitution should always be given a liberal interpretation except for in exceptional circumstances where it will lead to absurdities.
4. That Any power given by the Constitution, cannot therefore be taken away by any Act of National Assembly or Law of a state or a subsidiary legislation without first amending the constitution.
5. That "any other authority or person" used in sections 174 and 211 of the constitution can definitely institute criminal prosecution. The powers of the Attorney General of the Federation or of the State are not exclusive, any other person or authority can prosecute.

6. 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.

Katsina-Alu JSC and Musdapher, JSC however, dissented.

According to Katsina-Alu JSC, a police Officer cannot prosecute a case before the Federal High Court. His reasons are not farfetched. According to him once the meaning of a word in a statute is clear the courts have a duty to give life and effect to it. For him, the Constitution, by section 174(1), conferred power on the Attorney-General to institute and undertake criminal proceedings against any person before any court of law. The power to institute and undertake such proceedings before any court of law is that of the Attorney-General only. Furthermore, he held that Section 23 of the Police Act has not in fact widened the scope and power of the Police officer. The word “any” in according to him, does not imply every court of the land. For him it means “some” If that were not so it would be in conflict with section 174(1)(a).

In his words:

The inadequacy of section 23 of the Police Act is that it failed to state some of the courts in which the Police officers can initiate and undertake criminal proceedings. Whereas section 56(1) of the Federal High Court Act states the officers that can prosecute before that court on behalf of the Government of the Federation. Police officers are not on that list. What this means is that section 23 of the Police Act is a general provision while section 56(1) of the Federal High Court Act is a specific provision. The principle is well settled in the construction of statutory provisions, where a statute mentions specific things or persons, the intention is that those not mentioned are not intended to be included. (See *Buhari v Yusuf*).¹⁵⁵ In my judgment, a police officer or the police are excluded from initiating criminal prosecutions by or on behalf of the Government of the Federation in the Federal High Court.

¹⁵⁵ (2003) 14 NWLR (Part 841) 446.

The learned Justice fails to take cognizance of the fact that the word “any” which is synonymous with the word “some” means without specification and therefore any court should be all courts in Nigeria without exemption as held by the other majority of the justices.

While also dissenting on a different but somewhat similar reasons, Musdapher, JSC held that:

The said section (section 23 of the Police Act) does not by any stretch of imagination include the authority to prosecute by or on behalf of the Government of the Federation or other institutions such as Nigerian Customs Services. Historically, the police prosecute on their authority especially at the magistrates and Area Courts where prosecution may also begin by a complaint or by any aggrieved person against anybody. In my view the general powers of criminal prosecution under section 23 of the Police Act are necessarily limited by the specific provisions of section 56(1) of the Federal High Court Act.

His reasons are founded partly on the history of the Police Act and the effect of a new law on the existing law, having traced the history of the Act. He asserted that the Police Act was promulgated during the colonial rule in 1943 and at that material time the Magistrates' Courts were manned by laymen mostly District Officers and the police had the unfettered powers of prosecutions in all the Magistrates courts and later Customary, Native and Area Courts. The Federal High Court was established in 1973 to specifically deal with the very special subjects enumerated under section 7 of that Act. Now, its criminal jurisdiction is found under section 251(3) of the Constitution.

Therefore, according to his lordship therefore the law is settled that when two statutes, though both are expressed in affirmative language, are contrary in matter, the latter abrogates the former. It due respect to his lordship, it seems his lordship allowed himself to be swayed by the decision of the English law in the case of *Garnet v Bradley*¹⁵⁶ and *Ellen Street Estates v Minister of*

¹⁵⁶ [1878] AC 944, 965,

Health.¹⁵⁷ Where the English Court held that if one statute enacts something in general terms and afterwards another statute is passed on the same subject which, although expressed in affirmative language, introduces special conditions and restrictions, the subsequent statute will usually be considered as repealing or amending by implication, the former.

This not the position of the law in Nigeria, with due respect, his lordship who ought to have known the law failed to do so. The correct position of the law in Nigeria is that stated by the apex court in the case of *Ibidapo v Lufthansa Airlines*.¹⁵⁸ The court per Iguh, JSC held that “the repealing of statutes cannot occur by inference or implication. Only the express and direct provision of a law to that effect can repeal existing legislation.”¹⁵⁹ Therefore, Musdapher, JSC err in law to have held that the provisions of Section 56(1) of the Federal High Court Act repealed or amended the provisions of section 23 of the Police Act.

The positions held by Belgore, Kutigi, Pats Acholonu, Mohammed, Onnoghen JJSC that Federal High Court Act and the Police Act both being a federal law and without any repealing section in the Federal High Court Act repealing or amending the Police Act they both exist concomitantly.

3.2 An Analysis of the Case of *Federal Republic of Nigeria v Osahon & Ors vis-à-vis Statutory Provisions*¹⁶⁰

In a bid to regulate criminal justice system in Nigeria the Federal Government enacted the Administration of Criminal Justice Act (ACJA) in 2015. While the ACJA made several reforms in different aspects of Nigerian criminal justice system, the focus of this research work is the

¹⁵⁷ [1934] 1 KB 590, 596.

¹⁵⁸ [1997] 4 NWLR (Pt. 498) 124.

¹⁵⁹ Ibid.

¹⁶⁰ (2006) LPELR-3174(SC).

legal effect of section 106 which provides for the prosecution of criminal cases in courts where the ACJA is applicable. Section 106 of the ACJA provides thus:

Subject to the provisions of the Constitution, relating to the powers of prosecution by the Attorney-General of the Federation, prosecution of all offences in any court shall be undertaken by:

the Attorney General of Federal or a Law Officer in his Ministry or Department;

a legal practitioner authorized by the Attorney-General of the Federation;

a legal practitioner authorized to prosecute by this Act or any other Act of the National Assembly.

A careful perusal of the above provisions shows beyond contradiction that Police prosecution of criminal cases in courts where the ACJA is applicable is not expressly mentioned. The section merely refers to prosecution of offences in any court where the ACJA is applicable.¹⁶¹ The provision of this section is similar to section 56 of the Federal High Court Act 2004 which was interpreted vis-à-vis section 23 of the Old Police Act in the case of *FRN v Osahon & Ors*. However, while section 56 of the Federal High Court Act deals only with prosecution of cases at the Federal High on behalf of the Federal Government of Nigeria, section 106 of the ACJA covers the prosecution of offences generally in courts where the law is applicable. It is germane to point out here that the ACJA is only applicable to courts at the Federal Capital Territory, Abuja, the Federal High Courts and the National Industrial Courts across Nigeria, hence the similarity in the application of both laws.

In a bid to further strengthen and redefine the powers and functions of the police in line with modern trends. The Police Act 2020 was enacted. The Act provide for the power of the police to prosecute and such police officer must be a legal practitioner. The Police Act 2020 cannot be

¹⁶¹ See Administration of Criminal Justice Act 2015, Section 2.

said to be contrary to the provisions of the ACJA rather it is a confirmation of the ACJA, while ACJA provides that Legal practitioner can prosecute criminal cases in the area in which the Act is applicable, it therefore means that in accordance with the Police Act 2020, police officers who are legal practitioners can prosecute in area in which the ACJA applies. Currently, if section 106 of the ACJA is read in Conjunction with the provisions of Section 66 of the Police Act 2020. It will be correct to submit that a police officer who is a legal practitioner can now prosecute before the court in which the ACJA is applicable.

In conclusion therefore giving the provision of the Police Act 2020, for a police officer to prosecute a crime today in Nigeria such a police officer must be a legal practitioner. It is the cardinal duty of the court to ascertain the intention of the lawmakers and we hope that when the provisions of the Police as it relates to the Power of the police to prosecute when it is tested in court it should be interpreted to reveal the very true intention of the lawmaker till then it is safe to submit that only Police officer who are legal practitioners can prosecute criminal cases any court in Nigeria.

CHAPTER FOUR

FACTORS CHALLENGING THE POWER OF THE POLICE TO PROSECUTE CRIME IN COURTS IN NIGERIA

4.1 Conflicting Provisions of Section 66(1) and (2) of the Police Act 2020

Prosecution of criminal cases by the Nigeria Police dates back to the Colonial days when the Nigeria Police Force, upon its establishment in 1861, was solely responsible for the enforcement of all laws, prevention of crime, arrest, investigation and prosecution of offenders.¹⁶² The Nigeria Police Force, as presently constituted, is established for Nigeria by the Constitution of Nigeria.¹⁶³ Under the Constitution police officers are conferred with such powers and duties as are provided under any law. By virtue of Section 214 (2) (b) of the Constitution, the National Assembly enacted the Police Act. The power of Police officers to prosecute criminal cases in Nigerian courts is therefore derived from the powers conferred on the Police by the Police Act, a law enacted by the National Assembly pursuant to Section 214 (2) (b) of the Constitution. Under section 23 of the old Police Act the police was not required to be a legal practitioner to be able to prosecute cases in Nigeria. This was judicially endorsed by the Nigeria Courts.¹⁶⁴ The locus classicus in the jurisprudence of courts' interpretation of the statutory prosecutorial power of the Police is the Supreme Court landmark decision in *FRN v Osahon & Ors*.¹⁶⁵ Despite the clear, elaborate and unambiguous decision of the Supreme Court in this case, there is however controversy over the powers of the Police to prosecute criminal cases in Nigerian courts and this

¹⁶² E. Udonsy, *Nigeria Police Training Manual* (Police College Enugu, 1976); *FRN v Osahon & Ors* (2006) 24 WRN 1 at 18-19

¹⁶³ Section 214.

¹⁶⁴ *Olusemo v. COP* (1998) 11 NWLR (Pt. 575) 547 at 558, the Court of Appeal per Kalgo. JCA (as he then was) held that by virtue of Section 23 of the Police Act, the Police is entitled to prosecute criminal cases subject to the powers conferred on the Attorney General.

¹⁶⁵ (2006) LPELR-3174(SC).

was reinforced by the provisions of Section 106 of the ACJA 2015 which clearly excluded Police Officer from the category of those who can prosecute criminal case in Nigeria.

Under the ACJA, criminal prosecution of all offences in any court shall only be undertaken by (a) the Attorney General of Federal or a Law Officer in his Ministry or Department, (b) a legal practitioner authorized by the Attorney-General of the Federation and (c) a legal practitioner authorized to prosecute by this Act or any other Act of the National Assembly.¹⁶⁶ Although the Nigeria Police was not specifically mentioned in section 106 of the ACJA as among those to undertake criminal prosecution in courts where the ACJA is applicable, the provision of subsection (c) thereof is wide enough to accommodate Police officers who are qualified lawyers.

This was the position on ground before the enactment of the Police Act 2020. The Police Act 2020 as earlier stated in the previous chapter of this research work is filled with commendable innovative provisions thus bring the Police Act and the Nigerian Police Force in conformity with modern day practice in the developed world.¹⁶⁷

In attempt to remedy the situation, with regard to the controversies over the police power to prosecute that the Police Act of 2020 in Section 66 provides that subject to the provisions of sections 174 and 211 of the Constitution of Nigeria, 1999 and Section 106 of the Administration of Criminal Justice Act 2015 which relates to the power of the Attorney-General of the Federation and the State to institute, take over and continue or discontinue criminal proceedings against any person before any court of law in Nigeria, a police officer who is a legal practitioner may prosecute in person all prosecutions before any court whether or not the information is laid in his name.¹⁶⁸

¹⁶⁶ Administration of Criminal Justice Act 2015, Section 106.

¹⁶⁷ See Chapter for a comprehensive discussion of the innovative provisions of the Police Act 2020.

¹⁶⁸ Section 66 of the Police Act 2020.

According to section 66 of the Act, lay Police officers will no longer prosecute suspects in courts thereby affirming the provisions of section 106 of the Administration of Criminal Justice Act 2015. Subsection (2) only provides that any Police Officer may subject to the provisions of the relevant Criminal Procedure Laws in force at the Federal/State level prosecute before the Courts those offences which non-qualified legal practitioners can prosecute. This subsection further complicated the issue. While the Act intends to stop non-lawyers from prosecuting suspects, it still talks about “those offences, which non-qualified legal practitioners can prosecute.” “The question is; are there offences that non-qualified legal practitioners can prosecute? The answer is no. In federal level, we have the Administration of Criminal Justice Act (ACJA). Section 106 of ACJA, which states clearly that prosecution of all offences in any court shall be undertaken by only the following persons; Attorney General of the federation (AGF), the law officer in the office of the ministry of justice or department, a legal practitioner authorized by the AGF, a legal practitioner authorized to persecute by this Act or any other Act or National Assembly.

This new Police Act talks about subject to the provision of the relevant criminal procedure in force at the federal or state. In the state under the Administration of Criminal Justice Laws (ACJL), who are those qualified to persecute matters in court? We either have the AGF, the law officers of the of ministry of justice as the case may be, Attorney General of the state, legal practitioners acting under the authority of the AGF, a public officer prosecuting in official capacity, and any other person so authorized by the AGF, private prosecutor and a police officer who is equally a lawyer.

Police officers are not listed as prosecutors in the ACJL that many states have.¹⁶⁹ “But this New Act says subject to the provisions of the relevant criminal procedure laws in force in the FCT. So

¹⁶⁹ For instance, Section 104 of Administration of Criminal Justice Law (ACJL) of Abia State, Enacted in 2017 copied the position in Administration if criminal justice Act 2015.

if this new police Act is saying that it is subject to those laws, it means that we must definitely have recourse to those laws. And what are the extant laws guiding prosecution in our courts? They are the ACJA in the federal courts and the ACJL in the state courts as the case may be. So if there are no policemen provided for in the ACJA, and the ACJL, are there offences where laymen can prosecute? I have not found such and I stand to be corrected. This is more of a challenge to the already complicated issue.

At present it can be rightly submitted that there is no clear statutory provisions on the power of the police to prosecute criminal cases in Nigeria.

4.2 Conflicting Judicial Decision on the Power of the Police to Prosecute Crime in Courts in Nigeria

One of the effects of the uncertainty of the statutory provisions enabling the police to prosecute criminal cases in Nigeria is the issue of conflicting judicial decision on the power of the police to prosecute crime in courts in Nigeria.

The case of *Olusemo v Commissioner of Police*¹⁷⁰ was the first reported case challenging the power of the Police to prosecute criminal matters in superior courts. The Appellant in this case was at all material times the Accountant General of the Federation. He and five others were arraigned on a First Information Report on allegation of the offences of criminal conspiracy, forgery, using as genuine forged documents, attempted theft, criminal breach of trust and causing disappearance of evidence under the Penal Code in a Chief Magistrate Court in the Federal Capital Territory, Abuja. The Learned Counsel for the Appellant demanded before the Learned Magistrate the proof of evidence and a list of all the witnesses the state intended to call in proof of their case. Counsel for the Respondent objected to the application on the grounds that

¹⁷⁰ (1998) 11 N.W.L.R. (Pt. 575) 547.

it was premature at that stage to do so. The learned Magistrate however ruled that although the Appellant may be entitled to such proof of evidence and the list of the prosecution witnesses, it was too early to make the application at that stage. He refused the application. The Appellant appealed to the Federal Capital Territory (F.C.T.), High Court against the said Ruling. In the High Court, the Appellant raised an objection to the right of Mr. S.G. Ehindero, then a Police Commissioner to represent the State in the proceedings. The High Court after hearing the parties, ruled that the Police Commissioner was entitled to represent the State in the High Court.

On appeal to the Court of Appeal (Abuja Division), the issue that arose for determination was whether a Police Officer can represent the State in the High Court.

The Court held inter-alia that by the provisions of Section 23 of the Police Act, any police officer may conduct in person all prosecutions before any Court in Nigeria, but the power to conduct such prosecutions is subject to the provisions of the Constitution (Sections 160 and 191 of the 1979 Constitution) (now Sections 174 and 211 of the 1999 Constitution).

Also by virtue of Section 98(1) of the High Court of the Federal Capital Territory Act, in the case of a prosecution by or on behalf of the State or by a public officer in his official capacity, the State or that Officer may be represented by a Law Officer, Director of Public Prosecutions, State Counsel, Administrative officer, Police officer or by a Legal Practitioner or other person duly authorized in that behalf by or on behalf of the Attorney-General or, in revenue cases, authorized by the head of the Department concerned.

The Court further held at page 558:

In the instance, the power to prosecute or undertake criminal prosecution is vested on the police officer under Section 23 of the Police Act subject to the exercise of the powers conferred on the Attorney - General by the provision of Section 160(now section 174) of the Constitution. It is very clear and without any doubt that the Attorney - General of the Federation has not exercised his powers under Section 160 of the Constitution in the instant case. Therefore, the Police Officer's

powers to prosecute in the criminal proceedings in this case are 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. A Police Officer is defined in Section 1 of the Police Act to mean any member of the Police Force.

The effect of Section 23 of the old Police Act is by the Olusemo case, that any police officer can conduct prosecutions before any Court in Nigeria whether or not the Complaint or information is laid in his name, the only limitation or restriction is the Constitutional powers of the Attorney-General of the Federation or State under Sections 174 and 211 of the 1999 Constitution respectively.

In the Osahon case, the six Appellants were standing trial before the Federal High Court on a six count charge under the Miscellaneous Offences Decree No. 20 of 1984 (as amended).

The charge was initiated by a Police Officer who also signed as the prosecutor. The prosecution was done by the Police without the fiat or authority of the Attorney General of the Federation.

The Appellants subsequently filed an application before the court seeking to quash the charge preferred against them on the ground that by virtue of Section 174(1)(a) of the 1999 Constitution, it is only the Attorney-General and Officers of his department that can institute and undertake criminal proceedings against them. Since the prosecuting Police Officers do not come within the ambit of (1) Law Officer (2) State Counsel or (3) Legal Practitioners duly authorised by the Attorney General of the Federation as stipulated in Section 56(1) of the Federal High Court Act, nor Section 3 of the Law Officers Act, they were incompetent to institute and undertake the Criminal Proceedings.

The trial Judge overruled the objection by the Appellant and held that the Police Officers have power to institute and prosecute the charge in the Federal High Court.

The appellant appealed to the Court of Appeal. In allowing the appeal the court held inter - alia as follows: that the Police Officers are not law officers under the Attorney-General's Department. By virtue of Section 56(1) of the Federal High Court Act, in the case of a prosecution by or on behalf of the Government of the Federation or by a public officer in his official capacity the Government of the Federation or that Officer may be represented by a Law Officer, State Counsel, or by any Legal Practitioner duly authorized in that behalf by or on behalf of the Attorney-General of the Federation. Accordingly Police Officers, not having been mentioned as persons to represent the State in the Federal High Court, lack the standing to initiate and undertake criminal proceedings before the court. And in the instant case, the Police Officers prosecuting the Appellants lack the competence to conduct the proceedings. The case of *Olusemo v. C.O.P.* was distinguished. The State appealed against the judgment of the Court of Appeal. The full Court of the Supreme Court by majority, allowed the appeal and held that: (1) A Police Officer qua Police Officer can prosecute criminal matters in any court in Nigeria by virtue of Section 23 of the Police Act. They do not need the fiat of the Attorney General of the Federation.

Section 174(1)(b) of the 1999 Constitution recognises the right of "any other authority or person" to institute criminal proceedings in Nigeria. A Police Officer is such "person" who can institute criminal proceedings. (3) A 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. (4) When Section 56(1) of the Federal High Court Act is read together with Section 23 of the Police Act and Section 174(1)(b) of the 1999 Constitution, it is clear that a Police Officer has the power to initiate

criminal proceedings before the Federal High Court without first and foremost obtaining the Attorney General of the Federation's fiat.

According to Justice Onnoghen: "The fact that such a Police Officer is a lawyer, is a bonus or excess luggage".

In *Ajakaiye v FRN*¹⁷¹ the power of a police officer who was a legal practitioner was contested in Court. The Appellants and two others were sometime in 1994 arrested and investigated for various offences committed against the Failed Banks (Recovery of Debts) And Financial Malpractices in Banks, Decree No 18 of 1994. However, in the course of their detention, the Appellants and others filed an application in suit No M/492/98 upon the prerogative writ of Habeas corpus Ad subjiciendum at the Lagos High Court. They were accordingly released by the said court, but neither discharged nor acquitted. The two Appellants were later arraigned before the Federal High Court, Lagos, on a 7 counts charge by a police officer. The appellants appealed and one of the issue raised at the Court of Appeal was that Seidu Kazeem Atteh Esq is a police officer and not a law officer, and not (therefore) competent to initiate and prosecute the Appellants at the lower court.

The Court of Appeal held per Saulawa, J.C.A thus

I have appraised the nature and circumstances surrounding the case of *Osahon v FRN*, cited and relied upon by the Appellants' learned counsel in the submission thereof. ...there is no doubt that the provision of section 23 of the police Act (supra) is not, in any way whatsoever, in conflict with the provisions of sections 160 and 191 of the 1979 constitution. Undoubtedly, the said provisions of section 3 of the police Act supplement, rather than whittle down or being in conflict with sections 160 and 190 of the 1979 constitution. And I so hold! See *Olusemo v. COP* (supra) at 563 para. H and 564 para. A, per Ejiwunmi, JCA, of blessed memory, (as he then was) thus: "It is self evident from the legislation to which reference have been made that the only fetter in law to the prosecution of cases by a police officer is in the exercise of the power of the Attorney General of the Federation or that of the State to which reference have been made above. Lower

¹⁷¹ (2010) LPELR-4884(CA) 24-26.

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." In the light of the foregoing far reaching postulations, I have no hesitation whatsoever in coming to the inevitable conclusion that the answer to the second issue ought to be in the positive, and same is hereby resolved in the Respondent's favour.

This decision was a reconfirmation of the power of the police to prosecute.

In *Tonga v State*¹⁷² the Court of Appeal held that a police officer in the Nigerian Police Department (CID) Maiduguri who is a lawyer and called to the Nigerian bar is therefore qualified to file a criminal charge before any Court in Nigeria.

The competence of the Police Officers to prosecute election cases came up for consideration in the case of *Federal Republic of Nigeria v Jimmy Itamamah Akpan & 20 Ors.*¹⁷³

In that case, the Accused persons were arraigned for various electoral offences under the Electoral Act, 2002 at the Federal High Court sitting at Uyo. The charge was filed by Anyanwu Cosmos, a Police Officer as the Prosecutor. Incidentally, Mr. Anyanwu Cosmos was also a Legal Practitioner.

The court *suo motu* raised the issue of the jurisdiction of the court to entertain the charge and the competence or right of the Police to undertake prosecution of electoral offences.

On the competence of the Police to undertake prosecution of electoral offences, all the accused counsel contended that the prosecutor has no right to prosecute electoral offences in view of the combined effect of Sections 144 and 145 of the Electoral Act, 2002. According to them, it is only the Attorney General of the Federation or of a State or someone authorized by him that can prosecute electoral offences.

¹⁷² (2017) LPELR-43327(CA) 9-10, Paras B-A.

¹⁷³ (2003) 2 FHCLR 119.

The Police prosecutor on the other hand submitted that Section 145(2) of the Electoral Act avails them on the authority of the Attorney General when read in conjunction with Section 151(1) of the Electoral Act and Section 23 of the Police Act which empowers a Police Officer to prosecute criminal matters.

Secondly, as a Legal Practitioner under the Legal Practitioners Act, he has a double qualification which entitles him to prosecute these charges. He relied on the case of *Olusemo v. C.O.P.*

The court held¹⁷⁴ on this point that under Section 145(2)(a) of the Electoral Act, 2002, it is only the Attorney General of the State in which the offence is committed or a legal officer in the Ministry of Justice of that State that is empowered to undertake prosecution under the Act.

It also held that the general powers of the Police to prosecute is apparently in conflict with Section 145(1) and (2) of the Electoral Act. The latter will prevail.

4.3 Inadequate number of Legal Practitioner among the Police Force

Section 66(3) however provides that every police division must have at least one police officer, who is a legal practitioner, assigned to it. It envisages that if every police division has a lawyer assigned there, any Police Officer can charge a case unless the Police Officer is also a lawyer. Gone are the days were an Investigative Police Officer (IPO) can easily file a case without being questioned if qualified as a legal practitioner or not.

Police prosecutors are made up of Police officers who are qualified lawyers and Police officers who are not. Currently, there are only two hundred and seventy five Police officers who are qualified lawyers assigned to the Legal Section of the Nigeria Police Force.¹⁷⁵ The

¹⁷⁴ Ibid at 132.

¹⁷⁵ This is the information given by the present Commissioner of Police in-charge of Legal Section, Force Headquarters, Abuja, CP Augustine Sanomi at the recent meeting between the Inspector General of Police, IGP Mohammed Adamu, PSC, Mni, and Police Lawyers held on 9 January, 2020 at Force Headquarters, Abuja.

Commissioner of Police in charge of the Legal Department of the Nigeria Police Force, NPF, Mr Augustine Sanomi, on Thursday, 9 January, 2020, lamented that the Section has only 275 Police lawyers for its operations nationwide.

Sanomi, who made the revelation while speaking at a meeting between police lawyers and the Inspector General of Police, Mohammed Adamu, at the Force Headquarters, in Abuja on Thursday 9 January, 2020, described this as grossly inadequate and pleaded with the authority to act swiftly to redress the ugly situation. According to him:

It is imperative to state that the Nigeria Police as an organization has the highest number of lawyers. To achieve optimal performance the section requires adequate manpower. However, the present personnel of the section are inadequate, this is due to the unwillingness of some Police lawyers to serve in the legal section as well as the retirement of several personnel of the section throughout the country. As at date, the Section has a staff strength of only 275 police lawyers in all the sections of the force throughout the country which is viewed as grossly inadequate.¹⁷⁶

Giving the high rate of criminal activities in Nigeria today, this number is grossly inadequate for the Nigeria Police to prosecute its criminal cases pending in courts throughout the 36 States of the Federation and the Federal Capital Territory, Abuja, including fresh cases to be initiated for prosecution. Even the Police officers who are not lawyers but nevertheless posted to the Magistrate and other inferior courts of the different states of the federation as lay prosecutors (where they are still allowed) are also grossly inadequate.¹⁷⁷ This inadequacy is responsible for non-availability of Police Prosecutors in most Nigerian courts to prosecute criminal cases.

Information <<http://thenigerianlawyer.com/we-have-only-275-lawyers-in-policelegal-department-cp-laments/>> Accessed 20 April 2021.

¹⁷⁶ Ibid.

¹⁷⁷ Z. Arekhandia, 'Prosecution of Criminal Cases by the Nigeria Police: Issues, Problems and Prospects' <<https://thenigerianlawyer.com/>> Accessed 21 April 2021.

Consequently, most criminal cases initiated in courts by the Police are struck out for lack of diligent prosecution.

Furthermore, giving the new provisions of the Police Act 2020 that provide for legal qualification before a police officer can prosecute, It follows therefore that due to these laws most criminal cases of the Police pending trial are will be abandoned in courts because there are no sufficient officers who are qualified lawyers to take over prosecution of the cases.

The former IGP Adamu has assured that the Legal department would be prioritised under his leadership scheme and the welfare of lawyers in the Nigeria Police as well as funding concerns which have been demotivating factors in their activities shall be addressed.

According to him:

My idea is to have a Police Force that embodies the values of fairness, justice and equity.

This is informed by the reality that policing activities in a democratic society require accountability which is indeed demanded by an increasingly enlightened and diverse citizenry.

In this regard, it remains the responsibility of Police lawyers to guide investigators in the gathering, preservation and presentation of evidence as well as ensuring respect for the rights of persons who become the subject of police preventive and investigative procedures, be they suspects or witnesses of crime. Much as actions have been taken to address the issues underlying civil actions and awards against the Police, there is the need to strengthen our Legal Department both in terms of structure, manpower and processes to position them in addressing this major challenge.¹⁷⁸

At the time of carry out this research nothing have been done to savage the situation we hope and believe new IGP will look into the situation.

4.4 Lack of Adequate Training for Police Prosecutors

The Police Act 2020 provided that police officers who are legal practitioners can prosecute and for that purpose Section 66(3) however provides that every police division must have at least one

¹⁷⁸ Ibid.

police officer, who is a legal practitioner, assigned to it. While this is commendable as it will enhance efficient and expertise in the prosecution of cases in Nigeria by the police. It must be stated that most of the police officers in Nigeria are improperly trained. While it is not the position of the researcher that all police officers should be legal practitioners, it is the submission of the researcher that from the current situation in Nigeria, there are only few police officers that are qualified within the province of section 66 of the Police act 2020.

The Nigeria Police barely organize training programs for their prosecutors. Even when trainings are organized for Police prosecutors by other stakeholders in the criminal justice system, the Police do not provide fund and logistics for the prosecutors to attend. Lack of training program negatively affects the Police prosecutors in gaining up to date knowledge and acquiring modern skills in criminal prosecution.

The issue of inadequate training for police prosecutor has led to the call for the striping of police the power to prosecute.¹⁷⁹

4.5 Inadequate Funding of the Police

Quite worrisome, the Act lacks an appropriate funding framework for the Police Force in line with what is obtainable in other Federal Government institutions and earnestly requires a mandatory policing plan to be drawn up annually and tied to expenditures in the bid to ensure that all police formations nationwide are appropriately funded for effective policing. Proper keeping of records, and compliance with statutory rules on accounting and audit just as is obtainable with other public institutions is also non-negotiable.

¹⁷⁹ <<https://www.premiumtimesng.com/news/headlines/222178-strip-police-power-prosecute-criminal-cases-judge-advises-nigerian-govt.html>> Accessed 21 April 2021.

4.6 Lack Modern Gadgets and other Relevant Technologies

Despite the society's high expectation from the police, the government (society) itself is not prepared to pay the "price" for effective and efficient police system. The police in Nigeria is ill-equipped for effective discharge of its statutory responsibilities. Nigeria police still make use of outdated gadgets, the force lack modern communication gadgets and other relevant technologies to effectively police the society.¹⁸⁰

Apart from the Legal Section Head Office at the Police Force Headquarters in Abuja, there are no functional reference libraries for the Nigeria Police Legal Sections in the Police Commands across the 36 states and Federal Capital Territory.¹⁸¹ The nonexistence of reference libraries for Police prosecutors hinder their ability to adequately research criminal law and prosecution, and the result is poor prosecution of cases.

4.7 Corrupt and other Unethical Practices by Police Prosecutors

In describing the nature of police corruption Gerald Lynch says that "corruption occurs when police officer acts in a manner that places his personal gain ahead of duty, resulting in the violation of police procedures, criminal law, or both"¹⁸². In a similar manner, Lawrence Sherman defines police corruption as "illegal use of organisational power for personal gain"¹⁸³.

The efficacy of the philosophy and policies of any system of government in any given society will depend on their faithful implementation. In this wise, the role of the police in ensuring social justice, peace and harmony cannot be over-emphasized. In the administration of justice in

¹⁸⁰ A. Babalola, 'Power of Police to Prosecute Criminal Cases: Nigeria and International Perspectives' (2014) 2 (11) European Journal of Business and Social Sciences 127.

¹⁸¹ Z. Arekhandia, 'Prosecution of Criminal Cases by the Nigeria Police: Issues, Problems and Prospects' <<https://thenigerialawyer.com/>> Accessed 21 April 2021.

¹⁸² L. Gerald, 'Police corruption from the United states perspective' (1989) 12(4) Police studies 166.

¹⁸³ L. Sherman, *Scandal and Reform: Controlling Police Corruption*, (Berkeley: University of California Press, 1978) 30.

Nigeria, the police have the sweeping powers of arrest and prosecution of offenders. However, this law enforcement agency has at various times been criticized by both the general public and public officials in the exercise of their powers for being corrupt.¹⁸⁴

Some Police prosecutors indulge in corrupt and unethical practices that compromise criminal prosecution of cases assigned to them. This may be in the form of outright collection of bribe from defendants or failure to tender vital documents in evidence during trial, thereby creating loopholes that give rise to reasonable doubt in the mind of the Court. In other cases, a prosecutor may manufacture evidence against a defendant in order to gain conviction by all means. All these practices negatively affect successful criminal prosecution of cases by the Police.¹⁸⁵

4.8 Inordinate Delay in Criminal Trial by the Courts

Inordinate delay in criminal trial which is caused by frequent and unreasonable adjournments of criminal trials negatively affects criminal prosecution by Police prosecutors because the more a criminal trial is delayed, the more the likelihood of prosecution witnesses not being available, case files and documents missing, etc. In these circumstances, Police prosecutors are unable to successfully present their cases against the defendants. In some cases, the delay in trial may also cause the defendants to jump bail and avoid prosecution.¹⁸⁶

These issues and problems identified in the foregoing have a cumulative negative effects on Police prosecution of criminal cases in Nigeria. Until they are successfully addressed, Police criminal prosecutorial power will continue to suffer major setbacks, and stakeholders will continue to advocate for the removal of criminal prosecution of cases from the Nigeria Police.

¹⁸⁴ E. C. Onyeozili, 'Obstacles to Effective Policing in Nigeria' (2005) 1(1) African Journal of Criminology and Justice Studies 32.

¹⁸⁵ Z. Arekhandia, 'Prosecution of Criminal Cases by the Nigeria Police: Issues, Problems and Prospects' <<https://thenigerialawyer.com/>> Accessed 21 April 2021.

¹⁸⁶ Ibid.

CHAPTER FIVE

CONCLUSION

5.1 Recommendation

Based on the foregoing discussion, and the statement of problems noted in chapter one which this work seeks to address, this work will be concluded by proffering some recommendations. This will be in addition to those already stated in the body of this work.

i. Amendment Section 66 of the Police Act 2020

A key area of contention in the Act is the power of prosecution. Section 66(2) of the Act provides that, “A police officer may, subject to the provisions of the relevant criminal procedure laws in force at the federal and state level, prosecute before the courts those offences, which non-qualified legal practitioners can prosecute.” It is instructive to note that there are no offences that non-qualified legal practitioners can prosecute. Section 106 of the Administration of Criminal Justice Act (ACJA) states clearly that prosecution of all offences in any court shall be undertaken only by the following persons; Attorney General of the Federation (AGF), the law officer in the office of the ministry of justice or department, a legal practitioner authorized by the AGF, a legal practitioner authorized to persecute by this Act or any other Act or National Assembly. The Act, which is subject to the provisions of the relevant criminal procedure laws in force in the FCT, must definitely have recourse to the extant laws that guide prosecution in our courts (ACJA in the federal courts and the ACJL in the state courts as the case may be) and neither grants prosecutorial powers to the police.

It is the recommendation of the researcher that this provision of the Police Act should be expunged from the Act so has to bring the Act fully with existing laws on Police Power to prosecute.

ii. Professionalization of Members of the Police Force

Efforts should be made to fully professionalize the Police in order to enable it discharge its civic duties to the society. Full professionalism would be achieved through further training and re-education such as targeted special college equivalent classes in social sciences, and criminal law and procedure. This would improve the police officer's human relations capacity. The police personnel should refocus their perception of the force on being responsible only to the government. This shift in perception would go a long way toward fostering peaceful relationship between the Nigeria Police and the civic society.

With professionalism goes meritorious recruitment. Police officers should be recruited based on established minimum criteria and educational standard. People who do not qualify should not have a place in the national police. Meritorious recruitment will therefore enhance meritorious promotion since officers will aspire to get to the top, and not await promotion as a birthright. This will also eliminate politics of intrigue from the process.

iii. Proper Remuneration and Funding of the Police

Given the current financing requirement previously adduced in this work, which militates against the viable usage of the Police Act 2020 by the Police particularly, with relation to the police prosecutorial power, it is imperative and exceptionally earnest that for progress to be made with execution of the Act; generous budgetary arrangements should be made in both human and material assets by the government.

Furthermore, an immediate revision of the Nigerian police pay scale is needed as a first step toward discipline. In all developed societies, the salary of a police officer is above that of ordinary citizen with equivalent education. A decent pay is a worthwhile investment that will encourage restraint to acceptance of bribes to augment the meager income they recently receive.

The Legal Section of the Nigeria Police should be adequately funded to enable them meet the logistics challenge of prosecution of criminal cases.

iv. Creation of Specialized Department for Police Prosecutors

The Legal Section of the Nigeria Police should be made a full Department of the Nigeria Police independent of the Investigation Department, and it should be made a specialized Department like that of Medical Department, and others. And Police lawyers should be promoted in accordance and conformity with the grades of promotion of lawyers in the Ministry of Justice. This will encourage Police officers who are lawyers to prefer to work in the Legal Department for more productive outcomes.

v. Provision of Infrastructure

The government and the police authorities should also provide adequate logistics means that will contribute to the effective and efficiency delivery of the Police Service. Not only that, appointment, promotion and discipline in the force should be a regular thing. This would go a long way in boosting the morale of officers of the security agencies.

The Police Legal Section should be provided with modern Reference Libraries for Police prosecutors to research and update their knowledge of new developments in prosecution of criminal cases. This library should have law reports, precedent books, complete laws of the federation, and law of the respective States, computers and other electronic devices that are necessary for criminal prosecution in this twenty-first century.

vi. Efficient Investigation

The Police authority should enhance and improve on the investigation of criminal cases according to best standards and practices, and ensure that necessary evidence that will help in the successful prosecution of criminal cases are successfully gathered and preserve during

investigation and for the purposes of effective criminal prosecution. This will go a long way to helping the Police prosecutors in the effective prosecution of criminal cases.

5.2 Conclusion

The Nigeria Police power to prosecute criminal cases in Nigerian courts is conterminous with the duties of the Police as provided under Section 4 of the Police Act, to wit; the prevention of crime, investigation of offences and prosecution of offenders. Section 66 of the Police Act specifically provides that any Police officer who is qualified as a legal practitioner may conduct in person all prosecutions before any court, whether or not the information or complaint is laid in his name. Flowing from the provision of the section which is almost similar to the provisions of section 23 of the old Police Act for the fact that he introduced qualification. The Nigeria Police have since been responsible for the prosecution of most criminal cases in Nigerian courts. The Police power to prosecute criminal cases has been held to be subject only to the prosecutorial powers of the Attorney General of the Federation and the Attorney Generals of the States, as stipulated under Section 174 and 211 of the 1999 Constitution respectively. Based on the Supreme Court decision in *FRN v. Osahon & Ors*¹⁸⁷ and other line of cases, the power of the Nigeria Police to prosecute criminal cases in Nigerian courts was settled in favour of Police.

However, while there is a continuing controversy over Police prosecutorial power, and the various statutory attempts that have been made to exclude the Police from the prosecution of criminal cases. For example under the Section 106 of the ACJA 2015, criminal prosecution of all offences in any court which the ACJA 2015 applies shall only be undertaken by (a) the Attorney General of Federal or a Law Officer in his Ministry or Department, (b) a legal practitioner

¹⁸⁷ (2006) LPELR-3174(SC).

authorized by the Attorney-General of the Federation and (c) a legal practitioner authorized to prosecute by this Act or any other Act of the National Assembly.

In a bid to resolve this and to reconcile the provisions of the Police Act 2004 with some of existing laws. The Police Act 2020 was enacted. Section 66(1) of the new Act provides that a Police officer, who is a Legal Practitioner, may prosecute in person before any Court whether or not the information or complaint is laid in his name. For applicability of (1) of this section subsection (3) provides that that at least one police officer who is qualified to practice as a legal practitioner in accordance with the Legal Practitioners' Act shall be assigned to every Police Division. However, Section 66(2) of the Act provides that, "A police officer may, subject to the provisions of the relevant criminal procedure laws in force at the federal and state level, prosecute before the courts those offences, which non-qualified legal practitioners can prosecute." This subsection when contrasted against the provisions of existing laws prove impracticable. And it was the recommendation of this work that it should be removed from the Act.

It is submitted that the position of the law, as it is today, is that Police officers in Nigeria are permitted to prosecute criminal cases in Nigeria courts, if such a Police prosecutor is a qualified lawyer by virtue of Section 66 of the Police Act 2020.

Furthermore, this work also examined some of the issues militating against the power of the police to prosecute criminal cases in Nigeria. Among the issue identified were conflicting provisions on the prosecutorial power of the police, inadequate personnel, lack of training.

In this respect, it is submitted that if the succeeding recommendations in this Chapter are implemented, it would go a long way in enhancing the prosecutorial power of the police.

BIBLIOGRAPHY

BOOKS

- Aina K., *The Nigerian Police Law* (Princeton Publishing Company 2014).
- Arase S. E., *Law on Prevention and Detection of Crimes by the Police in Nigeria* (Lagos: Malthouse Press Limited, 2017).
- Okereke B. B., *'The Role of Nigeria Police Force in the Administration of Justice: Issues and Challenges'* (LL.M thesis, Ahmadu Bello University 2012).
- Sherman L., *Scandal and Reform: Controlling Police Corruption*, (Berkeley: University of California Press, 1978).
- Tamuno T.N., *The Police in Modern Nigeria* (University of Ibadan Press 1970).
- Udonsy E., *Nigeria Police Training Manual* (Police College Enugu, 1976).

CHAPTERS IN BOOKS

- Adebayo W.A, 'Nigerian Police: Structure, Powers and Functions' in T.F Yerima & B.
- Abegunde (Eds), *Essays on Administrative Law in Nigeria* (Ado Ekiti, Petoa Educational Publishers 2006).

ARTICLES

- Babalola A., 'Power of Police to Prosecute Criminal Cases: Nigeria and International Perspectives' (2014) 2 *European Journal of Business and Social Sciences* 127.
- Ekhaton E. G., 'An Overview of the Doctrine of Covering the Field and Its Application in Nigeria' (2018/2019) 4 (1) *ABUAD Law Students' Society Journal* 195.
- Gerald L., 'Police corruption from the United states perspective' (1989) 12(4) *Police studies* 166.
- Nwano T.C. and Bamidele B. J., 'Defining the agency of the police: Conflicting Legal Approaches' (2018) 9 *Nnamdi Azikiwe University Journal of International Law & Jurisprudence* 22.

Onyeozili E. C., 'Obstacles to Effective Policing in Nigeria' (2005) 1(1) African Journal of Criminology and Justice Studies 32.

ONLINE (WEB) SOURCES

Arekhandia Z., 'Prosecution of Criminal Cases by the Nigeria Police: Issues, Problems and Prospects' <<https://thenigerialawyer.com/>> Accessed 21 April 2021.

'History, Roles and Organizational Structure of the Nigeria Police Force' <[https://afsc.mil.ng/afsc/organizational structure of the Nigeria Police Force](https://afsc.mil.ng/afsc/organizational%20structure%20of%20the%20Nigeria%20Police%20Force)> accessed 29 May 2021.

'Nigeria Police Force' <https://en.m.wikipedia.org/wiki/Nigeria_Police_Force> accessed 19 July 2021.

Odoh I., 'Police Undergo Major Reorganization with 8 Departments, 8 DIGs, 17 Zonal Commands and 4 Annexes' Business Day (Lagos, 28 May 2020) <<https://businessday.ng/top-stories/article/police>> accessed 21 May 2021.