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Tunlad Publishing Coy.
No. 17, Beirut Road, Kano
Tel: + 2348034309063, + 2348055765886

ISSN 2408 - 8634

POLAC JOURNAL OF INTERNATIONAL LAW AND JURISPRUDENCE (PJILJ)

August, 2014



A Journal of
Department of International Law and Jurisprudence
Faculty of Law
Nigeria Police Academy
Wudil - Kano, Nigeria.



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The Editor, on behalf of the Editorial Board, has great pleasure in presenting our maiden edition Vol. 1 No. 1 of the *Polac Journal of International Law and Jurisprudence* to the research community and the general public at large who wish to keep up with latest findings in the areas of law and jurisprudence as well as legal theory. The journal provides opportunities to the researcher, academicians and professionals to publish their research papers around the globe.

The Editor is very grateful to the members of the Editorial Board/Advisers for kind response towards the establishment of such type of attempt. The contributions of our legal consultants cannot be described in words both in the case of developing and successful publication of this journal.

We seek the blessings and support of all towards the success of this journal.

Leonard C. Opara Esq.,

Editor
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CREATION OF STATE POLICE IN NIGERIA: A DIAGNOSIS OF THE CONTENDING ISSUES AND CHALLENGES

BY

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ABSTRACT

the inability of the Police to curtail the rising wave of crimes nationwide leave more than desired. The Police, high command often cries out that poor motivation, equipment and logistics have made its anti-crime war ineffective. Besides, it appears that till date, the Police equipped with obsolete weapons, are being out-gunned and out-numbered by armed robbers, insurgents, kidnappers, terrorists, and rebels. To check this, there is rising call for state police in Nigeria. The absence of a State Police in a Federal System like Nigeria is said to be incompatible with the spirit of true Federalism, hence, the issue of state police as one of the major issues at the on-going National Conference at Abuja. This paper therefore examines the contending issues, viability and or otherwise of a state police in Nigeria. In doing this, the paper examines the historical background, organisational structure, legal frame work as well as the arguments for and against state police creation in Nigeria. In the final analysis the paper posits that even though the creation of state police my guarantee true federalism, such action should be embarked upon with zenith level of cautionary measure in order to guard against conflict of authority and the misused of the state police by the state government.

KEYWORDS: State Police, Federal, Constitution, Creation, Challenges

1.0 INTRODUCTION

The issue of whether or not the component states of Nigeria federation should have their own police force has become a vexed issue in recent. While the Federal Government has insisted that Nigeria is not ripe for multiple police forces, the position taken by the state governments is that the solution to security problem of Nigeria is an amendment to the constitution to permit the states to own their own forces. While consensus could hardly be expected on issues like this, it is not unlikely that the position taken by the protagonists and antagonists is largely influenced by politics, since security agents largely influence results of election in Nigeria, and it has practically impossible to rig election without the connivance and collusion of security forces.

Nigeria is definitely at a cross road. With the abuse and misuse of power of coercion by native police in the first republic one would seem to make their return unwelcomed. Presently, the federal police are engaged in serious crises of confidence with Nigerians who see them as an agent of oppression. Indeed many believe that the difference between the outlawed native police and the Nigeria Police Force is the that between six and half dozen. It has been expressed that a single police force has the advantage

"See, U. "Insecurity in Nigeria needs, State Police Now- Abia Attorney General" *The Nation Newspaper* Thursday, 29th January, 2012.
Awbueze, B. *Federalism in Nigeria Under the Presidential Constitution* (2003) 56

that it exposes the individual to less risk of oppression than the one under the autonomous control of state governments.² It is difficult to agree with this view if one goes by the misuse of the Nigerian Force by the central government in the 2007 & 2011 elections in all most all the states of the federation.

A decentralized system of law enforcement agency must be regulated and understood because maintenance of federal and state police could cause conflict in jurisdiction if there are no well laid guidelines pertaining to issue of jurisdiction. More so, where control over a police force is distributed between the states and national levels, there might be the risk of inter-governmental conflict from policing. The entrenched fear among Nigerians is that the creation of State Police Force in 1996 would lead to oppression or victimization of political opponents by the ruling elites in particular. This fear may not be farfetched bearing in mind the experience of the Local Government Police (A.G.NCNC, and NEPU). Furthermore, the establishment of state police has been criticized as one of endangering people's liberty and that there is no safeguard against evil of the state police if created.

The fears was justified by the events that happened between 1979 and 1983 when under the regime of President Alhaji Shehu Shagari, the police abandoned its proper constitutional role, renounced neutrality and wore the cap of partisanship, so deep and blatant that Nigeria public came to view police as uniformed political thugs for the ruling party. The situation was equally nothing different during the time of President Olusegun Obasanjo (1999-2007). Wherein around July, 2001 President directly by action or indirectly by inaction, used the Nigeria Police Force to embarrass Nigige (the then Anambra State Governor) when an Assistant Inspector General of Police Ralph Igwe used to kidnapped the Governor.⁴

The emergence of vigilante group and ethnic militias across the country is another indictment of inefficiency in coping with the security needs of Nigerians, for instance, the Bakassi Boys, the People's Congress and so on. Most of these associations were formed to ensure the security of members of the public⁵ as well as their peculiar communal interest.⁶ Recently are the activities of dreaded Boko Haram sect terrorizing the citizens of the former North Eastern Region of Nigeria in particular, and the situation appears to have defied known solutions.

While the antagonist of state police argued that such a situation will lead to two rivaling institutions of the same responsibility, duty and nature, a situation that may aggravate the already precarious socio-political situation in Nigeria, the protagonists of the state police maintain that the creation of state police is the only, answer to all Nigeria security challenges.⁷ According to them, all the recent surge in the rate of sophisticated crimes and the continue helplessness of the centrally controlled police in Nigeria has empowered the necessity for the

creation of state police. Structured in to five chapters, the historical background of the police in Nigeria follows this introduction, while the legal frame work and organizational framework of police in Nigeria are examined in the third chapter. The fourth chapter is on contending issues and examination of the jurisprudential argument for and against the creation of state police in Nigeria. The paper ends in chapter five with conclusion and recommendations.

2.0 HISTORICAL BACKGROUND OF POLICE FORCE IN NIGERIA

The Nigeria Police Force as it known today is the branchchild of the British Colonial Government as far back as 1861 following the annexation of the territory of Lagos. The British Council charged

the administration of Lagos established a Consular Guard by virtue of Police Ordinance 1861 to help maintain law and order.⁸ By the year 1863, the 30 members Consular Guard was renamed Hausa Guard. Under this phase and formation, the first tier of the Hausa Police consisted of 600 men made up of some captured runaway slaves at Jebba. The second tier of the Hausa Police saw the enlistment of exclusively Hausa recruits into the force. Hence in 1879, the Hausa Police was further enlarged by the recruitment of more men mainly from the Hausas and renamed the Hausa Constabulary.⁹

The year 1879 has been said to be the real breaking point in the development of the character and structure of the Nigeria Police Force.¹⁰ It was not only the first time that 1,200 officers and men were enlisted as members of the largely one-region based force, but also the first time that such men were brought under the administration of an Inspector General of Police. The Constabulary was mainly military in character, though it performed some police duties. By 1886, the Royal Niger Constabulary which came to be known as Northern Nigeria Police was established, with its base in Lokoja, present Kogi State. The Constabulary was disbanded in 1900 when the Protectorate of Northern Nigeria was proclaimed. Some of the men joined the Northern Nigeria Regiment Army, and others formed the Northern Nigeria Police which by 1903 consisted of a Commissioner, 29 Officers, and 1,200 men rank and file.¹¹ And by 1914, the new Northern Nigeria Police had 23 Officers, and 1,200 men.

In 1894, the Niger Gold Coast Constabulary was formed with its headquarters in Calabar of the then Oil River Protectorate. The year 1896 saw the inauguration of the Lagos Police Force armed like the Hausa Constabulary. The establishment of the Lagos Police Force signified a major development of Police Force in Nigeria with key officers like the Commissioner, Two Assistant Commissioners, a Superintendent, an Assistant Superintendent, Pay and Quartermaster, a Master Tailor and 250 other ranks.¹² As an outcome of the proclamation of the Colony and Protectorate of Southern Nigeria in 1900, the Southern Nigeria Police was inaugurated in 1906. Those absorbed into this Regional Force were some members of the Niger Coast Constabulary and Lagos Police Force. The new police outfit was in addition to normal civil police duties, responsible for dealing with internal disturbances and external aggression, but the two Forces operated separately and autonomously even after the amalgamation of the Protectorates in 1914.¹³

From the year 1900, there were in existence too Regional Police Forces for three main Regions in Nigeria i.e North, West, and East. By April 1930, the Northern and Southern Nigeria Police Forces were merged to form the present Nigeria Police Force. In 1943 however, the Police Ordinance¹⁴ was promulgated and came into force on April 1st of 1943. This Ordinance made provision for the reorganization, discipline, power, and duties of the Police. Section 3 of the Ordinance provides that there shall be established in Nigeria a police force to be known as the Nigeria Police Force. The Police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of property and due enforcement of all laws and regulations with which they are directly charged.¹⁵ The Force shall consist of an Inspector General of Police and such other officers of such ranks as may from time to time be approved by the Governor General.¹⁶

On 1st October 1960, Nigeria became an independent country; and a Republic in 1963. The 1963 constitution permitted the legislature of a Region to make provision for the maintenance by any authority or local government authority established for a province or a part of a province a police force or employment within that province.¹⁷ This made it possible for the Northern and Western Regional governments under that Constitution to retain and expand the local police forces established and maintained by some of their native authorities.¹⁸ This provision would appear to be the basis of

³ Oluwede, P. A. *Constitutional Law in Nigeria* (London: Sweet and Maxwell, 1982) p. 441.

⁴ National Concord Editorial, Wednesday, November 9, 2003.

⁵ Ibid.

⁶ Olokooba S.M and Olokooba J.O. "Appraising the Constitutionality and Justification for the Use of Amnesty in Tackling Terrorism in Nigeria", Vol. 12, (1&2), *Bangladesh Law Journal*, 2012 p. 53.

⁷ Onyeozili, E. "Obstacles to Effective Policing in Nigeria", Vol. 1 No. 1 *African Journal of Criminology and Justice Studies* 2005 p. 37.

⁸ Olowokere, E.N and Oluaduro, B. "Implication of State Police in a Fledgling Democracy", Vol. 22 Number (2011) *European Journal of Social Sciences* p. 145.

⁹ Police Ordinance Cap. 154 Laws of the Federation of the Nigeria and Lagos, 1958.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

creating and maintaining a Regional Police Force and indeed possibly one of the arguments for agitation for creation of state police,¹⁹ but following the Military Coup of 15 January 1966, the provisions of the 1963 Constitution authorizing the establishment of local police was abrogated. In March 1966, the ten Head of the Military Government Major General Aguiyi-Ironsi (dec'd) set up a working party on Nigeria Police, Local Government, Native Authority and Prisons, to examine *inter alia* the unification of the Nigeria Police, Local Government Police and the unification of Prisons in Nigeria. The overall objective of Ironsi's Regime was to introduce a unitary polity in the country.²⁰

The Federal Military Government however, under General Gowon accepted the recommendation of the working party that the Nigeria Police Force be unified. As a result the local police forces were dissolved and their qualified personnel absorbed into the Nigeria Police Force.²¹ The unification of the Nigeria Police Force was not left out of it attendants problems and criticisms. For instance, it was on report that in the Western Region there were mass recruitment into the local forces of party thugs and stalwarts;²² coupled with allegations of Police oppression through bribery, blackmail and intimidation. Also in the Northern Region, political opponents were arrested by native authority police for holding private meetings to discuss political issues, handcuffed or chained and marched through the streets as ocular demonstration of what fate awaited those who sought to exercise their fundamental rights.²³ Unfortunately, the local police forces in the North and West were turned into local arms of the parties in power in the two Regions, becoming ready tools for the oppression and harassment of political opponents. In the North particularly, the native authority police were hardly separable from the party thugs, with whom they closely collaborate in the intimidation, detention, lynching and other acts of persecution of party opponents.²⁴

As a result of all of shortcomings above since the adoption of a unified police force, successive Nigerian Constitutions have provided for the existence of the Nigeria Police Force alone.²⁵ The result of course, is that the Federal Government has effective regulatory control, power, reinforced by the financial control which ensures more than ever before that the pay, allowances, dress and other conditions of service in the police force are uniform throughout the country. Though the present structure of the Police in Nigeria negates the concept of state police as enshrined in the Constitution, Nigerians are prepared to tolerate this practice in so far as it will assist the police in discharging its constitutional and statutory roles effectively.²⁶

3.0 THE LEGAL FRAMEWORK OF THE NIGERIA POLICE

Section 214 of the Constitution,²⁷ provides for the establishment of the Nigeria Police Force. The Section provides that there shall be a Police Force for Nigeria and no other police force shall be established for the Federation or any part thereof. 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.

The members of the Nigeria Police Force shall have such powers and duties as may be conferred upon them by law.²⁸ Also the National Assembly may make provisions for branches of the Nigeria Police Force forming part of the armed forces of the Federation or for the protection of harbours, waterways and air fields. The Constitution also provides for the appointment of Inspector General of Police by the President on the advice of the Nigeria Police Council, and for the post of Commissioner of Police for each state of the Federation who shall be appointed by the Police Service Commission.

The 1999 Constitution also re-established the Nigeria Police Council which was in the 1963 Constitution, but absent in the 1979 Repealed Constitution. The Third Schedule to the 1999

Constitution (as amended) creates the Nigeria Police Council and the Police Service Commission. The Police Council shall consist of the President as the Chairman; the Governor of each of the Federation; the Chairman of the Police Service Commission; and the Inspector General of Police. Practically, the participation of the State Governors in appointing the Inspector General of Police by virtue of their membership of the Police Council is merely advisory.³¹

Section 215³² provides for the office of the Inspector General of Police who shall be appointed by the President on the advice of the Nigeria Police Council. The President may also dismiss him after consultation with the Council. Equally in the same vein, a Commissioner of police is appointed for each state of the Federation by the Nigeria Police Commission and he is placed under the command of the Inspector General of Police.³³ All the contingents of police force stationed in the state are under the command of the Commissioner of Police. The aim of vesting the command of the police force in the Inspector General of Police according to Professor Nwabueze is no doubt to insulate its use as much as possible from undue political influence,³⁴ but in practice the use and control of the Nigeria Police Force would reveal that this aim is far from being achieved.

The Inspector General of Police is subject to the lawful directions of the President or of the Minister in his government authorized in that behalf, with respect to the maintenance and securing of public safety. In the same vein, the Governor of a state or a Commissioner in his government acting on his behalf may give the Commissioner of Police such lawful directions with respect to the maintenance and securing public safety and public order within the state which he may consider necessary.³⁵

The dicey area is as to the interpretation to be given to the words 'lawful direction'. So far the Constitution did not define what interpretation to be given to the words and equally there is no judicial pronouncement of this. This is further compounded by the provision of Section 251 (4) which provides that if the Police Commissioner considers the matter to be sensitive, he may request the Governor to refer the issue to the President or to the appropriate Minister in the Federal Government; the Constitution then provides that 'the question whether any and if so what directions have been given under this section shall not be inquired into in any Court'.³⁶ The effect of this according to Olowokere and Oluduro,³⁷ is that the ultimate control of the police Commissioners in the states remains with the Federal Government and to be specific with the President who is elected on the platform of a political party and whose lawful directions, the Inspector General of Police does not have the power to determine as lawful or unlawful.

The Governor on the other hand, is often referred to as the 'chief law officer' or chief security officer of the state, but the Governor is helpless regarding official police control and actions. The Governor in real terms does not control the police and the police can, and do ignore the governor's express wishes to secure his state. As long as the police comply with the president and Inspector of Police orders and wishes, the police can carry on as they wish. This could even be so particularly where the Governor and the President are political enemies.³⁸

3.1 THE ORGANISATIONAL STRUCTURE OF THE POLICE IN NIGERIA

In 1986, the Nigeria Police Force was reorganized nationwide into seven commands, which superseded a command structure corresponding to each of the states of Nigeria. Each command was under a Commissioner of Police and was further divided into police provinces and divisions under local officers. Nigeria Police Force headquarters, which was also an area command, supervised and coordinated the other area commands. Later, these commands were grouped under Zone Command as follows:

Section 214 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), S. "Which Way Forward for the Nigeria Police: Federal or State" Vanguard 9th February, 2012.
1999 Constitution of the Federal Republic of Nigeria (as amended).
Nigeria Police Force Act Cap P 19 LFN 2004.

Section 215 (a-b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

See Paras 28(9)-(c), Part I Third Schedule to the 1999 Constitution for the function of the council.
Olowokere, A. "The Constitution and National Security" paper presented at the National Conference on the 1999 Constitution, organized by the Institute of Advanced Legal Studies, Abuja, October, 1999, p. 5.
Section 215 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

18 For example are The Native Authority Ordinance of 1943 and Local Government Police Law, 1959 of the Northern and Western Regions respectively.

19 Oluwade, P. A. *Constitutional Law in Nigeria*, (London: Sweet and Maxwell, 1982) p. 440.

20 *Ibid*.

21 The Report of the Working Party on Police and Prison Services, 1966 p. 27.

22 Obonhami, "The Dilemma of Police Organization under a Federal System."

the Nigerian Example", Vol. 6 (1972) *The Nigerian Law Journal* p. 15-16.

23 *Ibid*.

24 Olowokere, E. N. and Oluduro, B. *op cit* p. 148.

Zone 1, Headquartered kano, with Kano, Katsina, and Jigawa Commands;
 Zone 2, Headquartered Lagos, with Lagos, and Ogun Commands;
 Zone 3, Headquartered Yola, with Adamawa, and Gombe Commands

Also, in 1986 the Nigeria Police Force was reorganized again occasioned by a public eruption of tensions between the police and the army over allegations of usurpation of functions by the army and jurisdiction. As a result, the Nigeria Police Force was reorganized into seven new area commands and five directorates i.e criminal investigations, logistics, supplies, training, and operations under a Deputy Inspector General of Police.⁴⁰

Furthermore, in mid-1989 the Nigeria Police Force was reorganized again after the Armed Forces Ruling Council's acceptance of a report by the Rear Admiral Murtala Nyako. A quick Intervention Force in each state, separate from the Mobile Force Units, specifically to monitor political events and to quell unrest during the transition to civil rule. Equally a Federal Investigation and Intelligence Bureau (FIIB), was set up as a successor to the Directorate of Intelligence and Investigation; also three Directorates were established for operations, administrations, and logistics, each headed by a Deputy Inspector General of Police.⁴⁰

The Directorate of Operations was subdivided into four units under a Deputy Director of Operations, Training, Communications, and the Police Mobile Force. The Directorate of Administration was composed of an administration unit headed by an Assistant Inspector General of Police (AIG), and of budget and personnel units under commissioners.

The Directorate of Logistics had four Units i.e procurement, workshop/transport, supply, and work/maintenance under (AIGs). The Zonal arrangements were retained. However, the (AIGs) were authorized to transfer officers up to the rank of Chief Superintendent, to set up provosts Units, to deploy Mobile Units, and to promote officers between the ranks of sergeant and inspector.

The D Department is the Force Criminal Investigation Department (FCID) is the highest investigating arm of the Nigeria Police Force. The Department is headed by a Deputy Inspector General of Police (DIG), its primary function include investigation and prosecution of serious and complex criminal cases within and outside the country. The Department also coordinates criminal investigation throughout the Nigeria Police Force. The criminal investigation department (CID) is divided into sections with most headed by Commissioners of Police. These Sections are: administration, anti-fraud, the central criminal registry (CCR), special anti-robbery squad (SARS), X-squad, general investigation, special fraud unit (SFU), legal section, forensic science laboratory, Interpol liaison, homicide, anti-human trafficking unit, special branch CIB/SIB.⁴¹

4.0 CONTENDING ISSUES AND JURISPRUDENTIAL ARGUMENTS FOR AND AGAINST THE CREATION OF STATE POLICE FORCE IN NIGERIA

The campaign for the creation of state police became more pronounced 1999 as part of the political process when the Regime of Chief Olusegun Obasanjo (one time president of Nigeria from 1999-2007) took off.⁴² For instance, the Governors of the Alliance for Democracy (AD) particularly Bola Tinubu of Lagos-State, made the establishment of state police as a major item in their agenda for a truly federal state and restructuring of the country. The advocates maintained that it was a necessity for a truly federal state. The agitation also resurfaced again during the public hearing of Electoral Committee set up for the electoral reforms in Nigeria in 2009.

i) Arguments for the Creation of State Police Force

The Nigeria Force is often considered as a federal government agency by virtue of listing police as a

³⁹ Ibid.

⁴⁰ Nwabueze, B. *op.cit.* p. 109.

⁴¹ Section 215 (2) (3) of the 1999 Constitution (as amended).

⁴² Ibid Section 231 (4) and (5).

⁴³ Olowokere, E. N and Oluduro, B. *op.cit.* p. 150.

⁴⁴ Ibid.

⁴⁵ Olowokere, E. N and Oluduro, B. *op.cit.* p. 441.

⁴⁶ Ibid.

matter within the exclusive legislative list in the Constitution,⁴³ hence the State Houses of Assembly cannot legislate on it. A Learned Author Professor Ben Nwabueze once castigated the arrangement of a single police as the most potential source of danger in our federal system.⁴⁴ The learned Professor opined that, if it is accepted that the federating units/states are autonomous in a federal arrangement, denial of police force to the states is an aberration, not only the power vested in the president to appoint and remove the Inspector General. Thus, it would appear that the present arrangement of a single police force appears not satisfactory to many Nigerians, especially at the states level.⁴⁵

A Lawmaker by name Senator Kaka, joins the call for state police creation. According to the Senator, the present security challenges in some parts of the country had necessitated the call for state police.⁴⁶ The Senator said further that Nigeria was too big to have a single federal police, adding that Nigeria as a country was ripe for it. The Senator recalled that in the early 1950s, the country used to have the 'constabularies' which was local government police, they were effective, dedicated and reliable. Kaka opined again that Nigeria as a nation derailed from the path to greatness, when military decided to throw away true federalism which was inherited from the colonial masters.⁴⁸ The Senator stressed the need for each state to have its security operators and be allowed to fund and manage it effectively, he further emphasized that language was a critical factor for effective policing particularly in the area of intelligence gathering; it is a person who knows the ways of life of his or her community that will be able to do the job efficiently.⁴⁹

Equally, the leaders of the upper chambers in the National Assembly gave nod to the creation of state policy in the country too. This was against the backdrop of the Inspector General of Police Mohammed Abubakar remarks that the nation is not ripe for state police. Equally, the Nigeria Governor's Forum gave noted that the fears of state police being used against the opposition is not tenable. In the words of the Senate President:

I was once afraid of state police, but I have since changed that position because no governor according to the constitution will govern for more than eight years. Once a governor's tenure ends he becomes more or less like an ordinary citizen of the state, so another governor will therefore take over the leadership of the state.⁵⁰

The Senate President added that the review of constitution alone cannot guarantee more development, terrorism among others, but attitudinal change. He said further that the Senate will not allow minority people to force their voices on them, assuring that the National Assembly will give equal and fair consideration to all the demand and agitation of every stakeholder.⁵¹

The Rivers State Governor Rotimi Ameachi called for the establishment of state police, noting that it is only in Nigeria that the fear of state police is the beginning of wisdom, he urged the National Assembly Lawmakers to address critical issues which include the removal of the immunity clause, federating unit, devolution of power, revenue sharing formulae among others. According to Ameachi, if these critical issues are avoided or solved in the review of the constitution it would create a pleasure and displeasure in the populace.⁵² Men of the state police if created would be made to work closely with their federal counterparts in order to ensure that their activities are not tele guided by politicians.

In the opinion of Fashola,⁵³ state and local government police are required to meet the specific needs of each state and local government. In the past, the police were poorly equipped because the various divisions (area and state commands) had to look to the Federal Government in Abuja for funding for their basic needs. The Federal Government did not have the time, knowledge, money, and other resources to meet the needs of the various police units across the country. Where they had the resources, issues of bigotry, corruption and incompetence hampered deployment. The state and local

⁴⁷ Ibid.

⁴⁸ Olowokere, E. N and Oluduro, B. *op.cit.* p. 152.

⁴⁹ Item 5 second schedule to the 1999 Constitution of Nigeria (as amended).

⁵⁰ Nwabueze, B. *op.cit.* p. 123.

⁵¹ Nwabueze, B. *Constitutional Democracy in Africa Vol. 1* (London, Sweet & Maxwell, 2003) p. 59.

⁵² Kaka, A. "Lawmaker Joins Call of State Police" *Business Day Newspaper* Tuesday, 14th August, 2012 p. 1.

government on the other hand know where the shoe pinches, and are closer to the people and it is easier for the people to hold them to account than it is to hold the federal government in faraway Abuja to account. Therefore, in recent times, state governments have had to step in to provide armoured cars, bullet proof vests, vehicle and other equipment's and logistic free to their state commands.

The issue of security is yet another factor. The state of insecurity has assumed a disturbing dimension. Perhaps, this is why some stake holders have advocated for the creation of state police as panacea to the incessant security breach. The advocates are of the view that the adoption of federal political system should also be extended to policing where the federating units would be empowered to have a police structure.⁵⁴ They opined that the state is more familiar with the terrain they are expected to police; thus they stand a better chance to prevent and detect crime.

The proponents of state police subscribed further that it will create employment for the teeming unemployed youths; effective utilization of security vote towards funding state police; bring succor to a nation under the siege of terrorists and as chief security officers of their respective states, governors would be in better position to live up to their responsibility of securing lives and property and it will bring the federalism of Nigeria state to the fore and ensure the autonomy of the federating units.

In the case of *Attorney General v Colonial Refining Co. Ltd.*,⁵⁵ the Judicial Committee of the Privy Council gave the autonomy of the federating units a literal interpretation and confines its application to cases in which the states, while agreeing to a measure of delegation, yet in the main continue to preserve their original constitutions. This interpretation has an application in Nigeria in so far as the federating states are allowed to decide the structure or kind of their federation.

By juxtaposition, in the United States of America, decentralized police forces are maintained in their federal structure.⁵⁶ The fragmented system of police administration in the United States has the principal law enforcement agencies of the federal government as the Department of Justice, the Department of Homeland Security, and the United States Postal Service. The jurisdiction of the federal law enforcement agencies is limited to the government's power to regulate inter-state commerce, impose taxes, and enforce constitutional and federal law. The Department of Justice agencies include the Federal Bureau of Investigation (FBI), who deals with bank robberies, kidnappings, terrorism, and violation of federal laws and provides training, identification, and laboratory services to the local police, the Bureau of Alcohol, Tobacco, Firearms and Explosives.⁵⁷

ii) Arguments Against the Creation of State Police Force

Hyma totally disagree with the idea of state police because the idea might be novel, but in practice it will suffer abuse.⁵⁸ What should be upheld instead is the present structure of the police force be sustained, but with improve funding. The Federal Government has failed in this regard thus prompting the call for a state police. The state should not look at the point of just buying Hilux jeeps as being man enough to include police in its already jaundice purse. The paucity fund allocated to states makes it impossible for non-attendance of infrastructure as a recurring event. State government may not be able to fund is better federal government continue with the overall funding.⁵⁹

Another reason while the clamour for the establishment of state police in Nigeria is likely to be seriously resisted is that nothing has changed in the condition that led to the demise of native police in the first instance, it suffices to state however, that native police in the pre-1966 Nigeria symbolized absolute powers by local authorities which powers were recklessly used by politicians of that era for selfish political gains, to oppress political opponents and rig elections.⁶⁰ Yet again is the likelihood of conflict of interests and challenges that is likely to be a fall out of multiple security agents. It is doubtful whether Nigerian politicians have the temperament to resolve amicably the jurisdictional problems

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

that are likely to arise from the operation of multiple police forces.⁶¹

To buttress the arguments against state police, it has been said that while the states and local governments may appear to have been outlawed from creating state police, their recourse to ethnic militias like Bakasi Boys, Egbesu Boys, O.P.C and so on, to wreak havoc on political opponents surely foretell how dangerous it would have been to allow state and local authorities to control the police.⁶² Governor Fashola's outfit KAI and LASTMA have been criticized and known to be aggressive and high handed. And they exhibit the tendency to replace all the policemen of the state.

Another argument worthy of examination under this head is the problem of funding which will definitely make the establishment of state police not feasible. Presently, virtually all the states in the federation depend on allocation from the federation account. The feasibility study carried out has shown that some states' incomes are hardly enough to meet their expenditure.⁶³ Therefore to add police responsibility to the affairs of the state's most of which are still battling with issues relating to the payment of minimum wage appears to be overkill. In the words of a private security practitioner Wilson Isangbador⁶⁴, was of the opinion that the upsurge in security threat should not be seen as a factor for establishing state police; he maintained if the police are well funded, it does not matter whether they are state or federal police.

Equally, at a gathering of former Inspectors General of Police, Gambo, Coomassie, and Ehindero warned President Goodluck Jonathan not to accede to the request of the proponents of state police.⁶⁵ To them, the era when police are controlled by local authorities are gone, saying Nigeria will disintegrate should Jonathan yielded to pressure and support the creation of state police. Speaking under the umbrella of the Forum of Retired Inspectors General of Police, they recalled that local police forces were bastionized in the past as they were used for all sorts of heinous things.

Similarly, one time former Attorney General of the Federation and Minister of Justice, Chief Akin Olujimi (SAN) described agitators for the creation of Nigeria Police as being motivated by short time considerations and lust for power.⁶⁶ The Police that is meant to be antidote to criminality are being overwhelmed by this phenomenon. The criminals appear to be ahead of the police such that so much so that police only react to the commission of crimes usually after the offenders might have left. The police often conjure to the public depressing feelings of fear and distrust.

6.0 CONCLUSION AND RECOMMENDATIONS.

The Nigeria Police Force had a colonial origin. This has been attributed to the reason why the Nigeria Police Force is more of an instrument of oppression and intimidation. The right step out of this impression is to re-conceptualize the kind of police our society needs and relate it to the political system we operate. If it is agreed that policing is communal matter; we must therefore endeavour to localize our police force, if done this it hoped will minimize its abuses by the political elite. The police must not operate above the society, but as part of the society, since the police are supposed to a community based issue. It would therefore be difficult to achieve efficiency in a centralized system of police in a federal structure.

In respect of jurisdiction relating to subject matter, federal agencies should have exclusive jurisdiction on specified federal offences. However, state police may arrest a suspect where a violation occurs, in collaboration with the relevant federal police provided the violation occurs within the territory of the arresting state. The state police forces should have territorial jurisdiction in the areas they cover. The states and federal governments must share the responsibility of law enforcement considering the

⁵⁴ Onwuzuligbo, D. "Insecurity: Is State Police the Panacea?" Nigerian Pilot Newspaper Monday 13th August, 2012 p.1.

⁵⁵ (1914) AC p. 237 at 253.

⁵⁶ Police in the United States available at <<http://encarta.msn.com/encyclopedia/761574058/police.html>> accessed on 13th May, 2014

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² Example is the Allhaji Ali Idume being accused of and facing trial for being a sponsor of the dreaded Boko Haram sect.

enormous capital involved in maintenance of adequate security.

The control of the state police should not be left entirely in the hands of the state governors. It is therefore imperative that some checks and balances be put in place to deter them from misusing the force. This among others may be accomplished by placing the appointment, discipline, and removal of the state police heads in the hands of an autonomous body or commission.

It is a fact devoid of fallacy that the present structure in Nigeria police as it affects the force does not reflect true federalism; therefore in the alternative, it has been suggested that a kind of democratic policing should be introduced. Democratic policing is not a strategy of policing, or an instrument for realizing the objectives of the police force; it is just a type of policing as a concept to make sure that the members of the public get the type of police force they deserve.⁶² Elements of democratic policing are; adherence to international principles of human rights, conformity to actions of law, accountability to external authority based on capacity to collect and the willingness to publicize information about operational activities; and responsiveness to the needs of ordinary citizens.

While the arguments for the state police continue to gain momentum, it is imperative that the existing police structure should be funded and equipped for a better service delivery, especially now that the country is facing serious security challenges. There is the obvious need to equip and reposition the force to checkmate acts of terrorism, armed robbery, kidnapping, and other criminalities threatening our corporate existence. There should in addition be a revision of the salaries and overall welfare and condition of service of the police. It noted with dismay that, the poverty in the police coupled with weak institutional governance, predisposed it to engaging in criminal and anti-social schemes for self help and survival.

⁶² *Ibid.*

⁶³ Hyam N *Op.cit* p. 14.

⁶⁴ Isangbodor, W cited *In re: Onwuzuligbo, D. "Insecurity: Is State Police the Panacea?" Nigerian Pilot Newspaper Monday 13th August, 2012 p. 2.*

see also Anonymous "Beyond the Clamour for State Police" *Business Day Newspaper Wednesday 8th August, 2012 p. 1*

⁶⁵ Oyedunji, A "Gambos, Coomassie, Ehindero Warn Jonathan on State Police" *Nigeria Compass Newspaper Tuesday, 14th August, 2012 p. 1*

⁶⁶ This Day Newspaper 28th April, 2004 available at <<http://www.accessing Library.com/coms/summary>> accessed 4th June, 2004.

⁶⁷ *Ibid.*, at p. 108.

REVISITING PROSECUTORIAL POWERS OF THE FEDERAL ATTORNEY-GENERAL AND ANTI-GRAFT AGENCIES IN NIGERIA

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ABSTRACT

The article examined prosecutorial powers of the Attorney-General of the Federal Republic of Nigeria and prominent anti-graft agencies like the Code of Conduct Bureau (CCB), the Independent Corrupt Practices and other Related Offences Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC) with a view to analyzing the extent of such powers and appraising recent controversies over contest for power and supremacy between them. Efforts had been made to rely on analytical and descriptive methods based on functional and system model theories. The findings showed that though, the Federal Attorney-General has gotten a constitutional power to initiate, take-over and discontinue criminal proceedings in any court of law other than a court martial before judgement, other agencies involved in criminal justice have also been empowered by other enabling laws to prosecute offenders. In some instances, the Federal Attorney-General had been exercising overriding powers over other anti-graft agencies in such a way as to render them ineffective. The article concluded that if the war against corruption would succeed in Nigeria, effective synergy should always exist between all authorities concerned with the duty of prosecuting offenders for all manners of crime including officers and men of the Nigerian Police. They should also be empowered further to operate according to law without allowing undue sentiments and political considerations to whittle down their powers and functions.

Key Phrases: Prosecutorial Powers, Federal Attorney-General, anti-Graft Agencies.

INTRODUCTION

Corruption and other anti-social crimes had gotten their strong-hold in Nigeria since independence. One of the reasons attributed to the first military intervention in Nigerian politics in 1966 was corruption in the high and low places.¹ The alarming rate of corruption continued even under successive military and civilian regimes till 1999 when there was a great relief of a successful transition from military rule to a civilian dispensation. Taking a swipe at corruption and its destructive consequences on the nation, both policy makers and the civil society continue to make serious pronouncements on how to curb or eliminate the problem. The matter has been assessed by most Nigerians as becoming irredeemable due to the apparent dysfunctioning of key institutions like the Police, Code of Conduct Bureau, Civil Defence Corps, military authorities, judiciary and other governmental agencies charged with the duty of curbing corruption and other economic and social crimes in the country.

Upon assuming power as the President and Commander-in-Chief, the issue of tackling corruption head-long was the immediate preoccupation of Chief Olusegun Obasanjo. Thus, in 2002, he signed into law, The Corrupt Practices and other Related Offences Act, 2000.² Corruption among Nigerians still continues unabated and seriously eroding into the affairs of

¹ Ademoyega, A. (1987). *Why We Struck*. Evans Brothers Publishers, Ibadan, p. 89.

² Now Cap. C31, *Laws of the Federation of Nigeria*, 2004.

NowCap. E1, *Laws of the Federation of Nigeria*, 2004.