

# THE ROLE OF THE POLICE IN THE ADMINISTRATION OF JUSTICE IN NIGERIA

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## **Abstract**

In its pursuit of good governance through justice, the state employs and relies on certain organs which it has created for that purpose. These organs include the police, the legal profession, the court and the prisons. The role of the police in this regard is often misunderstood, misconceived and unappreciated. The corrupt practices in the police system do not but compound the matter. This paper is therefore intended to examine the real role of the police in the administration of justice in Nigeria. This, will be shown in their duty to arrest, search, prosecute and generally maintain law, peace and order. The endemic corruption and abuses manifested in bribe-taking and torture of suspects both of which constitute gross impediment to the actualization of the role of the police will be rationalized as an indictment on the larger Nigerian society.

## **Introduction**

The administration of justice refers to the maintenance of right within a political community by means of the physical force of the state. It is the state's application of the sanction of force to the rule of right (Garner, 2004). But in its broad sense, the administration of justice is involved in the exercise of every governmental function, be it legislative, executive or judicial. It is one of the vital functions of state, for the aim of state and government is the welfare and happiness of the citizens (Ewelukwa, 1980). In this regard, the organs involved in the administration of justice include the police, the legal profession, the court and the prisons. But in this paper, we are concerned with the police and the part they play in the administration of justice. It is also pertinent to state that the role of the police is encapsulated in their duties and powers as prescribed by law. What is the role of the police in this scenarios?

It is a well-known fact that the prime object of the criminal law of which the police form an essential part is the protection of the public by the maintenance of law and order. To this end, it has been stated that the general purpose of the criminal law and the establishment of the police force, amongst others, is to forbid and prevent conducts that threaten harm to individuals and the public at large, as well as to subject to public control, persons whose conducts indicate that " they are disposed to commit crimes (American Law Institute's Model Penal Code, 1968). It includes the control of those who have manifested their dangerousness sufficiently enough to generate fear in the minds of reasonable members of the society. This is because every responsible society takes appropriate measures to protect lives and property of people living within its boundaries. This leads us to the concept of crime control which has been said to refer to a host of activities including all efforts designed to hold the volume of crime in effective check, to keep it from spreading, to restrict and prevent crime infection and continuation, to prevent crime from breaking and spreading to new areas, and to protect society against the activities of habitual and abnormal offenders (Ugwudike, 2002). Thus, as Will be shown in this paper, the role of the police is encompassed in crime control which includes apprehension of offenders, detection of crime, prevention of crime, protection of life and property and the enforcement of laws. The role of the police also entails the arrest and search of offenders and property, granting of bail and prosecution of offenders. How far this role has been played will be determined at the end of the paper.

## **The Legal Basis**

There is no doubt that the foremost state agency that combats crime and criminals as its foremost role in the administration of justice in Nigeria is the police with the support of the legal profession, the courts and the prisons. To be able to do this effectively, the police must have the legal basis for doing so. Put differently, the police must have the legal empowerment to play its role. In this regard, both the Nigerian Constitution and the Police Act (Laws of the Federation of Nigeria, 1990) give the police very wide powers in the performance of their duties. Thus, the role of the police in the administration of justice is one prescribed by law (The Supreme Court, 2002).

Section 214 (2)(b) of the 1999 Constitution provides that the members of the Nigeria Police Force shall have such powers and duties as may be conferred upon them by law. The major law which provides for such powers and duties of the police is the Police Act. But apart from the Police Act, sections 7 - 15 of the Sherrifs and Civil Processes Act (L.F.N.,1990), sections 3 - 11 of the Criminal

Procedure Act, (L.F.N.,1990), amongst other laws, also provide for special and particular powers and duties of the police. As shall be postulated in this paper, the law, in prescribing the role of the police, vests in it, the power to arrest any offending person, to search and detain any such person, and to conduct prosecutions in courts of law. Section 4 of the Police Act provides for the role of the police as follows:

The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged and shall perform such military duties within and without Nigeria as may be required of them by or under the authority of this or any other Act.

As can be deduced from the above, section 4 of the Police Act encapsulates the role of the police and makes it clear that the first and foremost duty of the police is to prevent and detect crime as well as to apprehend offenders. It is in light of this provision that we shall discuss the role of the police in the administration of justice in Nigeria.

### **Prevention and Detection of Crime and Apprehension of Offenders**

As observed above, the first and foremost role of the police is the prevention and detection of crime as well as the apprehension of offenders. This role of the police is manifested in the police powers of arrest and to conduct searches both on the person and on a chattel or property. According to Webster's New Collegiate Dictionary, "arrest" means "*to take or keep in custody by 'authority of the law'*".

It means the taking or restraining of a person's liberty in order to make him answerable to an alleged offence or a suspected crime (Membere, 1986). As a learned author put it, arrest means placing some restrictions on the liberty and freedom (especially of movement) of a particular person for the purpose of preventing him from committing an offence or, if he has already committed the offence, for purposes of apprehending him in order to keep him within reach to answer to the charges or complaint against him. But apart from this, an arrest may also be used in order to secure the appearance of an offender before a court of law (Doherty, 1990).

It is pertinent to note that by virtue of the provisions of section 3 of the Criminal Procedure Act, an arrest is effected by the person making the arrest actually touching and confining the body of the person to be arrested unless there is submission to custody by word of mouth or action. There must be some kind of restraint as arrest is the beginning of imprisonment (The Supreme Court, 1982). The Police powers of arrest are derived mainly from two laws. These are the Criminal Procedure Act and the Police Act. This is in contrast to the position in Nigeria in the wake of British colonialism in which case, as in England, the common law formally vested in the police, the power to arrest (Tobias, 1969). This role of the police is essential because in order for justice to be done in each case of the commission of an offence, the offender must be available to answer to the complaint.

In addition to their power to arrest, the police are empowered to take preventive measures whenever it is necessary, to nip any tendency to commit crime in the bud. Such preventive action taken by the police normally comes before arrest and it can be regarded as the foremost step within our criminal justice system towards stemming criminality in the society (Amadi, 2000). Section 53(1) of the Criminal Procedure Act Provides that:

Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent the commission of any offence.

Under the guise of this provision, the police have acted as agents provocateur in order to detect and prevent the commission of any offence. The shortcomings of this practice has been discussed in another paper by the writer (Obidimma, 2004). The point is further buttressed by the incredible facts of *EMEKA V. THE STATE* (The Supreme Court, 2001) which was also discussed. This shortcoming however does not completely obliterate the advantages of such interposition which

would prevent the would-be offender from putting his intention into actuality and at the same saving the would-be victim from experiencing the traumatic effect of a criminal act.

Next in the performance of this role is the power to conduct searches on persons, premises or things. When a person is arrested by the police for having committed an offence or when a complaint is made about the commission of an offence, it may be necessary for the police to conduct a search of the person or for the premises of the offender to be searched. The search is made in order to obtain evidence to be used at the trial of the offender in the court. Similarly, when an offender is conveying anything unlawful or unlawfully obtained in a moveable thing or object, the police has the power to search the thing or object for the same purpose of obtaining evidence that may be used in the trial of the offender. The search may be conducted with or without a search warrant depending on the subject-matter of the search. The search is conducted, as is indicated above, in order to obtain and procure sufficient evidence for the successful trial of the offender.

It is submitted that the power of the police to arrest and to conduct searches, is also subsumed in the duty to investigate every allegation of crime. In order to detect the commission of any crime and for the purposes of apprehending those who have committed the said crime, it becomes necessary that the police should investigate the crime by making a fact-finding exercise to determine the culprits and the extent of their involvement. The duty to investigate includes the duty to investigate office holders mentioned in section 308(3) of the 1999 Constitution as the immunity conferred by the said section 308 does not confer on any of such office holders, immunity from police investigation, as, in their duty to detect crime, the police should normally investigate allegations of crime committed by any person (The Supreme Court, 2002).

### **The Power to Grant Bail**

In exercise of the role assigned to them, the police have power, in appropriate cases, to release on bail, suspects under their custody. Bail has been defined as the procedure by which a person arrested for an offence is released, on security being taken for his appearance on a day and place certain (Doherty, 1990). By virtue of section 17 of (he Criminal Procedure Act, when any person has been taken into custody for an offence other than one punishable by death, any officer in charge of a police station may, if it will not be practicable to bring such a person before a magistrate with jurisdiction with respect to the offence charged within twenty-four hours after he was so taken into custody, discharge the person upon his entering into a recognizance with or without sureties. This means that in appropriate cases, the police has an obligation to grant bail to suspects under their custody.

But from practical experience, the police is not ready and willing to give effect to the constitutional guarantee of personal liberty to the citizenry. They continue to detain suspects for weeks, months and in some cases years without charging them to court or releasing (hem on bail because the suspects are either unable or unwilling to pay their "price". This practice has been deprecated by the courts since 1982 (the Supreme Court, 1982) but it has not changed anything because the cankerworm known as "corruption" has eaten so deep into the society in Nigeria. Again, section 35(4) of the 1999 Constitution provides that a person arrested or detained shall be brought before a court of law within a reasonable time but the police have more often than not, been reluctant to respect this constitutional provision. It is either that they have not concluded investigation or they will prefer what they call "a holding charge" which has no basis on the constitution nor on any other known law in Nigeria (The Court of Appeal, 1996). This is one of the ways by which the police deliberately seek to circumvent the constitution and thereby throwing spanners into the wheel of the administration of justice of which they are sworn to uphold (Amadi, 2000).

### **Power to Conduct Prosecutions in Courts of Law**

The police also play the role of prosecutors in the courts. The power to do so is derived from the provisions of section 23 of the Police Act. Pursuant to this, the police conducts most of the criminal prosecutions in the Magistrates' Court. But apart from this, there is evidence that the police also prosecute cases not only at special tribunals but also at High Courts, Court of Appeal and the Supreme Court (Ehinder, 2003). They also defend actions instituted against police officers or the police as a body. This they have done admirably and successfully. This is also done in

order to attain justice.

Apart from the above roles, the police also participate in the enforcement of all laws and regulations with which they are directly charged. Furthermore, under the Sheriffs and Civil Processes Act, the police is employed in the execution of the judgment of the court. They therefore extract the performance and obedience to orders made by the court and this enhances the respect that is accorded the court system in Nigeria. In doing this, they maintain peace and preserve law and order in the society.

### **Conclusion**

As has been shown in this article, the police play a very vital role in the administration of justice. In fact, one wonders what the polity would be without the police. The role of the police which is predicated on constitutional and statutory provisions, include the maintenance of law and order through the prevention and detection of crime, apprehension of offenders, the investigation of persons alleged to have committed an offence as well as through the exercise of the power to grant bail to suspects under police custody.

The police also participate positively in the administration of justice by conducting prosecutions as well as defending police officers facing trials in court. Furthermore, the police is engaged in the execution or enforcement of court orders and judgments. In doing so, they enhance the honour, respect and integrity accorded the court by compelling the performance and obedience to orders made by the court. It can therefore be said without equivocation that no criminal justice system can operate effectively without the participation of the police. This is so even with the obvious and flagrant abuses committed by members of the police force.

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