

# LEGAL ISSUE BRIEF

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## Reforming the Police Force in Nigeria: a Case for Effective Legislation

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### 1. Introduction

One of the basic function of government is the promotion of peace, order and good governance.<sup>1</sup> This is achievable where a vibrant police service exist, the police are the most visible manifestation of government authority responsible for public security.<sup>2</sup> It is often said that, the civility of any nation is measured by the civility of its police, every nation needs effective policing in order to protect institutions, citizens' rights and day to day activities of its citizenry where democratic values are imbedded in the institutional processes and structures.<sup>3</sup> It is therefore expedient that effective policing is built on the foundation of accountability, transparency, participation, respect for diversity, and the protection of individual and group rights.<sup>4</sup> Effective policing should be concerned *strictly* with 'the preservation of

safe communities and the application of criminal law equally to all people, without fear or favour'.<sup>5</sup> The issue of effective policing in Nigeria has been a subject of debate for a very long time, there have been calls for reforming, revamping and overhauling of the Nigeria Police force (NPF) for effective service delivery. This paper seeks to review the existing legal framework regulating the police force, their challenges or shortcomings and suggest possible reviews or amendments by the legislature. The brief also argues that effective legislation is a viable option for effective police reforms in Nigeria.

### 2. Issues to be considered.

- i. What are the current legislation regulating the Nigeria Police Force?

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<sup>1</sup> See for example the provisions of section 14(2)(b) of the 1999 constitution

<sup>2</sup> 'Guidebook on Democratic Policing' published by The Organization for Security and Co-operation in Europe (OSCE), May 2008.

<sup>3</sup> Prasad, D., 2006. Strengthening democratic policing and accountability in the Commonwealth

Pacific. *Sur. Revista Internacional de Direitos Humanos*, 3(5), pp.110-135.

<sup>4</sup> Ibid

<sup>5</sup> Hannings Ggabe Mlotha, D.C.P Malawi Police Service 'Key Principles of Democratic Policing' DCAF, Geneva, 15 July, 2009

- ii. How effective are the existing legislation?
- iii. Should the current legislation be repealed or amended?

### **3. Current Legislations regulating the Nigeria Police Force**

#### ***a. Constitution of the Federal Republic of Nigeria 1999***

The Nigeria Police Force (NPF) is established under Section 124(1) of the 1999 constitution and the Police Act. Cap P19 LFN 2004<sup>6</sup> Nigerian Constitutions, past and present legislate for a single national police agency for the Nigerian federation.<sup>7</sup> The present Constitution recognizes the Nigeria Police force (NPF) and two other agencies directly linked to the NPF, they are the Nigeria Police Council (NPC) and the Police Service Commission (PSC).<sup>8</sup> The NPF being a centralized federally administered institution, is under the command of an Inspector General of Police (IG) appointed by and answerable to the President of the Federal Republic of Nigeria.<sup>9</sup> There are also Commissioners of Police for each state of the federation who are appointed by the Police Service Commission.<sup>10</sup>

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<sup>6</sup> Section of the 1999 constitution states that: There shall be a police force for Nigeria, which shall be known as the Nigerian Police Force, and subject to the provisions of this section, no other force shall be established for the federation or any part thereof. See also Part II Section 3 & 5 of the Police Act Cap P 19 LFN 2004

<sup>7</sup> See Section 153(1)(m) & Paragraph 27 of Third Schedule of the 1999 Constitution

#### ***b. The Police Act***

Section 4 of the Police Act provides for the general duties of the NPF which is the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and the performance of such military duties within or outside Nigeria as may be required of them by, or under the authority of the Act or any other Act. The police Act guides the general conduct of the NPF, their operations, the scope of their duties, powers and other miscellaneous provisions.<sup>11</sup> The Police Act also recognizes the Nigerian Police Council (NPC) which basically deals with the organization and administration of the NPF and all other matters relating to the police force except for matters relating to the use and operational control of the Force or the appointment, disciplinary control and dismissal of members of the Force. It also carries out the general supervision of the NPF and advising the President on the appointment of the Inspector-General of Police.<sup>12</sup>

#### ***c. The Police Service Commission Establishment Act (PSC) 2001***

The NPF is regulated by the PSC, who deal with matters, relating to the promotion,

<sup>8</sup> See generally Section 215 & 216 of the Constitution

<sup>9</sup> See Section 215(1)(3)&(4) of the Constitution

<sup>10</sup> Section 215(1)(b)

<sup>11</sup> See the explanatory memorandum to the Police Act Cap P19 LFN 2004

<sup>12</sup> See Section 9 of the Police Act & Paragraph 28(a)(b)&(c) of Third Schedule of the 1999 Constitution

appointment, discipline and dismissal of officers amongst other functions<sup>13</sup> Part of their enormous powers as enumerated in the Act also include the formulation of policies and guidelines for the appointment, promotion, discipline and dismissal of officers of the Nigerian Police Force; Identifying factors inhibiting or undermining discipline and effective performance in the Nigeria Police Force, they are also to formulate and implement policies aimed at the efficiency and discipline of the Nigeria Police Force. The Commission also has some level of autonomy given to it under the Act in the performance of its duties. The Act also gives the Commission powers over the remuneration of police officers, and to enter into contracts on behalf of the police force may be necessary or expedient for the discharge of its functions.<sup>14</sup>

#### **4. Challenges of the Current Legislations regulating the Nigeria Police Force**

Some of the challenges of the NPF are foundational, touching on the laws establishing it including the provisions in the Constitution, other challenges are structural and institutional. Structural factors includes: over-centralization, long time neglect of the force particularly under military regimes, economic exploitation, poverty and widespread corruption that has eaten deep into social fabric of the nation among many others<sup>15</sup>. The institutional factors includes but

are not limited to poor training, dilapidating structures and facilities, poor remuneration package, poor condition of service and hostile police-public relations.<sup>16</sup> It is our argument that if the foundational issues are addressed other challenges can be easily contend. Provisions in the laws and regulations of the NPF that erodes the police force with the needed independence and inherent capacity to perform are as highlighted below.

##### **i. Lack of Autonomy Arising from procedure for appointment and removal of IGP:**

Section 215 (3)(4)& (5) of the constitution provides that;

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

*(4) Subject to the provisions of this section, the Governor of a state or such Commissioner of the Government state as he may authorize in that behalf, may give to the Commissioner of Police of that state such lawful directions with respect to the*

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<sup>13</sup> See Section (6) of the Police Service Commission (Establishment) Act No. 1 of 2001

<sup>14</sup> See Sections (6)&(7) of the Police Service Commission (Establishment) Act No. 1 of 2001

<sup>15</sup> Amusan, L. and Saka, L., 2018. The Nigerian Police Force and the Task of Policing Democratic Nigeria: Issues and Problems. *Anthropologist*, 31(1-3), pp.105-116.

<sup>16</sup> Ibid

*maintenance and securing of public safety and public order within the state as he may consider necessary, and the Commissioner of Police shall comply with those directions or cause them to be complied with:*

*Provided that before carrying out any such directions under the foregoing provisions of this subsection the Commissioner of Police may request that the matter be referred to the President or such minister of the Government of the Federation as may be authorized in that behalf by the President for his directions.*

*(5) The question whether any, and if so what, directions have been given under this section shall not be inquired into in any court.*

Giving credence to the provisions of the constitution section 9(4) of the police Act provides that; *“The President shall be charged with operational control of the Force”*

It appears that the operational powers of the NPF are subject to the directive of the President, although the constitution uses the word ‘*lawful directions*’ both the Police Act and the Constitution did not give a definition of the term, even if literally interpreted as any directive that is not in contradiction with existing the laws of the state, it could be vague and misleading, as political office holders may hide under such bogus provisions and direct the police force to act otherwise. A closer look at the provisions of S.215 (4), reveals that even a commissioner of police at the state level cannot carry out a lawful directive given by a State Governor without first conferring with the Inspector

general of police or the president as the case may, this creates unnecessary bureaucracy within the police and impairs on effective policing. The constitutional provisions above further gag the police with the proviso in subsection (5) which states that: *The question whether any, and if so what, directions have been given under this section shall not be inquired into in any court.* It therefore means that whatever directive is given by the president whether or not it is lawful shall not be subject to the interpretation of the court. Clearly this proviso is undemocratic and draconian.

Tied to the issue of Autonomy is the appointment of the Inspector general of Police and the Commissioners of Police as provided for in the constitution and the police act. Although such appointments are subject to the recommendation of the NPC from among members of the police force,<sup>17</sup> in practice it appears to be at the pleasure of the president, the appointments of the IG is not subject to confirmation by the senate nor a strictly a career progression based on seniority, this can be subject to abuse, and appointments of persons loyal to the president, thereby eroding them of the required independence needed to perform. The requirement for removal of the IG also follows a similar pattern<sup>18</sup> like in the case of appointments, it is pertinent that the President has to fulfill a condition precedent of consulting the Nigeria Police Council before removing an IG, but in reality he is not bound by the outcome of the consultation before

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<sup>17</sup> Section 215 of the 1999 Constitution

<sup>18</sup> Section 216(2) of the Constitution

removing an Inspector-General of Police from office.<sup>19</sup>

**ii. Funding:** As earlier highlighted the basic functions of an effective police include; maintaining public tranquility, law and order; protect and respect of individual's fundamental rights and freedoms; preventing and combating crime; and providing assistance and services to the public. This cannot be achieved where the Police is underfunded. Section 12, 13, 14 & 15 of the of the Police Service Commission (Establishment) Act No. 1 of 2001 provides for the funding of, expenditure and annual budgetary estimates of the commission<sup>20</sup>

It is clear to see that the NPF depend on the government for the provision of funds for day-to-day operations. However, the annual budgetary allocation for the Force, especially with regards to capital and overhead costs, does not reflect the enormous size, scope of responsibility and actual needs of the Force according to the Inspector General of Police.<sup>21</sup> He argued that "Arising from the limitations of funding occasioned by the budgetary constraint, most of the

requirements that would enable the Force to perform are never met. For instance, as against a capital budget estimate of N342.9billion proposed for the 2018 fiscal year, the Force was given an appropriation of N25.5billion.<sup>22</sup>

**iii. Overcentralisation:** It can be argued that the NPF is somewhat decentralized giving its command structure, from the federal to state levels. Decentralization in the real sense of the word is not limited to structure but functions and duties. Looking at the constitutional role of the NPF, it raises the issue of who has the control over the force, which has triggered the quest for state police<sup>23</sup>. Although the focus of this brief is not the issue of state police but the issues of decentralization of the police force both in structure and functions as its being practiced in other jurisdictions is imperative if the police force must function effectively. Decentralization of the NPF is necessary if Nigeria is to be regarded as a true federation. It has been posited that, "the basic indices of a federal structure of government are the political and economic autonomy of the

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<sup>19</sup> See generally section 215 of the 1999 Constitution

<sup>20</sup> Section 12(1) & (2) provides that: '(1) The Commission shall establish and maintain a fund from which Funds of the commission shall be defrayed all expenditure incurred by the Commission. (2) There shall be paid and credited to the fund established pursuant to Subsection (1) of this section- (a) such monies as may, from time to time, be granted or lent to or deposited with the Commission by the Federal or State Government or any other body or institution whether local or foreign; (b) all monies raised for the purposes of the Commission by way of gifts, loan, grants-in-aid, testamentary dispositions or otherwise; and (c) proceeds from all other assets

that may, from time to time, accrue to the Commission.

<sup>21</sup> 'IGP Says More Funding Needed For Nigeria Police Force to Maintain Neutrality'. Sahara Reporters March 27, 2019 available online at <http://saharareporters.com/2019/03/27/igp-says-more-funding-needed-nigeria-police-force-maintain-neutrality>

<sup>22</sup> Ibid

<sup>23</sup> Arase S.E (Fmr Inspector General of Police) 'A Critical Analysis of the Pros and Cons of State Policing: To Be or Not To Be' Being A Paper Presented At NBA Benin Branch 2018 Law Week (11th June, 2018)



integrating units within their legislative sphere of influence as provided for in the Constitution.”<sup>24</sup> Currently in Nigeria, State Governors who are security officers of their respective states do not have sufficient control of the NPF, a situation described as one of “responsibility without power.”<sup>25</sup> The constitution empowers State Governors to serve in the Nigeria Police Council, and give directives to State Commissioners of Police provided that such directives are lawful and not for oppressive political and other selfish purposes.<sup>26</sup> In practice the governors have no powers over the police force which makes it difficult for the governors as chief security officers of their state to curb uprisings or crisis in their domain when it arises. They have to rely on ‘orders from above’. The bureaucratic nature of obtaining such orders hampers on the security of lives and properties in many instances. It has also been argued that, the NPF as is currently constituted is too large and incapable of coping with the current challenge of preventing and detecting crimes thereby leading to high crime rate.<sup>27</sup>

## 5. Conclusion and recommendation

The role and importance of the Police in any society cannot be overemphasized. There is need therefore for a constant review of the

performance of the police and modalities on how to improve the efficiency of the police force. This is particularly necessary in Nigeria where the police has been underperforming and the consequent poor image of the police. This brief is targeted at the legislature to use their powers in bringing meaningful reforms to the Nigeria Police force, although there have been a number of proposals and sponsored bills on police reforms over the years, this is another call for expedited action by the legislature in the area of police reform. It is hereby recommended that;

1. There should be a constitutional amendment to subject the appointment of IGP to confirmation by two-thirds of Senate and for a single term of 4 years.
2. There should be a constitutional amendment to ensure that the removal of IGP before expiration of tenure should be on basis of incapacity or gross misconduct.
3. The Legislature should ensure adequate budgetary allocation to the police force in the appropriation act annually.

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<sup>24</sup> Inegedion, NA and Omoregie E, “Federalism in Nigeria: A Re-appraisal,” *Journal of Constitutional and Parliamentary Studies*, vol. xxxix Nos 1-4 , January – December, 2005, p 78 cite in Arase E

<sup>25</sup> Kemi Rotimi, ‘Approaches to the Policing of Perplexed Society: The Malformation of the Nigerian Policemen and the Impediments of His Being an Agent of Reform.’ See also Kemi Rotimi, *The Police in a Federal System: The Nigerian Experience*. Cited in Arase E.S

<sup>26</sup> See Section 214(1)(b) of the 1999 Constitution

<sup>27</sup> See generally Kemi Rotimi, *The Police in a Federal System: The Nigerian Experience*. Cited in Arase E.S ‘A Critical Analysis of the Pros and Cons of State Policing: To Be or Not To Be’ Being A Paper Presented At NBA Benin Branch 2018 Law Week (11th June, 2018)

4. The Legislature should push for the establishment of community policing in order to have some level of decentralization of the police force and ensure adequate policing at the grassroots level.
5. There should be an amendment of the Constitution and the Police Act to adopt a more decentralized and localized model of policing and command accountability.
6. There should be an amendment of the constitution and the police Act to restrict the role of the President or Minister in charge to policy directives and not operational control.
7. The legislature should ensure that the constitutional provision (Section 214(1)(b) of the 1999 Constitution) which empowers State Governors to serve in the Nigeria Police Council, and give directives to State Commissioners of Police provided that such directives are lawful and not for oppressive political and other selfish purposes are complied with. So that where there is an emergency State governors can secure the security of their domain without feeling helpless.