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# THE LEGAL STRUCTURE OF THE POLICE AND HUMAN RIGHTS IN NIGERIA

Chukwuma Innocent\*

## I. INTRODUCTION

There are many organisations that exercise internal security powers in Nigeria. Apart from internal security forces that are known, such as the Nigeria Police Force (NPF), the Nigerian Prisons Service, the State Security Service (SSS), and intelligence units of the armed forces which exercise these powers, there are also para-military organisations, such as the National Drug Law Enforcement Agency (NDLEA), the Board of Customs and Exercise and the Nigerian Immigration Service.

Among these organisations, only few have accessible laws that are relevant to this study. The laws and regulations governing the activities of the SSS and the Directorate of Military Intelligence<sup>1</sup> are unavailable to the public. Legislation authorising their establishment merely states that their powers are to be exercised at the discretion of the military head of the state.<sup>2</sup>

Given the secrecy and dearth of information on the legal structures of these security agencies, it is difficult to engage in any meaningful analysis of them apart from chronicling their systemic and widespread violations of human rights—a task that is not the aim of this study. This paper is therefore restricted to the Nigeria Police Force, the main organisation responsible for the maintenance of law and order in Nigeria. References are made to other internal security forces that exercise law enforcement as occasions permit.

Another preliminary remark relevant here, is that military rule has a serious effect on the activities of the police and other internal security forces in Nigeria with respect to human rights. This theme pervades the study: military rule, much more than civil rule, has had a profound and negative effect on the law enforcement agencies. It is almost impossible for civil society to hold law enforcement organs

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<sup>1</sup> These two agencies are notorious in violating the fundamental rights and basic freedom of the Nigerian people.

<sup>2</sup> National Security Agencies Decree, § 6(1), No. 19 (1987).

accountable in a situation where the government in power has no respect for the rule of law.<sup>3</sup>

Whereas a constitutional democracy defers to the supremacy of the constitution and its legislative acts are subject to judicial review, the opposite is the case under military dictatorship in Nigeria. On capturing power, the military promulgated a Basic Constitution (Suspension and Modification) Decree.<sup>4</sup> Its purpose and effect is to suspend some and modify other provisions of the existing Constitution.<sup>5</sup> What is saved or preserved in the existing Constitution remains in force at the will of the Federal Military Government and as a supplement to any other decree that is subsequently issued by that body. "In effect", argue Ojomo & Okagbue, "under a military administration, constitutional supremacy gives way to legislative supremacy."<sup>6</sup>

Given the foregoing situation, the police and other internal security forces in Nigeria no longer bother about what the Constitution says as long as they are serving under a military government. The result is the entrenchment of a police state in the country where the whims and caprices of those in power are enforced by overzealous internal security forces.

This study is divided into four sections. Section A deals with the historical background of the police in Nigeria. Section B is a summary of reports containing human rights critiques of the body of laws governing the Nigeria Police Force. Section C looks at the structure of Nigeria's ISFs. Section D offers conclusions of the study and some recommendations.

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<sup>3</sup> Refer to M.A Ojomo & I.E Okagbue, Human Rights and the Administration of the Criminal Justice in Nigeria, N.I.A.L.S., Lagos (1991), at 39.

<sup>4</sup> See Decree No. 1, 1966; Decree No. 1, 1984.

<sup>5</sup> Decree No. 1, 1984 provides in s.1 (1) "The provisions of the Constitution of the Federal Republic of Nigeria mentioned in schedule 1 to this decree are hereby suspended". S. 1(2) further provides "Subject to this and any other Decree, the provisions of the said constitution which are not suspended by subsection (1) above shall have effect subject to the modification specified in Schedule 2 to this decree". Accordingly, in Schedule 2, part B of the Decree, s.1(1) of the 1979 Constitution was modified thus: "the constitution as amended by this or any other decree is supreme and its provisions shall have binding force on all authorities and persons throughout the federation.

<sup>6</sup> *Id.*

### A. HISTORICAL BACKGROUND

Before the advent of the British colonial rule in Nigeria, the various ethnic nationalities that made up the country boasted some form of community based internal security forces.<sup>7</sup> This ranged from the highly developed age-grade system among the Igbos of eastern Nigeria, to the "secret societies"<sup>8</sup> such as the Ogboni and Oro cults in several Yoruba communities in western Nigeria, to the Ekpe cult amongst some tribes in Akwa Ibom and Cross River States, also in eastern Nigeria. All these groups helped in maintaining law and order and general community development in the pre-colonial era.<sup>9</sup>

The creation of the modern Nigeria Police Force as an organised force, armed and distinct from civil society, is a product of colonial rule. It functioned in the interest of British domination.<sup>10</sup> It was an essential instrument of alien rule.

This motivation had great influence on the kind of legal structure put in place to govern the police's activities, and that influence continues today. The colonial authorities were faced with the problem of controlling the restive natives in order to facilitate the plundering of the hinterland, hence the need for a coercive force.

Writing on the origin of the Nigeria Police Force, Alhaji A. Sheidu, Assistant Inspector General of Police (Rtd), stated that the Nigeria Police was established as an instrument of coercion.<sup>11</sup> "The (Nigerian) police," he said, "was an off-shoot of a para-military organisation called the West African Frontier Force (WAFF) which was essentially created to enforce obedience to the colonial rule."<sup>12</sup>

<sup>7</sup> See S.G. Ehindero, *Police and the Law in Nigeria*, Times Press, Lagos, 1986, at 1; Clement Nwankwo, et al, *Human Rights Practices in the Nigerian Police* 9 Constitutional Rights Project, Lagos (1993); A.B. DAMBAZAU, *LAW AND CRIMINALITY IN NIGERIA* 144 (1994), (Published by University Press, Ibadan).

<sup>8</sup> The term "secret societies" is a pejorative term used by early European missionaries to depict traditional institutions in a negative light.

<sup>9</sup> Refer to O. Soyombo, "Traditional Approaches to Curbing Deviant Behaviour in Nigeria", unpublished paper presented at a conference on the Administration of Justice: The Challenge of Due Process, held in Baton Rouge, Louisiana, USA, February 28-March 5, 1994, at 3.

<sup>10</sup> Refer to Akin Ibidapo-Obe, "Patterns of Police Brutality in Nigeria", paper presented at a workshop on Law Enforcement and Human Rights in Nigeria, held at Badagry, Lagos, May 30-June 1, 1994.

<sup>11</sup> Refer to an unpublished position paper presented at the Farm House Dialogue (FHD30), organized by the African Leadership Forum on Police and Society in Nigeria, November 4-6, 1994.

<sup>12</sup> *Id.*

Tekena Tamuno, a notable Nigerian police historian stated:

An examination of the origins, development and the role of the British-inspired police forces in Nigeria reveal that they were shaped by the nature of European interests in the country and the reactions of the indigenous people to their activities.<sup>13</sup>

The Nigeria Police, as we know it today, was established by the Colonial Ordinance No. 3 of 1930. It was administrated on a regional basis under the overall command of an Inspector General of Police, with headquarters in Lagos.<sup>14</sup>

The other significant development in the organisation and control of the police prior to Nigerian independence was the federalisation of the force in 1954. This followed the adoption of a federal constitution for Nigeria that year. The implication of this federalisation was that both the federal and the regional governments shared responsibility for the maintenance of law and order and the preservation of public safety.<sup>15</sup>

When Nigeria gained independence from Britain in 1960, expectation was high among the citizenry that, with fellow Nigerians coming into power under a democratic setting, there would among other things be a structural re-organisation and re-orientation of the security forces from that of a colonial occupation force to a friend and protector of the Nigerian people. This anticipation was soon dashed. The party that assumed power after independence found it more convenient to retain the colonial structure of coercion in dealing with the people. This was particularly evident by the hostile reception that greeted popular allegations of persistent electoral fraud during the elections.

Instead of a major reorganisation of the police force that would have included a review of the body of laws governing their operations, what was witnessed was a ceremonial oath transferring the allegiance

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<sup>13</sup> TAMUNO TEKENA, *THE POLICE IN MODERN NIGERIA* 71 (1970), (Published by University Press, Ibadan).

<sup>14</sup> Mohammed Dan Madani, "Police Administration in Nigeria", *Sunday New Nigerian*, Kaduna, March 11, 1990, at 8-9. This Ordinance brought together the various local police forces that existed in various parts of the country. The major forces were the Southern and Northern Nigeria Police Forces that were run as separate forces before passage of the Ordinance.

<sup>15</sup> Nwankwo et al, *supra* note 7, at 16

of the force from the British crown to the Federal Republic of Nigeria. The only change was in their former crest bearing the symbol of the British Crown to one bearing the Nigerian Federal coat of arms. All other features of the colonial police that made it widely feared and despised were left untouched.

The situation has been made worse by persistent seizure of political power by the military. It started on January 15, 1966, when the civilian government of Alhaji Abubakar Tafawa Balewa was violently overthrown through a bloody coup d'état. Since then, the only other time Nigeria had an elected government was a brief civilian interregnum that lasted four years, from 1979 to 1983. The government hardly had time to settle down in office before the soldiers came calling again on December 31, 1983.

In the thirty-five years of Nigerian independence, soldiers have held the reins of government for twenty-five years through five military regimes. Each of these regimes has had the police force re-organised in such a way as to ensure its subordination and complete loyalty to its military governors. They also made the police force more repressive than even under the worst phase of colonial rule. This was brought about by the promulgation of a plethora of autocratic decrees, which not only criminalized dissenting opinions, but also divested the courts of the jurisdiction to inquire into actions done or purportedly done in pursuance of those decrees.

### ***B. PATTERNS OF HUMAN RIGHTS ABUSE BY THE POLICE***

Policemen in Nigeria are given wide powers under the Police Act of 1943 and the Criminal Procedure Act of 1945 in the performance of their duties. These powers include the power of arrest, search, seizure, detention and the power to use force in certain circumstances. The exercise of each of these powers affects the fundamental rights of the citizen more directly than the activities of other internal security forces in the country.<sup>16</sup> Personal freedom, physical and psychological integrity are abused by unlawful arrests, detention and coercive interrogations.<sup>17</sup>

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<sup>16</sup> Ojomo, *supra* note 3, at 98.

<sup>17</sup> *Id.* at 98.

Other factors also contribute to violations of human rights by the police: the training and basic educational background of the policeman, his knowledge of his powers and duties, the facilities available to him, and the citizen's awareness of his rights and duties. Studies noted in this section reveal that a combination of these factors produces a pattern of human rights abuse that is not only countrywide in its manifestation, but also institutional in its execution. These are discussed under the following subsections:

### 1. Arrest and Detention

The police are empowered by the Criminal Procedure Act of 1945 and the Criminal Procedure Code of 1960 to arrest persons upon reasonable suspicion of their having committed criminal offences. Evidence of practice shows gross abuse of this power. A study conducted by the Nigerian Institute of Advanced Legal Studies (NIALS) in 1991, revealed that out of 863 suspects interviewed, 320 (37%) claimed that they were only told the reasons for their arrests while in detention.<sup>18</sup> However, out of 232 police respondents to the interview, over 9 out of 10 (93.5%) claimed they always inform a suspect of the reason for an arrest. While the number of irregular arrests indicated by the police responses may seem low (in the light of their reputation in this regard) it is indeed of importance. Considering the nature of the rights violated and the fact that such violations would appear deliberate, almost every police officer knows or ought to know, the basic requirements of a valid arrest. Furthermore, the responses indicated what policemen know they should normally do is not what they do in actual cases.<sup>19</sup>

Handcuffing, binding or subjecting a criminal suspect to unnecessary restraint in the course of arrest, except by order of court or reasonable apprehension of violence or attempt to escape, is prohibited under Section 4 of the CPA. Again, there is disparity between what the law says and actual police practice. A report, *Human Rights Practices by the Nigerian Police*, published by the Constitutional Rights Project (CRP) in 1993, established that the

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<sup>18</sup> Ojomo, *supra* note 3, at 91.

<sup>19</sup> *Id.*

police believe that they are able to do anything in the course of arresting a suspect. Even relatives and family members of suspects are not spared, as they are sometimes taken hostage until the suspect presents himself for arrest.<sup>20</sup>

## 2. Use of Violence and Deadly Force

Studies on patterns of police brutality in Nigeria frequently consider two basic situations of contact between the police and the citizen. These are the two areas where one can see the disproportionate use of violence and deadly force by the police in its dealings with the public. They are situations of "crime control" and "crowd control."<sup>21</sup>

The average Nigerian policeman often approaches his duties with an assumption that his suspects are already guilty and therefore deserve no respect or sympathy at all. In crowd control, he believes that the citizen has no right either to peaceful assembly or protest, except when the gathering is in support of government. In crime control, the average citizen who encounters the police is seen and treated as either a criminal or a potential criminal. The result is that the use of violence and deadly force, rather than being curbed, is ever on the rise.

A recent report by the Civil Liberties Organisation reveals that the use of violence and deadly force by the police has been institutionalised in Nigeria and occurs at every stage of detention, including those suspects who are simply required to make statements<sup>22</sup>. Criminal suspects, are the greatest victims of police violence in Nigeria.<sup>23</sup>

Another group of people that have suffered immensely from police violence and use of deadly force has been students or citizens exercising their right to dissent through protest. In Nigeria, passive resistance of any sort has always been frowned on by those in

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<sup>20</sup> Nwankwo, *supra* note 7, at 45.

<sup>21</sup> Akin Ibidapo-Obe, "Police Brutality: Dimensions and Control in Nigeria", paper presented at a workshop on Law Enforcement and Human Rights in Nigeria, held in Badagry, Lagos, May 30-June 1, 1994, at 9.

<sup>22</sup> See Chukwuma Innocent, Above the Law, Civil Liberties Organisation, Lagos, 1994, at 54.

<sup>23</sup> Almost all the cases involving the use of torture and deadly force in the CLO report involved criminal suspects.



authority.<sup>24</sup> Their argument against assemblage being that Nigerians can never protest peacefully like people from other parts of the world. Hence, it is almost impossible for the police to permit a public assembly of any type against government policy or actions. Interventions in protests have always been with a view to quelling them and brutal measures are often employed,<sup>25</sup> such as shooting demonstrators with live bullets and using irritant gas, even where other non-lethal measures would be just as effective, if not more.<sup>26</sup> Within the last five years, over three hundred people have lost their lives in three separate protests in Lagos State alone.<sup>27</sup> Some were shot in the back while running away.<sup>28</sup> Others were hit indiscriminately by stray bullets coming into their houses.<sup>29</sup> The principal victims have been students and other protesters.

### 3. Interrogation

Although the Nigerian Constitution and the Evidence Act of 1960, in particular, prohibits coercion of suspects during interrogation, studies have established that the Nigerian Police indulges in illegal interrogation and torture to extract a "confession" from a criminal suspect. In the study conducted by the Constitutional Project (CRP) quoted earlier, 69% of the respondents alleged that statements or

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<sup>24</sup> In a meeting with a delegation of the CLO in November 1993, the Inspector General of Police, Alhaji Ibrahim Coomassie, pointedly said that the police would not permit any gathering or assembly aimed at criticising the government of Nigeria or any of its agencies including the police force.

<sup>25</sup> Refer to "Shoddy Outing", *African Concord Magazine*, Lagos, May 25, 1992, at 20.

<sup>26</sup> Principle 2 of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials states that governments "should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death and injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind." United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials in Human Rights p. 319.

<sup>27</sup> Innocent, *supra* note 22, at 100

<sup>28</sup> According to a press statement by the Nigeria Medical Association, (NMA), most of the people killed in the heat of the July 1993 pro-democracy protest in Lagos, were shot in the back while running away.

<sup>29</sup> Jossy Idam, "Police Killed my Daughter in our House", *Yanguard*, Lagos, 1992, at 13.

confessions made by suspects during police interrogation were not made voluntarily.<sup>30</sup>

Most policemen interviewed in the study conceded that in the absence of an efficient means of investigating crime, torture is the easiest and most effective means of interrogation.<sup>31</sup> The methods of torture often used by the police in the course of interrogation include systematic beating with horsewhips, cables and iron bars. Other more severe forms include: "hanging" of suspects from the roof of the interrogation room with the aid of ceiling fan hooks, the use of shock batons, shooting of suspects in the limbs, cigarette burns, insertion of broom sticks or pins into the genitals of male suspects and bottles in the case of female suspects.<sup>32</sup>

#### 4. Treatment of Prisoners

"The prisons in Nigeria exist for the sole purpose of dehumanising and degrading the offender as punishment for his crime."<sup>33</sup> This was the conclusion reached by the CLO in "Behind the Wall", a report on prison conditions in Nigeria and the Nigerian prison system. The report considered the state of fifty-six prisons and lockups in the country.<sup>34</sup> The report revealed that from the moment a prisoner steps into the confines of a prison, whether as a convict or as an Awaiting Trial Person<sup>35</sup> (ATP), the prisoner is considered as a "thing" beyond the fringe of humanity and consequently of human treatment. He is beaten, robbed, harassed and visited with all kinds of indignities and outrages. The sprawling prison system of Nigeria is not only infested with a myriad of human rights violations, but also dependent on these violations for its very survival. The police and the government, being unable to curb or eliminate the material and non-material social pressures which encourage crime, consider the horrible conditions in

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<sup>30</sup> See supra note 15.

<sup>31</sup> *Id.*

<sup>32</sup> See supra note 22, at 59.

<sup>33</sup> OSAZE LANRE EHONWA, *BEHIND THE WALL: A REPORT ON PRISON CONDITIONS IN NIGERIA AND THE NIGERIAN PRISON SYSTEM* (2d ed. 1996), (Published by the Civil Liberties Organisation, Lagos).

<sup>34</sup> *Id.* ch. 1.

<sup>35</sup> Awaiting trial persons are police detainees. Of the estimated 60,000 prisoners in Nigeria, over 50% are ATPs, some of whom have spent several years in prison custody without trial.

the prisons as a valid and legitimate means of discouraging crime. This is despite official declarations to the contrary.<sup>36</sup>

### 5. Discrimination

Discriminatory practices by the police and other internal security forces in Nigeria are defined along class lines and the place one occupies in Nigerian society. Wealthy people and top public officials are rarely arrested or detained for any offence, unless the arrest is based on political motives.<sup>37</sup> This is rarely the scenario for poor persons, who are abused and maltreated at every turn by the police. Even when a wealthy person is detained, he or she is usually kept in a separate place, a VIP section,<sup>38</sup> from poor people held on similar charges.

This differential and highly discriminating treatment or selective enforcement of the law can also be seen in the police handling of brutality cases involving rich people and top government functionaries in Nigeria. For instance, if a victim of police abuse turns out to be someone of "importance" in the society, police inquiry of such abuse is usually faster and, more importantly, productive. A recent example was the February 1994 killing of a state security operative, Akinola Taiwo, by some policemen in Lagos. The policemen responsible for his death were fished out by an internal police inquiry and charged in court within two weeks of the incident.<sup>39</sup> Contrary to the above example, the deaths of "ordinary" Nigerians do not warrant similar action. In numerous cases of killing by the police under extra-judicial circumstances, the internal boards set up to investigate them have neither made their reports public nor caused the killers to be brought to justice.

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<sup>36</sup> Ehonwa, *supra* note 33, at ch. 9.

<sup>37</sup> The only exception to this overt discriminatory practice of the Nigerian Police is when they step on the toes of the government on political issues.

<sup>38</sup> "VIP" means very important person

<sup>39</sup> The Sunday Magazine, Lagos, March 13, 1994, at 1

## 6. Treatment of Women Prisoners

Although the treatment of female detainees by the police is undoubtedly better than that of men; judged by standards set by the United Nations, they are not only far from acceptable, they are frightful. Most police stations in Nigeria have female cells apart from open cells where they are held if their charges do not warrant overnight detention. For those who are detained for more than twenty-four hours, they are normally kept at the female wings of prisons as Awaiting Trial Persons (ATPs).

A CLO study of women and children in five Nigerian Prisons revealed that beyond the bounds justifiable by the requirements of prison security, prison administrators subject incoming female prisoners to bodily searches which extend to their genitalia.<sup>40</sup> The report also revealed that most cells in the female prisons visited by the research team had no beds or bedding, and that the women slept on the bare floor. This was true even in the rainy seasons when the floors of the cells were damp and cold.<sup>41</sup> The report went on to say:

The women had to depend on the charity of individuals and religious bodies for most of their clothing needs. In addition, sanitation in those prisons was extremely bad. As a result of the non-existence of an adequate system of medical care in them, many of the female inmates suffered various health problems or new mothers had no access to the kind and quality of medical attention that they required in their situation. Thus, although these conditions on the whole were much better than those in which male prisoners are held, as reflected in the virtual absence of mortality among female prisoners, they leave much to be desired and constitute a violation of the rights of women in prison, in the strictest sense of the term.<sup>42</sup>

To top the tribulations of female detainees, the report highlighted that the awaiting trial women are discriminated against by the prison

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<sup>40</sup> Lanre Ehonwa, Prisoners in the Shadows: A Report on Women & Children in Five Nigerian Prisons, Civil Liberties Organization, Lagos, 1993, at 6

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

authorities.<sup>43</sup> This discrimination against ATPs finds concrete expression in a wide variety of forms. According to the report:

At the Kirikiri Women's Prisons, they were released only once a day to take their morning bath, while the convicts were released twice: first between 10.00 a.m. and 1.30 p.m., then again between 5.00 p.m. and 6.00 p.m. At the Jos Prisons, awaiting trial women had no access to inmate baths. Inmate Mitwa James said that these were usually reserved for the female convicts. The same practice exists in Kaduna Prisons.<sup>44</sup>

## 7. Corruption

"The image of Nigerian police is very poor",<sup>45</sup> says a study by Ojomo and Okagbue. According to these two researchers, many factors are responsible this negative view. Most important of these, apart from their notoriety for brutality, is corruption. It is now taken for granted that if a person can "pay his way through," he can manipulate the police as he wishes. Corruption seems to have become institutionalised by policemen at checkpoints. They collect money unashamedly in the full view of passengers and other road users. Every checkpoint is itself a toll gate, especially for commercial vehicles. The difference of course being that the proceeds go into private pockets.<sup>46</sup>

Police authorities are not unaware of the pervading corrupt practices of their men. Perhaps, the most wholesome acceptance of this practice by Nigerian policemen came from no less a person than the former Inspector General of Police, Alhaji Mohammadu Gambo. While in office he was once quoted as saying, "Police corruption (in Nigeria) is a national tragedy because it hinges on a sense of betrayal. It is a tragedy because it touches the very core of public confidence and trust in the police force."<sup>47</sup> The awareness that this level of corruption exists, and that nothing is ever done to change it is accepted as being part of Nigeria.

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<sup>43</sup> *Id.* at 45

<sup>44</sup> *Id.*

<sup>45</sup> Ojomo, *supra* note, at 126

<sup>46</sup> *Id.*

<sup>47</sup> Newbreed Magazine, Lagos, May 7, 1989, at 20

Corruption in the Nigerian Police Force is not confined to dealings with the members of the public. Reports in a study by the Nigerian Institute of Advanced Legal Studies indicated that some policemen complained of the internal corruption within the force.<sup>48</sup> These policemen complained that they had to bribe to get their uniforms, to be issued working rifles, to be posted to lucrative checkpoints or to obtain barracks housing.<sup>49</sup>

### 8. Disregard of Accountability to Court

A disturbing aspect of police abuse in Nigeria is the contempt policemen have for the rule of law and the legal process. In handling cases of criminal suspects, they often take up the roles of prosecutors and adjudicators. Both the Nigerian Constitution and the Police Act permit the derogation of personal liberty for the sole purpose of arraigning a suspect before a court of law.<sup>50</sup> These provisions have been perverted by the police, who now arrest people merely to intimidate and extort money from them. A Nigerian jurist writing on this subject matter noted that:

The irony of the situation is that the courts do not always have the opportunity to examine most of these violations because the police hardly proceed beyond harassment and intimidation levels. The objective is never to prosecute. The victims of these violations are themselves not equipped to be able to go to court and seek a judicial examination of their cases.<sup>51</sup>

Under Nigerian law, an accused is supposed to have a trial within three months of arrest.<sup>52</sup> The suspect is also entitled to bail for certain categories of offences. It is sometimes the case that the Nigerian Police detain people for several years without trial or court appearance.<sup>53</sup>

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Constitution of the Federal Republic of Nigeria, 1979, s32; Police Act, s.27.

<sup>51</sup> M.A.Ikhariale, "Justice in the Accusation: A Constitutional Evaluation of the Nigerian Criminal Justice System", paper presented in a workshop on Law Enforcement and Human Rights in Nigeria, Lagos, May 30-June 1, 1994.

<sup>52</sup> The Constitution Nigeria, s.32(4).

<sup>53</sup> See Chukwuemeka Gahia, Human Rights in Retreat, Civil Liberties Organisation, Lagos, 1993, at 29.

The police and other internal security forces have been strengthened in their disregard of due process and disregard of accountability to courts by odious military decrees. These decrees not only prescribe long detention without trial, but also preclude the jurisdiction of the regular courts from inquiring into actions carried out in pursuance of them. The principal decree is the State Security (Detention of Persons) Decree No. 2 of 1984 as severally amended.<sup>54</sup>

Acts of executive lawlessness exhibited by successive military government in Nigeria have also encouraged police disregard of accountability to the courts. The New York-based organisation, Lawyers Committee for Human Rights, stressed this in a report on the culture of impunity of the Nigerian police. They stated that, "the culture of impunity affects not only the police force and the judiciary, but is part of a larger problem of government impunity that characterises the federal military government...."<sup>55</sup>

### ***C. THE LEGAL STRUCTURE OF THE POLICE IN NIGERIA***

The Constitution of the Federal Republic of Nigeria, 1979, provides for a national police force. Section 194(1) stipulates:

There shall be a police force which shall be styled the Nigeria Police Force and subject to the provision of this section, no other police force shall be established for the federation or any part thereof.

The breakdown of police powers and responsibilities are outlined in the Police Act, 1943. Section 4 declares their specific functions as:

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 and perform such military duties within or without Nigeria as may be required by them by, or under the authority of, this or any other Act.

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<sup>54</sup> The implication of this decree on police accountability will be discussed in chapter three.

<sup>55</sup> BINAIFAR NOWROJEE, *THE NIGERIAN POLICE FORCE: A CULTURE OF IMPUNITY* 15 (1992).

The instruments or powers and authority to discharge these functions are located in the Constitution, the Police Act, the Criminal Procedure Act and Code, military decrees and police regulations and Standing Orders. The Nigerian police do not lack the statutory powers and legal backing to enable them to discharge their duties effectively. Indeed, what is worrisome is the absolute power they seem to enjoy under some of the laws guiding their operations. This is especially true of the military decrees and some sections of the 1943 Police Act, which has remained largely un-reviewed. As shown below, these laws not only derogate fundamental rights and basic freedoms of the Nigerian People, they also make it difficult if not impossible for the courts to hold the police officers individually accountable for their actions.

### **1. Authority to Create and Determine the Organisation of the Police**

The power to enact laws establishing or determining the functions of internal security forces in Nigeria is vested in the National Assembly (National Legislature) by virtue of Section 4(2) of the 1979 Constitution. The Constitution further provides for the establishment of a Police Service Commission whose responsibility it is to advise the President on the appointment of the Inspector General of Police and the formulation of policies governing the force. Under the military regime these functions have been discharged by the successive military ruling councils that combine both legislative and executive powers. Presently this body is called the Provisional Ruling Council.

Over the last decade, the military has created numerous internal security forces with police powers. The most notorious of these is the State Security Service (SSS), which was created in 1986 by General Babangida through the promulgation of the National Security Agencies Decree No. 19 of that year. The SSS is charged with the "prevention and detection within Nigeria of any crime against the internal security..."

This approach to the establishment of internal security organs abandons the right to popular participation and debate on the necessity of their creation and violates international human rights standards that



are binding on Nigeria. Article 21 of the Universal Declaration of Human Rights guarantees everyone the right to take part in the government of his country directly or through freely chosen representatives. The will of the people remains the basis of the authority of government.<sup>56</sup>

## 2. Authority for Special Powers

Under a constitutional government, the authority to vest internal security forces with special powers of arrest and detention, combined with the ability to limit such powers, is given to the legislature.<sup>57</sup> However, under a military regime this authority is vested in the Head of State. He promulgates decrees to suit his purpose, giving powers to the security forces to carry them out. For instance, the State Security (Detention of Persons) Decree No. 2 of 1984, as amended, empowers the Chief of General Staff (the Deputy Head of State) and the Inspector General of Police to order the arrest and detention of any person for a renewable period of six weeks for acts prejudicial to state security. This decree forbids judicial inquiry into actions carried out in pursuance of it. Section 4(1) of the decree warns:

No suit or other legal proceedings shall lie against any person(s) (members of the security forces) for any thing done or intended to be done in pursuance of this decree.

Not only because of its vague wording of what constitutes threats to national security, but also more importantly, because it precludes judicial review of its execution, this decree violates international human rights law. The International Covenant on Civil and Political Rights provides everyone the right to personal liberty and freedom from arbitrary arrest and detention<sup>58</sup>. Article 9(4) stipulates:

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the

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<sup>56</sup> HUMAN RIGHTS, *supra* note 26, at 5.

<sup>57</sup> 1979 Constitution, s 265(2).

<sup>58</sup> Article 9(1).

court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.<sup>59</sup>

### 3. Emergency Powers

The 1979 Constitution of Nigeria empowers the President to declare a national state of emergency in the federation or any part thereof in the event an emergency threatens the life of the Nation, among other reasons.<sup>60</sup> For the proclamation and its powers to be given effect, the President is required to transmit copies of the official gazette to the National Assembly where a decision as to whether or not to pass a resolution giving a legal basis to the proclamation must be made.<sup>61</sup> A proclamation, declaring a state of emergency, ceases to have effect after six months or when revoked by the President.<sup>62</sup> It can only be renewed by the National Assembly if it is determined that the "emergency" situation continues to exist after the initial six months.<sup>63</sup>

The Constitution does not specify what special powers or privileges accrue to the President or government agencies during a state of emergency. It could be argued that as the proclamation and its emergency powers must be published in the official gazette and ratified by the National Assembly, the ratification acts to limit the emergency powers to those specifically listed in the gazette. There are no statutory instruments specifying the limits of powers to be exercised by the security forces during an emergency. This means that a lot depends on police judgement of a particular situation. Such unguided discretion makes the exercise of power subject to abuse.

If the constitutional provision governing the exercise of emergency powers under democratic regimes appears worrisome because of the legal loophole noted above, the situation is even more alarming under the continuous military dictatorship that has plagued Nigeria. Under military rule, a dangerous divergence from the rule of law results from the introduction of regulations of emergencies by means of ordinary

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<sup>59</sup> Nigeria has ratified this Covenant.

<sup>60</sup> Refer to s 265 (1). Section 265(1) stipulates other situations where a state of emergency can be declared.

<sup>61</sup> *Id.*, s 265(2).

<sup>62</sup> *Id.*, s.265(6) (a) (c).

<sup>63</sup> *Id.*

legislation, without resorting to formal declaration of a state of emergency. The abrogation of the Constitution is now the norm in Nigeria. This perversion is particularly serious as it takes the form of criminal law or procedures that are applicable under all circumstances. The areas most commonly affected by such legislation are: state security, drug trafficking, provincial arrest and news organisations. For instance, Decrees Nos. 6, 7 and 9 of 1994 proscribed three news organisations and their publications. These decrees provide for twenty-four hour security siege on the premises of these organisations and prevent the entrance of the workers to their offices. What is more, the exercise of these emergency powers has no restrictions or time duration, and cannot be scrutinised by any court of law.

#### 4. Training

There are different types of training courses for the various categories of policemen in Nigeria.<sup>64</sup> None of the courses place any emphasis on human rights. Police authorities, however, argue that instruction on the rights of an accused is given in their course on Nigerian criminal law. A training course that emphasises human rights, according to this thinking, is not necessary.

Constables, who constitute over 80% of the force, undergo a six months basic training course.<sup>65</sup> The course covers numerous areas, among them: general police duties, criminal law, drill, musketry, self-defence and first aid.<sup>66</sup> Six months of basic training can hardly be enough time for the recruits to adequately understand the depth of responsibility society places on them. The low level of educational qualifications<sup>67</sup> required for their enlistment into the force prevents them from having anything more than a pedestrian understanding of the general course on criminal law which they go through.

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<sup>64</sup> NATIONAL SEMINAR ON HUMAN RIGHTS AND SECURITY ADMINISTRATION (1989: ABJULA, NIGERIA), SECURITY ADMINISTRATION AND HUMAN RIGHTS: PROSPECTS FOR THE THRID REUBLIC AND BEYOND 351 (Bala J. Takaya, ed. 1992).

<sup>65</sup> Section 103 of the Police Act, Cap 359, Laws of the Federation of Nigeria, 1990.

<sup>66</sup> *Id.*

<sup>67</sup> For enlistment into the Nigeria Police Force, section 72(e) of the Police Act, stipulates that a male candidate seeking enlistment in the force as a recruit constable must be in possession of a Secondary School Leaving Certificate (middle four). Even this basic educational requirement was introduced recently and does not reflect the general minimum qualification of presently serving policemen as some of them do not even have a First School Leaving Certificate.

An effort by a former Inspector General of Police to raise the minimal educational requirement for enlistment into the police force at Secondary School Certificate level was dropped for political considerations.<sup>68</sup> It is a marked deviation from international standards, which require proper training of law enforcement officials. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials calls for proper screening procedures before selection of law enforcement officials. The moral, psychological and physical qualities must be considered to promote the effective exercise of their functions together with continuous and thorough professional training.<sup>69</sup>

### 5. Code of Conduct and Discipline

The Nigeria Police Regulation of 1968 provides a code of conduct to guide the activities of policemen in Nigeria. The code has neither been reviewed to incorporate the provisions of the United Nations Code of Conduct for Law Enforcement Officials nor has it been observed and effectively enforced in practice.

The provisions of the Code cover a number of areas: what a policeman should do if he feels wronged by another officer<sup>70</sup>, the conduct of police officers in their official duties,<sup>71</sup> prohibitions on receiving gifts (except from close personal friends or relatives),<sup>72</sup> petition writing<sup>73</sup> and institution of legal proceedings in their personal capacity. There are several important areas that are not considered or covered by the Code such as: the requirement to uphold human rights,<sup>74</sup> guidelines on the use of force,<sup>75</sup> maintenance of the confidentiality of certain information in their possession,<sup>76</sup> the prohibition of the use of torture and the full protection of the health of

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<sup>68</sup> Refer to Chukwuma Innocent, The Nigerian Police and Individual Liberties: A Report on Police Practices and Detention Conditions in the Cells of the Department of State Intelligence and Investigation Bureau (SIIB) Enugu and Port Narcout, Civil Liberties Organisation, Lagos, 1993, at 30.

<sup>69</sup> HUMAN RIGHTS, *supra* note 56 at 322.

<sup>70</sup> Police Act, s.352.

<sup>71</sup> *Id.*, s.353.

<sup>72</sup> *Id.*, s.354.

<sup>73</sup> *Id.*, s.365.

<sup>74</sup> Article 2 of the United Nations Code of Conduct for Law Enforcement Officials.

<sup>75</sup> *Id.* at art.3

<sup>76</sup> *Id.* at art.4

persons in their custody, as provided in the UN Code of Conduct for Law Enforcement Officials.

Observance and enforcement of Nigeria's rather obsolete code is non-existent. As the studies summarised in section two of this report showed, the average Nigerian policeman has no respect for the dignity of individuals he comes in contact with while on and off duty. The matter is not helped by the fact that the Nigerian Police Force is not particularly known for disciplining of police officers accused of human rights violations. The Police Act does not specify disciplinary processes to be followed where human rights abuses are alleged against police officers.<sup>77</sup> On occasions, Police Authorities have set internal police boards to investigate allegations that their men have used excessive force. These investigations have never resulted in the disciplining of any police officer accused of violating human rights.<sup>78</sup> This failure of the Police Authority violates the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Principle 22 stipulates that persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial review.<sup>79</sup>

The use of internal boards of inquiry by the police in Nigeria is a typical strategy to sweep events under the rug. They create the impression that the Police Authorities are doing something about human rights abuses by their men, where in fact, officers guilty of these atrocities are walking the streets, not likely to be reprimanded.

## 6. Corruption and Accountability

Corruption, according to the Police Act, is an offence against discipline and draws sanctions ranging from outright dismissal from the force to reprimand.<sup>80</sup> In practice, however, no policeman gets punished. Superiors rarely punish those under them for corruption, as they share in the booty.

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<sup>77</sup> Nowrojee, *supra* note 55, at 11.

<sup>78</sup> The only exception in recent times was the case of one Israel Rindam, a colonel in the Nigerian Army who was gunned down by some policemen at a checkpoint in Lagos. His killers were arrested and arraigned in court within a record time of 72 hours.

<sup>79</sup> The Basic Principles was adopted by the Eight United Nations Congress on the prevention of crime and the treatment of offenders, Havana, Cuba, 27 August to September 7, 1990.

<sup>80</sup> Refer to Police Act, First Schedule, Regulation 370(c).

The Police Act provides the following procedure for handling cases of junior officers reasonably suspected to have committed offences against discipline:

- (a) Suspension of the alleged offender from duty pending determination of the matter;
- (b) Authorising or directing a charge to be made under the regulations against the alleged offender; and
- (c) where the offender has admitted any offence against discipline, punishing the offender with any of the punishments set in regulation 371 without the necessity of making formal charges.

If charges are preferred against the alleged offending officer, the Police Act further provides for a summary investigation to be conducted by a delegated officer,<sup>81</sup> which is to be concluded within three months.<sup>82</sup>

When guilt of a junior officer is established, he shall be subject to any of the punishments listed in section 371 of the Act quoted above. If, however, the offence is of a criminal nature, the junior officer may be tried in any court of justice.<sup>83</sup>

Superior officers rarely invoke these provisions against their subordinates for cases of violation of human rights. Sometimes commanding police officers go out of their way to encourage their subordinates to torture suspects during interrogation. Since there is no law sanctioning them for condoning, neglecting or failing to investigate human rights abuses by their subordinates, they often get away with it. This amounts to a violation of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which condemns this practice. Principle 24 states:

Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted to the unlawful use of force and

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<sup>81</sup> Police Act, s.381.

<sup>82</sup> *Id.* at s.383 (8).

<sup>83</sup> *Id.* at 374.

firearms, and they did not take all measures in their power to prevent, suppress or report such use.<sup>84</sup>

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, as well as the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Execution, call on states to periodically review existing legislative practices to ensure their responsiveness to changing circumstances.<sup>85</sup> They require that legislation must also ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorised by law to use force and arms.<sup>86</sup>

## 7. Superior Orders

There is no legislation, case law or dictum in Nigeria empowering policemen or other members of the internal security forces with the ability to disobey orders where obedience of such order would produce a serious violation of human rights. Rather the Police Act provides, "Every police officer shall carry out all lawful orders and shall at all times punctually and promptly perform all appointed duties and attend to all matters within the scope of his office."<sup>87</sup>

However, in carrying out lawful directives from a state governor with respect to the maintenance and securing of public safety and public order, a commissioner of police may seek clarification from the President or a Minister acting on his behalf.<sup>88</sup> In general, a police officer is required to perform such duties as may be assigned to him by his superiors, subject to the direction of the Inspector General of Police.<sup>89</sup>

The provision *supra* forbids conscientious objection to any directives if it exhibits a modicum of lawfulness. Taking advantage of this provision, some government and police authorities have formed

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<sup>84</sup> The Principles were adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September, 1990.

<sup>85</sup> *Id.*, Principle 21, at 385.

<sup>86</sup> Principle 2, The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Execution, adopted by the Economic and Social Council, May 24, 1989.

<sup>87</sup> Police Act, s 347.

<sup>88</sup> Constitution of the Federal Republic of Nigeria, s.195(4)

<sup>89</sup> Police Act, s.348.

the habit of ordering security officials to shoot, with a view to kill, a person caught committing certain categories of crime, even crimes against property such as vandalism of public utilities.

There have been no major cases of police officers punished for declining to carry out lawful directives on the basis of either conscience or consideration of human rights. Nigerian police officers are not particularly keen on challenging directives given them, even if they have negative human rights implications<sup>90</sup>. In spite of the above, there have been a few cases of officers refusing to carry out a directive violative of human rights norms. Such officers were transferred or dismissed from their post.<sup>91</sup> The UN Basic Principles on the Use of Force and Firearms forbids disciplinary sanctions against officers who refuse to carry out an order to use force and firearms.<sup>92</sup>

Police officers often argue that they have no personal interest in violating human rights, but were under obligations to obey directives from their superiors. This argument is often bandied in cases of arbitrary arrest, detention and torture of detainees. This willingness to carry out all orders from their superiors violates principle 26 of the UN Principles quoted above. It states: "obedience to superior orders shall be no defence if law enforcement officials know that an order...was manifestly unlawful and had a reasonable opportunity to refuse to follow it..."<sup>93</sup> It also violates the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. Principle 3 stipulates:

Governments shall prohibit orders from superior officers or public authorities authorising or inciting other people to carry out any such extra-legal, arbitrary or summary executions. All persons have the right to defy such orders.<sup>94</sup>

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<sup>90</sup> The belief in police circles is that all directives from the government or superior officers must be carried out no matter how bad. The belief is illustrated in a popular saying of Nigerian policemen: "obey before complain".

<sup>91</sup> A typical example was the ordeal of Alozie Ogugbuaja (ASP), the former Public Relations Officer of the Lagos State Police Command. He was transferred from one state to another and finally dismissed from the force for refusing to allow his men to use excessive force against protesting university students.

<sup>92</sup> Refer to Principle 25.

<sup>93</sup> *Id.*, principle 26.

<sup>94</sup> E.S.C. Res. 1989/65, UN ESCOR, 1st Sess., Supp. No. 1, Annex, at 52, UN Doc. E/1989/89 (1989) (endorsed by the General Assembly Dec. 15, 1989).



## 8. Criminal Liability

Nigerian criminal law holds policemen individually liable for any excesses or abuse of power. Section 298 of the Criminal Procedure Act provides: "Any person authorised by law to use force is criminally responsible for any excess, according to the nature and the quality of the act which constitutes the excess."<sup>95</sup> The Police Regulation, 1968, similarly provides in section 373(a,b):

Nothing in these regulations shall affect or diminish the liability of any member of the force to prosecution before a court of summary jurisdiction for any offence against the Police Act or to prosecution before any court of justice.<sup>96</sup>

For the prosecution of such offences, the Constitution empowers the Federal Attorney General "to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-marshal, in respect of any offence created by or under any Act of the National Assembly."<sup>97</sup>

In practical terms, it is difficult to successfully prosecute any officer for excessive use of force. This is not only because of the embarrassing reluctance of the Justice Ministry to prosecute police officers accused of excessive use of force, but also because of the wide discretionary powers police officers have in discharging certain functions.

In making an arrest, for instance, it is lawful for police officers to use such force as is reasonably necessary to overcome any force used in resisting arrest.<sup>98</sup> It would appear that under the terms of this section, it may be justified to kill the person resisting arrest.<sup>99</sup> A police officer may also use reasonable force to prevent the escape of an arrested person, and, if the arrest is for felony, may kill that person if he cannot by any means other means effect an arrest.<sup>100</sup> In addition, the Criminal Code allows the police to use force in the suppression of

<sup>95</sup> Cap 77, Laws of the Federation of Nigeria, 1990.

<sup>96</sup> *Id.*, Cap 359.

<sup>97</sup> The Constitution of Nigeria, 1979, s.160(1)(a).

<sup>98</sup> Criminal Code, s.261, Penal Code s.171-173.

<sup>99</sup> AKINOLA AGUDA, CRIMINAL LIABILITY AND THE PROCEDURE OF THE SOUTHERN STATES OF NIGERIA, 683 (2d ed. 1974), (Published by Sweet & Maxwell).

<sup>100</sup> Criminal Code, s.271.

riots<sup>101</sup>. Though the discretion is to use “reasonable force”, the elastic nature of this phrase amounts to an open check for police abuse.

The cumulative affect of the foregoing is that it now requires an eagle-eyed judge to convict a police officer for excessive use of force in the discharge of his powers of arrest. This is compounded by the existence of a plethora of military decrees that absolve the police and other law enforcement agencies from criminal prosecution in the exercise of their powers under such decrees.<sup>102</sup>

The wide discretionary powers enjoyed by the Nigeria Police Force, violate several UN instruments on criminal liability of public officials for abuse of human rights. The Principle on Extra-legal, Arbitrary and Summary Executions calls on all governments to promulgate laws that will prohibit all such acts. It requires all states to ensure that any such executions are recognised as offences under their criminal laws and punished by appropriate penalties, which take into account the seriousness of such offences.<sup>103</sup>

## 9. Civil Liability

Although the Nigerian Constitution entitles victims of human rights abuse (especially unlawful arrest and detention) to compensation and a public apology,<sup>104</sup> a combination of factors undermine the effective exercise of this right by the victims or by their immediate families.

First, there is little incentive for victims of police abuses in Nigeria to file lawsuits. The reasons include considerations of cost, the difficulty of finding a willing lawyer, long court delays and fear of harassment. It is only due to the efforts of human rights organisations and a few committed lawyers that the number of civil actions against the police has increased slightly in the past few years.

Second, even when a victim or his immediate family succeeds in getting a favourable ruling from the court on compensation, law enforcement agencies and the government rarely honour such rulings in a timely fashion. The situation is further compounded by the

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<sup>101</sup> *Id.* at s.276, 277 & 278.

<sup>102</sup> A good example is decree no. 2 of 1984.

<sup>103</sup> Principle 1.

<sup>104</sup> Constitution of the Federal Republic of Nigeria, 1979.

provisions of the Sheriffs and Civil Processes Act which requires the Federal or State Attorney General to approve all attachment of money against government bodies before such funds can be released, regardless of the fact that a court of competent jurisdiction has made such awards.<sup>105</sup> The act specifically stipulates, in Section 84:

Where money liable to be attached by garnishee proceedings is in the custody or under the control of a public officer in his official capacity or in custodial legis, the order nisi will not be made under the provisions of the last preceding section unless consent to such attachment is first obtained from the appropriate officer (Federal or State Attorney General)....<sup>106</sup>

This provision of the Sheriffs and Civil Processes Act is further strengthened by Decree 107 of 1993 which added in its second schedule a new subsection 4 to section 251 of the 1979 Constitution. It states:

Notwithstanding the provisions of this section, no person shall enforce a judgement against a Ministry or extra-ministerial Department without the fiat of the Attorney General of the Federation or the Attorney General of a state whether or not he was, in either case, a party to the proceedings.

Legal commentators have argued that the Sheriffs and Civil Processes Act and Decree No. 107 are of doubtful constitutional validity. They threaten the independence of the judiciary as they allow officials of the executive to indirectly veto court orders if they so desire. They also make the Attorney General both a party and judge in an adversarial system of adjudication.<sup>107</sup> For the victim of police abuse there is little hope of compensation.

The laws therefore violate the International Covenant on Civil and Political Rights. Article 2(3) calls on member states to ensure that victims of human rights abuse have an enforceable effective remedy determined by competent judicial, administrative or legislative authorities.

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<sup>105</sup> Refer to Eze Onyekpere, "Executive Disobedience to Court Orders: What is to be Done", *Lane Alert*, CLO, Lagos, vol. 2 Jan-March, 1995, at 3.

<sup>106</sup> Refer to Section 84 of the Sheriffs and Civil Processes Act.

<sup>107</sup> Eze Onyekpere, *supra* note 105, at 3.

## 10. Access of the Public to Police Records

There is no legal instrument requiring the police and other internal security forces in Nigeria to disclose information concerning the names and whereabouts of persons held in their custody.<sup>108</sup>

The decision as to whether or not to disclose such information is entirely at the discretion of police authorities. They are also not statutorily obliged to disclose the evidence for detaining suspects, except in court. The justification that often belies the arrest or detention of people by internal security forces in Nigeria are usually hidden under the cloak of security information which might "obstruct investigations". However, a court can order the police to produce the criminal records of a particular police station if it believes that the station is deliberately withholding information.

The Police Act enjoins every police station in Nigeria to keep Criminal Records that contain such registers as:

- a) the station crime and incidents diary;
- b) the register of arrests (persons newly apprehended);
- c) the register of sudden and unnatural death;
- d) the charge register (of felonies and misdemeanour);
- e) the register of simple offences (offences punishable with imprisonment for not more than six months);
- f) the register of court exhibits;
- g) the register of lost, stolen, and recovered property;
- h) the register of warrants of arrest;
- i) the register of court processes[.]<sup>109</sup>

Whether these records are kept or not is unknown as the citizen has no access to them. Neither lawyers, nor relatives of detainees can have access to records. No means are available to determine what the charges are and the basis for detention. The lack of legal provisions guaranteeing access violates Rule 7 of the Standard Minimum Rules for the Treatment of Prisoners, which stipulates:

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<sup>108</sup> The first Schedule of the Police Act, makes it an offence against discipline if any member of the Force shows a person outside the Force any book or document the property of the government or the Force without proper authority.

<sup>109</sup> Police Act, s.253.

In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received: (a) information concerning his identity; (b) the reasons for his commitment and the authority therefore; (c) the day and hour of his admission and release. No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.

### **11. Powers and Rights of Civil Society to Monitor the Police**

As stated in the preceding sub-section, there is no right of access by the public to records. This includes: the press, human rights organisations and other institutions of civil society. This limits the ability to secure information, have access to detainees, clarify issues with police authorities and monitor their activities.

To gain access to information and the detainees, written permission must be obtained from the office of the Inspector General of Police or an officer delegated by him. This permission, which is given in a discriminatory manner, is rarely given to individuals or organisations perceived to be critical of government or the police force. If the applicant is an uncritical defender of the police or the military government, granting of access is express.<sup>110</sup>

Attempts by private persons to initiate criminal proceedings against members of internal security forces for abuse of human rights have always been frustrated by governmental authorities. It is especially difficult when such proceedings are instituted against high-ranking officers. For instance, the attempted (private) prosecution of two military officers that served under General Babangida's government, for their alleged involvement in the killing of a Nigerian journalist in 1986, shows the travail to be faced. The lawyer, Chief Gani Fawehinmi, was granted an order of Mandamus to compel the Attorney General of Lagos State to prosecute or allow him to prosecute privately.<sup>111</sup> By the time he got back to Supreme Court, a libel suit was commenced against him. In the time he took defending against the libel action, which he had wanted to abate until the

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<sup>110</sup> This is a common practice in the case of press men from government media houses.

<sup>111</sup> *Fawehinmi v. Akilu & Anor*, (No.2) (1987) NWLR (Act 67)

conclusion of his private prosecution, a Lagos State military edict had amended the constitution such that only private prosecution for perjury could therefore be staged.<sup>112</sup> He could not maintain the action against the two officers.

#### ***D. CONCLUSIONS AND RECOMMENDATION***

1. The laws establishing the police and other internal security forces in Nigeria were not products of popular participation and debate among Nigerian people or their elected representatives.
2. The legal structure, which governs the police, remains largely un-reviewed since the days of colonial rule to include developments in human rights law.
3. Consequently, Nigerian policemen do not see their responsibility as that of the defence of the Constitution of the state and protection of the rights of its citizens. Rather they see their duties as those of defence and protection of people in government at all cost.
4. A strong Constitution and legal system enabling protection of human rights in Nigeria are lacking. Given the suspension of the fundamental rights provisions of the Nigerian Constitution by the decrees of the military government, very few legal safeguards exist for challenging human rights abuses by the police.
5. The powers of the regular court to hear criminal and civil charges against erring police officers have been abolished under the provisions of certain military decrees, barring judicial inquiries into actions carried out in pursuance of them.
6. The military and police authorities condone widespread abuse of human rights by their personnel and do not sanction offending officers.
7. The failure to invoke disciplinary measures against erring officers and hold them individually accountable for their abuses has created a culture of absolute impunity among law enforcement agents.
8. Poor education and lack of emphasis on human rights in the training of police personnel have also contributed to law

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<sup>112</sup> Akilu & Anor v. Fawehinmi (No.2) (1989) 2NWLR (pt.102).

enforcement agents' ignorance of police responsibilities in the protection of human rights.

9. Individuals and institutions of civil society have no legal right of access to detention facilities and information on the identities of persons in the custody of internal security forces in Nigeria.

To establish an efficient and accountable police force in Nigeria, this study makes the following recommendations:

- \* Speedy return of Nigeria to a democratic regime.

- \* Thorough review of the body of laws governing police activities in Nigeria with a view to making their operations more transparent and accountable to civil authorities and institutions in the country.

- \* Disband the police force as presently constituted and reorganise it with a value system that places highest premiums on right to life, and physical and psychological integrity.

- \* Public trial of those involved in gross violation of human rights, especially in the last eleven years of military rule.

- \* Minimal educational requirement for enlistment in the police force should be pegged at Secondary School Certificate, with credit passes in the relevant subjects.

- \* Recruitment of policemen should be done by proper screening procedures to ensure that only those with appropriate moral, psychological and physical qualities find their way into the force.

- \* Compulsory inclusion of human rights education in the curriculum of all police colleges and training institutions.

- \* Improvement of the welfare package and working conditions of policemen.

- \*Policemen should be equipped with various types of self defensive equipment such as shields, helmets, bullet proof vests and bullet proof means of transportation in order to decrease need to use weapons of any kind.