

^{18/8/08} **^THE LAW AS A GUIDE IN THE
PERFORMANCE OF POLICE DUTIES**

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***POLICE SER VICE COMMISSION RETREA T ON:
UNDERSTANDING i tit, MANDA TE AIMJ urEKAiïONS ut
THE POLICE SER VICE COMMISSION IN THE CONTEXT OF
THE RULE OF LAW***

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THE LAW AS A GUIDE IN THE PERFORMANCE OF POLICE DUTIES.

It will do us a lot of good and save us a great deal of time to avoid the involvement in this presentation. Since up till date, there is no unanimously accepted definition of law. suffice us to adopt a simple dictionary definition, as most of us present here are not and need not be lawyers. Law, according to Oxford Advanced Learners' Dictionary is the whole system of rules that everyone in a country or society must obey. Our topic here is "The Law as a guide in the performance of Police Duties". Simply put, we are saying that Police duties should be performed strictly according to the system of rules which all police officers must obey; but when no such rules are available to cover the performance of any particular duty (*i.e. when there is a lacuna*), police must be guided in their actions and in the exercise of their discretion by the spirit of this system of rules. It further implies that even in the exercise of discretion, police should not be outlandishly arbitrary.

The foregoing sets the parameters for our discussion. We may now begin with the laws that guide the police in the performance of their duties. We shall commence with the supreme law of the land, known as the Constitution.

THE CONSTITUTION

"A Constitution is a system of laws and basic principles that a state/country/organization is governed by", In a free and democratic society, this system of laws is usually provided by the people for themselves "for the purpose of promoting good governance and welfare of all persons in the country based on the principles of freedom, equity and justice and for the purpose of consolidating their unity. This done, it becomes the supreme law of the land and if any other law is inconsistent with it. the Constitution prevails and that other law becomes void to the extent of the inconsistency. You may refer to the

constitution of a country as the head law, the head law, the chief law, the law that gives life to all other laws, in the legal system. Our Constitution is a written Constitution. This basically helps to reduce ambiguities and uncertainties to the barest minimum. But should there still be any ambiguities, uncertainties, misunderstanding, or differences of interpretation, it becomes the duty of the Supreme Court to finally resolve the issue.

THE DOMINANCE OF LAW OVER THE NIGERIA POLICE FORCE.

The Nigeria Police Force is dominated in every aspect of it by law. To illustrate this dominance, it should be observed that the Force's organization, establishment, administration, duties and powers are all creations of the law. Whereas in some countries the police force or service, being a normal organ of government for law enforcement and maintenance of order, is established without any constitutional provision, here in Nigeria, the Constitution specifically provides for the establishment of a police force in section 214 which states that *There shall be a Police Force for Nigeria, which shall be known as the Nigeria Police Force* and went further to state that *"subject to the provisions of this section, no other Police Force shall be established for the Federation or any part thereof."* In addition, it also specifically provides that the Nigeria Police Force shall be organized and administered in accordance with such provisions as may be prescribed by an Act of the National Assembly.

As regards the duties and powers of the Police, the Constitution further says that *"The members of the Nigeria Police shall have such powers and duties as may be conferred upon them by law"*. The implication of this provision is that, unless a duty or power is prescribed or conferred by law such duty is not obligatory nor is the power exercisable by the police. (See section 214 (2) (b) of the constitution).

The dominance of law over the police can be stretched to the fact that even the procedure for performing certain duties are to a great extent, prescribed by law. It is these legal provisions that we seek to discuss in them; to whom, where, when, how and why are they done?

The dominance of the law over the Nigeria Police Force also informed the specific constitutional establishment of the Police Council and the Police Service Commission. Section 153 of the Constitution stipulates that there shall be established for the federation, the Nigeria Police Council as well as the Police Service Commission. The composition and powers of the Council and the Commission are prescribed therein. It does appear on the surface of the Constitution that the power of the Commission is limited to:

- (a) Appointment of persons to offices (other than the office of the Inspector General of Police) in the Nigeria Police Force
- (b) Dismissal and the exercise of disciplinary control over persons holding any office referred to in sub-paragraph (a) of the paragraph.

But in subsequent provisions of the law we shall observe an extension or rather, a development of the powers.

The number of members of the Police Service Commission which the Constitution pegs at not less than 7 but not more than 9, is to be prescribed by an Act of the National Assembly. The National Assembly did not limit itself to this role only. It developed the powers of the Commission by first of all adding promotion and transfer to the list of powers as witnessed in the Police Act Section 46 "where the PSC may recommend to the President to make Regulations relating to appointments, promotion, transfer, dismissal and disciplinary control" of officers. Furthermore, the National Assembly, in the Police Service Commission (Establishment) Act 2001, added promotions to the

functions of PSC under section 6 (1) (a) but without including transfer. In that Act the National Assembly further extended the powers of the Commission to include "other such functions which in the opinion of the Commission are required to ensure the optimal efficiency of the Nigeria Police Force".

The foregoing functions contained in section 6 (1) (f and g) of the Police Service Commission (Establishment) Act 2001 tend to confer on the Police Service Commission some oversight functions over the Nigeria Police Force which may arguably be in conflict with the IGP's power of command.

A more incisive examination of these laws may confirm the notion that the Commission has a supervisory role otherwise known as oversight responsibilities over the Nigeria Police Force particularly if it performs *"such other functions which in its opinion are required to ensure the optimal efficiency of the Nigeria Police Force"*.

We may also note the difference between the words 'efficiency and discipline'. While the Police Service Commission according to the recent Act enacted by the National Assembly in 2001, may appropriately have power to formulate and implement policies aimed at the discipline of members of the Nigeria Police Force other than the IGP, it is not clear whether constitutionally it can formulate and implement policies aimed at the efficiency of the force unless it has supervisory responsibilities. Furthermore, the PSC has power to make Standing Orders with respect to any matter relating to the duties and operational control of the force (Section 46 Police Act). Such Standing Orders shall be binding upon all police officers but need not be published in the Federal Gazette. Even though the power can only be exercised with the approval of the President, yet it is indicative of some measure of operational oversight role of the Commission over the Police Force.

QUESTION

*What duties have been prescribed by law and are there other duties **not** so prescribed?*

DUTIES OF THE POLICE

Since, according to the constitution, the powers and duties of the Police shall be prescribed by law, the National Assembly has done this by enacting the Police Act which states in section 4 as follows "The Police shall be employed for

- i. the prevention and detection of crime*
- ii. the apprehension of offenders*
- iii. the preservation of law and order*
- iv. the protection of life and property and*
- v. the due enforcement of all laws and regulations with which they are directly charged, and*
- vi. shall perform such military duties within or outside Nigeria as may be required of them by or under the authority of this or any other Act).*

We shall now take these duties one after the other, analyze them and ascertain what powers the Law has made available to the Police to enable them perform these duties.

THE PREVENTION AND DETECTION OF CRIME.

(n) **The Prevention of Crime**— The main duty of the police is to see that no crime is committed in the society. This is often done by them working beats and showing police presence everywhere to ensure that no one breaches the law. As long as the police merely move about or stand around without interfering physically with anyone, they are absolutely at liberty to do so without any enabling law authorizing them. But should they decide to stop and question anyone or interfere with the constitutional right of personal liberty and freedom of movement granted to the

citizen under sections 35 and 41 of the Constitution, they must strictly act in accordance with the provisions of those sections of the Constitution.

It should be noted that the law specifically grants power to police officers to prevent the commission of any offence and he shall to the best of his ability prevent the commission of any crime. This, he can do of his own authority. (See section 53 of C.P.A). Section 55 also provides that a police officer knowing of a design to commit any offence may arrest without warrant the person so designing if it appears to such officer that the commission of the offence cannot otherwise be prevented. Without this power, the police officer would have to wait for the crime to be committed before intervention. If the crime is one that results in any physical injury to the body or the destruction of property, the damage would have already been done before the police can take action. In that case, they would have failed in their duty to prevent crime.

Section 275 and 281 of the Criminal Code provide a guide in the prevention of persons from committing a breach of the peace by arresting them without necessarily waiting for them to do it. As a matter of fact, the later sections of the chapter extend the power to the use of reasonable force against any person who is believed on reasonable grounds to be about to commit an arrestable offence including injury to a person. The Police Act (Section 24), in the powers of arrest without warrant, conferred upon Police officers, states that *"any Police Officer may arrest any person whom he reasonably suspects of being about to commit any felony, misdemeanour or breach of the peace"*, in this case, the person concerned need not have already committed the offence. By such intervention, the Police officer would have prevented its commission.

We have seen where the law permits a police officer to interpose to prevent a crime from being committed or arrest the potential offender if there is no other way to stop him. It is submitted therefore that the police officer needs not make an arrest if the interposition or intervention will suffice to prevent the crime from being committed. In every case where force is used, the force must not exceed the amount required to achieve the purpose. Where it is excessive, the action of the police becomes 'blame worthy' no matter how well interventioned.

- (b) **The Detection of Crime:** - For the purpose of emphasis, permit me to repeat that the foremost responsibility of the police to the society is the prevention of crime and should they fail to do so, the detection. This duty, if efficiently carried out, would invariably cover almost all other duties. Where crime cannot be prevented, it has to be detected. When it is detected, the offender should be apprehended. If crime is not prevented or detected when it occurs, there cannot be a preservation of law and order in the society. The protection of life and property is virtually the prevention of crime against life and property. It is clear from the foregoing analysis that police duties are more or less interconnected.

When a crime is committed, in order to detect it, (unless the offender is caught re-handed), it has to be investigated with a view to ascertaining who committed it. During investigation, there is bound to be physical contact between the police and some citizens or persons protected under the Constitution of the country. The contacts are likely to interfere with the personal liberty and other freedoms enshrined in the Constitution under the umbrella of fundamental human rights. Every procedure or step taken by the investigator which is likely to interfere with these rights has been

covered by legal provisions authorizing such procedure or action, it is imperative that investigating police officers are conversant with these laws for their own empowerment, enablement and the avoidance of liability for compensation.

To begin with, a police officer, in making enquiries must ask the crime being investigated or to find out whether a crime has been committed or not. This is the most loose contact between police and citizen and police power to do this could have been assumed or taken for granted; yet authority for this action has expressly been given by Judge's Rules No.1 which states that while investigating a matter concerning the author of a crime or whether or not a crime has been committed, a police officer is entitled to ask questions from any person whether suspected or not, who may have information regarding such crime. If, while so doing, the investigator makes up his mind that the questioned person is actually a suspect, he must administer to him the words of caution, which are that he is not obliged to answer any further questions unless he wished to do so, but that what ever he said from then on would be taken down in writing and might be given in evidence. Failure to administer words of caution can jeopardize any admission or confession purportedly made by the suspected person. I have earlier mentioned the constitutional right of a suspect to have his lawyer or other person of his choice present when answering interrogatory questions.

THE APPREHENSION OF OFFENDERS

Authority and powers to apprehend offenders were conferred on the Police by law under two major provisions:-

- (a) The Criminal Procedure Act and the Criminal Procedure Code operating in Southern and Northern Nigeria respectively.

(b) The Police Act

These provisions prescribe general powers of arrest that cover all classified offences (e.g. Felony, misdemeanor and simple) as well as

Act for instance, Section 10, provides that a Police Officer may arrest without warrant, any person whom he suspects upon reasonable grounds of being a deserter from any of the Armed Forces of Nigeria. The same section provides for the arrest of any person whom he suspects upon reasonable grounds of having been concerned in any Act committed at any place outside Nigeria which if committed in Nigeria would have been punished as an offence and for which he is under any enactment in force in Nigeria, liable to be apprehended and detained in Nigeria. The Criminal Code further gives power to a Police Officer to arrest any person who has no ostensible means of subsistence and cannot give a satisfactory account of himself. Even the refusal to give the name and residence of a person accused of committing a non indictable offence is sufficient reason to arrest him until he gives such name and address.

What to do with an arrested or detained person?:

Section 35 off the Constitution has provided extensively for what is to be done with a person arrested or detained. The Constitution expects that he be released on bail unless the offence is a capital one (one punishable with death). While arrested or detained, the person shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any person of his own choice.

'A person who is arrested or detained shall be informed in writing within 24 hours (and in a language that he understands) of the facts and grounds for his arrest or detention. He shall be brought before a court of law within a reasonable time. (A reasonable time means:- In any place where there is a court of competent jurisdiction within a radius of

40km, a period of one day; and in any other case a period of 2days or such longer period as in the circumstances may be consioerec reasonable by the court). Unfortunately, this provision is observed by the police more in the breach. However, a police officer or any other such authority making arrest or detention is warned in sub-section 6 CP.A *"that any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from such police officer or authority.*

The responsibility to release on bail any person arrested and detained for an offence without warrant is amplified in section 17 of the criminal procedure Act which makes it mandatory for the suspect to be released on bail unless, the offence appears to the officer in charge of the police station to be of a serious nature. In this case he would be required to charge the suspect to court within 24 hours or 2days as the case may be as stipulated by the Constitution. The recognizance entered into by the suspect or his surety to forfeit a specified amount or provide a bond should the suspect fail to present himself wherever required in respect of the matter must not be excessive.

Where at the end of enquiries against a suspect, it is found that, there is insufficient evidence to prosecute him for any offence, he shall forthwith be released. It is also mandatory for officers in charge of police stations to report daily to the nearest magistrate the cases of all persons arrested without warrant within the limits of their respective stations, whether such persons have been admitted to bail or not.

Searches of Persons and Premises

In the process of investigating a crime or ascertaining if a crime has been committed, it may be necessary to search a person in order to find out if any object or item which could lead to the detection of the crime in question can be found on him. Examples are: stioen articles, instruments for crime commission, documents, etc. Such police

investigator cannot just pounce on the person and search him without first arresting him on suspicion and taking him into custody. Section 29 of the Police Act is very clear on this point; it says that a police officer may detain and search any person whom he reasonably suspects of having in his possession or conveying in any manner anything which he has reason to believe to have been stolen or otherwise unlawfully obtained. The spirit of the law dictates that the suspect must be released after the search if nothing is found on him. Failure of the police officer to release him immediately may make his action malefied and entitle the victim to compensation for unlawful detention and breach of his constitutional right of privacy.

It may also be necessary for an investigating police officer to search premises where property or implements connected with the commission of a crime may be found. He cannot just enter into the premises and conduct the search because by so doing, he breaches the constitutional right of the owner or occupier of the premises. Section 37 of the Constitution grants every citizen the right to privacy of his home, correspondence, telephone conversations and telegraphic communications. Any police officer who wishes to enter into any private premises to conduct a search must first of all obtain a search warrant from a magistrate or justice of peace on swearing to an affidavit under oath giving reasons and circumstances under which he requires the warrant. The warrant may only be granted when the magistrate is satisfied that he has good cause to violate the person's privacy in the greater interest of the Society. Section 107 - 112 of the Criminal Procedure Act spells out in detail how a search of buildings, ships, carriages, receptacles or places should be carried out. The procedure contained therein is mandatory and even though evidence obtained from a breach of these provisions was previously admissible in evidence in court, a further development of the law in favour of constitutional rights tends to make such evidence inadmissible in modern times. Aside

from the issue of the admissibility of evidence so obtained, any breach of procedure may attract carnages or compensation.

It is not possible in this presentation and within the time frame available, to touch on the whole gamut of actions and procedures undertaken by the police in the detection of crimes. All that has been done is to illustrate by specific examples that every action taken by police in all their duties are either, in strict compliance with the law or with the law as a guide. It only remains to touch on the remaining general duties of the police which are: the preservation of law and order, the due enforcement of all laws with which they are directly charged and the protection of life and property.

THE PROTECTION OF LIFE AND PROPERTY

Of all the fundamental human rights granted to the citizen by the Constitution, the protection of life and property is rather regarded as the most sacrosanct for it is only when there is life that other fundamental rights have a meaning. It is no wonder, therefore, that the unlawful taking of another's life attracts capital punishment. Hence the offence of homicide, particularly murder, is ordinarily not a bailable one.

Property makes a person's life worthwhile. Deprivation of all property invariably renders a person destitute and makes his life miserable. The foregoing are enough reason why the protection of life and property is considered one of the cardinal duties of a police officer which if done with the best of intentions, could be looked upon with some leniency should he inadvertently infringe procedural law in the process of carrying out this duty. An innocent man's life must be protected by the police by whatever means possible even if he has to take the life of the aggressor in doing so, provided he uses the minimum amount of force in the circumstance. Copious legal provisions abound in our statute books for the protection of the lives of citizens and to ensure that even in the case of criminals and undesirables their lives are not to be taken

with flimsy excuses. The whole of chapter 24 of the Criminal Code covers the definition of all types of killings otherwise known as homicides, while chapter 29 provides for offences against persons such as assault, rape, abduction, kidnapping, deprivation of liberty, intimidation, slave dealing, child stealing etc.

Offences against property which include stealing of all types, robbery, extortion, breaking offences, obtaining property by false pretences, cheating, arson and malicious damage to property are crimes from which the citizen must be protected as of right. Sections 382 - 463 of the Criminal Code Act makes provisions to guide police in bringing offenders against personal property to book in order to enable owners to enjoy the full benefit of the right to protection of property as guaranteed by the Constitution.

THE DEFINITION OF "LAW AND ORDER"

The dominant word in the duty of the police to preserve law and order is "Order". A lot has already been said about the law. In the preservation of order, much of law would already have been maintained. The simple definition of order is "the way in which people or things are placed or arranged in relation to each other, the state of being carefully and neatly arranged. This is the situation that exists when people obey laws or authority." The situation that exist here is where people act in such a way that one person does not get in the way of another - a state of general peace and tranquility. It is the duty of the police to keep the society this way. Where the general environment is rowdy or disorderly or in a state of physical confusion, there is said to be a breach of the peace and this is what the police must prevent. The Constitution of the country has in sections 40 and 41 granted the citizen the right to peaceful assembly and association as well as the right to freedom of movement. While exercising this right, situations of unlawful assemblies and riots which the law has very clearly defined, may occur. In order to carryout their duty of preservation of law and order, the police will have

to restore peace. Since, to do this, violence is bound to occur, the law has made provisions prescribing the procedure which the police must follow in controlling the situation in order to reduce the amount of harm or damage likely to precipitate from the inevitable confrontation. Chapter 10 section 69 of the Criminal Code is relevant in this regard. Note particularly the need for a proclamation by a magistrate or in his absence, any police officer of or above the rank of assistant superintendent or any commissioned officer in the Naval, Military or Air Force of Nigeria in whose view a riot is about to be committed or who apprehends that a riot is about to be committed, it is mandatory that this proclamation be made and a reasonable time given for the rioters to disperse before reasonable force can be used to disperse them. (See sections 72 and 73 of the Criminal Code).

THE DUE ENFORCEMENT OF ALL LAWS AND REGULATIONS WITH WHICH THE POLICE ARE DIRECTLY CHARGED.

It should be recalled that the Constitution has empowered the National Assembly to make laws prescribing the duties of the Police. Recall also that the National Assembly has enacted the Police Act which has required the police to enforce all laws and regulations with which they are directly charged as long as those laws are validly made. Therefore, the police have a duty to enforce any valid law or regulation which confers the duty of enforcement on them.

THE PERFORMANCE OF MILITARY DUTIES

This duty prescribed by an Act of the National Assembly is yet in abeyance. It will be activated only when the National Assembly promulgates such an Act and spells out its details.

CONCLUSION

Going through the entire spectrum of police duties in Nigeria, two conflicting interests immediately immerse. The first is the enforcement of the laws of the Nation in order to make the people governable, enable the people to live and let live and thereby create an environment of peace, order and tranquility; while the other is the Bill of fundamental human rights enjoyed by the individual persons, guaranteed by the Constitution. A modern school of thought now posits that the actual duty of the police ought to be protection or enforcement of those individual rights rather than the general protection of the public. The first question therefore is, which of these two interests takes precedence over the other? Put differently, which of these two interests is more important than the other?

The Police Officer or Public servant would certainly give the pride of place to the interest of the entire society, while the lawyer and the private individual will invariably be on the side of the human rights of citizens. The judiciary which is said to be the last hope of the common man appears from its utterances, to be on the side of individual rights much more than the general interest of the society which the government seems to be more concerned with. This is indicated by the view of the judiciary' that it is better to acquit 10 guilty persons (criminals) than to convict one innocent man.

Now that democracy is in vogue with its emphasis on the rule of law, people's rights seem to be placed on a higher pedestal than the society's good to the extent that even civil society groups are in the process of "redrafting" as a Bill before the National Assembly, a new Police Act to focus the duties of the Police on the protection and enforcement of individual rights and privileges rather than its traditional law enforcement posture. Since there is no way the police can carry out its traditional law enforcement duties without some abrasive contact with the individual citizen, the Constitution, which is the "umpire"

between the contesting interests has made laws and directed government to enact laws also that tend to reconcile these divergent interests as much as possible. Hence, all the laws governing meetings between government law enforcement and individual rights have certain applicable principles these include:-

1. Where there is bound to be physical contact between enforcement of law and enjoyment of individual liberty/freedom only the minimum force to achieve the purpose of law enforcement must be used.
2. Where the enforcement of law entails the violation of the individual's right of privacy, a warrant must be obtained from an authority acting as an unbiased arbiter.
3. A Police Officer cannot be a judge in his own cause. Therefore, where he accuses an individual of law breaking, some other authority should examine the facts and determine whether or not the law had been broken and thereby inflict sanctions prescribed by law accordingly.
4. Any excessive use of force by public officers must attract sanctions and render the officer liable to punishment and compensation to the victim.
5. No life must be taken, not even by the consent of the victim, except only as expressly permitted by law.

Procedural laws which impose restraint on law enforcers have been extantly made for their guidance. The police, being at the forefront of law-enforcement and the maintenance of peace and order are enjoined in their interest and that of the entire nation to strictly apply these laws or be guided by them In the performance of their duties.

End of Presentation

Thank you for the opportunity given me to participate.