

Review of the Nigerian Police Act, 1943

Legal Diagnosis and Draft Bill

CLEEN FOUNDATION,

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The second is Dr. Sam Amadi, who worked with us in carrying the legal diagnostics and producing the draft police bill.

The third is the Security, Justice and Growth Programme (SJG) of the British Council, which supported the organization of a civil society consultative forum on the draft police bill in order to ensure CSOs input in the process of amending the Police Act.

Finally, we thank all the people that participated in the several public fora we organized between 2004 and 2008 on the draft police bill.

Preface

On November 8, 2004, the House of Representatives' Committee on Police Affairs in collaboration with the CLEEN Foundation and the Open Society Justice Initiative (OSJI) organized a one-day interactive forum on review of the 1943 Nigerian Police Act. The objectives of the forum included bringing stakeholders on police and policing in Nigeria to brainstorm and identify priority issues that needed to be reviewed in the Police Act and setting in motion the machinery for the review of the Act.

In attendance were the then Speaker of the House Representatives, Hon. Bello Masari and all the members of the House Committee on Police Affairs, the Minister of Police Affairs, representatives of the Police Service Commission, then Deputy Inspector General of Police, Mr. Sunday Ehindero and a team of senior police officers, representatives of Civil Society groups and the National Human Rights Commission.

At the end of the highly participatory forum, priority areas for amendment in the Police Act were identified and a 10-person interagency Committee comprising representatives of the Nigeria Police Force, Ministry of Justice, Ministry of Police Affairs, Police Service Commission, organized private sector, media and civil society groups was established under the chairmanship of Hon. Abdul Oroh to follow up on the recommendations. The Committee immediately set to work and within one year produced a legal diagnosis of the Police Act as well as a draft bill to amend the Act, which were submitted to the House of Representatives to enable them commence the amendment process.

The bill was subsequently published in the legislative journal of the House of Representatives in October 2006 and went through first reading, second reading and was at the committee stage when the lifespan of Hon. Masari's administration expired in May 2007. It was expected that when the new legislature was inaugurated in June 2007, they would take the police bill alongside other bills whose enactment processes could not be completed by the previous administration and complete them. That has not happened yet,

thus necessitating this publication. Our hope is that the Federal lawmakers would find the content of the publication useful and be dissuaded from reinventing the wheel in reviewing the act but to look at what has been done before and see how much of it can be incorporated in their new efforts at amending the police Act.

The publication is divided into three sections. Section I focuses on the legal diagnosis of the 1943 Police Act. It provides a rationale for conducting legal diagnosis before producing draft amendment bills and identifies areas that need to be either amended or included in the new draft bill. Section II reproduces the draft police bill. Section III is the annex and contains the report of the interactive forum on review of the Police Act

Innocent Chukwuma
Executive Director - CLEEN Foundation

Section I

Legal Diagnosis of the Police Act

Rationale:

One of fatal shortcoming of legal reform in developing countries, including Nigeria, is the inability of legal drafters to methodologically and scientifically justify the laws they want to introduce. There are two basic rational processes to law making. The first is technical and the second is political. The technical process begins right from the decision to review existing law or enact a new law. Once appropriate political authority decides to enact or reform the law, the drafter should begin serious research on the proposed law. The research includes analysis of the social, economic and political problems which makes the law necessary, social science based analysis of the social behaviors that creates the problems which the proposed law would deal with, and a report about the most efficient and ethical ways of dealing with the problems.

Here, as in most policy oriented social science research the two basic considerations are efficiency and fairness (equity). The new law should be such that enables the performance of police duties in the most efficient and effective based on value for money and must also enable the police protect the rights and liberties of the people. Whereas efficiency is an economic paradigm and related to scarcity and opportunity cost, fairness or equity is a political concept that relates directly to the problem of autonomy. In assessing how well a system performs we have to benchmark the assessment according to efficiency and fairness. These values should also guide the pre-drafting research.

The pre-drafting research should results in both a concept paper and a legislative plan. A concept paper sets out the purpose of the amendment, the issues to be dealt with in the proposed legislation; the result of research on the overarching social and political issues that affect the proposed law and determine its efficiency; and how the proposed law aligns with other existing institutions and legal regimes. A concept paper is the first serious intellectual

work towards the drafting of laws. After the concept paper, then the legislative plan based on a legislative policy follows.

It is important to draw a distinction between a legislative plan and a legislative policy. A legislative plan is different from a legislative policy. Whereas the legislative policy is the responsibility of the political authority, the legislative plan is the responsibility of the technical team drafting the law. In a well ordered legislative environment, especially where the executive branch of government is active in proposing bills for enactment, the legislative policy articulates the policy choices which the government has made. For example, in thinking about the structure and organization of the police force the executive can draw the line between having a police that responds to the peculiar needs of the locality and the people and a police that polices with integrity, especially according every Nigerian, irrespective of ethnic or religious affiliations, equal protection of the law, at any point between a regional or state police force or a centralized national. Where it draws the line becomes the legislative policy.

This is the way E.A. Driedger expresses the difference: “Legislative policy is not the same thing as the legislative plan; the former is the objective to be achieved, and the latter an outline of the method by which it is to be achieved. For example, it may be laid down as a policy that certain grants are to be paid to a class of persons under specified conditions. In order to give effect to such a policy, the draftsman needs to know that his statute must, among other thing, prescribe the persons who are to benefit, specify the amount of the grant and the condition under which it may be paid, and the provide authority for payment out of the Consolidated Revenue Fund, for suspension for breach of conditions and for recovery of unauthorized payments, for applications, decisions and awards, for penalties for misrepresentation or other wrongful conduct. In the case of an amending statute the draftsman must decide what statues are to be amended, what sections, and in what manner. After the legislative plan is prepared, it is discussed with the sponsors and it will undoubtedly be modified; new provisions will be added and others will be dropped or changed.” (E.A Driedger, “The Preparation of Legislation’, 31 Can. Bar Rev. 33, 39 (1953)

The idea of a concept paper is to base law-making upon empirical and rational experienced-based data. This is based on a conception of the role of law in development that law is a proactive force for change, and that for law to play this active role, legislative drafting should capture in its legal specifications the complexities of a social world. Some social theorists believe that law is a reactive rather than a proactive agent in the transformation of society. Still others believe that it is law that defines social and political institutions that condition problematic social behaviors. In spite of the theory of law and development which we subscribe to, the overwhelming evidence shows that the problem of development, whether defined in terms of underperforming civil service or inefficient public institutions relates to how underlying laws structure interactions within and between institutions.

In this wise, the challenge for reformers becomes how to enact laws that engender the best social behaviors. Professor Ann and Bob Seidman put it this way: “Law-makers (drafters and ministerial officials, legislative staff, legislators) seeking to design a law likely to change behaviors, must explain why actors presently behave in problematic ways in the face of existing law, and predict how relevant actors will behave in the face of the new law. They need a guide to discover, in a particular set of circumstances, why people behave as they do in the face of a rule of law”. (See Seidman, Seidman and Abeyesekere, 2000)

The rationale for this diagnostic study is to lay bare some of the problematic legal areas which must be addressed if the law review will achieve the purposes. To this end, the report is a research report preparatory to draft legislation. As the Seidmans noted, a research report should do the following:

1. describe the social problem the bill purports to address
2. explain the specified behaviors
3. design and proposes a solution (the bill or law at hand)
4. measure and evaluate the implementation of the new law

The Social Problems that the bill intends to address

The consultative workshop on the Police Act organized by the CLEEN Foundation and the House of Representative Committees on Police, Human and the Rule of Law and the Judiciary on November 24, 2004, examined the problems of Police and policing in Nigeria from a multiple perspectives- civil society, legal and internal police perspectives. The social problems that the proposed new Police Act is expected to address can be neatly and generally categorized as the following:

- a) inefficiency and ineffectiveness in the operation and execution of the Nigerian police
- b) violation of human rights and official malpractices against citizens and residents
- c) lack of adequate and democratic political and administrative accountability
- d) weak policy and administrative oversight.

In the context of the reform of police and policing in Nigeria through the amendment of the police Act, the problem solving methodology should be adopted. This approach is a pragmatic effort to write new laws by providing answers to questions that reflect on the realism of institutional behavior. For example, this approach asks the would-be legal drafter what are the problematic social practices which it intends to overcome; who and who are responsible for these behavior; what incentives reinforce this behaviors, which institution or agency of accountability ought to deal with the problematic behavior, why does this agency fail to transform or remedy such behaviors, what social practices, conventions or culture or institutional path-dependency reinforce these behaviors; etc. When answers are provided for these questions, the draftsman is able to design legal responses in the form of legal provisions to overcome such problematic behaviors. Without such problem-solving research methodology, a new law might either compound the existing social problems associated with the institution or go to no issues as regards dealing with its problems. It may also result in a situation where laws become mere fetishes with which the legalists decorate the social sphere. The allegation by some social scientists that laws are essentially incapable of transforming social

problems in troubled institutions is largely true only in the context where a problem-solving methodology to law-making is absent.

Therefore, the rationale of this legal diagnostics is to provide a template by which the queries which a good social science oriented and problem-solving focused legal review of the police act will elicit can be answered. It aims to set out some of the institutional and cultural problems of policing seen from the legal (not necessarily, a lawyer's) perspectives. Specifically, the report will examine some of the provisions of the extant police act, underline and analyze them with respect to publicly expressed misgivings about the police and compare them with provisions of other laws that either affect the police as an institution or impact upon policing as a public function.

A General Statement on the Problem of the Police Act

What are the problems of the police as a public institution that a new bill needs to address? There are a myriad of them. The following are some of the major ones:

1. Insufficient articulation of the mission of the police force in the police Act

The police act as the enabling law for policing in Nigeria should state as clear as possible the mission of the Nigeria police force. The Act is not simply a legal authorization for the police to act. It is also business and managerial authorization. It should guide the operations of the police and define its culture. Section 4 of the Police Act Cap.A19 articulates this mission as general duties of the police as follows:

“The police shall be employed for the prevention and detection of crimes, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within and outside Nigeria as may be required of them by, or under the authority of this or any other Act”.

Lawyers take the provisions from a legal point of view. It represents to them what the police can validly do, its legal remit. But, from a public management point of view this is the mission statement of the police force in Nigeria. It encodes the organizational culture, work ethos and the personal compact between the leadership of the people and the rank and file of the force; and the police as an agency and its customers- the Nigerian people. The first point is to determine whether Section 4 mission statement captures the kind of police we need. What do we want the Police to do? Most organizations have a mission statement; and the mission statement shows what the organization is set up to achieve. When an organization is about to be redesigned or reengineered for more efficiency and effectiveness, the mission statement is the first consideration. When the British prison service was slated for reform the focus went first to the mission. The prison was redefined from a custodian of convicted criminals to an institution that provides services of custodial and remedial nature with least expenditure in resources and maximal results. The results were further defined in terms of human rights and values of fairness, justice and dignity.

Based on the foregoing, it would appear that Section 4 mandate is inadequate to capture the expectation of the new kind of policing we require in the context of our disheartening experience of police brutality and hope for a democratic society of freedom and liberty. The police should be defined in a language that focuses on fairness, deference to human rights in the prevention and investigation of crimes and efficiency in combating crimes. The mission statement should define further a community-oriented policing that sees the works of the police as enabling the effective enjoyment of rights and happiness. This redefinition through the mission statement (legal mandate) is a political responsibility, which the National Assembly can authorize through a legislative amendment.

The mission statement (legal mandate) is very crucial to institutional reform because it operates both externally and internally to mobilize resources toward effective performance of the vision of the organization. The mission statement helps the managers to assess the performance of the organization; helps them to model internally the ethos and values, which the organization aims at; and

to allocate resources efficiently to realize its mandate. Externally, the mission statement signals to the clients, overseers and stakeholders that the organization intends to achieve some sets of public values and mobilize public support and political good will. The mission statement can be utilized in three dimensions of process designing: it can be used to effect efficiency and effectiveness in service delivery; to ensure political accountability in the process of producing services; and in protecting human rights as integral to the public peace which results from police work.”

In proposing a new mission statement for the Nigerian police focus should be on modeling a new police force that is suitable for a democratic society in the evolving context of the Nigerian state. It must articulate a police force whose directing principles are the protection of the freedom and liberties of the citizens, a civil force dedicated to prevention of crimes and protection of public order by the use of minimal force; and a force that is not a servant of the government but of law. John Alderson, a former Chief Constable and co-author with Professor P.J. Stead of *The Police We Deserve* (1993) offers a set of objectives that could prove helpful for a remodeled police force for modern democratic Nigeria. Note that these objectives derive from the Englishman’s notion of citizenship and priority of the protection of the freedom of the citizens against the protection of public order. In fact, public order is important because it allows the enjoyment of civil rights and not civil rights being expendable to maintain public order. This is his list:

1. To contribute towards liberty, equality and fraternity in human affairs.
2. To help reconcile freedom with security and to uphold the rule of law.
3. To facilitate human dignity through upholding and protecting human rights and the pursuit of happiness.
4. To provide leadership and participation in dispelling crimogenic social conditions through co-operative social change.
5. To contribute towards the creation or reinforcement of trust in communities.
6. To strengthen the security of persons and property and the feeling of security of persons.
7. To investigate, detect and activate the prosecution of offences within the rule of law.

8. To facilitate free passage and movement on highways and roads and on streets and avenues open to public passage
9. To curb public disorder.
10. To deal with major and minor crises and to help and advise those in distress, where necessary activating other agencies. (sources: Policing Freedom (London: Macdonald and Evans, 1979) the come to visit

2. Scattered Provisions in Different Acts and no Composite Legislation Like PACE

One other problem with the police act and policing in Nigeria is that legal rules relevant to policing are scattered across many legislations and it is difficult to state with any conclusiveness what the law is about, say arrest and detention. This contrasts with the position in Britain where the Police and Criminal Evidence Act (PACE), 1984 as amended has streamlined and codified in one piece provisions relating to police and policing. The scattered provisions create a situation where some of the provisions relating to policing conflict. For example, the constitution in section 114 seems to invest the power of law enforcement on a police force created by the constitution. The Police Act expands on such functions. But, under the influence of economic and special crimes, the government has created many executive agencies and invests on them different kinds of law enforcement operations, sometimes undercutting the powers and functions of the regular police force. This has damning effects on human rights. For instance, some of these provisions, like those in Economic and Financial Crimes Commission (EFCC) Act, empower the agencies to curtail citizen's right in many more ways than the police act and the constitution permit or in circumstances where such encroachment is devoid of due process safeguards.

3. Much about Policing Left to Discretion

One of the problems of policing, in fact, the general exercise of executive power is the abuse of discretion. The rule of law and the protection of human rights require that officials who exercise power on behalf of the state must not be allowed to act according to their prejudices, biases and in furtherance of personal or group interests. The essence of administrative guidelines and the Judges Rules is to curb discretion in a manner that results in valid exercise

of police power. Nevertheless, the police act and other legislations authorizing policing fail in many critical points to lay down objective and intelligible principles to guide a police officer called upon to decide whether to grant or refuse bail. If the police must operate under the law the law must find a way to balance the need to allow for flexibility for the sort of expert judgment intrinsic to policing, without promoting the cult of personal fancy and fantasy. Absolute power corrupts absolutely. And, in today's bureaucratic state there is no greater threat to freedom than an executive agency whose exercise of power is not properly and clearly delineated. The wisdom offered by Ralf Dahrendorf decades ago in a REITH LECTURE remains instructive: "The justice of man's social institutions is threatened too by the uncontrolled power of organizations and firms and bureaucracies, by shifting equality and impotent participation. And the solutions offered by some of these problems make matters worse: the authoritarianism of small elite which is supposed to assure survival along with law and order..." (B.B.C Reith Lectures (Routledge & Kegan Paul 1975)

The desirable degree of discretion which police officers should enjoy in their work is a controversial issue for reformers. As a matter of fact, modern society, based as it is on expertise, allows the expert a lot of discretion for the sake of effectiveness and efficiency. Where we draw the line between discretion and legal constraint relates to whether we privilege civil rights or public order in the debate about rights and order. The nature of police force we want will determine how much we embrace constraining exercise of discretion by police officers. This debate has a practical application. Consider the matter of arrest of suspected offenders. The law could authorize a police officer to arrest a person he reasonably suspect to have committed an offence. How he comes to this subjective knowledge may be made a subject of rigorous procedure. He may be required to make an endorsement as the reasons why he suspects that such a person has committed or is about to commit an offence, or he may be left to his judgment.

From the history of abusive policing in terms of unwarranted arrests of citizens it may be advisable to legally constrain the exercise of discretion to arrest by the police without impeding effective prevention of crimes. The justification

for this line of practice can be philosophically sourced from the argument that in a democratic executive discretionary action must be dictated, guided and limited by laws. As John Stuart Mill states in his “On Liberty”, “All that makes existence valuable on anyone depends on the enforcement of restraint upon the actions of other people. Some rules of conduct therefore have to be imposed”. Those who enforce the constraint on other people themselves need to be legally constrained.

4. Ineffective and Inefficient Organizational Processes

The review of the Police Act aims at creating a police force that is able to police democracy and freedom in an efficient and effective way. Democratization engenders a paradox. As society becomes democratic the individual demands the right to be herself and express herself without hindrance. This self-expression occasionally engenders crimes. In order to enable other citizens enjoy their freedom; the police needs to curtail the liberty of the crimogenic citizen. This is why it is often said that liberty depends on effective law enforcement.

The police act does not establish governance and administrative process that make for effective policing. The benchmark is that of efficient operations. The measure of efficiency in this wise is how much resources- in terms of money, equipments and time- expended by the force to realize its goals. The questions to consider in auditing the efficiency of the police force include the question of centralization of authority and command and control; the localization of policing initiatives; the structure of information management; and the transparency of decision making and allocation of resources. At the interactive forum at the National Assembly, it was argued that, “thing is clear from the perspective of police reform there is a great degree of incoherence in the administrative structure and hierarchy of the police force. Structures largely determine performance. Insights from private sector reform have shown that substantial improvement in performance results from organizational reform. Professor J. Richard Hackman has argued convincingly, with evidence from field research that greater productivity and performance result when the structure of the organization is reengineered to be enabling and to assist

teamwork (Leading Team: Setting the Stage for Great Performances). Results from Industrial Performance and Workplace Transformation (IPWT), though focused on private sector, shows that reengineering of the work process can increase performance (Judith Tandler, Good Governance in the Tropics).

The problems associated with disabling an incoherent process of the police has negative effects on humane policing. Take for example, the issue of centralization. Apart from resulting loss of initiative among police officers and the incapacity of commissioners to innovate better ways to police effectively, centralization affects police-community relations. As has become clear from the history of police reform in the United States, decentralization helps the process of making the police respond to local concerns and create community partnership necessary for both political accountability and protection of human rights. The police reform in England and Wales addressed similar issues. It localized the duty of every police authority to “secure the maintenance of an efficient and effective police force for the area”. The police authority determines the “objectives for the policing of all areas of police authority; local policing objectives; performance targets; and local policing plans”. The Secretary of State has power to issue directions to police authority. At this stage, I can’t argue for or against state police. But, I can state that the reform of police must revisit the issues of the organization of police hierarchy and the relationship between administrative hierarchy and political authority.

5. Insufficient Political Democratic Accountability

The last discussion about inefficient operative structures leads to the insufficiency of political accountability. The police act provides insufficient or at worse, non-existent democratic accountability of policing. One of the major failings of the act is that it makes the Inspector General of Police dependent upon the president both in appointment and management of police resources. The police are subject to the direction of the president in its daily operations. This compromises both its policy independence and its technical efficiency. The act fails to distinguish between the needful political oversight of the police by the political authority in “ensuring the efficiency” of the force and the managerial oversight of the “direction and control” of the force

which should reside in a police authority. (See P. Savage, 'Political Control or Community Liaison' (1984) 55(1) Political Quarterly 48 49-51)

For the purpose of the review of the police act, legal accountability should be distinguished from political accountability. Legal accountability deals with rule of law as regards policing, especially how it impacts on civil liberties and freedoms. As we shall see later in this analysis, the act is very deficient in establishing rule of law standards of accountability for the exercise of discretion by police officials. This aspect of accountability is reinforced by the power of judicial review of police illegal actions. We need to stress here that the problem of political accountability. By subordinating the police force to the operational direction of the President, the act makes the police the servant of the government and not the protector of the rights of the citizen. John Alderson argues that "Police in relation to politics pose the greatest potential threat to individual liberty where they are considered to be an extension of political power". He further states that, "A superior democratic police system must recognize the danger of too direct a link between a political machine and day-to-day police operations; for even in democracies police can be abused by being made to serve the narrower political purposes of those occupying political office for the time being." Alderson argues in his book the controversy provoked by the issue of political accountability in Britain. The structure of control and management of police in present day Britain is three-layered: the Chief Constable, the Home Secretary and the Police Authority. These structures are discussed in details later when discussing the framework for review of police act.

6. The Police Act Inadequately (or not at all) Protects Civil Rights and Liberties

This charge is that the provisions of the Police Act, viewed together do not help to create a police force that respects the rights of citizens as guaranteed under the constitution and other international human rights conventions which Nigeria has signed and ratified (and in the case of the African Charter, enacted into local law). The charge is two parts. In the first part, the police act in the positive enunciation of the powers or function of the police encourage violation of the rights of the citizens either guaranteed by positive law or part of the

common law traditions of natural justice and liberty. The second part of the charge is that the act does not provide sufficient and clear legal criteria to the exercise of police power and thereby encourage violation of these rights.

It should not be assumed that there is unanimity as regard the violating character of some of these provisions and even as to what this violations consist. Even at the aforementioned workshop the voice was divided between civil society and the police authority as to what is wrong with the law and what ought to be done about. But, to a large degree, one can safely state that some of issues to be discussed in this segment constitute a fair consensus on the problematic sections of the police act.

Comments on the Provisions of the Police Act and other Legislations

The formation of the police force:

Section 4 of the police act should be redrafted in such a way that the culture of civility and protection of human rights is announced upfront as the anchor of policing.

Section 9 needs review. The Police Council is an important organ because, under the model of the British police, it will share the control of the police with the Inspector General of the Police. The police act provides that the President is the chairman of the Nigerian Police Council and the Governors of the states and the IGP are members. The council's functions include "the organization and administration of the Nigerian Police Force and all other matters relating thereto (not being matters relating to the use and operational control of the force, or the appointment, disciplinary control and dismissal of members of the police force". The Council is also seized with the general duty of "the general supervision of the Nigerian Police Force" and "advising the President on the appointment of the IGP. There is a mysterious provision in subsection (4) of the act which states that "the President shall be charged with the operational control of the Nigerian Police Force". The totality of the effects of section 9 is to invest the control of the police force on the president in right as a president and as a chairman of the Nigerian Police Council. It is important to note that this control is not only on matter of general direction of policing. He controls the initiative on 'operational control' of the police.

Given the crisis of abuse of police power by president and governors in Nigeria it will be a mistake to place the police in the operational control of the President. This is against the spirit of professionalism and efficiency that underlines the recent public sector reform and the political neutrality of the police force of a democratic country.

Supernumerary Policing:

The whole sections 18 to 20 of the police act need to be reconsidered. The idea of supernumerary police is to meet the challenges of protecting lives and properties in fast developing business community like Nigeria. But it is important to bear in mind the potential dangers in 'allocating' policemen and women to corporate interests and the attendant 'loss' of control of the police authority implicit in such arrangement. Will this amount to privatization of police force against the poor. Again, the issue of entitlement of supernumerary police officer vis-à-vis regular police officers could be problematic. There are cases where supernumerary police officers who had been disengaged by the employers seek re-absorption into the police force. The legislative policy should re-examine the relationship between the regular police officers and supernumerary police officers.

Police Power to Prosecute:

The law today in Nigeria is that police officers can prosecute offences before a court of law. The constitution (section 174 and 211) denotes the power to prosecute to the AG and any other person he may delegate the power. It is taken for granted that the AG has delegated the power to officers in his office according to section 160 of the constitution. Similarly, section 23 of the police act permits a police officer to conduct in person all prosecution before the court whether or not the case is filed in his name. By the wording of the section, this power is subject to the power of the AG to take over or stop further prosecution by the police.

The critical question for the purpose of review of the police act is whether police officer should have the power to prosecute for serious criminal offences.

In the US prosecution is carried out mainly by district attorneys who are officers of the attorney general of the state or the federal government, in case of federal offences. Similarly, in the UK prosecution is conducted by the Crown Prosecution Service and not the police. There are two key issues to consider. The first is the capacity of the police to prosecute. Do police officers have the requisite skills to effectively prosecute crimes in a way that entrenched rights are not violated and criminals do not get scot-free? Of course there are many lawyers in the police force who may effectively prosecute. But, even at that, is the environment conducive for criminal prosecution? Above all, does it not appear untidy for the police to investigate crimes and still appear as prosecutor and, in some cases, witnesses? It seems to me that the best arrangement will be to hire the equivalent of district attorneys who will have office in police stations or divisional offices and coordinate prosecution on behalf of the police. The relationship will be cordial and interdependent, yet these attorneys will be answerable to the Attorney General. The arrangement will take away the latent contradiction between sections 174 of the constitution and section 23 of the police act.

Power to Arrest without Warrant:

It is generally believed that the power of the police to arrests and detain persons suspected of commission of crimes or intention to commit a crime or those caught in the commission of a crime is not articulated in a manner that respects the core essence of liberty and dignity of the person under the constitution. In a sense there is a certain lack of agreement between the police act and constitution on the priority accorded the protection of human rights. Chapter 4 of the constitution generously guarantees citizens and residents in Nigeria with basic rights and freedom in the exact language of the international covenants on human rights. One of the most important of these rights is the right to the liberty of the person in section 45 of the constitution. With particular reference to arrest and detention the section requires the arresting authority to arrest a person for a valid cause and in compliance with reasonable safeguards. One of the shortcomings of the police act and other laws authorizing the police in that respect is that they fail to establish sufficient safeguards against unwarranted and prejudicial arrest of persons. There are

insufficient due process standards to guide the police officer contemplating arrest of a person. Section 24 of the Police Act provides that:

“In addition to the powers of arrest without warrant conferred upon a police officer by section 10 of the Criminal Procedure Act, it shall be lawful for any police officer and any person whom he may call to his assistance, to arrest without warrant in the following cases-

- (a) any person whom he finds committing any felony, misdemeanour or simple offence, or whom he reasonably suspects of having committed or of being about to commit any felony, misdemeanour or breach of peace;
- (b) any person whom any other person charges with having committed a felony or misdemeanour;
- (c) any person whom any other person-
 - (i) suspects of having committed a felony or misdemeanour; or
 - (ii) charges with having committed a simple offence, if such other person is willing to accompany the police officer to the police station and to enter into a recognizance to prosecute such charge

The section further states that the aforementioned provisions shall not apply to any other offence where the law has provided that it shall not be arrested without a warrant. The Criminal Procedure Act lays similar provisions about power to arrest with and without warrant. It further provides for what a police officer can do after he has arrested with and without warrant. These provisions do not pass the due process requirements embedded in the constitution. Because of the immenseness of the state power which the police exercise on behalf of the society, it is common wisdom to curtail this power through legal and institutional check and balances. The late Lord Bertrand Russell has argued that “In every democracy, individuals and organizations which are intended to have only certain well-defined executive functions are likely, if unchecked, to acquire a very undesirable independent power. This is especially true of police.”

There is analogous provision in the Criminal Procedure Act. Section 10 thereof states:

“Any police officer may, without an order from a magistrate without a warrant, arrest-

- (a) any person whom he suspects upon reasonable grounds of having committed an indictable offence against a Federal law or against the law of any state or against the law of any other state unless the written law creating the offence provides that the offender cannot be arrested without warrant;
- (b) any person who commits any offence in his presence;
- (c) any person who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;
- (d) any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to such things;
- (e) any person whom he suspects upon reasonable grounds of being a deserter from any of the armed forces of Nigeria;
- (f) any person whom he suspects upon reasonable ground of having been concerned in any act committed at any place out of Nigeria which, if committed in Nigeria, would have been punishable as an offence, and for which he is, under any enactment in force in Nigeria, liable to be apprehended and detained in Nigeria;
- (g) any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of housebreaking;
- (h) any person for whom he has reasonable cause to believe a warrant of arrest has been issued by a court of competent jurisdictions in the state’
- (i) any person who has no ostensible means of subsistence and who cannot give a satisfactory account of himself; and
- (j) any person found in the state taking precautions to conceal his presence in circumstances which afford reason to believe that he is taking such precautions with a view to committing an offence which is a felony or misdemeanour”.

Subsection (i) is scary. It increases the potential for the violation of the rights of the citizens. What does it mean to say a person has no mean of livelihood?

How can a person fail to give account of himself? The onus should not be an innocent person to prove he is genuine. The provision presumes a continual state of emergency. It is only in a state of emergency that persons who appear to be unemployed and disorderly are rounded up and detained. The provision reflects the general presumption against the people, and focus on 'law and order' in the general orientation of the police in Nigeria.

The provisions in the police act and the criminal procedure act are insufficient to control exercise of discretion by police officers; and lack clarity when compared with such provisions as the Police and Criminal Evidence Act (PACE), 1984 in England. For one PACE clearly sets out detailed procedures for arresting without warrant. Section 24 of the PACE incorporates several criminal and law enforcement statutes like the Criminal Justice 1988, Sexual Offences Act 1985, Football offence Act, 1991 and Criminal Justice and Public Order Act 1994. The section lists offences for which a warrant is not required; and the specific conditions for executing an arrest without a warrant. Unlike the case with the police act and the criminal procedure act, PACE lists what a constable should do when he suspects that a person has committed an offense that is not an arrestable offence. Very importantly, the law requires that the constable informs the arrestee the objective grounds for suspecting that they are likely to have committed an offence.

The editors of "Civil Liberties: Cases and Materials" list some of the elements of a valid arrest under PACE as follows:

- there must be either an arrest warrant or a legal power to arrest without warrant
- the factual requirements of the relevant powers must be fulfilled: commonly the requirement of 'reasonable suspicion'.
- at common law it was necessary for the arrestor to make it clear that the arrestee was under compulsion either (i) by physical means (such as taking him by the arm) or (ii) by notifying him of the fact of compulsion by word of mouth.
- the arrestee must be informed of the *fact* of arrest except where the arrest was made by a private citizen and the reason is obvious.

- the arrestee must be informed of the *ground* for arrest as soon as practicable.
- the arrestor must regard his action as an arrest in the sense of a possible first step in the criminal process (for example, if he questions a person without intending an arrest, it will be unlawful).
- exercise of discretion must not be an ultra vires abuse of power.

The incidence of unlawful police action is high that a proper review of police and policing in Nigeria should aim at instituting legal regime that constrains the police officer to use the immense power at his command only for proper causes and in the least intrusive and offensive manner.

Detention and Bail

Detention or bail is the usual next stage after arrest. The problem with bail under the constitution is that it is not clear whether it is a right or a privilege which a police officer has a wide discretion to determine. Again, there is a glaring lacuna as regards how relevant police officers are to handle detention and the determination of bail before criminal arraignment. The power to detain is left so open to abuse because of the absence of guiding criteria and reviewable standards. Section 35 of the constitution requires that the arresting authority charges the arrestee before a competent court of law within 24 hours or at most 48 hours if the distance between the police station and a competent court is a considerable distance. The courts have held that the constitution by presuming the innocence of the accused person equally presumes the fundamentality of bail as a process of both guaranteeing the rights to liberty of the person and presumption of innocence. (See cases reported in Gani Fawehinmi (ed.) Human Rights Law Report of Africa (Vol. 1). There are two lines of cases on bail. The first line of cases focus on bail as discretionary by courts based on the nature of the offence, the likelihood of the accused standing for his trial; and whether he or she will interfere with police investigation. These are cases arising from criminal prosecution like *COP v. Obolo* and *Eyu v. State*. The other line of cases is based on applications for the enforcement of fundamental rights. Here the courts hold that bail is a facility for the realization of the right to personal liberty and the presumption of innocence. In this light, every person is entitled to be granted bail by the

police if they intend to hold him beyond two days without filing a competent charge against him.

The totality of judicial pronouncements, put in the context of section 35 right, is to effect that as soon as a police officer arrests a person, he ought to offer such a person bail, once it is a bailable offence. But, where the Police officer refuses the person bail at the station, he must charge her before a competent court within 48 hours or release her. Now, the ultimate question is how section 35 of the constitution squares with the provisions of the police act and the criminal procedure act. Section 35 provides as follows:

“Any person who is arrested or detained in accordance with subsection (4) shall be brought before a court of law within a reasonable time.... he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

(5) In subsection (4) of this section, the expression “a reasonable time” means (a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometers, a period of a day; and (b) in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.”

Section 27 of the Police Act provides for bail after arrest in this wise:

“When a person is arrested without a warrant, he may be taken before a magistrate who has jurisdiction with respect to the offence with which he is charged is empowered to deal with him under section 484 of the Criminal Procedure Act as soon as practicable after he is taken into custody:

provided that any police officer for the time being in charge of a police officer may inquire into the case and –

- (a) except where the case appears to the police officer to be of a serious nature, may release such person upon his entering into a recognizance, with or without sureties, for a reasonable amount to appear before a magistrate at the day, time and place mentioned in the recognizance; or

- (b) if it appears to such officer that such inquiry cannot be completed forthwith, may release such a person in his entering into a recognizance, with or without sureties for a reasonable amount, to appear at such police station at such times as are named in the recognizance, unless he previously receives notice in writing from the superior police officer in charge of that police station that his attendance is not required, and any such bond may be enforced as if it were a recognizance conditional for the appearance of the said person before a magistrate”.

It is clear that the police act does not support the constitutional positions as regards bail as a fundamental right. The police act does not follow through the high emphasis the constitution places on the right to personal liberty. The power of the arresting police officer to detain is made discretionary and subject to subjective considerations of the seriousness of the offence and substantiality of sureties. Besides, the police act does not lay down elaborate and express steps to be taken by the arresting authority to ensure that the process of making the decision to refuse bail to a suspect is made on good faith and based on objective grounds which are easily judicially reviewable. This position contrasts with the provision of the PACE. Sections 41 and 42 of PACE provides for limits on detention with trial and for what ought to be done when an arresting authority intends to detain a person beyond the statutory limitation. Section 41 provides positively that a person ‘shall not be kept in public detention for more than 24 hours without being charged”. It goes further to stipulate how to calculate the period of time under different circumstances. More importantly, section 42 lays down clear conditions when the 24 hours limit can be exceeded. It permits a police officer of the rank of superintendent and above to detain a person beyond the 24 hours period if the officer has reasonable grounds to believe the detention of the person is necessary to secure or preserve evidence needed for the trial, the offence he was arrested is a serious arrestable offence; and the investigation is being conducted diligently and expeditiously, to extend the detention to another 36 hours. This is extendable to a final 36 hours. The point to note is that in making the decision to extend beyond 24 hours, the relevant police officer is required by the act to the suspect or his legal representative an “opportunity to make representation

to him about the detention”. He is also required to inform the person of the decision to detain himself and to record the decision and the grounds for making decision in a reviewable record of detention. Where the officer avails the suspect of opportunity for representation before deciding to extend the detention he has to record the reasons why he rejected the suspect’s representation as to cessation of detention.

The editors of *Civil Liberties: Cases and Materials* summaries the detention under PACE in this wise: “The basic period of permitted detention without charge is limited to 24 hours from the ‘relevant time’: s. 41, usually the first time at which the arrestee arrives at the first police station to which he is taken after the arrests. In the case of ‘serious arrestable offences’ an officer of the rank of superintendent or above may authorize detention up to 36 hours from the ‘relevant time’: s. 42; a magistrate may issue warrant of further detention for a period up to a further 36 hours: s. 43; a magistrate court may extend the warrant for a still further period of 36 hours”. The legal accountability of the detention process is further secured by the provisions of Code of practice for the Detention, Treatment and Questioning of Persons by Police Officials (Code C of PACE).

The challenge before the drafters of the new police act is to draft a composite legislation like PACE or a simple police act with clear provisions on bail right from the arrest of a person and his recording of his presence in a police station. The same legislation should also provide for bail before the magistrate with or without charge. The most important point is that the law should clearly provide for the right of hearing of a suspect when decisions extending his detention beyond 24 hours is made, and the fact of decision, the grounds and the representation of the suspect should be endorsed on custodial record for the purposes of judicial review of the reasonableness and due process of the bail decision. This is important when compared with the provisions of section 364 of the CPA which purports to permit a magistrate lacking jurisdiction to remand a person in detention indefinitely pending when the DPP issue an advise and brings a proper charge before a competent court. This section has been misinterpreted by police through the years until the Court of Appeal in *Bayo Johnson v. Lufadeju* held that the section permits a special application

before the magistrate for remand and not the preferment of an incompetent charge just to secure a remand as is the practice of police. The court accepted my submission, based on the bail act (incorporated into PACE) that a police who does not want to grant bail or charge the accused for the proper offence by the competent court, should apply to the magistrate on affidavit evidence to remand the accused in prison pending arraignment. The application should be inter-parties and based on factual evidence and substantial inferences. The gap in the police act and the criminal procedure act is that none of these statutes spells out clearly the requirements of due process in detention of accused person pending proper arraignment before the courts.

Power to Search and Seize

The problem with the power to search under the police act is that it is excessive and not limited according constitutional principles. Also, it is not safeguarded by detailed provisions on endorsement and objectivity and due process. There are also several statutes, apart from the police act, that grant public officials including the police the power to search and seize. Examples are the Custom and Excise Management Act, the National Drug Law Enforcement Agency Act, NAFDAC Act, etc. The problem is that some of these laws authorize search of person and premises without due process. They also create conflicts when different agencies that lack the traditional culture of the regular police force enter and search the premises.

The PACE and its schedule provide plenteous provisions relating to power of entry, search and arrest or seizure (sections 8-23). By the provisions the power of the police to search for evidence is extended but several safeguards are provided so as the make the process transparent and accountable. In today's world of advanced crimes and terrorism, law enforcement agents seek more power to fish out dangerous situations before they explode in the public face. An efficient police force must be proactive, and preventive. Therefore, it needs to be able to follow new leads on crimes. But, this need must be balanced with the need to protect the privacy of citizens.

The PACE achieves this balance by both extending the power of evidence gathering beyond the common law position as well entrenching provisions that a constable provides reviewable facts before the circuit judge or a justice of the peace before a warrant of search is issued. These facts help to protect the public interest in protecting the privacy of citizens. The Nigerian situation is deficient in many ways. Section 28 authorizes a superior police officer to instruct any police officer to enter into premises in search of stolen property and search and seize any property he may believe to be stolen. When he finds property he believes to be stolen, he may arrests the owner or occupier of such property or good. There are no provisions about how the superior police officer should come to the understanding that a probable cause exists to issues a search warrant. PACE requires the justice of the peace must be satisfied that:

- (a) that a serious arrestable offence has been committed; and
- (b) that there is a material on premises specified in the application which is likely to be of substantial value (whether by itself or together with other materials) to the investigation of the offence; and
- (c) that the material is likely to be relevant evidence; and
- (d) that it does consist of or include other items subject to legal privilege, excluded materials or special procedure materials; etc.

Furthermore, PACE requires that the constable must state that it is not possible to communicate with any person entitled to grant entry to the premises; or it is not practicable to communicate with any person entitled to gain access to the evidence, even if it possible to communicate with any person who can gain lawful entry; that the purpose of the search will be frustrated unless a constable arrives with a warrant; etc. This sort of due process constraint needs to be provided by the new police act in other to negative any incentive for police officers to embark on capricious entry and search of premises. Again, I consider it wrong for the superior police to empower to issue warrants to any of his men and officers to enter forcefully into a premises and conduct a search. This compromises rule of law and due process. The act should invest of issuing police officers search warrant on authorities outside the police force in other to check the tendency towards institutional abuse of power. If it is

the police officer who grants the application for issuance of search warrant of another police officer, the necessary oversight may be compromised.

Stop and Search

The other issue of 'stop and search' under section 29 needs review. I recognize that there may be situations where the police officer observes physical evidence that gives her reasonable belief that a person possesses anything that might be stolen. In such situations it is not possible to secure a warrant of arrest. Balance has to be struck between preemptive action and due process. In this light the new police act may incorporate safeguards that require the police officer who feels he has enough objective facts to make such a call to endorse his reasons so that it can become a basis for judicial review.

Public Order and the Right of Free Speech and Freedom of Association

The Public Order Act directs that any person proposing a procession, meeting or assembly on a public road or a place of public resort, must apply to the Governor for license. The Governor exercises this power through the commissioner of police or the divisional police officer. Subsection (6) of section 1 purports to make the decision of the Governor on the grant of license incapable of judicial review before a competent court. This power is overbroad. The act simply invests the police with this power without provide for intelligible principles to guide their exercise. When groups and individuals apply for permission to hold public procession and the commissioner of police rejects their application, how will they know that due process has been followed or that the commissioner of police as a person who has a duty to act fairly has properly applied his mind? This is excessive power without legal discipline. Again, the public order act does not discriminate between public processions that are peaceful and lacks the capacity to threaten peace and those that do not.

The position in Britain and the United States is different. The Public Order Act 1986 of Britain takes a different philosophy of law and order. It does not place a blanket ban on public procession. It provides for the sort of procession

that require license, thereby expressly protecting the right of citizens to assembly freely. Section 11 thereof provides that, “Written notice shall be given in accordance with this section of any proposal to hold a public procession intended –

- (a) to demonstrate support for or opposition to the views and actions of any person or body of persons,
- (b) to publicize a cause or campaign, or
- (c) to mark or commemorate an event, unless it is not reasonably practicable to give an advance notice of the procession.

The difference between this provision and section 1 of the Nigerian public order act is that the latter expressly makes it an offence for “any person to convene any assembly or meetings without license; whereas the former restricts the requirement of license to only certain assembly that involve advocacy of special interests views that could lead to riotous situations. The blanket prohibition of public meeting lends to unintended violation of the freedom of assembly. Based on our constitutional guarantee of freedom of assembly (we should bear in mind that the guarantee of right is stronger in Nigeria than in Britain because, except for the newly enacted human rights act, civil liberties are overridden by parliamentary act), no law should place a blanket ban on freedom of movement. This is the position in the United States where police interference with personal liberty, including the freedom of movement requires valid criminal cause and the showing that the legitimate state interest to be realized by such interference far outweigh the private benefit of exercise of right and there no least interruptive manner of realizing this overwhelming state interest.

In Nigeria, we have faced situations where police abridged the right of peaceful assembly and protest at the instance of the government in power. In a plural society this amounts to a truncation of democracy, since democracy in such a society will involve contest and competition for power and ideological influence. Review of policing in Nigeria should reexamine the extent and limit of police power over public assembly. To allow the commissioner of police unlimited discretion over the right of public assembly without establishing clear guidelines for the exercise of such right will amount to a

frontal attack on freedom of assembly and cut against the grain of the decision of the Supreme Court in *Fawehinmi v. Abacha* to the effect that the power of judicial review extends to requiring reasons for the exercise of executive discretion in matters of public security. This is also in keeping with the principle laid down by the House of Lord in the *Associated Provincial Picture Houses v. Wednesbury Corpn* (1948) 1 KB 223 that discretionary acts founded on wrong motives and erroneous facts are reviewable. There is need to balance between the right of the majority to public order and the right of the minority to protest. The Rt. Hon. Lord Scarman OBE in his report on the Red Square Disorder of 15 June 1974 puts it this way: “Amongst our fundamental rights there are, without doubt, the right of peaceful assembly and public protest and the right to public order and tranquility. Civilized living collapses – it is obvious- if public protest becomes violent protest or public order degenerates into the quietism imposed by successful oppression. But the problem is more complex than a choice between two extreme- one, a right to protest wherever you will and the other, a right to a continuous calm on our streets unruffled by the noise and obstructive pressure of the protesting procession. A balance has to be struck; a compromise found that will accommodate the exercise of the right to protest within a framework of public order which enables ordinary citizens, who are protesting, to go about their business and pleasure without obstruction or inconvenience. The fact that those who at one are concerned to secure the tranquility of the streets are likely to be the majority must not lead us to deny the protesters their opportunity to march: the fact that the protesters are desperately sincere and are exercise a fundamental right must not lead us to overlook the rights of the majority” Speaking on the responsibility of the police with respect to balancing the right to protest and the entitlement to public order, Lord Scarman reasons that “The police are not required in any circumstances to exercise political judgment. Their role is the maintenance of public order- no more, and no less. When the national front marches, the police have no concern with their political message; they will intervene only if the circumstances are such that a breach of peace is reasonably apprehended. Even if the message be ‘racist’, it is not for the police to ‘ban the march’ or compel it to disperse unless public order is threatened”. This desirable state of affairs can only be procured through a legal regime that specifies the objective reasons which the commissioner of police or other superior police

officer must provide to justify refusal of permit or dispersal of public assembly and meeting.

Internal Discipline and Oversight

Another issue that came up for review during the interactive forum is the issue of internal discipline of police officers. The disciplinary process determines the culture of policing. The British pride themselves with having the most civilized police. The civil behavior of the British police is partly accounted for by the quality of due process proceedings that can be triggered against unlawful behaviors. These proceedings are both external and internal. The high courts of justice ensure that externally the performance of police officers complies with the requirements of rule of law and natural justice. Internally, it is the work of police disciplinary mechanism that ensures that the police respect the high expectation of decorum, civility and objectivity.

This discussion on police internal discipline relates to the question of the corruptibility of the police. There is no question that the issue of the corruption of police power is very important in every aspiring or flourishing democracy. In Nigeria, we are witnesses to how this power has been abused with regards to private citizens and democratic politics. The nefarious role of the police in aiding and abetting electoral fraud in Nigeria is almost a legend. The latest case of the improper and irregular attempted abduction of Governor Chris Ngige is to the point. Newspapers are full of stories of daily brutalization of Nigerians in the guise of enforcing the law. As John Alderson emphasizes, “All well-ordered societies make considerable efforts to prevent corruption of public officials by passing appropriate laws and exacting high standards of personal probity. This particularly applies to the police since corruption of the police is a negation of all that they stand for”.

In Britain, the issue of the corruption of police power drew serious attention in the case of Detective Sergeant Challenger. A.E. James Q.C in his report of inquiry made this interesting point: “In any disciplined force there are rules and regulations which must be observed. Nevertheless in order to get on with the job in hand there is always the temptation to disregard a rule, to “take a

short cut”, or to subscribe to the view that the end justifies the means of getting there. An atmosphere can grow which, if allowed to grow, undermines discipline and produces wrongful acts and omissions. It is the atmosphere in which the lower ranks of a disciplined force know that there are certain things which are contrary to regulations and which are wrong, but they also know they are allowed to do those things provided they are found out, no one is going to try very hard to find out”. The key task is how to create through internal procedures a culture that punishes abuse of police power.

In the light of Nigerian experience with abusive police power, the new law should establish clear administrative procedures for internal discipline of police officers who abuse their power. The police act does not contain any provision on internal discipline that deals with how police officers relate to the public, how they police freedom. Section 37 creates offences, but none of these offences deals with misconduct in excessive use of force or violation of civil liberties in performance of official duties. Equally, Part xv of Police Regulation provides for disciplinary measures against police force with regards to complaint of grievances and wrongs. Unfortunately, this has nothing to do with grievance by the public against police officers. It is about grievance by a police officer against another police officer. Section 353 is on the issue of conflict of private and public interests.

The point is that although the police has its own internal disciplinary procedure, this procedure does not address some aspect of corruption of police power and the internal procedure is not set up from the perspective of the citizens who are customers (and oftentimes, victims) of police abusive conducts. What we require is something resembling the provisions in the PACE. Sections 82-92 of PACE set out requirements of recording and investigation of complaints from the public. The important issues in the procedure are the channels of procedure for investigation and the reporting procedure of internal police operations. PACE requires the Police Complaint Authority to issue annual reports to the public and the Secretary of State on the working of sections 82-92. This creates transparency and accountability in disciplining of erring police officers. Bearing in mind that many Nigerians are poor and cannot maintain a long-winded litigation to enforce their rights against erring officer, transparent

and accountable internal disciplinary procedures become in the long run the greatest control on police public misconduct. There are many ways to structure fully transparent and accountable disciplinary procedures. The drafter can reflect our local context in the provisions of disciplinary procedures as long as it allows for transparency and engagement of the complainant.

Control of Police Activities

The need to distinguish between the responsibility to ensure efficiency of the force and the control and direction of its operation was earlier observed. The police must be autonomous. This does not mean that the police should be a force unto itself. The question is who should determine general policing policy? Section 6 of the police act says the police force shall be under the command of the Inspector General of Police. Section 10 entitles the President to give directions “with respect to maintaining and securing of public safety and public order” as he deems necessary; and the IGP is obliged to comply with the directions. The law subjects the IGP to the control of the president. This does not guarantee independence and impartiality.

Recruitment and Training of police officers:

The new police force requires new persons with special skills and aptitudes. These skills and aptitudes can be developed through formal and informal training. But still there is need for persons with the right aptitude in the police force. The police force requires that senior police officers (cadet ASP) should possess university education. Fresh police officers can be school certificate holders. In view of the general intelligence deficiency exhibited by some police officers, many people are of the opinion that recruitment to the police be open to persons who have recognized degree. Whereas the entry requirement is important, I do not think it is the most important issues in police conduct. The quality of training which police officers receive is the most important policy issue in the management of police conduct. Sections 55, 56 and 103 provides for training of various categories of police officers. One significant fact is that none of these sections is sufficient for the responsibilities that a modern society imposes on the police force. A closer look at section 55 shows

that the required coursework for a cadet officer for 12 months deals more with drills and less with human rights, political philosophy and psychology, which are subject matters with a lot of insights for democratic policing. There is need to drastically review the curriculum of police training schools so that the focus should be on coursework that exposes the recruit to the moral and social complexities and inculcate in him the discipline of civility, tactics and respect for human rights. A research report on the English shows that the greater focus is on the intellectual and moral resources of the force rather than on armament. The English police officer is effective because he is able to engage the citizen intelligently and civilly and gather actionable intelligence.

Needless to say, training is key to the re-imagining of police force as an institution. The ideals which are implied in the new vision articulated by the acting IGP need to be communicated via official and unofficial training and education of officers and men and women of the Nigerian Police Force. The National Human Rights Commission can help design a human rights curriculum for the police. The Police Services Commission should take over the responsibility of design and updating training modules for the police. The police act may not state specific course and subjects which applicants to the office should have or which must be taught in the police colleges, rather it should specify the focus and priorities of police education.

Internal Democracy/The Position of Women: (to be adumbrated in presentation of report). The main point here is to ensure that there are no unreasonable restrictions to the performance of police functions by women. Also, there should be no discrimination against women in terms of special procedures or requirements which are not related sensibly to well established and factual differences. The law should be brought to speed with actual police practices, and the governing consideration should be professionalism not gender.

Local/ Community Policing

There is no express mention of community policing in the police act, even though the police force has begun some form of community policing. The

sections on supernumerary police and special constable raise the issue of local policing. It is now time to consider giving formal legal backing for community police especially in the context of the existence of many police-community initiatives and many vigilante groups doing informal policing work. But, a note of warning. Community or local policing is not about distributing police men to localities and still retain control over their operations. It is about allowing autonomous police units in the local areas and mandating the development of policing initiatives for these localities based on their local resources and contexts. In England, the PACE (Section 106(1) provides that: “Arrangements should be made in each police area for obtaining the views of people in that area about matters concerning the policing of the area and for obtaining their co-operation with the police in preventing crimes in the area”. Lord Scarman reinforced the importance of local initiatives in effective policing when in his report on The Brixton Disorders (Cmnd. 8427, 1981) he opined that, “If a rift is not to develop between the police and the public as a whole (not just the members of the ethnic minority communities) it is in my view essential that a means be derived of enabling the community to be heard not only in the development of policing policy but in the planning of many, though not all, operations against crimes”.

It is obvious that, whether we accept the idea of state or regional police or not, we need to local policing initiative and allow certain independence and autonomous to community-based or oriented police unit. This is a matter of efficiency as well as political self-determination. A police force that is more locally resourced and focused will attract more solidarity and support and be able to gather more human intelligence to fight crimes.

Section II

NIGERIA POLICE SERVICE BILL

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81. Steps to be taken after investigation.

NIGERIA POLICE SERVICE ACT

This is An Act to establish and regulate the Nigeria Police Service that shall protect the rights and freedoms of persons in Nigeria, enforce laws and regulations and prevent the commission of crimes in an effective and efficient manner and specifically: ensure safety and security of all persons and property in NIGERIA; uphold and safeguard the fundamental rights of every persons as guaranteed under the constitution; ensure the cooperation between the service and the communities it serves in combating crime; reflect the respect for victims of crime and understand their needs and ensure effective civilian supervision over the Police.

PART I PRELIMINARY

I. Citation.

- (1) This Act may be cited as the Nigerian Police Service Act.

Commencement.

- (2) The Act shall have effect from the day it is signed into law.

2. Guiding Principles This Act is based on the principles of -

- (1) Efficiency and effectiveness,
- (2) Political Accountability, and

- (3) Protection of human rights and fundamental freedoms

3. Specific objectives The following are the specific objectives of this Act –

- (1) To repeal the Police Law of 1967 No
- (2) To establish a Police Service that is friendly, humane and efficient
- (3) To instill in the operations of the Police Service the values of fairness, justice and equity.
- (4) To make the police responsive to the calls of the citizens and needs of the community and to respect the dignity of citizens.
- (5) To efficiently and effectively prevent crimes without unduly threatening the values of liberty and privacy
- (6) To establish a Police Service that is well funded, motivated, trained and proactive in operations.

4. Interpretation

In this Act, unless it is provided otherwise in this law or any other law in force in Nigeria:

Any usage of the male pronoun ‘He’ also mean ‘She’

“Constable” shall mean any police officer below the rank of corporal,

“**Commissioner**” shall mean a Commissioner of Police, a Deputy Commissioner of Police or an Assistant Commissioner of Police,

“Constitution” shall mean the Constitution of the Federal Republic of Nigeria, 1999

“**Inspector-General**”, “**Deputy Inspector-General**” and “**Assistant Inspector- General**” shall mean respectively the Inspector-General of Police, the Deputy Inspector- General of Police and an Assistant Inspector-General of Police,

“**Inspector**” shall include a chief inspector and an inspector of police, and a cadet inspector of police

“**Non-commissioned officer**” shall mean a police Sergeant-major, a police Sergeant or a police Corporal as the case may be,

“**Police officer**” shall mean any member of the Nigerian Police Service,

“Prosecuting officer” shall mean any person appointed by the Attorney-General of the Federation or of the States to prosecute crimes on their behalf and for the Nigerian Police Service.

“Superintendent of police” shall mean a Chief Superintendent of Police, a Superintendent of Police, a Deputy Superintendent of Police, and an Assistant Superintendent of Police, *and a Cadet Assistant Superintendent of Police.*

“Senior police officer” shall mean any police officer from (above) the rank of a Cadet Assistant Superintendent of Police,

“The Police” shall mean the Nigerian Police Service established under this Act,

PART II

Constitution and Employment of The Police

5. Establishment and Composition of the Nigerian Police Service

- (1) On the date that this Act comes into effect, there shall be established for Nigeria a police organization to be known as the Nigerian Police Service which shall replace the former Nigeria Police Force and assume its rights, powers, privileges, liabilities, and structures and organs.
- (2) The Service shall consist of-
 - (a) All persons who immediately before the commencement of this Act were members-
 - (i) A Force established by section 214 of the 1999 constitution of the Federal republic of Nigeria which is deemed to be part of the service;
 - (ii) Appointed by the Police Service Commission under the constitution;
 - (iii) Appointed as special constables under section 49 of the Police Act Cap. 359 Laws of Federation 1990; and
 - (b) Such other persons that may be appointed under this Act

6. General duties of the police

- (1) The Police shall be employed to perform the following duties –
 - (a) To protect the rights and freedom of every person in Nigeria as provided in the Constitution, the African Charter on Human and Peoples' Right, and any other law.
 - (b) To protect the lives and property of citizens
- (2) To promote and protect the fundamental rights of all persons as guaranteed by Chapter 4 of the Constitution and the African Charter on Human and Peoples' Rights and any other law, treaty or convention to which Nigeria is signatory.
- (3) To prevent and detect crimes without threatening the liberty and privacy of the citizen.
- (4) To secure the safety and security of life and property of the citizenry.
- (5) To facilitate the free passage and movement on highways, roads, streets, and avenues open to public without subjecting citizenry to inhuman treatment or any form of extortion
- (6) To provide humanitarian assistance for citizen(s) in distress, like victims of domestic violence, destitute, minorities, victims of human trafficking, victims of road accident, fire disaster, earthquake, flood, etc., and where necessary activate other agencies for humanitarian assistance;
- (7)
 - (a) To establish and manage human rights desks in all police stations to take care of and prevent instances of human rights abuses by the police in their interactions with the public, and keep records of such violations that are reported.
 - (b) Human rights desks mentioned above shall be coordinated and managed in collaboration with the office of Executive Secretary of the National Human Rights Commission or the Zonal or State offices. Representatives of any other agencies accredited by the courts to perform such functions.

- (c) The journal of the Police Human Rights Desk shall be a public document accessible to all citizens at all times.
- (8) To perform military duties within or without Nigeria in accordance with the Nigeria Constitution or any bye laws to that effect
- (9) To partner with sister agencies of government and private concerns in ensuring the provision of conducive environment for the enjoyment of civil liberties, the execution of entrepreneurial drives and the improvrmnt of the quality of life of the citizenry

7. Establishment of the Nigerian Police Council

- (1) There is hereby established a body to be known as the Nigerian Police Council (in this Act referred to as “the Council”) which shall consist of-
 - (a) The President, who shall be the chairman,
 - (b) The Minister of Police Affairs
 - (c) The Attorney General of the Federation
 - (d) The Chairman of the Police Service Commission,
 - (e) The Inspector-General of Police,
 - (f) Governors of the 36 states of Nigeria
- (2) The functions of the Council shall include –
 - (a) The organization and administration of the Nigeria Police Service and all other matters relating thereto (not being matters relating to the use and operational control of the Police, or the appointment, disciplinary control and dismissal of members of the Police)
 - (b) The general supervision of the Nigerian Police
 - (c) Advising the President on the appointment of the Inspector General of Police
- (3) The Permanent Secretary in the Ministry of Police Affairs shall be the Secretary to the Council and the Secretariat of the Council shall be in the Ministry of Police Affairs

- (4) The Police Council shall meet quarterly
- (5) The Minister of Police Affairs shall be responsible for the political oversight of the Police in terms of resources and efficient utilization of resources

PART III

8. Hierarchy of the Police

Pursuant to Section 215 (1) of the 1999 Constitution, the hierarchy of the Police shall constitute of the following-

- (i) The Inspector-General of the Nigeria Police,
- (ii) Deputy Inspectors- General,
- (iii) Assistant Inspectors-General,
- (iv) Commissioners of Police and such other officers as the Nigeria Police Council may, from time to time, consider necessary for effective discharge of the functions of the service.

9. (1) The Inspector General of Police shall be the head of the service.

(2) The person to be appointed as Inspector General of Police shall be a senior police officer of the rank not below Commissioner of Police.

(3) The person for the office of the Inspector General of Police shall be appointed as follows:

- (i) The Nigerian Police Council by a two-third resolution of its members nominate three persons;
- (ii) The President shall appoint one of the three persons nominated by the Nigerian Police Council, and
- (iii) The National Assembly shall confirm the appointment by a Two-Third resolution of the Senate.
- (iv) The National Assembly may consider organizing a public hearing before confirming the appointment of the Inspector General of Police

- (4) The Inspector General of Police shall not be removed from office except on the following grounds
- (i) gross misconduct,
 - (ii) gross violation of the constitution or
 - (iii) demonstrated incapacity to effectively discharge the duties of the office.
- (5) The Inspector General of Police shall not be removed from office except:
- (i) A report or complaint of gross misconduct or incapacity to perform his or her duties has been made against him or her by any person, including the President
 - (ii) The Nigerian Police Council considers the allegations against him or her serious and sets up a committee of the Council to investigate the matter,
 - (iii) The Committee investigates the allegation, and after fair hearing, recommends that the Inspector General be National Assembly confirms the removal of the person by a two-third majority votes of its members.
- (6) The person appointed to the office of the Inspector General of Police shall hold office for a maximum period of 5 years.
- 10.**(1) The Deputy Inspectors General and Assistant Inspectors General shall be appointed by the Police Service Commission.
- (2) Persons appointed under subsection (1) above shall hold office until retirement or removal according to due process.
- 11.**(1) State Commissioners of Police of shall be appointed by the Police Service Commission on the recommendation of the Inspector General of Police. Commissioners of Police shall hold office in a State for a term not exceeding 3 years unless they retire or are dismissed for gross misconduct by the Police Services Commission after a thorough investigation and fair hearing.

12. Powers and Duties of the Inspector General

- (1) The Inspector General of police may exercise the powers and shall perform the duties and functions necessary to give effect to section 6.
- (2) Subject to subsection (1) above, the Inspector General powers, duties and functions shall include the powers, duty and function to –
 - (a) Develop a 3-year National Policing Plan at the commencement of this Act and this would be reviewed periodically (every year) to reflect the policing priorities and the needs of the citizens.
 - (b) The National Policing Plan shall be submitted to the National Assembly at the beginning of each financial year.
 - (c) A detailed annual report that ‘speaks’ to the National Policing Plan should be submitted to the National Assembly at the end of every financial year; same should be released to the media
 - (d) determine the distribution of the numerical strength of the Nigerian police after due consultation with the Police Service Commission,
 - (e) ensure that such distribution and posting of the police (is sensitive to the ethos of the various localities) such that two thirds of the personnel from the position of the Divisional Police Officers shall be drawn from the state or states with contiguous culture where the number required cannot be met.
 - (f) organize or reorganize the police at national level into various components, units or groups subject to approval from the Police Service Commission.

- (g) establish and maintain training institutions or centers for the training of officials and other members,
- (h) perform any legal act or act in any legal capacity on behalf of the service

13. Duties of the Deputy Inspector-General of Police

- (1) A Deputy Inspector-General is the second in command of the Police and shall act for the Inspector-General when the Inspector-General is absent from the Police Headquarters.
- (2) When acting for the Inspector-General, the Deputy Inspector-General shall be guided by the following-
 - a) all matters involving any change in police policy shall be held in abeyance until the Inspector-General returns or, if the matter is urgent, referred directly to the Inspector-General for his instructions, provided such matters do not contradict the general policy directive of the Police Council .
 - b) all matters of importance dealt with by the Deputy Inspector-General during the absence of the Inspector-General shall be referred to the Inspector-General on his return.

14. Commissioner of Police: powers, duties and functions

- (1) Subject to this Act, a State Commissioner of Police shall have command and control over the police command in the state of the federation to which he is posted in line with section 11 above and may exercise the powers and shall perform the duties and functions necessary to give effect to section 6 of the this Act.
- (2) A State Commissioner of police shall perform any duties delegated to him by the Inspector General subject to section 9 (2).

- (3) A State Commissioner of Police shall, subject to the directions of the members of the State Executive Council be responsible for establishing community police forums and community police boards in the state under his command.

15. Delegation by Inspector-General

The Inspector-General may delegate any of his powers under this Act, so that the delegated powers may be exercised by the delegate with respect to the matters or class of matters specified or defined in the instrument of delegation.

16. Command of police in case of active service

When required to perform military duties in accordance with the provisions of section 6 (11) of this Act, such duties entailing service with the armed forces of Nigeria or any force for the time being attached thereto or acting therewith, the police shall be under the command and subject to the orders of the officer in command of the armed forces in Nigeria, but for the purposes of interior security, shall remain under the control of a superior police officer.

PART IV

General administration

Oaths for officers

17. Oath to be taken by officers on appointment

On the appointment or promotion of any person as a member of the police to or above the rank of cadet inspector, the provisions of the Oaths Act shall apply; and such person shall forthwith take and subscribe to the official oath, the police oath and, in proper case, the oath of allegiance.

Enlistment and service

18. Enlistment

A non commissioned officer constable or recruit shall, on appointment, be enlisted to serve in the Police for six months in the first instance or for such other period as may be fixed by the Police Service Commission which shall take effect from the day he has been approved for service.

19. Extension of term of enlistment in special cases

- (1) Subject to section 18 of this Act, the Chairman of Police Service Commission may extend the service of constable whose service is needed beyond general duties for a period of six months in special cases.
- (2) Subject to subsection (1) of this section, a constable that serves an extension may be considered for a re-engagement into the Police service provided he or she applies for it.

20. Declarations

A non-commissioned officer, constable or recruit constable on fresh enlistment, or the one re-engaged for a further period of service, shall make and subscribe to the police declaration prescribed by the Oaths Act.

21. Re-engagement

- (1) Upon approval by appropriate authority a non-commissioned officer or constable of good character may be re-engaged to serve for a second period of six years as well as third period of six years or until he reaches age of 45 years (whichever is earlier).
- (2) Upon completion of such third period of six years, or if he or she has re-engaged until reaching the age of 45 years the non-commissioned officer or constable may be discharged or may claim a discharge provided a six months notice is given to or by him or her.
- (3) The prescribed approval referred to in subsections (1) and (2) of this section shall be that of the Chairman of the Police Service Commission or of a superior police officer to whom the Commission's Chairman has duly delegated the power to give such approval, and the prescribed notice referred to in subsection (2) shall be given by or to the Police Service Commission via its Chairman or to a superior police officer to whom the Commission's Chairman has duly delegated the power of giving or receiving such notice.
- (4) If a non-commissioned officer or constable offers to re-engage within six months after having received his discharge he will, if his offer of service is accepted, on re- engagement be entitled to the rank which he was

holding at the time of his discharge, provided there is a vacancy in the establishment of that rank at the time he or she re-engages.

- (5) The service of a non-commissioned officer or constable who has re-engaged under this section shall be deemed to be continuous for the purposes of the pension or annual allowance or gratuities, as the case may be, the non-commissioned officer or constable being regarded as being on leave without pay during the period between discharge and re-engagement.
- (6) A non-commissioned officer or constable may not be re-engaged after a period of six months has elapsed since his discharge, except his offer of service is accepted.
- (7) The question of the reinstatement of a re-enlisted non-commissioned officer or constable to the rank he held prior to his discharge shall be decided by a superior police officer.
- (8) A non-commissioned officer or constable whose period of service expires during a state of war, insurrection or hostilities, may be compulsorily retained and his service prolonged for such period, not exceeding twelve months, as the Police Service Commission may direct.
- (9) Subject to the provisions of section 7 (1) of the Pensions Act and to the provisions of subsection (2) of this section, no police officer other than a superior police officer shall be at liberty to resign or withdraw himself from his duties without the approval of the Police Service Commission or any police officer authorized in writing by the Police Service Commission.

PART V

Powers of police officers

22. Conduct of prosecutions

- (1) The power, provided under provisions of sections 174 and 211 of the Constitution of the Federal Republic of Nigeria 1999, to-
 - (a) Institute and conduct criminal proceedings on behalf of the State

- (b) Take over and continue criminal proceedings against any person before a court of law
 - (c) Carry out necessary functions incidental to instituting and conducting criminal proceedings; and
 - (d) Discontinue criminal proceedings against any person before any court of law in Nigeria shall vest on the Attorney-Generals of the Federation and the states
- (2) To ensure effective, quick and fair prosecution of cases investigated by police officers, the Attorney General of the Federation and the states shall appoint prosecuting officers among officers of their departments who will.
- (a) Implement the criminal prosecution policy of the Attorneys General,
 - (b) Have office in police stations or divisional offices of the Police, and
 - (c) Prosecute criminal offenders on behalf of the Nigerian Police.
- (3) The person(s) to be appointed prosecuting officer (s) under subsection (2) shall be person (s):
- (a) who has been called to the Nigerian Bar and licensed to practice in every court in Nigeria; and
 - (b) who has not been found guilty of gross misconduct in a professional matter by either a court of law or a legal practitioners disciplinary committee; provided that a police officer who is also licensed to practice law in Nigerian courts of law may also be appointed a prosecuting officer.
- (4) A prosecuting counsel appointed under subsection (1) shall be answerable to the Attorney General of the Federation or the state in every matter concerning the prosecution or discontinuation of prosecution of criminal cases.
- (5) Where there is not enough legal practitioners to be posted to police stations to prosecute crimes, the Chief Justice of the Federation may lay down conditions for the certification of a police officer as a prosecutor.

Such conditions shall include requirements of academic coursework on criminal law and procedure, fundamental human rights, etc, and the officer to be certificated shall pass a test approved by the Chief Justice of the Federation

23. Prosecution Policy and Issuing of Policy Directives

- (1) The Attorney General of the Federation shall, in accordance with section 177 of the constitution and such other provisions, determine the prosecution policy and issue such directives to realize such policy. Such prosecution policy shall be mandatory on all prosecution counsels and must be published in an official gazette.
- (2) The power of the Attorney General to discontinue criminal proceedings shall be exercised in accordance with the prosecution policy. Where the Attorney General issues an order to discontinue criminal proceedings against any person by himself or herself or through any of the prosecution counsel the order to discontinue criminal proceeding must contain verified statements about how discontinuing criminal proceeding against a person in the present social, economic and political contexts promotes the prosecution policy and accords with directive principles of state policy in the constitution.
- (3) Where a person other than the Attorney General of the Federation or the state as the case may be, discontinues criminal proceedings against any person, he or she shall present to the court where the proceedings are pending a copy of an authority to discontinue proceedings under the hand and seal of the Attorney General of the Federation
- (4) Where a prosecuting counsel discontinues criminal proceedings, any person who is aggrieved with the discontinuance can apply to the Attorney General of Federation for review of the decision. The Attorney General's decision on the appeal must be based on reasons and in writing to the applicant.

24. Decision to file case.

- (1) Where a crime is reported to the police or a person is brought to police station on the allegation of commission of criminal offence, it shall be

the duty of the police to investigate such allegations according to its internal processes and procedures and report their findings to the prosecuting counsel who shall decide whether to file a charge or not.

- (2) During the period of investigation the police shall not detain the person under investigation without the warrant of the court authorizing detention.
- (3) Where a police officer is also a prosecuting counsel, he or she shall not prosecute a case which he participated in the investigation.

25. Power to arrest without warrant

- (1) In order to protect the fundamental rights of citizens and persons resident in Nigeria, a police officer may arrest a person without warrant in the following cases-
 - (a) where the officer finds a person committing an offence that is punishable under Nigerian laws *such as* felony, misdemeanour or simple offence, or he reasonably suspects a person of having committed or of being about to commit any felony, misdemeanour or breach of the peace, theft or burglary related offences,
 - (b) when a formal complaint has been reported and verified on oath or a person calls a police officer via telephone and reports and verifies that any person has committed, or is about to commit or is committing the offences stated in section 26 (1a) above ,
 - (c) when a person reported and verified on oath that he or she found a person committing or proved that a person has committed or have a reasonable ground to suspect that a person is about committing any act of sexual offence,
 - (d) when a person reports and verifies on oath that a person is committing or has committed or has reasonable ground to suspect that another is committing or has committed an act of domestic violence against another person
 - (e) when a person reported and verified on oath that he or she found a person committing or proved to have committed or having a

reasonable ground to suspect a person is about committing any act of kidnapping, or involve in ritual killing, and

- (f) when a person reported and verified on oath that he or she found a person committing or proved to have committed or having a reasonable ground to suspect a person is about committing any drug related offences.
- (2) In all circumstances where a police officer suspects that a person has committed an arrestable offence or reasonably suspects that the person is about to commit such an offence, or acts on the reasonable belief of another person to arrest a person for commission or intention to commit a felony, misdemeanour or a simple offence, he or she shall endorse an official report as soon as practicable, but not more than 24 hours after the arrest, the grounds for his or her believing that the person ought to be arrested without a warrant
- (3) The provisions of this section shall not apply to any offence with respect to which it is provided that any offender may not be arrested without warrant.
- (4) For the purposes of this section the expression felony, misdemeanour and simple offence shall have the same meanings as they have in the Criminal Code / Sharia Penal Code.
- (5) All persons arrested shall be accorded human rights as guaranteed by the Constitution and any other international human rights treaties for which Nigeria is signatory.

26. Power to arrest without having warrant in possession

Any warrant lawfully issued by a court for apprehending any person charged with any offence may be executed by any police officer at any time notwithstanding that the warrant is not in his or her possession at that time, but the warrant shall, on the demand of the person apprehended, be shown to him or her as soon as practicable after his or her arrest, and not later than 24 hours after arrest.

27. Summonses

Any summons lawfully issued by a court may be served by any police officer at any time during the hours of daylight that is between 6.am to 6.pm.

28. Bail of person arrested without warrant

- (1) Upon arresting a person without warrant, the arrestee shall not be kept in police detention more than 24 hours without being charged before a magistrate court that has jurisdiction with respect to the offence the person is charged
- (2) The 24 hours is to be calculated –
 - (a) to the person it is applicable, it shall be –
 - (i) the time the arrestee arrived at the relevant police station, or
 - (ii) after the time the arrestee is arrested, whichever is the earlier,
 - (b) In the case of a person who-
 - (i) attends voluntarily a summon by the police at a police station, or
 - (ii) accompanies a police officer to a police station and is arrested in the police station, the counting begins at the time of arrest in the police station,
 - (c) In the case of a person who-
 - (i) is injured in the course of arrest and thereby taken to hospital for medical treatment his counting for 24hours is after the hospital discharge provided he or she was not interrogated on the way to the hospital, or in the hospital or on the way back from the hospital, and
 - (ii) where he or she is interrogated on the way to the hospital, or in the hospital or on the way back from the hospital, the counting will include the time of the interrogation.
- (3) Subject to subsection (4) below, upon the expiration 24 hours without charge the arrestee shall be released at that time on bail or without bail.

- (4) Subject to subsection (3) above shall exclude arrestee if his or her detention is extended subject to sections 30 or 31 below.
- (5) A person released under subsection (3) above shall not be re-arrested without a warrant for the offence for which he was previously arrested provided there is no new evidence to justify a further arrest.

29. Authorized detention extension.

- (1) Where a senior police officer of the rank of superintendent or above who is in charge of the police station in question in which a person is detained has a reasonable ground to believe that-
 - (a) the arrestee's detention without charge is imperative to secure or preserve evidence pertaining to an offence for which he or she is arrested or to obtain such evidence by interrogating him or her,
 - (b) offence in which the arrestee is arrested for is a serious arrestable offence, and
 - (c) for the investigation to be speedily completed the extension is necessary, then, the arrestee shall be in police detection for a period not more than 36 hours.

30. Warrant of further detention.

- (1) Upon an application on oath made by a police officer and supported by relevant information, a magistrate of relevant jurisdiction court may extend a warrant of further detention provided that-
 - (a) the Magistrate in question found reasonable grounds to justify further detention,
 - (b) the application for extension is filed before expiration of 36 hours of the arrest, and
 - (c) the arrestee has been served with a copy of the information, brought before the court for hearing and is given opportunity to be legally represented.
- (2) where the conditions stated in Subsection 1a ,b, c are not met the Magistrate shall dismiss the application.

- (3) Subject to subsection (1) above, the Magistrate shall not extend the detention beyond 36 hours.
- (4) Where the person to be detained is sick or of unsound mind, pregnant or a nursing mother special provision pertaining to appropriate accommodation, medical psychology and dietary facilities shall be provided by the detaining authority

31. Special Provision for Pre-Trial Detention

- (1) Where a person is detained in a police custody and the prosecuting counsel decides he or she has a case to answer but has not concluded preparation to arraign him or her at the appropriate court the prosecuting counsel may apply to a High Court judge for a warrant of detention pending conclusion of preparation for trial.
- (2) The High Court Judge shall not grant such detention warrant except in the following circumstances:
 - (a) The offence for which the person is to be charged carries a sentence of 3 years imprisonment after conviction,
 - (b) there is a verifiable evidence on oath that the person sought to be detained will materially interfere with investigation or escape from criminal trial if granted bail; and
 - (c) there is no other way of ensuring attendance of the person to trial and non-interference with investigation except by remand in police custody.
- (3) Application for detention pending trial under this section shall not be granted except there is an affidavit before the judge verifying the facts relied upon and the person sought to be detained file a court affidavit and is given opportunity to challenge the application.

32. Power to search

- (1) Upon an application on oath made by a POLICE OFFICER and supported by relevant information, a magistrate of relevant jurisdiction may issue a warrant authorizing a POLICE OFFICER to enter and search the premises provided that-

- (a) the Magistrate in question found reasonable grounds to justify that a serious arrestable offence has been committed,
 - (b) the material on premises specified in the application is of vital value to the investigation of the offence, and
 - (c) the material is likely to be relevant evidence or admissible in evidence at a trial for the offence.
- (2) A POLICE OFFICER may seize and retain anything for which a search has been authorized under subsection (1) above.
 - (3) In every case in which any property is seized in pursuance of this section, the person on whose premises it was at the time of seizure or the person from whom it was taken if other than the person on whose premises it was, may be summoned or arrested and brought before a magistrate to account for his or her possession of such property, and such magistrate shall make such order respecting the disposal of such property and may award such costs as the justice of the case may require.
 - (4) Such authority as aforesaid may only be given when the premises to be searched are, or within the preceding twelve months have been, in the occupation of any person who has been convicted of receiving stolen property or of harbouring thieves, or of any offence involving fraud or dishonesty, and punishable by imprisonment.
 - (5) While searching the premises a constable shall not violate the human rights of persons found in the premises that is being searched.

33. Search warrant safeguards

- (1) A search warrant is unlawful unless it complies with this section and section 34 below.
- (2) Where a POLICE OFFICER applies for any such warrant, it shall be his duty-
 - (a) To state-
 - (i) the ground on which he or she makes the application, and
 - (ii) the law under which the warrant would be issued,

- (b) To specify the premises which he or she desires to enter and search, and
 - (c) To identify, as practical as possible the article(s) or person(s) to be sought.
- (3) An application for such a warrant shall be made formally supported by necessary information in writing.
 - (4) To be granted a warrant a POLICE OFFICER in question shall answer on oath any question the Magistrate ask him or her.
 - (5) A warrant shall authorize an entry on one occasion only.
 - (6) A warrant –
 - (a) Shall specify-
 - (i) the name of the person who applies for it,
 - (ii) the date on which it is issued,
 - (iii) the law under which it is issue, and
 - (iv) the premises to be searched, and
 - (b) shall identify, as practicable as possible, the article(s) or person(s) to be sought.
 - (7) Two copies shall be made of a warrant.
 - (8) The two copies shall be clearly certified as copies.

34. Execution of warrants

- (1) A warrant to enter and search premises may be executed by any POLICE OFFICER
- (2) Such a warrant may authorize persons to accompany any constable who is executing it.
- (3) Entry and search under a warrant must be within one month from the date of its issue.
- (4) Entry and search under a warrant must be at a reasonable hour unless it appears to the constable executing it that the purpose of a search may be on an entry at reasonable hour _____

- (5) Where the occupier of premises which are to be searched is present at the time when a constable seeks to execute a warrant to enter and search, the constable-
 - (a) shall identify himself or herself to the occupier and , if not in uniform, shall produce to him or her documentary evidence that he or she is a constable,
 - (b) shall produce the warrant to him or her, and
 - (c) shall supply him or her with a copy.
- (6) Where the occupier is not present, but some other person who appears to the constable to be in-charge of the premises is present, subsection (5) above take effect as if the occupier is present.
- (7) Where there is no person present as stated in subsections (5) and (6), a constable shall leave a copy of the warrant in a conspicuous place on the premises and make an endorsement on it stating that the occupier of the premises should report at the address of the police station the constable is representing.
- (8) Upon the execution of a warrant, a constable shall make an endorsement on it stating:
 - (a) whether the articles or persons sought were found, and
 - (b) whether any articles were seized, other than articles which were sought.
- (9) A warrant which-
 - (a) has been executed, or
 - (b) has not been executed within the time authorized for its execution, shall be returned to the clerk or appropriate officer of the court where it is issued.

35. Power to detain and search suspected person or vehicle

A police officer may detain and search any person or attended vehicle if any of the following conditions exist:

- (1) reasonable grounds for suspicion exist that the person being suspected is having in his or her possession or conveying in any manner anything which he or she has reason to believe to have been stolen or otherwise unlawfully obtained.
- (2) reasonable grounds for suspicion exist that unlawful articles obtained or possessed are being carried.
- (3) reasonable grounds for suspicion that incidents involving serious violence may take place within a locality.
- (4) where information has been received as a description of an article being carried or of a suspected offender.
- (5) where a person is carrying a certain type of article at an usual time or in a place where a number of burglaries or thefts are known to have taken place recently.

36. Where reasonable suspicion never exist

A reasonable suspicion can never be supported on the basis of –

- (1) personal factors like, a person's colour, age, hairstyle or manner of dress, or
- (2) that the person is known to have a previous conviction for possession of an unlawful article.
- (3) stereotyped images of certain persons or groups as more likely to be committing offences.

37. Action before a search takes place

- (1) Where an officer has the reasonable grounds for suspicion necessary to exercise a power of stop and search he may detain the person concerned for the purposes of and with a view to searching him or her.
- (2) Before carrying out a search the officer may question the person about his or her behaviour or his or her presence in circumstances which give rise to the suspicion, if, he or she has a satisfactory explanation which will make a search unnecessary or other circumstances which come to attention of the officer that make a search unnecessary, no search may take place.

- (3) Where the questioning reveal reasonable grounds to suspect the possession of suspected article or different kind of unlawful article a search may take place.
- (4) Before any search of a detained person or attended vehicle takes place the officer must take reasonable steps to give the person to be searched or in-charge of the vehicle the following information-
 - (a) (i) his or her name and the name of the police station to which he or she is attached,
 - (ii) the object of the search, and
 - (iii) his or her grounds or authorization for undertaking it.
- (5) For any police to exercise the power to stop and search he or she must be in uniform.
- (6) An officer shall take the record of the search (in a duly authorised format by the Nigeria Police Service) and give a copy of the record of search to the person being duly signed by the officer and the person being searched before leaving the location of the search.
- (7) Subject to section (6) –
 - (a) where it is impossible to give a copy of the search record to the person being search on the spot, the officer may advise the person of the police station he or she should apply for it within a month.
 - (b) a searched person may refuse to collect a search record that his or her signature is not appended.

38. Conduct of the search

- (1) Every reasonable effort must be made to reduce to the minimum the embarrassment that a person being searched may experience.
- (2) The co-operation of the person to be searched shall be sought in every case, even if he initially objects to the search.
- (3) A forcible search may be used as a last resort only if it has been established that the person is unwilling to co-operate or resist.

- (4) The length of time for which a person or vehicle may be detained for a search will depend on the circumstances, but must in a normal circumstances not exceed one hour.
- (5) Searches in public must be restricted to superficial examination of outer clothing.
- (6) where it is considered necessary to conduct a more thorough search, that requires a person to take off his cloth or headgear , it –
 - (a) shall be done out of public view and by officer of the same sex with the person being searched, and
 - (b) may not be made in the presence of anyone of the opposite sex unless the person being searched requests it.

39. Action after a search is carried out

- (1) An officer who has carried out a search must take a written record unless it is not practicable to do so, on account of the numbers to be searched or for some other operational reason, e.g. in situations involving public disorder.
- (2) The records must be completed on the spot unless circumstances make this impracticable (e.g. other immediate duties or very bad weather) and a copy be given to the person being searched or the vehicle driver if it is a vehicle.
- (3) Subject to subsection (2) above, in case the search record is available on the spot, the officer that carried out the search shall advice the person searched or the driver of the vehicle searched of the police station the person should apply to for collection.
- (4) A form must be designed or made for this purpose, which shall be known as National Search Record.
- (5) The following information must always be included in the National Search Record :
 - (i) the name of the person searched or (if he withholds it) a description of him,
 - (ii) the date of birth of the person searched,

- (iii) a note of the person's ethnic origin,
 - (iv) when a vehicle is searched, a description of it, including its registration number,
 - (v) the object of the search,
 - (vi) the grounds for making it,
 - (vii) the date and time it was made,
 - (viii) the place where it was made,
 - (ix) its results,
 - (x) a note of any injury or damage to property resulting from it,
 - (xi) the identity of the officer making it.
6. In case the person to be searched is unwilling to declare the detail information about himself, he may not be detained by the officer, he should be allowed to go unless unlawful items are found in his possession or in the vehicle searched.

40. Power to take fingerprints

- (1) A police officer shall take and record for the purposes of identification the measurements, photographs and fingerprint impressions of all persons who may from time to time be in lawful custody.
- (2) In case a person who has not previously been convicted of any criminal offence is discharged or acquitted by a court, all records relating to such measurements, photographs and fingerprint impressions including the document of acquittal or discharge shall be stored in a retrievable form and handed over to such person upon request.
- (3) A police officer is obligated to array before a magistrate any person in lawful custody, who refuses to submit to the taking and recording of his measurements, photographs or fingerprint impressions.
- (4) Subject to subsection (3) above, if a magistrate satisfied that such person who refused to undergo finger print impression, measurements, and photograph is in lawful custody, the magistrate shall authorize a police

officer to take the measurements, photographs and finger- print impressions of such person. .

41. Public safety and public order

- (1) The Inspector-General shall be responsible for the maintenance and securing of public safety and public order. In discharging this responsibility, the Inspector-General shall not-
 - (a) violate any provision of the constitution
 - (b) violate or fail to protect the fundamental rights of citizens
 - (c) refuse or fail to protect the right, property or legal interest of any person because of their opinions, beliefs or religious, ethnic or political affiliations
- (2) Subject to the provisions of subsection (1) of this section, the Commissioner OF POLICE of a State shall be responsible for maintaining and securing public safety and public order within the State.
- (3) Notwithstanding the provisions of any law, neither the Inspector General of Police nor the Commissioner of Police or their lawful delegates shall unreasonably disallow members of the public the right to hold peaceful rallies and processions and assemblies.
- (4) Where a person or organization applies to the High Court for permission to hold a public rally, procession, meeting or assembly on a public highway or such other places where the public has access to. The High court Judge issuing the permit shall grant it under the following conditions:
 - (a) the applicant possess capacity to conduct such rally, procession, meetings or assembly without breach of the law, public order or public safety of any member of the public within the premises of the event
- (5) Where the judge refuses to grant permission for an application to hold a public rally or procession or assembly, he or she shall state reasons for refusing permission in writing
- (6) A person or organization aggrieved by a decision of a judge rejecting an application for permit to hold a public meeting, rally, procession or

assembly may apply to a higher court in the State where the meeting, rally, procession or assembly is to take place to overrule the police officer and issue a permit. The higher court may grant permission on any condition it considers reasonable to protect the rights of other persons and maintain public security

PART VI

Property unclaimed, found or otherwise

42. Property unclaimed, found or otherwise

- (1) If a property is found by a police officer or any other person, the person who found it shall take it to the nearest police within 24 hours after it is found.
- (2) A police officer on the duty at that period of the day or night shall collect the property found and make a record of it.
- (3) A form shall be designed for lost but found property which must contain the following information:
 - (a) the name of the property found,
 - (b) the description of the state or general particular of the property found when it was brought to the police station/any other relevant information relating to the property,
 - (c) the date and time it was brought,
 - (d) the name, address and telephone number (if any) of the person who brought it to the station,
 - (e) the name and rank of the police officer who collected the found property, and
 - (f) the signature space for both the police officer and the person who found the property.

- (4) A police officer who collected the found property shall prepare two copies of the lost but found property form and a copy shall be given to the person who brought the property to the police station.
- (5) A senior police officer in –charge of the police station that is in possession of lost but found property shall make at least for three consecutive times a public announcement in public media – radio, television or print - about the lost but found property for the rightful owner to recover it with authentic evidence(s) that prove his ownership within a space of six (6) months.
- (6) After the expiration of six (6) months and the property remain unclaimed or the claimant(s) came, the senior police in-charge of the station in possession shall arraign the property and claimant (s) (if there is any) before a court of summary jurisdiction to determine the authentic owner.
- (7) Subject to subsection (6) above,
 - (a) if a court rules in favour of a claimant the property shall be handed over to the claimant, but the claimant shall refund the cost the police incurred for the announcement as well as any sum the court may direct to be paid as a reward to the person by whom the property was delivered into the possession of the police, and
 - (b) if the court can not ascertain the owner, the magistrate presiding over the case shall authorize the police that brought the case to court to sell the property and proceeds of the sale be paid into Police Reward Fund, after deduction of the cost (if any) of the sale and of any sum which the court may direct to be paid as a reward to any person by whom the property was delivered into the possession of the police.

43. Missing Persons

- (1) When a person appear in a police station in respect of a crime of an allegation of the commission of a crime, either as an accused person or a witness, or as a relation or friend of an accused person or a witness, the duty officer or such other officer as may be authorized by the officer in charge of the station, shall record in the official record book the following:

- (a) the name of the person and his national identity number (if he has any)
 - (b) the date of birth of the person
 - (c) the reason for the person's visits
 - (d) the name and address of the persons next of kin
 - (e) the exact time the person came to the station and leaves each day he visits
 - (f) any ailment or medical condition which the person suffers
- (2) The particulars mention in sub-section (1) shall be updated each day the person is still in the custody in the police station
 - (3) Any person who is aware that somebody under his or her employment or control is missing shall within 24 hours report to the police the identity of the missing person and the circumstance in which that person got missing. When such report is lodged with the Police, the duty officer or such other designated staff shall immediately record the names and addresses of the missing person and the person who reported the loss.
 - (4) When in exercise of police duty a person is shot, wounded or killed, the officer commanding the operation shall record the number of those who are wounded or killed; the names of such victims or their description as much as possible and efforts taken to ensure hospitalization or proper preservation of the dead person.
 - (5) It shall be a crime punishable with one year imprisonment for a officer to fail to keep the appropriate records mentioned in subsections (1), (2), (3) and (4) above.
 - (6) The Inspector General shall report to the Police Services Commission quarterly report itemizing the number and identity of persons who were killed or wounded during police operations across the country

44. Perishable articles

Where the property is a perishable article or its custody involves unreasonable expense or inconvenience it may be sold at any time, but the proceeds of sale shall not be disposed of until they have remained

in the possession of the police for six months, and at expiry date of six (6) months the police in-charge of the police station in possession of the proceed of the sale of the perishable article shall follow the injunction stated in Sections 41(6) and (7) (a) and (b).

PART VII

Other provisions

45. The Police Reward Fund

- (1) There shall be established a fund to be called “the Police Reward Fund” (in this section referred to as “the Fund”) into which shall be paid the following-
 - (a) all pay forfeited by order of a senior police officer on members of the Police for offences against discipline,
 - (b) all fines levied for assaults on members of the Police,
 - (c) one third of any fees paid by members of the public in respect of extracts from reports of accidents made by the police,
 - (d) one third of any fees paid in accordance with standing orders for the services of police officers who would otherwise be off duty,
 - (e) all sums ordered to be paid into the Fund under section (b).
- (2) Subject to the rules for the time being in force under section 23 of the Finance (Control and Management) Act with respect to disbursements from the Fund, the Fund shall be applied at the direction of the Inspector-General, based on criteria laid by the Nigeria Police Council, for any of the following purposes, that is to say- .
 - (a) to reward members of the Police for extra or special services,
 - (b) for procuring comforts, conveniences or advantages for members of the Police which are not authorized to be paid for out of moneys provided by the Federal Government,

- (c) for payment of *ex gratia* compassionate gratuities to widows or children of deceased members of the Force, and
- (d) for making *ex gratia* payments towards the funeral expenses of any member of the police who dies in the service of the police.

46. Police officer and indebtedness

- (1) While still in service, a police officer shall not get himself or herself trapped in indebtedness of any kind. If he does he or she shall face disciplinary procedures and the debt shall be recovered from his or her salary or remuneration provided the creditor has evidence(s) to prove the indebtedness.
- (2) Subject to subsection 44(1) above, for such debt or liability to be settled the officer's remuneration may be withheld to an extent not exceeding one half of any monthly payment thereof.
- (3) when an order for payment of such debt or satisfaction of such liability is made, the court making the order shall give due notice to the superior police officer in charge of the detachment to which the indebted officer belongs, and the amount ordered shall be stopped out of the indebted officer's remuneration until the amount of the debt is made good.

47. Debt recovery: exception

The remuneration of a police officer shall not be withheld upon any debt or liability which he may have incurred within three years before being appointed to the Police.

48. Private business and Conflict of Interest

- (1) While still in service, a police officer shall not directly be involved in managing and running any private business or trade.
- (2) There shall be a list at every police State command of the proprietary interests of every Senior Police Officer in any registered company in Nigeria and every moveable and immovable property. This register shall be updated monthly and open for public examination and extract at reasonable price.

PART VIII
Offences

49. Offences by Police officer

- (1) Any police officer other than a senior police officer who—
- (a) begins, raises, abets, countenances, or excites mutiny;
 - (b) causes or joins in any sedition or disturbance whatsoever;
 - (c) being at any assemblage tending to riot, does not use his utmost endeavour to suppress such assemblage; .
 - (d) coming to the knowledge of any mutiny, or intended mutiny does not without delay give information thereof to his superior officer;
 - (e) strikes or offers any violence to his superior officer, such officer being in the execution of his duty;
 - (f) deserts or aids or abets the desertion of any officer from the Force;
or
 - (g) on enlistment falsely states that he has not been convicted or imprisoned for a criminal offence or that he was never employed by the Government of the Federation or Government of any State shall be liable to imprisonment for two years.
- (2) In discharging his duty, the police officer shall not discriminate against any Nigeria on the basis of class, gender, ethnic or religious affiliation and shall not use racial or chauvinist language.
- (3) Any police officer may be proceeded against for desertion without reference to the time during which he may have been absent, and thereupon may be found guilty, either of desertion or of absence without leave:

Provided that a police officer shall not be convicted as a deserter or of attempting to desert unless the court shall be satisfied that there was an intention on the part of such officer either not to return to the Force, or to escape some particular important service.

50. Apprehension of deserters

Upon reasonable suspicion that any person is a deserter, a police officer or other person may apprehend him and forthwith bring him before a court having jurisdiction in the place wherein he was found, which may deal with the suspected deserter or remand him to a court having jurisdiction in the place in which he has deserted.

51. Assault on police officer

Every person who assaults, obstructs or resists any police officer in the execution of his duty, or aids or incites any other person to assault, obstruct or resist any police officer or any person aiding or assisting such police officer in the execution of his duty, shall be guilty of an offence and, on summary conviction before a magistrate, shall be liable to a penalty of fifty thousand naira or to imprisonment for a term of six months.

52. Refusing to aid police officer assaulted

If any person is called upon to aid and assist a police officer who is, while in the execution of his duty, assaulted or resisted or in danger of being assaulted or resisted, and such person refuses or neglects to aid and assist accordingly, he shall be guilty of an offence and, on summary conviction thereof before a magistrate, shall be liable to a penalty of five thousand naira or to imprisonment for a term of six months.

53. Drinking of alcohol while on duty

- (1) While on duty, a police officer shall not drink any intoxication liquor. If he does he shall be guilty of an offence and upon conviction before a magistrate, he shall be liable to a penalty of –
 - (a) as first offender, one thousand naira,
 - (b) as second offender, five thousand naira, and
 - (c) as third offender, imprisonment of one month
- (2) a person who knowingly harbours or entertains, or, either directly or indirectly, sells or gives any intoxicating liquor to, any constable when on duty, or permits any such constable to abide or remain in his house

unlawfully (except in case of extreme urgency), and any person who, by threats or by offer of money, gift, spirituous liquors, or any other thing, induces or endeavours to induce any constable to commit a breach of his duty as constable or to omit any part of such duty, shall be guilty of an offence and, on summary conviction before a magistrate, shall be liable to a penalty of -

- (a) as first offender, one thousand naira,
- (b) as second offender, five thousand naira, and
- (c) as third offender, imprisonment of one month

54. Personation of police officer

A person not being a police officer who puts on or assumes either in whole or in part, the dress, name, designation, or description of any police officer or any dress, name or designation, resembling and intended to resemble the dress, name or designation of any police officer, or in any way pretends to be a police officer, for the purpose of obtaining admission into any house or other place, or of doing any act which such person would not by law be entitled to do of his own authority, shall be guilty of an offence and, on summary conviction before a magistrate, shall be liable to a penalty of fifty thousand naira (N50,000) and or to imprisonment for a term of one year.

55. Obtaining admission into Police by fraud

- (1) A person who knowingly uses or attempts to pass off any forged or false certificate, character, letter, or other document for the purpose of obtaining admission into the Police, or who, on applying for enlistment, shall make any false answer to any question which shall be put to him by a police officer, shall be guilty of an offence and, on summary conviction before a magistrate, shall be liable to imprisonment for a term of six months.
- (2) A police officer may arrest without warrant any person whom he reasonably believes to be guilty of an offence against this section.

56. Ordinary course of law not to be interfered with

Nothing in this Act shall be construed to exempt a police officer from being proceeded against by the ordinary course of law when accused of any offence punishable under any other Act or law. This relates to acts that are related to violence, assault, inhuman and degrading treatment or any other offence under the law or any other Act against any member of the public

57. Persons acquitted by court not punishable on same charge under this Act, nor if convicted, except by reduction

- (1) A person who has been acquitted by a court of any crime or offence shall not be tried on the same charge or suffer any punishment under this Act.
- (2) If a member of the Police has been convicted by a court of any crime or offence, he or she shall not be liable to be punished for the same offence under this Act, otherwise than by reduction in rank or grade or by dismissal from the police.

PART IX

Regulations and standing orders

58. Power to make regulations

The Minister of Police Affairs may make regulations on the recommendation of-

- (a) the Nigeria Police Council with respect to the policy, organization and administration of the Police, including establishments and financial matters, other than pensions within the meaning of the Pensions Act; [Cap. P4.]
- (b) the Police Service Commission with respect to appointments to offices in the Police Service, promotions and disciplinary control of officers.

59. Standing orders

- (1) The Minister of Police Affairs will make standing orders for the good order, discipline and welfare of the police after consultation with:
 - (a) The Nigeria Police Council with respect to the policy organization and administration of the police including establishment and financial matters other than pensions within the meaning of the Pensions Act
- (2) The Police Service Commission, with approval of the Minister of Police Affairs may make such standing orders as they may think fit and proper with respect to any matter relating to the duties and operational control of the Police
- (3) Such standing orders shall be binding upon all police officers and shall be published in the Federal Gazette and one national daily

PART X

Application

60. Application of Act to persons already serving

All the provisions of this Act shall extend to all persons who, at the commencement of this Act shall be serving in Nigerian Police established under an Act repealed by this Act as if such persons had been appointed under this Act, and service under any such repealed Act shall, for the purposes of gratuities and pension, be deemed to be service under this Act.

PART XI

Community Police Forums and Boards

61. Establishment of Community Police Forums

- (1) For effective and efficient community policing the Commissioner of Police in each state of the federation shall establish Community Police Forums and Boards that consist broadly representatives of the local community in his or her state of jurisdiction.

- (2) A community police forum may establish community police sub-forums.
- (3) Subject to section 64 (1) (b), the police state head officer and the members designated by him or her from time to time for the purpose, shall be members of the community police forum and sub-forums established at the police station concerned.

62. Establishment of Divisional community police boards

- (1) A State Commissioner of Police shall, in collaboration with members of the State Executive Council establish Divisional Community Police Boards in all Police Divisions within the State.
- (2) A Divisional community police board shall, subject to subsection (3), consist of representatives of community police forums in the Division concerned designate for the purpose by such community police forums.
- (3) Subject to section 64 (1) (b) , the Divisional Police Officer and the members designated by him or her from time to time for that purpose, shall be members of the divisional community police board concerned.

63. Establishment of State community police boards

- (1) A State Police Commissioner shall, in collaboration with the State Executive Council, establish a State Community Police board.(SCPCC)
- (2) A State Community Police board shall, subject to subsection (3), consist of representatives of Divisional community police boards designated for that purpose by the Divisional community police boards in the state concerned.
- (3) Subject to section 64 (1) (b) , the state commissioner of police and the members designated by him from time to time for the purpose, shall be members of the state community police board concerned.

64. Objects of community police forums and boards

- (1) For effective and efficient community policing the Commissioner of police in each state of the federation shall establish community police forums and boards in his or her state of jurisdiction with a view to-

- (a) establishing and maintaining a partnership between the community and the police,
 - (b) promoting communication between Nigerian police and the community,
 - (c) promoting co-operation between the police and the community in fulfilling the needs of the community regarding policing,
 - (d) improving the rendering of police services to the community at the state and local levels,
 - (e) improving transparency in the police and accountability of the service to the community, and
 - (f) promoting joint problem identification and problem-solving by the police and the community.
- (2) This section shall not prevent police liaison with the community by means other than community police forums and boards.

65. Functions of community police forums and boards

A State or Divisional community police board or a community police forum or sub-forum shall perform the functions it deems necessary and appropriate to achieve the objects stated in section 62 above.

66. Procedural matters

- (1) Every State or Divisional community police board and community police forum or sub-forum shall -
- (a) elect one of its members as chairperson and another one as vice-chairperson and another a secretary,
 - (b) determine the number of members to be designated by the State Commissioner or Division Police Officer to serve as members of the board, forum or sub-forum concerned,
 - (c) determine its own procedure and cause minutes to be kept of its proceedings, and
 - (d) whenever it deems it necessary, co-opt other members or experts or community leaders to the board or forum in an advisory capacity.

- (2) Members of community police forums or boards shall render their services on a voluntary basis and shall have no claim to compensation solely for services rendered to such forums and boards.
- (3) The majority of the members of the board, forum or sub-forum concerned shall constitute a quorum at a meeting thereof.
- (4) In the absence of the chairperson of a board or forum or sub-forum from meeting, the vice-chairperson shall act as chairperson, and if both the chairperson and vice-chairperson are so absent, the members present shall elect one of their members present at the meeting to preside at that meeting.

PART XII

Traffic Warden Service

67. Establishment of the Traffic Warden Service

- (1) There is hereby established a Traffic Warden Service (in this Act referred to as “the warden service”).
- (2) The warden service shall consist of Traffic Wardens appointed from time to time under this Act.
- (3) The warden service shall be a part of the Nigeria Police, and accordingly references to the police established under this Act shall, subject to the provisions of this Act, include references to the warden service.
- (4) Notwithstanding subsection (3) of this section, in so far as any enactment (whether passed or made before or after the commencement of this Act) requires police officers to perform military duties, or confers any power on any person (whether expressly or in general terms) to require police officers to perform such duties, that enactment shall not, in the absence of express provision to the contrary, extend to Traffic Wardens.
- (5) Traffic wardens shall be employed to discharge functions normally undertaken by the police in connection with the control and regulation of, or the enforcement of the law relating to, road traffic and shall in that connection act under the direction of the police.

- (6) Without prejudice to the generality of the foregoing subsection, a Traffic Warden shall be required to deal with the following, that is to say-
- (a) general control and direction of motor traffic on the highway;
 - (b) assisting pedestrians to cross the road; and
 - (c) controlling vehicles stopping or parking in unauthorized places.

68. Appointment of Traffic Wardens

- (1) Notwithstanding anything to the contrary in any enactment, the Inspector-General hereby vested with the power to appoint, confirm such appointment, promote, transfer, dismiss or exercise any disciplinary control over any Traffic Warden.
- (2) Subject to the provisions of this Act, a person may be appointed a Traffic Warden if he or she - .
- (a) is not less than nineteen nor more than 21 years of age;
 - (b) is in possession of a minimum educational qualification of Senior Secondary School Certificate (SSCE)
 - (c) is not less than 167.64 centimeters and 162.56 centimeters tall respectively for the men and women;
 - (d) in the case of men, has not less than 86.36 centimeters chest measurement when fully expanded;
 - (e) is of good character and is physically fit; and
 - (f) has signified his willingness to serve as a Traffic Warden.
- (3) The Minister of Police Affairs in consultation with the Chairman Police Service Commission shall, from time to time, by notice published in the *Federal Gazette*, fix the maximum number of persons who may at anyone time hold appointments under this Act; and a person shall not be appointed as a traffic warden if his or her appointment would cause the number for the time being so fixed to be exceeded.
- (4) Before fixing any number under subsection (3) of this section, the Minister of Police Affairs shall obtain from the Nigeria Police Council recommendation in respect this.

- (5) The Inspector-General may from time to time-
 - (a) with the approval of Chairman, Police Service Commission, fix the maximum number of traffic wardens who may at one time hold appointments in any State,
 - (b) at his or her own discretion fix the maximum number of traffic wardens who may at anyone time hold any particular rank in the warden service in any State, and
 - (c) in either case fix different numbers with respect to different States.
- (6) In relation to traffic wardens appointed under this Act-
 - (a) section 18 of this Act (which relates to the making of a declaration for enlistment or re-engagement) shall have effect as if for the reference to enlistment or re-engagement there were substituted respectively a reference to appointment or re-appointment; and
 - (b) the form of the police declaration prescribed by the Oaths Act shall be adapted by the substitution-
 - (i) for the words “police officer” where they occur in the fifth line, of the words “a traffic warden”, and
 - (ii) for the words from “for the preservation of peace” to the end of the declaration, of the words “to discharge all the duties of my office according to law”.

69. Period of service

- (1) Every traffic warden appointed under this Act shall be appointed to serve as a traffic warden for a period of one year, and only in the police province, district or division in which he or she resides.
- (2) Such a traffic warden may, subject to satisfactory conduct and service, be re-appointed for further periods of three years each until the expiration of the tenth year of his appointment in the warden service when he may elect to determine his appointment or elect that his service be allowed to continue until he is 55 years of age.

70. Powers, etc., of a traffic warden

A traffic warden appointed under this Act shall, when on duty, be in uniform and within the police province, district or division in which he is appointed to serve, but not elsewhere, and have the powers, privileges and immunities of a police officer under any law relating to the regulation of road traffic.

71. Certificate of appointment and of discharge

Every traffic warden shall, on first appointment, be issued with a certificate of appointment in a form approved by the Inspector-General and on the determination of that or any subsequent appointment (whether by effluxion of time or under section 12 of this Act) shall in like manner be issued with a certificate of discharge.

72. Ranks of traffic wardens

A traffic warden shall have such rank as may be assigned to him by the Inspector-General within the following grades, that is-

- (a) Traffic Warden Grade III,
- (b) Traffic Warden Grade II,
- (c) Traffic Warden Grade I,
- (d) Senior Traffic Warden.

73. Resignation

- (1) A traffic warden appointed under this Act may at any time give to any superior police officer under whom he is serving, notice in writing of his intention to resign his appointment on a date mentioned in the notice (not being less than 28 days later than the date on which the notice is given).
- (2) On receipt by the superior police officer of the notice referred to in subsection (1) of this section, the superior police officer shall immediately refer such notice to the Commissioner having control over him and the traffic warden, and if the Commissioner consents to the notice having effect, the appointment of the traffic warden shall determine accordingly.

74. Discipline

- (1) In so far as the context so admits, but subject to the provisions of this Act, a traffic warden shall be subject to the provisions of the Police Regulations for purposes of discipline.
- (2) In the application to traffic wardens of the Second Schedule to the Police Regulations, references to Constables, Corporals, Sergeants and Inspectors shall include respectively references to Traffic Wardens Grade III, Traffic Wardens Grade II, Traffic Wardens Grade I and Senior Traffic Wardens.

75. Provision of equipment

- (1) The Inspector-General may provide for use by the traffic wardens such equipments as he or she considers necessary for the proper carrying out of the duties of traffic wardens under this Act.
- (2) Any expenses incurred by the Inspector-General under this section shall be defrayed out of moneys provided by the Federal Government.

76. Delegation of power by Inspector-General

The Inspector-General may delegate any of his powers under this Act to the Commissioner of a State or the Commandant of a police college, so that the delegated powers may be exercised by the delegate with respect to the matters or class of matters specified or defined in the instrument of delegation.

77. Instruction of traffic warden, etc.

- (1) Every person appointed into the warden service shall be required to undergo a course of training at the traffic training school of a police college for a period of twelve weeks or such other or further period as the Inspector-General may determine.
- (2) A traffic warden appointed under this Act shall have allocated to him a service number with the letters "TW" and the service numbers of all traffic wardens employed in the Federation shall appear on the register kept for that purpose by the Inspector-General.

- (3) It shall be the duty of every traffic warden to whom a service number has been allocated under subsection (2) of this section, whenever on duty to wear such service number on the shoulder flaps of his uniform.

PART XIII

Police Public Complaints And Discipline

78. Establishment of the Police Public Complaints Authority

The Inspector-General of Police shall establish an authority, to be known as “the Police Public Complaints Authority” and in this Act referred to as “the Authority” in each of the Area Command in all States of Federation.

79. Authority Composition

The Authority shall consist of –

- (1) (a) Commissioner of Police as Chairman
- (b) Chief Superintendent as a Secretary
- (c) a representative from each division under the Area Command.
- (d) representative of the community to be appointed by the State Governor

80. The Functions of the Authority

The Authority shall be responsible for the following functions –

- (1) Shall receive complaint of Police officers misconduct from the public,
- (2) Shall receive complaint of Police officers misconduct from other police member or authority-
 - (a) any complaint alleging that the conduct complained of resulted in the death of or serious injury to some other person,
 - (b) any complaint that appear to the appropriate police authority that an officer may have committed a criminal offence or behave in a manner which would justify disciplinary proceeding,

- (3) The Authority shall supervise the investigations –
 - (a) of any complaint alleging that the conduct of a police officer resulted in the death or a serious injury to some other person,
 - (b) of any complaint refer to him or her under section (81)(1) above, if the Authority consider that it is desirable in the public interest that they should supervise that investigation.
- (4) While conducting investigation into any complaint by a member of the public against a police officer, the authority shall afford the complainant ample opportunity to give evidence of such misconduct and make available a copy of its decision on the complaint.
- (5) In this Act “serious injury” means a fracture, damage to an internal organ, impairment of bodily function, a deep cut or a deep laceration.

81. Steps to be taken after investigation

After a thorough investigation, the Chairman of the Authority shall –

- (1) send a copy of their investigation and the Authority recommendations to the Director of Public Prosecutions for prosecution within 60 days if the investigation reveal that a criminal offence has been committed,
- (2) send a copy of their investigation and the Authority recommendations to the appropriate police authority for proper disciplinary action if the investigation reveal that the offence committed is against discipline as stated in the First Schedule (Regulations 370).

Annex

Report of the Interactive Forum on Review of the Police Act

On November 8, 2004, the House of Rep Committee on Police Affairs in collaboration with CLEEN Foundation, the Network on Police Reform in Nigeria (NOPRIN) and the Open Society Justice Initiative (OSJI) organized a one-day interactive forum on review of the police act and regulations.

The forum aimed at;

- bringing stakeholders on police and policing in Nigeria to discuss and articulate possible legal framework for the on-going police reform in Nigeria
- articulating priority issues that need to be reviewed in the Police Act and Regulations and set in motion the machinery for further actions on the review

In attendance were: the Speaker of the House and all the members of the House Committee on Police Affairs, the Minister of Police Affairs, representatives of the Police Service Commission, a DIG of Police and a team of senior police officers, several Civil Society representatives and the Human Rights Commission. in all, over a hundred persons participated in the forum.

Opening Session

Though scheduled to start by 10am, the forum did not kick off until the Speaker of the House arrived minutes after 11am. The opening session was piloted by Hon. Uche Onyeagocha.

In his brief but upbeat welcome remarks, the Chair of House Committee on Police Affairs, Hon. Emmanuel Bwacha pointed out that the police Act is overdue for review. Though many things bother him about the police, but in his opening remarks he wondered why the Nigerian police perform very well

when on international missions while their domestic operations are the subject of virulent criticism by citizens of the country. He encouraged participants to be frank and blunt about what need to be done to re-engineer policing in Nigeria.

In his own welcome remarks, the Executive Director of CLEEN Foundation Mr. Innocent Chukwuma, pointed out that since 1943 when the police Act was enacted by the colonial government, it has not been reviewed to reflect present day realities. Though long overdue for review as pointed out by Hon. Bwacha, Mr Chukwuma believed in the saying that it is better late than never. In what looked like a pre-emption of the presentation by experts in the Forum, Chukwuma highlighted three broad categories of issues to be examined in the police Act.

The first is to capture and incorporate into the law, recent positive policy developments in the Nigeria police force. Such developments include community policing, police performance monitoring, enhancement of the status of women in the force and minimum educational requirements for entry and performance in the force. The second issue is to amend or expunge provisions in the Act that have either become outdated or obnoxious in the light of the present democratic dispensation. The third and perhaps most important is the necessity to amend sections of the Act that make it impossible to insulate the police from partisan political control. An example of such provision in the Act is section 9(4) which rest the operational control of the police in the hands of the president rather than the Chief of Police. According to Chukwuma provisions like this assail the professionalism of the Nigeria Police and lay the later bare to possible manipulation by a president who is power drunk.

In concluding his opening remarks, Chukwuman enjoined the Forum to consider the possibility of setting up interagency Committee comprising major stakeholders including civil society groups whose tasks should include producing a draft review of the police Act.

On his part, Mr. Chidi Odinkalu, Director Africa Program of Open Society Justice Initiative (OSJI) implored the stakeholders to take the review of the

Act beyond the interactive Forum. He called for extensive consultations and time frame for completing the review.

From welcome to opening remarks, it was the privilege and delight of the Speaker of the House to deliver a keynote address. In his address he noted the need to review the police Act in line with lessons learned from our chequered constitutional history and current policing practices in democratic countries of the world. For inexplicable reasons he regretted that the Nigerian police Act has not been reviewed to reflect the enormous changes in the country's national life and history. He believed that the forum was making history by kick starting a long overdue review of the police Act.

The Speaker pointed out that the disconnection between the police, the law and community has contributed in heightening the citizens' feeling of insecurity and lack of trust between the police and the people. According to the speaker, the need for a legislative perspective to police performance has become necessary given the shortcomings of current state and non state responses to the challenges of crime and injustice in the country. Assailed by un-abating insecurity, citizens have resorted to the setting up of private security agencies and formation of vigilante groups. Government on its part has continued to augment the personnel and law enforcement capacity of the police. While these responses have their benefits, we need to fundamentally rethink the legislative underpinning of policing in Nigeria. According to the Speaker, the benefits of on-going reforms in the police in the areas of Community policing, and gender balance in police appointments and promotions need to be sustained by law.

The Speaker particularly encouraged the stakeholders to think of ways in which the Nigerian police can be re-engineered from basically a law enforcement agency to that of a provider of services to the people.

In his opening remarks, the Minister of police Affairs told the forum that he had set up a Committee in June which produced a working paper on reform of the police. He promised to make the paper available to the review process. The Minister noted the 'bold' efforts of the government to improve policing

in Nigeria through Community policing and police performance monitoring units and called on law makers to incorporate these initiatives into the Act. Given the long years that the Act had stayed without review, the Minister urged the lawmakers and other stakeholders to ensure that the review process is thorough.

Mrs Ayo Obe represented the Police Service Commission at the forum. She pointed out in her remarks that the Police Act in chapter 19 2004 of the Laws of the Federation contained some minor reviews relating probably to nomenclatures etc. like other Speakers before her, she was of the view that the review was long overdue. Mrs Obe challenged the review process to look at three areas as follows. Technically, she thinks that the Act should be updated to reflect changes in police organisation and formations. The police Act according to her is in conflict with the constitution in a number of areas and this should be looked into. Finally, the philosophy of policing should be reviewed to address the relationship of the police with the community.

The Deputy Inspector General of Police Chief Ehindero represented the I.G.P. In his remarks he pointed out that when the law is not clear, police actions will be fraught with problems. Like others he believes that the police Act needs review. Chief Ehindero will later make a presentation on the areas he thinks the review should focus.

Second Session: Thematic Perspective on the Police Act

This session was chaired by Hon. (Dr.) Jerry Sony Ugokwe. Three expert presentations were made as follows:

- (a) The Nigeria Police Act; History & Imperative of Reform by Prof. E.E. Alemika
- (b) Review of the Police Act; Police Perspective by Deputy Inspector General of Police Chief Ehindero
- (c) Review of Police Act; Civil Society Perspective by Dr Sam Amadi

- Chief Tayo Oyetibo (SAN) was not on hand to present the fourth paper on: Review of the Police Act; A legal Perspective.

Prof. Alemika's paper traced the evolution and character of the Police Act and argued that the Act is long overdue for review. He pointed out that before 1930 there was nothing like a national police force in Nigeria. Between 1861 and 1990 there were several police forces in different territories of Nigeria as they were being brought under British imperialism. By 1943, the Police Act was enacted by the colonial government and since then, there has not been substantial review of the law. Though there were amendments to the provision of several laws that have impact on the Police but there had been no attempt to undertake a comprehensive review of the law on police organizations, powers and functions. According to Alemika, police and policing in Nigeria are governed by the constitution and statutes, of which the central ones are; the constitution, the Police Act, Criminal Code, Penal Code, Criminal Procedure Act, Criminal Procedure Code And Evidence Act.

All these laws except the constitution were enacted by the colonial government, and only few piecemeal changes have been made since independence. The objectives of the review of the police Act should be to make the Nigeria police force efficient, accountable, professional and civil. The revised laws according Alemika should conform to various international instruments on the operations and conduct of police and law enforcement agencies as well as with the norms of democratic policing.

More specifically, Alemika drew attention to some 12 obvious areas which a review of the police Act should focus on:

- 1. Mission and Value Statement:** There is need for an explicit mission and value statements to be incorporated in the law. In modern democratic states, the police aspire to promote democratic policing which involves commitment to (a) efficient safeguard of the safety of the citizens and security of their property; (b) civility to citizens; (c) partnership with citizens as co-determinants of safety and security policy concerns and priorities as well as co-producers of safety and security in community; (d) protection of citizens' human rights, (e) professionalism and integrity;

(f) equitable delivery of services, and (g) representation of the diversity of groups in community as regards employment.

2. **Functions of the Police:** Section 4 of the Police Act states that – The Police shall be employed for the prevention of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and due enforcement of laws and regulations with which they are charged, and shall perform such military duties within or without Nigeria as may be required ... To these functions shall be added (a) protection of the rights of citizens and (b) prompt response to call for assistance by citizens in distress.
3. **Organization of the Police:** The current organization of the Nigeria Police in territorial and functional terms should be reviewed.
4. Clear delineation of policy, accountability and command/operational organs external and internal to the police force.
5. Five year fixed tenure for the IGP, screened and confirmed, and may be removed for clearly specified serious misconduct, by two-third majority of the more representative arm of the legislature (House of Representative) and his/her accountability to be more extensive (e.g. to the executive, legislature and PSC) rather than limited to the president;
6. Clear provision for consultation among PSC, IGP and State Governors, prior to the posting and removal of state command CP;
7. Explicit provision on police public partnership;
8. Explicit code of conduct;
9. Discriminatory provisions against women in the Police Regulations should be expunged;

10. Provision dealing with public order maintenance by the police in the Police Act, Public Order Act (1979), and other statutes which are in violation of the Constitutional rights of the citizens to dignity, protection from torture and unusual punishment (such as extrajudicial execution of protesters), and freedom of assembly and association should be expunged. A culture of peaceful protest demonstrations without repressive and violent intervention from the police should be nurtured and sustained – a process which would be facilitated by government’s sensitivity and responsiveness to citizens’ protest against anti-human public policies rather than arrogant declaration that governmental policies are irreversible, as if the government is constituted by roving bandits preying on communities and peoples.
11. Juvenile Units and Women Units should be operational at all police stations to handle women and juvenile suspects and complainants.
12. Provisions should be made for a reliable criminal statistical system, and access to them by citizens should be guaranteed.

Then DIG Sunday Ehindero’s paper drew attention to the fact that the Police Act and Regulation were reviewed in 1990 as contained in Cap. 359, Laws of the Federation of Nigeria, 2004. According to him, the applicable current law is therefore the Laws of the Federation of Nigeria 2004, Vol 13, pg.19, Police Act. Ehindero pointed out that there was a police Act in 1917 and the functions of the police as contained in that Act have not significantly changed.

Ehindero’s paper largely dwelt on technical matters on the Act. A copy of the paper is attached for details on his technical recommendations. Though not contained in his paper and, probably in response to other papers, Ehindero posited that the Police should be repositioned to perform service function in addition to law enforcement tasks. Interestingly he pointed out that some sections of the constitution (section 42 sub-section...) provides for the derogation of the rights of the citizens by such agencies like the police.

He thinks that the review process must contend with how to balance the freedom of the individual with the security of the state. Ehindero supports the idea of community policing as a means of partnership between the public and the police.

Sam Amadi: commenced his presentation by responding to Ehindero's comment that some section of the Constitution provides the police with the power to derogate on citizens' rights. Amadi's position is that the police is central to the protection of rights. He sees a correlation between police work and civil society work in the area of protection of rights. The maintenance of "law and order" he argues, is crucial for the enjoyment of basic civil rights and the maintenance of even the most rudimentary forms of social intercourse. But law and order in a truly democratic state does not mean the same thing as law and order in predatory societies like that of Apartheid South Africa.

He said that the history of Nigeria can be retold along the theme of abuse of police power. Since 1914, Nigeria has remained a police state, a predatory state that treats citizens as subjects. According to him, the challenge for anyone reviewing the police Act will include understanding the Janus-faced character of the 'police force' as a necessary and important force for the effective protection of civil rights and at the same time: a potential threat to such rights when abused or misused by powerful interests.

In thinking about institutional reform of the police, Amadi urged the review process to take cognizance of the broader questions of politics, ideology and contestations. It is important that the process keeps track of the silent, dominant and unheard voices. Using the typology of institutional reform, Amadi suggested three guiding principles for a sustainable reform of the Nigerian police force:

- a) Efficiency and effectiveness
- b) Political accountability
- c) Protection of political rights and freedoms

Reform of the police as a public institution should focus on: the organisation called the police; the process called policing and; the product called public

peace. Amadi is of the view that reform should start from reconstructing the mission statement of the police as presented in section 4 of the police Act. To him section 4 is inadequate to capture the expectation of a new kind of policing which the country requires in the context of our disheartening experience of police brutality and hopes for a democratic society of freedom and liberty. The police should be defined in a language that focuses on fairness, difference to human rights in the prevention and investigation of crimes and efficiency in combating crimes. But a mission statement no matter how clearly articulated may not produce change if it is not modeled and internalized in the core values and process of the organisation.

For efficiency and effectiveness of the police Amadi called for structural reorganization with emphasis on decentralization and decoupling of political leadership of the police from administrative management of the force. According to him, centralization affects police – community relations and results in loss of initiative amongst police officers. Amadi deliberately did not want to venture into the debate on state police but he believes that the experience of United States show that decentralization helps the process of making the police respond to local concerns and create community partnership necessary for both political accountability and protection of human rights. The police can be run by a professional manager he argues. The manager will structure operation according to best practices as obtained in the private sector while actual policing will go on according to established intelligence processes. The professional manager should be able to organize the police as an institution capable of meeting customer expectations for humane law enforcement.

On political accountability Amadi stressed that the exercise of discretion by police officers must be subject to due process, fairness and judicial review. Political accountability according to him goes beyond what is obtained in the statute books. It goes to the training and orientation of the police. According to him, the example of New York Police Dept (NYPD) shows that transformative changes can occur if the police boss stresses certain values and institutes organisation processes to monitor, reward or punish compliance or deviation from these values.

On the protection of human rights, Amadi argues that both the constitution and the police Act must be unambiguous in relating Police powers to the protection of human rights. The powers of the police in its encounter with the public should be reviewed. He called for the review of section 24 of the police Act which authorizes the police officer to arrest without warrant any person who “he reasonably suspects of committing or about to commit any felony, misdemeanor or breach” or a person who another person “suspects of having committed a felony or misdemeanor”. The power to arrest without warrant should be imbued with safeguards, code of conduct and judicial review so that such power does not deteriorate into a license to invade the liberties of citizens.

On the issue of preventive detention or detention pending trial by the police, he drew attention to the fact that the courts have conclusively held even in matters of national security, that IGP must indicate how he comes to the belief that a citizen is a security threat.

Further on, Amadi referred to a situation of policy confusion in pre-trial detention. He said that both the police Act and the Criminal procedure Act seem to authorize the police to detain a citizen prior to proper arrangement. This has led to the practice of Holder Charge which accounts for an overwhelming proportion of prison inmates. Indicating that the courts have on a number of occasions ruled against the practice of Holding Charge, he suggested that the review of the police Act should look at the matter from the perspective of setting out a clear remand process that requires ample safeguards against abuse of police power.

On the power to search the persons and premises of citizens, Amadi called for its review according to the principles of the rights of personal integrity and privacy.

For the principles of human rights protection to be institutionalized in police reform, he called for police education as the most effective way to achieve a new orientation and culture of policing that responds to the concerns of civil society. The framework of police training under the law is deficient in its

curriculum and pedagogy. It focuses on technical skills and police drills to the detriment of civic education and human rights issues.

Questions and Answers

Barrister Musa Bala Panya emphasized the need to focus on the philosophy of policing. The police should be accountable to the people not to the command structure. The Force should be insulated from capture by partisan political interests.

Okey Ibeanu then of McArthur Foundation asked the DIG of Police, Mr. Sunday Ehindero, why he chose to read section 42 subsection 3 of the constitution in a derogatory rather than contradictory manner” Further commenting on the need for reform, he called on the stakeholders to interrogate the philosophy of on-going reforms at the national level rather than the philosophy of policing per se. The on-going reform at the federal level does not accommodate public input or dissent. The police is seen by the reformers as the force to hold down the people until reform is accomplished. Reform is based on the suppression rather than the explosion of civic power. Under this federal reform canopy, it will be difficult to nurture public police partnership.

Drawing from the experience of McArthur in supporting initiatives in the area of administration of justice, he called for a consolidation of on going review processes that relate to police powers and organization in other laws and policy instruments.

Representative of Boabab: Sought to know how the review process will relate with the new Sharia Code in the northern states, the Child Rights Act and domestic violence? She made the point that the language of the new police Act should be easy to comprehend.

Hon. Ibn Naala: of the House of Reps was of the view that the DIG presentation did not touch on any fundamental issue. To him it looked like the police do not think that there is a real problem?

Femi Odeyemi of WODCLEF pointed out to the DIG that in a democratic dispensation, the powers of the police should not be perceived as derogative of the rights of citizens as provided in the constitution. In the current dispensation we should be looking at how to create a police force that enhances our democracy. Femi alerted the participants to a provision in the constitution which states that no court should inquire into the orders given to the IGP by the president. Other issues raised by Femi include:

- a) discipline of senior police officers and civilian oversight
- b) political and executive control of the police
- c) freedom of the police to associate or unionise
- d) PSC at the state and local levels. The need for local content
- e) Removal of the public order Act
- f) Women and juvenile units

Mrs Obe of PSC was of the opinion that an order of the president to the IGP is not a license for the later to do things unacceptable. She believes that where the court fails to inquire, oversight institutions like the National Assembly should intervene.

Hon. Abdul Oroh of the House of Rep felt there was a need to bridge the gap between police perception of its mandate as a law enforcement agency and the protection of human rights. He was of the view that provision should be made for the police to police itself.

Barrister Uche Nwokocha sought to know whether this review process can lead to reform of the Nigeria Police. He said that the much talked about community policing is not effective in Enugu State.

... Legal Resource Consortium asked why the DIG presentation did not reflect on issues that concern women. He wondered whether community policing will be successful in a society in which the people are so apprehensive of the police.

A Commissioner of Police urged the review process to take due consideration of the rights of police officials.

A former police chief **Frank Odita** said that community policing will work if Nigerians buy into it Odita called for civilian oversight of the police.

Mr Udoji of HURILAWS said that the new Act must not foster security at the expense of human rights. He called for civilian oversight of the police because the later will always protect itself from public scrutiny.

Funso Omogbehin of CE&E asked why the DIG presentation omitted such issues like excessive use of force by the police, bail etc. Funso wondered whether this review would lead to a more intelligent based police force rather the one that is based on the use of fire power and brute force.

Reponses by Expert Presenters

DIG Ehindero said that the paper he presented was not comprehensive because he only knew of the interactive forum only hours ago.

He reminded the participants of the need to be careful about importing things from other countries which have not been tested in Nigeria. Our system is unique and we must fashion a system that suits us. He agreed that policing in the context of democracy means that leaders must be elected and human rights protected. Those are the tenets of democracy and they should guide the police. A society gets a police force it can pay for. The job of policing is not for the police alone. There should be self policing.

For the police to do its work, the law must be clear for its enforcement to be right. He sited the example of Holding Charge. Finally he called on the National Assembly to work with all the relevant agencies to ensure that the review of the Act is properly done.

Prof Alemika in responding to comments and questions said that Nigeria should approach the idea of Community policing with caution. Community policing means different things to different Countries. He had read a lot of literature on community policing to make him cautions on embracing

Community Policing uncritically. He said that in the United States, Community Policing was associated with funding requirements for policing the country. In Nigeria Community policing is so far donor driven. Nigeria does not have a policy document on community policing and the government does not have a budget for it. He wants an exhaustive national discourse on community policing so that the people are aware of what we mean when we talk about community policing.

In response to the question of domestic violence he suggested that the women units in the police should be saddled with that responsibility.

Dr Sam Amadi's response to the question of Holding Change was that the process should be made transparent through judicial oversight and review. On the question of whether the review process will trigger a real reform of the police, his answer was yes. However it all depends on what we put into the review process. He advised against the tendency to make a fetish of laws. What we put in our laws does not become a reality until we create them.

However, in what looked like an aside comment in response to Amadi, Mr Femi Odeyemi said that the question of changing laws and changing behaviour are the two sides of a coin. One side of the coin cannot obviate the other side. The issue as far as Femi is concerned is how we can improve our relationship with laws.

THIRD SESSION: Presentation of Issues of Concern by Stakeholders

This session was chaired by Hon Ibn Naala of the House Representatives Due to lack of time; the chair could only allow the stakeholders to run through issues of concern. The issues enumerated below were not further interrogated. But they came largely from discussions in the proceeding sessions.

1. **Issues of Concern from the Nigerian Police Force**
 - The laws that set out the functions powers and philosophy of the police and policing in Nigerian must be made clear
 - The police should be giving the wherewithal to perform creditably

- The society must realize that the police is part of them
- The idea of Community policing is good
- An independent body to monitor police performance is essential
- Welfare of the police is paramount because a nation can only get the type of police it can pay for
- The Nigerian factor, whatever that means must be taken into consideration while fashioning a new law for the police.

2. **Ministry of Police Affairs**

The Ministry will submit its concerns to the House Committee on Police Affairs

3. **Police Service Commission**

- We need to guide the police away from the believe that they are there to protect the government
- The police service commission is an independent agency but it needs to be empowered
- Refer to Ayo Obe's comments in earlier sessions

4. **National Human Rights Commission**

- We should bear the constitution in mind while reviewing the police Act
- Other instruments germane to the operation of the police should be reviewed
- Attention should be paid to the Women question
- The commission will make a comprehensive submission to the House Committee and CLEEN Foundation

5. **Civil Society Groups**

- Community Policing should be incorporate in the Act
- Police performance monitoring should be grounded in the Act
- Outdated provisions like those relating to women should be expunged from the Act
- The Act should not be silent on Police offence against citizens

- Police operational control should be insulated from the presidency.

Next Steps

In order to take the process of the review further, the chair of the House Committee on Police Affairs announced the set up of an interagency Committee made up of the following:

- 1) Hon. Abdul Oroh
- 2) Innocent Chukwuma
- 3) Ayo Obe
- 4) Uche Onyeagocha
- 5) Maxwell Kadiri
- 6) DIG of Police Chief Sunday Ehindero
- 7) Hakim Bello Osagie
- 8) Representative of Ministry of Justice
- 9) Representative of Ministry of Police Affairs
- 10) Representative of National Human Rights Commission

Closing Remarks

In his closing remarks, the chair of the session Hon. Naala expressed delight with the presence of relevant stakeholders in the interactive forum. He hoped that it will continue to be the policy of the House to open its doors to public opinion.

Vote of Thanks

The vote of thanks was delivered by Hon. Abdul Oroh.

The forum ended by 3:30p.

CLEEN FOUNDATION'S PUBLICATIONS

JOURNEY TO CIVIL RULE

A Report on the Presidential Primaries of the
All Peoples Party (APP) & Peoples'
Democratic Party (PDP) February 13-15, 1999
Published in 1999

POLICING A DEMOCRACY

A Survey Report on the Role and Functions of
the Nigeria Police in a Post-Military Era
Published in 1999

LAW ENFORCEMENT REVIEW

Quarterly Magazine
Published since the first quarter of 1998

CONSTABLE JOE

A Drama Series On Police Community
Relations In Nigeria
Published in 1999

POLICE-COMMUNITY VIOLENCE IN NIGERIA

Published in 2000

JUVENILE JUSTICE ADMINISTRATION IN NIGERIA

Philosophy And Practice
Published in 2001

GENDER RELATIONS AND DISCRIMINATION IN NIGERIA POLICE FORCE

Published in 2001

FORWARD MARCH

A Radio Drama Series on Civil Military
Relations In Nigeria
Published in 2001

HOPE BETRAYED

A Report on Impunity and State-Sponsored
Violence in Nigeria
Published in 2002

CIVILIAN OVERSIGHT AND ACCOUNTABILITY OF POLICE IN NIGERIA

Published in 2003

POLICE AND POLICING IN NIGERIA

Final Report on the Conduct of the Police
In the 2003 Elections
Published in 2003

CIVIL SOCIETY AND CONFLICT MANAGEMENT IN THE NIGER DELTA

Monograph Series, No. 2
Published in 2006

CRIMINAL VITIMIZATION SAFETY AND POLICING IN NIGERIA: 2005

Monograph Series, No. 3
Published in 2006

CRIMINAL VITIMIZATION SAFETY AND POLICING IN NIGERIA: 2006

Monograph Series, No. 4
Published in 2007

BEYOND DECLARATIONS

Law Enforcement Officials and ECOWAS Protocols
on Free Movement of Persons and Goods in
West Africa
Published in 2007

POLICE AND POLICING IN WEST AFRICA

Proceedings of a Regional Conference
Published in 2008

IN THE EYES OF THE BEHOLDER

A Post-Election Survey Report
Published in 2009