

# The Limits of the Exercise of Police Investigatory and Prosecutorial Powers in Nigeria

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## Abstract

*The act of policing is very important in all societies whether developed or developing countries, due to the onerous task of maintenance of law, order and peace, and of course, the enforcement of security of life and property. Criminal activities over time have become highly sophisticated, multifaceted and diversified, and still advancing with technological development cutting across every strata and level of the society. This has necessitated the government establishing a number of other agencies conscripted to taking over some roles which hitherto exclusively belong to the police. However, in the performance of its constitutional function, the police has been somewhat incapacitated by some form of constitutional and administrative exigencies, which forms the basis of our study in this article. This paper is divided into seven parts, beginning with an introduction and ends with a conclusion and recommendations. It examines how the establishment of these specialised agencies and the constitutional protection from prosecution of certain political office holders have incapacitated and impinged the exercise of the police traditional functions of investigation and prosecution.*

**Keywords:** Police, Immunity, Limitations, Specialised Agencies, Prosecution.

## 1.0 Introduction

It is incontrovertible that a secure environment is a catalyst to economic growth and development of any nation. The Nigeria Police is the foremost security institution in Nigeria responsible for internal security management.<sup>1</sup> The constitutional duties of the police are found in various enactments<sup>2</sup> including the Police Act<sup>3</sup> which is the principal enabling law that regulates the performance of police duties and the exercise of powers.<sup>4</sup> Major among these duties and powers are the police investigatory and prosecutorial powers under which the police exercise powers over all manner of persons who committed or reasonably suspected of having committed a criminal offence against the law. Despite these extensive powers, certain categories of persons command disability against the police as a result of immunity enjoyed by them. These classes are hereunder examined.

## 2.0 Concept of Immunity and Disability

What is immunity? Immunity denotes freedom from the power while disability denotes the absence of power of another person. In jural correlatives, immunity in one person X implies the presence of his correlatives in another person Y. Thus the immunity clause contained in the Constitution<sup>5</sup> granting freedom from arrest, or initiation of criminal proceeding to the holder of certain offices, amounts to disability in the police investigatory and prosecutorial power of arrest or initiation of criminal processes. There are four categories of persons who command police disability.

## 3.0 Persons with Immunity and Police Disability occasioned by the Constitutional provisions

A person with immunity is protected from any criminal liability to the extent permitted by such immunity. It is also trite in law to say that liability in Y means the absence of an immunity in him. Therefore immunity and liability are “jural opposites”. Conversely, the presence of immunity in Y implies the absence of liability in Y. The absence of liability in Y implies the absence of power in X. Therefore immunity in Y implies the absence of power in X; that is, powers and immunities are jural contradictories. Disability simply means no-power or no-

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<sup>1</sup> Manu, M.U: “Strategic Visions, Programs and Achievements of the Inspector General of Police,” in *Nigeria Police Force: The Journey So Far* (2013), MD Abubakar (ed.); Abuja: Panaf Press, p. 1.

<sup>2</sup> The Police Act, Cap P 19, Laws of the Federation of Nigeria (LFN), 2004 is the major enabling law which prescribes duties and powers for the Nigeria Police. Other enactments include the Administration of Criminal Justice Act, 2015; Criminal Code Act, Cap C 38, LFN 2004; Penal Code, Cap P 3, LFN 2004; and the Criminal Procedure Code for the (Northern States).

<sup>3</sup> *Op. cit.*, n.2.

<sup>4</sup> See, Section 214(2)(b) of the Constitution of the Federal Republic of Nigeria (CFRN), 1999, *op. cit.*

<sup>5</sup> Section 308 CFRN, 1999 (as amended).

right to act otherwise.

The Nigerian Constitution<sup>1</sup> and other varying enactments contain immunity clauses conferred on certain classes of persons as a result of specific offices being occupied by such persons. The class of persons conferred with constitutional immunity in Nigeria include: the President, the Vice President, the Governor and Deputy Governor while carrying out the functions of the office. Section 308 of the Constitution of Federal Republic of Nigeria 1999 (as amended), confers immunity from initiation of criminal process on persons holding certain offices in Nigeria during his period in office, though such immunity is limited to immunity from prosecution and it does not extend to police latent investigation. Investigation of criminal complaint by the police against any of the office holders mentioned above is not tantamount to laying a criminal complaint before the court. Police investigation is a preliminary course which may or may not result in criminal prosecution. Thus, in *Gani Fawehinmi .v. IGP*,<sup>2</sup> the Supreme Court held that:

...the immunities conferred on this category of office holders are to ensure the dignity of that office and freedom from coercive personal harassment of the incumbent.... That a person protected under Section 308 of the 1999 Constitution, going by this provision, can be investigated by the police for an alleged crime or offence, is beyond a dispute. There is nothing contained in the Section that precludes police investigation of offences committed by holders of the offices named herein.<sup>3</sup>

It is sufficient to state that the Nigeria Police is empowered under the Constitution to investigate criminal complaint against the Governor or any person to whom constitutional immunity applies, but such investigation would stop any time when going further would amount to asking the holder of such office for an explanation as to why criminal action would not be initiated against him. To this end, it is necessary to bear in mind that the outcome of any such investigation needs to be kept in abeyance until such persons vacate the office to which such immunity is inured.

The above position is reinforced by the international minimum standard for police investigation. In a proper police investigation, the case of the complainant is sustained on its strength. The complainant has a duty to furnish the police with credible evidence that will establish a *prima facie* case which would warrant the invitation of the suspect. In the words of the learned Justices of the Supreme Court in the case of *Gani Fawehinmi .v. IGP & Ors.*,<sup>4</sup>:

It is completely wrong to arrest, let alone caution a suspect before the police look for evidence implicating him. If this is well understood, then it will be easy to appreciate how a Governor (for example), can be investigated, evidence both analytical and forensic assembled, collated and weighed without breaching section 308 of the CFRN, which puts restrictions on legal proceedings, arrest or imprisonment or the compelling of appearance by court process as far as he is concerned.<sup>5</sup>

Expectedly, the investigating authority may continue to carry on latent investigation by recording statement from eye witnesses, gathering evidence from other institutions, making request for forensic analysis, requesting for independent evidence and any such action considered necessary for the purpose of collating evidence in the proof of the case against any of these functionaries; provided that the investigating authority has no direct contact with them for the purpose of questioning, arresting, obtaining statement or prosecuting during the subsistence of their term in such office.

The police should not be drawn into political logjam, on waiver of immunity often pressed upon them by conferees as to voluntarily waiving of such immunity under Section 308 of the Constitution while inviting the police to commence interrogation.<sup>6</sup> The immunities are inured to the office. It cannot be waived. It is unprofessional and unconstitutional for the police to approach such holders for the purpose of interrogation even when volunteered.

#### **4.0 Persons with Immunity occasioned by International Diplomacy and police disability**

Section 1 of the Diplomatic Immunities and Privileges Act (DIPA),<sup>7</sup> provides that:

subject to the provision of the Act,<sup>1</sup> every foreign envoy and every consular officer, members

<sup>1</sup> *Op. cit.*

<sup>2</sup> [2002] 23 WRN 1.

<sup>3</sup> *Ibid.*, n.7, pp. 34 - 35.

<sup>4</sup> *Supra.*, n.7.

<sup>5</sup> *Ibid.*, n.7, pp. 34-35.

<sup>6</sup> CFRN, 1999, (as amended).

<sup>7</sup> Cap D 9, LFN, 2004.

of the family of those persons, the member of officers domestic staff and members of the family of the official staff shall be accorded immunities from suit and court process and inviolability of residence and official Archives to the extent to which they are respectively so entitled under the law in force in Nigeria immediately, before the coming into operation of the Act.<sup>2</sup>

The immunities and privileges so enjoyed by those classes include:

- a. immunity from civil suit;
- b. immunity from criminal prosecution;
- c. immunity from forcible entry into their residence and office;
- d. immunity from seizure of, or search of property;
- e. immunity from arrest or search of person; and
- f. immunity from interrupted movement and privilege of flying flag on his vehicles.

The immunity conferred on this class of conferee is as a result of international treaties, conventions and protocols. This is in the form of diplomatic immunities. In certain relationship, the immunities granted by statute may be elastic whereby they extend to the conferee's official or domestic staff and members of the family of the official staff. Where immunities are available to a person, the immunities are accompanied with privileges.

Persons who enjoy immunities against police action in Nigeria also include foreign envoys and consular officers who are on diplomatic mission in Nigeria. The diplomatic missions include Embassies, High Commissions, Consulates and international organisations. The Papal's delegate, who is the representative of the Vatican in Nigeria, also enjoys diplomatic status while his office is regarded as Embassy and himself as an Ambassador.<sup>3</sup> An Embassy or a High Commission has the same status as territory of its home country. The major difference between the two is the nomenclature, and merely political. The former is the office of Representative of a foreign country not being a member of the Commonwealth of Nations. It is headed by the Ambassador while the latter relates to the representative of a foreign country who is a member of the Commonwealth of Nations and it is headed by a High Commissioner. A foreign country's representative whose duties in most cases are to treat immigration affairs, trade matters and offer general information of his own country in Nigeria, is lower in status than an Embassy and High Commission.

Immunities granted to the above class is extended to the members of their family, members of the officers' domestic staff and members of the families of their official staff who are not Nigerians. The same immunities and privileges extend to High Commissioners and members of their families with the members of their official and domestic staff and members of family of the official staff.

Similar immunities may also be conferred on representatives of the government or members of Commonwealth of Nations and members of their official staff attending conference in Nigeria. Section 6 of the DIPA provides that:

...where a conference is held in Nigeria and is attended by representatives of government or governments of one or more Commonwealth countries, the Minister may compile the list of representatives of the Commonwealth government or governments attending the conference and members of their official staff and cause that list to be published in the Federal gazette and every representative of the government of Commonwealth country who is for the time being included in the list, shall for the purpose of this Act, be treated as if he were a foreign envoy and subject to the provision of this section, such number of the members of the official staff as are for the time being included in the list, shall be treated for the purpose aforesaid as if they were his retinue.<sup>4</sup>

It should be noted however, that diplomatic immunities and privileges conferred on foreign envoy or foreign consular officer, unlike the constitutional immunity may be waived with the consent of his government. This waiver extends to members of his official staff or members of his family or members of family of his official staff. When such immunities and privileges are waived, the officer concerned opens himself to liability to civil suit, criminal prosecution, and forcible entry. In the face of immunity, it is submitted that the police is disabled, thereby constituting a limit to exercise of police power.

The international organisations may be accorded diplomatic status by treaty that established them. As a matter of fact, every member of such organisation is bound to concede immunity, as reciprocal treatment, to other

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<sup>1</sup> *Ibid.*, n.12.

<sup>2</sup> *Ibid.*, n.12.

<sup>3</sup> Ikogho, Joseph: *Police Companion and Public Guide*, (2006), Benin-City: Law View Consult, p. 81.

<sup>4</sup> *Ibid.*, n.12.

members. Section 14 of the DIPA provides that:

where a conference is held in Nigeria and attended by representatives of the government or governments of one or more foreign sovereign powers, and it appears to the Minister of Foreign Affairs that doubts may arise as to the extent to which the representative of these governments (other than the Federal or any State Governments in Nigeria), and members of the official staff are entitled to immunities and privileges, the Minister may by notice in the Federal Gazette direct that every representative of any such government (other than the Federal and State Governments of Nigeria) shall for the purpose of any enactment or rule of law or custom relating to immunity and privileges of a foreign envoy, be treated as if he is a foreign envoy and that of the members of his official staff as the Minister may from time to time direct, shall be treated for the purpose aforesaid as if they were members of the official staff of a foreign envoy. Diplomatic immunity is also available to certain international organizations.<sup>1</sup>

It must be understood that immunities and privileges accorded the above functionaries are in the course of their official duties and when carrying out their official functions or while exercising their functions as such. The immunity does not extend to matters of trade.<sup>2</sup> It is submitted that where a President or a Governor of State, in a foreign land, is involved in criminal activities which does not form part of the functions of his office, the immunity and privileges automatically become spent by exclusion of the law. For instance, where a Governor from Nigeria is arrested in Britain with illicit drugs or for money laundering, resulting from looting of his State's treasury, he cannot be said to be carrying out the duty of his office. His immunities and privileges are entitled to be waived in such circumstances and he may be proceeded against in criminal action.<sup>3</sup>

For the purpose of this discourse, it is sufficient to state that police powers are curtailed by implication of the law relating to immunities and privileges as they cannot arrest, search or prosecute the functionaries to whom those immunities and privileges relate. It is however not in doubt, on the authority of *Gani Fawehinmi .v. IGP &*

<sup>1</sup> These international organisations are: the World Health Organisation by virtue of Diplomatic Privileges (World Health Organisation) Order; International Civil Aviation Organisation by virtue of Diplomatic Privileges (International Civil Aviation Organisation) Order; United Nations; International Court of Justice by virtue of Diplomatic Privileges United Nations and (International Court of Justice) Order; United Nations Organisation by virtue of Diplomatic Privileges (United Nations) Declaration of Application Notice; Cameroon Visiting Nation by virtue of Diplomatic Privileges (Cameroon Visiting Nation) Order; United Nations Educational, Scientific and Cultural Organisation by virtue of Diplomatic Privileges (United Nations Educational Scientific and Cultural Organisation) Order; Food and Agriculture Organisation by virtue of Diplomatic Privileges (Food and Agricultural Organisation) Order; International Refugee Organisation by virtue of Diplomatic Privileges (International Refugee Organisation) Order; International Labour Organisation by virtue of Diplomatic Privileges (International Labour Organisation) Order; Specialized Agencies by virtue of Diplomatic Privileges (Specialized Agencies) Declaration of Application Notice; United Nations Children's Educational Fund by virtue of Diplomatic Privileges (UNICEF) Declaration of Application Notice; World Metrological Organisation by virtue of Diplomatic Privilege (World Metrological Organisation) Order; Universal Postal Union by virtue of Diplomatic Privileges (Universal Postal Union) Order; International Telecommunications by virtue of Diplomatic Privileges (International Telecommunications) Order; African Development Bank by virtue of Diplomatic Immunities and Privileges (African Development Bank) Order; African Groundnut Council by virtue of Diplomatic Privileges (African Groundnut Council) Order; Cocoa Producers Alliance by virtue of Immunities and Privileges (Cocoa Producers Alliance) Order; West African Health Community by virtue of Diplomatic Immunities and Privileges (West African Health Community) Order; Regional Centre for Training and Aerial Surveys by virtue of Diplomatic Immunities and Privileges (Regional Centre for Training in Aerial surveys) Order; International Finance Co-operation by virtue of Diplomatic Immunities and Privileges (International Finance Corporation) Order; International Crops Research Institute for Semi-Arid Tropics by virtue of Diplomatic Immunities and Privileges (International Research Institute for Semi arid Tropic) Order; International Committees of Directors by virtue of Diplomatic Immunities and Privileges (International Committees of Directors) Order; Regional Centre for International Commercial Arbitration by virtue of Diplomatic Immunities and Privileges (Regional Centre for International Commercial Arbitration) Order; and International Committee of Red Cross by virtue of Diplomatic Immunities and Privileges (International committee on Red Cross) Order.

<sup>2</sup> *A.R.C. v. J.D.P. Construction Nig. Ltd.* (2007) 11 SCM 1 at 7.  
Governor Diepreye Alamieyeseigha of Nigeria's Bayelsa state was arrested at the Heathrow Airport in London in September 2005, and had his passport confiscated on three money laundering charges after police found £1m in cash at his London address and property in his name worth £10m. He dressed up as a woman and took a Eurostar train from London to Paris, and then flown to Douala, Cameroon neighbouring Nigeria, where a speedboat took him home under cover of darkness. See, Rory Carroll, Nigerian State Governor Dresses up to Escape £1.8m Charges in UK, The Guardian Newspaper online, 23 November, 2005. Available at <https://www.theguardian.com/world/2005/nov/23/hearfrica05.development> Accessed 12 July, 2017.

*Ors.*,<sup>1</sup> that the duties of maintenance of law and order and investigation may still be undertaken to the extent that it will not resort in breaching the immunities and privileges so accorded.

The Nigeria Police Force policy on treatment of diplomatic immunity is contained in Force Order 333, made pursuant to Diplomatic Immunities Act 1962<sup>2</sup> (as amended).<sup>3</sup> It recognises the immunities conferred by law on diplomatic representatives, consular, their wives and children with their domestic staff. The immunities and privileges of Ambassadors duly accredited by the government of the Federal Republic of Nigeria are unconditional except when immunity is waived with the consent of his home government or when immunity is withdrawn on reciprocal ground by order of the Minister for Foreign Affairs and Commonwealth of Nations. Immunity from arrest however, does not extend to the officials or the domestic staff of a diplomat or consular unless the name of the person has been recorded with the Minister by the Diplomat or Consular.

In all cases, where a diplomat or person entitled to diplomatic immunity commits an offence, a report of the facts and action taken will be submitted immediately in duplicate to the Department of Finance and Administration, Police Force Headquarters, Abuja which will transmit a copy of such report to the Federal Ministry of Foreign Affairs and Commonwealth Relations for information and necessary action. No further proceeding will be instituted until instructions are received from the said Ministry. A defendant summons or warrant of arrest or search warrant will not be applied for against an offender who is entitled to diplomatic immunities though an enquiry may be made at the Embassy or High Commission concerned. The matter should in all cases, be reported by the police to the Force Headquarters for guidance and direction. Similarly, persons entitled to diplomatic immunity may not be subpoenaed as a witness in court proceedings or before an inquest unless the immunity is waived.

### **5.0 Persons with Immunity and Police Disability Occasioned by Limitation of Time**

The last class of persons who benefit from police disability are those whose arrest or prosecution are restrained by exclusion of time beyond that statutorily permitted for such criminal process or by virtue of their occupation at the time of the action. This class includes those exempted from criminal liability either by virtue of the office or duties performed by them for the time being or by virtue of their legal capacity or criminal status. Persons in this class include non-compellable witnesses and those excused from criminal liability including husband and wife of Christian marriage in an offence of accessory after the fact, Judges and Magistrates.

Though time does not run against the Crown, Section 92 of the Administration of Criminal Justice Act (ACJA), 2015 expressly provides that:

In every case where no time is specially limited for making a complaint for a summary conviction of an offence in the law relating to such offence, such complaint, if made other than by a person in his official capacity, shall be made within six years from the time when the matter of such complaint arose, and not after.

This constitutes a limitation to the exercise of police investigatory power. This is because if no complaint is lodged within six years after the commission of the offence thereafter the complaint becomes spent by effusion of time. The accused thereby becomes immune from police investigation on such complaint unless, if police want to circumvent this provision by bringing the complaint personally, in his official capacity. Even then, the bringing of such complain is limited to the offence of assault<sup>4</sup>

The Criminal Law provides for limitation as to time within which an action may be commenced. The action may border on the performance of duty or the exercise of power. For instance, Section 11 of the Criminal Procedure Law (CPL), provides that search warrant may be issued or executed on any day including a Sunday or public holiday and that it shall be executed between the hours of 5.0'clock in the forenoon and 8. 0' clock at night unless otherwise endorsed by the Magistrate. The effect of this is that, for a search to be legally conducted, or lawfully executed, the search must be conducted between the hours specified by law, which are the hours of 5.am to 8.pm. Where a search is conducted at a time other than that prescribed by the law, the search may be declared unlawful and this may entitle the person whose house was thus unlawfully searched to compensation or damages.

The foregoing is without prejudice to the fact that such searches though unlawfully conducted, may not preclude items seized from being used as exhibit or being admitted in evidence.<sup>5</sup> Since search is more likely to be

<sup>1</sup> *Supra.*, n.7

<sup>2</sup> Published in Federal Gazette No. 106 of 1962.

<sup>3</sup> Now Diplomatic Immunities and Privileges Act, Cap D 9, LFN, 2004.

<sup>4</sup> See, Section 88 (2), *ibid.*, n.22.

<sup>5</sup> *Kurumu .v. The Queen* (1955) 1 All ER 236; see also *Musa Sadau .v. The State* (1968) NMLR 208.

successful when executed at odd hours, the dichotomy of time was becoming a thorn in the flesh of criminal investigation, until the enactment of the ACJA, 2015 which now provides that a search warrant may be executed at any time and on any day. Despite this, in States where this dichotomy is still available, it becomes a limitation.

Statutorily, limitation as to time may delimit the prosecutorial initiation as the statute creating the offence may provide that prosecution for the offence shall not be commenced until the doing of an act. For instance, certain offences may be declared by the law creating them to be prosecutable upon the grant of Attorney General's consent. This will therefore make any prosecution without first obtaining such consent invalid. Besides, some sections of the Criminal Code also provide the period within which a criminal case may be initiated.

Though time does not run against the Crown on initiation of criminal process/actions, where time however is set against a criminal prosecution, time thereby becomes essential. Prosecution outside statutory limitation becomes invalid. For instance, Section 43 provides that a person cannot be tried for treason or for any of the felonies defined in Sections 40-42 of the Criminal Code which created the offences of concealment of treason, treasonable felony and promoting inter-communal war respectively, unless the prosecution is commenced within two years after the offence was committed. Also, Section 51 of the Criminal Code provides for the offence of sedition for which Section 52 of the Criminal Code provides that prosecution for an offence thereunder shall be undertaken within six months after the offence was committed. Also, section 57 of the Criminal Code also contained a limitation to time as it provides that a prosecution for any of the offences created thereunder shall be begun within six months after the offence was committed.<sup>1</sup>

Afolayan identified five key areas under the extant law under which time limit are provided for institution of criminal cases.<sup>2</sup> These include:

- i. Treason and treasonable felonies – must be instituted within two years after the offence is committed.<sup>3</sup>
- ii. Sedition – must be instituted within six months after the offence is committed.<sup>4</sup>
- iii. Customs and Excise Management offences – must be instituted within seven years after the offence is committed.<sup>5</sup>
- iv. Unlawful carnal knowledge of a girl under the age of thirteen – must be instituted within two months after the offence is committed.<sup>6</sup>
- v. Criminal proceedings against a public officer for committing an offence in the course of execution of his public duty – may be instituted at any time and not necessarily within three months after the offence is committed.<sup>7</sup>  
The Supreme Court has held that the Public Officers Protection Act is not to shield public officers from public prosecution but covers only civil liability.<sup>8</sup>
- vi. All military offences except Mutiny, Failure to suppress mutiny and desertion must be instituted within three years. Mutiny, Failure to suppress mutiny and Desertion has no time limit within which it shall be instituted.<sup>9</sup>
- vii. Actions against retired military officers for offences committed while in active service must be instituted within three months from date of disengagement from service.<sup>10</sup>

Evidently, the legal effect of the foregoing is that in the light of these statutory limitations, police powers become salutary by reason of disability. It is trite law that where a time limit is provided for taking an action, the commencement of such action at a later date or time would result in declaring the trial statute barred.<sup>11</sup> Thus, in

<sup>1</sup> Section 57 (3) of the Criminal Code.

<sup>2</sup> Afolayan A. F.: *Criminal Litigation in Nigeria* (2016) 3<sup>rd</sup> Ed., Enugu: Chenglo Law Publications Ltd, pp. 136-137.

<sup>3</sup> Afolayan, *ibid*, 137; section 43 Criminal Code Act Cap. C38 LFN, 2004.

<sup>4</sup> Afolayan, *ibid*; see also section 52 (1) *Ibid*.

<sup>5</sup> Section 176 (3) Customs and Excise Management Act, Cap. P41 LFN, 2004.

<sup>6</sup> Afolayan, *ibid*; section 218 Criminal Code.

<sup>7</sup> Section 2 (a) Public Officers Protection Act.

<sup>8</sup> Afolayan, *ibid*; see *Yabugbe .v. Commissioner of Police* [1992] 4 NWLR (Pt.234) 152 at 177-178 SC. See also, *Egbe .v. Alhaji* (1990) 1 NWLR (Pt.128) 546.

<sup>9</sup> Section 169 (1) Armed Forces Act, Cap A 20, LFN, 2004.

<sup>10</sup> Section 169 (2), *ibid*, n33

<sup>11</sup> Afolayan, *ibid*, n.26. See, *Adekoja .v. Federal Housing Authority* [2008] 4 SCM, 1. See also, *William .v. Williams* [2008] 7 SCM 2009.

*Arabella .v. Nigeria Agricultural Insurance Corporation*,<sup>1</sup> the Supreme Court held that where an action is commenced outside the limitation period, it is statute barred and no subsequent plea of guilty can revive it.

Aside the foregoing, though tardiness may constraint the exercise of police investigatory and prosecutorial powers, the Supreme Court in *Mohammed .v. The State*<sup>2</sup> appeared to apply a liberal approach against delay in prosecution and has held that:

...delay in prosecution of armed robbery cases would not invalidate the trial and that the remedy available to an accused person who suffered from an incineration is the enforcement of his fundamental right, if he is discharged and acquitted.<sup>3</sup>

#### **6.0 Limitation Occasioned by Proliferation of Law Enforcement Agencies**

Out of all police duties contained in Section 4 of the Police Act,<sup>4</sup> the protection of life and property; prevention and detection of crime, apprehension of offenders and enforcement of all laws with which they are directly charged are duties which border on the criminal jurisdiction while others are purely within the civil jurisdiction. We are mindful of a number of law enforcement agencies which are currently saddled with overlapping duties similar to those performed by the Nigeria police. Though, the enabling law creating each of these agencies does attempt to carve a niche for what duties the agency would perform, it nonetheless, does not divest the police of its proprietary powers and duties. The legal inference that may be drawn from the enabling legislation creating these new law enforcement agencies is that they are merely allowed to share in the performance of some of those duties also which hitherto were wholly imposed by law on the police.

Having been created by the instrumentality of various sections of laws still remaining in force which are yet to be repealed by any of these enabling laws creating these new agencies, all powers and duties of the Nigeria Police so created in the various laws through which the Constitution creates police functions,<sup>5</sup> remain intact until they are expressly taken away, repealed, modified or reserved exclusively for different agencies by their enabling laws or any law in that behalf to the exclusion of the Nigeria Police Force.

Notwithstanding any special powers so granted to any agency, police general powers still remain unrevoked. Thus, in *IGP .v. Daniel Andrew*,<sup>6</sup> the Court of Appeal (Ekiti Division) construing the provisions of Section 8(2)(a) of the National Drug Law Enforcement Agency (NDLEA), which saddles the Agency with the power of prosecution of drug related offences in contrast with the provision of Section 23 of the Police Act, held that:

None of those sections ousted the prosecutorial power of the police which is donated by the Constitution. The fact that the Agency is given concurrent power with the police to prosecute under the Act cannot amount to usurpation of its power by the police. Both the Police and National Drug Law Enforcement Agency are fighting crime in the country. Any power tussle between the Federal Agencies charged with responsibility to fight crimes will lead to anarchy and the Federal Government's effort will remain prostrate.<sup>7</sup>

Inconceivably though, the residual estate and fundamental powers of the police is perpetually preserved by law, executive intervention on inter-level cooperation and inter-departmental relationship often result in the Nigeria Police delimiting dissipation of efforts on overlapping functions to the effect that apart from preliminary action necessary to be taken, as occasion may consider to be efficacious, the handling of such cases earlier performed by the police, but later allowed to be performed by these new agencies are as a matter of consistency, usually directed to be conceded wholly to the specialised agencies. It appears such practice no doubt, may have resulted from the Federal Government's directive that they be so treated. Such directive may be necessary in order to enhance the patronage of these agencies by members of the public; more so that proliferation of law enforcement agencies in Nigeria could be seen as an executive intervention undertaken to ensure efficacy. Thus, the creation of new agencies covering special fields to heal police inefficiency demands police cooperation.

The above indication, as relates the direction of inter-level co-operation, is a constraint against the performance of police duties and the exercise of police investigatory and prosecutorial powers and discretions. This limitation continued in the Nigeria criminal law until judicial intervention came the way of the Nigeria Police. Despite the foregoing seemingly fanciful administrative arrangement, it is now settled in law that in Nigeria, the police can

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Afolayan, *ibid.*, n.26. See, *Arabella .v. Nigeria Agricultural Insurance Corporation* [2008] 5 SCM 39.

<sup>2</sup> *Mohammed .v. The State* [2015] 4 SCM 214 at 223.

<sup>3</sup> *Ibid.*, n.37 at 223.

<sup>4</sup> *Op. cit.*

<sup>5</sup> See Section 214 (2)(b) of the CFRN 1999, (as amended).

<sup>6</sup> *IGP .v. Daniel Andrew* (2014) All FWLR (Pt. 729) p. 1194.

<sup>7</sup> *Ibid.*, n.2, at p. 1207.

validly prosecute virtually all cases. In *FRN v Daniel Abuah*,<sup>1</sup> a similar case with another institution, the Court of Appeal Abuja Division, held that the Nigeria Police can prosecute all offences including those under the Nigeria Security and Civil Defence Corps Act (NSCDC), 2007. The Court overturned the decision of Justice I. E. Ekwo of the Federal High Court (Lokoja Judicial Division), who in his judgment delivered on the 17<sup>th</sup> of June 2013, had held that since Section 3 (1)(f)(vi) of the Nigeria Security and Civil Defence Corps Act, 2007 has expressly conferred on NSCDC, the authority to investigate offence of oil pipeline vandalism and the power to initiate proceeding thereto on behalf of the Attorney-General of the Federation, the police is under a duty to hand over any such suspect apprehended by them in respect of such offence, to NSCDC for prosecution.

Any administrative arrangement notwithstanding, police statutory powers and duties of detection and prevention of crime, maintenance of law and order, prosecution of criminal cases and protection of life and property are not indeed divested so long as the act or omission giving vent to police action, constitutes an offence. It does not matter under what enabling law the offence was created, police can exercise its residual jurisdiction to investigate and prosecute such offence.<sup>2</sup> This assertion is reinforced by the Supreme Court's holding in the case of *Nyame .v. FRN*<sup>3</sup> which approved that the Economic and Financial Crimes Commission is empowered to prosecute offences so long as they are financial crimes. In a similar vein, the Nigeria Police under Sections 4 and 23 of the Police Act<sup>4</sup> has an extensive wide investigatory and prosecutorial power in Nigeria so long as the complaint being handled is a crime known to law notwithstanding under what law the offences are created.

## 7.0 Conclusion and Recommendations

In the final analysis, though the Police in Nigeria possessed extensive enormous investigatory and prosecutorial powers sufficient enough for the lawful and effective performance of their primary duties, the law nonetheless concedes immunity on certain classes of persons thereby constituting disability on these exercise.

It is against the foregoing background that underlisted recommendations are proffered:

- i. Adequate funding of the police is necessary for logistic and operational requirements of the Force. The release of funds should be tied to operational projects toward sustaining improved service. Collaborative efforts through public/private participation in the funding of the Nigeria Police Force have become necessary. It is certain that security is no longer the business of the Federal Government alone. The three tiers of government should all be involved in its funding. Since the duties of maintenance of law and order performed by the police are undertaken at the instance of the Federal Government for the benefit of people living in the territories of the state and local governments which are both responsible for the maintenance of law and order in their individual domain; the three tiers of government should be involved in its effective funding.
- ii. Similarly, policing should not be left in the hands of the Federal Government alone, the state and local governments who are stakeholders in the maintenance of law and order within their domains should make adequate contributions toward a sustainable maintenance of law and order.
- iii. Besides, there is an urgent need for the passage of the Police Trust Fund Bill by the National Assembly and other similar bills by various state houses of assembly. In addition, local governments should take care of the local running of the police contingents within their locality, particularly the repairs, maintenance and fuelling of operational vehicles for effective patrolling to ensure adequate crime prevention, while more resources should be invested in modern equipment to enhance its functions.
- v. In order to improve on its image, the Nigeria Police should regulate the recruitment or enlistment of people into the Force by recruiting members of the public from good parentage. Such recruits should be people of proven integrity without criminal records.
- vi. There is also the urgent need for the amendment of Section 305 of the Constitution of Federal Republic of Nigeria, 1999 (as altered) as regards the immunity clause with a view to delimiting its provisions only to when the beneficiary is in actual business of the State in *bonafide* pursuit of the sovereign interest.
- vii. Similarly, Police authorities should put in place an institutional check mechanism to ensure that the

<sup>1</sup> *FRN .v. Daniel Abuah* published with approval in the *Nigerian Leadership's* publication entitled "Police Have Power to Prosecute All Offences" available on <http://leadership.ng/news/439601/police-have-powers-to-prosecute-all-offences-court> (Accessed on 30th March, 2017).

<sup>2</sup> Ijalana E. F. and Oluduro O. F.: "Jurisdictional Issues in Policing: Scope and Extent of Nigeria Police Jurisdiction" (2012), *African Journal of Institutions and Development (AJID)*, Vol. VI, No. 1 & 2, p. 79 at p. 93.

<sup>3</sup> See, *Nyame .v. FRN* [2010] 4 SCM 61 at pp. 100 – 101.

<sup>4</sup> *Op. cit.*, n.2.

personnel exercise their discretionary powers within the procedural and due process of the law. For the pursuit of substantial justice, police officers should be encouraged to exercise, as occasion warrants and in the interest of justice, discretion while performing their duties.

- viii. There is an urgent need for the delineation of duties for other parallel forces now contending with the Nigeria Police Force in the performance of its constitutional duties. Where necessary, those on special fields should be contained within the field without delving into the wider fields of duties constitutionally preserved for the Nigeria Police Force.

It is hope that the above recommendations will help, in no little way, in enhancing the lawful exercise of police investigatory and prosecutorial powers in Nigeria.