

**A CRITICAL ANALYSIS OF THE
PROS AND CONS OF STATE
POLICING: TO BE OR NOT TO
BE**

BEING A PAPER PRESENTED

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INTRODUCTION

1. After one-and-half decades of unbroken military rule, Nigeria returned to multiparty civilian administration on 29 May 1999. Almost two decades already, one of the enduring lessons of the new civilian dispensation; one in which the country has witnessed four back-to-back political transitions is that posed by the maintenance of public law and order. To be sure, the challenges are myriad and complex, ranging from the more familiar acts of criminality perpetrated by armed robbers to violence associated with the proliferation of a variety of armed groups contesting between among themselves at the same time that they undermine constituted authority. Between these extremes, Nigeria has witnessed the more conflicts linked to religion, ethnicity, contestations over the ownership of and benefits deriving from natural resources, disputes over traditional authorities, access to and control of land for farming and grazing, and the resurgence of violent sub-national groups.

2. A critical constituency in the academia believes that the Nigeria Police Force as presently constituted cannot effectively carry out the core mandate of policing: to serve and protect citizens. Those persuaded by this argument insist that after almost six decades of independence, the Nigeria Police Force has still not purged itself from its past as an instrument of coercion in the hands of the colonial – now postcolonial-state and that of the elite. They draw attention to

the highhanded manner the police frequently operates; be it on simple matters like attending to individual complainants or when there is a major breach of law and order. Regardless, what is clear from the nature and trajectories of violent conflicts in Nigeria is that they stretch the police as the institution principally responsible for the maintenance of law and order to the limit. In the first instance, these conflicts are hardly ever standalone; they are almost always linked to broader contradictions of governance and accumulation that have dogged the country consistently since independence. For this reason, and more, effectively preventing and managing (if not resolving) them go beyond conventional responses. Second, the violent conflicts are not necessarily episodic flash-in-the-pan events but they tend to be ad-hoc and largely reactive NOT measured and proactive; with emphasis mostly placed on addressing symptoms rather than the root causes.

3. Third, the country has witnessed both a considerable pluralization as well as privatization of policing; the former evident in the establishment of hybrid policing agencies such as the Nigerian Security and Civil Defence Corps by the Federal Government that operate parallel to the Nigeria Police Force while the latter is reflected in proliferation of a plethora of non-state and private sector policing institutions. Again, the jury is still out in respect of what such democratization of policing' means for Nigeria Police Force and the delivery of its constitutional role. The trend that is becoming evident is that such organisation established to complement, or fill-in-the gaps, sometimes set

themselves up against, or are made to see themselves as alternatives to, the Nigeria Police Force. There have been dire consequences arising from unhealthy, and often unnecessary, battle for supremacy between the personnel of the Nigeria Police Force and hybrid policing institutions in Nigeria, including how much rivalries further undermine law and order, if not trample on the liberty and dignity of innocent, law-abiding citizens.

4. Fourth, and by no means the last trend, is that in very short periods violent conflicts leave a heavy toll in terms of the loss of lives and the destruction of invaluable property. This happens not only because what is necessary to nip such violent conflicts take time in coming but also due to the fact that the country has seen a frightening proliferation of small arms and light weapons in the wrong hands. Underlying all of the issues and challenges in the maintenance of public law and order in contemporary Nigeria is that institutions created or mandated to tackle them either do not have what it takes to effectively respond to their changing forms and complexities or they face myriad and increasingly, overwhelming challenges; at one remove, internal (capacity, resources, processes etc) and at another external (policy and political environment). This is clearly the case with the Nigeria Police Force which is the agency of government constitutionally responsible for the maintenance of law and order in the country. The operational control of the Nigeria Police Force is vested in the Inspector-General of Police who reports to the President of the Federal Republic. Because the Nigeria Police Force is scheduled within the

exclusive list, the Federal Government exercises absolute control over it whereas political heads of the other two tiers of government: the State Governors and the Local Government Chairpersons, despite acknowledging them as Chief of Security Officers of their constituencies, are virtually helpless even in matters pertaining to the routine maintenance of law and order. These issues were aptly captured in the seminar paper by Associate Professor Kemi Rotimi, “Approaches to the Policing of a Perplexed Society.”

CONTROL OF THE NIGERIA POLICE FORCE

5. A discussion of the constitutional role of the Nigeria Police Force raises the issue of who has the control over the force and the quest for state police. A related issue is that of level of decentralization of the police, especially from the perspective of the force. The Nigeria Police Force is somewhat decentralized notwithstanding its command structure. The focus is therefore not much of centralization but on the control of the force, and issue of multiple forces.

6. The Nigeria Police Force is centralized at the level of the Federal Government and the force is controlled at that tier of government. Section 215(1)(a) of the Constitution provides that the President shall appoint an Inspector-General of police from among serving members of Nigeria Police Force. He is however, required to seek the advises¹ of the Nigeria Police Council or consult² the Council. The membership of the Nigeria Police Council

¹. Section 215(1)(a) of the Constitution

². Section 216(2) of the Constitution

consists of the President who is the Chairman of the Council, the Governor of each state of the Federation, the Chairman of the Police Service Commission and the Inspector-General of Police. The members of the Council including the Governor of the states are thereby in a position to advise the President on the appointment of an Inspector-General of Police. The membership of the Council by the Governors is an innovation in the 1999 Constitution unlike the 1979 Constitution which did not provide for the membership of the Council by the Governors. In reality, the President is not bound by the advice of the Nigeria Police Council; the President appoints the Inspector-General of Police.

7. By the provisions of the Constitution, before removing the Inspector-General of Police from office the President shall consult the Nigeria Police Council.³ Some scholars have stated rightly that, like in the case of appointments the President has to fulfill a condition precedent of consulting the Nigeria Police Council, but he is not bound by the outcome of the consultation before removing an Inspector-General of Police from office.⁴ Below, the Inspector-General of Police, there are Commissioners of Police, who, by virtue of Sector 215(1)(b) of the Constitution, are appointed by the Police Service Commission. Any “contingents of the Nigeria Police Force stationed in state

³. Ibid.

⁴. Ibid.

shall, subject to the authority of the Inspector-General of Police, be under the command of the Commissioner of Police of that state.”⁵

8. The provisions of Section 215(3) and (4) of the Constitution support the argument that the Federal Government has overall control of the Nigeria Police Force.⁶ It is pertinent that the President or such other Minister of the Government as he may authorise in that behalf may give to the Inspector-General of Police such lawful directions as he may consider necessary⁷ and the Inspector-General of Police shall comply with those directions.⁸ In the same vein, the Commissioner of Police of a state is required to comply with or cause them to be complied with the lawful directions to them by the Governor of the state or such Commissioner of the Government of the state as he may authorize in that behalf.⁹ The Constitution provides that the Commissioner of Police may request that the matter be referred to the President or such Minister of the Government of the Federation as may be authorized in that behalf by the President for his directions.¹⁰ In the two situations, the courts may not inquire into whether or what directions have been given.¹¹

⁵. Badaiki, AD, Op. Cit., p. 176. See also Nwabueze, BO, *The Presidential Constitution of Nigeria*, C Hurst & Company, London in Association with Nwamife Publishers, Enugu and Lagos, 1982, pp. 144-145.

⁶. Section 215(2) of the Constitution

⁷. Badaiki, AD, Op. Cit., p. 177, and Ijalaye, DO, *The Imperatives of Federal/Satte Relations in a Fledging Democracy Implications for Nigeria*, Nigerian Institute of Advanced Legal Lagos, 2001, p. 10. Argue that the ultimate control of the Nigeria Police Force resides with the Federal Government.

⁸. Section 215(3) of the Constitution.

⁹. Ibid.

¹⁰. Section 215(4) of the Constitution.

¹¹. Provisio to Section 215(4) of the Constitution.

9. The provisions of Section 215(5) of the Constitution oust the jurisdiction of the court on whether any direction is given or the type of directions given. “The question whether any, and if so what, directions have been given under this section shall not be inquired into in any court. According to Prof Badaiki, when statutory provisions oust the courts’ jurisdiction, the courts are prevented from examining the issues involved and from questioning the exercise of the authority conferred by the statute.”¹² He stated rightly:

The ouster clause in Section 215(5) of the Constitution is justified because in deciding whether or not to give lawful direction and the kind of lawful direction given under the subsection, the President or such other Minister of the Government of the Federation or the Governor of a state would always consider security matters. Such security matters may constitute some of the issues of determination by the court. To allow such security matters to be a subject of inquiry by the court can be inimical to the security of the nation. It is, however, submitted that where unlawful directions have been given by the state officers under the sub-section in question, the jurisdiction of a court is not excluded.”¹³

10. The Nigeria Police Force is largely under the control of the President, the head of the Federal Government. He appoints and removes the Inspector-General of Police who is responsible to the President whose lawful directions he must carry out. The lawful directions given by a Minister, “in that behalf” must be by the Minister authorized by the President. The same position applies where the Governor of a state or such Commissioner of the Government of the state as he may authorize in that behalf gives lawful instructions to the

¹². Section 215(5) of the Constitution.

¹³. Badaiki, AD, Interpretation of Statutes, Tiken Publishers, Lagos, 1996, p. 70 .

Commissioner of Police of a state. However, before deciding whether or not to comply with the lawful direction of the Governor or that of the Commissioner authorized by the Governor in that behalf, in exercise of the Constitutional discretion conferred on the Commissioner, the Commissioner may request that the matter be referred to the President or such Minister of the Government of the Federation as may be authorized in that behalf by the President for his directions.

QUEST FOR STATE POLICE

11. A major issue that the establishment of Nigeria Police Force under the control of the Federal Government has raised over the years especially during civilian democratic government is whether states should not be allowed by the Constitution to set up their police forces. There are both protagonists¹⁴ and antagonists¹⁵ of creation of the state police forces with each group having their reasons for their viewpoints.

12. One of the arguments of the protagonists is that creation of state police force reflects Nigeria as operating true federal system of government.¹⁶ The existence of a single police force in the country does not deter from Nigeria,

¹⁴. Badaiki, AD, Centralisation and Control of the Nigeria Police Force: Revisiting the Debate on State

¹⁵. For examples, Badaiki, AD, Op. Cit pp. 176-179, Akande JO, Introduction to the Constitution of the Federal Republic of Nigeria," The Constitution of Journal of Constitutional development, Vol 3, No 1, September 2002, p. 55, Nwabueze, BO "Reflections on the 1999 Constitution: A Unitary Constitution for a Federal System of Government," a paper presented at a Seminar organized by the International Commission of Jurists, Abuja 14-16 February 2009, p. 35.

¹⁶. For examples, Ijalaye DO, The Imperatives of Federal/State Relations in a Fledgling Democracy Implications for Nigeria, Nigerian Institute of advanced Legal Studies, Lagos, 2001, pp. 9.12' Nmerole, CI Police Interrogation in Criminal Investigation (Historical, Legal and Comparative Analysis Holygraph Nig Ltd, Minna 2008, p. 4.

being a true federal system. It is based on the exigencies of the time as determined by the abuse to which multiplicity of police forces was put in the past. There is no absolute federalism. In **Chief Adebisi Olafisoye v. Federal Republic of Nigeria**¹⁷, Niki Tobi JSC stated as follows:

“There are ideas of federalism propounded and developed by constitutional law scholars and political scientists, the world over. These ideals and ideas are goals set up to achieve true federalism. No Constitution can really achieve such goals, which largely utopia(sic). Such goals are ideals by and large, and at the end of the day, judges must interpret the provisions of the Constitution and not the ideals.”

His Lordship further asserted:

“A Federal Government will mean what the Constitution writers say it means. And this can be procured within the four walls of the Constitution. Therefore, a general definition of federalism or Federal Government may not be in the answer to the peculiar provisions of a nation’s Constitution which is the *fons et origo* of its legal system. Thus, the word federalism conveys different meanings in different Constitutions as the constitutional arrangements show particularly in the legislative lists.”

13. Similarly, Inegbedion and Omoregie had stated rightly that “the basic indices of a federal structure of government are the political and economic autonomy of the integrating units within their legislative sphere of influence as provided for in the Constitution.”¹⁸ Another argument is that the Federal Government control of the Nigeria Police Force enables it to use the police power for selfish purposes and in some cases leading to abuse of the Force.¹⁹ It

¹⁷. (2004) 4 NWLR (Part 864) 580 at 592

¹⁸. Inegbedion, NA and Omoregie E, “Federalism in Nigeria: A Re-appraisal,” *Journal of Constitutional and Parliamentary Studies*, vol. xxxix Nos 1-4, January – December, 2005, p 78

¹⁹. Akande J.O., *op. cit*

is also argued that Federal Government does not deliberately abuse the use of the Nigeria Police Force. Very often, the force is used for security purposes and cases of abuse of police powers are few and are actionable where they occur.

14. The State Governors who are security officers of their respective states have no sufficient control of the Nigeria Police Force, a situation described as one of “responsibility without power.”²⁰ State Governors are empowered by the Constitution to serve in the Nigeria Police Council, and give directives to State Commissioners of Police provided that such directives are lawful and not for oppressive political and other selfish purposes. It is further advanced as a rationale for establishment of state police that the Nigeria Police Force is too large and incapable of coping with the current challenge of preventing and detecting crimes thereby leading to high crime rate. The Nigeria Police Force is not large enough to effectively police the population. Moreover, crime and crime rate are a function of many other variables such as unemployment, nature of governance, value system, intelligence level and community cooperation. To the protagonists, there is a historical justification for permitting establishment of parallel state police forces as in the days of regional and native facilities, authority/local police forces under the 1954 Constitution and Section 105(7) of the 1963 Constitution. History is replete with abuses perpetrated by multiple police forces, and that resulted in a shift from multiple to single police force. (See Rotimi: *The Police in a Federal System: Nigerian Experience*).

²⁰. Idowu A.A, Op Cit & Kemi: Rotimi: *The Police in a Federal System: Nigerian Experience*.

STATE POLICE: THE GLOBAL ARGUMENT

15. The pull and push debate on centralized or decentralized structure of policing is not peculiar to Nigeria. It is also a discourse within the global space with argument gradually tilting towards the centralisation of policing functions. The impact of globalisation, increasing transnational nature of crime and criminal networks, as well as the huge budgetary demands of policing the community have combined to justify the argument for the centralization of policing structure and functions across various jurisdictions in the world. This drift was hastened by the post 9/11 terror incident in the United States which clearly exposed the challenge of inter-agency collaboration among the various policing frameworks.

16. The experience in the United Kingdom presents a unique case study reputed to have 43 police forces, the post 9/11 terror incident has produced a new policing model that is driven by centralisation. This underscored the establishment of the National Crime Agency (NCA), a centralized, triple warranted policing agency whose officers are granted the powers and privileges of a constable, powers of a customs officer, and powers of an immigration officer.²¹ The NCA today takes primacy in UK law enforcement's response to serious and organised crime and it has national and international mandates.

²¹. National Crime Agency website <http://www.nationalcrimeagency.gov.uk> (accessed on 20/5/16).

17. The experience of Scotland is indeed, more revolutionary. In 2013, all eight of Scotland's regional forces were replaced by just one, police Scotland.²² With new combined personnel of 17,400 officers, national jurisdiction covering 30,000 square miles and policing mandate over 5.3 million citizens, the new police Scotland is now the UK's second-largest force after the Metropolitan Police. The centralization of police structure in Scotland ensured the merger of Scotland's numerous competing Criminal Investigation Departments with a detective staff profile of 2,000 detectives.²³

18. Stephen House, the Chief Constable of police Scotland was quoted as observing that 'the new force will bring dramatic, much-needed improvements to Scottish policing particularly on major, complex cases' while also predicting that the Scotland's single force will be a model for the "inevitable" mergers of England and Wales's 43 Forces.²⁴ It is believed that the success of the Scottish police experiment may embolden the Home Office to renew the proposal for centralization of police forces in England and Wales, regardless of the vigorous resistance by English and Welsh Chief Constables and Local Councils.

19. In the United States, there is also a gradual drift towards a centralized policing model. It is on record that eleven days after the September 11, 2001, terrorist attacks, Pennsylvania Governor Tom Ridge was appointed as the first

²². See Badaiki's middle course argument in *The Comet*, Tuesday, August 24, 1999, pp. 24-25 as against his modified argument in Badaiki, AD, "Centralisation and Control of the Nigeria Police Force: Revisiting the Debate on State Police," *Op. Cit.* p. 102.

²³. Carell, S. Scotland's New Unified Police Force replaces eight regional constabularies: *Guardian Newspaper*, Monday 1 April 2013.

²⁴. *Ibid.*

director of the office of Homeland Security in the White House to coordinate a comprehensive national security strategy to safeguard the country against terrorism and respond to any future attacks.²⁵ Subsequently, the Homeland Security Act was promulgated by Congress in November 2002, and the Department of Homeland Security formally established as a stand-alone, cabinet-level department to further coordinate and unify national homeland security efforts. The Homeland Security Department became operational from March 1 2003. The establishment of Department of Homeland Security witnessed the integration of 22 different Federal Law Enforcement Departments and agencies into a unified national security agency with national and international policing mandate.²⁶

20. Against these global perspective, the argument for the state police in a country that is grappling with weak budgetary base (especially at state level of governance) and deep ethno-religious sensitivity may not present a credible policing future for the country. The trend is a movement from multiple police forces to a single centralised police force. It is less expensive, more unifying, more effective, result oriented and very useful for crime prevention and detection. I will personally from my experience as a Former IGP suggest a hybrid of the Dan Madami Police Committee Report on decentralization of the policing functions at the FHQ; encouraging community partnership and

²⁵. See Official Website of Department of Homeland Security.

²⁶. See Official Website of Department of Homeland Security.

neighborhood watch as panacea to internal security management in the country. More importantly, the police council should be made to function more efficiently through constant sittings.

21. Antagonists of state police argue that although Nigeria is a federation, its democracy is not mature enough to allow states to establish their police forces. It is feared that State Governors will use their respective police forces for political and other selfish vendetta. In addition, many State Governments cannot fund separate police forces of their own because of the enormous financial resources involved in running the Nigeria Police Force. A better view is Badaiki's earlier middle course of waiting for maturity and not fair maturity of the nation's democracy before contemplating constitutional permission to establish state police forces in the country. The real challenge of the Nigeria Police Force is how best to re-position it by proper funding, re-orientation, training and uncivil practices.

22. The constitution creates an obligation of government to ensure security of life and protection of property. As a part of and under the control of the executive organ of government, the Nigeria Police Force is specifically created to perform this governmental function of maintaining law and order. The constitutional role of the Nigeria Police Force includes prevention and detection of crimes which are critical in ensuring the security and welfare of the people. to achieve this purpose, the command of the Nigeria Police Force is put under the Inspector-General of Police. In organizing and administering the force, there

should be compliance with an Act of the National Assembly. Accordingly, the Constitution further provides that the powers and duties of the force must be as conferred by law. The Police Act with the police regulations has been identified as the most prominent and comprehensive legislation which create detailed powers and duties of the force. Section 4 of the Police Act encapsulates the duties and functions of the force including the prevention and detection of crime. Remarkably, it is shown that the Police Act should be read subject to the Constitution which does not only create it but also is superior to it.

23. The paper examined the supervisory, operational, organisational and administrative system of the Nigeria Police Force. It is shown how, within the constitutional framework, different structures are created. The significance of these structures is shown to determine the nature of control and the authorities that have control over the force. The most overwhelming authority of control appears to the President who does not only appoint and remove the Inspector-General of Police, but also is the operational head of the force. Furthermore, he is empowered to determine some of the membership of the Nigeria Police Council and the Police Service Commission, whose members cannot but be subservient to their appointor.

24. Although under the Constitution, the Governors of all the states, as the members of the Nigeria Police Council and Police Service Commission, are entitled to make inputs into the decision-making machinery of these bodies, and can give lawful directions to Commissioners of police in their respective states,

there is the issue of establishment of state police. It is shown that there are merits and demerits in the arguments for and against the establishment of such multiple police forces. It is, however, argued that historical evidence and in view of lack of sufficient maturity by many political actors, multiple forces in the name of state police forces parallel to the present federal-controlled Nigeria Police Force cannot in financial and security terms, be defensible, for they may be mere instruments of oppression in the hands of some overbearing Governors. It is recommended that all stakeholders should unite in properly funding the Nigeria Police Force for adequate equipment, facilities, motivation, training and re-training in order to rid the force of corruption and other vices and abuses that are cardinal to effective intelligence-led policing in the country.

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