

# AN APPRAISAL OF THE PROSECUTORIAL POWERS OF THE NIGERIA POLICE IN CRIMINAL CASES

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**Abstract:** This paper examines the Prosecutorial Powers of the Nigeria Police in Criminal Cases. Though the Police are saddled with the Statutory duties of protecting lives and properties and by so doing imbued with the powers to prosecute Criminal Cases, the Police Act 2020 as well as the Administration of Criminal Justice Act, 2015, and the Administration of Criminal Justice Law of States tends to restrict such Prosecutorial powers to only Police officers who are Legal Practitioners. The study adopted the doctrinal research methodology whereby primary and secondary documents forming part of related literature and judicial interpretations are used. The findings in the course of the research reveals that while the Police Act 2020 confers significant prosecutorial authority to the Police, Section 66(1) restrict such prosecutorial powers of the Police to only Police officers who are legal Practitioners which is a challenge that hinders effective prosecution and lack of adherence and strict enforceability of the said section. Other challenges include that most Police Prosecutors lack the basic legal procedure skills amongst others. Following these findings, the research recommends for the need to strictly adhere and ensure the enforceability of the Provision of Section 66(1) of the Police Act 2020 and to also enhance legal training for Police officers in legal procedures as well as improve overall funding and resources for the Nigeria Police Force.

**Keywords:** Prosecution; Prosecutorial powers; Police; Criminal cases

## 1 INTRODUCTION

Societies all over the world, and Nigeria in particular expand and develop continuously, as such human relationship and activities also expand. The results of dynamism of the growing population give room for crime, hence the need for the Police force to prosecute such criminal matters. These societies therefore strive to establish and develop institutions that can ensure peace as well as security of lives and properties of its citizenry. This is also true of the Nigerian State where the Nigerian Police Force as an institution has been established by law and given the responsibility to protect the citizens and ensure peace and stability within the Nigerian polity [1]. However, several decades after its creation or formation, the general powers of the Nigeria Police force as established with the goal of achieving peace, security and a crime free society through the force have not been realized. Several factors may be responsible for this failure of the Nigeria Police in combating crime through arrest and prosecution of suspects to ensuring peace and security. Some of these factors are poor funding, remuneration, corruption, lack of equipment to mention just a few.

It is an undisputable fact that failure to prosecute crimes in the society encourage the wide spread of the commission of more criminal activities within the society, hence, the primary tool of prosecution is the law. The secondary tool being the appropriate law enforcement agencies such as the Nigeria Police Force, Nigeria Civil Defence Corps, Nigeria Drugs Law Enforcement Agency, and the Economic and Financial Crimes Commission among others who are empowered by the law to see to criminal prosecution in any society within Nigerian. When there is a problem with the law, most likely, the agency empowered will face challenges in its application and consequently, the discharge of its duties in that direction. Before the enactment of the Administration of Criminal Justice Act 2015 (ACJA) and the Police Act 2020, Police officers in Nigeria popularly known as “Police prosecutors” could prosecute criminal cases at all level of courts. They actually do the bulk of the criminal prosecution at the lower courts particularly in Magistrate courts. This duty to prosecute was conferred on them by the Police Act [2]. This has effectively relieved the Federal Ministry of Justice and the various States Ministries of Justice the burden of going to the lower courts for the purpose of criminal prosecution. Subsequently, the prosecutorial powers of the Police have been a subject matter of various legal actions and the Courts have made pronouncements to establish the power of the Police to prosecute regardless of not being a legal Practitioner [3]. However, with the enactment of the Administration of Justice Act 2015 (ACJA), only a Legal Practitioner in the Police establishment is permitted to prosecute criminal cases. This is further included in the provisions of section 66 of the Act [2] to the effect that only a police officer who is a Legal Practitioner shall have the power to prosecute. However, under subsection 2 of Section 66 of the same Act also impliedly, provides that a police officer may, subject to the provisions of relevant Criminal Procedure Laws in force at the Federal or State level, prosecute before the Courts those offences which non-qualified Legal Practitioners can prosecute. This position, no doubt, appears ambiguous, confusing and contradicts the recent decisions of the Supreme Courts in Nigeria. This research will examine section 66 of the Police Act 2020 which empowers the Police to prosecute all

offences in federal courts in Nigeria and the concerns of the provision in terms of the manner it is couched leaving much to be contemplated upon as well as for amendment [4].

## 2 THE POLICE ACT, 2020

The Police Act, 2020 which came to force on the 17th September, 2020 repealed the Police Act Cap. P19, Laws of Federation of Nigeria, 2004. The general objective of the Act is to provide an effective police service that is based on the principles of accountability and transparency, protection of human rights, and partnership with other security agencies. The Act made a number of novel provisions towards improving the policing system in Nigeria and also making the Act to be in tandem with the Administration of Criminal Justice Act and other relevant laws of the Federation. Section 4 renders the primary functions of the Police Force, as follows[2]: The Police shall:

- (a) prevent and detect crimes, and protect the rights and freedom of every person in Nigeria as provided in the Constitution, the African Charter on Human and Peoples Rights and any other law;
- (b) maintain public safety, law and order; (c) protect the lives and property of all persons in Nigeria;
- (d) enforce all laws and regulations without any prejudice to the enabling Acts of other security agencies;
- (e) discharge such duties within and outside Nigeria as may be required of it under this Act or any other law;
- (f) collaborate with other agencies to take any necessary action and provide the required assistance or support to persons in distress, including victims of road accidents, fire disaster, earthquakes and floods;
- (g) facilitate the free passage and movement on highways, roads and streets open to the public; (h) adopt community partnership in the discharge of its responsibilities under this Act or under any other law;
- (i) to vet and approve the registration of private Detective Schools and private Investigative outfits.”

Section 5(1) of the Police Act provides that the Police Force is responsible for promoting and protecting the fundamental rights of persons in Police custody as guaranteed by the Constitution. It is provided that the Police Force shall collaborate with and maintain close working relationships with any relevant agency or initiatives offering legal services to accused persons in Police custody in need of legal services to ensure that they have full access to justice [5]. Generally, Section 5(3) lays that the Police is charged with the responsibility for promoting and protecting the fundamental rights of all persons whether in custody or not as guaranteed under the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act and other international legal instruments in Human Rights to which Nigeria is a signatory.

Section 66(1) of the Police Act 2020 empowers only a Police officer who is a legal practitioner to prosecute a suspect in any competent Court of law. In the same vein, a Police officer subject to the provisions of the relevant Criminal Procedure Laws in force at the Federal or State level prosecute before the courts those offences which non-qualified legal practitioners can prosecute. In a bid to ensure that human rights are given utmost priority by facilitating bail applications expeditiously and preventing any attempt to abuse the rights of the suspects, it is expected that in every police division, there must be assigned at least one police officer who is a legal practitioner in accordance with the Police Act [2]. Indeed, the Police Act provides powers, duties, hierarchy and general management and administration of the Police in the Nigerian Criminal Justice System. Aside the statutory powers above, the Court has made pronouncement in backing the provisions of the Police Act on the Police the powers to prosecute criminal cases. This was exhaustively strengthened and dealt with by the Supreme Court in the landmark case of *FRN, v Osahon* [6] where the Court held:

From colonial period up to date, police officers of various ranks have taken up prosecution of criminal cases in Magistrates and other courts of inferior jurisdiction. They derived their powers under Section 23 Police Act. But when it comes to superior courts of record, it is desirable though not compulsory that the prosecuting police officer, ought to be legally qualified. This is not deleting from the provisions of Section 174(1) of the constitution, rather it maintains age long practice of superior courts having counsel rather than non-lawyers prosecuting matters. The confusion that this matter has caused is rather unfortunate for trial of criminal cases, it has caused a disturbingly long delay. Previous constitution before 1979 provided for the post of Director of, Public Prosecutor, an independent officer, with powers in a statute. The absence of this vital office from subsequent constitutions has created this dilemma, For the foregoing reasons ...I hold that a police officer can prosecute by virtue of Section 23 of Police Act, Section 56 (1) Federal High Court Act, and Section 174 (1) of the Constitution of the Federal Republic of Nigeria.

Hence, Police authority can by virtue of Section 174(1) of the Constitution prosecute any criminal suit either through its legally qualified officers or through any counsel they may engage for that purpose and the power of the Police to prosecute can only be limited or restricted by the Attorney General. In the case of *FRN v. DANIEL* (2015) LPELR-24801(CA), the Court in relation to the power of the Police to prosecute, held thus:

“I shall now address the only issue raised by appellant's counsel which I adopt for the purpose of the determination of the appeal. In determining the issue, it is pertinent to set out the provisions of the Constitution of Nigeria 1999 (as amended) and other laws relevant to the issue immediately here under: (1) Section 174 (1) (a) (b) and (c) of Constitution of the Federal Republic of Nigeria 1999 (as amended). (2) Section 23 of the Police Act. (3) Section 3 (1) (f) (vi) of the Nigeria Security and Civil Defence Corps Act. (1)Section 174 (1) (a) (b) and (c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides as follows: (1) The Attorney - General of the Federation shall have power; (a) To institute and undertake criminal proceedings against any person before any Court of law in Nigeria, other than a Court-martial, in respect

of any offence created by or under any Act of the National Assembly; (b) To take over and continue any such criminal proceedings that may be instituted by any other authority or person; and (c) To discontinue at any stage before judgment is delivered, any such criminal proceedings instituted or undertaken by him or any other authority or person.".. the power of the Police to prosecute therefore can only be limited or restricted by the Attorney - General.

Hence, the power to prosecute and undertake criminal prosecution is vested on the Police Officer under Section 23 of the repealed Police Act, now Section 66 of the Police Act, 2020 subject to the exercise of powers conferred on the Attorney-General by the provision of Section 160 of the Constitution of the Federal Republic of Nigeria. Though the Provision of Section 23 of the repealed Act gave non-Police lawyers (Legal Practitioners) prosecutorial powers to prosecute. However, under Section 66 of the new Act, only Police officers who are Legal Practitioner can prosecute. The power of the Police to prosecute therefore can only be limited or restricted by the Attorney – General.

### **3 METHODS OF EXERCISING PROSECUTORIAL POWERS BY THE POLICE**

There are different methods of exercising prosecutorial powers by the Police in Nigeria. This may include, Charges, Information, and First Information Report (FIR), depending on the Court and the jurisdiction in which the case is to be instituted. Therefore, the methods of prosecutorial power exercised by the Police in Nigeria are closely tied to the legal framework, the nature of the offense, and the jurisdictional boundaries of the Court.

#### **3.1 By way of Charge**

It is a trite principle of law now that the Police or Prosecution can exercise Prosecutorial powers by filing a charge subject only to the power of the Attorney General to institute and prosecute cases. In *Olusemu V. COP* (1998) 11 NWLR ( Pt.575) 547, the information inform of a charge was filed by a Police officer and the Defendant argued that the Police officer can not file a charge in the High Court. The Court held that the Police can file a charge in the High Court subject to the overriding power of the Attorney General who can take over the matter. The authority of the Police to file a charge also came up in the case of *FRN V. Osahon* (2006) 5NWLR(Part97) SC 361. Hence, the Nigeria Police can institute a criminal proceedings either by way of Charge, First Information Report or an Information, depending on the Court and the nature of offences.

#### **3.2 By way of Information**

Information may be generally described as a document which the purposes of our criminal justice administration system refers to a court process filed by a prosecuting authority or person in the course of transactions culminating in the initiation of criminal prosecution against a criminal defendant found culpable of the commission of offences prohibited under any extant substantive criminal law statute. In line with the Administration of Criminal Justice Law, 2019 of Sokoto State, a criminal proceedings may be in accordance with the provisions of the Law be instituted by Information or a Charge [7]. Thus, an Information is a statement of offence or offences which a Defendant is charged in a trial at the High Court. Every Count of the Information is made up of two (2) distinct paragraphs. The first paragraph which is called 'the Statement of Offence'. This is usually a concise statement of the offence and the provision of the law creating the offence and/or punishing for its infraction. The second paragraph is called 'the Particulars of Offence'. This contains the name of the Defendant, the date, time and place of the commission of the offence and the description of the offence purportedly committed. The Count in an Information is preceded by an Information addressed to the Honourable Court notifying it that the defendant is charged with an offence. All Information filed in a criminal trial in the state High Court just like the Charge must be accompanied with its enclosed Proof of Evidence to be relied upon at the trial [8].

#### **3.3 By way of First Information Report**

Like Complaint in the South is what is referred to as First Information Report (FIR) in Federal Capital Territory Abuja and in other Northern States in Nigeria. The method refers to a process whereby the Police arraign suspects in the Magistrate Court in the Federal Capital Territory and Magistrate Court of other Northern States of Nigeria. Such complaint is usually made to the Police and upon investigation, the suspect is invited to the police station for investigation and the response of the suspect is recorded. The Police will after the interrogation, if convinced that the suspect has committed the offence, file the First Information Report in Court which shall contain the name and address of the suspect, the nature of the offence and the signature of the police officer prosecuting the case to court. This method is elaborately provided for in Section 112 of the ACJA [7]. Section 110(1)(b) of the ACJL, Sokoto, provides that: "Criminal proceedings instituted in a Magistrate Court may be; (a) by bringing a suspect arrested without a warrant before the Court on a charge....or (b) upon receiving a First Information Report for the Commission of an offence for which the Police are authorized to arrest..." Thus, First Information Report is one of the modes of instituting criminal complainant in the Magistrate in the north.

#### 4 CHALLENGES OF POLICE PROSECUTORIAL POWERS

The challenges confronting prosecution of criminal cases and investigators in the Nigerian criminal justice system are myriad. These challenges impact negatively their effectiveness in the criminal justice system. Traditionally, the Police is tasked with investigating crimes and gathering evidence, as well as prosecutorial functions to charging an accuse person to Court. Hence, in discharging this function, they are bound to face some challenges. The major issues and problems in Police prosecutorial power in Nigeria court ranges from inadequate Police Prosecutors, lack of funding, poor investigation and corruption amongst other challenges [9].

#### 5 OBSERVATIONS

During the course of this research, it was discovered that the major problems associated with the powers of the Police to prosecute have been partially addressed by the new Police Act of 2020, and the Administration of Criminal Justice Act, 2015 and checks and balances have been put in place to ensure its enforceability. However, more problems may be discovered in the long run as these new laws are put into implementation, hence, it has been observed that, the provisions of the new Police Act 2020 specifically Section 66(1) confers prosecutory powers to only Police officers who are legal practitioners. The problem now is there are so many cases but few Police officers who are legal practitioners. The workload is inversely proportionate to the existing manpower at the moment. Secondly, Section 66(1) of the Police Act, 2020 restrict the prosecutorial powers of the Police to only Police officers who are legal Practitioners, however, on daily basis in practice, we keep seeing Police Officers who are not legal practitioners prosecuting criminal cases.

#### 6 RECOMMENDATIONS

Flowing from the above observations, it is recommended thus: firstly, that proper implementation of the new Act should be ensured. Specifically, the provision of Section 66(1) of the Police Act and Section 106 of ACJA to make sure that a Police officer who is not a legal Practitioner does not prosecute in any Court of law in Nigeria. Secondly, the Police Service Commission should ensure that there is properly implementation and enforceability of all the provisions in order to carry out its prosecutor mandate effectively.

#### 7 CONCLUSION

The prosecutorial powers of the Nigeria Police are derived from a combination of constitutional provisions, statutory laws, and judicial precedents. While the Police have the authority to initiate and conduct prosecutions, their actions are subject to oversight by the Attorney-General, ensuring a system of checks and balances within the criminal justice system. The role of the Police in prosecution seeks to achieve justice for the victim, defendant, and society by ensuring the rule of law, maintaining public safety and security, and contributing to crime reduction. Professionalism in the execution of prosecutorial duties is essential to maintaining public trust and ensuring a fair and impartial justice process. The methods through which the Police exercise these powers, including filing of charges, information, and First Information Reports (FIR), are critical to the functioning of the justice system. However, several challenges hinder the effective exercise of these powers, including the lack of adequate criminal procedure training for Police prosecutors, poor investigation of criminal cases, corruption within the Police force, and inadequate funding. These issues result in weak cases, delays in prosecution, and diminished public confidence in the justice system.

#### COMPETING INTERESTS

The authors have no relevant financial or non-financial interests to disclose.

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