

THE STRUCTURE OF THE POLICE UNDER THE NIGERIAN FEDERALISM*

Abstract

Nigeria's governmental structure is arranged in line with the federal model of governance, a structure of governance often applied to heterogeneous systems, consisting of at least two constituent parts that are not wholly independent but together form the system as a whole. Nonetheless, the Nigeria Police Force is structured in a somewhat centralized pattern, thereby precluding State police in the country. The present centralized structure of the Nigeria police force has led to various negatives in the police force, leading to ineffective policing in the country, which has been variously decried and particularly deprecated by the #Endsars protest in the country. The paper therefore appraises Nigeria's federal system, while analyzing the somewhat centralized police structure in Nigeria. The paper argues that in line with basic federalism practice, the Nigeria police force should be decentralized and the governments of the States should be empowered to maintain State police forces.

Keywords: Federalism, Nigeria Police Force, State Police, Government.

1. Introduction

A combined study of section 214 of the Constitution of the Federal Republic of Nigeria 1999 and item 45 of Part I of the Second Schedule of the Constitution reveals that policing in the federal system of Nigeria is arranged in such a way that only the federal government can validly maintain a police force or police structure in the country. Over the years however, the structure of policing in Nigeria has been placed under the spotlight. The inadequate policing in the various States have led to several attempts by the various States to set-up security groups to cater for the several security challenges being faced by the States. Whereas the Amotekun group has been created by the South West Governors in this regards,¹ the South East has also created its own security outfit,² whilst the South South Governors have made moves to do same.³ The recent #Endsars protest, that rocked the nation, is also one of several consequences of the perceived failure of the present structure of the Nigeria Police Force. Again, the high crime rates and the seemingly unhindered activities of several criminal sects, such as Boko Haram, kidnappers, armed robbers, corrupt public officials and etc., within the various States, are pointers to the perceived failure of the present structure of policing in Nigeria. In this article therefore, the author examines the Nigeria Police Force and the present structural arrangement of policing in Nigeria, in contrast to the need for good and effective policing in the country. The article is divided into five segments. The first segment deals with a broad introduction of the discourse. The second aspect involves a historical survey of the Nigerian governmental structure, while also scrutinizing the various legal frameworks of policing in Nigeria. The third segment of the work involves a comparative analysis of the police structure in other federal countries, while the fourth aspect discusses the lessons to be learnt from the third segment of the work. The author concludes the article by proposing recommendations flowing from the discourse.

2. Nigeria's Governmental Structure *versus* Nigeria's Police Structure

In contrast to unitary system, federalism is a governmental arrangement fit for heterogeneous societies. Federalism is a principle of government structure which applies to systems consisting of at least two component parts, with each of those parts maintaining specific legislative functions or powers. Nigeria operates the federal model of governance,⁴ nonetheless, the Nigerian State, has been the subject of several criticisms from federalism enthusiasts. Prominent amongst these criticisms is the seeming absence of a complete application of federalism principles in the country.⁵ Again, the allocation of legislative functions between the federal government and the State governments in Nigeria seems to be awkwardly tilted towards the federal government. Hence, a review of the Exclusive Legislative List in Part I of the Second Schedule of the Constitution would show the attempt by the

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¹Jude Egbas, '7 things to know about Amotekun, Southwest's new security outfit'

<<https://www.pulse.ng/news/local/operation-amotekun-7-things-to-know-about-southwests-security-force/jpd0wz1>> accessed 3 November 2020

²Taiwo Adebulu, 'Like Amotekun, south-east governors establish regional security outfit' <<https://www.thecable.ng/like-amotekun-south-east-governors-establish-regional-security-outfit>> accessed 12 November 2020

³Kelvin Ebiri, Sony Neme, Njadvara Musa and Joseph Wantu, 'South-South Governors set for Regional Security Outfit' <<https://guardian.ng/news/south-south-governors-set-for-regional-security-outfit/>> accessed 12 November 2020

⁴Hilda Obi-Obiora and Favour Christopher Asiazobor, 'An Application of the Doctrine of Basic Structure in the Federal System of Nigeria' [2019] (1) (2) *IJCLLP*; 33

⁵ Ibid

drafters of the Constitution to confer too many legislative functions to the federal government, in grave breach of the subsidiarity principles⁶ and the basic tenets of federalism.

As part of the several legislative competences allocated to the federal government by the Constitution, policing in Nigeria is also allocated to the federal government. Hence, item 45 of Part I of the Second Schedule of Constitution clearly spells out the “Police and other government security services established by law” as one of the areas where the federal government is constitutionally empowered to act. The Constitution also specifies in section 214 that:

Section 214:

1. There shall be a police force for Nigeria, which shall be known as the Nigeria Police Force, and *subject to the provisions of this section no other police force shall be established for the Federation or any part thereof.*
2. Subject to the provisions of this Constitution
 - a. the Nigeria Police Force shall be organised and administered in accordance with such provisions as may be prescribed by an act of the National Assembly;
 - b. the members of the Nigeria Police shall have such powers and duties as maybe conferred upon them by law;
 - c. the National Assembly may make provisions for branches of the Nigeria Police Force forming part of the armed forces of the Federation or for the protection of harbours, waterways, railways and air fields. (Underlined for emphasis)

The combined effect of item 45 of Part I of the Second Schedule of Constitution and section 214 of the Constitution is that only the federal government can validly set up and maintain a police force in Nigeria. In other words, the Nigeria police structure is structured in such a way that the States cannot validly maintain a police force.

The above would appear totally bizarre when one considers the very fact that Nigeria operates a federal system of government. Federalism is the system of government in which sovereignty is constitutionally divided between a central governing authority and constituent political units.⁷The essence of modern federalism is the constitutional division of power between the government of an entire nation and the governments of the major political subdivisions of that nation.⁸ Again, the very idea of the federal structure of governance is that the federal government and the federating units ought to enjoy some minimal level of ‘shared-rule’⁹ and self-rule’. Therefore, while formerly the term ‘federal’, as used by political scientists, was based on a fairly strict and precise definition derived from the model of the United States of America as the first modern federation, now there is a growing recognition that the term extends to a broadened category of political relationships combining self-rule and shared rule.¹⁰ It was in exercise of this constitutionally allocated legislative function that the National Assembly of Nigeria enacted the Nigeria Police Act 2020 to repeal the Police Act, Cap. P19, Laws of the Federation of Nigeria, 2004 to provide for a more effective and well organized Police Force driven by the principles of transparency and accountability in its operations and management of its resources. The Act also seeks to establish an appropriate funding framework for the Police Force in line with what is obtainable in other Federal Government key institutions in the bid to ensure that all police formations nationwide are appropriately funded for effective policing. The Act further aims to enhance professionalism in the Police Force through the provision of increased training opportunities for police officers and other persons employed by the Police Force and to create an enduring cooperation and partnership between the Police and communities in maintaining peace and combating crimes nationwide.

However, the present policing arrangement in the country has been the subject of several criticisms. The view has been expressed that the present structure does not allow for effective policing and also it negates the very essence

⁶Conceptually, the subsidiarity principle postulates that in a federal political order, the powers of government should firstly be distributed to and administered by the federating unit because they possess more competence in solving problems which confront government and have the greatest impact on the people, while the federal or national government should only possess and exercise powers in respect of those matters for which the federating units lack capacity to achieve result acting on their own due to their wide scope. E. B Omoregie ‘Implementation of Treaties in Nigeria: Constitutional Provisions, Federalism Imperative and the Subsidiarity Principle’ [2015] *Extract of Proceedings of the 2nd International Conference on Public Policy*

⁷M. A. McIntosh, ‘A History of Federalism in the United States’ <<https://brewminate.com/a-history-of-federalism-in-the-united-states/>> accessed 12 November 2020

⁸J. R. Schmidhauser, ‘Federalism in the United States: Its Origin, Its Development, and Its Prospects’ [1960] (XIV) *Parliamentary Affairs*; 39

⁹D. J. Elazar, *Exploring Federalism* (University of Alabama Press. 1987)

¹⁰R. L., Watts, ‘Island Jurisdictions in Comparative Constitutional Perspective’ <<https://core.ac.uk/download/pdf/84895379.pdf>> accessed 12 November 2020

of federalism being practiced in Nigeria. Therefore, it has been argued that the federal government which has exclusive power on police related matters in Nigeria is far removed from the component States which are at the receiving ends of sophisticated crimes.¹¹ Also, another source of criticism of the present police structure in Nigeria relates to the very fact that whereas section 176 (2) of the Constitution regards the Governor of a State as the Chief Executive¹² of that State, one wonders how the Governor can, in reality, perform his role as the Chief Executive of the State when in the main, the Governor does not have constitutional control over the Police Force in the State. This very fact is made obvious in section 215 of the Constitution which provides as follows:

- (1) There shall be -
 - a. an Inspector-General of Police who, subject to section 216(2) of this Constitution shall be appointed by the President on the advice of the Nigeria Police Council from among serving members of the Nigeria Police Force;
 - b. a Commissioner of Police for each state of the Federation who shall be appointed by the Police Service Commission.
- (2) The Nigeria Police Force shall be under the command of the Inspector-General of Police and contingents of the Nigeria Police Force stationed in a state shall, subject to the authority of the Inspector-General of Police, be under the command of the Commissioner of Police of that state.
- (3) The President or such other Minister of the Government of the Federation as he may authorise in that behalf may give to the Inspector-General of Police such lawful directions with respect to the maintenance and securing of public safety and public order as he may consider necessary, and the Inspector-General of Police shall comply with those direction or cause them to be complied with.
- (4) Subject to the provisions of this section, the Governor of a state or such Commissioner of the Government state as he may authorise in that behalf, may give to the Commissioner of Police of that state such lawful directions with respect to the maintenance and securing of public safety and public order within the state as he may consider necessary, and the Commissioner of Police shall comply with those directions or cause them to be complied with:

Provided that before carrying out any such directions under the foregoing provisions of this subsection 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 authorised in that behalf by the President for his directions. (Italics for emphasis)

The import of the above is that the police force in a State is not under the control of the Governor of the State. As a matter of law, before a Commissioner of Police in a State can validly carry out any direction of the State Governor, the Commissioner must first seek and obtain the approval of the federal government (that is, through the President or such minister of the federal government as may be authorised in that behalf). As such, this arrangement of regarding the Governor as the Chief Executive of the State on the one hand, while denying the Governor the requisite apparatus to perform the roles of the Chief Executive in the State, has been variously described as being against the tenets of federalism and being illogical.¹³

3. A Comparative Study

Here is dedicated to a comparative examination of police structures in other federal countries.

Canada

Canada operates the federal system of governance, where there are three levels of government: the federal, the provincial or territorial and the municipal. While the federal government is responsible for the creation of the criminal law and legislation, under the Constitution Act, the provinces are responsible for the administration of justice, including policing. Therefore, the provinces are responsible for, and have control and supervision of law enforcement within their province with respect to provincial legislation and criminal law as defined by the federal

¹¹A. A. Z. Okemuyiwa 'State Police in Nigeria: issues and Challenges' <file:///C:/Users/BARRISTER%20FAVOUR/Downloads/state_police_in_nigeria_issues_and_chall.pdf> accessed 12 November 2020

¹²The Executive organ of government is an ubiquitous feature of the political system world over responsible for the implementation of the laws (F. O. N. Roberts, Models of Executive Power and Nigeria's Neo-Presidential. Implications for Governance and Development (Nigeria Institute of Social and Economic Research. 2002),

¹³Eme Okechukwu Innocent and Ogbochie, N. Andrew, 'Limitations of State Police in Nigeria' [2014] (5) (15) *Mediterranean Journal of Social Sciences*; 130

Parliament.¹⁴ This power of the province seems to stem from item 14 of contained in section 92 of the constitution which provides for the Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts as one of the legislative competences of the Canadian provinces.

United States

The United States which is regarded as the source of federalism as a system of government comprises of the federal government and the State governments. federating States of the United States are empowered to set-up their own police force. The power to do this seems to arise from the Tenth Amendment to the United States Constitution which gives States those powers not delegated to the federal government and not prohibited of States.¹⁵

India

India operates the federal structure of governance. Federalism is also reflected in the police structure in India. Owing to the combined effect of section 246 and item 2 in List II of the Seventh Schedule of the Indian Constitution, the framers of the Indian Constitution envisages police as a State subject. The power of the State government in India to maintain a police force is also covered by section 3 of the India Police Act. However, even though the States are allocated the powers to maintain police force, most States in India have adopted the Police Act 1861, without any change, while the very few States, including Kerala which opted for Police Act of its own, modeled its statute broadly based on the Indian Police Act, 1861 itself. Even the model Police Act, 2008 does not have any basic difference from the philosophy of Indian Police Act, 1861.¹⁶

Belgium

The structure of the Belgium police service is a bipartite one; and comprises the Federal Police service and a local police service. The Federal Police are responsible for conducting nationwide special operations as well as providing support to local officers.¹⁷ The “Octopus Agreement” dated 23 May 1998 gave rise to the “Integrated Police Force on Two Levels Act” in Belgium. This involved not only the structure, but it also thoroughly transformed the relationship with the authorities and furthermore, the manner in which policing policy was implemented was given a facelift. The police reform went together with an extensive regulatory framework within the areas of the law and regulations. Ultimately nothing was written into the act with respect to Community Policing (COP), and the COP was only cited in the Explanatory Memorandum of the act. It was two years after the introduction of the act that COP (late) was explicitly introduced as the official vision. Therefore it lay provisionally as a structural change in the act. Since the introduction of the act, Belgium has had two types of police: A local police force and a federal police force.¹⁸

4. Lessons Drawn

The structure of the Nigeria police force is highly centralized, even though Nigeria operates a federal model of governance. This has created a somewhat awkward situation where the State governments are handicapped and can only rely on the federal police to secure lives and property within the States. The very fact that the federal government is solely responsible for the police force makes it even more difficult for effective policing in Nigeria. While the present police force has made rigorous attempt to curb insecurity in the country, the very fact that the police force is ill-equipped and mostly possess outdated weapons, have rendered their role in effective policing unattainable.¹⁹ The statutory burden of maintaining and equipping the Nigeria police force rests on the federal government, alongside with the other 67 burdensome items on the exclusive legislative list in the constitution. The Nigeria police force, being a federal parastatal, is funded by the federal government. Budgetary allocation is made for them annually in the budget. However, the Police is grossly underfunded. The then Inspector General of Police, Ibrahim Idris told the National Assembly in 2018 that the Force required N1.3 trillion annually for its

¹⁴Bilton, J and C. Stenning, ‘Extra-jurisdictional authority of provincially appointed police officers in Canada’ [2001] A *discussion paper prepared under the contract for the uniform law conference*

¹⁵L. Santiago, ‘The Historical Background of the Police Power’ [2007] (9) *U. PA. J. CONST. L.*

¹⁶John Varghese, ‘Police Structure: A Comparative Study of Policing Models’

https://www.researchgate.net/publication/228242038_Police_Structure_A_Comparative_Study_of_Policing_Models/link/5f11c0c14585151299a1c52f/download> accessed 12 Nove,ber 2020

¹⁷Ozgur Solakoglu, ‘Trust in Police: A Comparative Study of Belgium and The Netherlands’ [2016] (11)(1) *International Journal of Criminal Justice Sciences*; 46

¹⁸Elke Devroe1 and Paul Ponsaers, ‘Reforming the Belgian police system between central and local’

https://www.academia.edu/15218678/Reforming_the_Belgian_police_system_between_central_and_local accessed 12 November 2020

¹⁹Idowu Johnson, ‘Policing in Contemporary Nigeria: Issues and Challenges’ [2013] (16) (1) *AJPSSI*; 75

operation.²⁰ The challenges being faced by the Nigeria police force has therefore been expressed in several protests against the force, including the recent #Endsars protest which rocked the foundation of the country²¹ and sparked the interests of the international community.²² However, there are utilitarian lessons which Nigeria can learn from the comparative examination of the arrangement of the police force in other federal countries. The arrangement in the United States is especially seminal to this discourse. As highlighted above, the federating States of the United States are entitled to set up their own police system. This has effectively shared legislative functions in the area of policing, between the United States federal government and the component parts. The arrangement in the United States of America has also decentralized the burden of maintaining, equipping and funding the police force.

5. Conclusion and Recommendations

This work is divided into four segments. In the first aspect of the work, the paper introduces the discourse. The second aspect of the work discusses Nigeria's governmental structure and the present Nigeria's police structure, noting the present police structure in Nigeria and the federalism practice in Nigeria. In the third part of the work, the researcher embarks on a comparative study of police structure and the arrangement of the police force in other federal countries, noting the various legal frameworks in those countries. The fourth aspect of the work discusses the lessons to be learnt from the comparative study I the third arm of the work. The work is concluded in the fifth part, where the researcher proposes recommendation for an effective police structure in the country. From the above research, the paper hereby advances the following reform proposals: It is proposed that the Constitution of the Federal Republic of Nigeria be amended to make policing in the country a matter for both the federal and State governments. By so doing, the State governments can legally set up State police tailored along the very security needs of the various States. The effect of this would be that the various State police forces would be properly equipped and ready to safeguard lives and property. Flowing from the above proposal and in consonance with basic subsidiarity principles, it is suggested that the federal police force should be structured to cater for policing as regards matters involving federal legislations, the federal government and its agencies, the Federal Capital Territory, Abuja and inter-state matters, which involves more than one State. The State police force on the other hand should be structured in such a way to provide adequate security in respect of matters within the State. It is suggested that the State Governors, as the Chief Executive of the States, should be constitutionally empowered to supervise and control the police force within their States.

²⁰C. S. Ibekwe & O. N. Aduma, 'Presidential control of the Nigeria Police: Constitutional Reforms for Organizational Performance Development and Political Neutrality', [2020] (8) (2) *Global Journal of Politics and Law Research*; 74

²¹William Ukpe, 'ENDSARS#EndSARS: A Day by Day Timeline of the Protest that has Brought Nigeria to its Knees' <<https://nairametrics.com/2020/10/25/endsars-protest-a-timeline-of-all-the-major-events-from-october-3rd/>? accessed 12 November 2020

²²BBC 'EndSARS Protest latest update: UK government reply to EndSARS petitions from Nigerians' <<https://www.bbc.com/pidgin/media-54914104>> accessed 13 November 2020