LEGAL FRAMEWORK FOR THE PREVENTION AND CONTROL OF PRE-TRIAL BAIL OF SUSPECTS BY NIGERIA POLICE: A CRITIQUE

Chukwunonso Nathan Uwaezuoke
Chukwuemeka Odumewu Ojukwu University, Uli,
Igbariam Campus Anambra State
E- mail: cnuwaezuoke2003@yahoo.com

ABSTRACT

Nigerian law gives police officers power to arrest and detain persons suspected to have committed criminal offences. After the arrest and detention of a suspect, the Police are further given the power to release the suspect or charge him to court. However, overwhelming reports suggest that police officers demand and collect bribe before deciding to release suspects or charge them to court. A number of factors prop this practice. These factors persist despite the presence of extant laws in this area. It was hoped that the most recent extant law, Administration of Criminal Justice Act signed into law on 13th May 2015, would have put in place provisions to check this practice but it, sadly, failed to do so. Suggestions were consequently proffered to deal with this practice and the factors that prop it.

1 INTRODUCTION:

Nigerian law gives police officers power to arrest and detain persons suspected to have committed criminal offences. After the arrest and detention of a suspect, the Police are further given the power to release the suspect or charge him to court. However, it is now almost an overwhelming practice for police officers to demand and collect money from suspects in other to release them[1]. This practice despite extant laws[2] is stoked by a

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*** Ph.D, Senior Lecturer, Faculty of Law, Chukwuemeka Odumegwu Ojukwu University, Igbariam Campus, Anambra State. 08036764064, cnuwaezuoke2003@yahoo.com

1 *"Everyone's in the Game" Corruption and Human Rights Abuses by the Nigerian Police Force*, Human Rights Watch Publication, August 2010. Pp.31- 40; "Factors Inhibiting Police Performance in Nigeria" A PAPER PRESENTED AT THE OCCASIONOF THE RETREAT WITH THE THEME:"UNDERSTANDING THE MANDATE AND OPERATIONS OF THE POLICE SERVICECOMMISSION IN CONTEXT OF THE RULE OF LAW" by Parry B.O. Osayande. p 15.; How to Get Free Bail in Nigeria www.nigerianpolicewatch.com/2013/03/how-to-get-free-bail-nigeria/ accessed on 22 May 2013 ; Emmanuel Franklyne Ogbunwezeh, "A Dysfuctional Affront to Human Rights" www.globalpolitician.com/print.asp?id=1266 accessed on 22 May 2013.

number of factors. One of these factors is the growing practice of arresting suspects on Friday evenings. A practice is ostensibly aimed at circumventing the effect of section 35 (5) of the Constitution[3]. There may also be another reason for this practice: the satisfaction, albeit sadistic, of seeing a perceived enemy languish in police detention for a few days. Another factor fueling the practice of police officers demanding money from suspects before releasing them is police men's downright refusal to comply with the provisions of extant laws on the duration of detention without trial. Most police men even refuse to comply even when reminded of the existence of these laws. The calculation is that it will take the suspect some time to file a suit in court and get an order from the court to secure his release or compel the police to charge the matter to court and that instead of taking this long route the suspect would be "pressured" to take the easier option of paying cash to obtain his freedom. To add to these, is the absence of any form punitive sanction for police men who, in defiance of extant laws, insist on collecting money from the suspects before releasing them.

The underlying assumption in the preceding paragraph is that the extant laws are clear and that they prescribe limits to the duration police men can detain suspects thereby limiting their powers in this respect. However there is need to interrogate the extant laws to determine the veracity of this assumption and also determine if there are solutions to this practice within their framework. The interrogation of the extant law also takes special cognizance of the Administration of Criminal Justice Act 2015 signed into law on 13th May 2015 by President Goodluck Jonathan. Special in the sense that this law was expected to provide a ready "antidote" to emerging problems not apparently well tackled within the framework of the extant laws.

For a clear analysis, the extant laws have been grouped broadly into two: Pre-13th May 2015 position and 13th May 2015 and beyond. This grouping, far from being arbitrary, is a reflection of the position already stated in the preceding paragraph.

2 PRE- 13TH MAY 2015 POSITION

I. Overview of the Legal Framework

A. Constitution of the Federal Republic of Nigeria 1999 (as Amended)

The Constitution of the Federal Republic of Nigeria 1999 (as amended) is the supreme law in Nigeria[4]. Therefore, its provisions automatically override the provisions of any other law that is inconsistent with it[5]. Section 35 of this Constitution guarantees every person living in Nigeria the right to personal liberty. This means that no person living in Nigeria can be denied this right by any person, including police officers. There is, however, an exception to this position. The exception is that a person's right to personal liberty can be validly denied under any of the circumstances listed in paragraphs (1) (a) - (f) of section 35 of this Constitution. Specifically, section 35 (1) (c) permits the denial of a person's right to personal liberty if it is done for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of having

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2 Some of these extant laws will be discussed later in this work

3 Discussed subsequently in this work.

4 Section 1 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

5 Section 1 (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

committed a criminal offence or to such extent as may be reasonably necessary to prevent his committing a criminal offence.

Where a person's liberty is denied based on section 35 (1) (c), he should be brought before a court within a reasonable time. The Constitution clarifies "reasonable time" to mean, in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometers, one day (twenty- four hours) and in any other case, a period of two days or *such longer period as in the circumstances may be considered by the court to be reasonable*[6]. However, this issue of bringing the suspects to court within a reasonable time does not apply in cases of persons arrested upon reasonable suspicion having committed a capital offence[7]. Also, the issue of denial of personal liberty under section 35 will not be applied to invalidate any law authorizing detention for a period not exceeding three months of a member of the armed forces of the Federation or a member of the Nigeria Police, in respect of an offence punishable by such detention of which he has been found guilty[8]. There a number of interesting decisions interpreting similar constitutional provisions[9].

In *Robinson Wabali and 2 Others v. Commissioner of Rivers State and 3 Others*[10], the applicants, Robinson Wabali, Abraham Nwajile, and Azundu Negbu, were arrested by the Police and detained at Isiokpo Police station, Rivers State on October 23, 1980 over an alleged murder. On December 11, 1980 they were charged before the Magistrates Court at Isiokpo who remanded them until they applied for their bail under the Fundamental Rights Enforcement Procedure Rules.

In arguing the application counsel for the applicants while agreeing that the police are empowered to arrest any person suspected to have committed an offence under 32 (1)[11] of the 1979 Constitution, contended that section 32 prescribes particular periods between arrest and production in court and trial. He went on assert that a detention as envisaged under section 32 (4)(a) must be made by a competent jurisdiction and not by a Magistrates Court as in this instance. Having established this, he went on to argue that section 32 (7) of the Constitution should be construed in the light of the provision of section 32(4) of the 1979 Constitution.

While granting the application, Okoro- Idogu J agreed with the submissions of the counsel for the applicant noting that,

> Section 32 (5) of the Constitution defines the "reasonable time" spoken of in section 32 (4) within which an arrested person must be brought before a "court of competent jurisdiction". Although section 32 (7) excludes the application of section 32 (4) to an offence like murder, such exclusion in my view does not bring in section 32 (5) on the time that should exist between arrest and court appearance, *and even if*

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[6] Section 35 (4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Emphasis supplied.

[7] Section 35 (5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

[8] Section 35 (7) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

[9] These cases were decided under a similar provision under the 1979 Constitution of the Federal Republic of Nigeria.

[10] (1985) 6 N.C.L.R p. 424.

[11] Now section 35 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended)

> *"such longer period as in the circumstances may be considered by the court to be reasonable" in section 32 (5) (b) is applied to provide for the unusually longer period that may be required to complete investigations for a murder charge*[12], there is no getting away from the fact that the accused is supposed to be brought up before a court of competent jurisdiction, that is to say, a court with sufficient power to entertain the matter. In respect of the offence of murder, the Magistrate Court is not such a court[13].

Also in *Augustine Eda v. The Commissioner of Police, Bendel State*[14], Mr. Augustine Eda, the appellant, was arrested and detained by the police on suspicion that he was involved in stealing some property belonging to Dumez International Social Club Organisation, Benin City of which he was the General Secretary. The appellant was detained by the police from Friday, August 22, 1980 to Tuesday, August 26, 1980 when he was taken on bail by one Etim Okon Okpor.

After his release from police detention, the appellant sued the police claiming compensation for unlawful detention and public apology from the respondent for breach of his constitutional right under section 32 (1)(c), (4) and 5 (a) of the 1979 Constitution[15]. The learned trial judge, after taking evidence, on the request of counsel to both parties raised a number of questions which were referred to the Court of Appeal under section 259 (2) of the 1979 Constitution[16]. One of the questions was whether, if a person arrested and detained by the police is able to procure a surety to take him on bail, it is a breach of section 32 (5) of the 1979 Constitution and therefore unconstitutional to retain him in custody in any event without bringing him before a court of competent jurisdiction within the period stated in section 32 (5) of the 1979 Constitution[17]. In his leading judgment, Omo Eboh JCA, answered this question thus[18],

> Whenever the police have performed their duty of offering bail to a person arrested or detained, the responsibility for getting a surety or satisfying the conditions prescribed for his bail immediately devolves upon that person and any further period he remains in custody is brought upon himself by that person for which the police are not liable as such further period cannot be rightly regarded as unlawful detention by the police, who, by the offer of bail have, as matter of law (to wit "…procedure permitted by law") already released him from their custody subject to certain conditions being fulfilled by that person…of course, it need not be doubted that how that

[12] Emphasis supplied.
[13] *Ibid,* p. 427.
[14] (1982) 3 N.C.L.R p. 219
[15] Same with sections 35 (1)(c), (4) and 5 (a) of the 1999 Constitution.
[16] Now section 295 (2) of the 1999 Constitution.
[17] (1982) 3 N.C.L.R 219 at 222.
[18] S.J. Ete JCA, A.G.O. Agbaje JCA, R.O. Okagbue JCA, and U. Mohammed JCA all concurring.

> person gets a surety or satisfies the conditions for his bail are his responsibility only[19]

He then went on to clarify,

> I must add in order to make this answer complete in relation to the question, that the police are obliged to take a person arrested or detained to a court of competent jurisdiction within a radius of 40 kilometers as in this case, Benin City, from the place where he was arrested within one day and what is more important, that the police can only bring any person in custody before a Court of Law during normal sitting hours on working days of the week[20]

Two positions emerge from the judgment of Okoro-Idogu in *Wabali's case*. The first is that once there is a court of competent jurisdiction within forty kilometer radius from where the suspect was arrested, the police should charge the detained suspects before that court within twenty- four hours of detaining him[21]. Further, the phrase "*such longer period as in the circumstances may be considered by the court to be reasonable"* in section 35 (5) (b) should be construed to mean that the duration of investigation rather than the proximity of the court to the police station where the accused is detained[22]. Secondly, that in other to activate the provisions of section 35 (5) the accused must be charged before a court of competent jurisdiction. So the provisions of section 35 (5) will not have been satisfied if the accused is not charged before a court of competent jurisdiction. In **Eda's case** section 35 (5) is further clarified to mean that the accused must be charged to court during normal sitting hours on working days of the week.

B. Police Act

This Act has a long history[23]. However, despite its long history, the key contents of the Act have remained largely unchanged. Section 24 of this Act empowers a police officer and anybody whom he may call to assist him, to arrest, without warrant, any person who:

(a) he finds committing any felony, misdemeanor or simple offence or whom he reasonably suspects of having committed or of being about to commit any felony, misdemeanor or breach of the peace;

(b) any other person charges with having committed a felony or misdemeanor;

(c) Any person whom any other person-

   (i) Suspects of having committed a felony or misdemeanor; or

   (ii) Charges with having committed a simple offence, if such other person is willing to accompany the police officer to the police station and enter into a recognizance to prosecute such charge.

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19 (1982) 3 N.C.L.R p. 219 at 228.

20 *Ibid*.

21 This is also the position in **Eda's case** (supra)

22 Per Okoro-Idogu J. at p. 219.

23 From the emergence of Police Ordinance (No.27 of 1930) which came into force on 1 April, 1930, the Southern Nigeria Police Force was merged with that of Northern Nigeria to form the Nigeria Police Force (NPF) to the Police Act (Cap 350 Laws of the Federation of Nigeria 1990 and (Cap P 19) Laws of the Federation of Nigeria 2004 and also (Cap P 19) Laws of the Federation of Nigeria 2010.

This provision does not apply in cases where the law creating the offence provides that an offender may not be arrested without warrant[24]. Based on this, the Police are under a duty to take the suspect, as soon as practicable, before a magistrate who has jurisdiction with respect to the offence with which he is charged or is empowered to deal with under section 484 of the Criminal Code Act[25]. In the interim[26], the police officer for the time being in charge of a police station may inquire into the case and:

(a) except when the case appears to such officer to be of a serious nature, may release such person upon his entering into a recognizance, with or without sureties, for a reasonable amount to appear before a magistrate at that day, time and place mentioned in the recognizance[27]; or

(b) if it appears to such officers that such inquiry cannot be completed forthwith, may release such person on his entering into recognizance, with or without sureties for a reasonable amount, to appear at such police station and at such times as are named in the recognizance, unless he previously receives notice in writing from the superior police officer in charge of that police station that his attendance is not required, and any such bond may be enforced as if it were a recognizance conditional for the appearance of the said person before a magistrate[28].

In *John Edo and another v. Commissioner of Police*[29]**,** John Edo and Nelson Oskakambo, who were police constables and appellants in this appeal, were charge with depriving one Tebegbene of his personal liberty contrary to the provisions of section 365 of the Criminal Code. The fact of the case was that the appellants received a complaint from someone that his wife was abducted and that Tebegbene was the only person who could direct them to where the wife was to be found. The appellants went to Tebegbene's place, arrested and bound him, then forced him to take them to the place where the abductor of the complainant's wife was staying. Tebegbene took them to the place but they still refused to release him until he paid £ 5. When Tebegbene complained, the appellants were charged to Magistrates court where they were convicted. The conviction was upheld by the High Court (East). The Supreme Court also affirmed this decision. According to Bairamain F.J, who delivered the Supreme Court judgment,

> In regard to the deprivation of liberty, the argument is that their action was not unlawful. Reference was made to section 10 and 34 of the Criminal Procedure Act and to section 20 of the Police Act[30]on powers of arrest, but we cannot see any provision which made their conduct lawful; and their conduct was aggravated by their continuing to deprive the complainant

[24] Section 24 (2) of the Police Act (Cap. P19) Laws of the Federation of Nigeria 2010.

[25] Section 27 of the Police Act (Cap. P19) Laws of the Federation of Nigeria 2010.

[26] Before charging the suspects before a magistrate.

[27] Proviso (a) to section 27 of the Police Act (Cap. P19) Laws of the Federation of Nigeria 2010.

[28] Proviso (b) to Section 27 of the Police Act (Cap. P19) Laws of the Federation of Nigeria 2010.

[29] (1962) All N.L.R p. 93

[30] Now section 24 of the Police Act (Cap. P19) Laws of the Federation of Nigeria 2010 on the power of police to arrest without warrant.

of his liberty even after the man they wanted was found, and by extorting money for his release[31]

The snag with this Act are first the failure to specify the number of days a suspect can remain in police custody before being released or charged to court[32]. Secondly is the inference in the Act[33] that police officers have an apparent unfettered discretion on the issue of release of suspects before trial. However one thing stands out from the **John Edo** case which is that nothing under the Police Act excuses demand and collection of money from suspects before they are released.

C. **Criminal Procedure Act**:

Criminal Procedure Act[34] is concerned with the procedure to be followed in criminal cases in High Court and Magistrate Courts. Thus while the Criminal Code Act is concerned with the substantive content, the Criminal Procedure Act is bothered with the procedure to be adopted in enforcing the substantive offences in the Criminal Code Act.

Section 9 of the Criminal Procedure Act provides that any person arrested, whether with warrant or not, shall be taken with all reasonable dispatch to a police station, or other place for reception of arrested persons. And such persons while in custody are to be given reasonable facilities for obtaining legal advice, taking steps to furnish bail and otherwise making arrangements for his defence or release.

Section 17 of the Criminal Procedure Act confers powers on police officers with respect to persons arrested on suspicion of committing criminal offences as follows:

(i) Where a person is taken into custody without a warrant for an offence other than an offence punishable with death, any officer in charge of a police station *shall*[35] if it is not practicable to bring such a person before a magistrate or justice of the peace having jurisdiction with respect to the offence charged within twenty- four hours after he was so taken into custody, inquire into the case and discharge the suspect upon entering into a recognizance, with or without sureties, unless the offence appears to be of a serious nature.

(ii) Where a person is taken into custody without a warrant for an offence other than an offence punishable with death, any officer in charge of a police station *may* if it is practicable to bring such a person before a magistrate or justice of the peace having jurisdiction with respect to the offence charged within twenty- four hours after he was so taken into custody, inquire into the case.

(iii) Where the officer in charge of a police station commences the inquiry and the suspect still remains in custody, the officer in charge of the station shall, as soon as practicable, bring such detained person before a court or justice of the peace

31 (1962) All N.L.R p. 93 at 96.

32 The phrase "as soon as practicable" in relation to the time within which to charge the suspect to court , it is suggested, is vague. However it appears that this position have been remedied by the Constitutional provision in section 35 (5) to some extent.

33 Proviso (a) and (b) to section 27 of the Police Act Cap. P19) Laws of the Federation of Nigeria. This is typified by the use of the word "May" which suggests that it is permissive.

34 (Cap. C 41) Laws of the Federation of Nigeria 2010.

35 Emphasis supplied.

having jurisdiction with respect to the offence or empowered to deal with such person by section 484[36], whether or not the police enquiries are completed.

Section 18 of Criminal Procedure Act makes a further provision on this issue. The provision of this section may be summarized as follows:

(i) where a person is taken into custody and it appears to officer in charge of a police station that inquiry into the case cannot be completed forthwith, he may discharge the said person on his entering into a recognizance, with or without sureties for a reasonable amount, to appear at such police station and at such times as named in the recognizance.

(ii) The recognizance may be enforced as if it were a recognizance conditional for the appearance of the person before a magistrate's court for the place in which the police station named in the recognizance is situate

(iii) The presence of a person discharged upon entering into a recognizance may be dispensed with if he receives a notice in writing from the officer of police in charge of that police station that his attendance is not required.

Section 19 of Criminal Procedure Act gives the police officer in charge of the police station or other place for the reception of arrested persons to which such person is brought power to, after the inquiry is completed and he is satisfied that there is no sufficient reason to believe that the person has committed any offence, forthwith release such person.

The court have also had occasion to clarify some of the provisions of the Act. For instance, in **Emezue v. Okolo and another**[37], Sunday Emezue sued E.E. Okolo, C.N. Nedum and Anthonisus, all police officers, for unlawful detention. Emezue, the appellant, a professional driver and a leader of a drivers' union, alleged that he was arrested following a scuffle between him and one Mr. Udokwu of a rival drivers' union. After his arrest, he was taken to Umuahia Police Station and detained from 9am on October 5, 1972 to about 7am on October 7, 1972 when he was released.

Following his release, he filed this suit at High Court, Umuahia claiming ₦ 200, 000 for unlawful detention. The trial court dismissed his suit as being frivolous on the ground that,

> Having conceded participation in a scuffle in a public place, the plaintiff[38] was entitled to be apprehended and detained by the police for conduct likely to cause a breach of the peace[39]

Aggrieved by this decision, the appellant appealed to the Supreme Court. The Supreme Court upheld the appeal and ordered for retrial. In giving the reasons for this, Fatai – William JSC, who read the Court's judgment noted,

> It is also provided in ...the Act[40], that any person who is arrested, whether with or without warrant, shall be taken with all reasonable dispatch to a police station and while in custody shall be given reasonable facilities for taking steps to furnish

[36] Dealing with jurisdiction in respect of appeal for review by persons arrested based on warrant issued by a court, judge, magistrate or justice of the peace. (See Section 482 (1) of Criminal Procedure Act 2011)

[37] (1978) 1 LRN p. 236

[38] The appellant

[39] *Ibid*, p. 239.

[40] Criminal Procedure Act.

> bail. It is common ground in the case in hand that the offence for which the plaintiff was arrested is that of taking part in affray. It is a minor offence, a misdemeanour and carries a maximum penalty of imprisonment for one year under s. 83 of the Criminal Code. That being the case, the plaintiff, in our view could not be detained in Umuahia Police Station for more than 24 hours[41]

This Act is similar to the Constitution to the extent that it provides for period of twenty-four hours within which to charge a suspect before a magistrate that has jurisdiction to determine his case. However the provision of the Act in this respect is made permissible[42] unlike the Constitutional provision which appears to be mandatory. A coordinated interpretation of these relevant sections of the Act[43] suggests that the Act did not place any obligation on police officers to release or charge suspects to court within a specified number of days.

II. **Responses of the Legal Framework to the Problems Raised**

The Pre- 13th May 2015, which the Constitution and legislations discussed represent, position may be summarized as follows. First, there is no specified ceiling on the number of days the police may keep a suspect in detention before release or charge to court[44]. It is largely left to the discretion of the police officer. Secondly, even where it appeared there is a limit to the time within which to charge a suspect to court[45] this provision is limited to where there is a court of competent jurisdiction within forty kilometers radius of where the suspect was arrested and that the offence is not a capital one[46]. The position, however, commendably, prohibits the practice of demand and acceptance of money by police officers before release of suspects[47]. The Pre- 13th May 2015 position did not address the factors that engender the practice such as arrests on Friday evenings[48], refusal by police officers to comply with the extant law[49] and the absence of any punitive sanction for police men who, in defiance of extant laws, insist on collecting money from the suspects before releasing them.

With this backdrop, it had been hoped that any subsequent law will tackle the factors encourage the practice. That subsequent law came in the form of Administration of Criminal Justice Act 2015. We shall examine this Act in other to appreciate its impact on the practice of police officers releasing suspects only on payment of money.[50]

3. **Post 13TH May 2015 Position**

A. **Administration of Criminal Justice Act:**

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41 (1978) 1 L.R.N p. 236 at 241.

42 See the phrase "if it is not practicable" in section 17 of the Act.

43 Sections 9, 17, 18 and 19.

44 Especially in capital offences.

45 As in section 35 (5) (a)

46 Offence that attracts death penalty

47 See John Edo & Anor. v. C.O.P. 1962) All N.L.R. p. 93

48 **Eda's case** could have addressed this issue but it appeared **Eda** was granted bail by the police when he was arrested on Friday (22/8/1980) but that he could not fulfill the conditions of the bail until Tuesday (26/8/1980) thereby leading the court to conclude that his continued stay in detention was not unlawful but as a result of his own fault.

49 Specifically section 35 (5) (a) of the Constitution.

50 Even when such detentions are beyond the period prescribed in the extant law.

i. **Relevant Provisions**

Although this a federal legislation and applicable to criminal trials for offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja[51], it could be a trail blazer because it affords the States the opportunity of patterning similar laws in their States to the federal standard. The Act has four hundred and ninety five sections. However only few sections[52] are relevant to this discourse. Section 30 of this Act is patterned substantially to conform to section 17 of the Criminal Procedure Act while section 31 is patterned to conform to section 18 of the Criminal Procedure Act. Sections 30 and 31 bring nothing substantially new[53] that will help us curb this practice. We therefore look at the remaining sections[54]. We find some interesting innovations which can help to curb this practice in these remaining sections. Firstly, section 32 gives a suspect the right to apply for bail orally or writing if not released on bail within twenty- four hours. The right to apply for bail orally although apparently commendable and has the capacity to abridge the period it may take to file a suit in court and have it assigned to a judge to hear and determine[55] its application is doubtful. This is because it is inconceivable that a court will hear and determine any case without any written document on the issue presented before it. Secondly, the Chief Judge of the State and the Attorney General of a State are empowered to take "appropriate remedial action" where a magistrate reports to them that a police officer in charge of police station has failed to furnish him, on the last working day of the month, cases of suspects arrested without warrant within the jurisdiction of their station whether they were granted bail or not[56]. The problem with this provision is that the nature of the "appropriate remedial action" which the Chief Judge of the State and the Attorney General of a State are expected to take is not specified. Does it include granting pre-trial bail to suspects detained at the police stations? The context, it is submitted, does not appear to support the view that this section gives them powers to grant pre- trial bail to suspects detained in police station. It appears the "appropriate remedial action" is to be limited to remedying the failure of the police officer in charge of a police station to report cases of persons detained in the station to the appropriate magistrate. Thirdly, a magistrate is given the powers to, at least every month, to conduct an inspection of police stations or other places of detention within his territorial jurisdiction other than the prison[57].

ii. **Responses to the Problems Raised**

This Act, laudable as its provisions may be, does not tackle the issues fostering the frequent demand and collection of money by police men before releasing suspects from detention because of the following reasons. First, this Act did not make any significant departure from the extant position by not placing a limit to the time a person

51 Section 2 of Administration of Criminal Justice Act.
52 Sections 30, 31, 32, 33 and 34.
53 Not already provided under the Criminal Procedure Act
54 Although the practical applicability of these provisions are in doubt.
55 The average period for filing and assignment of suits to judges is between three to five days.
56 Section 33.
57 Section 34.

will spend in police detention before release or be charged to court[58]. Secondly, there is no provision on what happens when a suspect is arrested on a Friday since Nigeria courts do not sit on weekends[59]? Thirdly, there is no provision on sanction for any police man who, in defiance of extant laws, fails to release or, as the extant laws expressly require, charge a suspect to a court competent jurisdiction within twenty- four hours where there is a court of such jurisdiction within forty kilometer radius of the arrest.

4. **CONCLUSION/RECOMMENDATIONS**:

It is not in doubt that police men in Nigeria demand and collect money from suspects in their custody before releasing them on bail[60]. However, as we have seen, Nigerian laws do not provide solution to this problem nor do they have any response to factors that prop the practice. It was thought that the Administration Criminal Justice Act which came into effect on 13th May 2015 would have solved these problems. But this law did not bring about any remarkable change in the existing position.

To effectively tackle this problem and the factors that prop it up we shall look at the following. First, it is recommended that we look the direction of the Nigeria Police Service Bill 2011 for a guide[61]. For instance Section 28 of the draft Nigeria Police Service Bill makes it mandatory for a suspect arrested for a any crime to be released, on bail or without bail, if not charged to court within 24 hours. Indeed the provisions of this Bill placed the maximum period which a person shall be in detention to 36 hours[62]. This extension, commendably, shall be permitted only if it is based on a warrant by a magistrate[63].

The Bill, although yet to receive the unanimous nod of the National Assembly, could be the catalyst for greater reinforcement in the fight against this practice. First, this Bill could be reinvented to circumvent the seeming constitutional quagmire which is apparently trailing the present Bill[64]. The reinvention can be in form of amendment to the Police Act or an entirely new Police Force. In this way the commendable approach of this Act to this practice will not be consigned to the papers.

The judiciary can play an important role in this disarraying this practice and the factors that prop it. It could do this through effective use of exemplary damages. Despite the criticisms against exemplary damages, its efficiency and scope has been since recognized by English Law. Indeed, the House of Lords in **Rookes v. Barnard**[65] stated that English law recognizes the awarding of exemplary damages whose object was to

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58 It remains that the suspect must be charged to court within twenty –four hours if there is a court of competent jurisdiction within a forty kilometer radius and the offence which the suspect is reasonably suspected of committing is not a capital offence.

59 For instance the Enugu State High Court Rules 2006 clearly excludes “Public holidays” from the court’s sitting days (Order 45 Rule 4 (a)). “Public holidays” is defined to mean “Saturday or a Sunday or a public holiday or a work free day” (Order 44 Rule 2)

60 See Footnote 1.

61 This Bill is languishing in the National Assembly without being passed.

62 Section 29(1) (c) of Nigeria Police Service Bill 2011.

63 Section 30 of Nigeria Police Service Bill 2011.

64 The present Bill is tagged “Nigeria Police Service”. The Constitution of Nigeria created “Nigeria Police Force” (section 214- 216 of the Constitution) Until the Constitution is amended to change this, this Bill may not be passed into Law.

65 (1964) 1 All E.R 367.

punish and deter and which was distinct from aggravated damages (whereby the motives and conduct of the defendant aggravating the injury to the plaintiff would be taken into account in assessing compensatory damages), There were two categories of cases in which an award of exemplary damages could serve a useful purpose:

(i) in the case of oppressive, arbitrary and unconstitutional action by servants of the government.

(ii) In the case where the defendant's conduct had been calculated by him to make a profit for himself, which might well exceed the compensation payable to the plaintiff[66].

The situation at hand clearly bothers on oppressive, arbitrary and unconstitutional action[67] by servants of the government, which in this instance is Nigeria Police Force. Our courts, it is recommended, should be more decisive in the use of exemplary damages, especially in cases bothering on Fundamental rights, through the award of sizable sum as damages[68].

The penchant by the police to detain suspects on Friday evenings which enhances their power to bargain for the freedom of suspects and frustrate the constitutional provision to charge the suspect within twenty-fours where there is a court competent jurisdiction within forty kilometer radius, can be frustrated by Chief Judges of the various State High courts[69] empowering at least a judge in each judicial division to sit every Saturday for the purpose of considering[70] issues involving suspects detained on Fridays by police men.

Although the much expected legislation of 13th May 2015[71] has failed to address the factors propping this problem, there is hope if the courts, legislators and legal practitioners ingeniously apply the recommendations here, and even craft more, in other to ensure the sanctity of the right to personal liberty enshrined in Nigerian Constitution.

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66 *Ibid*, p. 407, 408, 410. See also the House of Lord's decision in **Cassell & Co. Ltd v. Broome & Anor.** *(Supra)* which confirmed the decision in **Rookes v. Barnard** *(Supra)*

67 Although there is no clear constitutional provision setting limits to duration of detention, the blatant refusal of the Police to comply in most cases to constitutional requirement fuels this practice.

68 Nigerian courts have shown much reluctance in awarding damages that will be truly deemed to be exemplary and in some cases shown a misunderstanding of the import of exemplary damages. For instance in the case of Federal Minister of Internal Affairs & 3 Ors. v. Shugaba (1982) 3 N.C.L.R 915, the Court of Appeal showed clear misunderstanding of the import of exemplary damages when it lumped it together with other claims for damages (general/ aggravated, and compensatory damages) and awarded a paltry sum of ₦ 50,000.

69 And the Chief Judge of the Federal High Court.

70 Including the possibility of granting them bail.

71 Administration of Criminal Justice Act.