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Federalism: Prerequisite for Effective Criminal Justice Administration in the States

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Abstract

The Federal system being practiced in Nigeria has been widely criticized and referred to as asymmetrical in favour of the Federal Government. In the Context of the criminal justice system (CJS), twoprincipalagencies are in the Exclusive Legislative list, that is to say, the Nigeria Police Force and the Nigerian Correctional Service. This situation leaves the States short of the requisite resources for effective criminal justice administration. This paper examines the federal structure as designed by the extant Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN) with a view to bringing to the fore, the extent to which State Governments in Nigeria can maintain a coherent and smooth criminal justice administration. The paper also interrogates the capacity of State Governmentsto fight crime given the resources at their disposal. In doing so, it examines the tenets of a federal system of government and the extent of compliance in Nigeria. Consequently, it was found that theCFRN, robs State Governments in Nigeria of the requisite authority to maintain an independent, autonomousand effective criminal justice system. In other words, State Governments in Nigeria could make laws which a federal Police Force may refuseto carry out. This has negative implications for the state administration of justice, especially in the face of the upsurge in crime rate in Nigeria. Thepaper concludes that a State would be inherently weak if it were incapacitated or unable to enforce its own laws and as such recommends that the CFRN be reviewed in order to allow for a State Police Force and State Correctional Service.

1.0 INTRODUCTION

In view of the increase in the rate of heinous crimes in Nigeria, such as kidnapping, terrorism, cybercrime, ethnic cleansing, insurgency and financial crimes, it is obvious that the time has come for crimes to be fought effectively at all levels of government and in every facet of the society. This obligation requires governments, at all levels, to be adequately empowered to make laws, enforce those laws and interpret them as well. Concomitantly, the federal, state and local governments should have a significant amount of independence[1] in the conduct of their affairs, particularly, in fighting crime; otherwise there would be incoherence, ineffectiveness and disorientation. This clarion call in criminal justice administration needs to be rapidand water-tight because the institutions that operate the criminal justice system (CJS) are all mutually interrelated and interdependent. None can exist and succeed alone.

Thus, the administration of criminal justice in Nigeria, which comprises the Nigeria Police Force, the NigerianCorrectional Service, the Judiciary and the prosecutorial agencies of government (especially the office of the Attorney-General), must collaborate in order to be effective in criminal justice administration.

Unfortunately, in Nigeria, the federal system being practiced makescoherence difficult because it concentrates too much powerin the federal government. For instance, the Nigeria Police Force and the NigerianCorrectional Service are exclusively controlledbythe federal government. The Court of Appeal and the Supreme Court

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[1]Ben Nwabueze, *Constitutional Democracy in Africa* (Spectrum Books Limited, 2003) 59.

are federal courts and many institutions that are vested with prosecutorial powers are controlled by the federal government. This arrangement does violence to the federal system of government[2] as well as the criminal justice system, particularly in the states.Consequently, citizens suffer serious violation of rights in the criminal justice process.

2.0 FEDERALISM

The definition of federalism is controversial as there is no universally acceptable definition of the term; it means different things to different people. The Supreme Court nailed this point when it said, per Niki Tobiin *FRN v Anache*that, "[n]o two countries operating federal Constitutions practice Federalism exactly in the same way. I am yet to see two countries operating Federal Constitution providing for exactly the same federal content in the Constitutions."[3]There are however dangers inherent in thispositionof absolute unilateral authority to define federalism; this would rob the concept of its integrity. Thus, there must be inherent features that would qualify a system as federal. As a matter of fact, it may be implied from *FRN v Anache*that the Supreme Court agrees with the idea that federalism requires some distribution of powers between at least two levels of government.[4]

In spite of the controversy, Mowoe posits that a federal system should have certain features which include: voluntary submission of autonomy, cooperation amongst various levels of

[2]Ben Nwanbueze, Reflections on the 1999 Constitution: A Unitary Constitution for a Federal System of Government, being a paper delivered at a seminar in Abuja organized by the International Commission of Jurists, 4 -16 February, 2000, 35, cited by D A Ijalaye, *The Imperatives of Federal/State Relations in a Democracy: Implications for Nigeria*, (Nigerian Institute of Advanced Legal Studies, 2001) 11.
[3]*FRN v Anache*(2004) 14 WRN 1, 75.
[4]*FRN v Anache, op cit,* 74-5,noting that the Federal Government, although having more powers than the component states does not dismiss the fact that Nigeria runs a federal Constitution. See also *A-G of Ondo v A-G Fed &ors*(2002) 9 NWLR (pt 772) 222.

government and division of powers.[5]Saunders also made the point that federalism implies that there is power sharing between two or more levels of government; one at the central level and the other at the local level.[6]Sofowora, agrees with Mowoe and Saunders regarding the definition, on the point of power sharing but emphasizes the independence and autonomy of the levels of government.[7]

This paper keenly observes that one of the crucial ingredients of true federalism is that the said power sharing is usually between two independent entities that are autonomous and equal in strength; none is subservient to the other.[8] Saunders nails this point when he posits that, "[e]ach sphere deals directly with the people, organized nationally or in constituent unit, and each has constitutional autonomy within its own area of responsibility."[9]Ijalayeadopted the definition by K. C. Wheare who defined federalism as follows:

> Federal government exists – when the powers of government are divided substantially according to the principle that there is a single independent authority for the whole area in respect of some matters and that there are independent regional authorities for the other matters each

[5]Kehinde M. Mowoe, *Constitutional Law in Nigeria* (Mat=lthouse Press Limited, 2008), 54-6.
[6]Cheryl Saunders, *Federalism, Constitutional Democracy and Challenges for Good Governance* (Nigerian Institute of Advanced Legal Studies, Lagos), 2.
[7]Sofowora, 'Constitutionalism and Federalism in Nigeria,' in *Constitutionalism and Compliance in Nigeria*(Magistrates Association of Nigeria, 2006); 34- 5.
[8]Audrey L. Adu-Appiah*et al*, 'The U.S. Territories'*Harvard Law Review* [2017] (130) (2); 1632, noting that "federalism is a structure of government which connotes distinct and sovereign political entities jointly exercising governmental power over a given geographic region, with each entity acting as a check on the on the other's action and ambitions."
[9]Saunders, *Op cit,* 2.

> set of authorities being co-ordinate with and not subordinate to the others in its own prescribed sphere.[10]

Nwanbueze defines federalism as:

> An arrangement whereby powers of government within a country are shared between a national, country-wide government and a number of regionalized (ie territorially localized) governments in such a way that each exists as a government separately and independently from the others operating directly on persons and property within its territorial area, with a will of its own and its own apparatus for the conduct of its affairs, and with an authority in some matters exclusive of all the others.[11]

Similarly, Adediran has opined that the following features must be present in a federal system of government:

1. The federal government must have power over those matters that are of general interest to the nation;
2. The state government must have power over those matters that are peculiar to their locality;

[10]K. C. Wheare, *Federal Government, (*4th edition Oxford University Press, 1963) 33 cited by D. A. Ijalaye, *The Imperatives of Federal/State Relations in a Democracy: Implications for Nigeria*, Lagos, Nigerian Institute of Advanced Legal Studies, 2001, 11.

[11] Ben Nwanbueze, *Federalism in Nigeria Under the Presidential Constitution*, (Sweet & Maxwell Limited, 2003) 1.

3. In the exercise of their powers, both governments should coordinate and cooperate rather than one being subordinate to the other.[12]

It suffices to say that federal system of government or federalism is one whereby governmental power is shared between two or more levels of government in such a manner that no level of government is subordinate to the other. From the definitions by Ijalaye, Nwanbueze, Wheare and Adediran, it is clear that federalism is a constitutional device[13] that is used to distribute powers between two or more levels of government each of which should have its complete operational apparatus of government. In other words, each level of government should have its complete arms of government; legislative, executive and judicial arms. Further, each level of government should have its apparatus of government to promulgate, enforce and interpret its own laws. Furthermore, every state government in Nigeria ought to have its independence on certain matters and particularly, should have its criminal justice system which reflects its will and the peculiarities of its people.

Sequel to the above, it is obvious that it is apt for the states in the Nigerian federation to have their own distinct criminal justice system which includes a police force andCorrectional service. The 1963 Constitution of the Federal Republic of Nigeria provided for a regional police force[14] but for reasons of fear that regional governments would misuse the police force, particularly, because of the "role of the Northern Police Forces in the pogroms of 1966 it

[12]M. O. Adediran, "Critical Examination of the Constitutional Provisions on the Legislative Powers of the Federal and the States", in Professor J. D. Ojo (eds), *Proceedings of the Conference on the 1995 Nigerian Draft Constitution,* 11, cited by D. A. Ijalaye, *The Imperatives of Federal/State Relations in a Democracy: Implications for Nigeria*, (Lagos, Nigerian Institute of Advanced Legal Studies, 2001) 2.
[13]Nwanbueze, *Federalism in Nigeria Under the Presidential Constitution,* 1.
[14]Constitution of the Federal Republic of Nigeria, 1963, s. 105 (7).

was abolished by the Federal Military Government between 1966 and 1972."[15] Accordingly, the 1979 Constitution of the Federal Republic of Nigeria and its successor, section 214 of the Nigerian Constitution[16] provides that there shall be only one police force established for the Federation of Nigeria.

3.0 THE UNIFIED NATURE OF THE CRIMINAL JUSTICE SYSTEM

Seigel and Worralposit that the term criminal justice system (CJS) surfaced in the 1950s as part of the outcome of a project sponsored by the American Bar Foundation (ABF). The term surfaced because it became obvious that "justice agencies could be connected in an intricate way, yet often unobserved, network of decision-making processes".[17] This position is undisputable because, as this paper reveals, the institutions in the CJS are interrelated and interdependent. Accordingly, the CJS would be efficient only if the institutions realize this fact and live up to it.

Frase and Weidner, in the context of the United States, emphasize the need to regard the CJS as a system. They concur that the components of the CJS include police and other law enforcement agencies; trial and appellate courts; prosecution and public defender offices; probation and parole agencies; custodial institutions (jails, prisons, reformatories, halfway houses, etc.); and departments of corrections (responsible for some or all probation, parole, and custodial functions). They also posit that as a system, the CJS is a "highly rational – carefully planned, coordinated and

[15]ChetaEze, 'A History of Nigeria's Police Service,' available at https://africasacountry.com/2014/04/historyclass-nigeria-police accessed 7th October, 2019.
[16]Constitution of the Federal Republic of Nigeria, 1999 (as amended)(hereinafter referred to as CFRN), s. 214.
[17]Larry J. Siegel and John L. Worrall, *Introduction to Criminal Justice*, (Wadsworth Cengage Learning, 14thedn, 2014), 6.

regulated system."[18] The writers also observe that no jurisdiction has hasever been able to over haul all of its system of criminal justice. This, they however observe, is important "not only to stress the need for more overall planning, coordination, and structured discretion, but also to appreciate the complex ways in which different parts of the system interact with each other."[19]The ideal thing to do according to Fraser and Weidner in reference to the CJS, is to consider, treat and reform the sector as a system.

Adler, Gerhard, and Lauferdescribe the CJS as the sum total of society's activities to defend itself against the actions it describes as criminal.[20]They refer to it as that integral fusion of machineries of government that aim to enforce law and redress crime. The use of the word "fusion" by Adler *et al* suggests a high degree of unity and coherence for effectiveness. Thus, if the CJS must be effective, it must demonstrate a high level of synergy and cooperation. Throughout their work, which is a book length, they emphasized the need for coherence of agencies in the CJS.

Okoeguale, in his work, posits that the CJS in Nigeria straddles the following institutions: the Nigeria Police Force, the office of the Attorney-General and Commissioner for Justice (both Federal and State), the Courts and the Nigeria Prison Service.[21] He argues that the need for a synergy in the system cannot be overemphasized for the purpose of greater efficiency. He recommends that for a synergy to be achieved there must be a central coordinating unit that would be empowered to review the

[18]Richard S. Fraser and Robert R. Weidner, '*Criminal Justice System – Structural and Theoretical Component of Criminal Justice Systems, The Systems in Operation, The Importance of Viewing Criminal Justice as a System*' http://law.jrank.org/pages/858/Criminal-Justice-System.htmlaccessed on 20th May, 2017.
[19]*Ibid.*
[20]Freda Adler and Mueller Gerhard and Williams Laufer, *Criminal Justice: An Introduction* (2ndedn, McGraw Hill Higher Education 2000) 7.
[21]Hilary Okoeguale, 'Criminal Justice in Nigeria: The Need for Administrative Dexterity' [2015] (1) (1) *ABUAD Journal of Public and International Law*; 225.

discretions that are exercised within the system.[22] He concludes his work by stating that the CJS has to guarantee, protect and promote human rights in the system administratively without requiring victims of human rights abuse to always go to court.[23]

Dambazau, on his part, defines criminal justice system as a "legal entity, a set of interrelated elements, and a loose federation of agencieseach separately budgeted, each drawing its manpower from separate wells and each a profession unto itself."[24] Thus, it appears inevitable to consider the criminal justice system as a system. Dambazau, however, pays attention to the following sub-systems in the CJS:

a. The Police; which he considers the biggest and most visible institution in the CJS. He emphasized the importance of the Police by stating that "the decision of the Policeman on the street is as important as the existence of the criminal justice system". He further stresses that the Police is the gatekeeper of the CJS.
b. Criminal Courts; he explains that the court is the epicenter of the administration of justice and symbols of justice.[25] According to him, the courts have the exclusive powers to try and sentence a defendant who is being accused of a crime;
c. Prisons; Dambazau refers to the prison as the final destination of the product of the CJS if such a product were so qualified.[26]

[22]*Ibid*, 228; Siegel and Worrall, *op cit*, 23*op cit*, noting that there is the need to monitor the exercise of discretion in the CJS.
[23]Okoeguale, *op cit*at238.
[24]A. O. Dambazau, *Criminology and Criminal Justice* (Spectrum Publishers, 2011) 173.
[25]Dambazau, *op cit*,188-9.
[26]*Ibid* at 197.

The aforementioned institutions make up the criminal justice system. In addition to the above, Dambazau discusses the victim of crime as one important component in the CJS.

Adebayo, in referring to the gamut of the institutions and their functioning as a system, refers to the CJS as the "…system of institutions and practices of government whose main focus is to mitigate and deter crime, uphold social control and sanction individuals who violate the set laws of a specific state with rehabilitation and criminal penalties."[27] He posits that the major problem in the CJS in Nigeria is delay, which unfortunately, is confused with prison congestion. According to him, this delay runs through all the institutions in the CJS and he holds the view that delays are traceable to the failures of the institutions in the CJS in performing their roles. He then stated that the success of every criminal justice administration depends on the efficient performance of the responsibility imposed by each agency by law.[28]Although Adebayo noted the inertia by the agencies in the CJS, he failed to note that coordination is also a major problem in the system.

Owasanoye and Ani, note that the problems include delay in the CJS, poor case management and the holding charge practice amongst many others, and the first casualties of these problems are the defendant who is detained in dehumanizing conditions without trial, the state whose resources is being deployed in the process and the victim who wants justice done promptly. They also highlight the roles of the various organs in the CJS and thus describe the relationship between the state actors in the CJS as a "symbiotic relationship", such that a break at any point frustrates the whole system which ought to have a single identity.[29] Accordingly, they

[27]A. M. Adebayo, *Administration of Criminal Justice System in Nigeria,* (Princeton Publishing Co, 2012) 2.
[28]*Ibid*, 6-7.
[29]B. Owasanoye and C. Ani, 'Improving Case Management Coordination Amongst the Police, Prosecution and Court' in Epiphany Azinge and Dakas C. J.

opine that if there were adequate cooperation, the challenges in the system would abate. This paper concurs with the authors who opine that for the sake of accountability, state police and prisons should be created.[30] This suggestion is very useful as it is difficult, if not impossible for the state governments to control and manage criminal justice institutions outside its jurisdiction.

Aigbovo, Okoeguale and Aladejare,[31] writing on the CJS in Ondo State and with respect to the Administration of Criminal Justice Law (ACJL) of Ondo State,[32] contend that the criminal justice system includes the Nigeria Police Force, the Chief Law Officer/Prosecution, judiciary and the Nigeria Prisons Service. They define the CJS as the whole gamut of both adjectival and substantive laws as well as the institutions and practices of government that is aimed at addressing crime.[33] Again, they harped on the need for the institutions to work as an integrated system and considered the Administration of Criminal Justice Monitoring Committee, established by the *Administration of Criminal Justice Law of Ondo State, 2015*[34] to be important for the purpose of creating a synergy.

AdedejiAdekunle, reviews the Administration of Criminal Justice Act, 2015 and spots the major innovation made by the Act. The innovations that he considers are essentially procedural, including arrest, bail, remand, plea bargain, interrogation, speedy trial, witness protection, non-custodial penal measures, restitution and monitoring and/coordinating mechanisms. Under the latter heading, Adekunle stresses that the criminal justice system "must

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Dakas (eds) *Judicial Reform and Transformation in Nigeria* (Nigeria Institute of Advanced Legal Studies, 2012); 220.

[30]*Ibid*, 223 – 224.

[31]O. Aigbovo and H. Okoeguale and A. Aladejare, 'Implementing the Administration of Criminal Justice Law of Ondo State: Focus on the Police and Prisons' [2016] (2) (1) *ABUAD Journal of Public and International Law;*324-5

[32]Administration of Criminal Justice Law of Ondo State (ACJL), 2015.

[33]Aigbovo, *et al*, *op cit*, 325.

[34]ACJL, s. 426.

work as an integrated system"[35] so as to be efficient. He also notes that the institutions that must work together are: the victims of crime and their communities, the police, the courts and the Nigerian Prisons Service.

From the foregoing, it is clear that for the CJS in Nigeria to be effective, there must be a high degree of coherence, especially in the states where more crimes are prosecuted. This however might be impossible given the admixture of federal and state institutions in the criminal justice systems in the states. Put differently, it would be injurious to the essence of a federal system of government if a federal police, state judiciary, state prosecution and a federal prison service are forced to work in such an integral system as required by the CJS. The legislative instrument that establishes and influence the operational policies of the federal and state agencies are of different sources and as such the policies of the Federal Government might in many respects be inconsistent with that of the states. This situation leads to, at the least, problems of coordination in the CJS and ultimately, human rights abuse and injustice.

4.0 PROBLEMS OF COORDINATION IN THE CRIMINAL JUSTICE SYSTEM IN NIGERIA

Nwapa analyses the problems bedeviling the CJS in Nigeria and harps on pre-trial detention. According to him, one of the root causes of long pre-trial detention in Nigeria is poor coordination in the CJS, caused by the federal and state dichotomy. He diagnoses the problems of pre-trial detention and reveals that there are four major problems which include;

a. Law enforcement methods which are inconsistent with legal standards;

[35]AdedejiAdekunle, 'Statute Review: Administration of the Criminal Justice Act, 2015'[2016] (1) *Ogun State Bar and Bench Journal;*142.

b. Arraignment before a court lacking jurisdiction and a consequent remand order without the police completing investigation;
c. Near total failure of coordination amongst agencies in the CJS;
d. Little or no access to legal aid.

Nwapa's words best describes the situation of poor coordination and the consequence thus:

> [T]here is a near total failure of coordination and information management between the various state and federal agencies involved in the criminal justice process… Cases are often stalled interminably – for instance, because the IPO, a federal employee, is transferred from one state to another without notification to the state prosecutors with whom the IPO is working… [I]n 2005, 3.7 percent of pretrial detainees were in custody because their files were missing; 7.8 percent because their IPOs had been transferred and 17 percent because of delays in investigation."[36]

Impliedly, poor synergy of the institutions in the CJS or a total absence of same leads to unaccountability and myriads of criminal justice problems. Thus the problems highlighted above are actually symptomatic of a much more ingrained problem which is the federal and state dichotomy. The mixture of federal and state

[36]Anthony Nwapa, 'Building and Sustaining Change: Pretrial Detention Reform in Nigeria' in David Berry (ed), *Justice Initiatives* (Open Society Institute, 2008); 86- 102, 88-89.

institutions in the CJS in Nigeria, is working more hardship than good. It makes coherence and synergy difficult, if not impossible. For instance, Investigating Police Officer (IPO) may be transferred to a distant state which could lead to a breakdown in investigation and prosecution in a state.

Nwapa, vehemently argues that if there must be a solution to pre-trial detention in Nigeria, attention must be paid to the root causes rather than the obvious symptoms. "These root causes include lack of coordination among the criminal justice entities…"[37] According to Nwapa, in order to solve the problems, an intervention (project) was instituted to take steps towards addressing the problems in the CJS. The project, 'Detention and Legal Aid Service Delivery in Nigeria' paid critical attention to interagency communication and in December, 2004, the project undertook a national interagency consultation with the judiciary, the prosecution service, the Police, the Prisons and the Legal Aid Council. One of the outcomes of this interagency consultation was that they recognized the main problem encountered in previous criminal justice reform effort which was "the lack of inter-institutional communication and coordination."[38]This obviously poses a problem in the administration of criminal justice. At the time, Nwapa, expressed hope that the Administration of Criminal Justice Bill which limits the time for pre-trial detention among others, would put an end to the malady. This bill has since been passed into law in 2015 and its provision on synergy and cooperation is noteworthy.

Section 469 of the Administration of Criminal Justice Act, 2015,[39] is the synergy hub of the CJS in Nigeria. It establishes the Administration of Criminal Justice Monitoring Committee, which has as its members;

[37]Nwapa, *op cit*; 91.
[38]*Ibid.*
[39]Administration of Criminal Justice Act, 2015 (hereinafter referred to as ACJA), s. 469.

a. The Chief Judge of the FCT who is the chairman;
b. The Attorney-General of the Federation or his representative who shall not be below the rank of a Director in the Ministry;
c. A Judge of the Federal High Court;
d. The Inspector General of Police or his representative who shall not be below the rank of Commissioner of Police;
e. The Comptroller-General of the Nigeria Prisons Service or his representative who shall not be below the rank of Comptroller of Prisons;
f. The Executive Secretary of the National Human Rights Commission or representative not below the rank of Director;
g. The Chairman of any of the local branches of the Nigeria Bar Association in the FCT to serve for two years only;
h. The Director of the Legal Aid Council of Nigeria or representative not below the rank of Director;
i. A representative of the Civil Society working on human rights and access to justice or women rights to be appointed by the Committee to serve for a period of two years only.[40]

The Committee is charged with the general responsibility of ensuring the effective implementation of the Act.[41] A Commission with similar composition and functions was established by the Administration of Justice Commission Act[42] which also created a similar committee for the States of the Federation.

Owasanoye and Ani observe that these committees as established by the Administration of Justice Commission Act hardly ever functioned.[43] It is feared that the same fate would befall the

[40]ACJA, s. 469 (2).
[41]ACJA, s. 470 (1).
[42]Administrationof Justice Commission Act, 1993 cap. A3, Laws of the Federation of Nigeria,2004, now repealed by s. 493 of the ACJA, 2015.
[43]Owasanoye and Ani, *Op cit;* 222.

current Committee created by the Act.[44]For some subsisting constitutional reasons, a similar committee, even if created by, or, for a state may not function effectively for the simple reason that the criminal justice system in the states, are a mixture of federal and state institutions and a state legislature cannot legislate with respect to federal agencies.[45]

The Nigeria Police Force and other security services established by law and the NigerianCorrectional Service are listed as item number 45 and 48 respectively in Part I of the second Schedule of the Constitution of the Federal Republic of Nigeria. Thus, pursuant to section 4 (2) and (3) of the Constitution, the State Houses of Assembly cannot legislate 'with respect to' the Police and Prisons.[46] Section 4 (3) of the Constitution provides that "the power of the National Assembly to make laws … with respect to any matter included in the Exclusive Legislative list shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States.[47] If that is the case, how can a committee created by a state legislature in Nigeria, create obligations for federal government agencies? A possible answer is proffered by Nwabueze, when he posits that the Nigeria Police Force by virtue of section 214 (2) (b) of the Constitution mandates the Nigeria Police to keep laws made by the States as well as the Federal Government. For the sake of clarity, a reproduction of the said section would be helpful here. The said section provides that

[44]Stanley Ibe, 'Taking the ACJA Revolution Further,' *Punch* (19th September, 2019) <https://punchng.com/taking-the-acja-revolution-further> last accessed on 20th September, 2019, noting that the Committee had not yet been inaugurated in the Federal Capital Territory.
[45]CFRN, s. 4 (3).
[46]This paper acknowledges the argument by Nwabueze on the difference between the terms, '*legislating with respect to'* and '*in relation to'.* B. Nwabueze,*Constitutional Democracy in Africa* (vol. 1 Spectrum Books, 2003); 85 – 86. Nwabueze makes a similar argument in another work, B. O. Nwabueze, *Federalism in Nigeria Under the Presidential Constitution* (Lagos State Ministry of Justice, 2003); 94 – 6.
[47]CFRN, 1999, s. 4 (3).

"the members of the Nigeria Police Force shall have such powers and duties as may be conferred upon them by law."[48] According to Nwabueze, the use of the word 'law' in the Constitution is deliberate, with the intention of accommodating laws made by the States of the Federation.[49]Nwabueze further concludes that the Nigeria Police Force is an agency of government, which is common to both the Federal and State governments.

This argument is dismissed by the weight of section 214 (2) (a) which provides that the "Nigeria Police Force shall be organized and administered in accordance with such provisions as may be prescribed by an Act of the National Assembly."[50] A keen analysis of this provision reveals that the use of the phrase 'Nigeria Police Force shall be organized and administered,' which relates to the governance of the Nigeria Police Force, is used whereas in paragraph (b) it uses the word 'members'. In other words, whereas the governing of the force must be in accordance to an Act of the National Assembly, the members may have more duties imposed by a law made by a State House of Assembly (if one accepts the argument of Nwanbueze). Where however, there is a conflict between the powers or duties imposed by a State and the governing of the Police Force, that power or duty imposed by the State will be avoided. Accordingly, section 215 (4) allows a Commissioner of Police in a State to require that before he could obey an instruction from the Governor of a State, such instruction must be referred to the President and whatever the President directs cannot be inquired into by any court of law in Nigeria.[51]

The proviso to section 215 (4) of the Constitution[52]is to the effect that where a Commissioner of Police has been instructed by a Governor or Commissioner in a State, such Commissioner of

[48]CFRN, 1999, s. 214 (2) (b).
[49]Nwabueze, *op cit*; 85 – 86.
[50]CFRN, 1999, s. 214 (2) (a).
[51]CFRN, 1999, s. 215 (5).
[52] *Ibid*, s. 215 (4).

Police, before carrying out such instruction, 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 direction".[53] In other words the Commissioner of Police is not entirely under the control of the Governor of the State where he is presiding as Commissioner. This situation does not augur well with criminal justice administration.

Ocheme had also detected this problem. He did not mince words to point out that the Commissioner of Police in a State is empowered to defy the orders of the Governor of a State or the Attorney-General of a State. Accordingly, he states that, 'it does not lie within the capacity of the Attorney-General of a state to regulate the administrative activities of a federal security agency'.[54]Ocheme's position is in relation to the defunct Administration of Criminal Justice Law of Lagos State, 2007, which required the Commissioner of Police of Lagos State, in its section 10 (similar to section 29 (2) of the Administration of Criminal Justice Act), to remit to the office of the Attorney-General of the state, a record of all arrests made with or without a warrant…[55]. Ocheme, rightly contends that that provision was inconsistent with the provisions of the CFRN. He further points out that the Commissioner of Police of a State does not enjoy the tenure of his

[53] *Ibid*.
[54]Peter Ocheme, 'The Lagos Administration of Criminal Justice Law (ACJL) 2007: Legislative Rascality or a Legal Menu for Access to Justice' [2011] (1)*NIALS Journal of Criminal Law and Justice*; 141.
[55]Administration of Criminal Justice Law No. 10 of Lagos State, 2007, s. 10. This Law which has been repealed by the Administration of Criminal Justice (Repeal and Re-enactment) Law of Lagos State, 2011, s. 370, was repealed probably in response to the position canvassed by Ocheme to the effect that the Attorney-General of Lagos State cannot compel the Commissioner of Police in the State to report to him. That position is not retained by the extants Law, except for a similar provision. In its section 20 (1), the extant Law provides that the Police Officer in charge of a Police Station shall report to the nearest Magistrate within three days of arrest of a suspect and furnish particulars of the suspect. The Magistrate shall forward the records to the Attorney-General for necessary action.

office at the pleasure of the State executive and legislature and as such is free to disobey orders from them. In other words, the Lagos State Government, or any other State Government in Nigeria, lacks the competence to remove the Commissioner of Police in the State.[56]

5.0 A CASE FOR STATE CRIMINAL JUSTICE SYSTEM

Nwanbueze points out that each of the governments should have its own will, sufficient apparatus for conducting its affairs and with an authority in some matters exclusive of all others.'[57]In other words, for a state to function effectively, it should have the requisite powers to make laws, implement and interpret same. State governments, through their legislative arms, are empowered to make criminal laws in their respective states. Concomitantly, they may make laws with respect to criminal justice administration pursuant to section 4 (6) of the CFRN. In keeping with this constitutional provision, some states like Ekiti, Ondo, Lagos, Anambra, Kaduna, to mention a few have enacted the Administration of Criminal Justice Law in their respective states. Further, section 6 (5) of the CFRN also empowers courts to create such other courts, including the High Court; thus there are High Court Laws in various states, Magistrates Court Law, establishing High Courts and Magistrates Courts. However, in the area of execution of criminal laws and maintenance of Correctional Services, states have no jurisdiction. This fact diminishes the integrity of the states; more importantly, it clogs the smooth administration of criminal justice in the states and ultimately, citizens suffer human rights abuse; which is manifested in long detention awaiting trial, missing case files, arbitrary arrests and poor prison conditions.

[56]Ocheme, '*Op cit;* 141.
[57]Nwabueze, *Op cit,* 59.

It is however admitted that the Administration of Criminal Justice Laws and Criminal Procedure Laws regulate the criminal justice procedure which applies to the police, it would appear that where such laws conflicts with the governing structure of the Nigeria Police Force, particularly, section 215 (4) of the CFRN, the procedural law would be avoided. This is not elegant. Thus, it has been noted that the inability of states to control the security forces in their jurisdictions is a recipe for disaster.[58] In the United States as well as other countries where federalism is practiced, states are allowed to keep and maintain a local police force. One of the advantages is that crimes, being always local, could be solved more easily by officers who know the terrain and are intimately part of the community.

In a country with diverse ethnic groups as Nigeria, the solution to crime ought to have an indigenous character which cannot be had in a situation whereby there is only one Police Force for the entire country. If the CJS apparatus had indigenous character, it would be more acceptable by the people and compliance would be more significant.In order to keep up with the crime wave, it would be a lot better if a fully independentstate CJS were allowed. For instance a state whose prison facilities are getting congested could easily respond by taking measures to remedy the situation by building more prisons, reviewing detention and prosecution policies amongst many other options.

6.0 CONCLUSION

This paper finds that the extant criminal justice laws makes state governments bereft of the requisite independence and autonomyto effectively administer criminal justice; they must, at all times hope that their *modus operandi* for the administration of criminal justice conforms with the directive of the president of the Federal Republic

[58]Ijalaye, *Op cit;* 11.

of Nigeria or the appropriate Minister. This, according to Nwabueze is a recipe for disaster. Thus, this paper serves as a wake-up call to the relevant organs of government to establish a distinct and independent police force for CJS for states that make up Nigeria. This would increase the number of angles and perspectives through which crimescould be fought and would help reduce the crime wave to the barest minimum.