

## **Policing the Police in Nigeria: The Case of Maimuna Tanko**

**O.W. Igwe, PhD (Laws)**

Head of Dept. Public & Int'l Law

Faculty of Law

University of Calabar

CRS Nigeria

### ***Introduction***

The Nigerian police has the basic responsibility of enforcing law and order in Nigeria.<sup>1</sup> This responsibility has overwhelmed the force. It has become needful that the Nigeria police be policed considering the case of Mamuna Tanko amongst other instances of police abuse of innocent citizens. To properly bring out the issues at hand, the facts of Maimuns Tanko abuse is represented here. Maimuna Tanko, a 16-year old girl was abducted in Kano by a team of patrolling police on December 11, 2010. She was briefly detained before she was taken out to a private residence and repeatedly raped by many policemen, including two officers. Thereafter, she was pimped to other men for a fee by her abductors for about four weeks while she was still in the custody of the same policemen. Rape of underage girls by policemen is common in Nigeria. At Aba, a Divisional Police Officer allegedly raped a girl to death. In Kwara State, a police corporal was arrested for alleged rape of a young lady. Sometime ago, five policemen of Imo State Police Command were interrogated for alleged rape of a 12-year old girl. And in Enugu, a lady was allegedly raped and infested with HIV by policemen.<sup>2</sup>

### ***The Rights Violated***

Before appraising the human rights of Maimuna Tanko that were violated, it may be useful to undertake a brief perception of human rights in Nigeria. In the case of *Ransome Kuti v. A-G of Nigeria* Kayode Eso JSC, described Human Rights as: "a right which stands above the ordinary laws of the land and which infact is antecedent to the political society itself. It is a primary condition to a civilised existence...<sup>3</sup>. The legal position coming from a Nigerian Supreme Court judge (as he then was) emphasizes that human rights in Nigeria "stands above the ordinary laws of lead" as they are innate being inherent, inalienable and therefore immutable"<sup>4</sup>. These rights existed before the political arrangement called Nigeria. The learned judge's description reveals that its observance is a primary condition for a people desiring a civilized existence. The rights of Tanko and other victims of sexual abuse abridged include the right to dignity of person as protected by section 34 of the 1999 Constitution and Article 5 of the African Charter on Human and Peoples' Rights.<sup>5</sup> By section 35 of the Nigerian Constitution and Article 3 of the African Charter, their right to personal liberty was equally infringed upon. Also violated is their right to freedom of movement guaranteed by Section 41 of the 1999 Constitution.

Nigeria has ratified the following international instruments seeking to protect women and children:

International Covenant on Civil and Political Rights (CCPR);<sup>6</sup> International Covenant on Economic, Social and Cultural Rights;<sup>7</sup> Protocol to the African Charter on Human and Peoples' Rights on the rights of Women in Africa;<sup>8</sup>

---

<sup>1</sup> The Police Act, Cap 359, Laws of the Federation of Nigeria, 1990, sections 214, 215 & 216 of the 1999 Constitution of Nigeria

<sup>2</sup> See Editorial of Saturday Sun, January 8, 2011. p. 16.

<sup>3</sup> (1985)2 NWLR(pp 6), pp229-230

<sup>4</sup> O.W. Igwe, *Preliminary Studies in Human Rights Law*, Rings & Favolit Ltd, Lagos , 2002, p. 6

<sup>5</sup> Incorporated into the Nigeria law through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap 10, Laws of Federation 1990.

<sup>6</sup> General Ass. Resolution 2200 (XXI) of 16 Dec. 1966 (UNTS vol. 999.p.171); entry into force: 23<sup>rd</sup> mar., 1976; 160 ratifications (including Nigeria)

African Charter on the Rights and Welfare of the Child;<sup>9</sup> Convention on the Elimination of all forms of Discrimination against Women (CEDAW);<sup>10</sup> The Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women;<sup>11</sup> Convention on the Rights of the Child (CRC);<sup>12</sup> Slavery Convention;<sup>13</sup> The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT);<sup>14</sup> and The African Charter on Human and Peoples' Rights.<sup>15</sup> Nigeria has also signed the following Human Rights treaties

### **Protecting Women and children**

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;<sup>16</sup> The Optional Protocol to the Convention on the Rights of the child (CRC-OP-SC) on the Sale of Children, Child Prostitution and Child Pornography.<sup>17</sup> The foregoing shows how deeply committed Nigeria is to the protection of the rights of women and children. But the greatest challenge facing the Nigeria Police, is whether the enormity of these responsibilities is brought home to both the rank and file, officers and the police authorities.

### **Structural Problems**

The killing of Corporal Clement Amachi by his colleague Corporal Umoru Mohammed both, mobile policemen attached to the Abia State Government House presents clearly that these abuses are a result of a structural problem. But first, the presentation of the facts may offer an insight into the magnitude of the problem. The Policeman Corporal Umoru Mohammed had allegedly gone to the room of Corporal Clement Amachi at about 2.00am while the later was sleeping and shot him severally on the head.

According to a report<sup>18</sup>, the cause of the problem was a N2.5million gift the Governor of the State gave to the security details after a trip. Mohammed was said to have complained that he was always short-changed whenever the Governor extended such generosity to them. He was determined to teach his colleague what he thought was a lesson he would not forget. After killing Amachi, he stormed out of the house with his AK 47 assault rifle, shooting sporadically as he walked towards the main gate of the government house. He was however, shot and over-powered by other security operatives after he had expended the bullets in his gun and wanted to change to another magazine.

### **Constitutional Provisions**

The first difficulty is with the question: is the Nigerian Police independent? Recourse is had to section 215 (1)-(5) of Nigerian constitution. The section provides that Nigeria police force shall be under the command of Inspector-General of Police but that the President or any such other minister of Government of the Federation as he may authorize in that behalf may give to the Inspector-General of Police such lawful direction and the IGP shall comply.

<sup>7</sup> General Ass. Resolution 2220 (XXXI) of 16 Dec., 1966 (UNTS vol. 993, p.3); entry into force 3 Jan; 1976, 155 ratifications (including Nigeria).

<sup>8</sup> 9 June 1998 (OAU, Dec. Cm 2051 [LXVII]); entry into force: 25 Jan., 2004; 23 ratifications (including Nigeria)

<sup>9</sup> 11 July 1990 (OAU, Doc., CAB (LEG/24.9/49); entry into force: 25 Jan., 2004; 23 ratifications (including Nigeria)

<sup>10</sup> General Assembly resolution 34/180 of 18 Dec., 1979, (United Nations, Treaty series, vol. 1249, p. 13); entry into force: 3 Sept., 1981: 85 ratifications (including Nigeria)

<sup>11</sup> 6 Oct., 1999 (United Nations G.A. Res. 54/4); entry into force 22 Dec., 2000; 83 ratifications (including Nigeria)

<sup>12</sup> Gen. Ass. Resolution 44/25 of 20 Nov., 1989 (UN, Treaty Series) vol. 1577, p.3); entry into force: 2 Sept., 1990; 193 ratifications (including Nigeria)

<sup>13</sup> Signed at Geneva on 25 Sept., 1926, as amended by Protocol of 7 Dec., 1953, UN Treaty Series, Vol. 212, p. 17 and vol. 182, p. 51; entry into force: 7 July 1955; 108 ratifications( including Nigeria)

<sup>14</sup> Gen. Ass. Resolution 39/46 of 10 Dec., 1984 (UN, Treaty Series, Vol. 1465, p. 85); entry into force; 26 June, 1987; 144 ratifications (Nigeria ratified on 28 July, 2001)

<sup>15</sup> 26 June 1981 (OAU, Doc. CAB/LEG/67/3/Rev. 5); entry into force: 21 Oct., 1986; 27 ratifications (incorporated into the Nigeria Law through the African Charter on Human & Peoples' (Ratification and Enforcement) Act, Cap 10, Laws, of the Federation of Nigeria, 1990.

<sup>16</sup> 18 Dec., 2002 (UNGA Res. A/57/199); entry into force: 22 June 2006; 30 ratifications, excluding Nigeria).

<sup>17</sup> 25 May 2000 (UN, A/RES/54/263); entry into force 2002; 115 ratifications (excluding Nigeria).

<sup>18</sup> Editorial, "When 'Dog ate Dog'", *The Nation*, July 22, 2011 p. 19

But with respect to the states, the Commissioner of Police may receive lawful instructions, but before carrying out such directions may request that the matter be referred to the President or such Minister of the Government of the Federation as may be authorized in that behalf by the President for his directions. Sub-section 5 of section 215 provides an ouster clause with reference to the directions given by the President or his nominee, as no court of law shall enquire into such directives. In sum, the ultimate control of the Nigeria Police lies with the President or his nominee. This means that the Nigeria police is answerable to the President or his nominee and not the law of the land. Also, the State Commissioner of Police is not ultimately answerable to the Governor of the State or even the law of the State wherein he is Commissioner of Police, not even to the Inspector-General of Police but to the President or his nominee.

The third schedule Part 1 dealing with Federal Executive Bodies, established by Section 153 provides for the Council of State who in section (6) may advise the president whenever requested to do so on the maintenance of public order within the Federation or any part thereof. There is also created the Police Service Commission whose duty in section 29(6) will be to dismiss and exercise disciplinary control over persons in the Nigeria Police Force, excepting the IGP. The assessment to be made of the foregoing is that the Nigeria Police Force is not independent. It is definitely subject to the whims of the President, though arguably the IGP oversees the day to day control of the force. The implication of the Police dependence on the executive at the Federal level is that professionalism is stifled. Decisions of police authorities can be influenced by purely political interest so also is discipline and promotion.

### ***Challenges Facing Nigeria Police***

There is also financial dependence on the executive and this has massively manifested on the structure and disposition of police formations. Financial dependence is at the core of policing in Nigeria. Financial independence is the major cause of inadequate funding for the police. Every other challenge the Nigeria Police faces revolves around funding. This depreciation in service delivery has been systematic and consistent. The work of the police has been made even more demanding by the turn in Nigeria's economic fortunes beginning from the mid- 80s. The boom in crime associated with this era is only comparable to what transpired at the end of the Nigeria Civil War.<sup>19</sup> Criminals have become much more daring and sophisticated. Corruption has assumed a frightening dimension. Indeed, while crime has grown astronomically, the police have even sunk deeper into problems such as corruption among force members.

This is usually a great impediment in fighting crime. The sliding fortunes have been a great source of delay in equipping the police force adequate. Inadequate finance inhibits the provision of required materials and logistic supplies that is needed for effectiveness. It has been said that at least seventy percent of Nigerians are poorer today than they were in 1985<sup>20</sup>. The ripple effects on crime are huge. This army of the unemployed as is common knowledge, are ample enough workshops for the devil. This growing incidence of crimes are largely a consequence of the harsh economic circumstances of the moment. The result though arguably is that often the police is under great pressure to stem the tide, and when they have their hands full, it is believed, they resort to extra-judicial methods. Moreso, it is believed that a lot of criminal elements seek to join the force in order to exploit the police reputation for corruption and abuse of powers to their own ends. Once in the force, they are at liberty to contribute their quota to its bad image with the public.

### ***The Question of Perception***

The question to be addressed here is - how does the average Nigerian police perceive himself, his work and the people he is supposed to police? This is critical because the ability of a police officer to perform his role of protecting lives and property, maintaining order and safety effectively, depends to a considerable extent on that officers perception of his role and responsibilities. To put this simply and mildly-how does the police on seeing a Nigerian or a group of Nigerians feel? How may this feeling effect his reaction to this person(s)? Indeed, what would be his disposition towards him (or them)?

---

<sup>19</sup> Nigeria was involved in a brutal civil war that lasted for about 30 months, from 1966-1970 with disastrous consequences.

<sup>20</sup> See. C. Nwankwo, D. Mbachu, and B. Ugochukwu, *Human Rights Practices in the Nigerian Police*, Constitutional Rights Project, CRP, Lagos, 1993, pp. 74-75

Would it be to protect or overreach them? Conversely, what is the perception of an ordinary Nigerian to the police? How would that perception effect his reaction or relationship with the police? Put differently, does the average Nigerian feel safe, comfortable or secure in the presence of the police? If we may take the perception a little further-how may a Nigerian neighbour react to the presence of a policeman in his neighbour's compound? Generally, what is the reaction of a community to the presence of policemen in their environment. To begin with, in most communities in the eastern part of Nigeria, the town union constitutions, articles of associations, or conventions prohibit recourse to police in the treatment of disputes except when such matters or disputes have first been referred to these groups and the parties are dissatisfied with the decisions.

In this sense, recourse to police involvement is regrettably a least resort. The reason for these perception can be anchored on the fact of history. The colonial force was largely hinged on the concept of suppression of the peoples that were opposed to the imposed authority of the colonialists. The colonial police was a theatre of confusion. The native could not comprehend the laws and norms of the colonialist and the colonialist equally did not understand (and could not care or take steps to appreciate) the laws, norms and ways of life of the natives. For the natives, the mere sight of a colonial police was a bad omen that installed great fear. It was a sort of their police for their interest. The laws were alien and its execution was raw, strange, oppressive and an invasion. It was devoid of any meaningful local content, and indeed meaningless to the natives.

There is a widespread belief that 53 years after Nigeria's independence, the police force in Nigeria still carries on like an occupation force. In the words of a retired assistant inspector General of Police: The police in Nigeria was conceived not as a service organization for the natives but as an instrument of coercion and oppression of the natives. Consequently, the widespread complaints of police brutalities, the mindless shooting of the armless at road blocks and check-points... give credibility to assertions that the law enforcement agencies have not as yet completely succeeded in shaking off their imperial historical pasts.<sup>21</sup> This attitude of perceiving the citizens as a conquered people is not peculiar to the police force. It is common with members of the armed forces in general. According to a writer, "the result is that while this ....attitude makes the police scornful of the people, the latter are, on the other hand, resentful and hateful of the former".<sup>22</sup> Another consequence of this relationship is the state of permanent hostility between the police and the citizenry.

This culture of hate is traceable to the training the police receive before they are deployed to operations. Again, reference is had to the colonial authorities who neglected the establishment of a civil police. Due to their objectives, they depended to a large extent on a para-military police force deployed to suppress the resistance to British colonial rule. And with the training of senior police officers, the model adopted was not the Scotland Yard, where the police was of a more civil nature but rather a rebellion control model. Fifty-two years after independence, there is no evidence that the training and orientation practices bequeathed by the colonial authorities have been discarded or even modified significantly. On the contrary, evidence points to a general degeneration of training and standard.

From all perspectives, a policeman posted to a training school considered same as punishment, no incentives is provided and the working environment looks everything but a school. Training officers engage in extortion of bribes from trainees as a condition for passing them.<sup>23</sup> The overriding implication of this is that even new recruits in their examination and right from the training school, are drilled in corruption and abuse of office and responsibilities as a matter of accepted practice. The aforesaid police orientation is compounded by the general illiteracy predominant among the lower ranks.

Evidently, police work is perceived as a last resort employment, even for the unemployable, including those who are not only illiterate, but often have criminal records as antecedents. Moreso, the politicians use employment into the Police as platform for settling their thugs. This background is intended to shore up the cleaning effort which should be directed at not only raising entry qualifications. But also upgrading the general literacy levels in the country. It will enable more citizens understand the police for what it should be and then complement police duties, making the maintenance of law and order and prevention of crime effective with minimal application of force. The whole picture may not be brought out if we merely pass the buck to the police without apportioning appropriate blame to the government and the political elite, whether civilian or military.

<sup>21</sup> See. C. Nwankwo, D. Mbachu, and B. Ugochukwu, *ibid*, p. 66

<sup>22</sup> C. Nwankwo, D. Mbachu, and B. Ugochukwu, *op. cit.*, p. 67

<sup>23</sup> See Clement Nwankwo, Mbachu C, and Basil Ugochukwu, *op. cit.*, p. 68

Afterall, they have been running the ship of state since independence, and hugely, the failures of the police force stem directly from the cumulative acts and omission. Granted, the revenue accruing to the government may not be sufficient to meet its responsibilities, nonetheless, it is glaring that in the case of the police force, that it has been neglected, at least in comparison to the other security forces. In Nigeria, there is a general feeling by the public that policemen, particularly those of the lower cadre, are frustrated and take up the job as one of last resort. This may be evident in the physical appearance of most lower rank policemen. They are mostly ill-clad, in worn-out uniform and tattered boots.

This may explain their susceptibility to bribery and corruption which is higher than in the other professions. It may also be a consequence of a poor pay structure and other factors including living in poorly maintained and overcrowded barracks<sup>24</sup>. The Obalende barracks, in Lagos presents a clearer picture. Until recently, all the residents make use of the same toilet facilities and the taps are often dry. As for the buildings, they were looking very dilapidated, the railings of the balconies built with cement were all crumbling and most of the windows were either broken or often to viscidities of the wear and tear of nature. Though their functions differ, but the neglect of the police force is best appreciated by the relationship between the police and the military.

In physical appearance for instance, the military are always better packaged than the police, in neat, new uniforms and boots. Military barracks are better kept and soldiers are better paid and catered for. Due to these challenges facing the police in Nigeria, the government set up a Presidential Committee on the Reorganization of the Nigeria Police in 2012. Many of such committees have been previously set up. This committee rejected the call for state police. The committee perceived the state police concept as irrelevant. This is on the back drop that there has been consisted calls from many quarters for its creation. It has been argued that the security needs differ from state to state and will require the states to individually fashion out a policing system that may suit its peculiar policing challenges.

The present structure where the state Governor is the chief security Officer but cannot direct the State Commissioner of Police on operational issues has consistently thrown up security challenges. The present face-off between the Commissioner of Police in Rivers State and the Rivers State Governor brings out a major defect in the present policing structure. Firstly, a police command cannot effectively function without collaboration with the host state. This does not take away the fear that if created the state police may not be used as agents of the state government to stifle political opponents and perceived enemies. Much more is required to be done with respect to balancing the policing needs of the states and security responsibilities of the federal government.

### ***When Police Violate Rights of Citizens***

The dysfunction parading the Nigeria police is deep rooted, and complex. This explains why it is not easy to protect the rights of citizens when abused by the Police. Due to the level of awareness and literacy, even poverty in Nigeria, most citizens see the policemen as law unto themselves. Such feelings, even more are had of the military and paramilitary. They are seen as persons who can get away with their deeds. The tendency is for these group of persons to bond together in protecting themselves when they violates the rights of citizens. Generally, they see their uniforms as a cover over acts of impunity.

The average Nigerian does not see the Nigeria police as subject to the laws of the land. This is the genesis of the problem. Nigerians see themselves as helpless when they have issues with police. For there to be a meaningful change, this attitude must be erased through a sustained campaign. The citizens must be made to know that the laws are both for the police, the military and the citizens. In cases of police abuse, there are both administrative and judicial remedies. The administrative remedies are supposed to be cheaper and faster. The judicial remedies are sustainable, far-reaching, but bears cost implications.

The administrative remedy includes reporting the case of a violation to the relevant police authority for redress. In Nigeria this is an uphill task. The police in matters like this bond together to protect one of their own. Even in rare cases when a disciplinary process is initiated, the officer(s) involved are usually given soft landing. In most cases the matters are compromised. Indeed, the administrative option is non-existent since it is not viable. The police will protect their own. There is even a greater danger to the complainant, the danger of retaliation.

---

<sup>24</sup> In a typical police barrack mostly built during the colonial era, there are four blocks of buildings, each housing twenty-four families that on the average have ten or twelve members each.

The officer involved can arrange and visit the complainant with violence to his person, family and business interest. Challenging the police officer, may be likened to challenging the ' gods! It is even alleged that the same uniforms and guns supposedly used to protect citizens in the day are used to violate them at night. The other option, which is judicial, is to initiate a process to enforce the rights of the citizen(s), the object of abuse. The 1999 Constitution of Nigeria in Chapter IV, provides for the protection of civil and political rights of Nigerians. To realize this, section 40 of the said constitution provides that "any person who alleges that any of the provisions of the chapter has been is being or likely to be contravened in any state, in relation to him may apply to a High Court in that state for redress". Applications may also be brought at the Federal High Court<sup>25</sup>.

In pursuance to the aforesaid section 46 of the 1999 Constitution (the equivalence of section 42 of the 1979 Constitution), the then Chief Justice of Nigeria, Justice Fatayi Williams, on the 5th of December, 1979 in a supplement to Official Gazette<sup>26</sup>, made what is known as the Fundamental Rights (Enforcement Procedure) Rules. The Rules which will qualify as existing law under section 315 of the 1999 Constitution was amended by Idris Legbo Kutigi, the former Chief Justice of Nigeria<sup>27</sup>. Relatively, the process articulated by the rules is faster than the ordinary process of seeking relief in the Nigerian Courts. The major challenges associated with this process is the cost element which most Nigerian cannot afford. Process is initiated at the High Court or Federal High Court and due to its technicality must be undertaken by a lawyer.

The cost imperative therefore has taken it beyond the reach of an ordinary Nigerian who is the most vulnerable to police abuse. The judicial approach is viable but comes at a high financial cost. Another option may be to compel the Attorney-General of the State whereat the violation took place to initiate a criminal process against the police officer(s) involved. This alternative is only attractive on paper as it is fraught with bureaucratic bottlenecks. Even when the process is commenced which chance is very slim, it is subject to the sluggish court process that attend ordinary court processes. Again, this option lacks succor.

Resort to the services of the Legal Aid is not attractive. Its existence is not well advertised, morese, it is suffering from the challenges of funding. In reality, there are no genuine realizable open to a victim of police abuse in Nigeria. All the shadow options on ground are not viable. None is a process that can effectively avail an average Nigerian. The worrisome implications are that the victims continually mourn heavily their pains and the violators continue in their acts of impunity. The Nigerian state is worse for it. With respect to the case of Maimuna Tanko which attracted international outcry and condemnation, the Nigerian Human Rights Commission apparently waded into the matter.

The Commission asked the Inspector-General of police to look into it. The much that transpired was that the Divisional Police Officer of Kwali Police Station in Kano received a report of the crime and the involvement of his men, but he pleaded with the aggrieved family to forgive the policemen and let the matter be rested. The best that happened when the matter could not be buried as usual was that the State Police Command hurriedly dismissed the two policemen involved in the case and demoted the inspector who was perhaps the immediate supervisor of the errant cops.

### **Conclusion**

Humanity is diminished each time human rights are massively and systematically violated. With respect to remedies to victims of police abuse in Nigeria, the administrative approach has huge content deformity, the judicial process is technical and costly and beyond the reach of the majority of the victims. Other alternatives are not viable as they are not victim friendly. Looks like the door is permanently shut against the victims. However, that door is a revolving door, waiting to take in the next set of victims. The need is urgent to take proactive steps towards containing the menace of this dragon. In addition to strengthening the weak measures on ground, watch dog NGOs should be mobilized to breathe life into the existing laws protecting the rights of citizens.

<sup>25</sup> See *Ezeadukwa v. Maduka* (1991) 6 NWLR (pt. 200) 708, *Peterside v. International Merchant Bank (Nig) Ltd*, (1993)2 NWLR (pt. 278) 712

<sup>26</sup> No. 64, vol. 66

<sup>27</sup> On the 11<sup>th</sup> of Nov., 2009, in a supplement to Official Gazette No. 74 vol. 96, the Fundamental Rights (Enforcement Procedure) Rules, 2009 was procured.

It should equally be the responsibility of the NGOs to internationalize the massive and systematic police abuse of Nigerians. Nigeria is a signatory to many international treaties protecting human rights.<sup>28</sup> By this, the issue of police abuse is not merely a domestic affair. It requires the intervention of the international community in areas of criticisms, support of NGOs and in appropriate cases, direct involvement in arresting this growing danger of police abuse of Nigeria.

---

<sup>28</sup> These instruments include those Nigeria has acceded to or which have become peremptory norms of international law. The Charter of the UN-the preamble and Sections 55& 56); the Universal Declaration of Human Rights. The ICCPR; the Optional protocol to ICCPR, the Convention on the Rights of the Child; ILO Convention (n0182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT); the African Charter on Human and Peoples Rights etc.