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## A critical appraisal the prosecutorial powers of the police under the police act 2020

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### Abstract

Prior to the Police Act 2010, there were no specific limitation in the provisions of the law on the power of the Police to prosecute offences in the federal courts in Nigeria. However, with the coming of the Administration of Criminal Justice Act 2015 (ACJA), only a legal practitioner in the police establishment is permitted to prosecute criminal cases. This further included in the provisions of section 62 of the Police Act, 2000 to the effect only a police officer who is a Legal Practitioner shall have the power to prosecute. However, the subsection also provides that the non-lawyer police can prosecute in cases where they usually prosecute. This position, no doubt, contradicts the decision of the court in the case of *Olusemo v. COP and Osahon v FRN*. The article aims at addressing this contradiction and ambiguity capable of jeopardizing the intent and purpose of achieving smooth administration of justice in Nigeria. The article employs pure doctrinal approach relying on both primary and secondary sources of law such as statutes and case laws. It argues that the section 66 of the Police is ambiguous and as well contradicts the provision of the Administration of Criminal Justice Act earlier enacted. It recommends an amendment of the provision in the Police Act 2020 in order to bring it in line with provision of ACJA 2015 as well as a reconciliation with the recent decided cases of the appeal courts on the matter.

**Keywords:** Offences, police officer, prosecutory powers, legal practitioner, non-legal practitioner, Nigeria

### 1. Introduction

The decline in the record of criminal convictions and non-prosecution of criminal offences in Nigeria has continued to feature as an issue hindering the administration of criminal justice<sup>[1]</sup> and needs to be addressed if Nigeria is to sustain her current democracy<sup>[2]</sup>. Recent researches and findings, particularly by the National Human Rights Commission (NHRC) reports plethora of cases of allegation of electoral offences and indeed other offences which do not get through to conviction as a result of lacuna between the state ministry of justice and police<sup>[3]</sup>. Hence, the state of national security has been jeopardized by not bringing culpable persons to book to answer for their crimes. A very good example is the rate of impunity in the commission of offences by bandits, criminal herdsmen and members of the Boko Haram and other groups in Nigeria, Particularly, in states like Borno, Zamfara, Katsina and Niger States as well as thuggery and kidnapping in the all to the regions in Nigeria<sup>[4]</sup>. There is no doubting the fact that non prosecution and punishment of crimes encourages the wide spread commission of crimes and the belief that crime is profitable; and the primary tool of prosecution is the law. The secondary tool being the appropriate law enforcement agencies empowered by the law to see to criminal prosecution in any society. When there is a problem

<sup>1</sup> Buchanan Jim and Alex J. Grant, "Investigating and Prosecuting Nigerian Fraud" 49 (2001) US Att'y's Bull, 39.

<sup>2</sup> Oluwadayisi O. Akin, 'Judicial Intervention in Enhancing National Security through the Prosecution of Electoral Offences' in Godwin N. Okeke et al. (eds), Law, Security and National Development (Proceedings of the 50th (Golden Jubilee) Conference of the Nigerian Association of Law Teachers (NALT)) held between 11th -16th June, 2017 at Nnamdi Azikiwe University Awka, Anambra State, Nigeria on Security and National Development, 356.

<sup>3</sup> 'A Pre-Election Report and Advisory on Violence in Nigeria's 2015 General Elections' (National Human Rights Commission, February 2015) 44-48.

<sup>4</sup> Collier Paul and Pedro C. Vicente, "Votes and Violence: Evidence from a Field Experiment in Nigeria" (2014) (124) (574) The Economic Journal F327-F355; Okpaga Adagba Ugwu Sam Chijioke and Okechukwu Innocent Eme, "Activities of Boko Haram and Insecurity Question in Nigeria" (2012) (1) (9) Arabian Journal of Business and Management Review (OMAN chapter) 77

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with the law, most likely, the agency empowered will face challenges in its application and consequently, the discharged of its duties in that direction. Before the enactment of the Administration of Criminal Justice Act 2015 (ACJA) and the Police Act 2020, police officers in Nigeria popularly known as “Police prosecutors” could prosecute criminal cases at all level of courts. They actually do the bulk of the criminal prosecution at the lower courts particularly in Magistrate courts. This duty to prosecute was conferred on them by the Police Act <sup>[5]</sup> and it effectively relieved the Federal Ministry of Justice and the various States ministries of Justice the burden of going to the lower courts for the purpose of criminal prosecution. Subsequently the prosecutory power of the police has been a subject matter of various legal actions and the court has made pronouncements to establish the power the police to prosecute regardless of not being a legal practitioner <sup>[6]</sup>.

However, with the enactment of the Administration of Justice Act 2015 (ACJA), only a legal practitioner in the police establishment is permitted to prosecute criminal cases. This is further included in the provisions of section 62 of the Police Act (PA), 2020 to the effect that only a police officer who is a Legal Practitioner shall have the power to prosecute. However, the subsection also and impliedly, provides that the non-lawyers in the police can prosecute criminal cases where they usually prosecute. This position, no doubt, ambiguous, appears confusing and contradicts the recent decisions of the supreme courts in Nigeria.

The article critically appraises section 66 of the Police Act 2020 which empowers the Police to prosecute all offences in federal courts in Nigeria and the concerns of the provision in terms of the manner it is couched leaving much to be contemplated upon as well as for amendment.

## 2.0 Conceptual Framework and Definition of Keywords

Concepts are usually subject to various definitions depending on who is defining and the circumstances, background and perspective from which the person is looking at the concept. This paper does not have a perfect description of any of the relevant concepts to this topic but only attempts to describe each concept in line with the subject of discussion. The essence of the conceptualization is to ensure that the words used are viewed and strictly interpreted in the context of the author’s subject of discussion <sup>[7]</sup>.

They are equally necessary for the full understanding of the various headings and issues involved in this examination. However, the definitions of some dictionaries that are widely used by scholars will, to a large extent, be explored to achieve a level of general conception.

### Crimes

The Criminal Code Act define an offence to mean “an act or omission which renders the person doing the act or making the omission liable to punishment under this Code, or under

any Act, or law, is called an offence.” <sup>[8]</sup> An offence is described as a crime which can be a felony, a misdemeanour or a violation of any criminal law of a state <sup>[9]</sup>. It is used to describe “every crime and misdemeanour, or as a species, signifying a crime not indictable, but punishable summarily or by the forfeiture of a penalty” <sup>[10]</sup>.

### Prosecutory Power

Prosecutory power is the power of any agency to commence and continue criminal cases in the court of law against any suspect who has been alleged to have committed an offence. In Nigeria there are persons and institution given this prosecutor power and they include the Attorney General, the Police, Special Prosecutors and Private persons. Prosecutory power is a statutory provision and under the ACJA 2015, the prosecution of all offences in any Court shall be undertaken by: the Attorney-General of the Federation or a Law Officer in his Ministry or Department; a legal practitioner authorized by the Attorney-General of the Federation; a legal practitioner authorized to prosecute by the ACJA or any other Act of the National Assembly <sup>[11]</sup>.

### “Police officer who is a Legal Practitioner”

To be able to prosecute and contemplated by ACJA 2015, a “police officer” must be a “legal practitioner”. By the provision of section 66(1) and “Police officer” who must be a legal practitioner must be one admitted to practice law by the the Body of Benchers and whose name is on the Roll of lawyers kept at the Supreme Court of Nigeria. Meanwhile, “legal practitioner” has the meaning assigned to it by the Legal Practitioners Act <sup>[12]</sup> and is defined as “a person entitled in accordance with the provisions of this Act to practice as a barrister or as a barrister and solicitor, either generally or for the purposes of any particular office or proceedings.” Although, a “non-qualified legal practitioner” in the police under section 66(2) is conferred with the power to prosecute by implication if we are to apply the literal rule of interpretation where words are clear and unambiguous and as used in the PA 2020 <sup>[13]</sup>.

Persons empowered to prosecute crimes in Nigeria

### The Prosecutory Powers of the Attorney General of Offences, the ACJA 2015 (as amended) vis-à-vis the Power of Police

Generally, institution of criminal proceedings has to do with the persons entitled by law to prosecute criminal offences before courts of competent criminal jurisdiction. Essentially, there are four classes of persons who are largely recognized to commence criminal proceedings against any person in Nigeria. These are: the Attorney General, the Police, Special Prosecutors and Private persons. Understanding the extent of power given to each person entitled by law to institute criminal action is fundamental. This is because wherever

<sup>8</sup> Criminal Code Act, Cap. C38 LFN 2005, s2; Criminal Code Law of Lagos State 2011, s1

<sup>9</sup> ‘What is Offense’, <[thelawdictionary.org/offense](http://thelawdictionary.org/offense)> (accessed 30 April 2017)

<sup>10</sup> *ibid*; In re Terry (C. C.) 37 Fed. 649.

<sup>11</sup> ACJA 2015, s.106.

<sup>12</sup> Interpretation Act Cap I23 LFN 2004, s.18

<sup>13</sup> Applying the rule of language or maxims “expressio unius est exclusio alterius” and taking solace in the Supreme Court decision of Oni & Ors.v. Gov., Ekiti State (2019) Vol. 298 LRCN 190 at 202: 11(SC).

<sup>5</sup> Section 23 Police Act, CAPP 19, Laws of the Federation of Nigeria, 2004.

<sup>6</sup> The cases of Olusemo v COP (1998) 11 NWLR (Pt. 973 and Osahon v Federal Republic of Nigeria (2006) LPELR-3174(SC), (2006) 5 NWLR (PT 976) are instructive on this.

<sup>7</sup> Greene Jennifer C., Valerie J. Caracelli and Wendy F. Graham, “Toward a Conceptual Framework for Mixed-method Evaluation Designs” (1989) (11) (3) Educational Evaluation and Policy Analysis 255-274.

there is incompetence on the part of the prosecutor, the whole proceedings shall be a nullity including any judgment that may have been obtained there from <sup>[14]</sup>. And as mentioned earlier, it appears the inconsistency or contradictions in the law affects the responsibility of who to prosecute electoral offences thereby leading to less cases being diligently pursue to conviction stage in the law courts at the reports reveals <sup>[15]</sup>. The first person entitled by law to institute criminal proceedings is the Attorney General of the Federation or State. This is because the Attorney General of the Federation is the Chief Law Officer of the Federation while the Attorney General of the State is the Chief Law Officer of the State. Hence, section 174(1)-(3) of the Constitution of Federal Republic of Nigeria (CFRN) 1999 (as amended) is replicated here for emphasis and critical observation:

**1) The Attorney-general of the federation shall have power**

- a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any Act of the National Assembly;
- b) (b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and
- c) (c) to discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.

Beside the above provisions, it should be added that it is not only the Attorney-General of the Federation that can exercise the powers in person, he may exercise the power through officers of his department.<sup>16</sup> This power has been confirmed in plethora of cases as enormous and unimpeachable such that even the court cannot make a decision that will override the exercise of the power or caution the person or the office while exercising the power so far it is in conformity with the provision of the Constitution <sup>[17]</sup>. Recently, in *Saraki v. FRN* <sup>[18]</sup>. My Lord, Justice W.S. Nkanu Onnoghen, CJN, examined again this provision thus:

It is necessary to look at the Constitutional powers of the Attorney-General of the Federation in initiating criminal prosecutions as enshrined in Section 174 (1) and (2) of the 1999 Constitution, as amended which provides thus: '(1) The Attorney-General of the Federation shall have power - (a) to institute and undertake criminal proceedings (sic) (prosecution) against any person before any Court of law in Nigeria, other than a Court-Martial, in respect of any offence created by or under any Act of the National Assembly; (b)... (c)... (2) The powers conferred upon the Attorney-General of the Federation under Subsection (1) of this Section may be exercised by him in person or through officers of his department <sup>[19]</sup>.

<sup>14</sup> *Olatunji v The State* [2000] FWLR (Pt 30) 2635.

<sup>15</sup> "A Pre-Election Report and Advisory on Violence in Nigeria's 2015 General Elections" (National Human Rights Commission, February 2015) 44-48

<sup>16</sup> CFRN 1999 (as amended), s.174(2).

<sup>17</sup> *Emelogu v The State* [1988] 2 NWLR (Pt 78) at 524; *Attorney General of Ondo State v Attorney General of the Federation* [2002] FWLR (Pt 111) 1972 at 2073.

<sup>18</sup> [2016] LPELR-40013 (SC).

<sup>19</sup> *ibid* at 33-34, Paras. D-B.

Going by the definition of an offence and the provision of the Constitution considered above, the laws does not contemplate a restriction to the power of the Attorney General to prosecute any offence <sup>[20]</sup>. As contained in the above judicial pronouncement of the Chief Justice of the Federation.

It must also be borne in mind that by Section 174(2) and Section 211(2) of the Constitution, the Attorney General and that of the state may exercise all the powers enumerated in subsection (1) either personally or through officers of his department. Thus, Section 174(2) provides:

The powers conferred upon the Attorney General of the Federation under subsection (1) of this Section may be exercised by him in person or through officers of his department.

Given a literal interpretation, it would appear that all the three powers, that is, power to institute, to take over and to discontinue, may be exercised by the Attorney General either personally or through any officer of his department without any limitation whatsoever. However, in the case of *Obasi v. The State* <sup>[21]</sup>, the court made a distinction between the powers of the Attorney General to commence and take over on the one hand and the power to discontinue on the other hand. In *Obasi's* case, the accused persons were tried for murder on an information and they raised an objection that there being no Attorney General in office at the time the criminal prosecution commenced, their arraignment and trial was unconstitutional. In rejecting this contention, the Court held that the power to commence and take over can be exercised by any law officer in the Attorney General's office while the power to discontinue, which is *nolle prosequi* is exercisable by the Attorney General only either in person or by his expressed written authority <sup>[22]</sup>. Thus, apart from the power of *nolle prosequi*, the Attorney General can delegate any of his powers either expressly or by necessary implication. In other words, every law officer in the Office of the Attorney General has an implied power to commence criminal proceedings against any person or to take over any of such proceedings.

Flowing from the above, it is important to mention that there is no limit to the powers, which the Attorney General can delegate as the provision of the Police Act 2010 perhaps implies neither can the Police be the body to appoint the law Officers under the Attorney General's Chambers to prosecute electoral offence <sup>[23]</sup>. It is the position of this article that the powers of the police are only derivable from the ACJA 2015 and the Police Act 2020 through the overriding prosecutory powers of the Attorney General. Thus, in *Ibrahim v. The State* <sup>[24]</sup>, the delegation of power expressed by the Attorney General contained in the Ondo State Official Gazette No. 14 of 5<sup>th</sup> July 1980 reads:

I hereby authorize the Director of Public Prosecution and all grades of State Counsel in the Department of Public Prosecution [acting under the immediate direction and control of the DPP] to exercise on my behalf and acting under and in accordance with such general order, such directions in writing as I may from time-to-time issue to the DPP, all and sundry, the powers conferred upon me as Attorney General of the

<sup>20</sup> Emphasis mine.

<sup>21</sup> (1998) 9 NWLR (Pt. 567) 686.

<sup>22</sup> *Attorney General of Kaduna State v. Hassan* (1985) 2 NWLR 487; *Attorney General of the Federation v. ANPP* (2003) 18 NWLR (Pt 851) at 182.

<sup>23</sup> Electoral Act 2022, s.150(1).

<sup>24</sup> (1986) 1 NWLR (Pt 18) at 650.



State by subsection (1) and (5) of the said Section.

It was held in this case that there was nothing constitutional or legally wrong for the Attorney General to delegate all his powers to his subordinates and that where there is a blanket delegation as in this case, a State Counsel could validly sign an information without necessarily mentioning the Attorney General as the ultimate authority.

Again, going by the provision of section 106 ACJA 2015 which has now made modifications to the existing position on the power of the police, prosecution of all offences in any Court shall be undertaken by either the Attorney-General of the Federation or a Law Officer in his Ministry or Department; a legal practitioner authorized by the Attorney-General of the Federation; a legal practitioner authorized to prosecute by the ACJA or any other Act of the National Assembly <sup>[25]</sup>. By implication, in all Courts belonging to the Federal Government with criminal jurisdiction and all Courts within the Federal Capital Territory, only a legal practitioner can prosecute criminal cases regardless of which establishment it belongs (including the Nigerian Police). Hence, while the power of Police to prosecute criminal cases is not derogated with, it can only be exercised by those who are legal practitioners within the establishment. This position is now made clear and general throughout the Federation since the Nigerian Police Force is a federal institution. The combine provisions of section 106 ACJA and section 66 of the PA 2020 place restriction on the right of audience hitherto granted to police by virtue of the court's decision in *F.R.N v. Osahon* <sup>[26]</sup>. In the case of *Osahon*, the court had earlier held that:

Section 23 no doubt gives any Police Officer power to conduct in person all prosecutions before any Court whether or not the information or complaint is laid in his name subject only to the provisions contained in sections 174 and 211 of the Constitution which relate to the power of the Attorney-General of the Federation and the State to institute and undertake, take over and continue or discontinue criminal proceedings against any person before any Court of Law in Nigeria. The section is unambiguous <sup>[27]</sup>.

However, this position is what the ACJA 2015 modified as considered above but the position of the Police Act makes it more confusing when considering who actually under the law can prosecute cases in courts.

### **The Mode of Commencement of Criminal Cases Specified by ACJA 2015**

Again, the ACJA 2015 which provides for the modes of instituting criminal proceedings are set under the sections 109 and 110 of the ACJA 2015. It provides that in the Magistrates' Court, criminal proceedings shall commence by way of a charge or complaint whether or not on oath or upon receiving a First Information Report. By the nature of a charge in the Magistrate Courts of the Northern part of Nigeria, it is prepared by the Magistrate who is the one to try the matter. However, in the Southern part, it is expectedly prepared by the Commissioner of Police (who, I believe is expected to have acquired the relevant knowledge of law to be able to do that). In other words, both the Magistrate and Commission of Police in both jurisdictions are expected to be legal practitioners. And a Complaint on Oath is done before a

judicial officer. This emphasise more of the reasons while, a charge even in the Magistrate Court should not be left to be prosecuted by a non-legal practitioner police officer.

Similarly in the High Courts, either North or South, criminal prosecution is commenced by information filed by the Attorney-General of the Federation <sup>[28]</sup> in respect of an offence created by an Act of the National Assembly. We have considered above, the power of the Attorney General in the prosecution, to commence, taking over and discontinuing criminal proceedings in courts. Needless to state here that the Attorney General is legal practitioner of not less than 10 years post call experience at the Bar <sup>[29]</sup>. In the alternative, the second person who can file charges must also be a legal practitioner on the authority of the Attorney-General of the Federation <sup>[30]</sup>. in respect of an offence created by an Act of the National Assembly. Other persons referred to here can mean a "private prosecutor" <sup>[31]</sup> or "any other prosecuting authority" <sup>[32]</sup> all of which are legal practitioners. And the third person who can commence criminal case against a defendant is the court itself after the defendant has been summarily committed for perjury under the provisions of this Act" <sup>[33]</sup>.

Going by these provisions, it is the direct implication that the persons who can file a charge or information in both Magistrate and High Courts where criminal cases are commenced in Nigeria require the knowledge of law and must be a legal practitioner to be able to do this. This requirement is not only written in the statute considered so far, but also as a matter of practice and professionalism.

### **A critical examination of section 66 Police Act, 2020**

The Police Act 2020 <sup>[34]</sup> replaced the old Police Act <sup>[35]</sup>, section 66(1) of the Police Act 2020 provides that a Police Officer who is a Legal Practitioner, can prosecute criminal cases. And this will ordinarily mean that a Police Officer who is not a legal practitioner cannot prosecute unlike the old Act that gave non-Police lawyer's prosecutorial power. It states: Section 66(1) of the Police Act 2020.

Subject to the provisions of Sections 174 and 211 of the Constitution and section 106 of the Administration of Criminal Justice, Act (which relate to the power of the Attorney-General of the Federation and of a State to institute and undertake, take over and continue or discontinue criminal proceedings against any person before any Court of law in Nigeria), a Police Officer who is a legal practitioner may prosecute in person, before any Court whether or not the information or complaint is laid in his name.

However, section 66(2) of the Police Act, 2020 provides for a contradictory power of prosecution for the police as it reads:

A Police officer may, subject to provisions of the relevant criminal procedural laws in force at the federal and state level, prosecute before the courts those offences which non-qualified legal practitioners can prosecute <sup>[36]</sup>.

One would wonder the intention of the legislature of this

<sup>28</sup> ACJA 2015, s.104 (1).

<sup>29</sup> CFRN 1999 (as amended), s.211.

<sup>30</sup> ACJA 2015, s.104 (2).

<sup>31</sup> ACJA 2015, s.109 (e).

<sup>32</sup> ACJA 2015, s. 109(d).

<sup>33</sup> ACJA 2015, s. 109 (c)

<sup>34</sup> Signed into law President Buhari on September 16, 2020

<sup>35</sup> Cap P.19, LFN 2004.

<sup>36</sup> Underline mine for emphasis.

<sup>25</sup> ACJA 2015, s.106.

<sup>26</sup> (2006) 5 NWLR (Pt. 973) 361.

<sup>27</sup> Undermine for emphasis.

provision 5 years after ACJA 2015 has settled the issue of who can prosecute among the officer. By implication, all Courts belonging to the federal government with criminal jurisdiction and all courts within the FCT, only a legal practitioner can prosecute criminal cases regardless of which establishment it belongs (including the Nigerian Police).

Moreover, the argument here is that the express mention of “Police officers who a legal practitioner” and “Police officer” who are “non-qualified legal practitioners” in section 66(1) & (2) of the Police Act 2020 impliedly includes all other police officer familiar with criminal prosecution prior to the enactment of both the ACJA 2015 and Police Act 2020. There is therefore no discrimination again between “Police officers who is a legal practitioner” that can prosecute under section 66(1) and “Police officer” who are “non-qualified legal practitioners” that can prosecute under section 66(2). It also means that, no offence or offences is particularly mentioned within the ambit of the two category of police officers; that is, “Police officers who is a legal practitioner” can or cannot prosecute under section 66 Police Act 2020.

Flowing from the above, it is the position of this article that the two positions presented appears not only ambiguous but also confusing and slightly contradictory as to the stand of the law about non-legal practitioners especially in the light of ACJA 2015. This is also true because no offence is expressly prohibited in the section or listed for the two categories mention to prosecute and whatever is not expressly prohibited is implicitly permitted in law <sup>[37]</sup>. Hence, while it is agreed that the power of Police to prosecute criminal cases is not derogated with, but can only be exercised by those who are legal practitioners within the establishment. This position is now made clear and general throughout the Federation since the Nigerian Police Force is a federal institution. However, that the Police Act 2020 places restriction on the right of audience hitherto granted to police and opens up the power to other police officers through another door is what must be addressed. The Supreme Court in the earlier considered case of *F.R.N. v. Osahon* <sup>[38]</sup>. In the case of *Osahon*, had earlier held that section 23 of the Police Act clearly gives any Police Officer power to conduct in person all prosecutions before any Court whether or not the information or complaint is laid in his name subject only to the provisions contained in sections 174 and 211 of the Constitution which relate to the power of the Attorney-General of the Federation and the State to institute and undertake, take over and continue or discontinue criminal proceedings against any person before any Court of Law in Nigeria. It also stated that the provision is unambiguous, hence, all subsequent provisions in the amendment to the old Police Act ought to be clear too.

Considering the coverage of the Police to properly and diligently prosecute offences in all the 36 States of the federation as well as shortage of staff who are legal Officers, there is the reality and practicability of making the prosecution an exclusive reserve of the Attorney General with the legal department of the Nigerian police to prosecute criminal cases. The condition is simply that the officers must be legal practitioners not only in the federal courts but also in the courts within the 36 states of the federation.

But as it stands, the provision of the s.66 PA 2020 is not clear enough. There should be express provision as to whether the police can prosecute whether in the States or in the federal

court. The power to prosecute before the courts those offences which non-qualified legal practitioners can prosecute is more like a reversal to the old system where “prosecutors” who are non-lawyers can prosecute <sup>[39]</sup>. Granted that the administration of criminal justice is a question of both state and federal concerns, the fact that the adoption of administration of criminal justice in the various States has been modified should also cause an explicit provision in the PA 2020 to clear the air as the police has the power to prosecute whether in the States or in the federal courts. This is important because the police are a mercenary of both federal and state government and as a result, whether they operate at the state or at the federal or local level, the rights and powers that this institution has in the prosecution of criminal case should be more explicit and uniform.

In other words, the provision of the Act should not also be left to speculations. An Amendment of the PA 2020 as regards this power of police to prosecute criminal cases at any level of the court is highly desired. It should not be left to speculations neither should it be subject to manipulations or self-interpretation on the issue of the power of police to prosecute. The position of this article is that as the police power to prosecute crime is subject to being a “legal practitioner” at the federal level, the state also should follow suit so as to ensure uniformity in the administration of criminal justice in Nigeria. This will also help the professional’s trained legal practitioners in the police across all levels to focus and dedicate energy, knowledge and experience to criminal prosecution. This appears to be new order intended by the administration of criminal justice.

However, the only difficulty that could be experienced is in respect of manpower as regards qualified legal practitioners in the Nigerian police to prosecute criminal cases at the state level. At the moment, many prosecutors at the states are not legal practitioners most especially at the magistrate court. The number of State Counsel prosecuting criminal cases at the various high courts are equally limited but if anything is to go by the law, more legal practitioners may need to be employed in the prosecution of criminal cases. The Nigerian Law School churns out thousands of well trained and qualified lawyers every year that can be gainfully engaged by the Nigerian Police and even the Federal and state ministries of Justice of justice to tackle criminal prosecutions.

One may also be tempted to think that Section 66(2) of the Police Act, 2020, is referring to cases that are prosecuted by special prosecutors, for example in a case of Adultery, the husband of the woman can prosecute the offence <sup>[40]</sup>. So in such cases of special prosecution the prosecutor need not be a lawyer.

## Conclusion

From the above examination, this article has thoroughly considered the contradictions and lacuna in section 66 of the Police Act 2020. It examines the prosecutory power of the Attorney General of the federation vis-à-vis the power of police to prosecute offences under the law. It specifically

<sup>39</sup> Police Act 2020, s.66(2).

<sup>40</sup> Resolution Law Firm, “A Brief Overview of Bigamy and Adultery under Nigerian Law” available at <https://www.resolutionlawng.com/a-brief-overview-of-bigamy-and-adultery-under-nigerian-law/#:~:text=Adultery%20is%20a%20criminal%20offence,can%20rove%20that%20adultery%20occurred>. Accessed 17th August 2022.

<sup>37</sup> See *Mumini v. FRN* (2018) Vol. 283 LRCN 227 (Para Z-EE).

<sup>38</sup> (2006) 5 NWLR (Pt. 973) 361.

examined, critically, the provision of 66(1) and (2) of the Police Act 2020. The article observes from the examination of the provision that there is the need for a considerable reduction in security risk emanating from non-prosecution of electoral offences and other offences by amending section 66 of the PA 2020 to clear the ambitious intention as to the jurisdiction and courts where they can prosecute criminal cases.

It is therefore incumbent on the various governments at all levels to deploy more quality and professional legal practitioners in the administration of criminal justice to prosecution. This will improve the number of convictions secured in courts and prevent charges being struck out as a result of lack of diligent prosecution where “non-legal practitioner” are saddled with such responsibility.

Another suggestion to both state and federal government is to permit private legal practitioners who are interested in criminal prosecution to join hands with the states in the prosecution of criminal cases either by private consultancy, private engagement or by pro bono interest to assist the state in reducing the traffic of criminal cases pending in courts, dealing with awaiting trial suspect in custody and other issues generally connected with criminal prosecution.

In any case, the provisions of the administration of criminal justice act which has been adopted by many states with respect to legal practitioners prosecuting criminal cases is a laudable one. All that needs to be done is to show how manpower can be garnered from all sectors and from stakeholders. The Bar can equally be engaged to assist the state where possible to join hands in the prosecution of criminal cases provided that there are no private or personal interest or any other factors that can affect the interest of the State. This article view that it will amount to a reversal or a downward trend as well as a clog in the development of the prosecution of criminal cases if “non-legal practitioners” among the police are still permitted or empowered by state law to prosecute case in court by virtue of section 66(2) of the Police Act 2020.

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