1.0. This paper, as can be seen from the caption above focuses on the role of the Police and other Security agencies in the administration of criminal justice in Nigeria. But permit me to take the liberty to say I shall speak about the truth of the role of the police and other security agencies in the administration of criminal justice in Nigeria. I will not pretend in this paper. I will discuss what I know is the truth. I will be practical without gainsaying. Some people may not be happy, but I will speak the truth even if heaven falls. But heaven will not fall. It has never fallen and it will not fall if truth is told. The reason I have chosen to be blunt in this paper is because without knowing that one is sick, one will not know how to seek the help of the Doctor or the physician; or without diagnosing an ailment, no cure can be prescribed for it. I have therefore critically looked at the role of
the police and other security agencies in the administration of criminal justice and my conclusion or verdict as a practitioner on the field is that there is a near complete failure on the part of not only the Nigerian police, but the entire agencies involved in criminal justice administration in Nigeria including lawyers, magistrates and judicial officers.

2.0. There is no doubt that majority, if not all of us gathered here today know the role of the Nigerian Police Force and other security agencies in the administration of criminal justice. The Nigeria Police Force and the armed forces are the only security agencies that from my limited knowledge of the law, were established and created by Nigerian Constitution. See sections 214 and 217 of the 1999 constitution as amended. For instance, section 214 of the 1999 Constitution provides that there shall be a Police Force for Nigeria, which shall be known as the Nigeria Police Force. It provides therein that subject to this section 214, no other police force shall be established for the federation or any part thereof. The same section 214 goes on to provide in subsection 2(b) that the members of the Nigeria Police shall have such powers and duties as may be conferred on them by law.

In this paper, we shall examine in passing the constitutionality or otherwise of other security agencies that now perform the statutory role and duties of the police. We shall look at the role of the
police and other security agencies in the areas of arrest, investigations, interrogations, detentions, bail, the right of Nigerians and/or the accused or suspect to access case diary, duplication of case diary, arraignment of persons accused of an offence, prosecution of offenders, and the relationships of these security agencies with lawyers and even judicial officers in the administration of criminal justice in Nigeria.

3.0. Let me say that apart from the police, there are several other security agencies that have now assumed serious roles in the administration of criminal justice in Nigeria. Some of these security agencies are State Security Services, (SSS), Independent Corrupt Practices and other related offences Commission, (ICPC), Economic and Financial Crimes Commission (EFCC), Civil Defence Corps, the Nigerian Customs Service, Nigerian Immigration Service, National Drugs Law Enforcement Agency (NDLEA), NAFDAC and so on and so forth. There are others for instance like vigilante groups across Nigeria. There are other security outfits created by states to circumvent the constitutional provisions that prohibit establishment of any other force apart from the police force.

4.0. We will not be able to discuss all these security agencies, but suffice to say that all of them perform the duties and or the role of the Nigeria Police Force as set out in section 4 of the Police Act. Without attempting to cause any friction between the Nigeria
Police Force and these other security agencies, I dare say that in the light of section 214 of the 1999 Constitution, it is seriously doubted if the establishments and creations of these other security agencies by act of parliament, can survive the test of constitutionality and legality when challenged in view of the prohibition in section 214(1) of the 1999 Constitution and section 1(3) of the same Constitution. Let me leave it at this. We shall look at this deeper in this paper hereunder. For now let us examine the role and duties of the Police as I understand it.

5.0. As we have seen earlier, section 214 of the 1999 Constitution provides for the establishment of the Nigerian Police Force and it states that no other police force shall be established for the federation or any part thereof. The implication according to Prof. Bolaji Owasanoye and Dr Chinyere Ani¹ is that the Nigerian Police Force has jurisdiction over all states of the federation. The Police have such powers and duties as may be conferred upon them by law but Section 4 of the Police Act provides that the Police "shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and due enforcement of all

¹ See generally an article titled IMPROVING CASE MANAGEMENT COORDINATION AMONGST THE POLICE, PROSECUTION AND COURT Published at www.nials.edu.ng.
laws and regulations with which they are
directly charged, and shall perform such
military duties within or without Nigeria as may
be required (of) them by, or under the
authority of this or any other Act. It is apparent
from the above that save the performance of military
duty, all the other duties of the police have clear
bearing on the administration of criminal justice. In
the course of performing their duties, the police have
a wide range of powers conferred on them. These
powers range from the power to search persons or
premises, arrest with or without warrant any person,
if it is established that there is reasonable cause to
suspect or believe that a serious crime has been, is
being or will be committed. The Police also have the
power of detention and the power to use force in
certain circumstances. According to Prof Owasanoye
and Dr Ani, the Police are an integral part of our
judicial system as far as criminal justice
administration is concerned. A large
percentage of criminal prosecutions take place
in the lower courts, especially the magistrate
courts and it is the Police that handle them.
6.0. The primary duty and role of the Police Force and
indeed the most fundamental duty of the police is
the maintenance and securing of public safety and
public order within Nigeria. This has been judicially
acknowledged by the Supreme Court of Nigeria in
Attorney General of the Federation and others vs Abubakar and others\(^2\).

Before we go into discussion on the issues that are germane to our gathering here, it will be necessary to understand what criminal justice is. **Criminal justice may be defined as a system or process. As a system, it is made up of three sub-systems or components: the police, the courts and the corrections responsible for law enforcement. It is defined as a process when the different components co-ordinate their independent functions by processing the criminal suspects, one stage to the other. It involves basically, arrest, booking, trial and confinement.\(^3\)**

7.0. Once crimes are reported to the police and other security agencies in Nigeria, they begin their investigations. In most cases, witnesses are invited and interviewed, and interrogations are done to find out the truth and or facts of the crime. From the information gathered in the process of interviews and or interrogations, further arrests could be made. Criminal justice in my understanding consists of the steps taken preliminarily to the hearing of cases in courts and post judgments of courts. It starts with complaint by the complainants at the police stations and or other security agencies offices. The Police officers and other security agencies are expected to

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hear the complaints fairly and dispassionately, investigate the allegations with a view to deciding whether the person or persons against whom the complaint is made should be arrested or summoned to explain his own side of the story. In some cases arrest has to be made upon warrant duly executed. According to Robert Omote, The arrest and investigation process signals the commencement of the ordeal ahead of the victim of an awaiting trial. The accused is ushered into a hostile environment shrouded with various objects of intimidation, to wit an unfriendly cold bare floor that he is forcefully made to sit on. Intermittently the suspect is harshly addressed by the investigating police officer, slapped or even resort to the use of coercive objects of threat like horse whip, electric wire, and cutlass, all for the purpose of making suspects to admit to confessional statements they never intended.

8.0. I cannot improve more on this assertion. All I need add is that as practitioners of law, we see daily the brutalities of the police and other security agencies against suspects. The police and other security agencies respect the provisions of the Nigerian Constitution relating to right to dignity of persons from being tortured and degrading treatment, presumption of innocence and right to remain silent.

and be in consultation with Lawyers or other persons of the choice of the suspect in breach. In Nigeria, we operate accusatorial system of criminal justice. Accused or suspects are by law presumed innocent until their guilt is established. But Nigeria Police Force and other security agencies practice inquisitorial system in their interrogations and investigations. Criminal suspects are presumed guilty before investigations. They operate their own criminal justice administration by television and usurping the duties and functions of courts thereby. They pronounce the suspects guilty before arraignments in courts. Indeed they sell the suspect to public court and in most cases practice deception on the collective sensibilities of the gullible Nigerian people. Let me move on to other things. We may come back to this later.

9.0. We have seen that in the administration of criminal justice, the police and other security agencies perform vital and fundamental roles. Crimes must be investigated, interrogations done, witnesses are assembled, vital and material facts are collated and gathered and case diaries built up with a view to charging or bringing the suspects before the court with criminal jurisdictions to hear the case or cases. In the performance of this role and/or duty, the police and other security agencies must demonstrate absolute neutrality and impartiality. This point was much emphasized by Aderemi JSC, as he then was, in Attorney General of the
Federation vs Abubakar\textsuperscript{5} where his lordship stated that: \textbf{The primary duty; indeed the most fundamental duty of the Nigeria Police Force is the maintenance and securing of public safety and public order within the country. In the performance of its duty, the Nigeria Police Force must manifestly demonstrate impartiality; it must not lean to one side against the other, it must be apolitical. It must not take part in any disputation which has political coloration. These qualities are sine qua non to the enhancement of public respectability to it.} Can we really say the Nigeria Police Force and other security agencies have performed and are performing their role in administration of criminal justice creditably in Nigeria? I think not. We shall examine what they do in arrest, investigations, interrogation, collation of evidence, presentation of evidence, what has been the attitude of the police and other security agencies to lawyers and judges in the performances of their duties.

\textbf{ARREST OF PERSONS SUSPECTED OF COMMITTING CRIME}

10.0. There are provisions in our constitution and other laws vesting in the police and private persons the power of arrest. Section 35(1) of the 1999 Constitution guaranteed the right to personal liberty.

\textsuperscript{5} Supra
But this right can be denied any person upon reasonable suspicion of having committed a criminal offence. The suspicion to deny a person of his or her fundamental right to personal liberty must be reasonable and not done whimsically or capriciously. Other circumstances in which the liberty of a citizen can be curtailed vide arrest or court orders are set out under Section 35 of the 1999 constitution. The law requires that person arrested must not be kept in custody indefinitely. He or she must be brought before a court of law with criminal jurisdiction within reasonable time and if this cannot be done, the person arrested must be released either conditionally or unconditionally. What constitutes reasonable time within the meaning of the word has been constitutionally defined to mean: In case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day and in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.\(^6\)

11.0. It is expected that no citizen of this country is to be detained upon arrest for more than two days maximum and I dare say that the burden is on the detaining authority to show that there are no courts of competent criminal jurisdiction within a radius of

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\(^6\) See section 35(5) of the 1999 Constitution. See also Article 9 International Convention on Civil and Political Right and Article 7(1)(d) of African Charter on Human and Peoples Rights Ratification and Enforcement Act.
fourty kilometres or that detention more than two
days upon arrest is reasonably justifiable in the
circumstances. The detaining authority must satisfy
the court with sufficient materials. In this area the
Police and other security agencies observed the law
in breach. Practical experience shows that police
detains people for more than 24 hours allowed by
our constitution. Most times people are arrested and
detained as a means of economic benefits to the
arresting and detaining officers. Suspects are usually
not taken to court within the constitutionally
prescribed time because Police officers and other
security agencies detain them in order to extract
confessions from them. The result is that people are
usually arrested upon suspicion whether reasonable
or not before police commences investigations. Police
lacks the necessary tools to gather and do discreet
investigations before effecting arrests. Most arrests
are done at random to gather information before
investigation. This clearly is a negation of the letter
and spirit of our constitution.

12.0. The Constitution has clearly prohibited the practice
of detaining persons more than the period he would
have spent in prison and which will be outside the
period prescribed as maximum period of
imprisonment for such offence. There is this practice
by the Police not to disclose to you the reason or
reasons for one’s arrest. That is not good enough.
The Constitution provides in section 35(3) that any
person who is arrested or detained shall be
informed in writing within twenty four hours (and in the language that he understands) the facts and grounds for his arrest or detention. Hardly do police officers and other security agencies obey this imperative constitutional provision. Rather, what we see in actual practice is harsh and unfriendly treatments only fit for dogs and animals. Persons suspected of crime are usually maltreated and beaten upon to extract confessions, kept in detentions for months and in some cases years. Robert Omote as we have seen earlier puts the point I am struggling to make this way: The accused is ushered into a hostile environment shrouded with various objects of intimidation, to wit an unfriendly cold bare floor that he is forcefully made to sit on. Intermittently the suspect is harshly addressed by the investigating police officer, slapped or even resort to the use of coercive objects of threat like horse whip, electric wire, and cutlass, all for the purpose of making suspects to admit to confessional statements they never intended.

13.0. The provision that any person who is arrested or detained shall be informed in writing within twenty four hours (and in the language that he understands) the facts and grounds for his arrest or detention is mandatory and any breach of it can be enforced by way of fundamental right enforcement procedure. However, people don’t know
their right on this or if they know, the slow pace of our justice delivery dissuades them from resorting to judicial process. In the end we lament our ordeal with pity and sorrow.

**INVESTIGATIONS OF CRIMES BY POLICE AND OTHER SECURITY AGENCIES**

14.0. Majority of cases are won or lost depending on how thorough, detailed and scientific the Police and other security operatives carry out their duties of investigations. Criminal justice administration suffers a great deal in Nigeria as a result of faulty and porous investigations. According to *Ladapo, Oluwafemi Alexander*\(^7\), *It is trite that the pivot of the criminal justice system is crime detection and investigation, which serves as the pivot of every criminal case. This is especially so in an adversarial system of criminal justice like that which is in operation in Nigeria. In an adversarial system of justice, it is the duty of the accuser referred to as the prosecutor, to ensure that all pieces of evidence which are legally required to prove the charge against the defendant have been collected and collated through investigation and is ready for presentation before the court, for the determination of the defendant’s guilt or innocence. Criminal investigation is so important to the entire criminal justice system that its absence, tardy or shoddy execution may lead to delay in the administration of*

\(^7\) *African Journal of Criminology and Justice Studies*, published 1\(^{st}\) day of October 2011.
justice, the victimisation of innocent citizens and escape of offenders from paying for their misdeeds and being reformed. In 2006, Chief Bayo Ojo, the then Attorney-General of the Federation stated that 17.1% of prison inmates in Nigeria were awaiting trial because investigations into the allegations levelled against them were yet to be completed, 3.7% were incarcerated perpetually by default because their investigation case files could not be found, while 7.8% of the inmates trials were stalled because of the absence in court, of police investigators and other witnesses whose attendance is the duty of the investigators to procure.

15.0. Police officers in most cases lack sophisticated equipment to investigate sophisticated crimes. Scientific crimes require not only scientific and sophisticated equipment to investigate, but also committed patriotic, dedicated, experienced and well motivated Police officers and security operatives to investigate. Investigations of crimes have been commercialized in Nigeria. Corruption has killed our ability to do thorough investigation either by the officers detailed to investigate the alleged crimes or those in charge of administration of our security agencies who choose in most cases to sabotage the officers under them.

16.0. The former president of Nigerian Bar Association and my brother silk, J.B. Daudu, SAN had this to say
about corruption\(^8\): “The bane of Nigeria’s problem is corruption. What is corruption? And we need to define it as quite a number of Nigerians are oblivious of the fact that corruption is a very bad thing. Indeed some now see it as a way of life. Corruption according to Transparency International is the dishonest or fraudulent conduct by those in power typically involving bribery in the discharge of their mandate. It is the antithesis of due process and the Rule of Law. It is the pervasion of every value that society depends on to make progress in this world. Corruption does not spare any facet of the society and once embraced as Nigerians have progressively and massively done in the past 50 years ensures that we get the kind of rot, insecurity, injustice and imbalance that the country is now witnessing. Corruption has reached the level such that in private establishments and companies the owners steal from themselves. It has perverted moral and societal values such that those who have no ready cash to use to secure an undue advantage resort to bodies to secure whatever they want. It is so bad that even the vows of marriage have been desecrated by corruption. The end result is that family values are in grave jeopardy and in consequence, societal or

\(^8\) Chairman’s Remarks (J.B. Daudu, SAN) opening remarks at the formal opening ceremony of the NBA Osogbo Branch Law week on 2\(^{nd}\) June, 2014
communal values dead. Surely no facet of the Nigerian society be it executive, legislative and judicial can develop or survive in the face of these odds.” I totally agree with this statement. This statement could not be more apt concerning the dangers of corruption in our justice system in general and administration of criminal justice in particular.

17.0. Corruption can arise in a variety of ways. For instance failing to use money meant to buy instrument and equipment necessary for investigation, failing to pay officers on duty their due and appropriate allowances and remunerations, leaking information to key suspects of crimes, political interference by politicians and other powers that be in the society, misappropriation of funds meant to train officers, refusal to detail well trained and incorruptible officers to do thorough and proper investigations, interfering with due and proper investigations by political godfathers, community leaders, religious and traditional rulers and so on and so forth.

18.0. People are no longer their brothers’ keeper. People look the other way because of past experiences in the hands of Police and other security operatives. Majority of stop and search operations by our security agencies are not done out of patriotic desires to rid our society of crimes. Most, if not all are done as a result of the desires of the officers and men of the Police force and other security operatives
to line up their pockets and make quick money. There is this joke that was being circulated on social media. It shows the points I am struggling to make here. It was sent to me by one of my contacts on my black berry.

19.0. It was titled Nigerian Police vs Nigerian Pastor. It reads thus: On Lagos-Ibadan express road, a Pastor met a team of policemen who quite naturally wanted ‘something’ from him. Since he was not prepared to play their games, they asked for his papers and having combed through everything without any offence with which to nail the ‘stubborn’ pastor, they now asked him to open the bonnet of his car. A careful scrutiny of the engine number against what was on paper revealed that letter ‘U’ was written in such a way that it could be mistaken for letter ‘V’. That was all the officer-in-charge needed to shout “stolen vehicle!” Sensing trouble, even when he knew he committed no offence, the pastor called the 'OC' to say he was a pastor to which the officer replied, ”Please! Leave that pastor thing! In any case, if you are indeed a pastor, then you must have a bible in your car, bring it.” The Pastor did as was commanded after which the officer now ordered, “Please read Matthew 5:25-26 to me”. The incredulous Pastor opened to the recommended passage and read; “Settle matters quickly with your adversary who is
taking you to court. Do it while you are still with him on the way, or he may hand you over to a judge, and the judge may hand you over to the officer, and you may be thrown into prison. I tell you the truth; you will not get out until you have paid the last penny.”The man of God quietly made an “offering” of “just” 1000 naira to his newly found “preacher”.

20.0. This joke tells much about what goes on daily on our roads. Security agencies posted to our roads to detect crimes and nip same in the bud are highly compromised. It is an eye sore to pass through Nigerian roads and see the disgrace the security men and women subject us to. They collect bribes openly and as low as N20.00 to allow offenders pass. Big men or supposed big men are not even checked. All you need to do to commit crimes and go scot free in Nigeria is to act as big man. Indeed some criminals go to ridiculous extent to have police and military orderlies. Once our security operatives see such people they pass them with ease and even give them military compliments. It is sad. This has devastating consequences on our criminal justice system. Those who are supposed to be arrested and put in the coolers are not. They lord over us. The effect is the increase in criminal activities.

21.0. It is no longer news that officers and men of the police force and other security agencies pay their ways to be posted to where there is money to be made. We are living witnesses to the spate of
bombings in Nigeria. There are Policemen and security agencies on road blocks everywhere, yet bombs are planted and explode right in police stations, public buildings and motor parks. The reason is simple; searches are not thoroughly done by these security men and women. There are no equipment sophisticated enough to be used by these officers and men. Those in power seem to be playing politics with our destiny and security of lives and properties. In all these, the underlining factor is corruption.

22.0. Nobody is ready to do his or her job without thinking of what to gain personally. The administration of criminal justice suffers greatly. We don’t seem to allow law to take its course in this country. There are few police officers and men who do their jobs thoroughly without compromise, yet their efforts do not show because they are just tiny minority. Indeed their effort is like a drop of water in the ocean. Nothing can be noticed. It is infinitesimal efforts in every sense of the word. That is the truth. That is who we are. That is what our security agencies do.

23.0. In the process of investigations, Police officers and security operatives demand for bribes to kill vital evidence that may be harmful to the suspects. Very powerful criminal suspects pay their ways out of being investigated. Police men and women need to be commended here. Information had it that they do not demand much money like their counterparts in EFCC and other security operatives. I am told that
the more money that is involved in the cases being investigated the more bribes that are demanded. Lawyers are not left out here. There are also corrupt lawyers too. Corrupt lawyers arrange with the Police and other security agencies to bribe their clients out of trouble. They charge both their professional fees and bribe fees. These lawyers also act as conduits to collecting bribes for magistrates and judges. They pollute the stream of justice. They corrupt the criminal justice administration. This is dishonourable. All these have contributed to what we have today-increase in crime rates, impunity in commission of crimes, insecurity everywhere and invariably our fundamental rights to freedom from fear are daily being trampled upon and violated with impunity and reckless abandon. Nigeria society is no longer safe. Commerce and industry are not thriving as it should be in the midst of plenty resources. People are not sleeping with their eyes closed.

24.0. J.B. Daudu, SAN spoke my mind when he posited part of the solution to corruption and I agree with him. This is what the learned Senior Advocate of Nigeria said:”The first step to solving the conundrum lies in the understanding ‘corruption’ itself, how it works, who perpetrates it and how to effectively checkmate its perpetrators. In Nigeria, corruption is to be found among the ranks of the leadership and public officers including the judiciary and justice sector, nobody is left out. Corruption is
certainly more serious at the centre and this assertion is backed by the magnitude of fraud discovered in pension offices, in Government, oil sector, civil service etc. What then is the solution in the long term? It is not that State Governments are absolved of corrupt practices; certainly not. They too are neck deep in this deleterious practice to the detriment of the people that they govern. The solution lies (1) in excellent and principled leadership and (2) the implementation of the Rule of Law. Consequently, if leaders can recognize that everyone is equal before God Almighty and the Law, then they will not steal; if leaders and even the followers can recognize that no one is above the law then our society will be the best place to live in.

25.0. Closely related to corruption is the often brutality visited on those who may not want to cooperate in the process of investigations. Most of our security operatives rely on confessions as evidence of their hard work. As we saw earlier very crude and inhuman methods are used on suspects to extract confessions. Some suspects are usually forced to admit what they may not have done. This method is against the letter and the spirit of our constitution that guarantees the right to the dignity of persons
and prohibiting torture, inhuman and degrading treatments.\(^9\)

26.0. Most victims of these brutalities and inhuman treatments often wear visible marks on their bodies. As lawyers, we often get instruction of our clients how police officers give them what they call bat rest and how they are leg chained and hand chained. To extract confession, we are told police officers often take them out in the night with guns pointed on their heads to force them to confess to crimes they may not know anything about. This is not good enough. The constitution guaranteed the right to remain silent to any person accused of crime. See section 35 thereof. There is nothing wrong with Police officers obtaining confessional statements in the cause of investigations, but it must be voluntary and obtained in accordance with due process of law.

27.0. This much has been settled by long line of cases. See for instance **Ikemson vs The State (1989) 3 NWLR (Pt.110) 455**, **Hassan vs The State (2001) 6 NWLR (Pt.706)** and **Kareem vs FRN (No2) (2002) 8 NWLR (Pt.770) 682.** All these cases emphasized the points that an accused person will not be convicted upon confessional statements that are not admissible unless it is shown to have been made voluntary in the sense that it was not obtained by torture, duress, fear of persons in authority, prejudices, or hope of advantage. The

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\(^9\) See section 34(1) of the 1999 constitution as amended.
danger in obtaining confessions by force is that it causes delay in trials and very often lawyers take objections to admissibility of these statements. This will force trial within trial to be conducted. This trial within trial takes months or years to conclude and by the time trial within trial are done with, the main trial will then resume.

28.0. Very often police officers who testified in the trial within trial may no longer be available for the main trial as some may have retired, died or transferred to other stations. In all these, there will be delay in trials, criminal justice administration will suffer, prisons will be congested and so on. Clearly, thorough investigations are fundamental in administration of criminal justice system. Closely related to this is the notorious practice of Police officers and other security agencies asking victims of crimes and even the suspected criminals to fund investigations. The victims and those who are alleged to have committed the offence or offences are usually asked to buy papers with which statements are taken from the suspects and witness, buying files to use in building case dairies, fuelling the police vehicles to be used in going out for investigations or further investigations, funding of the taking of victims to hospitals for either treatments or medical examinations. There are many more of such unholy practices going on daily in our Police stations. While Police officers may not agree that these unholy and unacceptable practices are
daily occurrences in their stations, the facts remain that majority of Nigerians and all those who had at one time or the other come in contact and collision with the law can appreciate that these are practices that have become part of our criminal justice administration. We cannot run away from pointing them out. These practices are real. I think I will leave it at this.

29.0. Let us see what happens after investigations. Once Police officers and other security agencies have done their investigations, they normally and usually collate the results of their investigations and form opinions whether the suspects or accused persons are to be arraigned or charged to court. They may charge the accused or suspects to magistrate court or such other courts with criminal jurisdictions upon what is illegally called holding charge. In the case of Enwere vs. C.O.P.\textsuperscript{10} it was held that "holding charge" is unknown to Nigeria Law and an accused person detained there under is entitled to be released on bail within a reasonable time before trial more so in a non-capital offence. In Olawoye vs. C.O.P.\textsuperscript{11} it was held that: "A holding charge is unknown to Nigerian law and any person or an accused person detained there under, is entitled to be released on bail within a reasonable time before trial (more so in non-capital offences). A holding charge has no place in Nigerian judicial system. Persons detained under

\textsuperscript{10} (1993) 6 NWLR (Pt. 299) 333;
\textsuperscript{11} (2006) 2 NWLR (Pt. 965) 427 at 442-443 Paras.H-A
an 'illegal', 'unlawful' and 'unconstitutional' document tagged 'holding charge', must unhesitatingly be released on bail. In the instant case, the appellants were arraigned before a Chief Magistrate's Court, which certainly lacked jurisdiction in homicide cases/offences and there was no formal charge framed against them accompanied by proofs of evidence as at the time the High Court heard their motion for bail. The above amounted to special circumstance for High Court to admit them to bail, but by continuing to detain them on a "holding charge" was not a judicious and judicial exercise of discretion. See Enwere v. C.O.P. (1993) 6 NWLR (Pt. 299) 333; Jimoh v. C.O.P. (2004) 17 NWLR (Pt. 902) 389; Ogori v. Kolawole (1985) 6 NCLR 534; Onagoruwa v. State (1993) 7 NWLR (Pt. 303) 49; Oshinaya v. C.O.P. (2004) 17 NWLR (Pt. 901) 1 and Shagari vs. C.O.P. (2007) 5 NWLR [Pt. 1027] 275 at 298. Where jurisdiction to try offenders is exclusively vested by law in the High Court, the arraignment before a magistrate court is tantamount to a holding charge which has been declared as unconstitutional and illegal - Olawoye v. C.O.P. (2006) 2 NWLR (Pt. 965) 427 at 442

We shall not dwell on the constitutionality of the holding charge here, but it suffices to say that even though holding charge is unconstitutional, this practice has refused to go away from our criminal justice administration despite authoritative judicial
condemnations as seen above. The police and other security agencies are not expected to keep the suspects in custody at their whims and caprices. The suspects are entitled to bail. The Supreme Court has decided that: **The main function of bail is to ensure the presence of the accused at the trial. That is the cynosure of all the criteria. It is the centre-piece. And so this criterion is regarded as not only the omnibus ground for granting or refusing bail, but the most important. The second criterion, as I have mentioned, is the nature and gravity of the offence. It is the belief of the law that the more serious the offence, the greater the incentive to jump bail, although this is not invariably or for all times true.**"  

31.0. One common slogan we hear always at the police stations and some other detention camps of our security agencies is that bail is free. Nothing can be further from the truth. Bail is never free and has never been free. From what we see, sureties are usually tasked to pay. Accused persons also pay. Let no one deceive us that bail is free. If bail is free in Nigeria that may be in theory. The practical reality is that bail is not free and it is unfortunate that Nigerians are led to believe the opposite of the reality on the grounds. A typical bail negotiation scenario in our police stations is like haggling in

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12 See SULEMAN V. C.O.P. PLATEAU STATE (2008) 8 NWLR (PT.1089)298
typical market in Africa where the buyer bargains with the seller until prices are agreed upon. This should not be so. But it is unfortunately the practise.

32.0. There is no doubt that even at the appellate levels of our courts there are decisions tending towards liberty of the subjects. See **Orji vs F.R.N.**\(^\text{13}\) where his lordship Salami, J.C.A., as he then was held that: *I am respectfully of the view that section 29 of the court of Appeal Act already recited elsewhere in this judgment is wide enough to permit an applicant whose trial is still pending in the trial court to apply to this court for bail having unsuccessfully sought for bail in the trial court and the court below. This is because the provision of subsection (1) of section 29 of the court of Appeal Act (supra) which is recited immediately hereunder for convenience is clear, unambiguous and unequivocal. In **Mohammed Vs Olawunmi**,\(^\text{14}\) the Supreme Court per Uwais, J.S.C. as he then was, also held that: *Section 29 subsection (1) of the court of Appeal Act, 1976 which provides:- 29(1) The court of Appeal may, if it thinks fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal. What is clear from the foregoing is that the grant of bail by the court of Appeal is discretionary. The provisions of the subsection*

\(^{13}\) (2007)13 NWLR (Pt.1050)55 at 77-78, paras H-B.

\(^{14}\) (1993)4 NWLR (Pt.287) 254 at 275, paras D-E.
do not state whether there has to be a conviction and sentence before such bail could be granted. What the subsection requires is that there must be an application for bail by an appellant and that the bail to be granted should be pending the determination of the appeal brought.

33.0. If there are rooms for bail at the appellate levels of our courts, one then wonders and is at a loss as to why our security agencies engage in bail haggling as a means of survival or as a means of sabotaging our criminal justice administration. Most congestion in our police cells and prisons are as a result of the inability of the parties to agree to acceptable fees to be paid before suspects are granted bail by the police. Indeed, it is no longer news that failure to agree on acceptable fees aggravates the offence or offences to serious and non-bailable offence or offences. A person accused of petty theft for instance may suddenly be accused of armed robbery in order to put fear in him or his relations and to break the stubbornness or audacity to even engage in negotiation for the bail prices. Let me not be understood here to say that the practice of not willing to release accused persons on bail is limited to Police alone. No, that is not true. Some judicial officers who ought to know the principle behind allowance for bail also do refuse to grant bail. Even when Police and other agencies admit suspects or accused persons to bail, some judges will not grant
bail. Even when application for bail is filed in their courts, they will not want to hear it. This practice has been condemned.

34.0. In *Arabi vs. The State*¹⁵, Mohammed, J.C.A. as he then was held that: It is indeed very difficult to explain the stand of the learned trial Judge in this matter of bail in this case. In a criminal trial for an offence which is bailable as in the present case where the application for bail is not opposed by the prosecution, the trial court has no business whatsoever in taking side in the affair to the extent of refusing the application because it will be an uphill task for such a court to find real reasons for refusing the application, particularly at this crucial period in this country when the attention of all courts of law are directed at finding solution to the perennial problem of prison congestion. Therefore to my mind, by refusing to rule on the appellant’s application for bail for the entire period his trial lasted and without any disclosed reasons for doing so, the learned trial Judge had unwittingly exposed his court to be counted as one of the courts of law being responsible for the perennial prison congestion in this country. I say no more”.

35.0. At the end of investigations, case diaries are usually and normally compiled. These case diaries are then

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¹⁵ (2001)5 NWLR (Pt.706) 256 at 276-277, paras.H-A
duplicated and in some cases sent to the office of the DPP for legal advice. There is the practice that lawyers and the accused are not entitled to access the case diaries. Is this correct? I think not. First I see case dairies as public documents. Everyone is entitled to it upon fulfilment of legal conditions. Even in courts, counsel and accused persons are denied the right to see the contents and documents in the case diary. Police prosecutors hold the case diaries tenaciously to their chests that no one is allowed access. The authority for doing so is the Criminal Procedure Code, CPC. We should turn our attention to this law and see what it contained and then the pronouncements of our superior courts of record on the matter.

36.0. Under Section 121(1) of the CPC it is provided therein that every officer in charge of a Police station conducting an investigation under section 118, or any Police officer deputed by the officer in charge of a Police station to conduct such investigation shall keep a case diary in which he shall set forth in chronological order, the time he began his investigation; any information received by him in connection with the investigation; the time when such information reached him, the places visited by him, any action required to be taken or directions given by a court in the course of the police investigations or the inquiring by the court, and any facts ascertained as a result there of; any report made by any police officer
acting on his instructions; the statement of any witness if reduced to writing; a statement of the circumstances ascertained through his investigation, and the time when he closed the investigation.

37.0. The First information Report or a copy thereof shall in all cases be attached to and form part of the case diary. The problem in most cases arises from the application of the provision of the proviso to section 122(2) of the CPC, which provides in effect that nothing in anyway included in or forming part of a case diary shall be admissible in evidence in any inquiry or trial unless it is admissible under the provisions of the Evidence Law or of this Criminal Procedure Code or of Rules made there under. However the same section 122 made the following exceptions. These exceptions are:

a) A court may if it shall think fit order the production of the case diary for its inspection under the provisions of s.144.

b) The Attorney-General may at anytime order the submission of the case diary to himself.

c) Any relevant part of the case diary may be used by a police officer who made the same to refresh his memory if called as a witness. The section then goes on in subsection (2) to say that save to the extent that-

a) Anything in any way included in or forming part of a case diary is admitted in evidence in any inquiry or trial pursuant to the provisions of subsection (1), or
b) the case diary is used for the purposes set out in paragraph (c) of sub-section (1), the accused or his agent shall not be permitted to call for or inspect such case diary or any part thereof but, when for the purpose of paragraph (a) or (b) any such inspection is permitted, such inspection shall be limited to the part of the case diary referred to in paragraph (a) or (b) as the case may be.

38.0. In *The State vs Jimoh Sani* (unreported) in decision of Bello, SPJ, later the Chief Justice of Nigeria, it was held that: **The prohibition from inspection of the case diary by an accused person or his counsel is subject to not only the conditions laid down by the section but the Evidence law.** It is conceded that both PW7 and PW8 made statements which formed part of the case diary. Both have already given evidence at this trial. It must be presumed therefore that the contents of their statements have been admitted in evidence by their oral evidence. The defence counsel is therefore entitled to inspect their statements with a view to cross examining the witnesses in accordance with sections 198 and 209(c) of the Evidence Law. See Criminal Procedure Code in the Northern States of Nigeria 2\textsuperscript{nd} Edition by Jeffrey Richard Jones, at pp.58-59, thereof. The Supreme Court of Nigeria had an occasion to examine the provisions of the CPC as relates to the right of an accused and his agents to access the case diary in *Gaji vs. The state*\textsuperscript{16}. The Court held amongst other things that under section 122 C.P.C, the accused or his agent shall not be

\textsuperscript{16} (1975) 5 S.C at 65-67 paras 40-10
permitted to call for and inspect any part of the case diary except in certain circumstances. The statements in writing to Police by witness are part of the case diary: Section 121(g) C.P.C. The circumstances in which this mandatory prohibition is lifted are two;

a) **Where such statement is admitted in evidence.** (This present tense must in my view be the historic present, or the section 122 (2) (a) does not make sense to me) or

b) **Where a police witness has used such statement to refresh his memory.**

Neither of these circumstances obtains here. The confirmation by the appeal court of the magistrate’s refusal to allow the accused to see the statement of a Police witness is the similar circumstances in **Alhaji Ladan vs. C.O.P** which is in 1970 NNLR shortly to be published unturned me in this view. If ‘is admitted’ could be read as ‘is admissible’ then there is still no basis in the present case for ordering the production of these written statements. The Supreme Court case of Saka Layanu (1967) NMLR 411 expresses a different view, but that was governed by the criminal procedure Act. I am bound by the Criminal Procedure Code, whose provisions on this point are quite different. The application is refused. Thus, the learned senior state counsel had objected to the production of these statements, firstly, on the ground that section 122 of the Criminal Procedure Code does not permit the production and, secondly, on the ground that no foundation had been laid for ordering the production of these statements. The learned trial judge refused the application of counsel basing his refusal on his interpretation of
section 122 of the Criminal Procedure Code. He did not refer to the other arm of the objection of the learned senior state counsel, i.e. that no foundation was laid for ordering the production of these statements and it is unfortunate that he did not do so. We say it is unfortunate because in this particular respect it’s of the utmost necessity that some foundation be laid for requiring for the statement of a witness to cross-examine that witness and unless such a foundation is laid it is impossible to obtain an order for the production of his statement. **Sections 198 and 209 of the Evidence law, cap. 40, Laws of Northern Nigeria 1963** are directly relevant and they provide as follows: “198. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing and relevant to matters in question in the suit or proceeding in which he is cross-examined without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. 209. The credit of a witness may be impeached in the following ways by any party other than the party calling him or with the consent of the court by the party who calls him-

a) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

b) By proof that the witness has been bribed, or has accepted the offer of a
bribe, or has received any other corrupt inducement to give his evidence.

c) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.

39.0. The Supreme Court decision in Gaji vs The State\textsuperscript{17} appears to have put some elements of stamp of authority on the prohibition of the accused and agents accessing the case diary or the contents thereof unless the conditions set out under the Evidence Act are satisfied. In an earlier decision based on the provisions of Criminal Procedure Act, the decision of the Supreme Court therein appears to me to accord with justice, practical reality and one that gives flesh and blood to the constitutional imperative of affording the accused opportunity to all material necessary for his defence. In Layonu and others vs. The State\textsuperscript{18}, the Supreme Court held that: the valuing given at the start of the trial requires defending counsel to allege a discrepancy between a statement which he has not seen and the witness sworn testimony, and it would be irresponsible conduct, to say the least, to make that allegation in such circumstances, we do not think defending counsel is to blame for not having renewed his application after that ruling. The words used in the judgment would require defending counsel to establish such a discrepancy before he could see the statement, which is requiring the impossible. R V. Clark dealt with a particular

\textsuperscript{17} Supra

\textsuperscript{18} (1967) All NLR 210 at 213-215
kind of written statement, but in our experience the principle has always been applied, as it was in R.V Adebanjo (1935) 2 W.A.C.A 315, to any written statement in the possession of the prosecution which was made by a witness called by the prosecution and relates to any matter on which the witness has given evidence such a statement is not evidence of the facts contained in it and only use to which the defence can put it is to cross examine the witness on it and then, if it is intended to impeach his credit, to put the statement in evidence for that purpose. Evidence Act, ss. 198 and 209. The defendant or his counsel has no means of knowing whether the statement can be put to this use until he has seen it. Prosecuting counsel, whose traditional duties is not to secure a conviction but to see that justice is done, should put no hindrance in his way and the court, which exists to do justice should make whatever order that may appear necessary to enable him to put forward any defence that may be open to him. In this case, Mr. Akin Apara agreed that production of these statements had been improperly refused; the hearing of the appeal was adjourned to enable him to supply the court and the counsel for the appellants with copies of these statements. At the resumed hearing Chief Davies, for the appellants compared the statements made to the police by the two witnesses on whose testimony the conviction rested, Nurisratu and Selia, with their sworn testimony and
submitted that there were sufficient discrepancies to make it usage to uphold the convictions of any of the appellants. The special circumstances imposed on us a somewhat different approach from that which we usually adopt on issues of credibility in criminal appeals. We are not retrying the case, and we think the question we must ask is whether, if the judge had the opportunity of comparing the statements of the two women with their sworn testimony and of hearing their explanations of any discrepancies that might have been put to them, there is a reasonable possibility that he might have declined to convict in the strength of their sworn testimony.

40.0. The Supreme Court again in the case of Akpabio vs The State,19 held per Iguh JSC, as he then was, that: It seems to me well established that in a criminal trial, the defence is entitled to see any written statement in the possession of the prosecution which was made by a witness called by the prosecution and which relates to any matter on which the witness has given evidence, and to cross-examine the witness on it and then tender it solely to impeach his credit. It must be emphasized in this connection that it is not the law that the defence must allege or establish a discrepancy between the statement to the police and the sworn testimony before the court can order prosecution to produce the said statement. See Layonu and Ors v. State (1967) 1 all NLR 198 at 201; (1967) NMLR 411 and R V. Adebanjo

19 (1994) 7 NWLR (Pt. 359) 635 at 661
(1935)2 WACA 315. A distinction must however be drawn between and application by the defence in criminal trial for the production of the statement of a prosecution witness to tender such a statement in evidence. In the former case, as I have observed, the defence is entitled to see any such statement and to cross examine the witness on it and then, if it is intended to impeach his credit, to tender the statement in evidence for that sole purpose. In the latter case, however, it seems to me that the basis for which it is sought in evidence ought to enable the court to take an appropriate decision as to its admissibility.

This is because such an extra judicial statement is certainly not evidence of the fact therein contained and the only use to which the defence can put it, as I have observed, is to cross examine the witness on it and then tender it solely for the purpose of impeaching the credibility of the witness. If therefore, the basis of the application by the defence to tender such a statement is solely for the purpose of establishing the truth of the facts contained therein, the court is entitled on grounds of law to reject such an application as misconceived.

41.0. From these cases, it is clear that both the accused persons and defence counsel are entitled to see any document forming part of the case diary. There is no basis not to permit access to case diary. As we have seen earlier, the law sets out what and what the Police officers or security agencies must do when
crimes are reported to them. They are for instance, to set forth in chronological order, the time they began their investigations; any information received by them in connection with the investigations; the time when such information reached them, the places visited by them, any action required to be taken or directions given by a court in the course of the police investigations or the inquiring by the court, and any facts ascertained as a result thereof; any report made by any Police officer acting on their instructions; the statement of any witness if reduced to writing; a statement of the circumstances ascertained through their investigations, and the time when he closed the investigation.

42.0. All these steps are necessary for the administration of criminal justice to flourish undiluted and unpolluted. The time case is reported and the time the offences are alleged to have been committed must be stated and clearly recorded in the case diary. There is no doubt that most times we face a situation where Police officers who took no part in investigations and have no knowledge of the facts are usually put forward as witness for the prosecution. In most cases, these ‘Investigating Police Officers’ will be terribly messed up by defence attorney. This does not augur well for criminal justice administration. There is the need for all involved in the administration of criminal justice to put more efforts in improving the system.
Prosecution of cases in court is another vital aspect of criminal justice administration. After arrests and investigations are done and duplication of case diaries, there is the aspect of arraigning the accused or suspects in court. Police officers, lawyers and officers from the office of the Attorneys General either of the states or the Federation undertake prosecutions in our various courts. As we saw earlier, bad investigations can hamper effective prosecution. The converse is the case that poorly handled prosecution can set free an otherwise guilty accused. The duty of court is to listen fairly and decide based on the evidence of the prosecution. The duty cast on the prosecution is to prove the guilt of the accused beyond reasonable doubt. Where therefore prosecuting counsel or Police officers negligently handled prosecution, tendencies exist for the accused to be set free. In some states, Police officers are not allowed to prosecute criminal cases in courts any longer.

According to Prof Owosanoye and Dr Ani, (supra), recently the Attorney –General and Commissioner for Justice of Delta State, in exercise of his powers under section 211 of the 1999 Constitution, directed that with effect from 1st February, 2011, the police should cease from prosecuting any cases at the magistrate and lower courts in the State. The order places the burden of prosecution at this level on Law Officers in the Ministry of Justice.
If these are ill prepared or inadequate in number to handle all the cases requiring prosecution at the magistrate and lower courts in the State, the criminal justice system in Delta State will further deteriorate. On the other hand, the fact that the Police is a federal institution is one of the challenges bedevilling the criminal justice system because the Police is not answerable to state institutions like the State Attorney-General, DPP or the state judiciary. The uncooperative attitude of the police to reform of criminal justice system at the state level stems from the non recognition of state police by the Constitution. Unless and until this position is changed success in the reform of the criminal justice system will be a slow, painful and perhaps futile exercise.

45.0. With respect, I do not think some lawyers in the Ministries of Justice all over this court are doing better than some police officers in the prosecution of criminal cases in courts. Some lawyers compromise themselves in the handling and prosecution of cases in courts. Some of them sell legal advice to the highest bidders. They collect money from both the victims and the accused to issue or not to issue legal advice. The office of the DPP that should ensure that administration of criminal justice does not suffer as a result of these unprofessional and ungodly conducts are also highly compromised. The Hon Attorneys General in some of our states are not left out. Most
Attorneys General either of the states or Federation in the past have also demonstrated loyalty not to administration of justice but the selfish interest of their appointers. Cases that ought not to be charged to courts are charged to court to satisfy the whims and caprices of the chief executives. We see in some cases political persecution instead of prosecution. Some Judges too are not faring better. They grant leave to state to prosecute cases that obviously have no criminal colouration. The resultant effect is that we manipulate our criminal justice to suit our personal ego and interest. This should not be so. Patriotism and nationalism have taken flight out of our collective conscience. If judicial officers subject themselves to political and economic manipulations, what do you say of the magistrates and area courts judges? You can imagine this yourself. Let me not be understood as saying that there are no good lawyers, judges, state counsel, law officers from ministries of justice, DPP and Attorneys General either of the states or of the Federation. There are good and hard working ones past and present. What I am struggling to say is that there appears to be more bad ones than the good ones. That is why administration of criminal justice suffers a great deal. We don’t seem to also have the co-operation between the various agencies charged with the duty of administration of criminal justice in Nigeria. The underlining factor may not be far from corruption and corrupting influence. These days you see police,
EFCC, ICPC, Code of Conduct Bureau, and such other agencies investigating and prosecuting persons on the same or similar cases arising from the same facts. One does not know whether there are co-ordinations between these security agencies. Prof Owosanoye and Dr Ani put the point I am trying to make this way. There has been a longstanding controversy over the independence of the ICPC, EFCC and the Code of Conduct Tribunal, regarding whether they should seek permission and approval of the Attorney- General and Minister of Justice before initiating prosecutions. Late President Umaru Yar‘Adua had directed that all agencies involved in the prosecution of criminal cases should seek the consent of the Attorney – General. In addition, the agencies are also to report to the AGF in accordance with relevant laws: Recently, the Attorney-General of the Federation and Minister of Justice, Mohammed Bello Adoke, advocated the merger of the nation’s anti-corruption agencies, the Economic and Financial Crimes Commission (EFCC) with the Independent Corrupt Practices and Other Related Offences Commission (ICPC). He alleged that as a result of incompetence, inadequate capacity to thoroughly investigate and prosecute economic crimes, many high profile corruption cases, such as the $180m Halliburton bribe scandal, the alleged N50bn Police Equipment Fund fraud and the N3bn Vaswani Brothers rice importation scandal, failed as the agencies lack capacity to collate evidences to sustain
charges and secure conviction in court. The AGF further argued that the two anti-graft agencies seemed not to understand their roles and statutory mandates as they conflict more than agree over jurisdictional issues when “the Act establishing the ICPC mandates it to fight official corruption while the Act setting up EFCC mandates it to fight economic crimes and money laundering. In addition, he also posited that the mandates of the two commissions overlap. Similarly, a former Attorney-General of the Federation and Minister of Justice announced while in office that the Federal Government was considering merging the EFCC, ICPC and the Code of Conduct Bureau (CBC) because of overlapping functions. Other notable public figures have made similar observations on EFCC, ICPC, Federal Road Safety Commission (FRSC), Nigeria Security and Civil Defence Corps and the Nigeria Drug Law Enforcement Agency (NDLEA) by requesting their merger with the Police. These agencies were referred to as ‘white elephant security agencies.” The argument has always been that proliferation of crime-busting agencies has undermined the effectiveness of the police culminating in frequent friction amongst the agencies over issues of mandate and jurisdiction. To compound the situation, the current Attorney-General recently promulgated a controversial Statutory Instrument pursuant to his powers under section 43 of the EFCC Act of 2004 to the effect that all cases under the purview of EFCC
must be cleared with the Attorney-General before prosecution. The instrument attracted much public criticism but it has not been revoked. It must be mentioned that the position taken by the above mentioned public officers is not popular with the public. Indeed, failure of the police to investigate and successfully prosecute corruption and allied cases was the main catalyst for the establishment of these agencies at various times. While recognizing that the operations of the agencies have room for improvement, scrapping or merging them with the Police will compound an already bad situation. Reform of these institutions, especially the anti-corruption agencies, must emphasize the need to work together. Mandatory and regular exchange of information and intelligence by the agencies, in the overall interest of the country, must be enforced.

46.0. While I do not share wholly some of the views expressed in the publication referred to above I believe the point has been made and recognized too by public officers concerned in the administration of criminal justice that there is no proper co-ordination amongst these security agencies. I believe with respect that some of these agencies were set up in breach of the provisions of the constitution. All of them perform the duties and the roles assigned to the police force by the constitution and the Police Act. These security agencies, apart from the police and armed forces, were not set up or established by the constitution. Indeed the constitution prohibits
establishment of any other force apart from the police. See section 214 of the 1999 constitution as amended. For ease of reference, section 214(1) provides that: “There shall be a Police Force for Nigeria which shall be known as the Nigeria Police Force, and subject to the provisions of this Section no other police force shall be established for the federation or any part thereof.” Section 214(2) (b) expressly provides that “the Police shall have such powers and duties as may be conferred upon them by law.”

Consistent with this constitutional mandate, the National Assembly enacted the Police Act and vested in the Nigeria Police Force the power for the prevention and detection of Crimes, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulation with which they are directly charged.

47.0. Clearly, I submit that the power to assign roles and duties to the Nigeria Police to do what other security agencies are doing in Nigeria has been donated by the Constitution to the National Assembly. It is my submission that the Police Act having been enacted in accordance with section 214(2) (b) of the 1999 CFRN, the enactment of EFCC Act and any other Act setting up other security agencies in clear contravention of the same provision of the Constitution, is inconsistent and in conflict with the Constitution and to the extent of that inconsistency,
null and void. See section 1(1) and (3) of the 1999 Constitution (as amended) which for the purpose of emphasis state as follows: “(1) this constitution is supreme and its provision shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. (3) If any other law is inconsistent with the provisions of this constitution, this constitution shall prevail and that other law shall to the extent of the inconsistency be void.”

There are legions of authorities in support of this proposition that the constitution is supreme and any other law including any other Act set up in breach of the constitution and that is inconsistent with the constitution is void. In the case of MARWA and ORS vs. NYAKO & ORS the supreme Court emphatically restated the position of the law in the following words “...part 1 of Chapter 1 under general provisions which state that - Section One, This constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria." Section 3 "If any other law is inconsistent with the provisions of this constitution this constitution shall prevail and that other law shall to that extent of the inconsistency be void." This Court had given

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21 (2012) NWLR PT.1296 199
recognition to this supremacy and had expatiated on the Constitution through various judgments in its interpretative jurisdiction. The Constitution is described as the grundnorm and the fundamental law of the land. All other legislations in this country take their hierarchy from the provisions of the Constitution. It is not a mere common legal document. It is an organic instrument which confers powers and also creates rights and limitations. It regulates the affairs of the nation state and defines the powers of the different components of government as well as regulating the relationship between the citizens and the state. Once the powers, rights and limitations under the constitution are identified as having been created, their existence cannot be disputed in a court of law. But the extent and implications may be sought to be interpreted and explained by the court. The provisions of the constitution take precedence over any law enacted by the National Assembly even though the National Assembly has power to amend the constitution itself.”

48.0. It is my contention that what amounts to a Police Force is a matter of function and not nomenclature. In this regard, the term Police has been defined variously as the civil force of state responsible for maintaining public order and the definition include any force with similar functions for enforcing
regulations and law which will even naturally include military police, Federal Bureau of Investigation (FBI), ICPC etc. see the Oxford Dictionary. By every definition of the term, the EFCC and other security operatives or agencies are Police organizations carrying out the functions of the Police, which essentially is law enforcement and regulation of society or maintaining law and order i.e. the prevention, detection, apprehension of offenders, preservation of law and order, protection of lives and properties and enforcement of all laws and regulations. Put in another way, the EFCC, ICPC, NDLEA and all other security agencies are simply carrying out all the functions vested in the Nigeria Police Force by the Police Act. In particular see section 4 of the Police Act which empowers the Nigeria Police Force to enforce all laws and regulations which in this case includes the offences created by the EFCC Act, ICPC Act, SSS Act and such other security agencies that have been vested with police duties.

49.0. In other words, the establishments of other security agencies by acts of parliament to perform the same functions that have been constitutionally assigned to the Nigeria Police Force, and which duties some, if not all, have performed and are performing to the prejudice and detriment of criminal justice administration have clearly brought the performance of those duties on a direct collision course with section 214 of the Constitution which prohibits the
establishment of a Police Force other than that established by the Constitution. Indeed, the Constitution has prohibited the creation and establishment of any other force, organization or authority to enforce the laws of the land other than the Nigeria Police Force in order to prevent the kind of conflict that we are now faced with in the administration of criminal justice as shown above. It should be noted that most, if not all of the personnel of these security agencies are police men and women or police officers especially in EFCC and ICPC. Why can’t we make the police force fully functional and turn these agencies as departments of police to avoid constitutional catastrophe that the duplication of these security agencies has brought to the administration of justice in general and criminal justice administration in particular? There will then be one central command. This will end the frequent clashes between our security agencies. It is no news now to see and hear of fights between various security agencies. Some who have no arms want to bear arms. These security agencies lack proper and adequate co-ordination and synergy that is required for effective policing of our criminal justice administration.

50.0. We need co-ordinate security agencies that can guarantee peace and security of our Nation. The current security agencies appear to have failed us. The reason as I have earlier said borders on corruption and corrupt influence within our society.
Most of our security agencies appear not to have a mind of their own. They appear to protect personalities in power than the institutions. This is our bane.

51.0. I think we need absolute reorientation for the security agencies. Most people don’t want to volunteer information and assistance to our security agencies because of the unfriendly and hostile attitude of these security operatives. There is this slogan that police is your friend. That slogan is not only false, but completely untrue. Police cannot even be any person’s friend. Their first duty appears to be in suspicion of persons. There appears to be suspicions in the DNA of most of our security agencies.

52.0. That takes me to the relationship between lawyers and police and other security agencies. Most of these agencies see lawyers not as partners in progress, but enemies in the wheel of progress and serious threats to the performance of their jobs. They exhibit most hostile attitude to lawyers. Most times you hear police officers telling lawyers to go and wait in court. Police and security agencies that engage in this kind of attitude often forget that lawyers are first and foremost ministers in the administration of justice. A lawyer’s duty is to justice and the course of justice. Lawyers can and most times help police in the administration of justice. It takes two to tango. Some lawyers also don’t fare well in their relationship with the police. Some lawyers show off
and look down on the Police. They talk down on police men and women in charge of their clients’ case. This is not good enough. Respect begets respect. I noticed that some lawyers don’t show respect to Police officers they consider as not well read. That is why some Police officers too have developed unfriendly posture towards lawyers. I think we have seen enough what is wrong with us in criminal justice administration. We need to find solutions to our problems. I think the following should be done to improve the quality of our criminal justice administration. There must be proper and thorough investigations of crimes. To this end, Police and other agencies involved in administration of criminal justice must be given proper training and all modern equipment necessary for scientific investigations procured for them. We must ensure that money voted for funding of police and other security agencies are not diverted for selfish interests. The government must monitor senior officers who may not be willing to release money meant to train security agencies and paying them their due and earned allowances.

53.0. Over the years according to Prof Muhammed Ladan22, our criminal justice system has been identified with the following challenges. These include:

- **chronic delay in the trial of cases,**

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22The Criminal Justice System and the New Security Challenges in Nigeria being a lecture presented at the Quarterly Public lecture series organized by the Institute for Peace and conflict resolution, Abuja in collaboration with the United nations Development Programme (UNDP)
lack of effective coordination amongst the agencies of the criminal justice system - the police, prisons, prosecutors and the courts,
as absence of clear and consistent sentencing guidelines,
growing number of awaiting trial inmates,
problem of ‘holden’ charge,
Limited alternatives to imprisonment,
Dichotomy between federal and state offences,
Indiscriminate transfer of investigating police officers.
All these must be avoided if we are to have effective and efficient criminal justice administration.

54.0. The learned Prof spoke my mind when he made the following suggestions and let me quote him in extenso in concluding this paper.

“The urgent need for greater inter-agency collaboration and cooperation in law enforcement, intelligence gathering and exchange for effective prevention and control of terrorism and terrorist financing as defined and criminalized by the most recent Anti-Terrorism and Money Laundering Acts 2011, addressing the root causes of youth involvement in violent crimes and ethno-religious violent conflicts, entails the promotion of good governance and prioritizing investment in human security and human development in a
sustainable manner. Pursue vigorously enhancement of the capacity (human, technical, material and financial) of criminal justice personnel through training, reform and re-organization, information gathering and exchange, research analysis, and dissemination of information on terrorism and terrorist financing. Conflict Prevention and Peace – Building: - The country has witnessed recurrent conflicts since the attainment of independence. Government response to these conflicts which is largely characterized by a “fire brigade” approach, points to the absence of a systematic and institutionalized way of obtaining early warning signal. If such is in place, it would be possible to anticipate conflicts by detecting the various flashpoints of violent conflicts that have torn many communities asunder. For the purpose therefore, of designing effective conflict prevention and peace-building strategy, government needs to put in place the structure, requisite personnel and equipment for monitoring conflicts and transform existing conflict situations into enduring and sustainable peace. However, it is a requirement for success that such conflict management schemes be inclusive to include community leaders (of both “settlers” and “natives”), religious leaders, traditional rulers, CBOs and NGOs involved in conflict management and
human rights, intellectuals and researchers, and women groups and leaders. In recognition of the role of the media in promoting conflicts through information (mis)management, it is necessary to expose media practitioners to the importance and need for moderation, less sensationalism, integrity and professionalism. This can be done through continuing peace education workshops and seminars aimed at sensitizing media practitioners to the national political objectives of building a united, strong and prosperous society in the context of diversity and pluralism.

I adopt these suggestions as mine and have nothing more useful to add save to thank you all for your attention.