

## Examining the Powers of The Police in Making Arrest Under Nigeria Law.

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### Abstract

This paper examines the powers of the police in making arrest under Nigeria law. It states the applicable law in tandem with judicial authorities on the subject. It also deals with a comparative analysis of the powers of the police to make arrest and the facts exemplified in Flyod's conundrum. In the case of Nigeria and the full facts of George Floyd's case, the police while making arrest on their victims most times apply too excessive, unreasonable, inappropriate and disproportionate force.

**Key-Words:** Examining, powers of police in making arrest, Nigeria law, Floyd's conundrum.

### 1. Introduction

The word 'police' was coined<sup>3</sup> in France in the 18th century and is defined as a government organization charged with the responsibility of maintaining law and order and the force of policemen and officers. Policing actually dates back<sup>4</sup> as far as 3000 B.C. The first organized<sup>5</sup> police force was the Roman vigils. At a time in history, England was the most lawless country in the world. Citizen groups known as vigilantes arose in an attempt to combat prevalent crime. The English watch system that existed was adopted by America around 1600 A.D. Towards the end of the colonial era (1600 A.D.- 1800 A.D.), England began to move away<sup>6</sup> from the watch system. It was at this time, Sir Robert Peel in England created the Metropolitan Police Force, sometimes referred to as "Bobbies" named after him.

Coming home, the establishment of the Nigerian Police Force (NPF) predates the Nigerian constitution<sup>7</sup> 1999 as amended. Prior to the British arrival in Nigeria in 1800,<sup>8</sup> law and order was maintained by the local chiefs and their messengers by means of traditional institutions and the age grade system<sup>9</sup>. After the British arrival in Nigeria<sup>10</sup>, the police system and administration gradually passed from the local chiefs to the British. Following the annexation of Lagos, William McCoskry, the first acting Governor of Lagos established the Hausa constabulary/Lagos Police Force in 1861<sup>11</sup>.

Currently, section 214 CFRN establishes the NPF. It abolished<sup>12</sup> the individual state or local government police forces<sup>13</sup>. The duties of the police are provided for under section 4 of the Police Act.<sup>14</sup>

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<sup>3</sup> LM .Sandifer 'Police Use of Force: Does Gender Make a Difference' (Master of Arts Dissertation in Criminology and Criminal Justice presented to the Graduate School Of Criminology/Criminal Justice, The University of Texas, Arlington, 2006) 11.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.* They were created by Gaius Octavius, the grand nephew of Julius Caesar, around 27 B.C.

<sup>6</sup> *Ibid.*

<sup>7</sup> Cap C23 Laws of the Federation 2004. It shall hereinafter be referred 'CFRN'.

<sup>8</sup> O. Oluwaniyi, 'Evolution of State and Society in Pre-colonial Nigeria 1500-1800' (unpublished manuscript), <<https://run.edu.ng/directory/oermedia/3696103805403.pdf>> accessed 24 December 2020.

<sup>9</sup> VA. Mpmugo 'The Role of the Nigerian Police in Human Rights Protection and Enforcement' (1996) Abia State L.J. 29.

<sup>10</sup> Oluwaniyi, (n.6).

<sup>11</sup> *Ibid.*

<sup>12</sup> NJ Madubuike-Ekwe, OK Obayemi 'Assessment of the Role of the Nigerian Police Force in the Promotion and Protection of Human Rights in Nigeria' (2019) *Annual Survey of International and Comparative Law*: 23 (1) <<https://digitalcommons.law.ggu.edu/annlsurvey/vol23/iss1/3>> accessed 5 May 2020.

<sup>13</sup> Constitution of Nigeria, item 45 of the exclusive legislative list, part I, second schedule.

<sup>14</sup> The Police Act Cap. P19 Laws of the Federation of Nigeria 2004. It shall be referred to as the 'PA'. The CFRN provides that no other police force shall be established for the Federation or any part thereof. Police affairs is under the jurisdiction of the Federal government as it is an item on the exclusive legislative list of the constitution

The statutory granting of powers to police is not an absolute right to arrest people without caution. Where that power is not exercised legally, the Court will condemn it.

Further more, the use of force by police officers is defined<sup>15</sup> as “acts that threaten or inflict physical harm on suspects” leading to death in some occasions<sup>16</sup>.

Succinctly, in examining the use of force by the police in making arrest under Nigeria law. The paper therefore deals with six interrelated parts in examining the powers of the police in making arrest under Nigeria law. It begins with the introductory part. Part 2 takes cognizance of the literatures of scholars such as Worden, Dunham, Alpert among others in the jurisprudence of the use of force by the police in making arrest. Their views on the subject matter are well articulated. Under part 3, principles governing use of force is highlighted such as the principles of proportionality, necessity and the others. Part 4 deals with police power to effect arrest under Nigeria law. It states that police powers are covered under section 4 of Constitution of the Federal Republic of Nigeria 1999 as amended. Succinctly, the Nigerian police have powers to arrest suspects, but they must exercise this power of arrest, detention and interrogation in accordance with the law. Part 5 examines fully the facts<sup>17</sup> of George Floyd on the police use of force in making the arrest in comparison with the situation under Nigeria law. Finally, part 6 concludes that under Nigeria law, the use of force apply the police in making arrest is unreasonable and disproportionate as captioned in Floyd’ case.

## 2. Literature on Use of Force by Police

According to Schwartz, excessive police misconduct<sup>18</sup> costs taxpayers and impacts all stakeholders negatively. The practice of shooting unarmed or fleeing suspects will not be accepted or perceived as responsible policing by a broad segment<sup>19</sup> of a democratic society. Palmiotto opines that the general responsibility of the police is to preserve<sup>20</sup> peace and that to enforce the law carries with it the power to arrest and to use force, even deadly force”. In this sense, the use of force is permitted<sup>21</sup> and central to the work of police . Therefore, this power granted to police must be justified according to legal status, professional standards as well as public expectations based on appropriate moral conduct and ethical considerations. Miller, Blackeler and Alexandra states that considerably, it has also been argued that it is “morally obligatory<sup>22</sup>” for police officers to protect life, another aspect of respect for personal autonomy and preserve order, which often require the potential for force or its actual deployment. This dilemma of duties lead to a practical balance requiring that the “exercise of force needs to be ethically justified by the ends that it realizes”.

Harris and Worder on their part, say there is an immediate consequence<sup>23</sup> to victims, stakeholders and the general public when an incident of police misconduct occurs; resulting in police legitimacy and public cooperation being minimized According to Garner and Maxwell, some studies have found<sup>24</sup> that police are more likely to use<sup>25</sup> excessive force against people who are arguing, fighting, or defying their authority.

<sup>15</sup> W Terrill ‘Police use of Force and Suspect Resistance: The Micro Process of the Police-Citizen Encounter’ (2003) *Police Quarterly*, 6(1) 56.

<sup>16</sup> Words in bold are mine and its usage and meaning shall be so ascribed to in the context of this paper. It is obvious that use of force can lead to death. A good example is the use of force by the police in making arrest in United States which led to the death of George Floyd.

<sup>17</sup> George Floyd: ‘What happened in the Final Moments of his Life’ <<https://www.bbc.com/news/world-us-canada-52861726>> accessed January 12 2021. Mr.George Floyd was arrested by the Minnesota Police in United States on May 25,2000. The facts will be abridged in heading 6 as only relevant facts that pertain to this paper will be reported and the reasonableness of the use of force used by the police will be discussed fully in heading 5 of this paper. See *Tennessee v. Garner* (1985) 471 U.S. 1 and *Graham v. Connor* (1989) 490 U.S. 386 , two of the leading use of force cases decided by the United States Supreme court

<sup>18</sup> JC Schwartz, ‘Police Indemnification’ (2014) 89 *New York University Law Review* 885.

<sup>19</sup> *Ibid.*

<sup>20</sup>MJ Palmiotto *Police use of Force; Important Issues Facing Police and the Communities they Serve* (Taylor & Francis Group, CRC Press, 2017) 36.

<sup>21</sup> *Ibid.*

<sup>22</sup> S Millel, J Blackler and A Alexandra *Police Ethics* (2nd edition, Allen and Unwin, Australia,2000) 98.

<sup>23</sup> CJ Harris, RE Worden ‘The Effect of Sanctions on Police Misconduct. Crime and Delinquency’ (2014). 60(8), 1258-1288, doi: 10.1177/0011128712466933.

<sup>24</sup> J Garner, C Maxwell. ‘Study Links Use of Force to Suspect’s Back Talk’ (2003) *Law Enforcement News*. January 15-31.

<sup>25</sup> *Ibid.*

On their part, Alpert and Smith state that law enforcement officers are permitted<sup>26</sup> to use some degree of force in all citizens' contacts and all reasonable means may affect brutal and extreme active punching; kicking and restraining of subjects. Alpert and Smith say it is seen<sup>27</sup> as necessary to a particular situation that arrest while making arrests.

According to Holman, excessive force is that which would not be used under the circumstances by a reasonable<sup>28</sup> and prudent law enforcement officer. It is quite often this excessive force that causes<sup>29</sup> intense and expensive lawsuits for police agencies and officers. The term excessive can evolve<sup>30</sup> from verbal use; handcuffing inappropriately or too tightly; physical handling of subjects or prisoners' to . The use of force to effect an arrest is a lawful act. The principle of necessity holds that force used for law enforcement purposes must be necessary. Excessive force, which is often the basis<sup>31</sup> of lawsuits, is any force which exceeds that necessary to make a lawful arrest. Ross alludes to the fact that allegations of excessive force in policing have been cited<sup>32</sup> as one of the most frequently filed arrest claims against the police.

### 3. Principles Governing Use of Force

In so far as it governs use of force, the law of enforcement has four main components: necessity, proportionality, precaution and accountability.<sup>33</sup> Necessity and proportionality limits on how and when force can be lawfully used during police actions. The precautionary principle, on the other hand, extends<sup>34</sup> upstream and allows states to ensure that law enforcement activities are prepared and carried out in a manner that minimizes the risk of injury.

**3.1 The Principle of Necessity.** Article 3 of the Code of Conduct<sup>35</sup> of 1979 stipulates that police officers may use force only when strictly necessary. Consequently, force is not legally permissible in many instances and therefore non-violent means should be used to ensure compliance<sup>36</sup>. Non-violent means include<sup>37</sup> persuasion, negotiation, and mediation, backed by a law enforcement official's inherent authority acting extent, has to be for a legitimate purpose.

This means that even potentially violent suspects should be arrested rather than killed, whenever this is reasonably possible<sup>38</sup> and that force used 'must be in keeping with the level of resistance offered'<sup>39</sup>. Each use of force needs to be justified and justifiable. This also means that, when the need for force ends, no further force may be applied.

<sup>26</sup> GP Alpert, WC Smith 'How Reasonable is the Reasonable Man?: Police and Excessive Force' (1994). (vol. 85 ed.). Chicago 12.

<sup>27</sup> Alpert and Smith (n.24).

<sup>28</sup> L Holman 'Use of Force' in (ed.) (2005) *Campus Law Enforcement Journal* 33/36.

<sup>29</sup> Alpert and Smith (n.24).

<sup>30</sup> See Sandifer (n.1).

<sup>31</sup> *Ibid.*

<sup>32</sup> DL Ross 'An Assessment of *Graham vs. Connor*, Ten Years Later' 2002. (Vol. 25 ed.) Emerald, Greenville, North Carolina 87.

<sup>33</sup> See, e.g., Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christ of Heyns, A/HRC/26/36, 1 April 2014, 59–73.

<sup>34</sup> 'Topic Three - The General Principles of Use of Force in Law Enforcement' <<https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-4/key-issues/3--the-general-principles-of-use-of-force-in-law-enforcement.html>> accessed 5 January 2021.

<sup>35</sup> The 1979 Code of Conduct for Law Enforcement Officials was adopted by UN General Assembly Resolution 34/169 of 17 December 1979. In para 1 of the resolution, the Assembly decided to 'transmit it to Governments with the recommendation that favourable consideration be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials.

<sup>36</sup> As 1990 Basic Principle 4 were adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990. In its Resolution 45/166, adopted without a vote on 18 December 1990, the UN General Assembly welcomed the Basic Principles and invited governments to respect them. It provides: 'Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.'

<sup>37</sup> Note 32 above.

<sup>38</sup> NS Rodley, 'Integrity of the Person' in D. Moeckli et al (eds), *International Human Rights Law*, (Oxford University Press, 2010) 223.

<sup>39</sup> NS Rodley, M. Pollard 'The Treatment of Prisoners under International Law' (3rd edn, OUP, 2011) 499.

### 3.2 The Principle of Proportionality Application

The principle of proportionality to the use of force in law enforcement is much misunderstood<sup>40</sup>. It is sometimes confused<sup>41</sup> with the duty to use minimum necessary force (which, as described above, is part of the principle of necessity) or misinterpreted to mean that a law enforcement official is only entitled to use the same level and type of violence on a criminal suspect. In fact, proportionality sets a maximum on the force that might be used to achieve a specific legitimate objective<sup>42</sup>.

Proportionality comes into play<sup>43</sup> when the principle of necessity has been met, but it can make required force unconstitutional when operating in accordance with the principle of necessity. An example<sup>44</sup> of excessive use of force would be to use a weapon to hinder the escape of an unarmed thief.

If the circumstances are such that a police officer on the scene can only prevent a robber from escaping by using his or her weapon, the proportionality principle may intervene to make use of it.

### 3.3. The Duty of Precaution

The third principle serves as a bridge between the necessity and proportionality concepts. To save lives, all necessary precautions should be taken "upstream" to prevent circumstances where the decision to pull the trigger is made or to ensure that, if this occurs, the harm is contained as much as possible.<sup>45</sup> The need to use force may also be obviated, or at least minimized by equipping police forces appropriately with 'self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation<sup>46</sup>'

### 3.4 Principle of Accountability

States, law enforcement agencies and their officials should take responsibility for inappropriate<sup>47</sup> use of force and answer to their victims. States should set up "a system of internal and external checks and balances aimed at ensuring that law enforcement agencies carry out their duties properly and are held responsible if they fail to do so"<sup>48</sup>. Law enforcement agencies should be subjected to appropriate<sup>49</sup> control and oversight of their compliance with the legal and operational framework governing their functioning and be held accountable for the fulfilment of their duties, including with regards to their use of force.

## 4. Police use of Force to make Arrest Under Nigeria Law

*Section 4 of the Police Act* provides that police are employed in the prevention and detection of crime; in the apprehension of offenders; in the preservation of law and order; in the protection of property and in the enforcement of all the laws and regulations with which they are directly charged, and carry out military duties within or outside Nigeria, as requested by or under the authority while using its power to arrest criminals and suspects.

In *Dokubo Asari v. Federal Republic of Nigeria*,<sup>50</sup> the Supreme Court held that "the authority to apprehend suspected offenders are vested in the police and that no one can take it away. This general power is statutory."

<sup>40</sup>Use of Force in Law Enforcement and the Right to Life: The Role of the Human Rights Council' <[https://www.geneva-academy.ch/joomlatools-files/docman-files/in-brief6\\_WEB.pdf](https://www.geneva-academy.ch/joomlatools-files/docman-files/in-brief6_WEB.pdf)> accessed 7 February 2021.

<sup>41</sup> *Ibid.*

<sup>42</sup> Above note 31. Its meaning is therefore to be distinguished and differs from the notion of proportionality in other branches of international law, such as *jus ad bellum* or international humanitarian law.

<sup>43</sup> Note 32 above.

<sup>44</sup> *Ibid.*

<sup>45</sup> Note 38 above..

<sup>46</sup> 1990 Basic Principle 3.

<sup>47</sup> 'Resource Book on the Use Of Force and Firearms in Law Enforcement'. Criminal Justice Handbook Series Office of The United Nations High Commissioner for Human Rights United Nations Office on Drugs and Crime United Nations New York, 2017 <[https://www.unodc.org/documents/justice-and-prison-reform/17-03483\\_ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/17-03483_ebook.pdf)> accessed 24 January 2021.

<sup>48</sup> See' UNODC Resource Book on Police Accountability, Oversight and Integrity' 2011 at: <[http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability\\_Oversight\\_and\\_Integrity\\_10-57991\\_Ebook.pdf](http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability_Oversight_and_Integrity_10-57991_Ebook.pdf)> accessed 27 February 2021.

<sup>49</sup> *Ibid.*

<sup>50</sup> (2007) 5-6 SC 150.

In *Igweokolo v Akpoyibo and Ors*<sup>51</sup>, the Court of Appeal held that "in any event, the police have the statutory power to investigate, arrest, interrogate, search and detain any suspect". The Court further stated that the police must exercise the power of arrest, detention and interrogation in accordance with the law.

From the above, in the exercise of its power to arrest offenders and suspects, the Nigerian police enjoy both statutory and judicial powers. It must be stated, however, that the exercise of this power must be done properly and legally. The statutory granting of powers to police is not an absolute right to arrest people without caution. Where that power is not exercised legally, the Court will condemn it.

Suffice to state that, the 2015 Administration of Criminal Justice Act applicable in the Federal Capital Territory and other federal courts) also has provisions regulating the use of force by police officers. According to section 5 of the Act, a suspect or defendant should not be handcuffed, tied, or secured unless: (a) there is a legitimate risk of violence or an attempt to flee; (b) the restraint is deemed essential for the suspect or defendant's safety; or (c) by court order.

Section 73 CC provides that if at the expiry of a reasonable period after such declaration or after such proclamation has been forcefully stopped, twelve or more individuals shall continue to riotously gather, any

individual authorized to make proclamations, or any police officer, or any person authorised to make a proclamation, or any other person acting in aid of such person or police officer, may do all things necessary to disperse the persons so remaining assembled, or to apprehend them or any of them, and, if any person makes resistance, may use all reasonable force to overcome such resistance, and shall not be liable in any criminal or civil proceeding for having, by the use of such force, caused harm or death to any person.

In same vein, a long-standing Regulation of the Police Force 237, named principles of guidelines for the use of weapons thus: (a) When threatened when his life is in danger and there is no other way to save his life; (b) When protecting an individual who is attacked and assumes on reasonable grounds that he cannot otherwise shield the person who is attacked from death; (c) When required to stop rioters or keep them from being assaulted by the police (d) If he cannot, by any other way, arrest a person in lawful custody who escapes and take to flight to prevent re-arrest; if the crime of which he is charged or convicted is a criminal offence or misdemeanour; and (e) if he cannot, by any other method, arrest a person who takes to flight to avoid arrest, provided the offence is such that the accused may be punished with death or imprisonment for 7 years and above.

Concisely, the above stated conditions stated in section 73 and Regulation of the Police Force 237, must be adhered to police officers before they can use firearm in apprehending a suspect or defend themselves when their lives is in danger or being threatened.

According to Nwauzi and Ogon, one important aspect worthy of note<sup>52</sup> is the issue of the meaning and mode of arrest. Arrest is not defined in the statutes conferring power on the police to arrest. Arrest is the deprivation of a person of his/her liberty. It is the beginning of imprisonment<sup>53</sup>. It is the first step towards bringing to justice any person suspected to have or to about to commit crime<sup>54</sup>.

Any arrest carried out which is outside the ambit of the law is unlawful<sup>55</sup>. In Nigeria, the law requires that the individual that makes the arrest, that is, the police officer or any person who makes the arrest, will actually touch or confine the person to be charged, unless he makes submission to custody by word or action.<sup>56</sup> The practice whereby police officers drop invitation for an arrestee to report at a station on a named date is not a statutory requirement.

<sup>51</sup> (2017) LPELR-41882 (CA)

<sup>52</sup> LO Nwauzi, P Ogon 'A Critical Analysis of the Scope of Police Powers of Law Enforcement in Nigeria' (2018) *Cranbrook Law Review* 8(1) 26-41.

<sup>53</sup> *Christy v. Leachinsky* (1947) AC 573, 600.

<sup>54</sup> See GOS Amadi, 'Police Powers and the Rights of Citizens in the Nigeria Criminal Justice System' (Unpublished Ph.D. Thesis, Faculty of Law, University of Nigeria. 1993) 31.

<sup>55</sup> See *Ikonne v COP* (1986) 2 NSCC 1130,1145; *Edo v COP* (1962) All NWLR 92. See also the English case of *Dumbell v Roberts* (1944) 1 All ER 326 at 311 where the English Court of Appeal emphasized on the need to comply with statutory provisions in order to qualify an arrest as lawful.

<sup>56</sup> See section 4 Administration of Criminal Justice Act (ACJA) 2015.

Amadi has said that the procedure is a device to circumvent the law on arrest and thus illegal<sup>57</sup>. Nwauzi and Ogon state that, firstly, with due respect to the learned scholar, that opinion cannot be upheld since the invitation itself is not an indictment or summons, but simply a note to honour the arrested person, or he may not honour it as the procedure has not been given any legal backing. Secondly, it is only when the person invited appears before the police that he can be arrested formally and informed in writing within 24 hours (and in a language he/she understands) of the facts and grounds for his arrest.<sup>58</sup> The person arrested has the right to remain silent until he consults a lawyer or a person of his choice.<sup>59</sup> Such an arrested person must be taken to a Court within a reasonable time<sup>60</sup>. From the foregoing, it could be safely said<sup>61</sup> that in exercising their power of arrest and detention, the police must act not only legally but bonafide as to act otherwise would attract unpleasant consequences to the officer concerned and the NPF in general. This is more so when there<sup>62</sup> is a constitutional provision that: "any person unlawfully arrested or detained shall have the right to restitution and public apology from the competent authority or individual specified by law".<sup>63</sup>

The use of force arises whenever a policeman or other persons are making an arrest. Section 4 ACJA stipulates that the "any other person making the arrest cannot, in general, contact and confine the accused person's body, except there is submission to custody by word or action. Section 5 ACJA states that a person arrested shall only be handcuffed or restrained if there is reasonable apprehension of violence or an attempt to escape; or the restraint is considered necessary for the safety of the arrestee; or if the Court so orders<sup>64</sup>. Sections 34 and 35 CFRN demands that the person arrested be treated humanely having regards to his right to dignity of human person; and that the arrestee shall not be subjected to any form of torture, cruel or degrading treatment.<sup>65</sup> Therefore, any person who acts against the foregoing extant provision of the law is acting in contravention of the law. The Nigerian police should observe the United Nations Code of Conduct for law enforcement officials which stipulates that: "law enforcement officials may only use force where strictly necessary and to the extent required by the performance of their duty."<sup>66</sup>

Section 4 of the Criminal Code prohibits handcuffing, restraining, or subjecting a criminal suspect to undue restraint during an arrest, unless the Court orders it or there is a fair fear of abuse or an attempt to flee. In making an arrest, for instance, it is lawful for police officers to use such force as is reasonably necessary to overcome any force used in resisting arrest<sup>67</sup>.

It would appear that under the terms of this section, it may be justified to kill the person resisting arrest<sup>68</sup>. A police officer may also use reasonable force to prevent the escape of an arrested person, and, if the arrest is for felony, may kill that person if he cannot by any means other means effect an arrest.'

## 5 Comparative Analysis in Making Arrest Under Nigeria Law and Floyd's Conundrum.

The facts in Floyd's began with a report by a store employee to the police at 20:01 of a fake \$20 bill in Minnesota on the evening of 25 May, 2020. The employee said the man appeared 'drunk'. Two police officers arrived about 20:08.

<sup>57</sup> Amadi. (n.52)35

<sup>58</sup> *Ibid*

<sup>59</sup> *Ibid*. Section 35(2) CFRN 1999 as amended.

<sup>60</sup> *Ibid*. Section 35(4) states: reasonable time where there is Court competent Court is 24 hours or 48hours or such circumstance as the Court may consider to be reasonable

<sup>61</sup> *Ibid*.

<sup>62</sup> *Ibid*.

<sup>63</sup> See *Newswatch v. I.G.P* (unreported) but contained in Guardian Newspaper of 10-12-86, where the then I.G.P Etim Inyang had to tender a public apology to Newswatch Publication and it's four Editors of Dele Giwa, Ray Ekpu, Dan Agbese and Yakubu Mohammed as ordered by the Court

<sup>64</sup> See section 261 of the CC which stipulates that "it is lawful for a person who...in making arrest, and for any person lawfully assisting him; to use such force as may be reasonably necessary to overcome any force used in resisting such arrest"

<sup>65</sup> See section 8 ACJA..

<sup>66</sup> Article 3 of Code of Conduct for laws enforcement Officers was adopted by General Assembly Resolution 34/169 of 17th December 1979. Similarly, Article 5 provides that no Laws enforcement Officials may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement Official invoke superior orders or exceptional circumstances such as a justification of torture or other cruel, inhuman or degrading treatment or punishment . it seems very clear that the innovation introduced by the ACJA of 2015 in its section 13 is a domestication of the UN Resolution/Article 5 of Code of Conduct for law enforcement officers of 1979.

<sup>67</sup> Section 261 Criminal Code, section.171-173 Penal Code.

<sup>68</sup> A Aguda *Criminal Liability and The Procedure of The Southern States of Nigeria* (2nd ed., Sweet & Maxwell, 1974) 683.

One of the officers, Thomas Lane, took his weapon out and ordered Mr Floyd to show his hands and pulled him out of the car. Then, Floyd resisted being handcuffed. Once handcuffed, though, Floyd became compliant while Lane explained he was being arrested for 'passing counterfeit currency'. It was when officers tried to put Floyd in their squad car that a struggle ensued. Officer Chauvin arrived at the scene. At 20:19, Chauvin pulled Floyd away from the passenger side, causing him to fall to the ground. He lay there, face down, still in handcuffs. Chauvin placed his left knee between his head and neck. For seven minutes and 46 seconds. Floyd said more than 20 times he could not breathe as he was restrained. About six minutes into that period, Floyd became non-responsive. Yet the other officers did not move. At 20:27, Chauvin removed his knee from Floyd's neck. He was pronounced dead about an hour later.

It is axiomatic that the use of force by the police in making arrest on Floyd will be examined. The pertinent question that must be answered is whether the use of force applied by the police in making the arrest based on the surrounding circumstances was reasonable or otherwise? Section 4 of the Police Act gives the police power to make arrest and carry out other numerous functions. This is exemplified by the court in *Dokubo Asari v. Federal Republic of Nigeria*<sup>69</sup>. However, this power according to the court in *Igweokolo v Akpoyibo and Ors*<sup>70</sup> must be exercised by the police in accordance with the law. Section 5 of the ACJA states<sup>71</sup> the conditions that must be satisfied before use of force can be applied by the police in arresting a suspect. In tandem with the above, Police Force Order 237, titled rules of guidance in the use of firearms also states<sup>72</sup> the conditions that must be fulfilled before the use of force in the form of usage of firearm can be used by police in effecting arrest. The major reason for these provisions of the law and regulations is to check the powers of the police while combating crime and maintaining peace and order in the society. It is necessary also to check abuse and arbitrary use of force by the police while making arrest.

Candidly, from the above provisions of the law under section 4, section 5 of ACJA and Police Force Order 237 titled rules of guidance in the use of firearms, the use of force by the police would be justified in some circumstances especially in situations where the police officer's life is in great danger stated in section 73 CC. Applying the provisions stated above to the facts in Floyd's, we state unequivocally that the police officers lives who were involved in Floyd's conundrum were not in danger; Floyd was the only person arrested; he was not arrested alongside with group of persons; he was unarmed; didn't make attempt to escape and pleaded all through that he was going through excruciating pains. Floyd hands was put on handcuff and Officer Lane pulled out his gun at the scene of the incident is a clear violation of section 4 of the Police Act and section 8 ACJA. The use of force applied by the police in making arrest for all intents and purposes was deadly as it culminated in the death of Floyd over an alleged commission of a non-serious offence. The use of force applied was unreasonable; excessive and disproportionate based on the available facts at the scene of the incident. The action of the police in the use of force in this circumstances breached the provisions of the law as enunciated above.

Further more, Officer Chauvin placing his left knee between Floyd's head and neck for seven minutes and 46 seconds which eventually culminated to death is a flagrant abuse of the use of force in making arrest on Floyd and a clear violation on his right as enshrined under sections 34 and 35 of the CFRN 1999 as amended which deals with the right to dignity of the human person and right to personal liberty. His right to human dignity was degraded based on the clear provision of section 6 ACJA. Further, the use of force applied by the police in making the arrest breached the principle of necessity as the use of force was excessive as the force used was not necessary in the prevailing circumstances. The principle of proportionality was breached as the use of force applied was disproportionate to the alleged offence and the prevailing surrounding circumstances in the course of the arrest.

One wonders whether Floyd was fully armed with an AK 47 at the time the police arrived at the scene of the incident to make arrest which might have warranted such brute force to be meted on him by the police. The duty of precaution was thrown to the wind without caution by the police as the non-observance of this eventually led to fatality. The police officers should be made to account fully for the ignoble roles they played on the use of force applied in making arrest. Unambiguously, the use of force applied by the police in making the arrest on him was unreasonable and exercised malafide without restraint.

<sup>69</sup> *Dokubo Asari v. Federal Republic of Nigeria* (n.48).

<sup>70</sup> *Igweokolo v Akpoyibo and Ors* (n.49).

<sup>71</sup> See generally heading 4.

<sup>72</sup> *Ibid.*

## 6. Conclusion

Without prevarication, the police use of force in making arrest under Nigeria law and Floyd conundrum is bizarre, appalling, unreasonable and disproportionable in regards to the facts established in the course of during and after his arrest on 25 May 2020 which eventually led to his demise on that the same day.

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