



# **EFFECTIVE POLICE ACCOUNTABILITY: THE ROLE OF CORONER INQUIRIES**

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## **ABBREVIATIONS AND ACRONYMS**

1. ACHPR – African Charter on Human and Peoples Rights
2. CEDAW – Convention on the Elimination of All Forms of Discrimination against Women
3. CERD- International Convention on the Elimination of All Forms of Discrimination of Racial Discrimination
4. CRC- Convention on the Rights of the Child
5. ECHR - European Convention on Human Rights
6. ECtHR – European Court of Human Rights
7. HRC – Human Rights Committee
8. ICCPR- International Covenant on Civil and Political Rights
9. LAGOS ACT – Lagos State Coroners’ System Law of 2007
10. NORTHERN IRELAND ACT- Coroners Act (Northern Ireland) 1959
11. UDHR - Universal Declaration of Human Rights
12. UNCAT- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
13. UN Code of Conduct – United Nations Code of Conduct for Law Enforcement Officials

## EXECUTIVE SUMMARY

The Nigeria police exercise enormous powers and discretion in discharge of their constitutional duties given that they are the legally empowered public institution charged with the responsibility to maintain law and order. However, the constant abuse of these police powers particularly the excessive use of force, torture, extra-judicial killings and death in police custody are acts of gross human rights violations making police accountability an issue of topical concern in Nigeria. It should be noted that several mechanisms have been put in place to check these excess, but without yielding very positive results. It has therefore become imperative to question the adequacy and effectiveness of the existing mechanisms put in place to ensure that the powers vested in the police are used responsibly and hold them to account where they exercise these powers arbitrarily.

This thesis focuses on police accountability in Nigeria from the view point of coroner inquiries. The aim is to resolve the questions - what role do such inquiries play, and how do they serve as an effective mechanism for police accountability in Nigeria? These questions will be critically examined by a comparative analysis of the coroner systems in Lagos State, Nigeria and Northern Ireland with case studies, pointing out the strengths and weakness of such inquiries, with conclusions on their effectiveness as a measure to enhance police accountability and improve human rights protection in Nigeria. Finally some recommendations will be made on possible ways to address the potential weaknesses of coroner inquiries with a view to improving their effectiveness and contributions to police accountability in Nigeria.



## INTRODUCTION

It is generally accepted that accountability is an important element in the governance of nations and corporate entities.<sup>1</sup> Its relevance is hinged on the continuing need for checks and oversight on the exercise of power, in order to prevent it from becoming repressive and exploitative as well as ensuring that it is exercised in accordance with rules and in a transparent manner.<sup>2</sup>

The process of accountability involves:

*(a) establishing a set of relationships that detail who is accountable to whom, for what, both within and outside an organization; (b) utilizing methods and procedures through which an accounting is given to the responsible parties that standards of effort, effectiveness, and efficiency have been met; and (c) redistributing rewards and costs that accrue during the accounting process*<sup>3</sup>

All of these stems from accountability being a vital strand in the conception of democracy and the rule of law.<sup>4</sup> With the transition of governments to democracies,<sup>5</sup> the concept of

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<sup>1</sup> Etannibi E. O. Alemika “Police Accountability in Nigeria: Framework and Limitations” in “*Civilian Oversight and Accountability of Police in Nigeria*”, E. E. O. Alemika and I.C. Chukwuma. (eds), Centre for Law Enforcement Education and Police Service Commission, Lagos, Nigeria, 2003 p45

<sup>2</sup> Ibid pp 45 -46

<sup>3</sup> Harold H. Weissman “Accountability and Pseudo-Accountability: A Nonlinear Approach”, The Social Service Review, The University of Chicago Press Stable, Vol. 57, No. 2 (Jun., 1983), pp. 323-336

<sup>4</sup> Jose Antonio Cheibub and Adam Przeworski, “Democracy, Elections and Accountability for Economic Outcomes” in “*Democracy, Accountability and Representation*”, Adam Przeworski, (ed) et al, The Press Syndicate of the University of Cambridge, United Kingdom, 1999, p 222. In this article, they argue that “democracy is a political regime distinguished by accountability of the rulers to the ruled” and as a system, it enforces accountability; Philippe C. Schmitter & Terry Lynn Karl, in their article “What Democracy is ....And is Not” Journal of Democracy, The Johns Hopkins University Press, Vol 2, No. 3, 1991, pp. 75-88 (p75) they emphasized that one distinguishing factor between democratic and undemocratic rulers are the accountability practices employed by the former to hold them accountable for their actions; Etannibi E. O. Alemika (2003) pg 45 highlights the fact that “democracy and rule of law embody frameworks for accountability”.

<sup>5</sup> Samuel P. Huntington, “The Third Wave: Democratization in the Twentieth Century”, University of Oklahoma Press: Norman and London, 1991, pp 1-16; Philippe C. Schmitter & Terry Lynn Karl, “What Democracy is ....And is Not” (1991), p 75, both articles speak about the wave of transitions from authoritarian to democratic governance which swept across the world between 1970 -90s. They explain that the positive changes of democracy experienced across Europe particularly the freedom and individual liberty guaranteed to the citizens influenced the changes and democratization in Africa and the rest of the world within this period; Nathan W. Pino and Michael D. Wiatrowski,

accountability as earlier mentioned has become a concept government are expected to imbibe in addition to other democratic principles and values. According to Yusuf the “imperative of accountability has both normative and transformational underpinnings in the context of restoration”<sup>6</sup> of the rule of law and democracy.

Police institutions being part of the state in a democratic society, are also expected to guarantee accountability as well. Much has been written by scholars in support of this view. Thus, the general consensus is that the police in practicing democratic policing must operate according to the basic tenets of democratic governance, which includes the principles of accountability and transparency.<sup>7</sup>

In other words, accountability is an inherent feature of the police in a democratic society,<sup>8</sup> one of the hallmarks of democratic policing,<sup>9</sup> vital for promoting the rule of law, ensuring respect for human rights and encouraging transparency. Within this framework, the police is expected to meet the needs of the public<sup>10</sup> in the discharge their functions. Unfortunately, this is far from the reality as accountability (or lack of it) by the police remains one of the major challenges being

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“Prospects for Democratic Policing” (Part 1) in *“Democratic Policing in Transitional and Developing countries”* Nathan W. Pino, (ed) et al, Ashgate Publishing Limited, Hampshire, England, 2006, p 3

<sup>6</sup> Hakeem O. Yusuf, “Calling the Judiciary to Account for the Past: Transitional Justice and Judicial Accountability in Nigeria” Law & Policy, Vol. 30, No. 2, Baldy Center for Law and Social Policy, April 2008 p 1

<sup>7</sup> “Advancing democratic policing: the South African Experience” in “Police and Policing in Africa: Proceedings of a Regional Conference” CLEEN Foundation, Lagos, Nigeria, p 73 ; David Bruce and Rachel Neild, “The police that we want: a handbook for oversight of police in South Africa”, Johannesburg: CSVr and OSI 2005, available at [www.justiceinitiative.org](http://www.justiceinitiative.org); CHRI 2005 Report, “Police Accountability: Too Important to Neglect, Too Urgent to Delay”, Maja Daruwala and Clare Doube. (eds), Commonwealth Human Rights Initiative (2005) p12

<sup>8</sup> Amir M. and Einstein S. (eds), “Policing, Security and Democracy: Theory and Practice”, The Office of International Criminal Justice, Huntsville, USA, 2001 p ix

<sup>9</sup> CHRI 2005 Report, “Police Accountability: Too Important to Neglect, Too Urgent to Delay”, Maja Daruwala and Clare Doube. (eds), Commonwealth Human Rights Initiative (2005) p17

<sup>10</sup> Devika Prasad, “Control & Governance of the Police: Commonwealth Innovations in Policy and Practice” Paper presented at Commonwealth Human Rights Initiative National Roundtable on Police Reforms in New Delhi, India, December 2005, p1, available at <http://www.humanrightsinitiative.org>

grappled with by many countries. Police institutions in many countries have been described as being coercive, corrupt, unaccountable and performing poorly.<sup>11</sup>

The police are legally empowered to exercise wide powers and discretion in the pursuit of their legitimate functions. Exercising these powers (which are also often intrusive), not only creates tensions “between the police powers and [citizens’] liberty in a democratic society”<sup>12</sup>, but it can also endanger the rights and freedoms of the citizens if such powers are not regulated and checked.<sup>13</sup>

In Goldstein’s view,

*“the police specific form of authority – to arrest, to search, to detain and use force- is awesome in the degree to which it can be disruptive of freedom, invasive of privacy, and sudden and direct in its impact upon individuals.”*<sup>14</sup>

This view is further expounded by Marx in his study while attempting to justify the necessity for continued control and accountability of the police.<sup>15</sup> In his opinion, the exercise of police discretion to use force and deprive people of their liberty, however temporary, creates an avenue for potential abuse of police powers. He concludes that the possibility of abuse of police powers is ever present and it should not be ignored, even in a democratic society, thereby advocating the

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<sup>11</sup> CHRI 2005 Report, “Police Accountability: Too Important to Neglect, Too Urgent to Delay”, Maja Daruwala and Clare Doube. (eds), Commonwealth Human Rights Initiative (2005) pp2 – 10

<sup>12</sup> Etannibi E. O. Alemika, “Police Internal Control Systems in West Africa: An Introduction” in “*Police Internal Control Systems in West Africa*”, Etannibi E. O. Alemika and Innocent C.Chukwuma(eds), Malthouse Press Limited and CLEEN Foundation, Lagos, Nigeria, 2011, p1

<sup>13</sup> Etannibi E. O. Alemika “Police Accountability in Nigeria: Framework and Limitations” in “*Civilian Oversight and Accountability of Police in Nigeria*”, E. E. O. Alemika and I.C. Chukwuma. (eds), Centre for Law Enforcement Education and Police Service Commission, Lagos, Nigeria, 2003 p 47; Marx G.T, “Police and Democracy” in “*Policing, Security and Democracy*”, Amir. M and Einstein S.(eds), The Office of International Criminal Justice, Huntsville, USA, 2001 p 41

<sup>14</sup> H. Goldstein, “Policing a Free Society”, Cambridge: Ballinger Publishing Co, 1977 p1

<sup>15</sup> Marx G.T, “Police and Democracy” in “*Policing, Security and Democracy*”, Amir. M and Einstein S.(eds), The Office of International Criminal Justice, Huntsville, USA, 2001

need for vigilance over police activities to prevent or curtail abuse of police powers.<sup>16</sup> This clearly underscores the imperativeness of accountability. A position also firmly recognized and emphasized by the United Nations General Assembly in its resolution on the Code of Conduct for Law Enforcement Officials.<sup>17</sup>

This enduring tendency for abuse of police powers creates the need and constant “challenge to ‘guard the guardian’ or ‘police the police.’”<sup>18</sup> Consequently, different countries have adopted various strategies and mechanisms to hold the police accountable in conduct, performance and management. Some of these measures include “constitutional guarantees of fundamental rights which serves to limit the exercise of police power; statutory provisions on procedures for policing and law enforcement; civilian oversight bodies; judicial system, special investigation commissions”<sup>19</sup> and review boards. These mechanisms are in addition to internal control and disciplinary procedures already existing within the police institutions which have been queried to be insufficient and largely ineffective to hold the police accountable.<sup>20</sup> For instance, Miller points out that having “some form of civilian oversight is probably the best way to achieve legitimacy with the community, regardless of whether internal systems for dealing with police complaints might also be effective.”<sup>21</sup> Similarly, Silverman in discussing ‘public accountability’ emphasizes that the efforts of external monitoring agencies have an impact in ensuring that

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<sup>16</sup> Ibid p41; Etannibi E. O. Alemika “Police Accountability in Nigeria: Framework and Limitations” in “*Civilian Oversight and Accountability of Police in Nigeria*”, E. E. O. Alemika and I.C. Chukwuma. (eds), Centre for Law Enforcement Education and Police Service Commission, Lagos, Nigeria, 2003 p 47

<sup>17</sup> See generally UN General Assembly Resolution 34/169 adopting the Code of Conduct for Law Enforcement Officials

<sup>18</sup> Abimbola Ojomo, “Historical Reflections on Internal Control Systems in the Nigeria Police Force” in “*Enhancing Accountability Systems in the Nigeria Police Force: Conference Proceedings*”, Monograph Series. No 8, CLEEN Foundation, Lagos, Nigeria, 2010 p23

<sup>19</sup> Ibid

<sup>20</sup> Joel Miller, “Civilian Oversight of Policing: Lessons from the Literature” in “*Civilian Oversight and Accountability of Police in Nigeria*”, E.E.O. Alemika and I. C. Chukwuma (eds), Centre for Law Enforcement Education and Police Service Commission, Lagos, Nigeria, 2003

<sup>21</sup> Ibid, p13 – here he cites the argument put forward by Perez in “Common Sense about Police Review”

police institutions are accountable for performance, abuse, brutality and corruption which, in his opinion, exemplifies democratic and transparent policing.<sup>22</sup>

The necessity for accountability of the police is further heightened by the impact of international human rights law. All States and their agents, including the police are bound to adhere to and apply the universally recognized human rights norms and due process of law in the exercise of their powers.<sup>23</sup> As a result, the police is required to respect, protect and “uphold the human rights of all persons.”<sup>24</sup> This extends to reporting violations of the human rights norms and principles when they occur.<sup>25</sup>

However, the failure of the police to successfully adhere to the mandate to respect, protect and uphold the human rights of all persons is apparent in the complaints of human rights violations by the police lodged before human rights treaty monitoring bodies and other regional mechanisms set up to provide an avenue for victims of such violations to seek redress and hold to account their governments and its agents for failures to promote and protect their human rights.

Consequently, the failure of the police has led to the development of extensive human rights jurisprudence in relation to the exercise of police powers. For example, the European Court of human rights (ECtHR) responsible for monitoring the implementation of the European Convention on Human Rights (ECHR) provides substantial jurisprudence and case law on

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<sup>22</sup> Silverman E.B, “William Bratton’s Perspective on Democratic Policing” in “*Policing, Security and Democracy*”, Amir. M and Einstein S.(eds), The Office of International Criminal Justice, Huntsville, USA, 2001, p48; Marx G.T, “Police and Democracy” in “*Policing, Security and Democracy*”, Amir. M and Einstein S.(eds), The Office of International Criminal Justice, Huntsville, USA, 2001 pp 35 -36

<sup>23</sup> Office of the United Nations High Commissioner for Human Rights “Human Rights Standard and Practice for the Police: Expanded Pocket Book on Human Rights for the Police”, Professional Training Series, No. 5/Add.3, United Nations, New York and Geneva, 2004, p1

<sup>24</sup> Ibid, p2

<sup>25</sup> Ibid

violations of Article 2, (the right to life); Article 3, (prohibition of torture and inhuman or degrading treatment); and Article 5, (deprivation of liberty) of the Convention by security and law enforcement agents of State Parties to the Convention.<sup>26</sup> Similarly, the jurisprudence of the African Commission on Human and Peoples' Rights (though not as copious as the case law of the ECtHR) also reveal substantive efforts been made to hold to account States members that violate provisions of the African Charter on Human and Peoples' Rights through their security and law enforcement agents.<sup>27</sup> Also national courts play a role in ensuring the protection of human rights. They are expected to be the first channel for redress of human rights violations including those committed by the police.

From the foregoing, the development in human rights jurisprudence has increased the threshold and significance of police accountability.

Nigeria like many other countries in Africa has been severely criticized locally and internationally for its poor human rights record.<sup>28</sup> Much of the human rights violations have been linked to security and law enforcement agents particularly the Nigeria Police Force. The violations include police brutality and incivility towards citizens, excessive use of force,

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<sup>26</sup> A review of the number of complaints (per article) received by the European Court of Human Rights shows that in **2010** - Article 2( right to life - 54 complaints); Article 3(torture – 13 complaints; inhuman and degrading treatment - 217); Article 5(right to liberty and security - 315 complaints) and in **2009** – Article 2 (71 complaints); Article 3( torture -8 complaints; inhuman and degrading treatment - 190); Article 5(342 complaints) , the complaints include those made against the police as well as other security agents. available at <http://www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Statistics/Statistical+information+by+year/>,( last visited March, 27, 2011).

<sup>27</sup> See generally *Kajikabi & Others v. The Arab Republic of Egypt*(2007); *Article 19 v. The State of Eritrea*, No 275/2003(2007); *INTERIGHTS & EIPR( on behalf of Sabah & others) v. Egypt*(2006); *Centre for Advancement of Democracy, Social Justice, Conflict Resolution and Human Welfare v. Nigeria*, No 273/2003(2005)

<sup>28</sup> See generally, United Nations Universal Periodic Review on Nigeria at the 4<sup>th</sup> Session of the UPR, Geneva, 9 February,2009,availableat [lib.ohchr.org/HRBodies/UPR/Documents/Session4/NG/A\\_HRC\\_WG6\\_4\\_NGA\\_1\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/NG/A_HRC_WG6_4_NGA_1_E.pdf); Also see various annual reports on state of human rights in Nigeria by International Human Rights Organizations such as Human Rights Watch and Amnesty International

impunity, torture during criminal investigations, extra-judicial killings and death in police custody, some of which have been well documented.<sup>29</sup>

These violations persist in spite of the existence of several mechanisms and institutions within and outside of the Nigeria Police Force to ensure accountability such as the Police Service Commission, the National Assembly (Parliament), Ministry of Police Affairs, the Nigeria Police Force and the courts.<sup>30</sup> The UN Special Rapporteur on Extra-Judicial, Summary, or Arbitrary Executions, Philip Alston stated in his mission report to Nigeria in 2006 that he found a “largely unaccountable police force, a system that does little to deter police killings or deaths in custody, and impunity for those accused of associated misconduct.”<sup>31</sup> This, therefore prompts, the critical question: how effective are the existing accountability mechanisms and bodies in the prevention of human rights violation against police?

Police accountability is a broad and complex issue with considerably many dimensions for examination. As a result, this research focuses on the examination of Coroners inquiries and their adequacy to contribute to effective police accountability in Nigeria. This evaluation is imperative in the light of the recent reforms to the Coroners law of Lagos State, Nigeria and its subsequent application. For example, documents provided by Access to Justice,<sup>32</sup> a Nigerian based NGO, reveal that it currently has about 10 cases on human rights violations instituted

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<sup>29</sup> See generally “Criminal Force?: An Interim Report of the Nigeria Police Force”, A Progress Report by the Network on Police Reform in Nigeria (NOPRIN), 2007; “Rest in Pieces:” Police Torture and Deaths in Custody in Nigeria, by Human Rights Watch, 2005. These studies are further supported by frequent media reports of cases of police abuse.

<sup>30</sup> There is the Police Service Commission established under the 1999 Constitution charged with responsibility of external oversight of the police. Its mandate cover appointment, promotion and discipline for the police; For internal accountability mechanisms, the Nigeria police force have established public complaints bureau (PCB) and human rights desk to receive and deal with public complaints of human rights

<sup>31</sup> United Nations, Economic & Social Council, *Report of the Special Rapporteur, Mr. Phillip Alston, Mission to Nigeria*, E/CN.4/2006/53/Add.4, 7 January 2006, paragraph 100

<sup>32</sup> Human rights Non Governmental Organisation based in Lagos, Nigeria that works to provide access to justice and improve the criminal justice system in Nigeria.

against the Nigerian Police Force in the courts with half of the cases relating to coroner inquest matters where the deceased died in questionable circumstances.

Specifically, my research aims to examine the coroners' inquiries in Lagos State, Nigeria in order to answer the following key questions:

- (1) what role do such inquiries play?,
- (2) how do they serve as an effective mechanism to hold the Nigeria Police Force accountable in order to prevent human rights violations particularly extra-judicial killings and deaths in police custody?

In order to achieve my aim, the research methodology will mainly be a comparative analysis of the coroner systems in Lagos State, Nigeria and Northern Ireland, with concrete case studies.

For this purpose, Chapter one will briefly define and discuss the notion of accountability; review the existing legal framework for police accountability under international human rights law. This will extend to considering other regional and national legislations that guarantee police accountability in Nigeria and lastly discuss the justification for the obligation of accountability by the police from the standpoint of human rights. Chapter two is centered on the coroner systems in Lagos State, Nigeria in comparison with Northern Ireland. It includes an overview of the historical development of coroner system, legal provisions under the enabling law stipulating the mandate and scope of coroner inquiries in both jurisdictions. Chapter three focuses on the application of coroner inquiries in detail. Concrete case studies of coroner inquiries in Lagos State, Nigeria and Northern Ireland will also be presented in order to evaluate the effectiveness of the process in enhancing policing accountability as well as eliciting its strengths and weaknesses. Jurisprudence of the European Court of Human Rights will also be considered. The

concluding Chapter four will present my research conclusions, highlighting the potential strengths and weaknesses of the coroner inquiries to hold police accountable in Lagos state, Nigeria while borrowing ideas from the Northern Ireland system and jurisprudence of the European Human Rights Court. Recommendations on ways to remedy the weaknesses identified will be provided to improve the coroner system as a mechanism for police accountability and foster human rights protection in Nigeria.

## CHAPTER ONE

### THE CONCEPT OF ACCOUNTABILITY

The impact of accountability on police effectiveness, professionalism and overall cooperation with the public in the discharge of the arduous responsibility to maintain safety and security of the citizens and state is one that cannot be ignored. It not only strengthens and gives credibility to the police in its conduct, performance and management<sup>33</sup> but also legitimacy in the eyes of the public and a restoration of public trust.<sup>34</sup> This allows police to operate without recourse to the use of force.<sup>35</sup> Thus there is now a general consensus on the potential effectiveness of accountability<sup>36</sup> which has made it become very critical in the many reform efforts undertaken by police institutions across the globe.

However, there is no clear definition of ‘accountability’. To propose a precise definition would be a highly difficult task given the complex and broad nature of the concept.

The lack of a clear definition has resulted in different understandings and perspectives of the concept.<sup>37</sup> Consequently, several varieties of accountability are recognized.<sup>38</sup>

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<sup>33</sup> CHRI 2005 Report, “Police Accountability: Too Important to Neglect, Too Urgent to Delay”, Maja Daruwala and Clare Doube. (eds), Commonwealth Human Rights Initiative (2005) p13

<sup>34</sup> Andrew Goldsmith, “Police reform and the problem of trust” *Theoretical Criminology*, Vol. 9 2005, p447

<sup>35</sup> Neils Uildriks et.al, “Policing Post-Communist Societies: Police – Public Violence, Democratic Policing and Human Rights”, Hart Publishing, Oxford, 2003, p39

<sup>36</sup> Anneke Osse, “Understanding Policing: A Resource for Human Rights Activists”, Amnesty International the Netherlands, 2007, p183

<sup>37</sup> Jonathan A. Fox, “Civil Society and Accountability” in “*Accountability Politics: Power and Voice in Rural Mexico*”, (2007), Published to Oxford Scholarship Online (May, 2008), pp27-28, available at <http://www.oxfordscholarship.com/oso/public/content/politicalscience/9780199208852/toc.html>, last visited on March 11<sup>th</sup> 2011; Etannibi E. O. Alemika “Police Accountability in Nigeria: Framework and Limitations” in “*Civilian Oversight and Accountability of Police in Nigeria*”, E. E. O. Alemika and I.C. Chukwuma. (eds), Centre for Law Enforcement Education and Police Service Commission, Lagos, Nigeria, 2003 p45; Patricia J. Fredericksen et.al, “Accountability and the Use of Volunteer Officers in Public Safety Organizations”, *Public Performance and Management Review journal*, Vol. 27, June 2004, p122, the paper indicates that the differences in the understanding of accountability may be attributed to the “distinct perspectives of politics, administration ,and markets”.

## 1.1 Accountability Defined:

A few definitional attempts and interpretations have been made by different scholars in order to provide an understanding of the key elements of the concept.

Andreas Schedler, describes the term accountability “as expressing the continuing concern for checks and oversight, for surveillance and institutional constraint on the exercise of power.”<sup>39</sup>

He posits that the concept is hinged on two key pillars –

*answerability which denotes an obligation on public officials and agencies to provide information about their actions and decisions and to justify them to the public and the specialized accounting to monitor their conduct and enforcement which is the capacity of the accounting bodies to impose sanctions in cases of manifest misconduct in office.*<sup>40</sup>

Mark Boven, took his interpretation a step further, by emphasizing that accountability is tied to the notion of responsibility with regards to political, moral or legal liability for harmful results or particular behavior<sup>41</sup>

For Phillip Stenning, accountability “entails a set of normative prescriptions about who should be required to give accounts, to whom, how and about what.”<sup>42</sup>

From these definitions, accountability is deemed to impose duties, require answers for actions taken and impose sanctions in the cases of violation of laid down rules. It is clearly “a process that relates behavior to set standards of conduct.”<sup>43</sup>

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<sup>38</sup> Etannibi E.O. Alemkia (2003), p 46; Patricia J. Fredericksen et al (2004), pp 122 -123; Jonathan A. Fox (2007), pp27 -30

<sup>39</sup> Andreas Schedler, “Conceptualizing Accountability” in “*The Self-Restraining State – Power and Accountability in New Democracies*”, Andreas Schedler,(ed) et al, Lynne Rienner Publishers, Boulder, Colorado, 1999, p 13

<sup>40</sup> Ibid p 4

<sup>41</sup> Mark Bovens, “The Quest for Responsibility : Accountability and Citizenship in Complex Organisations”, Cambridge University Press, United Kingdom, 1998, p 25

<sup>42</sup> Phillip Stenning, “Accountability for Criminal Justice: Selected Essays”, University of Toronto Press Inc., 1995, p5

Literature proposes two broad levels of accountability namely -“vertical” and “horizontal” accountability. According to Fox, “vertical accountability refers to power relations between the state and its citizens [which is usually exercised through the process of elections], and horizontal accountability which refers to processes of institutional oversight, checks, and balances.”<sup>44</sup> This is also applicable to police institutions. This is important for the police because their empowerment by the state and the law to effectively carry out their duties creates the need for them to be accountable for how they exercise their powers to avoid abuse. The law controls how these powers are exercised to ensure their proper application and to avoid abuse either by the police itself or on behalf of the state.

Skolnick, buttresses this point by emphasizing that “the authority police wield should derive from public confidence in them and their accountability through the rule of law.”<sup>45</sup> Accordingly, the police are required to answer on how they exercises their powers in what they do and how they perform i.e. their performance, management and conduct of police officers with regards to the lawful, respectful and equal treatment of citizens ( and from a negative point of view: abuse of powers, police brutality, destruction of property etc).<sup>46</sup> This requirement is very important because the way police powers are exercised directly affects the “quality of life of individuals and the society in general.”<sup>47</sup>

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<sup>43</sup> Nathan W. Pino and Michael D. Wiatrowski, “Policing and Police Reform in the US: Adequate for Export?” in “*Democratic Policing in Transitional and Developing countries*” Nathan W. Pino, (ed) et al, Ashgate Publishing Limited, Hampshire, England, 2006, p56

<sup>44</sup> Jonathan A. Fox, “Civil Society and Accountability” in “*Accountability Politics: Power and Voice in Rural Mexico*”, (2007), Published to Oxford Scholarship Online (May, 2008), p30; Etannibi E. O. Alemika (2003), pp46 -47

<sup>45</sup> Jerome H. Skolnick et al, “Police Accountability and the Media” American Bar Foundation Research Journal Vol. 9, No.3, 1984, pp522-523

<sup>46</sup> Ibid p1

<sup>47</sup> See generally UN General Assembly Resolution 34/169 – Code of Conduct for Law Enforcement Officials

Consequently, some of the recognized varieties of accountability are applicable to the police both on the organizational and individual level.<sup>48</sup> Specifically these varieties include, *administrative accountability* which reviews the appropriateness and correctness of police procedures, *professional accountability* monitors observance of ethical standards of the police by the organization and its personnel, *legal accountability* oversees their observance of legal rules and lastly, *financial accountability* evaluates how state resources allocated to the police are used for the purpose of carrying out their mandates.<sup>49</sup> All of these are necessary for the effective performance and proper conduct of individual police officers.<sup>50</sup>

The horizontal mechanisms of accountability for the police can be broadly categorized into ‘internal’ and ‘external’ accountability mechanisms. Internal accountability is understood here to include internal administrative review procedures maintained by the police that are concerned with the investigation and review of public complaints against the police or by a police officer against a fellow officer.<sup>51</sup> It also covers police disciplinary procedures.<sup>52</sup> External accountability on the other hand as the name implies involves scrutiny from outside of the police such as the coroners’ inquiries. The discourse on police accountability has however created highly

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<sup>48</sup> Etannibi E. O. Alemika “Police Accountability in Nigeria: Framework and Limitations” in “*Civilian Oversight and Accountability of Police in Nigeria*”, E. E. O. Alemika and I.C. Chukwuma. (eds), Centre for Law Enforcement Education and Police Service Commission, Lagos, Nigeria, 2003 p 46

<sup>49</sup> Ibid.; Etannibi E. O. Alemika, “Enhancing Police Accountability in Nigeria: The Missing Links” in “*Enhancing Police Accountability Systems in Nigeria Police Force: Conference Proceedings*”, CLEEN Foundation, Lagos, Nigeria, Monograph Series No.8, 2010, p 9

<sup>50</sup> Samuel Walker, “Police Accountability: Current Issues and Research Needs” Paper presented at the National Institute of Justice (NIJ) Policing Research Workshop: Planning for the Future, Washington, DC, November 28 – 29, 2006; Etannibi E. O. Alemika, “Enhancing Police Accountability in Nigeria: The Missing Links” in “*Enhancing Police Accountability Systems in Nigeria Police Force: Conference Proceedings*”, CLEEN Foundation, Lagos, Nigeria, Monograph Series No.8, 2010, pp 8- 9

<sup>51</sup> Etannibi E. O. Alemika “Police Accountability in Nigeria: Framework and Limitations” in “*Civilian Oversight and Accountability of Police in Nigeria*”, E. E. O. Alemika and I.C. Chukwuma. (eds), Centre for Law Enforcement Education and Police Service Commission, Lagos, Nigeria, 2003, p 48

<sup>52</sup> Innocent Chukwuma, “Internal Disciplinary Systems as Important Complement To External Oversight of Police in Nigeria” in *Civilian Oversight and Accountability of Police in Nigeria*”, E. E. O. Alemika and I.C. Chukwuma. (eds), Centre for Law Enforcement Education and Police Service Commission, Lagos, Nigeria, 2003, p 60

contentious debates amongst scholars as to the effectiveness of the two systems of accountability.<sup>53</sup>

As earlier mentioned, several varieties of accountability have been recognized and some of these are applicable to the police both on the organizational and individual level.<sup>54</sup> The varieties applicable to the police include *administrative accountability* which reviews the appropriateness and correctness of police procedures, *professional accountability* which monitors observance of ethical standards of the police by the organization and its personnel, *legal accountability* which oversees their observance of legal rules and lastly, *financial accountability* which evaluates how state resources allocated to the police are used for the purpose of carrying out their mandates.<sup>55</sup> All of these are necessary for the effective performance and proper conduct of individual police officers.<sup>56</sup>

Although the above mentioned varieties of accountability are all important to police institutions in a democratic society, this study focuses specifically on legal accountability of the police in relation to police conduct through an examination of coroners' inquiries into deaths which occur in questionable circumstances involving the police.

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<sup>53</sup> Ibid, p59; see also Swati Mehta "Police Complaint Agencies in the Commonwealth" presented at the Commonwealth Human Rights Initiative's National Roundtable on Police Reforms in New Delhi, India, December 2005 p1; Tim Prenzler, "Civilian Oversight of the Police: A Test of Capture Theory" British Journal of Criminology, Vol. 40, 2000; Joel Miller, "Civilian Oversight of Policing: Lessons from the Literature" in "*Civilian Oversight and Accountability of Police in Nigeria*", E.E.O. Alemika and I. C. Chukwuma (eds), Centre for Law Enforcement Education and Police Service Commission, Lagos, Nigeria, 2003 p13

<sup>54</sup> Etannibi E. O. Alemika "Police Accountability in Nigeria: Framework and Limitations" in "*Civilian Oversight and Accountability of Police in Nigeria*", E. E. O. Alemika and I.C. Chukwuma. (eds), Centre for Law Enforcement Education and Police Service Commission, Lagos, Nigeria, 2003 p 46

<sup>55</sup> Ibid.; Etannibi E. O. Alemika, "Enhancing Police Accountability in Nigeria: The Missing Links" in "*Enhancing Police Accountability Systems in Nigeria Police Force: Conference Proceedings*", CLEEN Foundation, Lagos, Nigeria, Monograph Series No.8, 2010, p 9

<sup>56</sup> Samuel Walker, "Police Accountability: Current Issues and Research Needs" Paper presented at the National Institute of Justice (NIJ) Policing Research Workshop: Planning for the Future, Washington, DC, November 28 – 29, 2006; Etannibi E. O. Alemika, "Enhancing Police Accountability in Nigeria: The Missing Links" in "*Enhancing Police Accountability Systems in Nigeria Police Force: Conference Proceedings*", CLEEN Foundation, Lagos, Nigeria, Monograph Series No.8, 2010, pp 8- 9

## **1.2 Legal Framework and Principles for Police Accountability under Human Rights Law.**

Democratic policing requires the police to “operate under the rule of law.”<sup>57</sup> This indicates that the police have a clear obligation to respect the law and comply with its dictates in their actions and activities.<sup>58</sup> Accordingly where the police act ‘ultra vires’, misuse their lawfully entrusted powers or “engage in unlawful, criminal or corrupt acts”<sup>59</sup> they are to be held accountable to the law for their conduct and/or actions.<sup>60</sup> This view is stressed and shared by many scholars including the renowned legal luminary Lord Denning, M.R. According to Denning, the police are “answerable to the law and law alone.”<sup>61</sup> For Bayley, he points out “accountability to the law” as one of the cardinal norms that all democratic police forces must adhere to.<sup>62</sup> Furthermore, the recognition by the UN General Assembly “that the effective maintenance of ethical standards among law enforcement officials depends on the existence of a well-conceived, popularly accepted and humane system of laws”<sup>63</sup> sums up the underlying importance of law to police and policing.

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<sup>57</sup> David Bruce and Rachel Neild, “The police that we want: a handbook for oversight of police in South Africa”, Johannesburg: CSVr and OSI 2005, p 37 available at [www.justiceinitiative.org](http://www.justiceinitiative.org); Neils Uildriks et.al, “Policing Post-Communist Societies: Police – Public Violence, Democratic Policing and Human Rights”, Hart Publishing, Oxford, 2003, p33; Marx G.T, “Police and Democracy” in “Policing, Security and Democracy”, Amir. M and Einstein S.(eds), The Office of International Criminal Justice, Huntsville, USA, 2001 p 36; David Bayley, “Democratizing the Police Abroad: What to Do and How to do it”, National Institute of Justice, Office of Justice Programs, U.S. Department of Justice: Washington D.C.p14,available at <https://www.ncjrs.gov/pdffiles1/nij/188742.pdf> (last visited 21 October, 2011) - in this paper the author emphasizes that “police actions in a democracy must ... be governed by the rule of law rather than by directions given arbitrarily by particular regimes and their members.”

<sup>58</sup> Anneke Osse, “Understanding Policing: A Resource for Human Rights Activists”, Amnesty International the Netherlands, 2007, p190

<sup>59</sup> Edetaen Ojo “The Role of the Media In Ensuring Police Accountability in Nigeria” in “*Civilian Oversight and Accountability of Police in Nigeria*”, E. E. O. Alemika and I.C. Chukwuma. (eds), Centre for Law Enforcement Education and Police Service Commission, Lagos, Nigeria, 2003, p101

<sup>60</sup> Ibid; Anneke Osse, “Understanding Policing: A Resource for Human Rights Activists”, Amnesty International the Netherlands, 2007, p190

<sup>61</sup> Judgment delivered by Lord Denning in *R v. Metropolitan Police Commissioner ex parte Blackburn* ( No 2),1968, 2 All E.R., 319

<sup>62</sup> See generally David H. Bayley, “Changing the Guard: Developing Democratic Police Abroad, Oxford University Press, New York, 2005

<sup>63</sup> See UN General Assembly Resolution 34/169 adopting the Code of Conduct for Law Enforcement Officials

The obligation of the police to respect and observe the due process of law is further enhanced by the potential threat abuse of police powers could have on human rights. This intensifies the necessity for human rights to be protected by the rule of law.<sup>64</sup> Segun underscores this point by her assertion that “the protection of human rights is fundamental to genuine and lasting law and order.”<sup>65</sup> The assertion is hinged on the UN Universal Declaration of Human Rights which states:

*“it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”*<sup>66</sup>

Taking a cue from the above with regards to the police and to ensure the protection of human rights Walker maintains that

*“the state must develop a framework of governance which both serves to enable and constrain the police effectively and to constrain the state’s own capacity to interfere unduly on its own behalf”*<sup>67</sup>

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<sup>64</sup> See generally Preamble of the Universal Declaration of Human Rights, 1948; United Nations Civilian Police Handbook, International Training Centre of ILO, Turin, Italy, Annex D5

<sup>65</sup> M. E. Segun, “Broad Overview of Human Rights”, Presentation used for series of training workshops on Human rights and Conflict resolution for Police officers of the Criminal Investigation Department(CID) of the Lagos State Police Command organized by CLEEN Foundation and National Human Rights Commission, September 2009 – March 2010

<sup>66</sup> Ibid, Preamble of the Universal Declaration of Human Rights, 1948

<sup>67</sup> Neil Walker, “Policing in a Changing Constitutional Order”, London: Sweet and Maxwell, 2000 p6; other scholars and writers hold similar views. For example G.P. Joshi in his paper “Controlling the Police: An Analysis of the Police Act of the Commonwealth Countries” International Police Executive Symposium(IPES) Working Paper N 13, Oct 2007, p4 points out two ideas relating to the exercise of police powers, which have grown simultaneously in the democratic world. First is the idea that the immense powers of the police must be controlled to prevent their misuse. Secondly, the idea that controlling the police itself becomes a source of tremendous power that can be abused to serve partisan interests; Marx G.T, “Police and Democracy” in “Policing, Security and Democracy”, Amir. M and Einstein S.(eds), The Office of International Criminal Justice, Huntsville, USA, 2001 p 36, the author reiterates Joshi’s position on ideas of the exercise of police powers

Such a framework must include effective systems of accountability for the police that operate “within a supportive legislative and policy framework.”<sup>68</sup> Accordingly, Melissa Ziegler et al sum up this view with their observations that

*“...accountability in the police force requires the operation of both internal and external control mechanisms that ensure that the police force is performing its job in a manner that respects the rule of law and the civil rights of the people it is to protect...Accountability is ensured when the police are transparent, abide by the rule of law and respect civil rights.”*<sup>69</sup>

The protection of human rights is guaranteed under both international and national law.<sup>70</sup> The police acting as agents of the state are bound to adhere to national law.<sup>71</sup> By voluntarily ratifying international treaties under international law, states and their agents (including the police) create legal obligations upon themselves to be bound by such treaties.<sup>72</sup> To guard against human rights violations and to ensure that the police perform effectively, international human rights law places limit on police powers through very comprehensive legal and normative frameworks which set up clear standards for law enforcement activities including the conduct of law enforcement

<sup>68</sup> Anneke Osse, “Understanding Policing: A Resource for Human Rights Activists”, Amnesty International the Netherlands, 2007, p189; See also CHRI 2005 Report, “Police Accountability: Too Important to Neglect, Too Urgent to Delay”, Maja Daruwala and Clare Doube. (eds), Commonwealth Human Rights Initiative (2005)

<sup>69</sup> Melissa Ziegler et al, “From Peace to Governance: Police Reform and the International Community”, Washington D.C: Washington Office on Latin America, 2002

<sup>70</sup> Neils Uildriks et.al, “Policing Post-Communist Societies: Police – Public Violence, Democratic Policing and Human Rights”, Hart Publishing, Oxford, 2003, p35; here the author highlights that with the incorporation of human rights standards in both national and international laws states and the police “can be held legally accountable” under both international and national law; Virginia A. Leary et al, “An Introductory Guide to Human Rights Law And Humanitarian Law”, The Nadesan Centre, Colombo, 1993, p5

<sup>71</sup> Virginia A. Leary et al, “An Introductory Guide to Human Rights Law And Humanitarian Law”, The Nadesan Centre, Colombo, 1993 pp 79- 80- here the author stresses that police readily comply with national laws which they are required to maintain and also binds them than international laws which they unfamiliar with.

<sup>72</sup> This is in consonance with the universally recognized and accepted international law principles of ‘free consent and of good faith’ and the ‘pacta sunt servanda rule’

officials.<sup>73</sup> These legal frameworks are founded on the universally recognized human rights norms and principles which the police in a democratic society are obliged to uphold and protect.<sup>74</sup> Considered as “a legitimate subject for international law”<sup>75</sup> binding on states and their agents, police institutions are therefore obligated “to know and apply international human rights standards”<sup>76</sup> when exercising their police powers particularly in the areas of arrest, detention and use of force.<sup>77</sup> Conversely, failure of the police to adhere to and apply human rights standards results in violation of the rights for which they are to be held accountable under human rights law<sup>78</sup>. Therefore, International human rights standards play a crucial role in policing and law enforcement.<sup>79</sup>

A central argument that has been put forward by many experts in the field of policing and human rights, is that to ensure police compliance with human rights standards there should be a wide range of effective accountability measures<sup>80</sup> including the law.<sup>81</sup>

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<sup>73</sup> United Nations Code of Conduct for Law Enforcement Officials; Basic Principles on the Use of Force and Firearms; Standard Minimum Rules for the Treatment of Prisoners; Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Minimum Rules for the Administration of Juveniles Justice

<sup>74</sup> Article 2 of the UN Code of Conduct for Law Enforcement Officials 1979 expressly provides that: “In the Performance of their duty, Law enforcement officials shall respect and protect human dignity and maintain uphold the human rights of all persons.”

<sup>75</sup> See “United Nations International Human Rights Standards for Law Enforcement: A Pocket Book on Human Rights for the Police”, United Nations High Commissioner for Human Rights, Centre for Human Rights, p3

<sup>76</sup> Ibid

<sup>77</sup> See generally the United Nations Code of Conduct for Law Enforcement Officials; Basic Principles on the Use of Force and Firearms; Amnesty International, “10 Basic Human Rights Standards for Law Enforcement Officials”, Amnesty International, International Secretariat, London, 1998

<sup>78</sup> Such failure to apply human rights standards is a violation of both national and international legal obligations because states and their agents such as the police are duty bound in law to protect the rights all persons within their jurisdiction. This is by virtue of the fact that major human rights principles have been incorporated into both national and international laws.

<sup>79</sup> Cephas Lumina, “Police Accountability and Policing Oversight Mechanisms in the Southern African Development Community”, African Security Review 15.1, 2006, p 96 available at [http://www.iss.co.za/uploads/15\\_1ELUMINA.PDF](http://www.iss.co.za/uploads/15_1ELUMINA.PDF) (last visited 21 October, 2011)

<sup>80</sup> Anneke Osse, “Understanding Policing: A Resource for Human Rights Activists”, Amnesty International the Netherlands, 2007, p183;188

<sup>81</sup> Ibid p188

The legal standards for ensuring police accountability can be found in both national and international human rights law. Although under the international legal framework, accountability is not explicitly mentioned in the international human rights treaties, the rights contained in the treaties (such as the rights to life, liberty, privacy, freedom of assembly and prohibition of torture etc) are “affected by the lawful exercise of police powers”<sup>82</sup> and as such it is expressly provided that there must be the right to effective remedy accessible to any person where the rights have been violated.<sup>83</sup> This requirement to provide remedy derives from the practice of accountability.<sup>84</sup>

Article 8 of the Universal Declaration of Human Rights(UDHR) stipulates that:

*Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law*<sup>85</sup>

The International Covenant on Civil and Political Rights (ICCPR) further elaborates on this provision in Article 2(3) wherein it states that:

*Each State Party to the present Covenant undertakes:*

*(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*

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<sup>82</sup> Cephas Lumina, “Police Accountability and Policing Oversight Mechanisms in the Southern African Development Community”, African Security Review 15.1, 2006, p 96 available at [http://www.iss.co.za/uploads/15\\_1ELUMINA.PDF](http://www.iss.co.za/uploads/15_1ELUMINA.PDF)( last visited 21 October, 2011)

<sup>83</sup> *ibid*, p191

<sup>84</sup> *Ibid* p 185

<sup>85</sup> The Universal Declaration of Human Rights, (UDHR) adopted 10 December 1948. The declaration by virtue of its influence and wide acceptance is now considered as an instrument that creates legal obligations under international law

*(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities for judicial remedies;*

*(c) To ensure that the competent authorities shall enforce such remedies when granted.*<sup>86</sup>

The interpretation of these provisions in Nowak et al's view is that:

*"The very idea of a right means that somebody has a claim against somebody else, and the other one has a duty to meet this claim. If the duty-bearer does not live up to his or her obligations, the rights-holder has a remedy to hold the duty-bearer accountable. Otherwise, the right would be meaningless. A remedy means that the rights-holder can sue the duty-bearer before an independent neutral body, which has the power to decide in a binding manner whether or not the duty-bearer violated his or her obligations. Such an independent neutral body is usually called a court. If the court finds that the duty-bearer violated certain obligations, it has the power to order the duty-bearer to provide reparation to the rights-holder."*<sup>87</sup>

The import of the above provisions for the police is that as duty bearers charged with the responsibility to uphold and protect human rights, they must be accountable for their actions or conduct where a right is alleged to have been violated as a result of police misconduct or abuse of power. This guarantee is only possible when there is effective accountability which requires having in place speedy and effective channels for complaints and redress accessible to the public

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<sup>86</sup> International Covenant on Civil and Political Rights, (ICCPR) adopted 16 December 1966, entered into force, 23 March, 1976

<sup>87</sup> Manfred Nowak and Julia Kozma, "A World Court of Human Rights", June 2009, p15, available at [www.udhr60.ch/report/hrCourt-Nowak0609.pdf](http://www.udhr60.ch/report/hrCourt-Nowak0609.pdf) (last visited on 11 October, 2011)

in cases of complaints of “police abuse and/or negligence”<sup>88</sup> This is considered a fundamental component for effective police accountability.<sup>89</sup>

In addition to these legally binding general international human rights treaties, there are other binding treaties which deal with specific human rights which are also relevant to the police “both in terms of prohibited police behavior and desirable priorities.”<sup>90</sup> Some of these treaties are the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>91</sup>, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>92</sup>, Convention on the Rights of the Child (CRC)<sup>93</sup>, International Convention on the Elimination of All Forms of Discrimination of Racial Discrimination (CERD)<sup>94</sup>, International Convention for the Protection of All Persons from Enforced Disappearance.<sup>95</sup> These treaties require accountability when there are violations.

Supplementing these international human rights treaties are a number of international declarations, principles and guidelines. Although these instruments are not legally binding they are relevant to the police in terms of setting out important requirements for the performance and conduct of police officers. However for the purpose of this study, the focus will be restricted to the United Nations Code of Conduct for Law Enforcement Officials (UN Code of Conduct),

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<sup>88</sup> Anneke Osse, “Understanding Policing: A Resource for Human Rights Activists”, Amnesty International the Netherlands, 2007, p 185; CHRI 2009 Report, “Complaints Authorities :Police Accountability in Action”, Devika Prasad and Navaz Kotwal, Commonwealth Human Rights Initiative (2009), p9 – the report highlights that the availability of sufficient, accessible and effective complaint channels for the public in cases of police misconduct is essential for police accountability in a truly democratic state.

<sup>89</sup> United Nations Office on Drugs and Crime (UNODC) “Handbook on Police Accountability, Oversight and Integrity”, United Nations, New York, 2011, p33

<sup>90</sup> Ibid p21

<sup>91</sup> UNCAT adopted 10 December 1984, entered into force 26 June 1987

<sup>92</sup> CEDAW adopted 18 December 1979, entered into force 22 December 1981

<sup>93</sup> CRC adopted 20 November 1989, entered into force 2 September 1990

<sup>94</sup> CERD adopted 21 December 1965, entered into force 4 January 1969

<sup>95</sup> This treaty is yet to enter into force as at 6 August 2010

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles on Force and Firearms) and Principles on the Effective Prevention and Investigation of Extra- legal, Arbitrary and Summary Executions which contain provisions for police accountability.

The Code of Conduct for Law Enforcement Officials specifically emphasizes accountability of the police at various levels – to community, law as well as establishing internal controls to ensure discipline and proper monitoring.

The Code states:

*“ (a) That, like all agencies of the criminal justice system, every law enforcement agency should be representative of and responsive and accountable to the community as a whole;*

*(b) That the effective maintenance of ethical standards among law enforcement officials depends on the existence of a well-conceived, popularly accepted and humane system of laws;*

*(d) That every law enforcement agency... should be held to the duty of disciplining itself in complete conformity with the principles and standards herein provided and that the actions of law enforcement officials should be responsive to public scrutiny, whether exercised by a review board, a ministry, a procuracy, the judiciary, an ombudsman, a citizens' committee or any combination thereof, or any other reviewing agency”<sup>96</sup>*

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<sup>96</sup> See preambular paragraph 8(a)(b) and (d), United Nations General Assembly Resolution 34/169 on the Code of Conduct for Law Enforcement Officials adopted 17 December 1979

Additionally, Article 8 imposes an obligation on law enforcement officials to report violations of the code which protect human rights to internal control and oversight systems maintained by the police or external agencies “vested with reviewing or remedial power”<sup>97</sup> for the police where there are no other available or effective remedies. This may also extend to the use of the mass media as a measure of last resort.<sup>98</sup> This framework further guarantees and ensures police accountability.

Considering that the police are legally empowered to use force and to exercise wide discretionary powers on when to use force and the appropriate measure of force to be applied, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles on Force and Firearms) outlines the rights and duties of police officers to use force and firearms in order to ensure that it is properly used in ways that respect human rights.<sup>99</sup> The legal obligations are supported with provisions for accountability where human rights violations occur as a result of the use of force. Specifically principles 22 – 26 stipulate that

*“Governments and law enforcement agencies ...shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control”<sup>100</sup>*

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<sup>97</sup> Ibid, Article 8

<sup>98</sup> Ibid, commentary to Article 8

<sup>99</sup> See generally the Basic Principles on the Use of Force and Firearms adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. The principles supplement the United Nations Code of Conduct for Law Enforcement Officials.

<sup>100</sup> Principle 22

*Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process<sup>101</sup>*

*... superior officers [should be] held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.<sup>102</sup>*

*... no criminal or disciplinary sanction [should be] imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.<sup>103</sup>*

*Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.<sup>104</sup>*

There are also other legal frameworks at the regional levels such as the European Convention on Human Rights, the European Code of Police Ethics, African Charter on Human and Peoples Rights etc which contain provisions relevant to the police and police accountability. Also, governments incorporate or are obligated to incorporate the provisions of these international and

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<sup>101</sup> Principle 23

<sup>102</sup> Principle 24

<sup>103</sup> Principle 25

<sup>104</sup> Principle 26

regional human rights instruments into their national legal systems thus making them part of their laws to be observed and applied by law enforcement officials. In Nigeria the legal framework on police accountability derives from the Constitution<sup>105</sup>, Police Act and regulations<sup>106</sup>, Criminal Procedure Act and Criminal Procedure Code (applicable in southern and northern Nigeria respectively)<sup>107</sup> and Coroners' laws of the different states of Nigeria.

### ***1.3 Human Rights Justification for the Obligation of Police Accountability***

The collective international human rights treaties create legal obligations on state parties “to respect, protect, promote and fulfill human rights.”<sup>108</sup> Article 2(1) of ICCPR requires all state parties “to respect and to ensure to all individual within its territory and subject to its jurisdiction the rights” contained therein.<sup>109</sup> This extends to enacting laws and adoption of other measures and procedures that “may be necessary to give effect to the rights.”<sup>110</sup> An interpretation of these legal obligations creates not only positive obligations on states to protect these rights from abuse and ensure their full enjoyment and realization by taking concrete steps but also a negative obligation to restrain itself and its agents from curtailing the enjoyment and realization of the human rights. For the police, this means that they are to uphold and protect human rights and must only interfere with the enjoyment of the rights to the extent approved by law.<sup>111</sup>

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<sup>105</sup> Constitution of the Federal Republic of Nigeria 1990

<sup>106</sup> The Police Regulations contains a code of conduct which stipulates how police powers should be exercised together with the procedure to investigate complaints against police misconduct and discipline

<sup>107</sup> The Criminal Procedure Act applies in the 17 states of southern Nigeria while the Criminal Procedure Code applies to the 19 states of northern Nigeria and the Federal Capital Territory of Abuja

<sup>108</sup> This creates both positive and negative obligations on State parties in the observance of their human rights obligations

<sup>109</sup> Article 2(1) of ICCPR, 1966

<sup>110</sup> Article 2(2) of ICCPR, 1966

<sup>111</sup> See Article 29, UDHR- this provision highlights the linkage between protection of human rights and maintenance of law and order by the police

It is generally accepted that state powers are exercised through their agents notably amongst them is the police.<sup>112</sup> The implication of this is that, states' observance or repression of human rights (as the case may be) is realized through its police or security agents. Marx underscored this point in his statement when he said "it is ironic that police are both a major support and major threat to a democratic society."<sup>113</sup> Furthermore, Mwalimu argued that there is no "distinction between police behavior and state power"<sup>114</sup> and also that public perception of government functions is affected by the perception of the police as an instrument of state. Thus "public perception of rights violation undermines the popularity of a government."<sup>115</sup> Jones viewpoint appears to sum up these arguments. In his view, "a crucial indicator of the nature of [a society's] political and social order is the way it regulates and controls the organization and powers of the police."<sup>116</sup>

In other words, for states to be perceived to meet their international human rights obligations where the police is concerned, they must strictly monitor and oversee police actions to ensure that they comply with human rights standards. This includes the provision of adequate and effective channels for complaints and redress where there are grievances about police misconduct resulting in human rights violations. This will clearly be in line with state parties'

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<sup>112</sup> Charles Mwalimu, "The Nigerian Legal System: Private Law", Peter Lang Publishing Incorporated, New York, USA, Vol. 2, 2009; Gareth Newham, "Towards a New Approach: Monitoring Metropolitan Police Departments by the Gauteng Department for Community Safety", Research report written for the Centre for the Study of Violence and Reconciliation, July 2006

<sup>113</sup> Marx G.T, "Police and Democracy" in "*Policing, security and Democracy*", Amir. M and Einstein S.(eds), The office of International Criminal Justice, Huntsville, USA, 2001, p36, paragraph e

<sup>114</sup> Charles Mwalimu, "The Nigerian Legal System: Private Law", Peter Lang Publishing Incorporated, New York, USA, Vol. 2, 2009, pg 857

<sup>115</sup> Ibid

<sup>116</sup> Trevor Jones, "The Accountability of Policing" in "*Handbook of Policing*", Tim Newburn (ed), Second Edition, Willan Publishing, Culllompston, Devon, UK, 2008 p695

obligation to provide effective remedy where there are such allegations of human rights violations.<sup>117</sup>

Additionally, the provision for effective remedy extends to ensuring the conduct of prompt and effective investigations into the complaints of human rights violations.<sup>118</sup> The very essence of providing remedy and prompt investigations is the need to ensure police accountability. To conclude, the justification for states' to observe and fulfill their international obligations to promote and protect human rights increases the threshold for police accountability.

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<sup>117</sup> Article 2(3) ICCPR and Article 13, ECHR

<sup>118</sup> This position is clearly established by the European Court of Human Rights in the *McCann & ors v. UK* (1995) 21 EHRR 97

## CHAPTER TWO

### CORONERS' SYSTEM: A CRITICAL APPRAISAL OF PRACTICE IN LAGOS, NIGERIA AND NORTHERN IRELAND

The recognition of the inviolability of human life is expressed in 'right to life' being the foundation upon which all other human rights can be enjoyed. As a result, all international human rights instruments emphasize the necessity for the right to life to be protected at all cost.<sup>119</sup> The position of this right in the hierarchy of rights is reiterated in many quarters. For instance, the Human Rights Committee refers to the right as "the supreme right."<sup>120</sup> Similarly, the European Court of Human Rights in *McCann and ors v United Kingdom* expressed that Article 2(right to life) ranked amongst "one of the most fundamental provisions in the Convention."<sup>121</sup> For scholars and human rights advocates, the position is the same. For instance, Irwin says that, "of all the rights that individuals have by virtue of existing as human beings, the right to life is the most fundamental."<sup>122</sup> Herndl on his part maintains that the right to life is "a primordial right which inspires and informs all other rights, from which the latter obtain their *raison d'être* and take their lead."<sup>123</sup>

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<sup>119</sup> See generally Article 6 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2 of the European Convention on Human Rights (ECHR); Article 4 of the African Charter on Human and Peoples Rights (ACHPR); See also Forward to "The Right to Life in International Law", B.G Ramcharan, (ed), Centre for Research and Study in International Law and International Relations of the Hague Academy of International Law, Martinus Nijhoff Publishers, 1985, p xi – here the former United Nations Assistant Secretary – General for Human rights, Kurt Herndl, accentuates that "the protection against arbitrary deprivation of life must be considered as an imperative norm of international law" which is binding on all states whether or not they have ratified the international human rights treaties guaranteeing the right to life.

<sup>120</sup> See Human Rights Committee General Comment No. 6: The right to life(art.6), 1982, paragraph 1

<sup>121</sup> *McCann and ors v. UK*, ECtHR, September 27, 1995, Application No. 18984/91, paragraph 147; (1995) 21 EHRR 97

<sup>122</sup> Kara Irwin, "Prospects for Justice: The Procedural Aspect of the Right to Life Under the European Convention on Human Rights and Its Applications to Investigations of the Northern Ireland's Bloody Sunday", *Fordham International Law Journal*, Vol. 22, Issue 4, Article 27, 1998, p1823

<sup>123</sup> See Forward to "The Right to Life in International Law" ", B.G Ramcharan, (ed), Centre for Research and Study in International Law and International Relations of the Hague Academy of International Law, Martinus Nijhoff Publishers, 1985, p xi

Appreciating the imperativeness to protect human life, states under their national laws criminalize the deprivation of life outside those exceptional circumstances permitted by Law. This is in consonance with the ‘positive obligation’ impressed on state parties by the international human rights treaties to “protect life by law.”<sup>124</sup> Furthermore, a ‘negative obligation’ is also created for states and their agents to refrain from taking human life without justification.<sup>125</sup> The European Court of Human Rights has developed a well established jurisprudence in this regard.<sup>126</sup>

Essentially, police institutions bear the responsibility to protect the right to life guaranteed by both international and national law respectively.<sup>127</sup> By virtue of this crucial responsibility, and being agents of the state, the police too are obligated not to take human life. This is particularly imperative because of the nature of police law enforcement functions. Generally, as earlier mentioned herein, the law explicitly permits the police to use force in the course of their duties. Due to the far reaching effects police use of force( amongst other things) has on the right to life and dignity of the human person,<sup>128</sup> international human rights law emphasize that police use

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<sup>124</sup> Noel Mc Guirk, “Justice –Lessons from Northern Ireland”, in “*Policing in Central and Eastern Europe: Dilemmas of Contemporary Criminal Justice*”, Gorazd Mesko et al (eds), Koda Press – tiskarna Saje, Maribor, 2004, p4

<sup>125</sup> Ibid

<sup>126</sup> See generally Article 6, ICCPR and Article 2(1) ECHR; See also jurisprudence of the ECtHR e.g. *Keenan v. United Kingdom*, ECtHR, (2001), Application No. 27229/95; *Powell v United Kingdom* (App No 45305/99, unreported 4 May 2000) where the ECtHR has reiterated the substantive obligation article 2 imposes on member states not to take life without justification and also to establish a framework that encompasses the enactment of laws, procedures and means of enforcement which will reasonable protect life

<sup>127</sup> Ibid; preambular paragraph 3, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, (1990)

<sup>128</sup> The United Nations General Assembly in its resolution on the Code of Conduct for Law Enforcement Officials firmly recognized and attested to this position

non-violent measures when carrying out their duties.<sup>129</sup> Force is only to be used as a last resort and in very limited and exceptional circumstances which are strictly regulated by national law.<sup>130</sup>

Furthermore, police lawful use of force must satisfy the principles of necessity<sup>131</sup> and proportionality<sup>132</sup> as stipulated in international human rights instruments.<sup>133</sup> In addition, the ECtHR in *McCann &ors v. UK* while emphasizing need to satisfy the 2 important tests, noted that the necessity test applicable with regards to the use of force under Article 2(2) must be “stricter and more compelling”<sup>134</sup> than the regular test applied when determining whether a State action is “necessary in a democratic society.”<sup>135</sup>

Any use of force by the police outside of the requisite standards and limits is considered ‘excessive’ and illegitimate.<sup>136</sup> States are thus obligated to promptly conduct thorough and impartial official investigations of allegations of police illegitimate use of force especially where it results in a violation of the right to life.<sup>137</sup> This is with a view to explain the circumstances of

<sup>129</sup> Principle 4, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, (1990)

<sup>130</sup> Principles 4, 5 and 9 of the Basic Principles of Basic Principles on the Use of Force and Firearms, 1990; Commentary (a) and (b) to Article 3, UN Code of Conduct for Law Enforcement Officials, 1978 wherein it is emphasized that use of force should be exceptional and only to be used when “reasonably necessary” under regulation by national law. Commentary (c) emphasizes the use of firearms as a “extreme measure” which should be avoided and where it is used, a report must be made to appropriate authorities; Principle 2, UN Principles on the Effective Prevention and Investigation of Extra –legal, Arbitrary and Summary Executions, 1989

<sup>131</sup> Principles 4 and 5, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, (1990) underscores the lawful use of force “only when strictly necessary”; Commentary (a) to Article 3, UN Code of Conduct for Law Enforcement Officials, 1978

<sup>132</sup> Principles 2 and 5(a) UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, (1990) underscores the “use of force to be proportional to lawful objectives” sought to be achieved; Commentary (b) to Article 3, UN Code of Conduct for Law Enforcement Officials, 1978 – here it is stressed that national law must ensure that the force used by law enforcement officers must at all times be proportionate to the “legitimate objective to be achieved”

<sup>133</sup> Article 2(2) of the ECHR; Article 3, UN Code of Conduct for Law Enforcement Officials, 1978; principles 4, 6 and 9 of Basic Principles on the Use of Force and Firearms, 1990;

<sup>134</sup> *McCann v United Kingdom* ECtHR, September 27, 1995, Application No. 18984/91 paragraph 149

<sup>135</sup> Ibid

<sup>136</sup> See generally, “Monitoring and Investigating Excessive Use of Force”, Amnesty International and CODESRIA, Russell Press Ltd, Basford , Great Britain, 2000

<sup>137</sup> Principle 9, The Principles on the Effective Prevention and Investigation of Extra –legal, Arbitrary and Summary Executions, 1989; Report by the Special Rapporteur on Extrajudicial , Summary or Arbitrary Executions, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights Resolution 1993/71, E/CN.4/1994/7, p19,

the incident, identify and hold to account those responsible for the human rights violations and take concrete actions to prevent a further recurrence of such incident.<sup>138</sup> This is clearly in conformity with the well-established obligation under international human rights law as illustrated for example by the European Convention on Human Rights (ECHR) amongst others.<sup>139</sup> Under the European Convention, article 2 (right to life) and article 13 (right to effective remedy) are interpreted by the European Court to mandate prompt investigations by state members into allegations of violation of right to life as well as the provision of adequate and effective remedy (including compensation) to the victim(s) or their families who have alleged such violations.<sup>140</sup> The Human Rights Committee has elaborated further on the right to effective remedy by stating that failure to provide reparations denotes a failure to discharge the obligation to provide effective remedy as required in Article 2(3) of the ICCPR.<sup>141</sup> Similarly, the

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paragraph 48, p 157, paragraph 688-689; *McCann v United Kingdom* ECtHR, September 27, 1995, Application No. 18984/91 paragraph 161

<sup>138</sup> Principle 9, The Principles on the Effective Prevention and Investigation of Extra –legal, Arbitrary and Summary Executions, 1989; Principle 7, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, (1990) – this principle emphasizes that deaths resulting from excessive or arbitrary use of force and firearms by Law Enforcement Officials should be considered a criminal offence punishable under national law; See generally, “Monitoring and Investigating Excessive Use of Force”, Amnesty International and CODESRIA, Russell Press Ltd, Basford , Great Britain, 2000, p14; Report by the Special Rapporteur on Extrajudicial , Summary or Arbitrary Executions, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights Resolution 1993/71, E/CN.4/1994/7, p18, para 43; *Keenan v UK* ECtHR (2001), Application No. 27229/95

<sup>139</sup> The procedural obligation created by article 2 of the European Convention of Human Rights which has been emphasized by the ECtHR(*McCann*’s case). See also Human Rights Committee, General Comment 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), Paragraphs 15 and 18 - available at

<http://www.unhchr.ch/tbs/doc.nsf/0/58f5d4646e861359c1256ff600533f5f?Opendocument> (last visited 11 Nov, 2011) – the sections explaining the import of Article 2 of the ICCPR highlights the imperativeness for state parties to conduct prompt and thorough investigations as well as holding to account perpetrators of human rights abuses particularly violations of the right to life(article 6)

<sup>140</sup> The European Court of Human Rights in its jurisprudence reiterates the position that the right to effective remedy under Article 13 of the ECHR encompasses the conduct of prompt, impartial and thorough investigations by public authorities into allegations of human rights violations; See also Principles 9, 18, 19 and 20, UN Principles on the Effective Prevention and Investigation of Extra –legal, Arbitrary and Summary Executions, 1989; Human Rights Committee, General Comment 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), Paragraph 18

<sup>141</sup> Human Rights Committee, General Comment 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), Paragraph 16

African Charter on Human and Peoples Rights (ACHPR) adopts the same position with regards to the above arguments.<sup>142</sup>

With respect to the above, international human rights jurisprudence does not specify the form or kind of investigation that should be undertaken in the event of a death by state authorities but only stipulate that such investigation must satisfy certain requirements.<sup>143</sup> Consequently, coroner inquiries are regarded as a form of investigation that is appropriate in this regard.<sup>144</sup> The coroner is clearly considered to play a crucial role in the entire process of investigation and ascertaining responsibility in cases of allegations of violation of right to life especially those resulting from police actions or omissions.<sup>145</sup> This role evidently discharges the procedural obligation for public investigation of deaths under article 2 of the European Convention and has been extensively elucidated by the European Court of Human Rights.<sup>146</sup>

However before an extensive examination of the coroner's role in deaths where the police is implicated, (which will be dealt with in chapter three of this research), it is necessary to first have an understanding as to what the coroner system is all about and how it is practiced in some jurisdictions.

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<sup>142</sup> See African Charter on Human and Peoples Rights, 1981

<sup>143</sup> The European Court of Human Rights have in a number of cases such as *McCann & ors v UK*, ECtHR, September 27, 1995, Application No. 18984/91 paragraphs 161-163, *Jordan v United Kingdom*, ECtHR, 4 May, 2001, Application No 24746/94 paragraph 105, *McKerr v United Kingdom* (2002) 34 EHRR 20, have emphasized that the investigation must be independent, prompt, thorough and impartial, capable of ensuring the effective implementation of domestic law that protect the right to life and also must secure accountability of persons responsible especially in cases where state agents are implicated

<sup>144</sup> Ibid, paragraph 162; see also UK jurisprudence for example *R(Middleton) v West Somerset Coroner*(2004) UKHL 10

<sup>145</sup> See *McCann v United Kingdom* ECtHR, September 27, 1995, Application No. 18984/91 paragraphs 161- 162

<sup>146</sup> See *McCann v United Kingdom* (1995) 21 EHRR 97, ECtHR, September 27, 1995, Application No. 18984/91; *Keenan v. United Kingdom*, ECtHR, April 3,2001, Application No. 2722995

## 2.1 The Coroner System in General

Historically, the establishment of the coroner practice dates back to 1194 in England after the Norman Conquest.<sup>147</sup> With the passage of time, the coroner system has evolved from a being that of a “medieval tax gatherer”<sup>148</sup> for the Crown into a well organized and independent state institution regulated by law to investigate deaths with the aim to discern the true facts as to “the manner, cause and circumstances”<sup>149</sup> of the deaths. The European Court of Human Rights in *Keenan v. United Kingdom* aptly describes the coroner as

*“the independent judicial officer charged with inquiring into deaths of various categories. His duties have been judicially defined; It is the duty of the coroner as the public official responsible for the conduct of inquests, whether he is sitting with a jury or without to ensure that the relevant facts are fully, fairly and fearlessly investigated. He is bound to recognize the acute public concern rightly aroused where deaths occur in custody. He must ensure that the relevant facts are exposed to public scrutiny, particularly if there is evidence of foul play, abuse or inhumanity”*<sup>150</sup>

In other words, the aim of the coroner and coroner laws is to make certain that unnatural, sudden or violent deaths are investigated and explained. This is done through an independent, clear and formal investigative process called an inquest that is able to establish the true facts as to the cause of the deaths. Furthermore, in addition to the traditional functions of death determination, coroner investigations are now considered to play a vital role in helping bereaved family

<sup>147</sup> Ian Freckleton, “Death Investigation and the Evolving Role of the Coroner”, Faculty of Law, Monash University Research Paper No 2009/26 , available at <http://ssrn.com/abstract=1570870> (last visited on October 28, 2011); article also available at Otago Law Review, Vol. 11, No. 4, 2008, p566

<sup>148</sup> Ibid p567; Warwick Inquest Group, “ The Inquest as a Theatre for Police Tragedy: The Davey Case”, Journal of Law and Society, Vol. 12, No. 1, 1985, pp 37 -38

<sup>149</sup> David Studdert et al, “Impact of coronial investigations on the manner and cause of death determinations in Australia, 2000-2007, MJA, Vol. 192, No 8, 2010, p444

<sup>150</sup> See *Keenan v. United Kingdom*, ECtHR, April 3, 2001, Application No. 27229/95

“understand and deal with the death of their loved one(s)”<sup>151</sup> by clarifying any contradiction about the death.<sup>152</sup> It also serves to douse public concerns over deaths in contentious circumstances through the publicity of the relevant facts about the death, exposure of culpable conduct, securing accountability for such conduct as well as taking concrete steps to rectify and prevent future recurrence of such incidents resulting in the death(s).<sup>153</sup> This helps to ensure that justice is served and that wanton and arbitrary deprivation of life is averted. It is however noteworthy to mention that coroner investigations are not intended to determine guilt or secure a conviction but rather a fact-finding process aimed at safeguarding lives through the investigation of preventable deaths.<sup>154</sup> The coroner’s role therefore seeks to strengthen the sanctity of human life by preventing deaths and upholding justice where it is established that the right to life has been violated without justification.<sup>155</sup> This satisfies the procedural requirement of article 2 of the convention as earlier mentioned herein.

Coroner inquiries or investigations are conducted as a judicial process and are inquisitorial in nature.<sup>156</sup> Though the enabling laws establishing the coroners practice may vary from country to country, the coroner is generally not bound by the rules of evidence.<sup>157</sup> Usually, the coroner is

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<sup>151</sup> David M. Studdert et al, “Impact of Coronial Investigations on Manner and Cause of Death Determinations in Australia, 2000-2007”, Melbourne Law School, Legal Studies Research Paper No.473, available at [http://www.mja.com.au/public/issues/192\\_08\\_190410/contents\\_190410.html](http://www.mja.com.au/public/issues/192_08_190410/contents_190410.html)

<sup>152</sup> Ibid

<sup>153</sup> *McCann v United Kingdom* ECtHR, September 27, 1995, Application No. 18984/91, paragraphs 159 -163; Death Certification and Investigation in England, Wales and Northern Ireland: The Report of a Fundamental Review 2003, p72

<sup>154</sup> See “Death Certification and Investigation in England, Wales and Northern Ireland: The Report of a Fundamental Review 2003, p 68, 78 and 92; *Re Jordan’s Application for Judicial Review* [2004] NICA 29 – here the court supported the coroner’s view that an “inquest is a fact finding exercise and not a method of apportioning guilt.”

<sup>155</sup> Death Certification and Investigation in England, Wales and Northern Ireland: The Report of a Fundamental Review 2003, p78

<sup>156</sup> Ibid, p68

<sup>157</sup> Ibid; S. 34 of the Lagos State Coroners’ System Law, 2007

empowered by the law to receive evidence as well as summon and examine witnesses that are relevant to the investigations.<sup>158</sup>

Additionally, the coroner's proceedings is a participatory and inclusive process which enables relatives of a deceased person and other interested parties with standing to be involved in the process through the examination and questioning of witnesses including state agents where relevant.<sup>159</sup> It is a well –established fact that the coroner has a duty to hold an inquest where a death is reported to have been unnatural, sudden or violent.<sup>160</sup> An inquest is considered a “thorough and open investigation process”<sup>161</sup> that is capable of unearthing the truth about the cause and surrounding circumstances of the death of a person.<sup>162</sup> Thus even where a person may have been buried and the coroner is of the view that holding an inquest is necessary, he is empowered to order an exhumation of the body without the necessary consent from the deceased family.<sup>163</sup> This clearly illustrates and reiterates the importance attached to the right to life and pursuit of justice.

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<sup>158</sup> Death Certification and Investigation in England, Wales and Northern Ireland: The Report of a Fundamental Review 2003, p68; S. 32 of the Lagos State Coroners' System Law, 2007

<sup>159</sup> See “Death Certification and Investigation in England, Wales and Northern Ireland: The Report of a Fundamental Review 2003, p 69; *McCann v United Kingdom* ECtHR, September 27, 1995, Application No. 18984/91 paragraphs 162

<sup>160</sup> *Jordan v. Lord Chancellor & Anor*(Northern Ireland) [2007] UKHL 14 (28 March 2007), paragraph 37 -decision delivered by the House of Lords. Here the House highlighted that it is “common ground that the purpose of an inquest is to investigate fully and explore publicly the facts pertaining to a death occurring in suspicious, unnatural or violent circumstances, or where the deceased was in the custody of the state”

<sup>161</sup> Warwick Inquest Group, “The Inquest as a Theatre for Police Tragedy: The Davey Case”, *Journal of Law and Society*, Vol. 12, No. 1, 1985, p 36. Available at <http://www.jstor.org/stable/1410246>, (last visited 30 October, 2011)

<sup>162</sup> See *McCann v United Kingdom* (1995) 21 EHRR 97, ECtHR, September 27, 1995, Application No. 18984/91; *Keenan v. United Kingdom*, ECtHR, April 3, 2001, Application No. 2722995

<sup>163</sup> James W. Mehafty, “Coroners: Inquests: Right to Exhume Body after Burial”, *Michigan Law Review*, Vol. 36, No. 8 (1938), pp 1382- 1383- In this paper the author stated that the exhumation of a body for an inquest is considered to satisfy the state's interest to punish crime which outweighs the “natural desires of relatives and the obvious policy to violate the sanctity of the grave”

While the analysis so far indicates that coroner investigations are more a fact-finding procedures,<sup>164</sup> however the information uncovered through the process is vital to the initiation of criminal prosecutions against persons suspected to be culpable in any death particularly those in suspect circumstances.<sup>165</sup> Having the aforesaid in mind, a conclusion may be reached that coroner investigations are an apparent necessity and an indispensable procedure in ensuring accountability and upholding justice for the gross violation of the right to life.

While the role of the coroner in death determination and indictment of those responsible is indisputable and very essential as has been mentioned above, however, the scope of the coroner's powers has been a contentious issue of debate now duly settled by the European Court of Human Rights. The position of the European Court now on the scope of the coroner powers is that beyond determining the cause of death, he should be able to examine the broader circumstances surrounding the death.<sup>166</sup> This evidently is in compliance with the Article 2 procedural obligation.

In relation to the police, coroner investigations are all the more mandatory in cases of deaths where the police is implicated.<sup>167</sup> This stems from the fact that the police is mandated to uphold and respect all human rights.<sup>168</sup> This as earlier mentioned implies a duty on the police as agents of the state to refrain from any action or omission that would infringe on the enjoyment of these rights. Thus, any death involving the police (whether as a result of police actions or death in police custody) raises public interest and concern particularly in a number of issues such as the

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<sup>164</sup> See "Death Certification and Investigation in England, Wales and Northern Ireland: The Report of a Fundamental Review 2003

<sup>165</sup> See Principles 9 and 18, UN Principles on the Effective Prevention and Investigation of Extra –legal, Arbitrary and Summary Executions, 1989

<sup>166</sup> See generally *McCann v United Kingdom* (1995) 21 EHRR 97, ECtHR,(1995), Application No. 18984/91; *Jordan v United Kingdom*, ECtHR, (2001), Application No 24746/94

<sup>167</sup> See "Death Certification and Investigation in England, Wales and Northern Ireland: The Report of a Fundamental Review 2003, p80

<sup>168</sup> Article 2, UN Code of Conduct for Law Enforcement Officials, 1978

nature of force used and the systems of accountability that exist for the police.<sup>169</sup> In such circumstances, the duty on the state to investigate the activities of its agents (which in this case of the police), identify and punish those individuals responsible for the death(s) is as more pertinent and crucial. The Human Rights Committee emphasizes that this obligation to investigate and punish is most compelling in cases of violations of article 6 (right to life), article 7 (torture) and article 9 (arbitrary deprivation of liberty) of the ICCPR.<sup>170</sup>

Against this backdrop, allegations of death implicating the police require thorough and impartial investigations including those conducted by a coroner. This is not only imperative for ascertaining the cause, circumstances and responsibility for the death(s)<sup>171</sup> but also preserving public confidence and preventing cover-up of such unlawful use of lethal force. This was clearly pointed out by the ECtHR in *Jordan v. United Kingdom*.<sup>172</sup>

## **2.2. Coroner System in Northern Ireland**

The enabling statute regulating the Coroner practice and system in Northern Ireland is the Coroners Act (Northern Ireland) 1959 (herein after referred to as “The Northern Ireland Act”). The Northern Ireland Act expressly stipulates that only a barrister or solicitor may be appointed as a coroner,<sup>173</sup> with their appointment and removal to be effected only by the Lord

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<sup>169</sup> Warwick Inquest Group, “The Inquest as a Theatre for Police Tragedy: The Davey Case”, *Journal of Law and Society*, Vol. 12, No.1, 1985, p35 available at <http://www.jstor.org/1410246> (last visited on 30 Oct. 2011)

<sup>170</sup> Human Rights Committee, General Comment 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), Paragraph 18 – herein the committee stressed that the above criminal acts recognized under national and international law required investigation and subsequent prosecution of the perpetrators where the allegations are founded

<sup>171</sup> *Jordan v United Kingdom*, ECtHR, 4 May, 2001, Application No 24746/94 paragraph 105 – here the court emphasizes that the purpose of the investigations into cases of death does not only lie on the protection of the right to life extends to ensure that state agents who are found to be implicated in such cases are held accountable for deaths under their responsibility.

<sup>172</sup> Ibid, paragraph 108

<sup>173</sup> S2(3) of the Coroners Act (Northern Ireland) 1959 provides that the Barrister or Solicitor to be appointed as Coroner must have practiced for a minimum of five years prior to the appointment

Chancellor.<sup>174</sup> While the Northern Ireland Act covers a wide area and different aspects of the coroner activities, however for purposes of this research work reference will only be made to the coroner's mandate and the scope of their powers.

### ***2.2.1 The Coroner's Mandate and Scope of powers under the Northern Ireland Act***

S.11 of the Northern Ireland Act requires a coroner to conduct investigations into deaths which are reported to coroner that occur under certain specified circumstances. These include deaths that occur from

- a) violence or accident or unjust means;
- b) negligence, malpractice or misconduct;
- c) any other unnatural cause;<sup>175</sup>
- d) unexpected or explained circumstances;
- e) suspicious circumstances;
- f) when a dead body is found<sup>176</sup>

It is note-worthy to mention that a statutory duty is imposed by the Act on every individual and specific institutions including the police to report deaths which occur in the above -mentioned circumstances that may require holding an inquest.<sup>177</sup> Any contravention of this reporting duty is

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<sup>174</sup> S2(1) and (2) of the Northern Ireland Act

<sup>175</sup> Deaths which are listed in (a) –(c) are stipulated under S.7 of the Northern Ireland Act

<sup>176</sup> Circumstances listed in (d) – (f) are stipulated under S.8 which imposes the duty on the police to notify the coroner in cases of deaths under the listed circumstances

<sup>177</sup> S. 7 and S. 8

considered an offence attracting sanctions under the Act.<sup>178</sup> The duty to report is held to be a well – established old common law duty.<sup>179</sup>

The obligation to carry out the investigation(s) requires the coroner to take custody of the body for this purpose.<sup>180</sup> In addition, the coroner’s power to take custody of a body empowers him to also exhume a body buried within the coroner’s jurisdiction without seeking the consent of either the deceased family or any other authority.<sup>181</sup> The purpose of the investigation is to ascertain whether or not an inquest into the death will be required.<sup>182</sup>

Accordingly, S. 13 stipulates that a coroner may conduct an inquest in the following instances

- (a) *“where a dead body is found within his district; or*
  - (b) *an unexpected or unexplained death, or a death in suspicious circumstances*  
*or in any of the circumstances mentioned in section 7 of the Act;*
- (2) *Where more than one death occurs as a result of any circumstances and it appears to any coroner who may hold an inquest into one of the deaths under sub-section (1) that one inquest ought to be held into all the deaths so resulting he may*
- (a) *with the consent of any other coroner who may hold an inquest into one of the deaths, hold the inquest; or*

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<sup>178</sup> S. 10 provides that a violation of the S.7 & S. 9 is punishable with summary conviction to a fine not exceeding twenty pounds

<sup>179</sup> See “Death Certification and Investigation in England, Wales and Northern Ireland: The Report of a Fundamental Review 2003, p 32

<sup>180</sup> Ibid

<sup>181</sup> S.11(4) ) of the Northern Ireland Act

<sup>182</sup> Ibid, S. 11(1)

*(b)request that other coroner to hold the inquest.”<sup>183</sup>*

Additionally, the Act also provides that a coroner may also hold an inquest at the instance of the Attorney – General wherein he makes an order for one to be held.<sup>184</sup> Thus, any death outside the above stated categories is deemed not to require the conduct of an inquest.

Beyond holding an inquest, the coroner is empowered to make other inquiries such as order a post-mortem examination when he deems necessary. This may be helpful to further explain and clarify issues as to the cause of a death.<sup>185</sup>

In the conduct of an inquest, the Act permits the coroner to sit with or without a jury. However in certain cases, the coroner is mandated to summon a jury for the purpose of holding an inquest. Thus S. 18 provides that a jury must be summoned in cases of death in prison; death resulting from an accident, “poisoning or disease”; deaths that may likely affect public health and safety and any other case where the coroner is of the opinion that a jury should be summoned.<sup>186</sup>

In addition, the Act empowers the coroner to summon jurors and witnesses for purposes of holding an inquest.<sup>187</sup> Failure to answer the summons attracts a penalty to be imposed by the coroner as stipulated under the Act.<sup>188</sup>

In all cases, with or without a jury, the findings of an inquest must establish the identity of the deceased, the cause and circumstances surrounding the death.<sup>189</sup>

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<sup>183</sup> S.13 of the Northern Ireland Act

<sup>184</sup> S.14

<sup>185</sup> S.27

<sup>186</sup> S.18

<sup>187</sup> S.20

<sup>188</sup> Ibid

In addition to the enabling act is the Coroners (Practice and Procedure) Rules (Northern Ireland)<sup>190</sup> which also sets out rules on coroner activities in Northern Ireland.

### ***2.3. Coroner System in Lagos State, Nigeria***

The coroner system in Lagos State, Nigeria is regulated by the newly revised Coroners' System Law of 2007 (herein after referred to as the "Lagos Act"). The revised law replaces the Coroners Law Cap C16 of 2003. Under the new Lagos Act, a chief coroner who is responsible for the administration of the coroner system and other coroners are appointed by the Chief Judge of the State.<sup>191</sup> Principally, the Lagos Act provides that the position of chief coroner and coroner be filled by judicial officers of the level of a judge of a high court and magistrates respectively.<sup>192</sup> The Act however states that Legal practitioners of not less than 5 years may also be appointed as coroners.<sup>193</sup>

A unique feature of the Lagos Act is the introduction of the medical examiner system into the coroner practice in Lagos state.<sup>194</sup> Thus, coroners and medical examiners now work together in death investigations and determination. According to the Lagos Act, medical examiners (a system in practice in the United States of America and Canada) are responsible for the conduct of death investigations.<sup>195</sup> In this regards, the medical examiners who are required to be experts in the field of forensic pathology are mandated to carry out post-mortem examinations and

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<sup>189</sup> S. 31; See also "Death Certification and Investigation in England, Wales and Northern Ireland: The Report of a Fundamental Review 2003"

<sup>190</sup> Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 (SI 1963/199).

<sup>191</sup> S. 2 and S. 4 of the Lagos Act

<sup>192</sup> S. 2 provides for the chief coroner to be a Judge of a high court and S. 4 provides that a Magistrate not below Magistrate grade 1 be appointed as coroner

<sup>193</sup> S. 4(1)(b) of the Lagos Act

<sup>194</sup> S. 7 of the Lagos Act

<sup>195</sup> Ibid, S. 7 – 12

ascertain the cause and manner of death of any person referred by the coroner.<sup>196</sup> These amongst others are the main functions of the medical examiners.

Furthermore, S.14 of the Lagos Act provides that in addition to the duty to report any death, post – mortem examination is required to be conducted in circumstances where the cause of a death is

- a) *“unknown;*
- b) *sudden or unexpected and natural;*
- c) *unreported after occurrence;*
- d) *violent, unnatural or suspicious;*
- e) *accidental or misadventured;*
- f) *due to self–neglect or negligence by others*
- g) *a known or unknown cause while in custody or shortly afterwards”*<sup>197</sup>

### ***2.3.1 The Coroner’s Mandate and Scope of powers under the Lagos Act***

With regards to the mandate of the coroner, the main obligation of the coroner under the Lagos Act is the holding of inquest. Specifically, S.15 of the Lagos Act provides that an inquest will be held whenever a coroner is notified of a deceased person lying within his jurisdiction whose death may have occurred

*“a)in a violent, unnatural or suspicious situation;*

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<sup>196</sup> S.10 and S. 12

<sup>197</sup> S. 14(1) – the above limited list is drawn from a broader list which encompasses other different circumstances under which a death may have occurred. We have chosen to narrow down the list to conform with area of discourse; see also S. 23 of the Act on duty to give notice of a death

*b) in custody or shortly afterwards;*

*c) due to accident, industrial disease or poisoning;*

*d) following medical intervention;*

*e) any other reportable death which in the coroner's opinion should require the holding of an inquest”<sup>198</sup>*

Additionally S. 18 mandates a coroner to hold an inquest on all deaths occurring in custody.<sup>199</sup>

It is worthy to note that a death occurring in custody mentioned above refers to death occurring in any place of confinement which includes prison, police station, asylum, hospital etc.<sup>200</sup> This statutory provision evidently buttresses efforts been taken to satisfy the general obligation that state parties have to investigate deaths where state agents are alleged to have been involved or implicated.

As earlier mentioned herein, coroners and medical examiners work together in death investigations. A coroner during the investigation of circumstances of a death may make an order to the medical examiner where he deems it necessary to have a post-mortem examination conducted to ascertain the cause and manner of death.<sup>201</sup> Such a medical report will be used in the event of an inquest.<sup>202</sup> The coroner may also order the exhumation of a body for purposes of a post-mortem examination.<sup>203</sup>

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<sup>198</sup> S.15 of the Lagos Act

<sup>199</sup> Ibid, S. 18

<sup>200</sup> See Interpretation section of the Coroners' Systems Law of Lagos State, 2007

<sup>201</sup> S. 26

<sup>202</sup> S. 27

<sup>203</sup> S. 31(3)

For purposes of holding an inquest, the Lagos Act does not provide for a jury system.<sup>204</sup> Thus the coroner is solely responsible for conducting the inquest. In the course of an inquest, a coroner is empowered under the Act to summon and compel the attendance of witnesses to give evidence or produce any document relevant for the public inquest.<sup>205</sup> Such evidence must be taken under oath and capable of establishing the relevant facts as to “the identity of the deceased, the time, place and manner of the death”<sup>206</sup> However it is worthy to mention that the coroner in holding an inquest is not bound by the rules of evidence applicable to civil or criminal proceedings.<sup>207</sup>

Furthermore, a coroner during the conduct of an inquest is empowered to grant standing to parties who have an interest in the inquest.<sup>208</sup> Consequently, such parties may then be able either personally or through their legal representatives examine and cross-examine witnesses at the inquest.<sup>209</sup> Also the Act provides that a coroner may stay and later resume an inquest proceeding where it is established that through the proceedings, sufficient facts are disclosed to initiate criminal proceedings against a person implicated in a death. Such inquest will only continue after the conclusion of the criminal trial.<sup>210</sup> Similarly, though the inquest proceedings do not serve as a procedure for guilt determination, however under the Act, the coroner has powers –where he is satisfied that there is sufficient evidence for a charge to be made- to issue an order of arrest of a suspect for investigation by the relevant authorities.<sup>211</sup>

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<sup>204</sup> Generally the jury system is not applicable in the Nigerian Legal System. Judgment and decisions rest solely on the judge presiding over a case. This is the same procedure which applies to coroner proceedings

<sup>205</sup> S. 32(1)

<sup>206</sup> S. 33

<sup>207</sup> S. 34

<sup>208</sup> S. 36

<sup>209</sup> Ibid

<sup>210</sup> S. 38

<sup>211</sup> S. 39

## ***2.4. Comparative Analysis of the Coroner systems in Northern Ireland and Lagos State, Nigeria***

Having reviewed the enabling legislations setting out the mandate and scope of powers of the coroner, this section will mainly analyze and compare the substantives provisions in relation to the above in the two legislations.

It is important to note that Northern Ireland and Lagos State both share the same common law origin from where the coroner system originated. As such the underlying foundation of the coroner system in the two jurisdictions is traceable to the same root and having the same objectives – to safeguard lives through the investigation of preventable deaths with a view to determining the cause and circumstances under which they occur, securing accountability of those responsible for such deaths and preventing their recurrence.

Narrowing our focus to the mandate and scope of the coroner's powers in the two jurisdictions, there are clearly a lot of similarities. Firstly the investigative obligations of the coroner in the two jurisdictions are largely similar. The main circumstances where a death will be referred to a coroner are in cases of sudden or unexpected or unexplained deaths; deaths in violent, unnatural or suspicious circumstances and deaths which occurred in custody. In all of the above situations, the coroner is mandated to hold an inquest to establish the identity of the deceased person, the cause, manner and circumstances surrounding the death(s). For purposes of delivering on this mandate, the coroner has the powers to order an exhumation of a body, summon witnesses to testify and give evidence relevant to the coroner's proceedings. In addition to the coroner's mandatory obligation to hold an inquest in the specified circumstances, in Northern Ireland the

Attorney – General can also call for an inquest where his is of the opinion it is desirable to do so.<sup>212</sup>

One apparent fundamental difference in the two jurisdictions is the use of the jury system in an inquest. While as earlier mentioned both Northern Ireland and Lagos State have linkages to the common law system, there still remains differences in the way the coroner system is practiced in two jurisdictions. Accordingly, while the under the Northern Ireland Act, a coroner is required to summon a jury while holding an inquest in particular cases such as a death in prison custody, deaths that maybe prejudicial to public health and safety etc<sup>213</sup>, in the Lagos Act the coroner bears the sole responsibility to determine the outcome of all inquests.

Another difference is the introduction and use of the medical examiners system under the Lagos Act. Although under both jurisdictions the coroner is empowered to make orders for post-mortem examinations', in the case of Lagos State, the medical examiner is the one responsible to determine the cause and manner of a death and conduct a post- mortem examination in cases where an inquest is to be held especially death in custody.<sup>214</sup>

In conclusion, as would be seen from above, the significance of the coroner's role in the promotion and protection of the right to life is one that cannot be underemphasized as it has been reiterated both in international and domestic human rights jurisprudence.

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<sup>212</sup> S. 14 of the Northern Ireland Act

<sup>213</sup> Ibid, S.18

<sup>214</sup> Ibid, S. 10

## CHAPTER THREE

### PRACTICAL APPLICATION OF THE CORONERS INQUIRIES: CONCRETE CASE STUDIES IN NORTHERN IRELAND AND LAGOS STATE

Chapter three presents and examines concrete case studies of coroner inquiries in Lagos State, Nigeria and Northern Ireland. It also draws heavily from the jurisprudence of the European Human Rights Court. The main aim is to evaluate the effectiveness of the coroner process to enhance and promote police accountability while at the same time highlighting its potential strengths and weaknesses. This is particularly important for the newly reformed coroner system of Lagos State as it will bring out ideas that can be borrowed from the Northern Ireland system and jurisprudence of the European Human Rights Court on ways to remedy the weaknesses identified to improve the coroner system as a mechanism for police accountability and foster human rights protection in Nigeria..

#### ***3.1. Northern Ireland Case Study- Jordan v. Lord Chancellor***<sup>215</sup>

The case is a very well known and contentious one in the judicial circles in Northern Ireland with its facts leading to much litigation in the domestic courts. In one of such cases – *Jordan, Re an Application for Judicial Review*<sup>216</sup>, Gillen J. described the facts as “been the harbinger of litigation in a number of fora. Each judgment that seems to be the last word has proven merely to be the last but one.”<sup>217</sup> The extent of the litigation is such that it has gone beyond the domestic courts and reached the door steps of the European Court of Human Rights (ECtHR) which has also made a ruling in respect of the said facts. This ECtHR decision and its impact on the subsequent decisions of the appellate courts in the case will be examined. The case is considered

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<sup>215</sup> [2007] 2 WLR 754.

<sup>216</sup> [2004] NIQB 27 (12 January 2004)

<sup>217</sup> Ibid

one of the landmark cases that deals with the investigation of deaths caused by security agents including the police and the contributions of the coroner to the process. Therefore makes it an appropriate case study.

According to the facts of the case, the crux of the matter rest on a number of issues raised by the applicant, one of which concerns the conduct of an inquest into a death which occurred on 25 November, 1992 where the police in Northern Ireland were implicated. From the said facts, the deceased, Mr. Pearse Jordan, son of the Applicant was shot and killed a police officer of the Royal Ulster Constabulary who was identified simply as Sergeant A.

Inquest proceedings commenced 4 January 1995 and by February of the same year, the Director of Public Prosecution (DPP) decided not to prosecute on grounds of insufficient evidence. This led to a series of judicial review applications and subsequent appeals up to the House of Lords and also an application to the European Court of Human Rights by the applicant.<sup>218</sup> The series of applications further delayed the resumption of the inquest.

The applicant in his first application for judicial review challenged the Lord Chancellor for failing to take steps to enact legislation that would ensure that inquest conducted in Northern Ireland conform with the with the Article 2 requirement of the European Convention (ECHR). This was particularly in the light of the then Coroner Procedure Rules which prevented the compellability of persons suspected to be responsible for a death at an inquest.<sup>219</sup>

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<sup>218</sup> See generally *Re Jordan's Application*[2002] NIQB 7, NI 151, decision delivered by Kerr J. on 29 January 2002; *Re Jordan's Application for Judicial Review* [2004] NICA 29, decision delivered by Kerr J. on 8 March, 2002; *Re Jordan's Application for Judicial Review*[2004] NICA 29, [2005] NI 144, *Jordan v. Lord Chancellor & Anor*(Northern Ireland) [2007] UKHL 14 (28 March 2007), decision delivered by the House of Lords; *Jordan v. UK*(2001) ECHR 24746/94, (2003) 37 EHRR 553 decision of the European Court of Human Rights

<sup>219</sup> Rule 9(2) of the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 previously prevented a person suspected for been responsible for a death from been compelled to give evidence at the inquest. This position of the law has since been amended following the decision of the ECtHR in *Jordan v. UK*

By a second similar application, the applicant challenged the coroner's ruling to conduct the inquest in accordance with the enabling coroner's law and practice in force in Northern Ireland (which would prevent a summons of the said Sergeant A at the inquest) and also prevent the jury from giving a verdict of 'unlawful killing'. The coroner considered that it was unnecessary for the jury to deliver a verdict of unlawful killing so as to comply with the Article 2 requirement of the ECHR, in his view, the inquest itself would uncover such facts that determine the lawfulness of the force which resulted in the deceased's death. The two applications were dismissed both by the lower and appellate courts.

Concurring with the decision of the Court of Appeal, the House of Lord reiterating the purpose of an inquest to fully discern all facts pertaining to a suspicious, violent or unnatural death or death cause by state agent, the House emphasized that the coroner had the sole responsibility and discretion to determine the extent of such inquiries. On the issue of returning a verdict of 'unlawful killing' by the jury, the House concurred with the Northern Ireland courts and went a step further to add that the powers to issue such verdict maybe applicable in other jurisdictions such as England and Wales, but the Northern Ireland legislations do not in any way provide for jury to express any opinion on criminal liability and as issue any verdict outside one that reflects facts as to the identity of the deceased, how, when and where the death occurred is not permitted.<sup>220</sup>

Finally, the House added that the jury in the cause of their fact –finding mission, are capable of uncovering facts which may or may not lead to an indictment. However, whereby the facts

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<sup>220</sup> Ibid, rule 16

uncovered by the jury point out criminal liability, the onus rest on the coroner to inform the appropriate authorities which in this case would the DPP to take action.<sup>221</sup>

### ***3.1.1. Salient points from the ECtHR decision in Jordan v.UK***

Responding to the Applicant's complaint of unjustifiable killing of the deceased resulting in a breach of the substantive obligation in Article 2 as well as the procedural obligation to investigation as laid out in *McCann's case*, the ECtHR found the following shortcomings:

*“(i) A lack of independence of the police officers investigating the incident from the officers implicated in the incident;*

*(ii) A lack of public scrutiny, and information to the victim's family, of the reasons for the decision of the DPP not to prosecute any police officer;*

*(iii) The police officer who shot Pearse Jordan could not be required to attend the inquest as a witness;*

*(iv) The inquest procedure did not allow any verdict or findings which could play an effective role in securing a prosecution in respect of any criminal offence which may have been disclosed;*

*(v) The absence of legal aid for the representation of the victim's family and non-disclosure of witness statements prior to their appearance at the inquest prejudiced the ability of the applicant to*

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<sup>221</sup> *Jordan v. Lord Chancellor & Anor*(Northern Ireland) [2007] UKHL 14 (28 March 2007), paragraphs 65 - 66

*participate in the inquest and contributed to long adjournments in the proceedings;*

*(vi) The inquest proceedings did not commence promptly and were not pursued with reasonable expedition.”<sup>222</sup>*

The outcome of the ECtHR decision as earlier mentioned herein impacted on developments in the case. It led to the review and amendment of Rule 9(2) of the of the Coroners (Practice and Procedure) Rules(Northern Ireland) 1963 which prohibited compellability of a person suspected to be responsible for a death to give evidence at the inquest.

While the case as earlier mentioned covers addressed different issues, the focus of examination of this research work remains to establish how the coroner’s proceedings contribute to promoting police accountability. In the instant case, the Northern Ireland courts and the ECtHR clearly agree that an inquest proceeding is capable of unearthing facts as to person(s) responsible for a death and securing accountability of such persons.<sup>223</sup> Even though in the view of the Northern Ireland courts an expression of opinion of criminal liability by the jury is prohibited, but by stating that

*“nothing in the 1959 Act or the 1963 Rules prevents a jury finding facts directly relevant to the cause of death which may point very strongly towards a conclusion that criminal liability exists or does not exist”<sup>224</sup>*

the courts appear to have “indirectly overturned” that position.<sup>225</sup>

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<sup>222</sup> *Jordan v. UK*(2001) ECHR 24746/94, (2003) 37 EHRR 553

<sup>223</sup> *Jordan v UK* ECtHR, (2001), Application No 24746/94 paragraph 109

<sup>224</sup> *Jordan v. Lord Chancellor & Anor*(Northern Ireland) [2007] UKHL 14 (28 March 2007), paragraph 39

<sup>225</sup> Brice Dickson, “ Presuming that Legislation Favours a Peace Process: Some Cases from Northern Ireland, pp 3 - 4, a paper presented at the Statue Law Society Conference, Belfast, October 2008

This agreed position of establishing responsibility is evidently a strong selling- point and strength of coroner inquiries and also sets the stage for securing accountability especially where the alleged offenders are agents of the state.

While Rule 9(2) may have been amended, it is however worthy to mention that the previous position of the Coroner Rule that a suspect, in this case Sergeant A, the police officer who shot Pearse Jordan (the deceased) could not be compelled to attend the inquest as a witness undermines the very essence of the procedural obligation to investigate under Article 2 of the European convention to secure accountability and safeguard the right to life.

If there had not been an amendment to this rule, it would have remained a fundamental flaw and weakness in the coroner practice from the human rights perspective.

Furthermore, the delays in the holding of the inquest in the instant case as noted by the ECtHR is a breach of procedural obligation under Article 2 which provides that State must conduct a prompt, thorough, impartial and independent investigation into cases of death. Bearing in mind that long delays may have a direct impact on witness testimonies in terms of the accuracy and reliability, the imperativeness to hold inquest proceedings promptly cannot be over-emphasized.

### ***3.2. Lagos State Case Study- Inquest into the Death of Samson Adeleke Adekoya<sup>226</sup>***

The inquest was called at the instance of Access to Justice, a local based NGO on grounds of suspicion that the deceased died in police custody. At the inquest, evidence was taken from a number of witnesses including the police, relatives of the deceased, hospital representatives and

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<sup>226</sup> Coroner Court, Ikeja Coronial District, Suit No. C/ID/105/01/2008

other interested parties. According to the police evidence, the deceased was arrested on the 11<sup>th</sup> February, 2008 in connection with Conspiracy and Armed Robbery. He remained in police custody for 3 to 4 days within which time the police team in whose custody the deceased was last seen claimed that they were conducting further investigations to apprehend other suspected members of the gang who were still at large. It was in the course of their investigations that they claimed the deceased suddenly took ill warranting the need to secure medical assistance for him. According to the police, the deceased died before he could receive proper medical assistance. He was said to have died on 12<sup>th</sup> February.

However under cross examination of the members of the police team, facts revealed that the leader of the team, Inspector John Sawyer, failed to enter any records at the police station on indicating that deceased was taken out of the station on the said date that he died, he did not make effort to notify the coroner's office of the death or secure a post- mortem to ascertain the cause of death and lastly failed to notify the family of the deceased of his death.

Furthermore evidence by the police superiors revealed a disparity in the dates and time of the deceased death. The police station crime diary which was signed by the officer in charge showed that the deceased died on the 11<sup>th</sup> of February. Similarly, documentary evidence from the hospital also supported this position. According to the evidence from the doctors, the police report which accompanied the deceased body to the hospital indicated that he died at about 22:30pm on 11<sup>th</sup> February, 2008. The doctors also stated that no autopsy was conducted on the deceased as the request to conduct one was usually based on police directives. Concluding the

doctors stated that the deceased was given a mass burial after the 2months mandatory waiting period stipulated by the Health Ministry if there is no request for an autopsy by the police.

Submissions from the counsel for the police was to the fact that the police were acting within their lawful capacity to investigate the case against the deceased. He added that in the course of their investigations the police did not in any way act negligently as they took steps to secure medical assistance for the deceased at the time he took ill. The counsel for the relatives, submitted that the all documentary evidence tendered by the hospital that received the deceased body and even from the police showed a clear disparity in the claims made by the police in evidence. Thus, the only reasonable inference to be drawn is that the police were clearly implicated in the death of the deceased as he died in police custody. Furthermore the failure to officially notify the family of the death was a plot to hide and conceal about the death.

In reaching the final verdict of the inquest, the coroner emphasized that the aim of the inquest was to ascertain the identity of the deceased; establish the how, when and where the deceased the deceased death came about; determine whether any person should be held charged in connection with the death and lastly make any other recommendation to prevent future death in custody.<sup>227</sup>

Consequently, amongst the main facts the coroner found the following:

- (a) The deceased died while in police custody;
- (b) The deceased died on the 11<sup>th</sup> of February as against the 12<sup>th</sup> February claimed by the police;

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<sup>227</sup> Certified True Copy of the Inquest proceedings for the Death of Samuel Adeleke Adekoya, Suit No. C/ID/105/01/2008, pp6-7

- (c) That Inspector John Sawyer failed to comply with the directives of his superiors to notify the Coroner's office of the death;
- (d) That the police officers concealed information about the death of the of deceased from the deceased family;
- (e) No autopsy was conducted to ascertain the cause of the deceased death therefore making the death unknown. A final verdict of unknown cause of death was made by the coroner.

Additionally, the coroner made recommendations to the effect that the internal investigations into the circumstances of the deceased death should be ordered by the Police Commissioner in the light of the failure of Inspector John Sawyer and other officers to give credible information as to how the deceased met his death. He added criminal prosecution should be initiated accordingly where the officers are found culpable.<sup>228</sup>

A critical examination of the instant case again brings to the fore the pivotal role of the inquest proceedings and its main strength. Through the public inquiry, crucial facts as to police attempts to cover up facts about the death of the deceased in police custody were uncovered. Police complicity and unsatisfactory conduct connection with in the death was clearly exposed, placing some measure of liability on the police for the circumstances resulting in the deceased death. And even though the cause of death could not be established<sup>229</sup>, the public scrutiny into the circumstances surrounding the death in addition to the above, served to guarantee justice and effective accountability from the police for actions that they took in the course of discharging their constitutional duties. This is the position that the ECtHR noted in *Jordan v UK* when it

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<sup>228</sup> Ibid, p8

<sup>229</sup> An important function of an inquest is that it affords the deceased family an opportunity to know the true and actual cause of death

stated that there must "be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory."<sup>230</sup>

Although the facts of two case studies are radically different in terms of the issues raised, however the similarity they share rest in the fact that the inquests were conducted based on the facts presented during the public hearings. This in itself has been considered to be an apparent weakness and limitation of coroner inquiries because the realm of coroner's investigative powers is restricted to the public hearing alone.<sup>231</sup> While the coroner is vested with powers to summon witnesses in inquest proceedings, he is unable to order search and seizure or interrogations which may be able to make available further possible evidence that could be of relevance to the inquiries.<sup>232</sup>

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<sup>230</sup> *Jordan v UK* ECtHR, (2001), Application No 24746/94 paragraph 109

<sup>231</sup> Warwick Inquest Group, "The Inquest as a Theatre for Police Tragedy: The Davey Case", *Journal of Law and Society*, Vol. 12, No. 1, 1985, p36

<sup>232</sup> *Ibid*; See also "Death Certification and Investigation in England, Wales and Northern Ireland: The Report of a Fundamental Review 2003", p74 – here the report highlights that coroner powers are defective in the area of acquiring evidence needed for the conduct of effective investigations

## CONCLUSION

With police accountability being one of the critical issues in the police reform agenda of the Nigerian government, the initiative taken by Lagos State to reform its coroner law and putting it to test to check the excessive use of force resulting in arbitrary and extra-legal deaths by officials of the Nigeria Police Force must be commended. However, as the newly reformed coroner law is still at its trial stages, a lot needs to be done to refine the law to make it a very adequate and effective measure for promoting police accountability in Nigeria. This includes scoping and borrowing good ideas and practices from other jurisdictions which may be useful in improving the coroner's law and its practice.

This thesis set out to resolve certain critical questions bothering on the what is the role of coroner inquiries and how do inquiries serve to contribute to promoting police accountability in Nigeria. It sort to answer the questions through a comparative examination of coroner system and concrete case studies where coroner inquiries have been applied in both Lagos State and Northern Ireland, while also pointing out the potential strengths and weakness of the of the coroner inquiries.

Our critical study and examination of the coroner systems and case studies in the two jurisdictions and also the jurisprudence of the European Court of Human Rights, reveal that coroner inquiries is one sure way for the State to give effect to its human rights obligations. This is because coroner inquiries are able to ensure full disclosure of information pertaining to avoidable deaths caused by law enforcement and security agents, exposes the unsatisfactory and culpable conduct of individual officers so that they are held to account for such conduct

This in no small measure helps not only to check and control the use of force by security and law enforcement agents but also promote their accountability and curtail impunity that may arise from the exercise of their police powers.

Secondly, the contribution of the coroner to the protection of the right to life is one that cannot be contested. This is clearly reflected in the ECtHR jurisprudence as well as in many other quarters.<sup>233</sup> Thus, the way a State is able to use the coroner investigations to deal with the cases of death caused by law enforcement and security agents has grave implications on its observance of its human rights obligations. This position is clearly substantiated by the views of the former United Nations Special Rapporteur on Extrajudicial, Summary and Arbitrary Execution, Barce Waly Ndiaye when he said

*“The manner in which a government reacts to human rights violations committed by its agents, through action or omission clearly shows the degree of its willingness to ensure effective protection of human rights”*<sup>234</sup>

Consequently in the light of the findings of this thesis, it is my conclusion that coroner inquiries and investigations do serve as an adequate and effective measure to enhance police accountability and improve human rights protection in Nigeria.

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<sup>233</sup> Death Certification and Investigation in England, Wales and Northern Ireland: The Report of a Fundamental Review 2003, p68; S. 32 of the Lagos State Coroners’ System Law, 2007; Coroner’s Place, a publication by Access to Justice

<sup>234</sup> United Nations, Economic & Social Council, *Report of the Special Rapporteur, Mr. Barce Waly Ndiaye, Mission to United States of America*, E/CN.4/1998/68/Add.3, 22 January 1998,

## ***Recommendations***

While the strengths of the coroner inquiries in the two jurisdictions examined is clearly accentuated with very minimal weaknesses, it is suggested by way of recommendation that to continually improve on the newly reformed coroner law and practice in Lagos State, efforts should be made to introduce the Article 2 procedural requirements of the European Convention (ECHR) into the new coroner law and ensure that coroner proceedings conform with the article 2 requirements. This will further strengthen the protection of the right to life guaranteed under the 1999 Nigerian Constitution as well as the accountability process.

Furthermore, to address the limited investigative powers of the coroner, a review of the enabling coroner law should be done to expand the coroner's powers to be able to take all necessary steps including making orders to secure every necessary document or material that would be relevant to the conduct of an effective death investigation.

This research work is not exhaustive and as a result further research that will improve Coroner proceedings as instrument for securing police accountability in Nigeria is encouraged.

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