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THE LEGALITY OF POLICE CHECKPOINTS IN NIGERIA

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ABSTRACT

Police checkpoints are locations especially on the highway where police officers are stationed to check vehicle and drivers in consonance with their duty of prevention and detection of crime as well as the apprehension of offenders and preservation of law and order. But the proliferation of police checkpoints and the manner of operation of police officers at these checkpoints across the nation has called to question the legality of these checkpoints. This paper discusses the legality of police checkpoints in Nigeria with reference to the extant laws on the point and in comparison with the practice in civilized jurisdictions. The conclusion that is made is that notwithstanding the powers of the police to prevent and detect crime, police checkpoints, as presently conducted in Nigeria, are not only illegal, they also present a platform for the commission of more illegality. The paper recommends strict adherence to the law, respect of the citizens' fundamental rights and adequate discipline of erring police officers as the way to curb this national embarrassment.

Keywords: Policing, Traffic, Highway Patrol, Nigeria.

1. INTRODUCTION

One of the admirable reforms introduced by the immediate past Inspector-General of police, M.D. Abubakar, was the ban on illegal and irritating checkpoints established across the nation's road network by members of the Nigeria Police Force. In declaring the ban, the Inspector General did not mince words in berating police officers for failing the force. In his words:

“Even when the checkpoints were in place, how many kidnappers did they stop? How many vehicles or persons involved in smuggling of arms and ammunition or robbery on these roads did they stop? Rather, what they were doing was tarnishing the image of the police by involving themselves in embarrassing acts.”¹

¹ Taiwo Kehinde, *Police Checkpoints in Nigeria: Mitigating the Excesses of the Men in Black*, available at: taiwokehinde-mymind.blogspot.com/2013/09/police-checkpoints-in=Nigeria.html (accessed on 19/11/2014)

Obviously, these embarrassing acts which tarnished the image of the police are legion and include extortion of money from motorists, extra-judicial killings, and bloodshed caused by accidents occasioned by indiscriminate checkpoints.² Before the coming of M.D. Abubakar, it would appear that it was virtually the case that the only discernable duty policemen enthusiastically engaged in, was the manning of illegal checkpoints almost at every kilometer of the nation's highways. This made road usage a very risky and hellish expedition for most Nigerians.³ Some checkpoints became regular scenes of bloodshed because fatal accidents occur when unsuspecting motorists are signaled or made to halt abruptly. Many motorists have been killed by policemen for either failing to stop or refusing to pay illegal levies imposed at these checkpoints. Numerous innocent passengers have also died from stray and directly aimed bullets in the process⁴. Thus, rather than aiding security and the apprehension of criminals, police checkpoints in Nigeria have become notorious as avenues for irritatingly delaying motorists and commuters in the quest by the police officers to extort money from them, even as criminals make the best of such scenarios to pay the necessary toll and evade apprehension⁵. To effectively ensure that motorists come to a standstill for the purpose, policemen at these checkpoints use all sorts of objects such as tree trunks, tree branches, empty drums, big stones or iron barricades that are placed across the road with a little space in between to restrict or slow down movement. These checkpoints have no doubt created very ugly and disgusting spectacles on the highways.

It was the foregoing negative perception and reality of police checkpoints in Nigeria that must have informed the former Inspector-General of Police to outlaw the setting up of indiscriminate checkpoints and ensured during his tenure that they did not return. The present Acting Inspector-General noted the negative perception and the reality of police checkpoints when he announced the dismantling of all police checkpoints in the country even though he reintroduced them by setting up the Tactical Operation Points where policemen would be authorized to start an extensive stop-and-search procedure.⁶ How much this will differ from the notorious police checkpoints as we know is yet to be seen. Suffice it to state that the main purpose of this paper is the determination of the legality of police checkpoints in Nigeria. In other words, are police checkpoints legal? If the answer is in the affirmative, does the law permit the rampancy and modus operandi at these checkpoints? The answers to these questions are found in the discussion following.

2. THE LEGAL BASIS FOR POLICE CHECKPOINTS

It is a well-known fact the prime object of the criminal law of which the police form an essential part, is the protection of the public by the maintenance of law and order. To this end, it has been stated that the general purpose of the criminal law and the establishment of the police force, amongst others, is to forbid and prevent conducts that threaten harm to individuals and the public at large as well as to subject to public control, persons whose conducts indicate that

² Audu Echono & M B Anaki, Checkpoints in Nigeria and their implication on Security, available at the lawyerschronicle.com/checkpoints-in-nigeria-and-their-implication-on-security/ (accessed on 15/11/2014)

³ Mike Ikhariale, Return of Illegal Police Checkpoints, *The Punch*, September 28, 2014. P. 16 also available at: www.punchng.com/columists/trivia-constitutional/return-of-illegal-police-checkpoints/ (accessed on 19/11/2014)

⁴ Audu Echono & M B Anzaki op.cit.

⁵ Backdoor Return of Police Checkpoints, available at: www.tribune.com.ng/quiklinkss/editorial/item/17222-backdoor-return-of-police-checkpoints/17222-backdoor-return-of-police-checkpoints (accessed on 14/11/2014)

⁶ Ibid.

they are disposed to commit crimes.⁷ It includes the control of those who have manifested their dangerousness sufficiently enough to generate fear in the minds of reasonable members of the society. This is so because every responsible society takes appropriate measures to protect the lives and property of people living within its boundaries.

There is no doubt that in Nigeria today, the foremost state agency that combats crime and criminals is the police with the support of the courts, the legal profession and the prisons⁸. But to be able to do its work effectively, the police must have the legal basis for doing so. Put differently, the police must have legal empowerment to do their work. In line with these general purposes, both the Constitution⁹ and the Police Act¹⁰ give the police very wide powers in the performance of their duties.

The police are a creation of law. Section 214(1) of the 1999 Constitution provides that there shall be a Police Force for Nigeria, which shall be known as the Nigeria Police Force. Section 214(2)(b) of the same Constitution provides that the members of the Nigeria Police Force shall have such powers and duties as may be conferred upon them by law. The major law which provides for such powers and duties of the police is the police Act¹¹. Section 4 of the Police Act¹² provides for the role of the Police follows: -

The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged and shall perform such military duties within and without Nigeria as may be required of them by or under the authority of this or any other Act. In *Fawehinmi v. Inspector-General Of Police*¹³, the Supreme Court gave credence to the powers of the Police as encapsulated in section 4 of the Police Act when it synthesized the duties of the police under the law to include, to:

- (a) prevent crime;
- (b) detect crime;
- (c) apprehend offenders;
- (d) preserve law and order;
- (e) protect life and property; and
- (f) enforce all laws and regulations with which they are directly charged.

As can be deduced from the above, section 4 of the Police Act makes it clear that the first and foremost duty of the police relevant to this work is to prevent and detect crimes as well as to apprehend offenders. In exercise of its duty of preventing and detecting crimes and apprehending offenders, the police usually effect arrest and conduct searches on the person suspected of having committed an offence. Under our criminal justice system, the incidence of police power of search of persons and things is generally known as “stop-and-search”. But under that system, the police have no powers to merely stop a citizen without first effecting his arrest for the purpose of searching him. It is therefore after arrest that the power of search is normally exercised.¹⁴ This is also the position at common law.¹⁵

⁷ E.O.C. Obidimma, “Agent Provocateur – Devil’s Agent: A criticism of the role of the Police a agent provocateur in our criminal justice system” in UNIZIK LAW JOURNAL, VOL. 4, NO. 1, 2004, P. 103

⁸ D.I.O. Ewelukwa, “Administration of Justice’ in Introduction of Nigerian Law; C.O. Okonkwo Ed; (London, Sweet & Maxwell, 1980) P. 45

⁹ The Constitution of the Federal Republic of Nigeria, 1999

¹⁰ Cap. 359, Laws of the Federation of Nigeria, 1990

¹¹ Cap. P. 18, Laws of the Federation of Nigeria, 2004

¹² Cap. P. 18, LFN, 2004

¹³ (2000)7 N.W.L.R. (Part 767) 606 at 670

¹⁴ Criminal Procedure Act, Cap. 80, Laws of the Federation of Nigeria, 1990, Section 5(1)

¹⁵ G.L. Williams, “Statutory powers of search and Arrest on the Grounds of Unlawful Possession (1960) C.L.R.

It has been suggested that it is implied from the general duties of the police under section 4 of the Police Act that there exist the powers to stop and search.¹⁶ That is to say that the police power to search is derived from section 4 of the Police Act. The search procedure, apart from being a means of extracting evidence to be used at the trial, is also a routine procedure for the prevention or detection of crime. But the power to stop and search is not just exercised anywhere and anytime. They are usually exercised when the police set up checkpoints on public highways. It is at these checkpoints that motorists and other road users may be stopped and, if need be, searched.¹⁷ However, section 29 of the Police Act unequivocally provides for the powers of stop and search in the following terms: “A police officer may detain and search any person whom he reasonably suspects of having in his possession to conveying in any manner, anything which he has reason to believe or have been stolen or otherwise unlawfully obtained.” Thus, by the combined effect of sections 4 and 29 of the Police Act, and section 214(2)(b) of the Constitution, a police officer arresting a person suspected of having committed an offence, may search that person where such search will afford evidence of the commission of the offence.

Under these laws, a police officer may conduct a search of a thing, which he reasonably believes contains anything unlawful. It has been suggested that the power to stop and search a vehicle exercised by the police at checkpoints, is derived from the general duty of the police to prevent and detect the commission of crime as adumbrated in section 4 of the police Act.¹⁸ Much as we agree with this suggestion, with due respect, we disagree with the manner of the exercise of that power as it is presently being done in Nigeria. The mobile police officers as well as the regular policemen who mount road blocks at almost every kilometre on our highways only do so for one purpose; the collection of N20.00 or more as the case may be from mostly commercial bus drivers. This has immensely proliferated the number of police checkpoints on our highways. It is submitted that there is nothing in the nature of prevention and detection of crimes in collecting “tolls” from road users. Rather, in doing this, the police assist in concealing crimes because once they collect their “roja”, they look away. They are not concerned if the vehicle is carrying criminals or any unlawful thing or is being used in any unlawful manner or purpose. This greatly derogates from the purpose for which the police are permitted to stay on our highways, and must be deprecated in very strong terms.

Furthermore, it is submitted that the power to stop and search a vehicle which power is exercised by the police at checkpoints, is also derived from the power of the police under the Road Traffic Laws of the states.¹⁹ The duty of the police under this law is to check the behaviour or misbehavior of road users. This has become necessary in order to avoid traffic chaos. To this end, rules are made pursuant to the law to guide and regulate the use of the highway. And as has been aptly argued, as long as there are statutory provisions and regulations which road users are required to comply with, the police, in pursuance of their general duty to maintain law and order, are vested with powers to ensure that such provisions and regulations are obeyed for effective traffic control.²⁰ In exercise of these powers, the police have powers to stop, inspect and detain vehicles, to arrest vehicle drivers, to demand and obtain driving license and vehicle documents etc. Obviously, these powers cannot be exercised if the vehicles in question are not stopped and the vehicles cannot be stopped for this purpose without the existence of police checkpoints on the highways. Hence, in order to give effect to the law, it is necessary that the police should establish checkpoints on the highways. To draw the curtain on the discussion on the legal basis, it is pertinent to observe that from the statutes we have examined including the Constitution, the Police Act, the Criminal Procedure Act and Road

¹⁶ George O.S. Amadi, *Police Powers in Nigeria*, (Nsukka, Afro-Orbis Publishing Co. Ltd, 2000), P. 120

¹⁷ *Ibid.*

¹⁸ Oluwatoyin Doherty, *Criminal Procedure in Nigeria: Law and Practice*, (London, Blackstone Press Ltd, 1990) P. 90

¹⁹ See Road Traffic Law, Cap. 116, Laws of Eastern Nigeria, 1963.

²⁰ George O.S. Amadi, *Op. cit.* P. 159

traffic Law, there is legal basis for the police to establish checkpoints on the highways. This is in consonance with the general duty of the police to prevent and detect crime as well as to apprehend offenders. These duties are predicated on the laws we have so far examined. However, the extent to which the police exercise these powers within the confines of the law leaves much to be desired and will be discussed in the latter part of this paper. Suffice it to say however, that the complaint is not founded on the non-existence of laws on the basis of which the police establish checkpoints as has been adumbrated herein, but on the manner of the exercise of such powers as exist in the law. The real problem is that there is no crime which they are preventing and detecting at the checkpoints, yet they violate the rights of their victims. The obvious violations of the rights of citizens to personal liberty and other infringements are discussed in the next section.

3. THE ABUSE OF CHECKPOINTS

From the foregoing discussion, it is not difficult to infer that the police have authority to establish checkpoints for purpose of carrying out their duties. In other words, it is legal for the police to set up checkpoints. However, it needs to be stated from the onset that what is legal is the establishment of police checkpoints for purposes of preventing and detecting crimes. It is not, and can never be legal, for the police to establish checkpoints at which they extort money from drivers, subject those who refuse to give them money to untold harassment and brutality, shoot at some of them and in the process, either maim or kill some of their victims. It is also not legal for the police to use these checkpoints to cause obstructions and accidents as they do. It cannot also be used as a forum to commit any offence whatsoever.

One of the most glaring abuses made by the police in the exercise of their power to establish checkpoints on the highways is to use them as toll collection centers. Any regular commuter on our highways need not be told of the incidence of police collection of money from motorists. For example, a ride on the Enugu-Onitsha expressway will reveal that there are about fifteen police checkpoints mounted by the men of the police mobile force from Onitsha to Enugu. On some days, it could be more. This is apart from the roadblocks mounted by the regular police officers or those of the highway patrol. At each checkpoint, the driver pays at least N20.00 and woe betide him if he should even hesitate to do so.

On some routes like the Onitsha-Nkwelle Otuocha road where the commuters make about four to five trips daily, they are expected by the police to make three returns each day viz, morning afternoon and evening. And on a day the policemen will stay late into the night, in addition to the three daily contributions, each driver is expected to pay what they call "night extra". Police effectiveness in doing this is manifested in the fact that one police officer is specifically assigned with a "record book" in which he registers every vehicle that has paid for each session. Another officer is assigned with the duty of giving "change" to those who do not have N20.00 notes. As shameful as these acts are, the police do them without any qualms and they are ready to "deal" drastically with any person who refuses to pay the "toll." They mete out several inhuman treatments on such persons: they force such people to do frog-jumping for hours, they deal several lashes of the horse-whip on some, they force some to lie face down in a pool of mud water, they force some to sit down in the middle of the road and others they compel to off load their vehicle and go back to the loading station.

These punishments are inflicted on road users not for committing any particular traffic offence but for refusal to pay the demanded N20.00. As reprehensible as these acts are, road users in this category must count themselves very lucky. This is because others lose their lives in the process. Others have themselves maimed.

As a result of these abuses, several motorists and other road users have lost their lives. A few examples will suffice. In the first week of February 2002, a commercial bus driver and his conductor were both killed at a police checkpoint over their refusal to part with N20.00 in

the Gbagada area of Lagos State. As a result of this, two policemen at the checkpoint were lynched and set ablaze in their patrol car by irate members of the public²¹.

Again, a recent release by the Police Force Headquarters gave account of the death of a Police Corporal, Agboola, who was attached to an Assistant Inspector-General of Police. Agboola, was on his way home with his wife in a commercial bus when they were stopped along Iyana-Paja-Egbeda Road in Lagos at a police checkpoint manned by Corporals Oguntola and Ojukaiye. As usual, the driver and his conductor were man-handled by the policemen. Agboola rebuked them and as he attempted to bring out his identity card, one of the policemen shot him in the stomach. He subsequently died at the Ikeja General Hospital the following day.²²

Other forms of abuses include obstruction of the highway, which the police do by blocking the road and making the passageway narrow so that every vehicle that passes must stop. This is in a bid to ensure that no vehicle escapes their extortion. In most cases, this causes a long queue of vehicles to the distress and inconvenience of road users. Furthermore, this obstruction causes accidents in many cases. When vehicles queue up as stated above in police checkpoints, unsuspecting on-coming vehicles, not knowing that the vehicle ahead of him would stop suddenly, would hit that other vehicle. In serious or fatal cases, the policemen at the checkpoint would disappear from the scene, never to be seen again.

The above are the chronicle of some of the abuses carried out by the police at the numerous checkpoints on the highway. To say the least, this is gross derogation of power of the police to establish checkpoints for the purpose of preventing and detecting crime. But the worse aspect of this abuse is the pretence of powers that be in the police, to ignorance of these abuses. There is a Commissioner of Police in every State of the Federation, there are at least three area commanders in each state and there are divisional police officers in charge of every police station. Certainly, the policemen who adorn the highway at checkpoints do come from one of the units enumerated above. This means that these policemen are subordinate to some senior police officers. Thus, they are subject to control. Yet, these senior officers pretend not to know that their subordinates parade the highways extorting money from road users and committing, other atrocities in the process.

As this pretence is a veritable subterfuge, it cannot but continue to reduce the credibility of the police. In fact, it would be an understatement to say that the Nigeria Police Force as of today has lost credibility in the eyes of most Nigerians. The police have no credibility as they are generally perceived to be very corrupt. The police in the eyes of the public are cheats, brutes, corrupt and trigger-happy. Many innocent persons have been killed at police checkpoints. As noted earlier, most of the killings result from the refusal of commercial bus drivers to part with N20.00 (about 4 British pence) or more depending on how desperate and hungry the policeman was.

The most worrisome aspect of these abuses is that they derogate the fundamental rights guaranteed the citizens by the Constitution. These rights include the right of life,²³ the right to the dignity of human person,²⁴ the right to personal liberty²⁵ and the right to freedom of movement.²⁶ Surprisingly, these abuses are not redressed either because the victims are uninformed or do not know what to do or they lack the means to do so even when they know. Some others are in so much hurry that they prefer to mortgage their rights by compromising with the policemen – who always take advantage of this weakness in their continued abuse of the power to prevent and detect crime in the society.

²¹ The Comet, February 6, 2002, P. 15

²² The Comet, March 16, 2002, P. 16.

²³ The Constitution of the Federal Republic of Nigeria, 1999, section 33

²⁴ Ibid., Section 34

²⁵ Ibid., Section 35

²⁶ Ibid., Section 41

4. POLICE CHECKPOINTS IN OTHER JURISDICTIONS

In the United Kingdom, the system of *police stop and search* system serve the same purpose as Nigeria's police checkpoints. The police and other law enforcement agencies in several other jurisdictions also use checkpoints in combating criminal activities but such checkpoints are limited to a particular or specific purpose. The use of such checkpoints must also be in consonance with the law and must not derogate any of the citizens' fundamental rights guaranteed by the Constitution. In the United States of America for example, although vehicle checkpoints are constitutional for some purposes, they are unconstitutional if used to obtain evidence of ordinary criminal wrongdoing.²⁷ In *Indianapolis v Edmond*,²⁸ the police set up a programme of vehicle checkpoints to detect illegal drugs. The roadblocks which were operated during daylight hours and clearly marked by signs were well-planned in advance. After the stop, an officer required Edmond to produce his driver's license and registration particulars. The total time of the search was less than five minutes. Edmond and other drivers who were also stopped brought this suit claiming that the stops violated the Fourth Amendment because they lacked individualized reasonable suspicion. The court agreed, holding that the roadblock in this case did not fall within the category of the roadblocks the court had approved in the past in that the purpose of the roadblock in Edmond was to detect criminal wrongdoing. The court concluded thus:

We have never approved a checkpoint programmed whose primary purpose was to detect evidence of ordinary criminal wrongdoing. Rather our checkpoint cases have recognized only limited exceptions to the general rule that a seizure must be accompanied by some measure of individualized suspicion.

Indeed, the general tendency in America, with very few exceptions, is to declare checkpoints illegal and unconstitutional.²⁹ In consonance with this, it has been held that the Fourth Amendment's reasonableness standard prohibits police officers from randomly stopping vehicles to check driver's license and registration. This was in the case of *Delaware v Prouse*³⁰ in which a police patrolman stopped a vehicle without reasonable suspicion to check the driver's license and registration. The patrolman recovered marijuana from the car in plain view. Addressing the constitutionality of the stop, the court noted that the public interest in ensuring that motorists are licensed and vehicles are duly registered justified the checkpoint's slight intrusion on motorists. However, in the instant case, because the officer had unbridled discretion regarding which car to stop, this made the checkpoint unconstitutional. The same conclusion is reached in cases of general crime control checkpoints for the purpose of detecting crime.³¹

However, with regard to sobriety and informational checkpoints, the courts have held them to be constitutional. In *Illinois v Lidster*,³² the U.S Supreme Court held that information-seeking checkpoints are constitutional. In coming to this decision, the court concluded that the substantial interest in solving a serious crime outweighed the minor intrusion the stop imposed on motorists. In the case, a police detective who was investigating a hit and run accident in which a 70 year old bicyclist was killed stopped drivers on the highway to get information about the fatal accident. Lidster was stopped and in the course of doing so, he was found to be

²⁷ Rolando del Carmen, "vehicle Checkpoints" available at:
<http://books.google.com.ng/books?isbn=1285415485> (accessed on 23/2/2015)

²⁸ 531 U.S. 32, 41 (2000)

²⁹ Mathew Martoccio, "Checkpoints are Unconstitutional" available at:
<http://www.martoccio.com/2012/12/04/checkpoints-are-unconstituti..> (accessed on 23/2/2015)

³⁰ 440 U.S. 648 (1979).

³¹ *Indianapolis v Edmond* supra, see also Mathew Martoccio op.cit.

³² 779, N.E. 2nd 855 (111.2002)

drunk and he was arrested and eventually charged to court. At his trial, Lidster challenged his arrest and the evidence obtained from the stop, contending that the information-seeking checkpoint violated his Fourth Amendment protection against unreasonable seizure. The trial court denied the motion and the defendant appealed to the Illinois Supreme Court which reversed the trial court. Upon further appeal, the U.S. Supreme Court held that the information-seeking stop was constitutional and reasonable.³³ This is so because information-seeking checkpoints are an important tool for law enforcement. The decision whether a checkpoint is constitutional or not is based on the Fourth Amendment which states:

The right of the people to be secure in their person, houses, papers, and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

In dealing with the above constitutional provision, the U.S. Supreme Court held that there is no Fourth Amendment prohibition on officers simply asking citizens in a public place for voluntary cooperation in providing information. The court however stated that although the Fourth Amendment permits information-seeking checkpoints, the protection against unreasonable search and seizure still applies to the procedures used. And to conform to the constitutional provisions *inter alia*:

- The crime about which information is sought must be serious.
- Checkpoints must be narrowly tailored to the investigative purpose.
- All checkpoints stops must be brief and systematic as arbitrary stops are unconstitutional.
- Officers may not stop vehicles to conduct generalized interrogation.³⁴

In the United Kingdom and Australia, police checkpoints are rarely seen except during Christmas and New Year holidays and this is mainly to check and prevent drunk-driving.³⁵ Under section 6 procedures,³⁶ the police at checkpoints can stop and interrogate you:

- If a constable reasonably suspects that you have alcohol or drugs in your body
- If he reasonably suspects that you have committed a traffic offence while the vehicle was in motion, or
- If an accident has occurred owing to the presence of your vehicle.

Because driving whilst over the speed limit or driving whilst under the influence of drugs or alcohol is a breach of the law, the police officer is entitled to stop you and there is no defence against refusing to stop and provide a sample when asked to do so by an officer in uniform. The inference is that it is legal for the police to mount checkpoints for these specific purposes.³⁷

³³ See the case of *Michigan v Sitz*, 496 U.S. 44, 455 (1990) in which the court held that sobriety checkpoints without individualized suspicion are constitutional. See also Lawinfo, "The Constitutionality of Sobriety Checkpoints" available at <http://resources.lawinfor.com/drun-driving-defence/the-constitutional...> (accessed on 23/2/2015)

³⁴ *Illinois v Lidster* supra

³⁵ Police Checkpoints. Anti drink driving campaigns, what is the law on this? Available at www.rac.co.uk/forum/showthread.php?1981-police-checkpoints-Anti-drink-driving-campaign (accessed on 28/2/2015)

³⁶ The Road Traffic Act, 1988

³⁷ Police checkpoints during the festive period available at: <http://groups.google.com/forum/#!topic/uk.legal/vErdvS52jzo> (accessed on 28/2/2015)

In South Africa, the combined effect of both the Constitution of the Republic of South Africa³⁸ and the South African Police Service Act³⁹ is that although roadblocks are an indispensable mechanism in the endeavours of the police to combat crime effectively, they constitute a limitation on the individual's fundamental rights to privacy and freedom of movement. Therefore, as a limitation on fundamental rights of citizens, roadblocks have to conform to the requirements of the Constitution as interpreted by the courts otherwise the police might incur liability if the legal requirements are not met.⁴⁰

Pursuant to section 13(8)(b) of the Police Act, a national or provincial commissioner may in writing authorize a police officer under his command to set up a roadblock on any public road in a particular area. This authorization will be necessary where it is reasonable in the pursuant to section 205 of the Constitution. Whenever such authorization is to be made, it must be in writing and must also specify the date, approximate duration, place, and object of the proposed action.

However, under section 13(8)(d) of the Police Act, any police official who has reasonable suspicion to believe that any of the offences listed in schedule 1 of the Criminal Procedure Act⁴¹ or any of the circumstances in section 138(d) of the Police Act has occurred, may without prior authorization, set up a checkpoint on any public road in the area to establish whether a motor vehicle is carrying such a person or object.⁴²

The point to be made in the position in South Africa as well as in other jurisdiction examined including the United Kingdom and the United States of America, is that police checkpoints are not established arbitrarily. As has been shown, in some cases, the law categorically provides for its non-existence and permits it only in some exceptional circumstances. And even in those exceptional circumstances, the procedure adopted must conform to the tenets of law and recognize the fundamental rights of the citizens. In those exceptional circumstances also, the procedure adopted by police officers is required to be humane and not predicated on the personal discretion of a particular police officer. Checkpoints should therefore not be a venue for the violation of the rights of the people or a forum for corruption by the police.

Can the same be said of police checkpoints in Nigeria? The answer must be in the negative. In the first place, neither the Constitution⁴³ nor the Police Act⁴⁴ has made any guidance for the establishment of police checkpoints in Nigeria. The power to stop and search vehicles exercised by the police at checkpoints is derived from the general duty of the police to prevent and detect crime as adumbrated in section 4 of the Police Act.⁴⁵ Thus, there is no prescribed manner of the exercise of the power by police officers. The result is that police officers set up checkpoints arbitrarily and do whatever their whims and caprices dictate. And as it is, there is no known decided case which has determined the legality of police checkpoints in Nigeria. This situation no doubt may be a good ground for the police to continue in their arbitrariness and abuses that are perpetrated at numerous checkpoints in Nigeria.

6. CONCLUSION

The conclusion that is made is that there is legal authority for the establishment of police checkpoints in Nigeria. This conclusion is predicated on the provisions of the

³⁸ Act N0. 200 of 1993.

³⁹ Act N0. 68 of 1995

⁴⁰ Christa Rautenbach, "The Constitutionality of Police Roadblocks in South Africa, available at <http://www.academia.edu/4009126/The-Constitutionality-of-Po...> (accessed on 28/2/2015)

⁴¹ N0. 51 of 1977

⁴² Christa Rautenbach, *Ibid.*

⁴³ Of the Federal Republic of Nigeria 1999 (as amended)

⁴⁴ Cap. P. 18, Laws of the Federation of Nigeria, 2004.

⁴⁵ *Ibid.*

Constitution, the Police Act, the Criminal Procedure Act and the Road Traffic Law which have all been examined in this presentation. What this means is that the police will be acting within the ambit of the law in establishing checkpoints on the highways. This is for the purpose of accomplishing the general duty to prevent and detect crime in the society.

In preventing and detecting crimes, the police are empowered for that purpose, not to observe the fundamental rights prescribed under the Constitution. This is so because the fundamental rights are not absolute. They are qualified right. What this means is that there are reasons and circumstances when they may not be observed. The case in point here is *Ekwenugo v. Federal Republic of Nigeria*⁴⁶ where the Court of Appeal held that: “No citizen’s freedom or liberty is absolute. A citizen’s right of liberty may be impaired temporarily in order to prevent him from committing an offence or if there is a reasonable suspicion that he has committed an offence.” Even the right to life under the Constitution is not absolute. In this regard, the Supreme Court held in *Onuoha Kalu v. The State*⁴⁷ that the right to life prescribed under section 30(1) of the 1979 Constitution (section 33(1) of the 1999 Constitution) is clearly a qualified right.⁴⁸

What this translates into is that in the course of its duty to prevent and detect crimes, the police may derogate any of the fundamental rights guaranteed by the Constitution. Thus, they can establish checkpoints and upon reasonable suspicion that a person has committed an offence or in order to prevent him from committing an offence, the police can arrest, detain and search him for the purpose of collecting evidence to be used at the trial. They can do so as long as it is necessary to do what is necessary in the circumstances of each case and this will not amount to the infraction of the person’s constitutional right.

Apart from this exception, which is predicated on the Constitution, the police have no right and power to indulge in the abuses discussed above. In fact, it can be concluded without any fear of contradiction that in establishing checkpoints on the highway as they presently do, the police do not seek to prevent or detect any crime. They only do so for the sole purpose of collecting money from motorists. This is the aspect that is illegal in the conduct of the police at checkpoints. It is illegal because it has no basis in law. Besides, it is not one of the reasons for which the law permits the use of checkpoints on the highways. Apart from the extortion of money from motorists, other illegal conducts and abuses committed by the police at checkpoints are hereby deprecated. They are uncalled for and their continued occurrence is a crushing indictment on our pretended effort to wipe away corruption and corrupt practices in our polity. It smacks of un-civilization and does not in any way launder our image in the globalised world. Nigeria could borrow a leaf from the United States of America, the United Kingdom and South Africa, and prescribe the specific circumstances and the procedure to be adopted for the establishment of police checkpoints. This will go a long way in assuring the citizens of the protection of the law against arbitrariness. As checkpoints are an indispensable mechanism in the fight against crime and even though they constitute a limitation on the individual’s fundamental rights, these limitations can be contained within the purview of the law so that the police might incur liability if the legal requirements are violated.

⁴⁶ (2001)6 N.W.L.R. (Part 708) 171 at 185

⁴⁷ (1998)13 N.W.L.R. (Part 583) 531 at 593

⁴⁸ I.A. Okafor, S.A.N. and E.O.C. Obidimma, “Case Comment on *Onuoha Kalu V. The State*” in UNIZIK LAW

JOURNAL, Vol. 1 No. 3, 2001, p. 248. See also *Director of S.S.S. V. Agbakoba* (1999)3 N.W.L.R.; (Part 595) 314 at 355.

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