

Constitutionalism, the Rule of Law and Human Rights

Presentation by Ayo Obe to the Governors' Forum
Retreat at Sokoto, 16th November 2013

Altering the Constitution

- **9.** (1) The National Assembly may, subject to the provision of this section, alter any of the provisions of this Constitution.
- (2) An Act of the National Assembly for the alteration of this Constitution, not being an Act to which section 8 of this Constitution applies, shall not be passed in either House of the National Assembly unless the proposal is supported by the votes of not less than two-thirds majority of all the members of that House and approved by resolution of the Houses of Assembly of not less than two-thirds of all the States.
- (3) An Act of the National Assembly for the purpose of altering the provisions of this section, section 8 or Chapter IV of this Constitution shall not be passed by either House of the National Assembly unless the proposal is approved by the votes of not less than four-fifths majority of all the members of each House, and also approved by resolution of the House of Assembly of not less than two-third of all States.
- (4) For the purposes of section 8 of this Constitution and of subsections (2) and (3) of this section, the number of members of each House of the National Assembly shall, notwithstanding any vacancy, be deemed to be the number of members specified in sections 48 and 49 of this Constitution.

Why amend the Constitution? (1)

- Dissatisfaction with the 1999 Constitution
 - Not a Constitution made by “We the people”
 - Interference by the outgoing military dictatorship
 - Contents unknown until the eve of the hand over to civilian rule
- Clumsy errors
 - The requirement for membership of a political party as a qualification for almost every office under the Constitution, including those where impartiality and non-partisanship are obviously essential – such as INEC

Why amend the Constitution? (2)

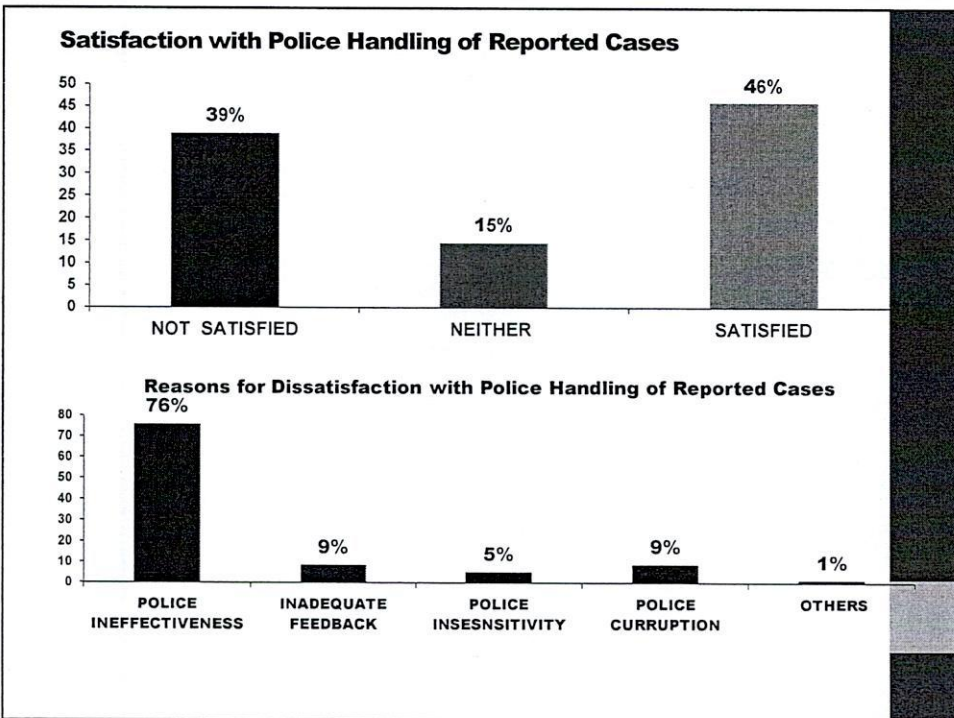
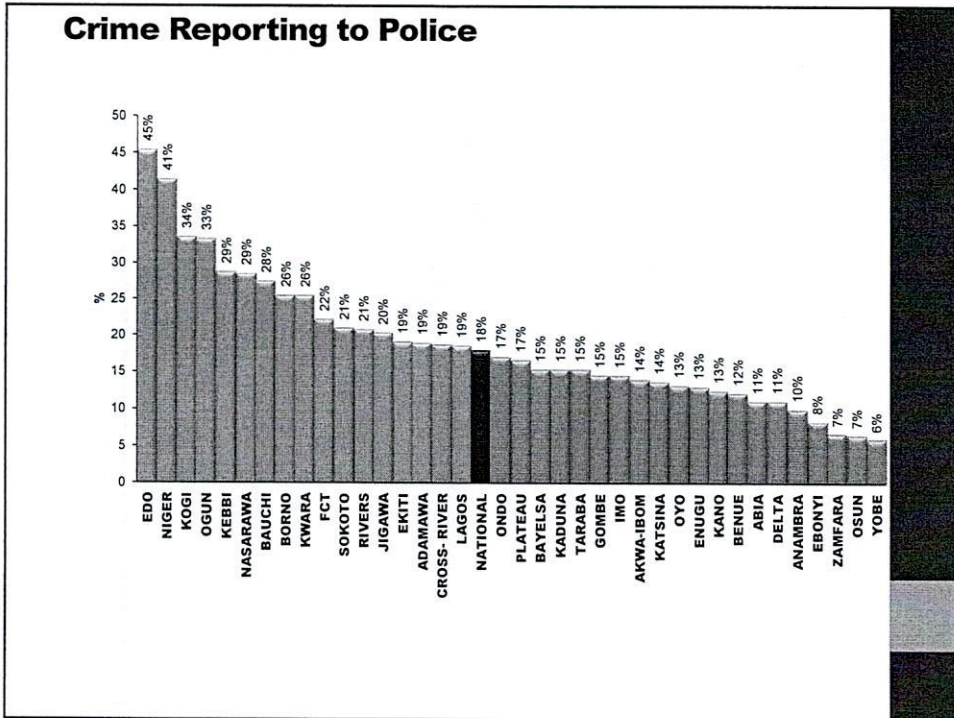
- Functional amendments
 - The election-related alterations which were rushed through in 2010 to enable the 2011 elections to be held
 - The National Industrial Court of Nigeria
- To make genuine substantive changes

The Nigeria Police Force

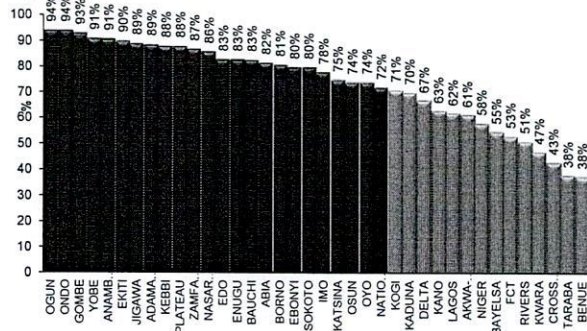
- **214.** (1) There shall be a police force for Nigeria, which shall be known as the Nigeria Police Force, and subject to the provisions of this section no other police force shall be established for the Federation or any part thereof.

NPF: Answerable to whom?

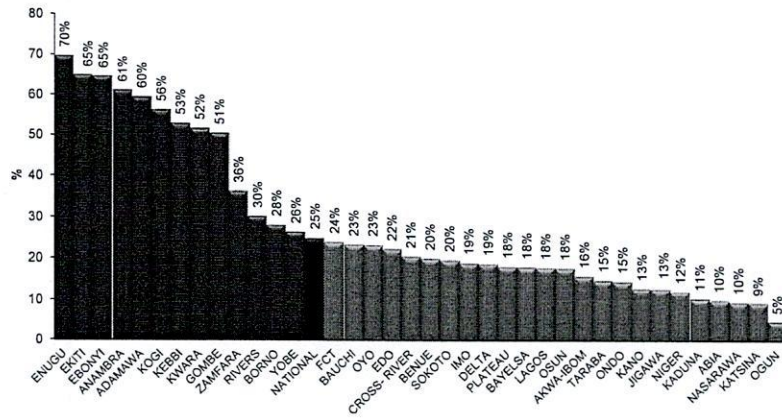
- (2) The Nigeria Police Force shall be under the command of the Inspector-General of Police and contingents of the Nigeria Police Force stationed in a state shall, subject to the authority of the Inspector-General of Police, be under the command of the Commissioner of Police of that state.
- (3) The President or such other Minister of the Government of the Federation as he may authorise in that behalf may give to the Inspector-General of Police such lawful directions with respect to the maintenance and securing of public safety and public order as he may consider necessary, and the Inspector-General of Police shall comply with those direction or cause them to be complied with.
- (4) Subject to the provisions of this section, the Governor of a state or such Commissioner of the Government state as he may authorise in that behalf, may give to the Commissioner of Police of that state such lawful directions with respect to the maintenance and securing of public safety and public order within the state as he may consider necessary, and the Commissioner of Police shall comply with those directions or cause them to be complied with:
- Provided that before carrying out any such directions under the foregoing provisions of this subsection the Commissioner of Police may request that the matter be referred to the President or such minister of the Government of the Federation as may be authorised in that behalf by the President for his directions.

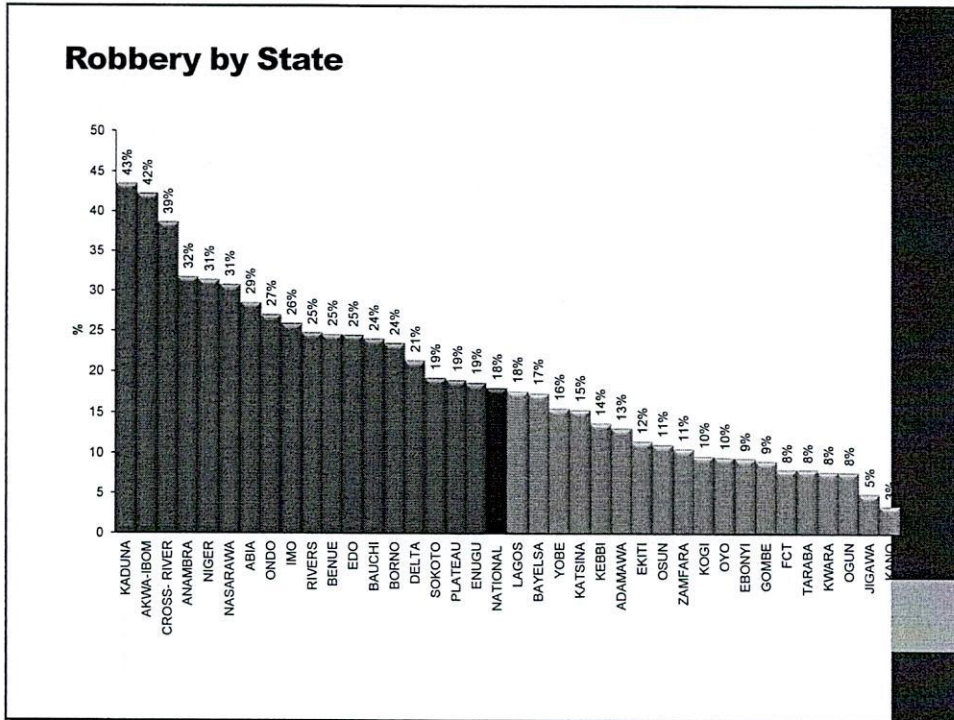


Fear of Crime



Actual Experience of Crime





CSO Panel Report (2012)

- "... at present, policing does not address the needs and concerns of ordinary Nigerians; is careless of ordinary people's security or need for protection from the depredations of criminals and ne'er-do-wells and has turned itself into oppressors of the people who have much more to fear from the police than they have to be reassured by. A service-oriented State police starting with a clean slate ... would be better placed to meet these needs."

CSO Panel Report (2012)

- “State governors’ handling of outfits as diverse as State Independent Electoral Commissions (SIECs), Hisbah in Kano State, Bakassi Boys in the South East, and Kick Against Indiscipline (KAI) and the Lagos State Transport Management Authority (LASTMA) were cited to show on the one hand that governors were just as – if not more – capable of political oppression and intolerance for dissenting views as the Federal government, and on the other, that ordinary people were at as great – or greater – risk of oppression and extortion as they went about their business or tried to make an honest living as they were under the Federal police. Particular bitterness was expressed at the way State run outfits would seize the goods of traders and lock them up, experiences difficult to distinguish from robbery and kidnapping!”

Creating Confidence

- No State replication of NPF’s subservient role at Federal level
- Strengthen existing state institutions to make them independent of political control
- Civil society organisations should work with the legislature and conduct informed debates in partnership with the media towards amending the Constitution to allow for the establishment of State Police and also produce a bill that will guarantee the establishment of an independent and professional State Police.

Steps to be taken

- Amend Sections 214-216 of the Constitution
- Move Item 45 (Police and other government security services established by law) on the Exclusive Legislative List to the Concurrent List to allow for the creation of State Police.
- Optional, not compulsory.
- State Police should only be established on a basis of strict adherence to the principles of operational autonomy, and be based on sound professional practice in appointment, operations and control.
- State Police should have defined parameters of cooperation. Where a state does not fully cooperate with its counterpart or the Federal Police on any matter the Federal Police should take over and deal with the matter.

Safeguards

- Establish an independent service commission for the police to guarantee police autonomy at federal and state levels in matters of appointment, discipline, promotions and accountability. It should be insulated from interference by political office holders, at state or federal level
- Permit cross service transfer from the state through the federal levels (condonment/transfer of service); this will enable professional and experienced police officers to serve, or be recruited to serve in the police in any part of the federation
- Recruit or appoint on the basis of residential status, rather than indigeneity, particularly having regard to the diverse ethnic and cultural make up of most states of the federation
- The State Police Service shall draw up an annual policing plan which details policing priorities to be during the coming year. It should be based on surveys and official statistics on crimes and trends in criminal activity. Funds should be allocated on the basis of such plan.
- Annual reports should be submitted to the State House of Assembly providing information about police activities during the preceding year and showing the extent to which the policing plan referred to above has been implemented.
- The independent service commission for the police should carry out periodic audits for all police services to ensure compliance with and maintenance of professional and autonomous service standards and respect for human rights