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TRUMPED- UP CHARGES BY LAW ENFORCEMENT AGENCIES IN NIGERIA: CAUSES, EFFECTS AND THE WAY FORWARD

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ABSTRACT

It is a notorious fact that traits of impunity by way of arraignment on trumped – up charges are on the increase on the part of Law Enforcement Agencies in Nigeria. There is a need to adhere to constitutionalism by Nigeria as a developing nation and an emerging democracy in Africa. There were instances where prosecution by the police and other law enforcement agencies serves some other ends other than the course of justice. An example of this is where there is a trumped – up charge against citizens without prima facie evidence to prosecute for such offences alleged. The paper observed impunity on the part of the law enforcement agencies in Nigeria especially with respect to arrainging citizens on trumped – up charges to serve other ends other than that of justice. Trumped – up charges may lead to anarchy if it continues. This is one of the findings of this research. This paper examined trump up charges by law enforcement agencies in Nigeria, its causes, effects and proffered solutions to this growing menace in order to nip it in the bud.

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INTRODUCTION

Law enforcement agencies are part of the governance structures of the State as an entity. They mirror the level of discipline and patriotism of any clime. It is trite that the legislature makes the law while the judiciary interprets the law; it is the executive which executes and enforces the law. The executive does this enforcement process through the law enforcement agencies created by the Constitution and other extant laws by the Parliament. The word 'trump up' simply means to invent false accusations or false evidence in order to incriminate a person wrongly. It is a false and exaggerated charge, invented by fraud or criminal deception.¹ Trumped – up charge means it is spuriously devised or fraudulently fabricated against the accused person.² This paper is borne out of the burden the writer has while defending helpless accused persons in Nigerian courts. Most often, innocent citizens are arraigned on frivolous and non-bailable offences by the

Nigerian Police and a few other prosecution agents of the State and remanded in correctional facilities to serve other ends other than the ends of justice through a fair trial. There are instances where the case files of these accused persons are referred to the Director of Public Prosecutions and it may take months depending on the jurisdiction before the legal advice on their level of culpability is determined. This is partly due to the influx of criminal cases demanding the attention of the Director of Public Prosecutions who also combines other administrative schedules with his routine legal advisory services. This thriving practice should not be overlooked in a developing democratic nation such as Nigeria. This paper seeks to examine trump – up charges by law enforcement agencies in Nigeria, its causes, effects and proffer solutions to this growing menace in order to nip it in the bud.

Causes of Trumped –upCharges

Lack of Professionalism on the part of the Investigators and Prosecutors

The first factor to recognize as a cause of trump – up charge is lack of professionalism. A well –trained officer of the law

¹The Idiom Connection, Legal and Law Idioms. For example, the business owner was arrested on trumped-up charges. <http://www.idiomconnection.com/legal.html> accessed 5 May 2020

² Dictionary.com available via <https://www.dictionary.com/browse/trumped-up> accessed 2 May 2020

ought to know that where there is no sufficient evidence to prosecute an accused person, the best professional decision to make is to allow such accused person or suspect enjoy his liberty as guaranteed under the constitution. Section 214 (1) of the constitution of the Federal Republic of Nigeria established the Nigeria Police Force. The section provides as follows: There shall be a police force for Nigeria, which shall be known as the Nigeria Police Force, and subject to the provisions of this section no other police force shall be established for the Federation or any part thereof. Section 214 (2) (a) & (b) provides further that: subject to the provisions of this Constitution - (a) the Nigeria Police Force shall be organised and administered in accordance with such provisions as may be prescribed by an act of the National Assembly; the members of the Nigeria Police shall have such powers and duties as maybe conferred upon them by law. It is apposite from the above to state that since the Police and other security agencies derive their powers from the constitution and other enabling legislations made by the National Assembly, it is unprofessional for these security agencies to act contrary to the powers conferred on them by law and work against the constitutional provisions on the need to protect the rights of the citizens. The constitution provides confers inalienable fundamental rights on citizens. The constitution also confers the power on the security agencies to protect the citizens against violators of the law. It is simply unprofessional for any law enforcement agent to allow politicians or other violators of the law to use the instrument of the State as a means of oppressing the poor. The fear of sanctions by the authorities or powers – that – be should not be a reason to slaughter professionalism on the altar of selfish arraignment of innocent citizens.

Poor Investigation method adopted by the Law Enforcement Agencies

Among politicians, criminal justice agencies and charities in the UK, there is a collective sense of remorse that reports of abuse were often not properly investigated.³ It is suggested that investigators and prosecutors must base all final judgments of their investigation report on the findings from a thorough, evidence-based investigation. In *McCurdy v. Montgomery County, Ohio*,⁴ the Sixth Circuit held that when an officer literally has no idea whether a presumptively law-abiding citizen has violated the law, the Fourth Amendment clearly commands that government let the individual be. Indeed, if anything is clear about the Fourth Amendment, it is this: government may deprive its citizens of liberty when, and only when, it has a viable claim that an individual has committed a crime, and that claim is supported empirically by concrete and identifiable facts.⁵ Amnesty International published the

experience of a Nigerian Journalist and lawyer on police brutality and mass arrest of his family members for an article purportedly published on *elombah.com*. He recounted his experience in the hands of the men of the Special Tactical Squad for alleged from the office of the Inspector General of Police. The policeman who had claimed to be an ASP then slapped him. He slapped him about four times. The other three kicked him. I said, 'Why are you hitting him?' The other guy replied, 'If you think you are a lawyer, be a lawyer in your house, not in this police station.' Daniel Elombah stated that four days after himself and Theo Elombah were released from the Police custody, the police summoned Daniel that they have obtained a court order from an Area Court in for a 7 – day detention warrant. Daniel and Timothy Elombah were both charged on trumped – up charges under the Cybercrimes Act, Terrorism Act for cybers talking, cyber-intimidation and terrorism related offences.⁶ Amnesty International wrapped us this experience as follow: "This general atmosphere of fear amongst people living in Nigeria is not something that should be accepted."⁷

Vendetta on the political opponents by politicians

Trump – up charges are abuse of legal process for political reasons. "We will protect everybody's rights, even of those who oppose us", Philippine President Benigno C. Aquino promised in 2012. Although, a welcomed pledge, it stands in sharp contrast to statistics of human rights violations and accounts from victims and their relatives that expose a mere lack of the promised protection. Since President Aquino assumed his presidency in 2010 Human Rights Alliance KARAPATAN documented 129 politically motivated killings, 12 Enforced Disappearances, and 239 illegal arrests with detentions.⁸ Trumped-up charges, illegal arrests and detentions are therefore understood to be part of a broader vilification strategy framed by the Philippine military anti-insurgency campaign.⁹ They are classic examples for a Strategic Legal Action against Public Participation (SLAPP). SLAPPs are lawsuits used by powerful (judicial) persons against financially less able critics and activists intended to censor, intimidate, and silence them by burdening them with costly and long lasting legal defenses. Therefore, SLAPPs have an alarming impact on the public participation by civil society and the exercise of civil and political rights, such as freedom of expression, of assembly and of association to name but a few.

Poverty and Illiteracy

Most victims of trumped – up charges are poor and cannot afford lawyers and when they can, the authorities are not responsive. When court order for compensation is obtained, it is not paid. It is a discouraging menace. The poverty rate in Nigeria as released by the National Bureau of Statistics is 82.9

³ See for example, the Home Secretary's 'Statement on Historic Allegations of Child Abuse in North Wales', November 6, 2012; <https://www.gov.uk/government/speeches/historic-allegations-of-child-abuse-in-north-wales-home-secretarys-statement-to-the-house-of-commons>. The Crown Prosecution Service revised its policy. See also, Starmer, K. (2013) 'The criminal justice response to child sexual abuse: time for a national consensus' CPS website, March⁶ http://www.cps.gov.uk/news/articles/the_criminal_justice_response_to_child_sexual_abuse_time_for_a_national_consensus/index.html. Accessed 4 May 2020

⁴ 240 F.3d 512 (6th Cir. 2001)

⁵ Matthew Heins Contempt of Cop is Not a Legal Charge and Neither is Trumping Up Other Charges to Support an Arrest! Law Enforcement Action Forum Newsletter, p. 3. In addition, in the case of *Crawford v. Geiger*, 996 F.Supp.2d 603, 615 (N.D.Ohio 2014) the court held "there is a First Amendment right to openly film police officers carrying out their duties."

⁶ Amnesty International Publication titled: Endangered Voices. Attack on Freedom of Expression in Nigeria. Journalists and Media Activists Persecuted on Trumped-Up Charges. Journalists Accused of Cybercrime: Timothy and Daniel Elombah, para 5.1, P. 28. Available at www.amnesty.org Accessed on 7 May 2020

⁷ *Ibid.*

⁸ KARAPATAN: 2012 Year-End Report on the human rights situation in the Philippines, p. 7

⁹ Hannah Wolf and Maïke Grabowski, Trumped-up charges: Just another means of Political Repression. https://menschenrechte-philippinen.de/tl_files/aktionsbuendnis/dokumente/eigene.Publikationen/13-02-06 AMP_trumped-up charges. Accessed 5 May 2020

million people as of 4th day of May, 2020.¹⁰This ugly development impacts negatively on access to justice and legal aid. When illiterates are arraigned by law enforcement agents, it requires extra efforts to make them aware of their fundamental rights as suspects and the affordability of legal services remains a mirage to the illiterates.

Effect of Trump up Charges

The pertinent question is: what is the implication of arraigning a man on trump up charges when it is obvious there is no shred of evidence to prosecute him? Are there other ends other than the course of justice that its arraignment wants to serve? The case of Khadija Ismayilova v Azerbaijan¹¹ started in Azerbaijan where an investigative journalist Khadija Ismayilova, a leading figure in the battle for press freedom in Azerbaijan, was arrested on 5 December 2014 on a trumped-up charge of inciting a former colleague to commit suicide. Her preventive detention has been routinely extended ever since and on 13 February 2015, she was additionally charged with large-scale embezzlement, illegal trading, tax evasion and abuse of authority. On 27 February 2020, the European Court of Human Rights issued its Chambers judgment in the second case of Khadija Ismayilova against Azerbaijan. The Court held that the journalist had been arrested and detained without a reasonable suspicion of an offence. The Court found in particular that one of the charges against her: that she had incited a former colleague to commit suicide was based on a complaint made under coercion and that other charges related to her work at Radio Azadliq were not backed up by facts. The Court concluded that the authorities' actions against Ms Ismayilova had been driven by the intent to silence her and found several violations of the ECHR, including a violation of Article 18 in conjunction with Article 5.¹²The above is a clear case of trumping – up a charge in order to detain and prosecute an accused person by all cost. Below are some of the effects of this thriving but barbaric practice in Nigeria:

It endangers rule of law

The legal frameworks for fair and speedy trial and equality before the law at international and domestic fronts are sufficient. The same applies to protection by the court of law in deserving cases. Therefore, in international law, instruments for equal protection of citizens before the law includes; the Universal Declaration of Human Rights (UDHR), Article 3 of the African Charter on Human and People's Rights (ACHPR), Article 26 of the International Covenant on Civil and Political Rights (ICCPR), Article 24 of the American Convention on Human Rights Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF), United Nations Code of Conduct for Law Enforcement Officials (CLEO), Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, UN Model Protocol for a Legal Investigation of

Extra-Legal, Arbitrary and summary execution. All these laws are sufficient for any serious nation to conduct proper investigation on suspects and do the needful where there is no prima facie evidence of the crime alleged by the complainant.

Abuse of Judicial Powers

A cumulative effect of arraignment on false charges without evidence to substantiate its prosecution is that it is an abuse of judicial powers. In instances where citizens are arraigned before Magistrate courts for capital offences, the implication is that such citizen will not be granted bail and as such will be remanded in the correctional facilities such as prison custody. Poor citizens suffer more hardship in the correctional facilities because of slow justice delivery system in Nigeria and inability to access and afford legal aid and services. Arraignment on false charges is an abuse of judicial power because the judicial process is invoked based on false assumptions and presumptions by the court. Trumped – up charge is a grave abuse of Rule of Law and human dignity which are the core of fundamental human rights. It should be strongly condemned and denied in any sane society, especially where democratic governance is practised, such as Nigeria. It thrives where its occurrence receives none or inadequate response from government and failure to address the root causes and bring perpetrators to justice. Necessarily, a proactive mechanism must be devised to arrest this ugly trend. There should be conscious efforts on the part of the government to constantly train the apparatus of the State not to tow this path.

It discourages growth and investment in the Nigerian Economy

Arraignment of citizens based on false evidence or on trumped – up charges sends a wrong signal to the international community and would-be-investors on the fragile nature of our criminal justice system. This will inversely affect our foreign direct investment because no investor would want to invest his resources in an environment where rule of law is defeated at the whims and caprices of the state apparatus being used as instrument of oppression against her citizens. Failure to address this ugly trend is robbing the government of revenues accruable from taxes and foreign direct investments which reduces unemployment rate per time.

It violates the fundamental rights of the citizen

The practice of trumped – up charge arraignment disregard even rudimentary forms of protection of the affected citizens while judges and prosecutors routinely get away with it. A member of a political opposition party in Tanzania was quoted to have said: "A senior police officer cautioned me to avoid trouble by avoiding people through staying at home. He felt sorry for me".¹³ Even before the amended Political Parties Act, opposition politicians faced arbitrary arrest and detention on trumped-up charges. On 24 June 2016, President John Magufuli placed a blanket ban on political parties organizing political activities and rallies until electioneering period in 2020. Under the ban, the president restricted politicians to hold their activities in their respective constituencies only.¹⁴ The

¹⁰ National Bureau of Statistics Press Release of May 4, 2020. The figure of 82.9 million Nigerians in poverty as of May 2020 represents 40.09 per cent of the total population. 82.9 million people living on less than one United States dollar per day, statistics have shown. See also the vanguard Newspapers of 5th May, 2020: 82.9m Nigerians below poverty line – National Bureau of Statistics

¹¹ Applications Nos. 65286/13 and 57270/14 at the European Court of Human Rights, 5th Section, Strasbourg
10 January 2019

¹² https://www.coe.int/en/web/media-freedom/detail-alert?p_p_ accessed on 3 May 2020

¹³ Amnesty International telephone interview with a member of the political opposition, March 2019. Culled from: The Price we pay: Targeted for Dissent by the Tanzania State. Amnesty International 2019 Report

¹⁴ MCL Digital, "Mikutanoya Hadharana Maandamano, Vigogo CCM

Tanzania Police Force started implementing immediately.¹⁵ On 26 July 2016 Reuters reported that President John Magufuli's warned politicians not to hold planned nationwide anti-government political rallies slated for 1 September 2016.¹⁶

It increases cases of prison congestion in Nigeria

There is no doubt that one of the effects of arraigning citizens on trumped – up charges is further congestion of our congested correctional facilities across the nation. According to Jones who was arraigned on false sexual charges in 2011: "History is full of innocent men and women who have been sent to jail for crimes they did not commit. I am not too naïve to realize that it could easily have been have happened to me. Before my trial began, relatively few people could understand how a formal care worker could possibly be facing more than 20 counts of physical and sexual abuse from four sexual separate accusers and claim he was innocent and all that allegations were false. By the time trial had collapsed, practically everyone knew the explanation".¹⁷

The Way Forward

Adherence to the ethos of Rule of Law: The political class should lead by example by adhering to the spirit and letters of the constitution through which they acquire the right to govern and administer the resources of the State. Officers of the state should be courageous to state in the preliminary investigation report that it will be against the spirit and letters of the law to proceed with prosecuting an innocent suspect in undeserving cases. Concocting charges against an innocent person is wicked, barbaric and against natural justice.

Further strengthening of the investigatory mechanism of our law enforcement agencies. Use of information technology such as lie detectors and other equipment for forensic investigation is recommended for our security agents. This call for training and re-training of our security agent on the need to adhere to professionalism vis-à-vis code of conduct in arrests, investigation, arraignment and trial tips in line with global best practices. Nothing in law enforcement is black and white. Officers must interpret, evaluate and re-evaluate information constantly, then decide on what they should do. That is why it is important for officers to be trained in departmental policy, procedures and expectations for their actions, behaviour, decisions they make and discretion they use in performing their job tasks. There should be adequate budgetary provision for periodic training of officers in the law and policy of the department for fair and impartial policing.

Governmental interventions in cases of those in foreign jails. Nigeria should as a matter of urgency use the Ministry of Foreign Affairs and the National Diaspora Commission to

intervene in cases where Nigerians are arraigned outside the shores of the nation on trumped – up which at times may be facilitated by the foreign state on the hidden agenda of racial discrimination or xenophobic treatments. Our officials should be trained to collaborate with the prosecuting States in order to ensure innocent Nigerians do not languish in foreign jails without necessary legal aid and assistance.

Use of non – governmental organizations to decongest our prisons

Non – Governmental organisations have a huge role to play in this respect. This paper notes that Non – Governmental organisations have been playing critical roles in ensuring there is sanity in the criminal justice system in Nigeria. There is the need to do more.

Payment of Damages for Malicious Prosecution

Some false allegations leading to arraignment on trumped – up charges do not go beyond informal complaints, but they may still affect their subjects' employment or standing in the community. This calls to question the need for the prosecution to be ready to pay damages for malicious prosecution. It is suggested that both the complainant and the prosecuting authority which failed to apply professionalism to discontinue further prosecution after failed investigative exercise ought to pay damages to the person falsely arraigned on trumped – up charges. When done, it will serve as a deterrent to other prosecuting authorities that arraignment on trumped – up charges may be counter – productive.

Compensation for victims

The position of the law in section 314 of the Administration of Criminal Justice Act 2015 as applicable in the Federal Capital Territory with similar provisions in the state's Administration of Criminal Justice Law (ACJL) should be invoked against the Prosecuting agencies for filing cases which as devoid of any reasonable evidence to substantiate its institution in the court. Section 314 (1) of the Administration of Criminal Justice Act 2015 provides: "Notwithstanding the limit of its civil or criminal jurisdiction, a court has power, in delivering its judgment, to award to a victim commensurate compensation by the defendant or any other person or the State". This provision should be interpreted to include victims arraigned on trumped – up charges. Where this particular proviso could not accommodate the suggested victims of false arraignment, there should be legislative reform by the National Assembly to include a third subsection 314 (3) for the proposed amendment to the principal legislation.¹⁸

Prosecution of Complainants for false information to the Law Enforcement Agency

If a report of an alleged crime is determined on the basis of the investigative findings to be false, investigators must then make the decision regarding whether or not to charge the complainant with giving a false report. However, this decision must be made carefully, with consideration of a number of factors. Investigators and prosecutors are thus advised to

Wamtega Magufuli," Video recording, 12 February 2019, www.youtube.com/watch?v=G2yEtDCJxmQ accessed 5 May 2020

¹⁵ "Polisikuhusutanko la kuzuiamikutanyakisiasa Tanzania." Ayo TV, 9 July 2016, www.youtube.com/watch?v=E-AkSwZ-1Z8. Accessed 5 May 2020

¹⁶ "Tanzania's president threatens crackdown on opposition protesters." Reuters, 26 July 2016, www.reuters.com/article/us-tanzaniapolitics/tanzanias-president-threatens-crackdown-on-opposition-protesters-idUSKCN10925G. Accessed 5 May 2020

¹⁷ Carolyn Hoyle, et al., Jones 2011. In *The Impact of Being Wrongly Accused of Abuse in Occupations: Women's Trust*. In *depth Study of Criminal Cases Review Commission*, Centre for Criminology, University of Oxford, p. 2

¹⁸ Administration of Criminal Justice Act 2015 and other state laws in this respect should be considered for such amendment to compensate victims arraigned on trumped – up charges.

discuss the advantages and disadvantages of prosecution with other professionals involved in the multi-disciplinary response to false accused victims (e.g., victim advocates, forensic examiners). For example, some of the advantages of pursuing such a charge would include the importance of conducting a thorough investigation and exonerating anyone who is innocent. It is because complainants who give false information to the police and other law enforcement agencies are not routinely prosecuted that serves as a catalyst for innocent citizens to suffer unnecessary arraignment and stigmatization.

Conclusion

It is not the intention of this paper to posit that persons who have disobeyed the law should not be prosecuted but that the

practice of arraigning citizens on trumped – up charges should stop with immediate effect. This paper has helped us to have an overview of the causes and effect on trumped – up charges by law enforcement agencies in Nigeria. It has been established from the legislations and practice observed above that the goal of trumped of charge is clearly to terrorize citizens from speaking against the state or perceived opponents. There are suggested recommendations on the way forward for a healthy society and good governance. We conclude by agreeing that, even, if every single accused person is declared innocent, the charges themselves are the punishment.¹⁹

¹⁹<https://crimethinc.com/posters/trumped-up-charges> accessed 5 May 2020.