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ARREST IN LIEU:
AN ANALYSIS OF CASES BASED ON SELECTED STATES ACJ LAWS

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ABOUT THE PROJECT

The Project on Supporting the Implementation of the Administration of Criminal Justice Act (2015) and ACJLs (MacArthur 2.0) aims to deepen understanding of the Federal Act and the respective state counterparts and improve the management of criminal proceedings, including the prosecution of anti-corruption cases in Nigeria. Through workshops, review of bulletins and digests, the Project offers a common framework for providing practical tools for relevant stakeholders. It enhances nationwide familiarity with the legal instruments, ensuring expediency in and modernizing the Criminal Justice System.

The John D and Catherine T. MacArthur Foundation supports the Project as part of the Foundation's on Nigeria Grant Program.

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ARREST IN LIEU: AN ANALYSIS OF CASES BASED ON SELECTED STATES ACJ LAWS

I. INTRODUCTION – BACKGROUND

Multiple international and national human rights instruments prohibit the infringement of human rights. The international human rights documents include, *inter alia,* the Universal Declaration of Human Rights, 1948; the African Charter on Human and People Rights, 1981; International Covenant on Civil and Political Rights, 1976 and the International Covenant on Economic, Social and Cultural Rights, 1966.At the national level, the primary documents are the 1999 Constitution of the Federal Republic of Nigeria (CFRN), as altered. Others include the Child Rights Act of 2007, the Anti Torture Act 2017 and the Administration of Criminal Justice Act 2015 which deal specifically with the topic under review. The CFRN specifically provides that personal liberty is a right that can only be taken away under specific circumstances as prescribed by law. Hence, any derogation executed outside the ambit of the law would constitute a violation of fundamental human rights and would be actionable against the defaulting party. Consequently, the arrest and detention of a person must be based on reasonable suspicion. Otherwise, such an act would be considered *ultra vires* the powers of the arresting authority or agency.

Although, the Nigerian Police Force is primarily responsible for the arrest process in Nigeria,[1] other agencies, judges, as private citizens have the power to arrest. Specifically, the 2020 Police Act repeals the Police Act Cap P19, Laws of the Federation 2004. The Act aims to improve the efficiency and professionalism of the police force by promoting transparency and accountability in management. Arrest in *Lieu* is prohibited under section 36(1) of the Police Act. It is also prohibited under section 7 of the Administration of Criminal Justice Act, 2015 (ACJA). For instance, section 6 and 8 of the Act, provide that when making an arrest, the suspect is entitled to be informed of the reason for the arrest and to be treated humanely throughout the process. These innovations lie in the goals of ACJA to prioritise societal needs and prevent human rights abuses. [2] Therefore, the main objective of the ACJA is to promote *inter alia,* restorative criminal justice.

According to section 35(1)(c) of the Nigerian Constitution, the right to liberty is guaranteed. However, certain exceptions would permit the alienation of this fundamental right. The right to liberty can be taken away where an offence that warrant an arrest and detention has been committed, especially where the offence is prosecuted and the suspect is tried, convicted and sentenced to imprisonment. [3] The Supreme Court in *Dokubo Asari v. Federal Republic of Nigeria* (2007) *LPELR-958(SC) (Pp. 38-41 paras. E)*.held that:

1. Part VII Police Act 2020.
2. *Id* Sections 1 and 8(1).
3. Section 35(1)(a) Constitution of the Federal Republic of Nigeria,1999.

The above provisions of Section 35 of the Constitution leave no one in doubt that the section is not absolute. Personal liberty of an individual within the contemplation of Section 35(1) of the Constitution is a qualified right in the context of this particular case and by virtue of subsection (1)(c) thereof which permits restriction on individual liberty in the course of judicial inquiry or where, lightly as in this case, the appellant was arrested and put under detention upon reasonable suspicion of having committed a felony. A person's liberty, as in this case, can also be curtailed in order to prevent him from committing further offence(s).

Similarly, in *Ifemeje v. Umuchu (2020) LPELR – 50623 (CA)*, the Court of Appeal restated the law regarding the position of arrest. Nwosu -Iheme JCA held that…"It is trite that no person can be unlawfully arrested and detained when he has committed no offence". The court further held that the subsequent arraignment cannot cure an unlawful and unconstitutional arrest of the person.[4] The provisions of the laws and court rulings have stressed the importance of upholding "personal liberty", as a person cannot be charged for crimes they did not commit. This article analyses the compliance of ACJL States with the express prohibition on Arrest in *Lieu* through an analysis of case law.

4. *Nnoruga & Ors v. Eniowo & Ors* (2015) LPELR-24273(CA) (Pp. 15 paras. D).

II. CONCEPTUAL CLARIFICATION

The Oxford Dictionary of Law defines "arrest" as the apprehension of a person suspected of criminal activities. Most arrests are carried out by police officers, although anyone may, under prescribed conditions, effect an arrest. The dictionary further explains that a person who believes they have been wrongfully arrested may petition for *habeas corpus* and sue the person who arrested them for false imprisonment.[5]

In *Ayakndue & Ors. v. Ekprieren & Ors (2012) LPELR-20071(CA) (Pp. 26-27 paras. E).*, the court defined an arrest as a "seizure or forcible restraint." The court held that if a person is unlawfully arrested or detained, they are entitled to compensation and a public apology under section 35(6) of the 1999 Constitution. In addition, section 323 of the ACJA outlines the provisions for compensation in cases of false and vexatious accusations. [6]

"In lieu" is a legal term to indicate substitution or a particular action taken for another. "Substitutional arrest", "arrest by proxy" or "in lieu", are used interchangeably. In *Udemba v. Nwabueze* Per AGUBA, J.C. A (2016) LPELR-41314(CA) (Pp. 44 paras. D). held that:

Accordingly, the Learned Counsel for the Appellant and in line with the definition of the term "in lieu" by Black's Law Dictionary

5. Oxford Dictionary of Law (Oxford University Press, 7th edn, 2009).
6. *Id.*

Ninth Edition at page 558 (see also page 791 of the Seventh Edition) has nightly submitted that it means: "Instead of or in Place of in exchange or return for".

To put it succinctly, 'arrest in lieu', which refers to arresting one person in place of another, is explicitly prohibited.[7] Moreover, an arrest without lawful authority violates Section 35 of the 1999 Constitution, which protects the right to freedom and liberty. It also amounts to false imprisonment. If a person is wrongfully arrested, they are entitled to reasonable compensation and a public apology.[8] In summary, it is illegal and unconstitutional for the police or other arresting authority to arrest a person in lieu or by proxy. In case of wrongful arrest, the victim has the right to sue for damages.

III. SELECTED ACJL CASES

he practice of Arrest in Lieu is strictly prohibited by ACJA, the TPolice Act, and numerous ACJL of states. For instance, section 7 of the AJCL of Edo State 206, expressly prohibits arrest in lieu. The courts have consistently taken a stance against the misuse of police authority to effect arrests. In this section, we examine the progressive approach and judicial reasoning adopted by the courts in selected ACJL states on the subject of 'arrest in lieu.' While some of the cases reviewed may not be direct examples of Arrest in lieu per se, they establish fundamental principles on arrest

7. Section 7 Administration of Criminal Justice Act, 2015.
8. *Emonena & Anor v. IGP & Ors* (2016) LPELR-41489 (CA).

procedures. These principles are relevant to the subject matter and reflect the general practice of the courts.

In, *Igweokolo v. Akpoyibo & Ors(2017) LPELR – 41882 (CA)* , though not specifically a case on arrest in lieu, the appellant was arrested, detained and tortured by the police which contravened sections 33, 34 and 35 of the 1999 Constitution. By this, the court reiterated the statutory powers of the police to arrest, investigate, interrogate, search and detain any suspect, such power to be exercised within the ambit of the law. Further, the Court held that once a violation of fundamental rights is proved, the award of damages in the form of compensation must automatically follow whether asked for or not by the claimant. The Court awarded N1 million compensatory damages for the violation of the appellant's fundamental rights.
Again, In *Emonena & Anor (2016) LPELR 41489 CA*, the court held that *Section 35 (6) of the 1999 Constitution provides that any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person.*

In *Okonkwo & Anor v. Anyadiegwu & Ors*, *(2020) LPELR-50581(CA) (Pp. 8-9 paras. B)*. the Court held that it is unlawful to arrest and detain a person who has not committed a criminal offence or is reasonably suspected of having done so. The Court further held that an arrest or detention of a person will only be justified and lawfully restrained by virtue of Section 35(1)(a)(a)(c)(d)(e) and (f)

of the 1999 Constitution. Thus, any violation of section 35 (1) would be unconstitutional and a violation of fundamental human rights. The principle was further enunciated in *Luna v. Commissioner of Police, Rivers State Police Command*, *(2010) LPELR - 8642 (CA)*. where the court held, that where the power of the police is improperly used, the Court can restrain the Police from arresting for some particular improper purpose, as it would no longer be covered by section 35(1)(c) of the Constitution.

Furthermore, in *Commissioner of Police, Ekiti State & Ors v. Mrs. Sola Aregbesola & Ors,(2020) LPELR-50177(CA)*the court held that the exercise of the powers of the police must be done within the ambit of the law. Otherwise, the court will interfere with the abusive exercise of such powers. Further, the court held that the court may issue an order restraining the police from arresting a particular improper occasion or purpose.

In *Okwudiba & Ors v. Mr Emmanuel Nwankwo & Ors (2018) LPELR-46074(CA).,* the Court laid down the rules on the pivotal role of the police in conducting a preliminary investigation and the liability for false arrests. The Court held that the justification of an arrest must be founded on reasonable grounds based on preliminary investigations before arresting a suspect. Hence, the court relied on the case of *Onyedinma v. Nnite (1997) 3 NWLR (PT. 493) 333 @ 347 D-E,* which observed that *the law of false imprisonment will be pursuing the shadow and leaving or neglecting the substance if it does not pin liability on a person*

who is directly or actively instrumental to the arrest and detention of another person, the arrest and detention of which, at the end of the day is unlawful. The court made it clear that a person who raises a false alarm leading to the arrest and detention of another person is equally liable for the arrest and detention of that person.

In *Adjarho v. IGP & Ors,(2021) LPELR-55557 (CA)*the court held that an unlawful arrest would constitute a liability tort. The court further held that any person responsible for putting the law in motion that leads to the arrest of another when it is done in malice or without probable and reasonable cause will be liable.

The Court in *Mitin v. C.O.O Bayelsa State & Ors (2017) LPEL(2017) LPELR-43064(CA)R-43064(CA)*, outlines the circumstances under which a person can be lawfully arrested and detained. The court held that an arrest should not be made until the police have concluded their investigations. Therefore, the onus is on the Police to establish that they acted reasonably.

Similarly, in *Ogbe v. Okonkwo & Ors, (2018), LPELR) – 43876(CA),* the Court held that arresting a suspect without sufficient evidence is unlawful. The Court further held that *law enforcement of any kind does not require recklessness and overzealusness on the part of law enforcement officers…It is only in Nigeria that the proper police protocol for apprehending suspects is on its head. Under normal circumstances, it is unlawful police procedure to arrest first and then begin to scavenge for evidence…Mr. Agbo, as it can*

be recalled, was not arrested because of any offences he committed. He was rather arrested, tortured and incarcerated in the place of another, one Mr. Osondu, despite protestation and the intervention of the Appellant, who strenuously did all he could to set the records straight to no avail. If they were not sure of the identity of the suspect, they were supposed to have called off the operation at that stage. The arrest, therefore, of Mr. James Agbo is inexcusable as it is condemnable.

In *The State v. Hannis Kalib, (2021) LPELR-56084(CA),* the court held that the established principle of law is that a person cannot be convicted of a criminal offence if either the *actus reus or mens rea* ismissing. To prove its case beyond a reasonable doubt, the prosecution must establish both aspects of the offence. Finally, in *Inspector General of Police & Anor v. Mr. Billy Agbinone & Ors, (2019) LPELR-46431(CA).* The court ruled that any detention, even if brief, can violate fundamental rights if it is unlawful.

The above analysis of cases reflects the court's stance to prevent the perversion of justice. The majority of the ACJL states have well-developed case laws that prohibit unlawful arrests in general, which largely reflects the prohibitive stance of arrest in lieu provided under the law.

IV. CONCLUSION

he legal system's stance on wrongful arrests is evident in case Tlaw, which consistently emphasises the importance of

reasonable suspicion and a comprehensive preliminary investigation. It is crucial to note that criminal responsibility cannot be transferred to another person. As such, the courts are unwavering in their condemnation of such acts as unlawful and unconstitutional, regardless of the duration of detention. The principles of *mens rea* and *actus reus*, which refer to the mental and physical elements of committing a crime, are fundamental.

It's important to note that section 2(a) of the Public Officers Protection Act does not protect police officers or other arresting officers who exceed their legal authority. The Act safeguards explicitly those who exercise their duties within the boundaries of the law. In *Attorney General of Rivers State v. Attorney General of Bayelsa State (2013) 3 NWLR (Pt. 1340) 123 at pages 148=149, paras F-G,* the court held that unlawful and unconstitutional actions cannot be justified under any circumstance. Consequently, if a person experiences an unjust arrest, it is imperative to recognise themselves as victims and understand their entitlement to lawful recourse. This principle is rooted in the Latin adage *Ubi jus, Ibi remedium*, which means that where there is a right, there must be a remedy.