

A LEGAL EVALUATION OF EXTRA-JUDICIAL KILLINGS IN NIGERIA BETWEEN 2019 AND 2021*

Abstract

The right to life is an inalienable right. It is one of the major components of the Fundamental Human Rights enshrined in the 1999 constitution of Nigeria (as amended). These rights are broken consists of the right to life, the right to assemble, the right to education and others. Beyond the constitutional provision of the rights, the courts have always ensured that the right to life is duly protected from being violated. In most cases however, citizens have shown ignorance of their rights and their constitutional provision. Therefore, law enforcement agents have always taken advantage of the citizens' ignorance and killed people unlawfully for minor offences without being tried. This study therefore evaluated extra-judicial killings in Nigeria between 2019 and 2021, factors for responsible for such illegal killings, the various patterns of the killings and showed exceptional circumstances when the rights to life can be breached. The study adopted the doctrinal research method and the approach is investigative and comparative. This involved the consideration of data from statutes, case laws, and journal articles including the review of works done by other authors in the subject area. In the course of the study, it was observed that ignorance and poverty have affected the citizens' access to justice after each extra-judicial killing. It was also seen that poor conditions of service and inadequate investigative infrastructure are some of the reasons for the breach of the right to life resulting in extra-judicial killing in Nigeria. It was then recommended that enhanced working conditions, and adequate investigative infrastructure be provided for security agents especially the police to mitigate extra-judicial killing in Nigeria.

Keywords: Legal, Framework, Extra-judicial killing, Nigeria

1. Introduction

Human rights are inalienable. They are enshrined in the constitution with provisions for their protection and sanctions for their violation. They are many and one of the human rights as contained in the 1999 constitution of Nigeria (as amended) is the right to life (Akin, 2007). Unfortunately, the right to life appears to be one of the most breached in Nigeria through extra-judicial killing. Extra-judicial killing is also known as extra-legal or unlawful killing. It is a violation of the rights to life and it can be defined as any form of killing that is not sanctioned by law. Extra-judicial killing is carried out by mostly the police, with a couple of unlawful killings by non-state actors like bandits and other nefarious groups.¹ Extra-judicial killing can be regarded as the unlawful deprivation of a person's life without regards to judicial or legal processes. It could also be regarded as the deliberate disregard of the right to life as enshrined in the 1999 constitution of Nigeria (as amended) and other national and international legal instruments. Extra-judicial or unlawful killing is by all standards illegal and unconstitutional as it is an infringement on the fundamental human rights of individuals affected. It is an aberration of the law as it the outright termination of the human life of a person against his wish and against the constitutional provision for the protection of the rights to life and human dignity.² It consists of human rights violations like torture, and brutality resulting in unlawful killings of varying degrees or proportions. Extra-judicial killing is an unethical crime by governmental agencies in contradiction of legal provisions for the protection of humanity. It is essentially the killing of human beings that could be considered null and void and ultra vires as it is carried out with no regard for constitutional process or judicial processes or approval.³ A legal review of extra-judicial killing in Nigeria entails the examination of unlawful killings in Nigeria against the background of the various laws or legal instruments that provide for the rights to life of the citizens as enshrined in these laws. In this work, both national and international laws or legal instruments that have provisions for the rights to life of the people and the protection of this right to life and liberty of the people will be used as the bench marks against which extra-judicial killing in its different forms will be examined. Section 33 (1) of the condition of the Federal Republic of Nigeria 1999 (as amended) states thus: 'Every person has a right to life, and no one shall be deprived, intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria'⁴ This shows that the right to life is provided by law. It therefore presupposes that any person either representing the state or a non-state group that engages in killing people without the sanction of the law is engaging in extra-judicial killing and that is a breach of the law.

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¹ C.O Akusemm, 'Nigeria record extra-judicial killing in nine months', THIS DAY Live.com\undex.php2020\10\11.

² Amnesty International, killing at will extrajudicial execution and other unlawful Killing by the police in Nigeria

³D. Odinaike *et al.* I will kill you and nothing will happen extrajudicial Killing I n Nigeria, Backcock University Law School.

⁴ FGN. The Constitution of the Federal Republic of Nigeria 1999 (as amended) Section 33(1).

2. Causes of Extra-judicial Killings in Nigeria

One of the reasons for extra-judicial killing in Nigeria is that law enforcement agents suffer a lot of unpalatable working conditions especially the police. Their salaries are very poor and their vehicles are in bad states and not maintained. Their offices are not conducive and there is inadequate basic equipment like bullet-proof vests that can protect them against counter act from criminals. There are no provisions for medical care or life insurance or assurance policy. Accommodation spaces in the police barracks are very limited and quite in deplorable states. In addition, there are no equipment to fight crime and criminals. The police therefore depend on the information provided by complainants to investigate cases and rely on the same complainants to fund their investigation.⁵ Another reason for extra-judicial killing in the country is corruption. This can also be attributed to poor welfare packages. In fact, this has accounted for police's poor public image and poor police community relation. Tope⁶ has opined that a lot of extra-judicial killing in the police revolves around bribes and extortion, stressing that the desire to corruptly obtain money from people has resulted in police brutality. Akinyetun stated that extra-judicial killing by the police in Nigeria is an indication of their socio-economic, ecological and socio-cultural challenges.⁷ The police also have the problem of inadequate training infrastructure with national and international human rights laws and poor oversight by the police service commission due to the lack of the enforcement of the 2017 Anti-Torture Act which advocates for an independent, prompt and through investigation in dealing with criminal suspects. The same could be said of the other security agents, like the officials and men of the customs and excise duties. The Directorate of State Service, the National Drug Law and Enforcement Agents and even the Civil and Defense Corps. All suffer similar fate in terms of working conditions and inadequate equipment to do their jobs. The police are however more brutal and lethal in their dealings with suspects than all other security agents, perhaps due to this weak security architecture.

One other cause of extra-judicial killing is the government creation of certain special squads to combat criminals and insecurity. These special anti-robbery squads are given different names in different states of the country. They are called 'operation desert storm, operation Kpochapu, rapid response squad and operation fire-for-fire. These special squads have intensified the use of dangerous weapon or lethal force with varying degrees of ruthlessness and brutality to perpetrate unlawful killing, their duties as terms of reference have always been to deal with clandestine criminal groups.⁸ The problem however is that they have regularly over done it. Another reason of extra-judicial killing in Nigeria by law enforcement agents especially the police are lack of internal control, lack of reform initiatives, inadequate documentation of arrests and torture of suspects. There is also the problem of inadequate database of detention centers and lack of treatment of tortured suspects or victims. Nepotism, maladministration, delayed promotion, delay in the payment of salaries and death benefits are also reasons for the high rate of extra-judicial killing in Nigeria.⁹ Another reason for extra-judicial killing in Nigeria is ignorance. Most extra-judicial killings and brutality are not reported. Only a handful of them are made public and this is largely due to ignorance, fear of being victimized by the police and lack of funds to get legal support. In addition, the few cases reported are either not investigated or mildly investigated with almost no record or file containing such cases. In some cases, the investigation of certain extra-judicial killing are left in the hands of non-governmental organizations (NGOs) who lack the intricacies or ingredients for the investigation of offences of such magnitude. Their data are often not reliable, contradictory, and insufficient or inadequate for empirical analysis.¹⁰

3. Forms of Extra-judicial killings in Nigeria

One of the forms of killing by security operation is killing at checkpoints. A lot of human lives have been wasted at the various police checkpoints in the country. It is at the stop and check points that they extort money from their unsuspecting victims and kill those who cannot cooperate with them. It is ordinarily presented to look like a security mechanism called 'stop and check' operation designed to fish out criminals who may be on the road for robbery operations. Between 2019 and 2021, not less than 35 persons have been shot dead by the police at the various checkpoints nationwide. The police can kill for as low an amount of money as ₦50.00.¹¹ Killing during a short-out with armed robbers is another form of extra-judicial killing. In most cases, the robbery

⁵T S Akinyetun, & Adedimi, S O., 'The police, extra-judicial killings and imperatives for reforms in the Nigerian Fourth Republic' (2022), 3 *DHS.*, 141-166.

⁶T S. Akinyetun, Reign of terror: a review of police brutality on Nigerian youth by SARS. (2021). *African Security Review*.

⁷ *Ibid.*

⁸Fair Trial (2020). 'Short update: COVID'19 lockdown in South Africa, Kenya and Nigeria lead to spikes in police brutality' <https://www.fair-trials.org/shortupdate.com>

⁹The International Convention Personal Rights

¹⁰Amnesty International Nigeria (2020). Time to end impunity. Accessed on July, 2023. <https://www.amnesty.org/download/Document/AFRM4495052020english.pdf>

¹¹T.S. Akinyetun, 'Social media, youth participation and activism. an analysis of the #EndSARS protest in Nigeria' (2021). 5(3) *Democracy and Development journal*, 4-10.

suspects are killed without any attempt or effort to arrest and prosecute them. In some other cases, even when they are arrested or apprehended, they are killed the following day without any form of trial or prosecution. Several armed robbery suspects have been shot dead without any of them being given the opportunity of fair hearing. Chances are that some of them would not have been guilty of death sentence if they were granted any opportunity of fair hearing. He-tried-to-escape killing' is another pattern of extra-judicial killing by the police. Sometimes, officers of the customs and excise also engage in this type of killing. This is where a suspect arrested is killed on the ground that he wanted to escape or run away. An example of this type of killing was that of the founder of Boko Haram insurgency, Mohammed Yusuf who the police said they killed while he was trying to escape from their custody.¹² There are also several others who have been killed that way. The police can also kill by mistake. This has increased the incidence of extra-judicial killing. They call this type of killing accidental discharge. What is difficult to understand is what made the discharge or killing accidental since somebody fired the gun. Most of the killings were not by mistake but orchestrated by what the killers (Police) intended to achieve. A lot of innocent lives have been terminated through that method and nothing has been done to mitigate the so called 'accidental discharge'. There are also police killings during their routine operations. This type of killing is almost common at the eve of festivities. The main purpose of the police as always stated is to guarantee a secured period for such festivities like the Easter, Christmas and Salah celebrations. The police usually use this period to extort money from people and those who refuse to comply with their demand are either brutalized or killed. Such people are eventually paraded as armed robbers and their cases are closed.¹³ Quite often, they have carried extra-judicial killing quietly or secretly in order to keep the knowledge away from the public and this has resulted in public outcry as seen in the #EndSARS protest that erupted nationwide in October, 2020. The special Anti-Robbery squad (SARS) was established as a department or unit in the Nigeria police for the purpose of combating all forms of crime like armed robbery, kidnapping and assassination in the country especially in the Southern part of the country. Due to its success however, the operation of SARS was extended to the whole country. However, the squad was not as successful as it was expected due to poor supervision and oversight.¹⁴

The anti-robbery squad (SARS) unleashed terror on Nigerians. Their operations were characterized with heinous crimes like rape, extortion, hanging, starvation, forced detention, beatings, chaining suspects' hands or legs, burning sensitive parts of suspects' bodies with cigarette fire and forcing suspects to sit on sharp objects. The squad was feared or dreaded for their brutality and extra-judicial killing. In fact, their cells or detention rooms were branded human abattoir with some of them having the inscription, 'welcome to hell fire'. Amnesty international stated that by May 2020, not less than 82 people were brutalized by SARS.¹⁵ Their heinous operation created a high level of enchantment or distancing against the squad or unit so much that there was a nationwide protest calling for the disbanding of SARS as a unit in the Nigerian police. It is this protest that is known as #End-SARs protest.¹⁶ The #EndSARS protest took place in October, 2020 was carried out all over Nigeria by youths irrespective of ethnic leaning, religious or political affiliation. Though the major participants were youths, it had the overwhelming support of elders and even parents. Its main purpose was to demand for an end for police high handedness and extra-judicial killing by calling on the federal government of Nigeria, especially the presidency to disband the SARS unit.¹⁷ The protests lasted for about three weeks and the anger of the participating youths appeared unquenchable. It was the ugliest citizens' confrontations with the police in the history of Nigeria. However, it is still doubtful whether the police and other law enforcement agents learnt any lesson from the EndSARS protests as their extra-judicial killing has continued unabated.¹⁸

4. Legal Framework against Extra-judicial killings in Nigeria

As indicated earlier, the idea of extra-judicial killing in this study has to do with the police. This is because 80 percent of extra-judicial killing in Nigeria is perpetrated by them in spite of the fact that there are constitutional provisions for the protection of the lives and welfare of the people. It is their duty to conduct investigation that

¹²C. Ochia, 'Gone the lost Victims of Nigeria's Most Brutal' Police Statement', (2021) <https://www.adjazeem.com/features/2021/1/20>.

¹³E. Nwadozie, (2020). 'What leads police into extra-judicial killings' <https://www.vanguardngr.com/2020/11/what-leads-police-into-extra-judicial-killing/>.

¹⁴Amnesty International Global Rights, RULAAC canvass full implementation of police Act: Despite #EndSARS. Nigeria records 164 extra. judicial killings.

¹⁵ *Ibid.*

¹⁶Amnesty International Global Rights, RULAAC canvass full implementation of police Act: Despite #EndSARS. Nigeria records 164 extra. judicial killings.

¹⁷ *Ibid.*

¹⁸T O Akinyetun, 'Social media, youth participation and activities. 'an analysis of the #EndSARS protest in Nigeria' (2021). 5(3), *Democracy and Development Journal*, 4-10.

will help them pick out the real offenders from the group of suspects assembled for prosecution.¹⁹ The constitution of Nigeria, 1999 (as amended) states thus: ‘Every individual is entitled to respect for the dignity of his person and section 34 (1) (a) ‘no person shall be subjected to torture or inhuman or degrading treatment.’ The above provision means that persons living in Nigeria have the right to life as enshrined in the constitution of the country considered as the *grundnorm* of all laws in Nigeria. In addition to that, the right of the citizens to life is protected by law and shall have nobody violate or terminate it unless by the order or sanction of the court following the conviction of the person for a criminal offence. As pointed out earlier, extra-judicial killing with its attendant characteristics of brutality and torture are illegal and a violation of the dignity of the human person. Extra-judicial killing is not only a problem in Nigeria but it has remained unabated suggesting that it cannot be minimized or out rightly stopped. In 2020 alone, the rate of extra-judicial killing assumed an alarming proportion as communal clashes claimed about 407 lives, extra-judicial killing by the police had 271 people dead, cult related activities had 247 people killed, isolated killing with no assailant identified claimed 185 lives, mob actions took about 7 lives while pirate attacks resulted in the death of 4 people in the Niger Delta.²⁰ Akinyetun remarked that Nigeria has a checkered history of violence, brutality, human right violation and extra-judicial killing in spite of the many laws that have been enacted or legislated against unlawful killings in the country.

The Administration of Criminal Justice Act, 2015 was enacted to mitigate all forms of extra-judicial killings in Nigeria. Akuiyetun (2020) submitted that Nigeria is not lacking in the laws that regulate the conduct of security agents as they wage war against crime, criminals and other outlawed groups but that the problem has been poor or a near absence of implementation.²¹ There is the criminal code in the Southern part of the country and the Penal code in the Northern part of the country all framed to fight crime and secure the lives and property of Nigeria. There is also Police Act 1990 and Police Order 237 that have provided regulations on the conduct and operations of the officers and men of the police in crime fighting and criminal investigation. There is equally the Administration of Criminal Justice Law (ACJL) for states that have domesticated it. All these laws were made to ensure that the police and other security agents comply with their rules of engagement on the use of force and firearms when fighting crime and criminals.

Sommer and Assal explained extra-judicial killing as a violation of the right to life. They are of the view that it is a situation where the government looks the other way while its citizens are being murdered by government agents.²² Extra-judicial killing is a problem in developing countries especially in Nigeria. This accounts for why the United Nations has remarked that extra-judicial killing has been on the increase in Nigeria. This is consequent upon the killing of over 300 members of the Islamic Movement of Nigeria who were protesting for the release of their leader sheikh Ibrahim Elzakzaky in Abuja in 2020. Between 30th March and 18th April, 2020, not fewer than 18 people were extra-judicially killed by the police for various reasons bordering on the enforcement of Covid-19 lockdown.²³ As indicated earlier, extra-judicial killing appears to be always on the increase. From January to October, 2020 about 123 people were recorded to have been unlawfully or illegally killed by the police for offences that were either not thoroughly investigated or not even investigated at all.²⁴ Extra-judicial killing contravenes the constitutional rights of the people to life and liberty as guaranteed under sections 33-35. Section 46 additionally provided specifically for the jurisdiction of the high court and legal aids where there is the need for life to be terminated. In other words, the fundamental principles of necessity, legality and proportionality should be in tandem with the seriousness of the offence and the legitimate objective to be achieved with the rule of law.²⁵ In addition to these laws that guarantee the rights to life of the citizens of the state and ensure their protection, there are also institutional frameworks that are designed to protect the rights to life and liberty of the people. These institutions contain several human right agents or personnel who engage in periodic campaign and sometimes litigate against the abuse of human rights and extra-judicial killing as seen at the Lekki Gate in October, 2020 during the #ENDSARS protest. These agencies are the Human Right Commission, Truth and Reconciliation Commission, the Human Right Law Service and Association of

¹⁹Nigeria Police Force (2019). Reviewed force order 237, [https://www.policing.infor/assets/download/Reviewed-use-of-force-order-237-\(237\).pdf](https://www.policing.infor/assets/download/Reviewed-use-of-force-order-237-(237).pdf).

²⁰U V Summer, ‘Examining extra-judicial killings: disseminate analysis of human rights violation; dynamics of asymmetric conflict pathways toward terrorism and genocide, (2019), vol. 12, issue 3

²¹D A Odinaike, O. Noyosorelalde, & T. O. Odusaumni., ‘I will kill you nothing will happen. Extra-judicial killings in Nigeria and public interest litigation’, (2021), 26(6), *Bialystole Legal Studies*. 145 – 165.

²²T.S. Summer, Examining extra-judicial killings: discriminant analysis of human rights violation; dynamics of asymmetric conflict pathways toward terrorism and genocide, 2019, 12(3)

²³ T.S. Akinyetun, ‘Reign of terror: a review of police brutality on Nigerian youth by SARS’. African security review. 2021

²⁴ *Ibid.*

²⁵ FGN. The constitution of the Federal republic of Nigeria, 1999 (as amended). Sections 33 – 35 and section 46.

Democratic Lawyers. These institutions advocate for the protection of human rights and often times go to court to seek redress for those whose rights have been violated including cases of extra-judicial killing.²⁶

5. Foreign Legal Framework against Extra-judicial killing

At the international level, extra-judicial killing has also been outlawed. The 1948 UN Declaration of the Human Rights contains provision on the legality and sanctity of human rights especially the right to life as contained in Article 3 of that UN Declaration which states thus; ‘Everyone has the right to life, liberty and the security of a person.’ This provision gives vent to the legality of human life and liberty. By extension, the UN lawfully sanctioned against extra-judicial killing. Article 5 of the same 1948 UN Declaration of Human Rights states thus. ‘No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.’ It is important to note that Nigeria has ratified the UN Declaration, yet much is being talked about extra-judicial killings with little or nothing being done about it²⁷. At the regional level, The African Charter on Human and Peoples' Rights states in the Article 4 that; ‘Human beings are inviolable, every human being shall be entitled to respect for his life and the integrity of his person, no one may be arbitrarily deprived of his right.’ In addition to the above provision and to stress the importance of the sanctity of human life and person, Act 5 of the same African Charter on Human and People’s Rights states thus;

Every individual shall have the right to life and the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.’

Article 6 of the same law quickly states that; ‘every individual shall have the right to liberty and to the security of his person. No one may be deprived of this freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained. The International Convention on Civil and Political Rights also provided for the right to life for the citizen of members states. Nigeria being a member of the international community and a signatory to this convention has the responsibility to protect the lives of its citizens. The European Convention for Human Rights is not left out in sanctioning the protection of the rights to life. Articles (1) of the convention states that: ‘There shall be no interference by a public authority with the Exercise of this right except such as in accordance with the law.’²⁸

6. Conclusion and Recommendations

All these laws attest to the fact that right to life is constitutional, sacrosanct and should not be terminated outside the dictates of the law. All over the world, the life of the human person is respected and efforts are deliberately or consciously made by the authorities of the state to protect the dignity of human life, Nigeria is the only exception. One painful thing is that Nigeria has ratified these laws but implementation is the problem. In view of the above conclusion, it could be recommended that there should be reform initiatives in the police that will restructure the officers and men to the core values of their job which is to protect the lives of the people. The reform should include enhanced working conditions and the provision of adequate investigative infrastructure that will help them do their job well. Government should go beyond making laws but focus more on law enforcement. Laws made should be obeyed and violators should be punished. The courts should come up with stiffer penalties. Death sentencing and life imprisonment should be given to violators of human rights, especially the right to life. The legislature should come up with laws that will strengthen internal control mechanism within the police. This will reduce abuse of power by the police.

²⁶Amnesty, international limited Global right, RULAAC Canivas full implementation of police Act: Despite #EndSARS, Nigeria Records 164 Extra-judicial killings

²⁷ Universal declaration of human Rights: 1948 (USHR) Article 3

²⁸ European convention for human Rights: Articles (891) and (2).