

THE RIGHT OF SELF-DEFENCE AND STAND YOUR GROUND IN CRIMINAL TRIALS IN NIGERIA*

Abstract

Criminal trials in Nigeria usually require that the defendant will raise a defence on his behalf. There are several of such defences; it is pertinent to point out that self-defence is a unique defence. Not only is it one which does not accept another form of defence, it also requires the burden of proof on the defendant. It is this unique defence that we seek to analyse in this article. The article will take a look at the definition, definition of 'Castle Doctrine' 'stand-your-ground law' proportional response, duty to retreat or escape and conclusion.

Keywords: Self Defence, Stand-your-ground, Castle Doctrine, Threat.

1. Introduction

Self-defence is the protection a person affords himself against the injury attempted by another person. A person who is in immediate danger of unlawful bodily harm from his adversary is allowed to use such force as is reasonably necessary to avoid such danger. The defence is justified on the ground that a person must be able to protect himself against unlawful bodily harm and grievous danger, which may lead to death, if not averted. The gruesome murder of undefended Nigerians on the daily basis by unidentified muggers in the name of Armed Banditry, Armed Robbery and Cattle rustling in place like Benue, Taraba, Nassarawa, Plateau, Kaduna, Sokoto and some part of Zamfara State. In the face of these attacks and reprisal attacks, the Former Minister of Defence, General T.Y. Danjuma, has called on Nigerians to rise on to defend themselves against ethnic cleansing. He gave this warning on the 24th day of March, 2018 at the Maiden Convocation ceremony of Taraba State University in Jalingo, Taraba State. He said the unnecessary killings which is a target to ethnic cleansing on the people of Taraba and Nigeria at large must stop just as he called on the people to 'rise and defend themselves against the killers' you must rise to protect yourselves from these people, if you depend on the Armed Forces to protect you, will all die¹. In considering the concept of stand your ground in self-defence in U.S.A., we shall also consider castle doctrine in self defence. The article will look at the justification for the extension of the concept of stand your ground in self-defence in Nigeria whether necessary in view of the present killings in Nigeria.

2. Conceptual Foundation

One of the recognized defences that exclude unlawfulness is self-defence or private defence². According to the Black's Law Dictionary³, self defence, is the protection of one person or property against some injury attempted by another. The right of such defence is an excuse for the use of force in resisting an attack on the person attack. This definition is very narrow as it restricts the concepts of self-defence to the imminent victim of the attack or his property alone, it does not see the right of self-defence extending to the person or property on another which a person has right to protect. This definition does not either describe the type of force to be used in exercising the right. Self defence is a defence common to the charges of offence against the person (including murder) when reasonable force is used to defend one self, or one's family or anyone else against attack or threatened attack. The problem with this definition is that only see self-defence as restricted to person not extending property. The judicial definition of self-defence was considered as application of force to a reasonable apprehension of death or grievous harm and the accused reasonably believes that the act of killing is necessary for his own protection⁴. This definition is also too narrow as it has not captured some important legs or defence of self-defence. These include the ones right to defend the person of others or their property. Self defence is an affirmative defence to a charge of violent crime. This means if someone is charged with murder, or assault, they can use self-defence as a legal excuse for the conduct if they can prove it is a court of law⁵. Private defence is defined as the lawful use of force to deter an unlawful attack. There are certain conditions attached to both the attack and defensive action. The attack must have already begun, and endanger the defender's or another's life bodily integrity, or other legitimate

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¹ Vanguard on-line <<https://vanguardngr.com/2018/defend-will-die-ty-danjuma-tells-nigerian/>> accessed on 29/11/2019.

² Private defence is commonly referred to as self-defence. According to some scholars the phrase, private defence captures a boarder scope of legally-recognised. Thus killing in defence of property is an aspect of private or self defence. In the US, the term self-defence is employed.

³ <http://www.blackslawdictionaryonline.com> accessed on 2/11/2019.

⁴ *Jeremiah v State* (2012) 14 NWLR (Pt 1320) 248 at 281.

⁵ <http://criminalfindlaw.com> (accessed on 2/12/2019).

interest, interalia, property⁶. From the foregoing, therefore, self-defence can be defined as a legitimate right for a person under attack by someone to use reasonable force to defend himself, his property, or to defend others or their property.

3. Definition of ‘Castle Doctrine’

According to the Black’s Law Dictionary⁷ Castle Doctrine is defined as ‘an exception to the retreat rule allowing the use of deadly force by a person who is protecting his or her home and its inhabitants from attack, especially from trespassers who intends to commit a felony or inflict serious bodily harm’.

A castle doctrine (also known as a castle law or a defence of habitation law) is a legal doctrine that designates a person’s abode (or in some countries, any legally occupied place e.g. a vehicle or work place) as a place in which that person has certain protections and immunities permitting him or her, in certain circumstances, to use force (up to and including deadly force) to defend himself or herself against an intruder, free from legal responsibility or prosecution for the consequences of the force used⁸.

The principle first developed from the so-called castle doctrine that permits the owner of a house to use deadly force where another person threateningly enters his property without lawful excuse. This principle is based upon the logic that a man’s home is his castle and has a right to protect it. In 1876, the Supreme Court of Ohio rejected the common duty to retreat in *Erwin v State*⁹. The Court described retreat as behavior that is not expected of a ‘true man’ but from the ‘cowardly’ this gave birth to the principle that a ‘true man’ but from and is not expected to flee. The American version of the castle doctrine should however be situated in the historical context of the founding and evolution of the USA. In many states of the USA, where a person is attacked at a place where he has a right to be, he could stand his ground and defend himself. This Supreme Court of the State of Indiana made one of the earliest exposition of the castle doctrine in *Runyon v The State*¹⁰ thus:

The tendency of the American mind seems to be very strongly against the enforcement of any rule which requires a person to flee when assailed, to avoid chastisement or even to save human life...

(Accordingly,) the weight of modern authority....establishes the doctrine, that when a person, being without fault and in a place where has a right to be, is violently assaulted, he may, without retreating, repel force by force, and if, in reasonable exercise of his right of self-defence, his assailant is killed, he is justifiable.

Similarly, in *Brown v United States*¹¹ the court applied the principle to proportionality, in the case, justice Oliver Windell Holmes declared: ‘Detached reflection cannot be demanded in the presence of an unlifted knife’^{12c}.

4. Definition of ‘Stand Your Ground Law’

Sand your ground is a law that authorizes a person to protect and defend one’s own life and limb against threat or perceived threat. This law states that an individual has no duty to retreat from any place he/she has a lawful right to be retreat from any place he/she has a lawful right to be may use level of force, including lethal, if he or she reasonable believes he or she faces imminent and immediate threat of serious bodily harm or death; this is as opposed to duty to retreat¹³. Stand-your-ground laws in the United States were created to provide defence in criminal cases. In *Dawkins v State*¹⁴, the court describes ‘the stand your ground law... provides that a person has a right to expect absolute safety in a place they have a right to be, and may use deadly force to repel an intruder..... for a person to be justified in using deadly force, the person must not be engaged in unlawful activity. ‘stand your

⁶ *Govender v Minister of Safety and Security* (2009) 2 SACR 87. See also *David v C.O.P.* (2019) 2 NWLR (Pt 1655) 178 S.C.

⁷ *Ibid*, *Black Law Dictionary*.

⁸ ‘Assembly, No. 159 State of New Jersey, 213th Legislature, the ‘New Jersey Self-Defence Law’ (PDF) May 6th, 2008. Retrieved 30-11-2019 ‘The Castle Doctrine’ is a long-standing American Legal Concept arising from English Common Law that provided that one’s abode is a special area in which one enjoys certain protections and immunities, that one is not obligated to retreat before defending oneself against attack, and that one may do so without fear of prosecution.

⁹ 29 Ohio St. 186, 195, 199-200 (1876).

¹⁰ 57 Ind.80 (1877).

¹¹ 256, U.S. 335, 343 (1921).

¹²See also *Albert v United States*, 162, U.S. 499, 505 (1896).

¹³ <<http://en.m.wikipedia.org/wiki/stand-your-ground-law>> (accessed 1/12/2019).

¹⁴ 252 P31214 (Okla 2011).

ground' laws are also referred to as 'no duty to retreat' laws because a person is not required to retreat from the situation, even if they would had a reasonable opportunity to safely do so. These laws generally come into play when a person is attacked in a place they are lawfully allowed to be present¹⁵.

5. Self-Defence in Nigeria

The right to defend oneself by using deadly force is not unique in Nigerian Jurisprudence. The right to private defence, otherwise known in English Law as self-defence which is an exception to a person's enjoyment of right to life under the Nigerian Constitution¹⁶ dated back to the period of antiquity as an inherent right of man which enables him to protect his interest against wrong doers¹⁷. Self-defence in Nigeria is found in Section 33(2)¹⁸, self-defence is one of the fundamental rights of man for self-preservation. There is natural instinct to defend oneself and one's property and positive law cannot but to recognize this natural phenomenon¹⁹. The right of defending one's body or the body of another is codified in Section 32(3)²⁰ and Section 59²¹. Section 32(3) of the Criminal Code provides, inter alia: 'A person is not criminally responsible for an act or omission if he does or omits to do the act.... When the act is reasonably necessary in order to resist actual and unlawful violence threatened to him or to another person in his presence'. Section 59 of the Penal Code on the other hand reads as follows: 'Nothing is an offence which is done in the lawful exercise of private defence'.

Whereas the law recognizes the natural instinct of self preservation, it lay down certain limitations on the exercise of the right of self-defence. This is necessary if society is not to degenerate into anarchy with everybody taking the law into his hands. These limitations are contained in Sections 286-294 of the Criminal Code and Sections 62-66 of the Penal Code. The provision of Section 286 of the Criminal Code allows self-defence where the blow is a response to an assault that causes reasonable apprehension of death or grievous harm. The section is not available to a person who is abnormally nervous or excitable, who on being assailed by a comparatively minor assault excitable person who claims self-defence where stated in *R v Josiah Onyeamaizu* as follows²²:

'Such a person may hope for clemency from other quarters; he cannot expect it from the law. It would be surprising, and indeed dangerous, if it were otherwise. The legal right to kill in self-defence cannot be made to depend upon the temperament, nervous or courageous, robust or weak, phlegmatic or excitable, of the individual killer. For those who claim to have exercised the legal right to kill, the law, insists upon on standard: it is the standard of reasonable man'.

Similarly, it was held in *Sunday Amala v State*²³, that Section 286 of the Criminal Code does not avail an appellant who stabbed the deceased to death under circumstances which suggested that he killed the deceased in cold blood and not in a knife fight as stated by the appellant. In *Augustine Duru v State*²⁴ the Supreme Court held that the test of what qualifies as defensive force under Section 287 of the Criminal Code is objective, and that objectively, even if the evidence of the appellant that the deceased hit him with fists is accepted, it did not justify shooting the deceased to death.

6. The Constitutive Instruments on Self-Defence and their Pragmatic Nature in Nigeria

In any case in which it is lawful for any person to use force in any degree for the purpose of defending himself against unlawful assault, it is lawful for any other person acting in good faith in his aid to use the same degree of force for the purpose of defending such a person²⁵. The sections of the Criminal Code aforementioned have clearly distinguished how action and inaction in the defence of self and property are justifiable. For persons, in occupation of dwelling houses the castle doctrine applies, that is, there is no obligation on the occupants to retreat in the face

¹⁵ Legal match, 'stand your ground legal definition <https://www.legalmatch.com/law-library/article/stand-your-ground-definitionhtm> accessed 22/11/2019.

¹⁶ Section 33 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).

¹⁷ Kilani A.O. 'An Examination of the Right of Self-Defence and others in Nigeria' Vol. 28, 2014 *Journal of Law, Policy and Globalization* <https://iiste.org/journal/index.php/jipa/article/view/5007> (accessed 22/11/2019).

¹⁸ Ibid Section 33 Ibid Constitution.

¹⁹ Chukkol K.H. *Criminal Law in Nigeria* (A.B.U. Zaria Press, 1987) 100.

²⁰ Criminal Code Act.

²¹ Penal Code Act.

²² (1959) NMLR 93.

²³ (2004) 12 NWLR (pt 888) 520

²⁴ (1993) 3 NWLR (pt 281) 283

²⁵ See Section 193 of the Criminal Law of Lagos State (2011), Section 286 of the Criminal Code act and Section 60(a) of the Penal Code Act respectively.

of threat, but when threatened in their dwelling houses, the use of force should be reasonably necessary and on the reasonable ground that the assailant is attempting to break and enter dwelling house, with the intent to commit a felony or misdemeanor. However, in the case of defence of oneself, the law requires that the victim should retreat from the scene of threat by the assailant and his actions and inaction in the use of force can only be justifiable where he tries to escape from the assailant upon apprehension that actual and unlawful violence threatened to him or another in his presence or there is apprehension of death or grievous harm threatened to be inflicted upon him by some person actually present and in position to execute same.

However, this protection does not extend to a case in which the person using force, which causes death or grievous harm, first began the assault with intent to kill or do grievous harm to some person²⁶; nor, to a case in which a person using force which caused death or a grievous harm endeavoured to kill or to do grievous harm to some person before the necessity of so preserving himself arose²⁷, the person using such force declined further conflict and quitted it or treated from it as far as were protectable. Thus, for an intense non-judgmental of the pragmatic nature of the use of the right to private defence, the recent case of *Omoregle v State*²⁸ parades the recent decision of the Supreme Court on the pragmatic nature of the right to private defence while considering the following issues²⁹:

1. Whether the defence of self-defence raised by the appellant in his second statement to the police (exhibit p3) was belated as to justify the failure of the police to investigate same.
2. Whether the learned justices of the Court of Appeal were right to hold that the learned trial judge properly disbelieved that appellant's evidence of self-defence.

In the determination of the appeal, the Supreme Court considered the provision of Section 32(4) of the Criminal Code. For the interpretation of the practical use of the right to private defence and subsequently dismissed the appeal by affirming the decisions of the Lower Court³⁰. In arriving at the decision that must be present before the defence of self-defence can avail an accused person. These are:

- a. The accused must be free from fault in bringing about the encounter.
- b. There must be presence of an impending penal to life or of great bodily harm, either real or so apparent as to create honest belief of an existing necessity.
- c. There must be no safe or reasonable mode of escape by retreat.
- d. There must have been a necessity for taking life³¹.

The Supreme Court reemphasized that in order to sustain the defence, all the above ingredients must co-exist and be established. In the instant case, none of the above ingredients was present; therefore, the Trial Court rightly convicted the accused person³². Also, the Supreme Court held that the defence of self-defence, if successful is a complete defence or answer to the charge of murder or manslaughter. Whether in Nigeria or in the U.S. the purport and import of self-defence is almost the same. Therefore, for the purpose of elucidation, it is better to discuss the ingredients of successful plea of self defence in a comparative manner, that is in Nigeria and the U.S. the ingredients of self-defence can be categorized as follows:

The Imminence of Danger or Threat of Death or Serious Injury and the Contemporaneous of Response

The accused must believe himself in imminent danger before he can lawfully use lethal force, otherwise it may be interpreted as an offensive act³³. The permissible reaction may depend on whether the assailant is law abiding citizen or a felon who uses lethal force either to commit a crime or effect his escape³⁴. The ground for the belief

²⁶See the case of *Chinedu Osuji v State* (2016) LPELA-40042 (CA) where the Justice ITAJCA held that the defence of self-defence or of provocation cannot be available to an accused person who was the aggressor. Certainly, the above principle cannot apply to Appellant in this appeal to justify the brutal murder of the deceased by the Appellant and to avail the defence of self-defence any or of provocation. See *Dado v State* (2019) 2 NWLR (pt 1656) 281 S.C.

²⁷As such use of force will be an intentional and deliberate use of force to cause death or grievous bodily harm, *Musa v State* (2014) LPELR 22912 (CA); *Okon v State* (2014) LPELR 24018 (CA), on ingredients for the offence of murder.

²⁸ (2009) All FWLR, 230.

²⁹ At PP 230-231.

³⁰ Both the High Court of Edo State and Court of Appeal.

³¹ *Omeregile v The State* Ibid, see *David v. C.O.P.* (2019) 3 NWLR (Pt 1655) 785 S.C.

³² Ibid.

³³ See the second paragraph of Section 287 CC. see *David v C.O.P.* Ibid.

³⁴ See the *State v Nwinbo Okere* (1970) IECSLR 43.

that threat or danger is imminent may arise from a bonafide mistake. The test is objective; that is, whether the threat would cause reasonable apprehension of serious peril to the human body or to property³⁵. In *John Okonji v State*³⁶, evidence showed that the deceased slapped the Appellant in the face. The Appellant then stabbed the deceased several times with a broken bottle or knife causing injuries which led to the death of the deceased. Affirming his conviction, the Supreme Court held that not only was the force used disproportionate, there was no evidence that the Appellant was in imminent danger of death or grievous bodily hurt to justify his response. There must be evidence that the deceased was on the offence or was about to attack before the defensive act, otherwise, the response would not be contemporaneous to an imminent attack. In *Afoke Njoku v State*³⁷ the Appellant dealt the deceased, her husband, two machetes blows from behind while he waylaying down which resulted in his death. While affirming her conviction for murder, the Supreme Court stated that before a plea of self-defence in a murder case made out, there must be evidence that ‘the victim was attacking or about to attack the Appellant in a manner that will cause grievous hurt and or death was possible and had to defend himself; that the self-defence was instantaneous or contemporaneous with the threatened attack.

The Fear of Harm Reasonable?

What matters whether a reasonable man in the same situation would have perceived an immediate threat of physical harm. The concept of reasonable man is a legal concept subject to differing interpretations in practice, but it is the legal system best tool to determine whether a person perception of imminent danger justifies the use of protective force³⁸. In the case of *Mgboiko v State*³⁹ and *Nwuzoke v State*⁴⁰ where he Supreme Court held:

‘One point that must be emphasized with respect to the defence of self-defence in cases of murder in our law is that is a child of necessity. It is available t a defendant only when he proves that he was, at the time of the killing, in reasonable apprehension of the death or grievous harm and that it was necessary at the time to use the force which resulted in the death of the deceased, in order to preserve himself from the danger. The force used by the defendant must also be shown to be proportionate to the force used imminently threatened against him, and reasonable in the circumstances in which it was used. There must be reasonable grounds for the accused person to believe that the only way by which he could escape death or grievous bodily harm to himself was to kill the assailant⁴¹.

In the United State of America as in Nigeria, the defendant must reasonably⁴² believe deadly force in indispensable to foil the use of deadly force on the defender by the assailant. This element includes both subjective and objective condition in the sense that the defender must have reasonable belief that the force is necessary to defend against deadly force. For example, the Florida statute provides: A person is justified in using or threatening to use deadly force if he or she reasonably believes that.... Such harm is necessary to prevent imminent death or great bodily harm⁴³.

The Proportionality of the Response

The response of the accuse must be commensurate with the acts of the assailant⁴⁴. The defence provided by Section 62 of the Penal Code is not available to an aggressor⁴⁵. Thus the duty to retreat appears to be part of the scheme under the Penal Code because Section 63 of the code provides that no right of private defence exists in situations where there is time to have recourse to the protection of public authorities. The right of private defence may also be available to a public servant who takes defensive action when justified by law, provided he acted in good faith. This right extends to person’s acting under the direction f such public servant acting lawfully in good faith⁴⁶.

³⁵ See *R v Chisam* (1963) 47 Cr. APP. R. 130.

³⁶ (1987) NSCC 291, see *Ukpong v State* (2019) 6 NWLR (1677) 1 S.C.

³⁷ (1993) 6 NWLR (pt 299) 272. See *David v C.O.P.* Ibid

³⁸ See *Musa v State* (2009) 39 NSCQR 358 at 382-383.

³⁹ (1972) LPELR 1872 (SC).

⁴⁰ (1988) NWLR (pt 72) 529.

⁴¹ See *Apugo v State* (2006) 16 NWLR (pt 1002) 227.

⁴² Section 3.06 (3)(a) United States Model Code, 1962 and also See the case of *Garner v Memphis Police Department* (1983) USCA 6th Circuit 710 F2d 240.

⁴³ FLA-STAT-ANN & 776.012 (2) (West 2010 & Supp. 2015).

⁴⁴ See Section 62 of the Penal Code Act.

⁴⁵ See *Adamu Garba v State* (1997) 3 NWLR (pt 492) 145. See *Bala v State* (2019) 9 NWLR (1676) 176 SC.

⁴⁶ See Section 64 of the Penal Code Act. See *Bala v State* (Ibid).

Self defence may not be available where death results the degree of force used by the accused exceeded the force reasonably necessary to respond to the assailant. But the occurrence of death may be excused where:

- a. an attack causes reasonable apprehension of death or grievous hurt; or
- b. to repel rape or an assault with the intention of gratifying unnatural lust; or
- c. toward off abduction or kidnapping⁴⁷.

Section 65(a) of the Penal Code was applied in *Abara v State*⁴⁸, the appellant did not deny killing his sister. He stated that he believed she killed their younger brother with witchcraft. He told her to cure him, threatening that if she did not, he will kill her. He claimed that she then struck him on the head and hand with an axe. He claimed that he disarmed her, but as she run away to get a hoe with which to continue he assault, he struck her with the axe and she died from the blow. The court believed his statement and discharged him of culpable homicide punishable with death but convicted him of culpable homicide no punishable with death contrary to Section 224 of the Penal Code.

Where the defensive force is proportionate to the threat and the assailant dies in the process, the accused would be totally exonerated from liability. In *Kwaghshir v State*⁴⁹ it was held that where the victim cut the appellant five times with a knife and the deceased was on top of him. The appellant was justified in having the reasonable apprehension that death or grievous harm would result to justify a lethal response in accordance with the conjunctive reading of sections 59 and 65 of the Penal Code to totally exonerate the accused from the murder.

7. The Duty to Retreat or Escape

Under the Nigerian Criminal Code, the duty to retreat in the face of imminent threat to one's life is drawn from the English Common Law duty to retreat in self-defence. The defender is expected to take reasonable steps to see that he tries to escape the threat posed by the assailant and he can only resort to self-defence when it seems to be the last option⁵⁰. However, for people who are attacked in their dwelling houses, the law does not require them to retreat in the face of imminent danger, but rather to use reasonable force to prevent the assailant from gaining access into the premises⁵¹. Government Policy in the United State in against the unreasonably taking of a human life's although private defence grants the actor the right to defend his life. There are states in United States that have inserted in the Penal Law. The Common Law duty to retreat in self-defence, whereas some other states in the United States due to incessant killings of innocent citizens have had the common law duty expunged from their panel law⁵². In most jurisdictions in the United States, however, a person may use lethal force in order to word off a deadly attack around his home despite the possibility of escaping. This implies that a person needs not to flee from his home or business if threatened with lethal force even if there is the possibility to do so.

8. Self-Defence/Stand Your Ground Law in United States of America

In the United States of America, just as it is applicable in under the Nigerian jurisprudence, self-defence in protection of one's life or property is justifiable. It is worthy of note that in the United States, a federal system of government is practiced and various states have their various penal codes and other laws which are applicable and particular to each state⁵³. On the issue of self-defence each state in the United States has its laws as it relates to how the defence of oneself can be justifiable. The jurisprudence in the United States had acknowledged the permissibility of self-defence in particular case. Nevertheless, in comparison with other jurisdictions, different reasons allowing the application of lethal force are predetermined. This at times exposes possible difference s in the scope and the strengths of the defence⁵⁴.

When a defendant raises the defence of self-defence in the United States, it does not necessarily mean that no crime has been committed; such a defence merely represents the fact that the defendant may go unpunished due

⁴⁷ See Section 65 of the Penal Code Act.

⁴⁸ (1981)2 NCR 110. See *Bala v State* Ibid.

⁴⁹ (1995) 3 NWLR (pt 386) 651.

⁵⁰ See Section 32(3) 8(4) of the Criminal Code Act and Section 62 and 63 of the Penal Code Act.

⁵¹ Ibid, *Isah v State* (2018).

⁵² This will be discussed in detail under sub-topic self-defence or stand your ground in the United States.

⁵³The Constitution of United States established a system of government called a federal system which allows for power-sharing between the national and state government. The judiciary has both federal and state courts. Each court tries particular cases but is not independent from one another. For more information, see United States Court Administrative Officer 'Why two Courts System?' <http://www.uscourts.gov/educational-resources/get.informed/federal-court-basic/whytwocourts.systems.aspx> (accessed 24/11/19).

⁵⁴Unlacke S. 'Self-Defence and Natural Law' 36(1)(1991) *American Journal of Jurisprudence* PP 73-101.

to public policy. And the condition taken into consideration are evaluated based on the standard of reasonableness and various courts⁵⁵, in the United States have developed a mixed standard both objective and subjective tests, taking into consideration the particular circumstances of the accused when the unlawful act was committed to determine whether or not erected reasonable. The United States Criminal Law explicitly holds that a person is allowed to aptly deadly force when there is an apprehension of impending and unjust aggression exists. This explains why in justification defences it is admitted that the defender is liable for his act nevertheless it is also proclaimed that the act of the defender was not wrongful. Thus, for the defender's act be regarded as justifiable, there must exist a set of factors which correspond with the defender's conviction for the need to defend, thereby making lawful what could have been regarded as unlawful⁵⁶ Kanan and Braman explain the defence as such:

The conventional formulation of private defence effectively permits the use of deadly force only to protect one's life. However, in many other situation this doctrine may authorize the use of deadly force when necessary to protect a myriad other interest-property, equality and the like. This explains why United States recognizes a person's moral agency to demand respect not just his bodily integrity but his dominion over property his entitlement to social deference, his enjoyment of individual liberty, and so on, this would still be a doctrine of self-defence⁵⁷.

There are two important concerns under the United States Law of Self-Defence which need to be understood: the first is that 'self-defence may be a defence of either justification or excuse; secondly, in dealing with the conditions of self-defence, the courts agree that the significant question is that of the reasonableness of the conduct and beliefs of the accused'⁵⁸. Existing at time of the time of his act, one could assert that self-defence seems to overlap with both justifications excuse.

In the United States, there are states that have extended the defence of self-defence include 'no duty to retreat' however popularly called 'stand your ground law' after the Florida had joined other states of the United States to remove the duty to retreat⁵⁹. A public debate on self-defence, in the United States was ignited in 2005, when Florida joined the majority of states and abolished the duty to retreat, which fault finders and pundits quickly christen the law as a 'stand your ground law'. Even though, the new statute abolishing the duty to retreat in the state of Florida was not named a 'stand your ground' law. Stand-your ground law is a law that authorized a person to protect and defend one's own life and limb against threat or perceived threat. This law states that an individual has no duty to retreat from any place he/she has a lawful right to be and may use any level of force, including lethal, if he/she reasonably believes he/she faces an imminent and immediate threat of serious bodily harm or death; this is as opposed to duty to retreat laws⁶⁰. Despite the fact that same states in the United States of America did follow the English tradition of imposing a duty to retreat before using deadly force in self-defence. Those states recognized that one has the right to use deadly force in the defence of one's dwelling in the castle doctrine, which abolished the duty to retreat in one's home or dwelling before using deadly force in self-defence and allowed a person to stand his ground⁶¹.

From the aforementioned, it should be noted that the legal justification for self-defence whether by retreating or not retreating breathers on the premise that the victim has no opportunity to resort to the law for his defence. Just as the basic justification for the use of force in self-defence is recognized in every state in the United States, the basic components of the justified used of deadly force are found in all states with slight variations in wording or emphasis. Those components are proportionality, necessity and reasonable belief would be used in determining whether the defender acts of using deadly force in the state that abolished the duty to retreat is justifiable.

⁵⁵ The court at the Federal Level and State in the United States.

⁵⁶ Smith Justification and Excuse in the Criminal Law (1989) 1.

⁵⁷ Kahan & Raman 'The Self-Defensive Cognition of Self-Defence' 2008 45(1) *America Criminal Law Review* P18.

⁵⁸Smith Ibid.

⁵⁹ The States that have legislatives adopted stand – your – ground laws and (Alabama), Alaska, Arizona, Florida, Georgia, Chao, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nerada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah and West Virginia. See <http://www.nesl.org/research/civil-and-Criminal-Justice/self-defence-and-stand-your-ground.aspx>. accessed 24-3-2018.

⁶⁰ Ibid.

⁶¹ *Weiland v State*, (732 So. 2d1044, 1049 – 50 (Fla. 1999) (quoting *People v Tomlins*, 107 N.E. 296, 497 CW.Y.I 1914).

9. Conclusion

The killings and destruction of lives and properties in Nigeria is alarming and disheartening, in view of the fact that government and its agencies are doing less or nothing to ensure that are brought under control and the incessant killings put on hold. However, in the interim, having looked at the provisions of the Constitution and the Nigerian Criminal Laws, it is germane to say that self-Defence is not a crime, but a justifiable act under the Nigerian Legal System which is not exclusive of any class or groups of persons, but all Nigerians. The right of self-defence presently under the Nigerian Legal System shall be enjoyed if the necessary ingredients or conditions to justify the act of self-defence are observed, that include duty to retreat. There is the need for an extension of the defence of self-defence in the constitution of the Federal Republic of Nigeria, 1999 (as amended) the Criminal Code Act and Penal Code Act to incorporate the duty not to retreat (Stand Your Ground Law) just like in the United States of America and Expunge from our laws the duty to retreat which seems to be problematic, so as to avail Nigerian and every person living in Nigeria the opportunity to defend themselves using deadly force, when attacked with deadly force, without first resulting to the common law duty to retreat, which in most cases leads to the victims losing their lives and properties. That in abolishing the common law duty to retreat, it should be incorporated in the laws that all other ingredients of self-defence that makes a defence by use of deadly force justifiable that makes attacked with deadly force under the English Common Law duty to retreat, which is part of our Criminal Laws should be applicable, except the duty to retreat that unlike in the United States of America where the abolishment of duty to retreat is restricted to some states, all the states in Nigeria should ensure that the duty to retreat is expunge from laws of the state domesticating either the Criminal Code or the Penal Code Act, so as to ensure that the duty not to retreat (Stand Your Ground) is applicable in all the states of the federation, so as to make it difficult for the perpetrators to choose between states when they want to attack.