

RIGHT TO LIFE, RIGHT TO SELF DEFENCE AND CRIMINAL ELEMENTS IN NIGERIA¹ *

1.1 Introduction

Nigeria has witnessed a rise in criminal elements killing Nigerians on daily basis. The Nigerian government seem overwhelmed by the sheer weight of the activities of these criminal elements. There has been little or no arrest of these people. Even those arrested are not arraigned to face appropriate punishments. There have been reports of some of these criminal elements being admitted or absorbed into the military and paramilitary services. The worrying aspect of the activities of these criminals is the fact that they are carrying out their activities without any resistance or defense from the Nigerian citizens who are the victims of the criminal activities.

Nigerian constitution guarantees right to life and right to self defense in line with right to life; but the irony of the above scenario, is that Nigerians are not allowed to carry guns, which is a major instrument of self defence.

This article will examine the constitutional provisions of right to life, and right to self defense and juxtapose them with the restraint in the access to gun and its use to defend one's self in the face of threat of criminal elements like Fulani Herdsmen, Kidnappers, Bandits, Unknown Gun men, armed robbers, Bokoharam and various rampaging criminals in Nigeria.²

Nigeria is a populous country with about 225,954,000, with diverse tribes³ and religions like Christianity, Islam and Traditional religions. Nigeria is one of the greatest economies in Africa,⁴ mainly oil and gas, agriculture, trade, transportation and manufacturing services. After British colonial over Lordship, Nigeria became independent in 1960, and a republic in 1963. Nigeria has undergone various security challenges, strifes and civil wars since independence till date.

The most pressing problem bedeviling Nigeria presently is the problem of upsurge of lawless criminal elements with various nomenclature, like bandits, Fulani herdsmen, *Boko haram*, Kidnappers and Unknown Gun men.⁵

All the above and many more criminal elements have been killing Nigerians without any protection from the government, and Nigerians have no effective way of defending themselves because of restraint to access to guns by government against Nigerian citizens.⁶

1.2 Illustrations of Criminal Activities and Mass Killings in Nigeria

1.2.1 Owo Killings

In June, 2022, worshippers at St. Francis Catholic Church in Owo Southern Nigeria, were worshipping God in the church when some armed men opened fire on the congregation, killing over 40 people, including children⁷ one can imagine innocent worshippers worshipping their God, and some criminal elements came and cut short their lives.

1.2.2 Kidnapped Catholic Priest in Edo Killed by Abductors

A catholic priest was also kidnapped in his rectory while coming out for Sunday mass. Until his death he was a principal in a Catholic Secondary School in Edo State Nigeria.⁸ Here the victim is a clergy man. A man who dedicated his life to serve humanity and his life was taken by abductors. A deep insight into the reasons for the killing shows a religious undertone. A particular religion wants to intimidate the Catholic adherents in order to stop their focus on their religious beliefs.

1.2.3 Nigeria's Kaduna Train Attack

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¹ Britannica, Nigeria Summary/Britannica.com accessed on 28/6/22.

² Mostly Igbo, Yorubas, Hausa Fulani *etcetera*.

³ *Supra*.

⁴ Britannica (*ibid*).

⁵ Vanguard unknown gun men in South-East are Terrorists, Federal Government (vanguardngr.com). accessed on 28/6/22. Nigeria's banditry; why 5 government strategies have failed (theconversation.com) accessed on 28/6/22.

⁶ BBC News: Nigerian Owo Church Massacre who are the victims (bbc.com) 12/June/2022 accessed on 28/6/22.

⁷ Tribune, Kidnapped Catholic Priest in Edo killed by abductors (tribuneonlinn.com/update) Accessed on 28/6/22.

On 28th March, 2022 Abuja - Kaduna train was attacked by kidnappers with bomb. Some passengers died instantly, while many were abducted into the bush by marauding bandits who arrived in motor bikes, holding fire arms and other deadly weapons.⁹ There were 150 passengers in the said train who were unaccounted for. In the said train incident, a Medical Doctor, a Lawyer, Secretary General of Trade Union Congress and an Party Chieftain were among those killed in the incident.¹⁰

1.2.4 Farmers-Herdsmen Conflict

The middle belt (North Central) part of Nigeria has confessed growing incidents of bloodletting between mainly Muslim Fulani Herdsmen and Non-Fulani, mostly Christian farmers. This had been growing since 1999 till date. The basic reasons are mostly economic and environmental in nature, but it has degenerated to religion and ethnic dimension. These conflicts have led to the death of thousands of people. It has affected farming industry as farmers are afraid of going to their farm to avoid being killed. It has also affected the cost of food items and very few people are now into farming to avoid being killed. About 19000 people have been killed and many displaced due to Herdsmen - Farmers clashed.¹¹

1.2.5 Regional Conflicts in Jos and Kaduna

There has been violent conflicts in urban places like Jos and Southern Kaduna, this has led to gang/bandits targeting communities for mass killings, kidnappings and looting. The most annoying of these incidents is the rhetorical statements from the government authorities that perpetrators will be brought to book and nothing has ever happened and the incidents keeps increasing in leaps and bounds.¹²

On January 26th and 27th of 2022, 32 villagers were murdered in two different attacks by Muslim Fulani Herdsmen in Plateau State.¹³ All these are expression of state of anarchy enveloping Nigerian state.

1.2.6 Bandits, Militants, Unknown Gun Men and Armed Robbers

All the above mentioned groups have terrorized Nigerian in various dimensions. Resulting in loss of lives, properties and maiming of limbs. One thing they have in common is that the average citizen is hopeless and helpless whenever they strike, because, there is restraint in the access and use of guns in Nigeria. Arms have become the toys of the criminals while law abiding citizens fall easy victims. There must be action to be taken to stop the impurity going on in the criminal circles.

2.1 Right to Life in Nigeria Constitution

Section 33(1) of the Constitution of the Federal Republic of Nigeria (CFRN)¹⁴ provides that "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 offences of which he has been found guilty in Nigeria".

A cursory look at the above provision seem to have totally exempted all citizens and individuals from extra-judicial killings. In other words, the only circumstance that would warrant a person being killed is in execution of a court order after an accused person must have been properly tried, found guilty and exhausted all appellate opportunities. So the issue of lynching, unknown Gun men attacks, bandits attacks, kidnappers attacks, assassin attacks and different ways Nigerian have been losing their lives, are frowned against by the constitution. Also the idea of police killings, army shootings, and other para-military violence are not contemplated by the constitution.

However, the provision of *section 33(1)* is not absolute as there are exceptional circumstances that could warrant extra-judicial killings as provided in the same constitution. The exception is clearly provided as follows:¹⁵

⁸ Channels Television "Many feared killed, others kidnapped as Bandits attack Abuja-Kaduna Train 29/3/22.

⁹ *Ibid.*

¹⁰ Nigeria's Silent Slaughter: Genocide in Nigeria and the implication for international community. ICON Launches: New report proving Nigerian Genocide Messeer Box, 31 August 2020. See Wikipedia.com accessed on 28/6/22.

¹¹ Mohammed Tanko Shittu Dozens Dead After Gunmen Ransack Central Nigerian village: Yahoo News: Retrieved 14 April 2022.

¹² Violence in Plateau State, Nigeria Escalates with more Muslim Fulani Herdsmen Attacks - Morning Star News. 20/1/20.

¹³ *Section 33(1)* CFRN (As amended).

¹⁴ *Section 33(12)* CFRN.

A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as a result of the use in such extent and in such circumstance as are permitted by law or such force as is reasonably necessary: (a) for the defence of any person from unlawful violence or for the defence of property, (b) in order to affect lawful arrest or to prevent the escape of a person lawfully detained or (c) for the purpose of suppressing a riot insurrection or mutiny.

The above exceptions seem to have authorized the extrajudicial killing of a person in self-defense, in course of effecting an escape from lawful custody and to suppress riot, insurrection or mutiny. While the first exemption is reasonably justified, the last three exemption has been abused and have resulted to death of many individuals, who may be innocent of the accusations leveled against them. It is possible for a corrupt police officer to be easily compromised to kill a detainee/accused person, under the claim that he tried stop the accused from escaping lawful custody.¹⁶ The last exemption has warranted the suppression of people protests which runs contrary to the right of freedom of expression.¹⁷ The "ENDSARS" killings are a classic example of killing based on the provision of *section 33(2) CFRN*.¹⁸

The sacred and irreversible nature of life and death respectively, demands that life must be preserved by all means, and even those who were lawfully convicted and sentenced to death should be allowed to exhaust all opportunities to save their lives before they face the ultimate punishment of being executed. The state made such a grievous error in the case of *Bella v. AG of Oyo State*.¹⁹ In this case an appellant who has already been convicted and sentenced to death was erroneously executed while his appeal was still pending in an appellate Court in Nigeria (Supreme Court). The convicted was later exonerated by the apex court of the charge of armed robbery for which he was executed, unfortunately, he was not alive to enjoy the positive judgement he got at the appellate courts. One can imagine the pains the family went through over the hasty passage and implementation of the judgement. So it behoves on the state to protect lives of all time, and the life of citizens must be protected by the government. And individuals should be authorized and given free hand to defend themselves when it becomes necessary and imperative.

3.1 Right to Self Defence

Section 33 (2) (a) CFRN, provides for defense of any person of property. This self defence has been interpreted to be necessary and proportionate. One wonders how it will be measured in determining the appropriate force is to be applied, when a person life's in danger of being taken by criminal elements. Also *section 32(3)* of the Criminal Code²⁰ provides that a person is not criminally liable for an 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. The two preceding legal provisions invariably state that when one's life is threatened with violence, the person has a right to defend himself or herself. The problem here is the nature of defence to put up and the means of attaining same.²¹

In *Uwaekweghinya v. State*,²² the Supreme Court held unequivocally that where a person kills another in defence of himself, such a killing is excused, and it does not amount to manslaughter under the criminal code or culpable homicide not punishable with death under the Penal Code. The defence of self-defence is a complete under the criminal code and the penal code and a successful defence of self defence leads to the discharge and acquittal of the accused person. So far government has failed in its primary duty to the citizens of protecting lives. *Section 14(2) (b) CFRN* states that the security and welfare of the people shall be the primary purpose of government. In addition, *section 17(2)b* of the CFRN also states that, "the sanctity of the human person shall be recognized.

However from the look of things and the on-going events, government has failed woefully in its duty of protecting lives of citizens. Also the sanctity of human life has become a mere rhetoric in Nigerian environment, hence there is an urgent need for masses to defend themselves against criminal elements.

¹⁵ Vanguard, "what leads police into extra judicial killings, (vanguardngr.com) 7/11/2020.

¹⁶ Economists (Middle East and Africa), Peaceful Protesters Against Nigerian Police Violence are shot (economist.com) 22/10/2020.

¹⁷ The ENDSARS was a movement to protest police brutality, held in 2020. See also *Joshua v. State*.

¹⁸ (1986) 5 NWLR (Pt 45) 828.

¹⁹ *Section 32(3)* Criminal Code.

²⁰ (2005) 9 NWLR (Pt 930) 27.

²¹ (1988) 9SC 110.

3.2 Self Defence and Gun Usage in Nigeria

From the foregoing pages, it has been established that there is constitutional right to self defence, as adumbrated in *section 33(2) CFRN (supra)*.

The main instrument of self defence in Nigeria is gun. However, the unfortunate reality is the access to gun is not easy. Gun usage is based on gun license.²³ So there is no free access to gun, unlike in the United States of America, where such rights are granted liberally.²⁴

The second Amendment declares:

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

This US see access to gun as a natural right for every one as an extension of right to life to avoid people's lives from being taken by criminals in the society.

Nigeria is faced with a serious threat by few criminals who are holding the majority of the Nigerian populace at the Jugular. For one to access gun in

Nigeria, there are strict procedures for assessment to guns in Nigeria. And the type of guns accessed are pump action guns. The provisions reads:

Any lethal barreled weapon of any description from which any shot, bullet or other missile can be discharged.

Ammunition means a component part of any fire arm and includes shots bullets, missiles etc. the fire arm fit highlights the permitted and prohibited forms of firearms capable of being in the possession of private citizens in Nigeria.

Also, *section 3 (supra)* provides:

No person shall have in his possession or under his control any firearm or ammunition except in accordance with a license granted by the President acting in his discretion.

From the foregoing, it is clear that accesses to guns are at the discretion of the President, fire arms are not granted as of right in Nigeria. In other words the President or the Inspector General of Police can refuse the granting of license without any reason and the license can even be granted without any compelling reason. As observed earlier, the guns that enjoy license in Nigeria are hunting rifles, pump actions and shot guns. There is prohibition of possession of access to hand guns (pistols or revolvers), machine guns automatic guns, bombs and grenades. So how can citizens who have only been granted access to pump actions guns and non-automatic guns, bombs, grenades *etcetera*, defend themselves.²⁵

The criminals in Nigeria operate with automatic guns and have access to bombs and grenades. So how can citizens who have been granted access to pump actions guns and non-automatic guns face these criminals in gun battle.

Besides, majority of Nigerian do not have access to guns, as it is not easily granted. In addition, the firearms licenses expires on yearly basis (31st December), and must be renewed. This could be used as an opportunity to withdraw such licenses and guns whenever the government feels it necessary.

Not too long ago the government ordered all gun owners to hand over their guns, even in the face greater attacks coming from criminals in Nigeria.²⁶ It is a crime punishable with terms of imprisonment to be found in illegal possession of arms (5years).²⁷

Therefore, the access of weapon for self defence in Nigeria, especially gun is not easy and there should be a review of the law in line with what obtains in other countries, especially the USA.

In the United States, gun culture encompasses the behaviours, attitudes and beliefs about fire arms and their usage by civilians. Gun ownership guaranty in the United States Constitution, Fire arms are widely used in the United States for self defense, hunting and recreational uses, such as target hunting.²⁸

²² *Section 3 Fire Arms Act LFN 2004.*

²³ Second Amendment to the United States Constitution.

²⁴ *Section 34 Fire Arm Act.*

²⁵ *Section 28(1) (5) Fire Arms Act.*

²⁶ *Section 3, the Robbery and Firearms (special provision) Act., provides for 10 years imprisonment for illegal possession of Arms or N10,000 fine or both.*

²⁷ Gun culture in the United States n.m.wikipedia.org. accessed on 13th July, 2022.

The article believes that one of the reasons why America is a guaranteed democratic nation today is because no extremist group can easily overrun the country using arms. Like it has been witnessed in Lebanon and Afghanistan.²⁹ Nigeria is a secular, multi ethnic and multi-religious country. No group should be allowed to overrun the country or annihilate the indigenes of Nigeria under any guise. The easiest way to stop the impending evil is to and Liberalize License gun and by extension access to gun.

Conclusion

The problem of insecurity has greatly increased in recent times. The Nigerian Constitution recognized Nigerian as a secular country.³⁰ Nigeria has many ethnic groups with three dominant groups namely: Igbo, Yoruba and Hausa. Nigeria is an agrarian country with many natural resources. Nigeria is the most populous country in Africa, with about 200 million people. Nigeria is a multi-religious and animists existing simultaneously. Nigeria is a beautiful and great country. Nigeria has existed officially for 62 years (after independence), and unofficially 104 years (since the amalgamation of 1914). The country must be sustained and no group or groups should be allowed to forcefully over take the country, through the use of arms.

Therefore, there is an urgent need to allow easy access to fire arms by granting easy license to the citizens.

Recommendations

Nigeria citizens should be granted easy access to weapons by amending the Fire Arms Act. The Act should allow for access to automatic guns and hand guns. The criminals operating in the country, are operating with sophisticated guns, therefore, citizens must be allowed to use similar weapons to defend themselves.

Also, self-defense and martial arts should be introduced in primary, secondary and tertiary institutions. Furthermore, government must be transparent and fair in dealing with various ethnic groups and religious in the country. No group or religion should be treated as sacred cows in Nigerians. Nigeria must feel safe and free in their country.

²⁸ Taliban in Afghanistan, www.cfr.org accessed on 13th July 2022. Lebanon also was overrun by extremists Muslims. See Mark Voorhees "How was Lebanon before it become a Muslim majority country? Duora.com accessed on 13/7/22.

²⁹ Section 10, (1999) CRFNCA, Amended.