

AN ANALYSIS OF POLICE POWERS AND EXTRA JUDICIAL KILLINGS AND THE RIGHT TO LIFE**SUNNY IBOLOKU PhD.****Department of Private and Property Law,
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It is no longer news that many Nigerians have lost their lives yearly unabated due to acts of violence meted by law enforcement agencies, especially the Nigeria police, armed forces personnel and ethnic militia and sometimes by vigilante and very recently the Nigeria Civil Defence Corps. The killings are random, arbitrary and extra-judicial without just cause. Most of the victims are defenceless and are probably those who reject the illegal demands by the police and other armed forces personnel at road blocks or check points which are in most cases illegal. Others may be mere squatters or those considered to be wonderers, like the killings at Abuja to wit the Apo six or the killings in Alu Rivers State, the Alu four. The killing of Uniben students, killing of football fans in Lagos, killing of yahoo boys and innocent youths during the 2020 End Sars protest in various parts of the country. Some are even killed for merely arguing with policemen when the issue of extortion of money is at stake while many others are based on irrelevant or very minor altercations with policemen. These killings go on unabated because police officers believe they can evade justice by frustrating investigations. The aim of this paper is to critically examine the power of the police, the grounds if any supporting the abuse of police powers and unwanted killings vis-à-vis the constitutional provision of the Right to life. It proceeded to make appropriate and reasonable recommendations on how to avert the abuse of police powers and curb unwanted extra-judicial killings in Nigeria.

Introduction

The right to life is a constitutional provision in Nigeria and has global recognition. It is also considered sacrosanct and a pivot to all other rights. The right to life is enshrined in section 33 (i) of the Constitution of the Federal Republic of Nigeria 1999 as amended.

It state thus:

“Every person has a right to life and no one shall be deprived 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”¹

The above provision guarantees the right to life indicating that human life should not be taken at will. Again Article (iv) of the African Charter on Human and people’s Right² lays credence to this constitutional provision of right to life. It provides that human beings are inviolable. Every human being shall be entitled to respect for his life and integrity of his person.

The provision therefore makes it mandatory on government to respect the sanctity of

1. Section 33 (i) Constitution of Federal Republic of Nigeria 1999 as amended.

2. Article (ii) African Charter on Human and People’s Right.

3. Amnesty international and others V Sudan

4. (2005) 18 NNLR PT. 938

human life and ensuring adequate protection without violation by state or non-state actors that has the obligation to protect.

The principle of state obligation to protect human right to life is rightly enshrined under international law and jurisprudence. It was fully highlighted by the African commission on human and people's Right.

In *Amnesty International and others V Sudan*,³ wherein the commission addressed the contention that execution of people in Sudan were not affected by state agents, held "in addition to the individuals named in the communications, there were thousands of other execution in Sudan. Assuming these were not all the work of the forces of government, the government has a responsibility to protect all people residing under its jurisdiction. The commission came to the conclusion that the government of Sudan was in violation of the right to life as enshrined under Article (iv) of the African charter as a result of its inability to protect the lives of people under its jurisdiction.

In *A.G Adumawa V AG Federation*,⁴ the Nigeria supreme court affirmed the principle of duty of government to protect citizens, when it held that the citizens of Nigeria have a right to seek protection of their human rights from government. In effect it is another way of saying that government of Nigeria has a duty to protect Nigeria citizens, because if the citizens have a right to seek protection from government, it follows that a duty is imposed on government to provide such protection. Also in *Nipa V N Nkume*,⁵ the supreme court held that every person resident in Nigeria has a right to go about his or her lawful duties unmolested by anyone else, be it a government functionary or a private individual. Any manifestation of arbitrary powers assumed by anyone over the life or the property of another must not be tolerated.

The United Nations Human Right Committee has equally noted that the right to life includes a duty to prevent war, acts of genocide and other acts of mass violence including arbitrary loss of life. Perhaps it is pertinent to mention that the only possible termination on the right to life as contained in section 33(2) of the 1999 constitution as amended.⁶ but does this constitutional clause allows intentional killing in circumstances enumerated in section 32(2). This was succinctly answered by Osita Nnaneni Ogbu who remarked thus:

*It is respectfully submitted that the killing permitted under section 33(2) should have the objective of achieving one of the specified aims and the killing merely a consequence of using an absolute necessary amount of force in doing so.*⁷

The European Commission on Human Right in construing similar provision, ruled that if misappropriate force is used and death results, the convention is violated.

This article examines the right to life as enshrined in the Constitution of the Federal Republic of Nigeria 1999 as amended, the justification and liability for extra judicial killings by the police, the exercise of police powers vis-à-vis the constitutional provision of the right to life, the remedies of victims, dependants and their advocate and the procedure for pursuing such remedies. Also it examines judicial attitude, towards human rights violation in Nigeria. It proffered recommendations to help save the Nigeria society on how to avert the abuse of

^{5.} (2001) 6 NNLR Pt.710

^{6.} Section 33(2) 1999 Constitution of Federal Republic of Nigeria as amended.

7. See the comments of Nnamani Ogbu on permitted killing under section 33(2) of the 1999 constitution as amended.

police powers and curb unwanted and arbitrary extra-judicial killings.

Expatriation on the Right to life

The right to life as earlier stated is sacrosanct and to understand life is to understand death, as both are inextricably related as only a fool fight to die. The wise they say fight to live for he who fights and runs away lives to fight another day.

The right to life assumes the prevalence existence and availability to all of certain essential facilities such as food, health, shelter and education etc. the right to life to be maintained needs food, which has to be produced by members of the society all of whom have this right to life. The right to life is therefore related to the right to work to enable one attain the means of subsistence to procure food and shelter.⁸

I cannot but agree with the writer who argues that the relationship of the right to life to human security should be obvious. If one consistently has to live with fear that one's life can be taken arbitrarily or summarily by one's government, one cannot reasonably be active in society. Hence without the respect for right to life there cannot be an honest discussion of human security. Nigeria constitution from 1960 to the current 1999 constitution as amended has provision under chapter four on Fundamental Human Rights guaranting the right to life. For instance section 33 of 1999 constitution as amended provides as follows:

1. Every person has a right to life, and no one shall be deprived intentionally of his life, same in execution of the sentence of a court of competent jurisdiction in respect of a criminal offence of which he has been found guilty in Nigeria.
2. A person shall not be regarded as having been deprived of his life in contravention of this section, if he does as a result of the use, to such extent and in such circumstance as are permitted by law of such forces as is reasonably necessary;
3. For the defense of any person from unlawful violence or for the defense of property.
4. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
or
5. For the purpose of suppressing a riot or insurrection or mutiny.

In *Kalu v State*,⁹ the supreme court of Nigeria stated inter alia that the right to life in Nigeria law is not absolute but qualified. Commenting on this provision. It stated that life is sacrosanct and deliberate killing is abhorred in all societies all over the world.

This is to the effect that everyone is entitled to respect for his or her life in society. Police officers may therefore not resort to lethal force such as firing life ammunition at people unless their own lives or the lives of others are in immediate danger, and less extreme measures are not appropriate to avert the danger. The Constitution however recognizes some exceptions to the rule relating to preservation of life. The derogation are with respect to defence of property and killing of a suspect resisting lawful arrest.

^{8.} Ajomo M.A Perspective in human rights, An introductory Test, 2nd edition New Era publishers Benin City, 2005.

9. (1998) 13 NWLR Pt 583
 10. (1995) NWLR, 828, 986 12 SC

In *Aliu Bello and Ors V AG of Oyo State*¹⁰ which was an unlawful execution of Nasiru Bello. The Supreme Court and the court of appeal declared the killing illegal. In the said case Nasiru Bello was convicted for armed robbery by High court of Oyo State and sentenced to death. He filed an appeal and while the appeal was pending before the Court of Appeal the AG of Oyo state recommended his execution and this was duly carried out. An action for damages was brought by his dependants.

The Supreme Court held that the premature execution constituted an infringement of the deceased fundamental right to life as enshrined in the constitution.

Again in *Gbemre V Shell Petroleum Development Company and N.N.P.C.*,¹¹ the plaintiff Mr. Gbemre of Iweherekan Community in Delta State, sued S.P.D.C. and N.N.P.C and AG of Federation based on the underlisted claims; A declaration that the constitutionally guaranteed fundamental right to life and dignity of human person provided in the constitution inevitably includes the right to clean, poison free, pollution free and healthy environment.

The court declared that the actions of the 1st and 2nd respondents in continuous gas flaring in the course of their oil exploration and production activities in the applicant community was a violation of their fundamental right to life including healthy environment and dignity of human person guaranteed by the constitution and the Africa charter. The court further declared that Shell and N.N.P.C were to be restrained from further flaring of gas in the Applicants community and directed them to take immediate and appropriate steps to stop further gas flaring in the plaintiff's community.

Appraisal of Extra-judicial Killing

The killing of a person by government agencies without the imposition of any judicial or legal process is termed extra-judicial killing. Extra-judicial punishments are by their nature unlawful as they evade the due process of any legal jurisdiction in which they occur.¹² Extra-judicial killing often target some politicians, trade unionist, dissidents, religious or social figures and may be carried out by the state government or other state authorities like the police or armed forces.¹³

In the case of *Sinaltrinal V Cocacola*,¹⁴ extra-judicial killing was described thus:

A deliberate killing not authorized by a precious judgement pronounced by a regularly constituted court affording the entire judicial guarantee which is recognized as indispensable by civilized people. The Blacks law Dictionary¹⁵ describes the term "extra-judicial" to mean outside the function of the court system. It also describes the word to "kill" to mean to "end life; to cause physical death.

In Nigeria those involved in extra judicial killing most times go unpunished. The victims of this heinous crime are treated unjustly and they never get justice. According to Amnesty,

11. (2005) A.H.R.L.R (Nigeria) FHC

12. Iluma C. "Condemn Extra-judicial killing" *Punch Newspaper* 12 December 2012 P.15

13. Nwana, F. Mob justice and Rising case of extra judicial killing. *National Mirror*, October 23, 2012.

14. See *Sinaltral v Coca-cola* on further description of extra judicial killing.

15. Garner B.A Black's law Dictionary 5th ed. St. Paul publishing Co. Texas USA. 2004

international report of year 2000, extra judicial execution are unlawful and deliberate killings carried out by order of a government or with its complicity or acquiescence.¹⁶ The term unlawful killing include extra-judicial execution, as well as other types of killing, such as those resulting from excessive use of force by the police and other law enforcement officials. They derogate the right to life as guaranteed by the 1999 constitution as amended the international covenant on civil and political rights and the African Charter and Human and people's Rights. Extra judicial killings are prevalent in the world today and have become a global problem as many countries had cases and incidents bothering on extra-judicial killings. It is mostly prevalent in countries at war, in form of war crime like Gaza, Pakistan, Egypt, and Syria etc. Also common in countries under Military regime as was the case in Libya under the late General Gadafi.¹⁷

Attitude of the law to extra judicial killing

The position of the law with respect to extra-judicial killing is embedded in the report both in the light of human rights law and international humanitarian law. The report states that extra-judicial executions are gross violations of the universally agreed human right that enshrined the right to life in accordance with Article 3, of the Universal Declaration of Human Rights,¹⁸ and further cemented by the International covenant on Civil and Political Rights. Extra-judicial executions are therefore outside the boundary of the rule of law, and hence deprive the target individuals of their right to life, as well as the right to defend themselves against charges initiated against them.

In accordance with the provisions of International Humanitarian Law, those living under foreign occupation enjoy special protection under the ubiquitous Article 3 of the four Geneva Convention. Extra-judicial killings are prohibited in all times and in all situations.

According to Article 3, of the Universal Declaration of Human Rights (U.D H.R) everyone has the right to life, liberty and security of persons.¹⁹ It should be noted that Principle 9 of United Nations Basic Principles on the use of force and firearms states:

Law enforcement officials shall not use firearms against persons except in self-defense of others against the imminent threat of death or serious injury, to prevent perpetration of a particularly serious crime involving grave threat to life; to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, international lethal use of fire arms may only be made when strictly unavoidable in order to protect life.

Extra-judicial killing is an act of murder, this is supported by section 308 of the criminal code which provides thus: "any person who causes the death of another, directly or indirectly, by any means, whatever is deemed to have killed that other person".²⁰

In Nigeria the punishment for murder is death sentence. This is as per section 319 of criminal code which states "*subject to the provision of this section; any person who commit the offence of murder shall be sentenced to death*"²¹ yet majority of the perpetrators of this

16. Oyewole S, "feeding their deadly lust" Tell Magazine 24th August, 2008. P.30

17. Adesina, F. "cold blooded slaughter" The Sun, 15 September 2009 P.13

18. See Article V Africa Charter on human and people's right.

19. Article 3, Universal Declaration of Human Rights.
 20. See section 308 Cap 38 LFN 2004

grievous crime are not prosecuted or face sentence as stated above as they go scot free and perpetrate more crimes thereby rendering the law ineffective.

However there is no law in Nigeria which authorizes the killing of a person because he is a notorious thief or because he is caught killing. Again there is the coroner's law that determines if a death occurred through other causes or causes from extra-judicial killing. A coroner is an officer of the crown whose principal function is to investigate death, suspected to being violent or unnatural.

The coroner does this either by ordering autopsy or conducting an inquest. The law recognizes Magistrates as persons who may hold inquest. Section 4 of the coroners law,²² provides that;

"an inquest would be held whenever a coroner is informed that the body of a deceased person is lying within his jurisdiction and there is reasonable cause to suspect that such person has died either by violent or an unnatural death and such inquest on such body would be held as soon as practicable".

Sudden or unnatural death refers to death which occurs from causes other than by natural causes, invariably extra-judicial killing would fall under such categories. Section 6 of the coroner's law makes provision on inquest on all prisoners and persons in police custody, it states that,

*"whenever any prisoner or any person in police custody, shall die from any cause whatever, a coroner of the district in which such death has occurred shall hold an inquest and where such death is in execution of a judgement death, the inquest shall be held within four hours thereafter"*²³

The relevance of the above is that death which occurs in police custody or suspected criminals and prisoner shall come under inquest whether they are natural or not. This is expected to keep the police in constant check to ensure that excessive use of force that may result to death does not occur. The significance of coroners law was brought to bear in September 2005, where the death of Engineer Alaba Joseph, the Chief Executive Officer of Mobitel, and a Lagos based Communication Company, came under an inquest upon police request. Prof John Obafunwa, the then Chief Pathologist of Lagos State University Teaching Hospital, Ikeja, Lagos conducted the autopsy on the late Engineer Alaba corpse where the cause of death was linked to gunshot injury.

Analysis of police powers

Police is an agent of public order, and has the responsibility to maintain law and order in society.²⁴ this may be attained by the use of force where all necessary civil attempts prove

21. See section 319 Cap 38 LFN 2004
 22. See Coroners Law of Lagos State
 23. See section 6
 24. See Public Order Act Cap 387 LFN 2004
 25. See section 2 (a) (b) Police Act Cap P.19 LFN 2004

26. See section 4 Police Act Cap P.19 LFN 2004

27. See Cop V Chukwuma (2005) 8 MOFRC/AB/CS/54 (unreported)

abortive.²⁵ such instances would include taking an individual who resists arrest or in dispersing an unlawful assembly. Police duties under the maintenance of public order; involve both civil and criminal functions. Crimes may be mere attempt or the actual committal of a wrongful act. A person is presumed to be innocent, and abides as such until the contrary is proved in a court of law.

According to the express grant of constitutional police power, an officer of the law may make an arrest upon reasonable suspicion. Power as used in this sense means force by which obedience to orders are compelled. If the law has no adequate means of enforcement, it would be empty and meaningless.

Therefore for the effective performance of his duties, the police officer is given certain powers. These powers are conferred on him by law. He must exercise them within and according to the dictates of the law. Succinctly put, he should not on any ground exceed or abuse these wide powers. However, if he does he stands the risk of losing the shield of protection, endowed on him by law and thus incurs criminal liability. The police are granted the general power of crime prevention as articulated in section 4 of the Police Act, which provides:

The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the enforcement of all laws and regulations, with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by or under the authority of the act.²⁶

Section 214 (2) (b) also provides;

The members of Nigeria Police Force shall have such powers and duties as may be conferred upon them by law.

A police officer may search and detain anyone in questionable possession of things believed to be stolen. No exhaustive test exist to provide ambit or ground for reasonable suspicious. In *Commissioner of Police V. Chukwuma*,²⁷ it was observed thus:

The test as to what is reasonable belief that a suspect committed an offence is objective. It is not what the policeman himself considers reasonable but whether the facts within his knowledge at the time of the arrest disclosed circumstances from which it could be reasonably inferred that the applicant committed an offence.

In considering grounds of arrest careful consideration of the following must be noted.

- Time, place, circumstances and demeanor of the suspect. The fact of the theft in the area or facts that establish an attempt
- The type of relationship conveyed in the relationship within the status of the bearer.
- A description that fits that of a wanted person.

The enforcement of the obedience to rules and regulations often times against the will

28. See section 24 and 25, Police Act Cap P.19 LFN 2004

29. Garner, B.A. *Black's Law Dictionary* (6th ed), St. Paul's Publishing Co. Texas USA 1990 P.109-110
 30. (1980) 2 NWLR 1130
 31. See section 10 criminal procedure Act, Cap 80, LFN 2004

of the individuals has been the function of the state through the police and other law enforcement agencies. To achieve this in Nigeria the Nigeria Police has been given enormous power under the law of the Federation. These include power to arrest, to issue summons, to detain, to search to conduct prosecution all to grant bail, to take finger prints, to regulate assembly and dispersion of violators, to prevent injury to public property, etc.

Attempt would be made to expatiate on some of these powers as follows:

Power of arrest

The power of arrest is in section 24 and 25 of the police Act.²⁸ Arrest is the deprivation of a person's liberty by some lawful authority for compelling his appearance to answer a criminal charge or as a method of execution.

Black's law Dictionary defines arrest thus:

*"To deprive a person of his liberty by legal authority. Taking, under real or assumed authority, custody of another for the purpose of holding or detaining him to answer a criminal charge or civil demand"*²⁹

The purpose of arrest are in three folds, preventive (where a man is arrested in order to terminate a breach of peace), punitive (where it is resorted in order to take a man before a magistrate or court of law to be punished or bound over and protective (where a person is arrested for his protection. The arrest may be an order of execution of a court order generally arrest is affected with a warrant of arrest, an authority from a magistrate or judge, usually on oath and signed by the authority issuing it, ordering the arrest of the person named. In *Ikonne V Commissioner of Police*,³⁰ a warrant not on oath issued by the Imo State High Court judge ordering the arrest of the appellant on the fictitious allegations that the later wanted to kill the former with juju was held invalid by Supreme Court.

An arrest must be reasonable and infact based on probable cause. Probable cause as used here means a state of fact that leads a man of ordinary care and prudence to believe and conscientiously entertain an honest and strong suspicion that the person being arrested is guilty of an offence. Section 35(3) of the 1999 constitution as amended is meant to protect and preserve the liberty of citizens and check the abuse of police power of arrest. It states that:

Any person who is arrested or detained shall be informed in writing within twenty-four hours (an in a language that he understands) of the fact and ground for his arrest or detention.

Arrest without a Warrant

Section 10 of the Criminal procedure Act³¹ gives the police officer wide powers to arrest without a warrant any person who commit an offence in his presence, any person who obstructs him while executing his duties or a person found in possession of a property reasonably suspected to be stolen etc.

The exercise of police power of arrest under the Criminal Procedure Act and Criminal Procedure Code is absolute and not subject to any limitation. The law also provides that an

^{32.} (1982) 2, NCLR 142

33. See section 28 of Police Act, Cap 19, LFN 2004
 34. See section 28 (1) Police Act Cap 19, LFN 2004
 35. (1987) 4 NWLR 797

arrested person must be taken to a police station to avoid abuse of human rights which may endanger the life of the accused. However the police may do otherwise by doing what is reasonable to investigate the alleged offence. A warrant is usually in writing indicating date and place of issue with relevant particulars. It remains in force, until it is executed or cancelled by a judge of magistrate. When a police officer is affecting arrest with a warrant, the procedure is as stated below:

- He should approach the accused or the subject.
- Tell him or her that there is a warrant for his arrest.
- Show him the warrant if available, but due care should be exercised by the officer in order not to allow the accused touch the warrant so that it might not be seized or destroyed.

Though the police have wide powers of arrest as stated in the Criminal Procedure Code, Police Act, Criminal Procedure Act and the Constitution as previously highlighted, there are corresponding regulations aimed at avoiding the abuse of power. Judges and magistrates are also there to quash any abuse through cases.

In *Sadiq V the State*,³² the accused was invited by a police officer to the police station for questioning, but he refused to accompany them. Other officers were sent and on persuasion the accused followed them to the station. The accused was charged and convicted of resisting arrest. On appeal it was held that the appellant was never arrested by police because there was no restraint of the appellant. It was further held that mere words cannot constitute an arrest under the law.

Power of Search

This Power is enshrined in section 28, of the Police Act³³. Again section 37 of the 1999 constitution of Nigeria as amended provides that the privacy of citizens, their home, correspondence, telephone conversation and telegraphic communication is guaranteed and protected. This notwithstanding, the police have wide powers to conduct search on person, his premises and on a thing in order to recover any property that is stolen or unlawfully obtained or to obtain evidence required at trial of an offender. The search may be with or without a warrant depending on the offence, circumstances or subject matter of the search.

The constitutionality of this power derives from the derogatory provision of section 45(1) of the 1999 Constitution as amended. It provides thus:

Nothing in section 37 of the 1999 Constitution as amended shall invalidate any law that is reasonably justified in a democratic society.

- In the interest of defence, public safety, public order, public morality or public health.
- For the purpose of protecting the rights and freedom of other person.

36. See section 23 Police Act Cap, 19 LFN 2004 Federation and Attorney General of the States
 37. (1998) 2 NWLR 578
 38. (1996) 3 NWLR (PE 436) 320

- The power of the police to search may be construed from property law concept to mean trespass. This power may involve the use of surveillance techniques to physically penetrate such areas.

Search with warrant

A search warrant is an order in writing issued authorizing an officer of the court, member of the police force or other person there in named to search and seize any property that may constitute evidence of the commission of a crime. It is issued by a magistrate authorizing a police officer or any person there in named to search a place if there is a reasonable ground for believing will afford evidence as to the commission of any offence. The warrant may also authorize the apprehension of the occupier of the premises, home or place where items were found.

A search warrant like the warrant of arrest must bear all necessary things such as description of person to be searched, otherwise it is illegal. Also declared illegal is a general warrant in which either the person or the property to be searched is not specified. A search warrant remains in force until executed or cancelled by the court that issued it. By section 28 (1) of the Police Act.³⁴ A superior police officer may be authority under his hand authorize any police officer to enter any house, shop, warehouse or any premises and search for stolen property, seizing and securing therein any property he may believe to have been stolen in the same manner as he would be authorized to do if he had a search warrant and the property seized, if any corresponded to the property described in such search warrant. Once this is done the police officer conducting the search will do as if he has been issued a search warrant by a magistrate.

In this regard Lord denning, Master of Rolls opined;

“when a constable enters a house by virtue of a search warrant for stolen goods, he may seize mostly the goods which he reasonably believed to be covered by warrant, but also other goods which he believes on reasonable grounds to have been stolen and to be material evidence on a charge of stealing or receiving against the person in possession of them”

However, in *Ghani V Jones*,³⁵ he stated thus: if police officers should engage in indiscriminate search of peoples premises, they would be guilty of trespass, even if they should find something incriminating against the occupier adding that the court should not allow it to be used in evidence against him if the conduct of the police officer was so oppressive that it would not be right to allow the prosecution to rely on it.

The above is to ensure there is no abuse of people’s right by the police in spite of enormous powers in their hands. They will be held liable for breach of people’s fundamental rights if they exhibit oppressive conduct in exercising their power of search. It should be noted

The Police Act empowers police officers to conduct prosecution in person before any court, whether or not the information or complaint is laid in his name section 23, police Act³⁶ refers. This power is however subject to the power of the Attorney General of the

^{39.} See Criminal Procedure Act Cap 80, LFN 2004

^{40.} (2004) 17 NWLR (Pt 901)1, 6 and 10

that where the person to be searched is a woman, the search is to be conducted by another woman and may be taken to the police station for that purpose. The restriction is however limited to the body of the woman and not the things appurtenant to the person, such as hand bag, which are not part of her body.

Power to conduct prosecution

Under section 174 and 271 of the 1999 Constitution as amended, respectively to institute and undertake the take over and continue or discontinue criminal proceedings against any person before any court of law in Nigeria.

The above notwithstanding, the power of the police to conduct prosecution is exercised in any court of law in Nigeria. This the police do by bringing before the court a charge contained in a charge sheet or First Information Report (FIR) specifying the offence and presents the case before the accused. The power to prosecute criminal proceedings is therefore not exclusive of the Attorney General. In *Olumo V Commissioner of Police*,³⁷ it was held that the police have powers to prosecute cases before court.

Power to Grant Bail

Bail is the release from custody of the offender of the law. It is the procedure by which a person arrested for an offence is released on security being taken of his appearance at a day and place certain. Bail may be granted by the police to a suspect pending further investigation into any matter or by the court after the suspect has been charged to court pending the determination of the case or to a convicted person pending the determination of an appeal.

It is arguable, depending on the prevailing facts and circumstances of each case that there is no offence that is notailable today in Nigeria. Afterall, what is the essence of bail, if not to enable the accused to prepare for his defence and face his trial "(Today) a court that fails to look into the facts of such charge (before declining jurisdiction) cannot be said to have exercised its discretion judiciously" *Anaekwe V Cop*³⁸ Police bail otherwise called pre-trial bail or pre-arraignment bail, seem to be a creation of the 1999 constitution of Nigeria as amended. Section 35(4) provides that "Any person arrested or detained pursuant to the constitution shall be released within a reasonable time"

Again section 17 of the Criminal Procedure Act,³⁹ authorise the police officer or any other officer in charge of the station where the suspect is detained to release such suspect subject to terms thus:

When any person has been taken into custody without a warrant for an offence other than offence punishable with death, any officer in charge of a police station may in any case, and shall, if it will not be practicable to bring such person before a magistrate or justice of peace having jurisdiction with respect to the offence..... Inquire into the case, and unless the offence appear to such officer to be of serious nature, discharge the person upon his entering into recognizance with or without sureties for a reasonable amount to appear before a court at the time and place named in the recognizance".

41. Supra

42. Supra

Notwithstanding the above the police have refused or denied suspects bail without just cause, sometimes in collusion with some court officials.

In *Kayode Oshinsanya V Cop Lagos State and others*,⁴⁰ The court of Appeal harped on when a person arrested or detained must be released and held:

“A person arrested upon reasonable suspicion of having committed a criminal offence and if not entitled to bail and having not been charged before a competent court within, in the case of the appellant per section 35(5) of the 1999 constitution as amended, one day, shall necessarily be released either conditionally or unconditionally. Applicant’s arrest cannot be said to have been based on reasonable suspicion and he is yet to be charged to court three years after arrest”

In Oshinsanya’s case (Supra) the summary of the facts of the case, disclosed that the applicant was denied bail by trial court “purely on the basis of the allegation against him without more” as the respondent did not file the proof of evidence in support of the alleged offences. It is not uncommon to see people who have been arrested and detained in police cells for unreasonable and illegal periods. Such conducts cannot be excused.

Not even when there are enabling law and statutes empowering the law enforcement agencies to release persons on bail pending proper charges before the courts. It should be noted that the requirement for bail is entering into recognizance or bind with or without sureties for reasonable amount.

It is the responsibility of the suspect to meet the conditions for bail, and if a suspect remains in custody after bail has been granted due to his inability to meet bail conditions, his continued detention in police custody is not in contravention of the constitutional provision.

How to prevent further Acts of Extra-Judicial killing

There is need to amend the section of police force order 237 which provides for more grounds for lethal force than those permitted by international human rights standards and ensure that it is in line with United Nations basic principles on the effective prevention and investigation of extra-legal arbitrary and summary execution.

- Condemn publicity all extra-judicial killings including suspected armed robbers and announce that perpetrators would be brought to justice.
- Ensure that there are clear guidelines requiring officers to report abuses and that officers at all levels of the chain of command know about these guidelines, and are held responsible for enforcing such guidelines, with adequate penalties imposed for covering up police misconduct.
- Ensure that where reasonable suspicion exists of misconduct or criminal offence involving a police officer, there is a thorough and impartial investigation and discipline in accordance with international standards, as set out in UN code of conduct for Law Enforcement Officials.
- Ensure that procedures for storage and registration of weapons are enforced. Weapons should be stored in designated and secure facilities and each should carry designated number, type and number of ammunitions used should be accounted for.
- Ensure that adequate systems and mechanisms are put in place, along side training and regulations on the use of force and fire arms to make sure that police officers apply the relevant UN standard in their daily work. This include ensuring that police officers have

access to a differentiated range of police equipment and training on the use of range of equipment for the differentiated use of force, and other tactic method, including open hard techniques (using no equipment, to apply the UN basic principles in the use of force and fire arms by law enforcement officials.

Also the National Human Rights Commission should be more proactive in ensuring that relatives of victims of extra-judicial killing or other unlawful killing and enforced disappearances have access for justice and these are investigated promptly. Those involved in torture and other brutality should be prosecuted.

The law should not spare any of them so that we can send a strong signal that extra-judicial killing will no longer be tolerated in Nigeria. It is also necessary that our judicial system is strengthened to make it easier for criminals to be brought to justice.

Further the police force order 217 should be reviewed to expunge section 3(d) and (e) of police force order 273 which permit police officer to shoot suspect and detainee who attempt to escape or avoid arrest, provided the offence is such that the accused may be punished with death or imprisonment for 7 years or more. The police have hidden under this order to perpetrate crimes.

Conclusion and Recommendation

The constitutional provision of the right to life is such that it cannot be deprived except on the condition stated in section 33 of the 1999 constitution as amended. Thus, it can be deprived in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria by a court with competent jurisdiction or for the defence of any person from unlawful violence or for the defence of property.

In *Kalu V State*, the Supreme Court of Nigeria stated that the right to life is not absolute but qualified. Having said that it should be noted as previously stated that excessive or abusive use of police powers have been frowned at by the law and appropriate sanction imposed. See the case of *Aliu Bello and Ors V AG of Oyo State*.⁴² it was also observed that indiscriminate use of police powers exposes such erring officers to appropriate action as there are adequate provisions in criminal procedure code and in criminal procedure act on appropriate procedure with regards to police power and anything to the contrary will be viewed as abuse of powers and cannot be condoned. The concept of right to life and police powers therefore has limitations.

In the foregoing this article has elucidated on the concept of police powers and the right to life with respect to extra-judicial killings. However, a number of recommendations are proffered below.

Recruitment

The making of a good policeman begins from his recruitment. It has been observed that the recruitment system in the police scarcely pay attention to the psychological make-up of the recruits. The effect is that men, women and officers of quick temper who found their ways to the police soon become dangerous element to the society. A good policeman has to qualify mentally, physically, educationally, and attitudinally for the job. It has been said it is only in setting that he can easily be molded and oriented to perform effectively for the benefit of the beneficiaries of his service.

Prosecution of Extra-Judicial killing

Government should endeavor to prosecute all known extra-judicial killings by the police and the police should be informed of the result and punishment awarded to the perpetrator. This will serve as deterrent to the police from being trigger – happy especially when they know they will be made to face the law when the love for the barrel to consume their duty to protect and secure lives.

Training, Re-training and Empowerment of Police Officers for their lawful Duties

The average policeman is not properly trained; facilities for proper training and re-training are inadequate. The method of arrest and investigations appears archaic and not in line with global best practice as obtains in order jurisdiction. Basic materials that enhance record keeping and proper documentation of suspects and accused are nonexistence. The conditions of police cells constitute an affront to decent human sensibilities. These put in mates at logger heads with police officers. Again finger print and basic forensic kits are inadequate or obsolete, same for modern digital camera, to record scenes of crime. The average policeman is hopelessly outmoded and often resorts to cover up for institutional weakness. These situations aggravate police mentality making them to abuse the use of arms at the slightest provocation. Compared to his counterpart in developed and advanced countries, he appears like a mere boys scout.

However, the officers of the Nigeria police force when properly equipped during foreign or international mission have excelled. The thinking is that with proper training and adequate motivation and empowerment the resort to excesses will be greatly reduced to the barest minimum.

Incorporation of International Instrument Governing Conduct into Rules and Regulation of Nigeria Police Force

There is need to incorporate the provision of the various instruments governing the conduct of law enforcement officials into the rules and regulations of the Nigeria Police Force, such instruments include; the code of conduct for law enforcement officials, the declaration on the protection of all persons from being subjected to torture and other cruel offences or degrading treatment or punishment.

References

- Adesina, F. "Cold Blooded Slaughter" *Tell Magazine*, 24th August (2009) P.13
- Ajumo, M.A *Perspective in Human Rights An introductory Texas* (2nd Ed) New Esa publisher, Benin City (2005)
- Akirode, V. "This is recklessness and its height" *Sunday Punch Newspaper*, 12 July (2003) P.13
- Atsegbua, L. *Criminal Law in Nigeria, A Modern Approach* Perfect Touch Publishers, Lagos (2008)
- Garner, B.A. *Blacks Law Dictionary*, (8th Ed) St. Paul Minn West publishing co. Texas (2004)
- Ilumo, C. "Condemn Extra-Judicial Killing" *Punch Newspaper* 12 December (2012)
- Nwanna, F. "Mob Justice and Rising case of Extra-Judicial Killing" *National Mirror Newspaper* October 12 (2012) P.14

Okonkwo, C.O. *Okonkwo and Nash on Criminal Law* (2nd 3rd) Sweet and Maxwell, London (1980)

Oyewole, S. "Feeding their deadly lust" *Tell Magazine* 24th August (2008), P.30

Uchegbu, S. "The concept of Right to Life under Nigeria Constitution: *Essays in Honour of Justice T.O. Elias* edited by J.A. Omotosho, Ethiope publishers, Benin.

Cases Cited

AG Adamawa V AG Federation (2005) 18 NNLR (PE 983)

Aliu Bello and Ors V AG of Oyo State (1980) NWLR, 828 (Pt 986) 12 Sc

Anaekwe V COP (1990) 3 NNLR (PE 436) 320

Chukwuma V COP (2005) 8 MOFRC/AB/CS/54 (unreported)

Gani V Jones (1987) 4 N.C.L.R 142

Gbemre V SPDC and NNPC (2005) A.H.R.L.R

Ikonne V COP (1980) N.W.L.R 1130

Kalu V State (1998) N.W.L.R (PE 583) 300

Kayode Oshinsanya V COP (2005) 17 N.W.L.R (Pt 901) 1 6 and 10

NIPA V Nkume (2001) 6 N.W.L.R (PE 710)

Obekpa V COP (1980) 126, 693

Olimo V COP (1988) 2, NWLR 578

Osahon V FGN 18 (2006) SNWLR

Sadiq V State (1987) 2 NCLR 142

Statutes

Article (iv) Africa Charter of Human and Peoples Right (Ratification and Enforcement) Act Cap 10 of Law of Federation (LFN) 1990

Article (v) African Charter of Human and Peoples Right (Ratification and Enforcement) Act Cap 10 LFN 1990

Article (3) Universal Declaration of Human Rights

Public Order Act Cap 357 LFN 2004

Section 332 Constitution of Federal Republic of Nigeria 1999 as amended.

Section 308, Criminal Code, Cap 38 LFN 2004

Section 319, Criminal Code Cap 38 LFN 2004

Section 2(a) (b) Police Act, Cap P.19 LFN 2004

Section 4 Police Act, Cap P.19 LFN 2004

Section 24 and 25 Criminal Procedure Act, Cap 80, LFN 2004

Section 10, Criminal Procedure Act, Cap 80, LFN 2004

Section 28(1) Police Act, Cap P.19, LFN 2004

Section 23, Police Act, Cap P.19, LFN