

Extra-Judicial Killings by the Nigerian Police Force: An Examination of the Legal Framework

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ABSTRACT

A unique priority of every state is the maintenance of law and order in order to protect the lives and properties of the citizens even when some citizens violate these laws and this is only achievable through an efficient Criminal Justice System. It is the responsibility of the police Force in every jurisdiction to prevent crimes, arrest offenders and ensure their protection while in custody or standing trial. In contrast to these facts, in the past years in Nigeria, there are accusations against the Nigerian police that its officers commit extra-judicially killings on Nigerians in the course of effecting law and order. In fact some officers of the Nigerian Police Force have been prosecuted and sentenced to imprisonment for extra-judicially killings. This is a major problem that causes distrust from the citizens to the Nigerian Police force. This paper explores the patterns and theories of extra judicial killings. The domestic, regional and International responses on extra-judicial killings are also examined. The work concludes that except the officers of the Nigerian Police force are re-oriented on handling criminals and suspects, there is no end in sight to extra-judicial killings. It is recommended that the National Assembly should amend relevant laws like the Police Code of Conduct and the Police Force Order and maximise the punishment for any erring officer to serve as deterrence to others.

Keywords: Killings, Police officers, Extra-Judicial, Suspects, Law

INTRODUCTION

The police are state authorities vested with the duty regarding law enforcement and maintaining order in the society. In discharging their responsibilities, the police may be authorized to use reasonable force where the need arises. Now, the Nigerian constitution, the Police Act, professional ethics, international conventions and many more statutes and rules of ethics regulate and where necessary constrain the use of force by police in carrying out their functions. However, in spite of these regulations, the police in many societies use extreme force beyond limits permitted by law in carrying out their duties and such gross disregard of the rule of law has resulted in killings outside the law, torture and subjection to inhumane and degrading treatment of the same citizens that the police have sworn to protect.¹

Extrajudicial killings, as the name implies refers to killings outside the scope of the law and the recent upsurge in extra judicial killings, torture, degrading and inhumane treatment of citizens in the society by the police and even the Nigerian citizens themselves brings about a need for the appraisal of the criminal

¹ Nigeria Police Code of Conduct (2013)

<<http://eie.ng/wpcontent/uploads/2014/02/NIGERIAPOLICECODEOFCONDUCT.pdf>>accessed 5 October 2018

justice system so as to prevent judicial usurpation and a lack of reverence for constituted authority which could result in the complete breakdown of our criminal justice system.²

With a specific goal of completely bringing to light the depth of the problem of extra-judicial killings by the Nigerian Police (NP),³ various illustrations on the true reality of the activities of the police need to be examined. The Nigerian citizens are mishandled in various ways such as beating and killing of citizens, unnecessary restraints such as handcuffs and leg chains, unnecessary use of firearms against suspects and members of the public, torture of suspects in order to excerpt confession or extortion of gratification by those vested by law to ensure the safety of the citizenry. A large portion of these cases are concealed, evidence is destroyed and proof of any such acts is typically hidden. This is partly due to the fact that the family members of the victims many a times would be denied justice when they seek as a result of the many flaws in the judicial system.⁴

The unfortunate 'Apo Six' case, where a nine-count criminal charge was brought against six policemen by the Federal Government for murder of six traders on the 7th of June 2005 while returning home from a night club along Gimbiya street in Area 12 of the Federal Capital Territory (FCT)⁵ reiterates the point that gross abuse of authority vested in police officers could result in loss of public faith in the criminal justice administration. In this case, one Danjuma Ibrahim, a senior police officer had allegedly reported to the policemen at the checkpoint on Gimbiya Street, by Ahmadu Bello Way, Apo, Abuja that he had sighted a gang of robbers and one Agustina Arebun, the alleged girlfriend of one of the traders, in a saloon car. According to eyewitnesses, Danjuma Ibrahim had faked the report because Augustina had allegedly turned down his advances at the nightclub. On their way home from the same nightclub, the police officers at the checkpoint due to Danjuma Ibrahim's assertions attempted to stop the victim's car and when they did not stop, the officers opened fire on the traders, killing four of them on the spot while the remaining two were killed in the later hours of the morning.⁶ Close to 12 years after the incident, on the 9th of March 2017, Justice Ishaq Bello of the Federal Capital Territory sentenced two of the accused officers to death by hanging, on the strength of their confessions which the judge denied them a retraction. However, three others, including Danjuma Ibrahim who according to eyewitnesses gave the order to open fire on the victims were discharged and acquitted for lack of concrete evidence while the last officer involved in this incident is still at large till this day. Remarkably, one of the officers who testified against the extra-judicial killing was confirmed by the National hospital, Abuja to have died of poisoning.⁷

Justice delayed, they say, is justice denied. Arguably, in this case, justice has been denied due to the fact that nearly 12 years after the unfortunate death of the traders, 3 of the perpetrators of the act were acquitted for want of evidence. Sahara Reporters on 23 November 2017 reported that Danjuma Ibrahim had been reinstated as Deputy Commissioner of Police.⁸

This is but one of the many examples of how the justice system has invariably played a huge part in the increasing menace of police brutality through its inability to swiftly and effectively handle cases of police

²Maruf Nasir, 'Extra Judicial killings: A Reflection of failing in criminal justice system' <<http://seajbel.com/wp-content/uploads/2017/05/LAW-65.pdf>> accessed 5 October 2018

³ Hereinafter known as NP in this study.

⁴ Open Society Justice Initiative, 'Criminal Force: Torture, Abuse, and Extrajudicial Killings by the Nigerian Police Force' (2010) <<https://www.opensocietyfoundations.org/reports/criminal-force-torture-abuse-and-extrajudicial-killings-nigeria-police-force>> accessed 28 January 2018 > accessed 10 October 2017

⁵ Richards Oludare, 'Apo traders, victims' families protest over court judgement' *The Guardian* (2017) <<https://guardian.ng/news/apo-traders-victims-families-protest-over-court-judgment/amp/>> accessed 10 October 2017

⁶ Ibid

⁷ Urowayino Warami 'Full justice wanted for Apo Six' *The Vanguard*, (2017)

<<https://www.google.com.ng/amp/s/www.vanguardngr.com/2017/03/full-justice-wanted-apo-six/amp/>> accessed 07 September 2018

⁸ Sahara Reporters, 'Apo Six: Nigeria Police reinstates officer who killed Igbo traders'

<<https://saharareporters.com/2017/11/23/apo-six-nigeria-police-reinstates-officers-who-killed-igbo-traders>> accessed 19 September 2018

brutality which would significantly act as a form of deterrence to other officers with misguided notions that they are above the law.

Police brutality has become prevalent in Nigeria and is viewed by some as part and parcel of police operations. A research led by Amnesty in 2014, uncovered that extra-judicial killings and torture remains a customary event in the operations of NP and a joint research led by the Nigerian Human Rights Commission and the Centre for Law Enforcement Education (CLEEN) uncovered that about 80 percent of prisoners in police custody have either⁹ been beaten or tortured with weapons. They noticed that it is hard to discover a police prisoner in Nigeria who had not been tortured. Extrajudicial killings of suspected culprits, extreme and self-assertive utilization of power have unfortunately become very normal in the operations of the NP. This severity is dispensed by NP at all levels of police work extending from 'swarm control, capture, examination, to detainment'.⁹

What is Extra-judicial Killing?

In order to fully understand the term Extrajudicial Killing, one must breakdown the term and address them separately and then collectively.

Extrajudicial means an act which is done, given, or effected outside the course of regular judicial proceedings that is not founded upon, or is unconnected with the action of a court of law.” It is basically any act which is carried out beyond the course of legal proceedings.¹⁰

The Garner.BS, Black’s Law Dictionary defines extra-judicial as outside court; outside the functioning of the court system.¹¹ However, killing in respect to this topic can be seen as to "cause the death of (a person, animal, or other living thing)". It can also be seen as action which seeks "to deprive of life in any manner; cause the death of; slay."¹² Some synonyms of the word 'killing' include slaughter, massacre, butcher; hang, electrocute, behead, guillotine, strangle, garrotte; assassinate.¹³

Hence, based on the definitions above, extrajudicial killing can be defined as any form of killing done outside the due process of the law i.e. any for, of arbitrary killings. In the context of which this project is heading, an extrajudicial killing is the killing of a person by governmental authorities without sanction from any judicial proceeding or legal process. Extrajudicial executions are mostly seen by humanity to be unethical, since they fail to follow the due process of the legal jurisdiction in which they occur.¹⁴

For a better understanding, extra judicial killings have been categorised into;

1. Killings carried out by law enforcement officials or other security forces of alleged criminals, during attempts to extort civilians, politically motivated killings and many more.
2. Killings done during armed conflicts
3. Targeted killings of suspected terrorists during counter-terrorism operations.
4. Killings by non-state actors which could include paramilitary group, vigilantes, gangs, private individuals, and so on.
5. Deaths in custody, resulting from torture, poor health care, inadequate food, killings of prisoners by guards, inter-prison violence and so on.¹⁵

Theoretical Framework

Scholars have opined on reasons why the police and other law enforcement agents engage in abusive treatments towards civilians they have sworn to protect, why the police target the weak and easily oppressed in the society as opposed to those with influence and ‘powerful connections’, various environmental factors that influence the individual-level behaviours of police officer and many more

⁹ Amnesty International, 'Welcome to hell fire: Torture and other ill-treatment in Nigeria', (Amnesty International Publications 2014) <<https://www.amnesty.org/en/documents/AFR44/011/2014/en/>> accessed 05 September 2018.

¹⁰ <<http://legal-dictionary.thefreedictionary.com/Extrajudicial>> accessed 07 September 2018

¹¹ Garner.Bryan, Black’s Law Dictionary, (U.S.A West Publishing Co.2009)

¹² <<http://legal-dictionary.thefreedictionary.com/Extrajudicial>> accessed 07 September 2018

¹³ Thesaurus.com <<http://www.theaurus.com/browse/kill>> accessed 07 September 2018

¹⁴ <<http://www.freebase.com/m/03h5ksn>> accessed 20 September 2018

¹⁵ Sorvino Mira, 'The Concept of Extra-Judicial Killing: An Analysis'(2010) International Journal of Social Sciences

questions that have been raised during the course of scrutinizing their actions.¹⁶ Some of the prominent theories are;

Social conflict theory

The social conflict theory embodies vast criteria of social phenomena's such as class, culture, race, morals, ethics, revolutions, religion and many more. Social in this context refers to group conflict between different groups of people, in this case, the police and the citizens as opposed to conflict between individuals.

This theory which originates from the Marxist tradition basically asserts that the police are instrument used by the elite and the powerful in the society to maintain status quo of inequality. In essence, race and class in a society determines the dynamic of the relationship between the police and civilians in a society, hence the politically powerless and economically marginalized citizens are more likely to experience incidences of police brutality. The inefficiency of the prescribed authority in checking the excesses of the police impunity therefore reflects as a manifestation of the powerlessness of the minority in the society.¹⁷

One of the limitation of this theory stems from the fact that this theory asserts that the police force serves majorly the interest of the elites, however it is not all officers in the police force that seek to control the subordinate class of citizens in a society, merely some of the officers as there still exist a great number of officers within the force that carry out their duties diligently. Also, this theory postulates that the police exist majorly to serve the interest of the upper class, which is evidently not the case in the Nigerian society. While this submission is partly true, it fails to encompass the reality of the NP and their duties in the society.¹⁸

Symbolic Interactionist theory

This theory compliments the conflict theory with the added factor of self-identity of the individual police officers and how it influences the interpersonal relationship between police and civilians. Where the role of police is perceived as that of an agent and crime factor, as opposed to being perceived as a social worker serving in the public interest, gradually, the police would be seen as oppressors on the lookout for rule violators i.e. the citizens. This theory begs the question, "Why do the bad apples in the NP target only a certain class of people" in the perpetuation of acts of brutality.¹⁹

The theory posits that various officers with identical positions in the police force may act differently when encountering civilians based on their perceptions as policemen of what roles they play in society. A police officer with the mentality of an oppressor and dogmatic role of a crime fighter may appear hostile to a civilian while an officer who views his role as protector of the citizens would act accordingly during an encounter with a civilian. The mind-set of a power struggle between the rule breakers/violators and the enforcers which end in the minorities feeling oppressed and in turn rebelling against constituted authority. One of the major short-coming of this theory arise from questions such as why the so-called 'bad apples' in the police force target specific classes of people, which this theory fails to adequately answer for as it neglects other variables and related situations.²⁰

Control balance theory

This theory seeks to answer why some police officers are involved in deviant behaviours such as extra judicial killings, brutality and so on and how willing fellow police officers would be in reporting their

¹⁶Kwon JiHyun, 'Towards a theoretical understanding of Police Brutality' VERSTEHEN:VOLUME IX <<http://mcgillverstehehen2012.weebly.com/towards-a-theoretical-understanding-of-police-brutality.html>> accessed 13 September 2018

¹⁷ Jacobs David and David Britt 'Inequality and police use of deadly force: An Empirical Assessment of a Conflict Hypothesis' (1979) 26(4) Social Problems

¹⁸ Jensen Gary, 'A Critique of Control Balance Theory: Digging into Details.' (1999) 3(3) Theoretical Criminology

¹⁹ Walker Samuel, *A Critical History of Police Reform: The Emergence of Professionalism* (Lexington MA: Lexington Books 1977) 145

²⁰Kwon JiHyun, 'Towards a theoretical understanding of Police Brutality' VERSTEHEN:VOLUME IX <<http://mcgillverstehehen2012.weebly.com/towards-a-theoretical-understanding-of-police-brutality.html>> accessed 19 September 2018

counterparts. It asserts that deviant behaviours could be as a result of ‘power-trips’ and the desire to maximise control over others subject to their authority. However, this theory fails in the provision of sufficient clarity as to why certain classes of civilian are targeted more than others, just as in the case of the symbolic interactionist theory.²¹

Summarily, this theory attempts to provide interesting insights into why the police behave the way they do and various factor that influence these negative behaviours, however as regards the NP specifically, numerous environmental, sociological, economical factors affect the behaviours and attitude towards service. While no single theory may sufficiently provide explanations on all the aspects of police brutality, they open up new paths for further research and possible ways to address the issues of police brutality.

Patterns of Extrajudicial Killings by the Police

The NP carries out extrajudicial killings under different guises in executing their duties. There have been reported instances of killings at checkpoints, killings during operations and raids, killings in police detention, enforced disappearances and many more. The reoccurring pattern of unlawful killings by the NP manifests itself in various ways, and the methods in which they carry out this dastardly act often times than not, seeks to serve as a cover up for the crimes committed. A few well known forms of extrajudicial killings by the NP would be duly considered.²²

Police operations are vital to all police operational activities in Nigeria. They involve counter active crime prevention policies, review and redefinition of strategic approaches to crime control, planning and organizing raids to combat civil disturbances, criminal activities such as armed robberies, looting, rioting and so forth.²³

The NP under the charade of police operations have been known to routinely kill individuals who they allege made attempts to escape. The Police Force Order 237 allows the police to ‘shoot at’ suspects attempting to evade arrests. Various circumstances however, corroborate claims that the police abuse this provision of the law by killing suspects who have not attempted to flee or evade arrest and planting evidence to back their crime.²⁴ On 23 September 2017, it was reported by The Punch newspaper that a High Court sitting in Rivers State, Port-Harcourt presided over by Justice Adolphus Enebeli found a five-man patrol team of the Special Anti-Robbery Squad (SARS) guilty of extrajudicial killing of Michael Akor and Micheal Igwe. The judge refuted their claims that the deceased were killed by stray bullets during crossfire between the police and a group of hoodlums, stating that the claims were unsubstantiated. It was however proven that the victims were shot at the same parts of their bodies and buried by the SARS officials.²⁵ Quite tragic!

The NP during their raids or operations has been known to kill people without any tangible reason for their death. They sometimes seize the bodies and refuse to release the bodies to the families after committing such atrocities under the pretext of investigation.²⁶

Another infamous pattern wherein the NP carries out extrajudicial killings and engages in other forms of brutality is at police checkpoints. The police have turned their checkpoints to temples of exploitation of innocent citizens. Even as a child, I personally grew weary every time we approached a police checkpoint during long distance travel to my hometown as I had grown accustomed to hearing ‘*find us something*’, ‘*anything for the boys*’ or similar innuendos from the police officers. Most times, citizens who refuse to comply with their request on a good day may be waved through or delayed unnecessarily.

²¹ Rodney Stark, *Police Riots: Collective Violence and Law Enforcement* (Wadsworth Publishers, 1972)

²² Okesola Folasade, ‘Human Rights Abuse by the Nigerian Police in Four Selected States and the Federal Capital Territory, Abuja’ (2013) vol 13(2) ISSN: 2046-9578 British Journal of Arts and Sciences

²³ Nigerian Police Force <www.NP.gov.ng/operations.php> accessed 07 September 2018

²⁴ Amnesty, ‘Nigeria Police Killings must be investigated’ (2010) <<https://amnesty.org/en/press-releases/2010/02/nigeria-police-killings-must-be-investigated-20100212/>> accessed 09 November 2018.

²⁵ Olusesan Olubode, ‘Five SARS operatives found guilty of extrajudicial killing’ *Punch* (2017) <https://www.google.com.ng/amp/punchng.com/five-sars-operatives-found-guilty-of-extrajudicial-killing/amp/> , accessed 11 September 2018)

²⁶ Amnesty International ‘Killing At Will’ [2009] <<https://www.academia.edu/Download>> accessed 02 November 2018

However, numerous instances of unlawful arrests, flogging, torture and even killings by the NP have been recorded at checkpoints²⁷. One such case is the case of Timilehin Egun a nine year old boy who was allegedly killed in Ketu Lagos, on 13 June 2013 by a one Razaq Alowonle a police officer who had been attempting to stop a commercial bus for breaking traffic rules. Eyewitness stated however, that the police officer was attempting to extort money from the commercial bus driver at the checkpoint and he fired his gun when the bus attempted to drive off, the bullet in turn hitting young Timilehin. Now, whether or not the NP have the right to stop citizens at a checkpoint, the question here is, should he have used that amount of force in his attempt to prevent a traffic violation or extort a civilian, whatever the case may be and in close proximity to other civilians? These types of misconducts that carry grievous consequences such as loss of life are part of the reasons why the excesses of the NP need to be curbed.²⁸

Where a person is wanted and the police are hot on the trail, the NP is sometimes given orders to shoot on sight. It should not matter how dangerous a suspect is, everyone is deemed innocent until proven guilty. Everyone should have his right to fair hearing. The police shooting suspects on sight and killing them is a violation of one's right to fair hearing, another form of extrajudicial killing which needs to be stopped. The practice of shooting on sight should be stopped; sometimes innocent lives are taken as opposed to only rendering fleeing suspects incapable of escape. They are killed for no just cause and there is nothing that can be done to bring them back.²⁹

Consequences of Police Engagement in Extrajudicial Killing

When the NP engage in extrajudicial executions and torture of citizens, there are a myriad of consequences that follow; some immediate and some slow acting yet damaging in the long run. The offending police officer, the victim, the police department and the public at large all suffer consequences in the event of police brutality. Victims of police brutality are made to endure both physical and mental abuse, on the offending officer, his misconduct would forever taint his police record, and he could get suspended or permanently removed from the police force. The entire NP could be held accountable for one police officer's indiscretion and they would undoubtedly have a difficult time fixing the poor image of the police force that a few bad apples have dragged in the mud by their actions.³⁰

The rule of law and accountability against impunity by the NP needs to be better promoted by the government. The use of lethal force where necessary though legal, should not be abused. Where there is impunity, where there is a lack of accountability and where the rules of engagement are not strictly adhered to, the use of firearm and lethal force by the NP would be handled indiscriminately with a blatant disrespect for human life and dignity without fear of sanctions. Where cases of police misconduct are not handled and investigated appropriately, it would serve as encouragement to carry on ineffectively because it is not mandated of the NP to act effectively. The NP in the discharge of its constitutional duties through the instrumentality of officers and men of the force has in a lot of cases violated the wordings and spirit of the constitution it was meant to protect.³¹

Hence, there is a need to ensure that in the process of carrying out the duties anchored to it, the police force does not turn the fundamental rights of Nigerian citizens into toys in their hands, under the guise of performing their legal duties.

Legal Framework on Extra-judicial killing

Extrajudicial killings are simply killings outside of the law. They refer to killings done outside the due process of the law. Where such killings are carried out by those in authority such as government

²⁷ Taiwo Kehinde, 'Police Checkpoints in Nigeria: Mitigating the excesses by the Men in Black' <<https://mymind.blogspot.com.ng/2013/09/police-checkpoints-in-nigeria.html>> accessed 02 November 2018

²⁸ Bakare Olumide, 'Policemen in Lagos Killed A 9-Year-Old Boy and Fled', *Information Nigeria* <<https://www.google.com/amp/www.informationng.com/2013/06/policemen-in-lagos-killed-a9-year-old-boy-and-fled.html>> accessed 22 November 2018

²⁹ Human Rights Watch. 'Rest in Pieces: Police Torture and Deaths In Custody' <<http://www.refworld.org/docid/45d2f62c2.html>> accessed 07 September 2018

³⁰ Shanks John, 'Understanding Police Culture' (2nd edn. Routledge, 2015) p 107

³¹ Ibid

authorities, the police and other elites, it conveys a bad message to the general populace that certain classes of people are above the law and there is a lack of accountability.

In the case of *Hyam v DPP*,³² the judge stated;

“...If a man in full knowledge of the danger involved and without lawful excuse deliberately does that which exposes a victim to the risk of probable grievous harm of death, and the victim dies, the perpetrator of the crime is guilty of murder and not manslaughter to the same extent as if he intended the consequences that flowed. Irrespective of whether he wishes it or not...”³³

Although there are various laws, both domestic and international that contains provisions on the right to life and are against the arbitrary killings of individuals, i.e. killings done without the leave of court, authority from the state/ governing body or any other prescribed authority, and provisions against torture, degrading and inhumane treatments, a lot of these laws, especially our domestic laws could take a stronger stance against such acts and administer harsher sanctions on defaulters especially where the defaulters are those that are charged with the duty to uphold the safety of others. The application of international laws, treaties and conventions on torture, inhumane treatments and extrajudicial/arbitrary killings, that have been domesticated and ratified by Nigeria should be strictly enforced and adhered to.

The Police Act³⁴

The police act is important as it serves as guidelines for police officers in carrying out their administrative duties. It bestows on police officers the authority to carry out some of their duties such as bearing of firearms, detaining suspect, protection of human life and many more but the act also serves as a check on those powers given by attaching sanctions to various acts which have been termed as improper or as crimes to prevent abuse of such powers and the Act provides that;

“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 due 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 this or any other Act”.³⁵

This provision clearly states that the general duties of the police should include obeying the law, enforcing the law and protection of life amongst others. Hence, it is illegal and against this provision of the police act for a police officer to arbitrarily take the life of another. This is what is done during extrajudicial killing, a blatant disregard for this section and should not be encouraged. Offending officers should be punished and indicted by the court. In the case of *Asheik v Borno State Government*,³⁶ the NP was described as a complete and comprehensive organ of the federal government with national institutions of its own. Now here the provisions of this section are not strictly adhered to, and this section is constantly abused, it is considered a national disgrace to the entire country.

“A police officer may detain and search any person whom he reasonably suspects of having in his possession or conveying in any manner anything which he has reason to believe to have been stolen or otherwise unlawfully obtained”.³⁷

This provision of this section is one which has been grossly abused by the NP. The NP are notorious for wrongfully detaining persons who they subsequently term suspects of unknown crimes to cover for their wrongful arrest. In the case of *Idris Abubakar, Anas Abubakar and Aliyu Abubakar v Inspector General of Police*³⁸ at Kaduna, a federal high court awarded 2 million to three men; Abubakar, Anas Abubakar and

³² *Hyam V DPP* 1 All E.R.41 (H.L.1974)

³³ *Ibid*,

³⁴ Police Act Cap P19 LFN 2004

³⁵ The Police Act, S.4.

³⁶ *Asheik v Borno State Government* (2012) 9 NWLR (PT-926) 40

³⁷ The Police Act, S.29.

³⁸ *Idris Abubakar, Anas Abubakar and Aliyu Abubakar v Inspector General of Police* Suit No FHC/KD/CS/22/2016

Aliyu Abubakar who were wrongfully detained for 19 months by the police. They were initially arrested on the charge of theft and subsequently, the police claimed that they were members of Boko Haram. These men were denied access to their lawyers and relatives throughout their 19 months detention, they were never charged to court. This high level of unaccountability is what breeds unprofessionalism to the point where a police officer can kill people and not be sanctioned for it. The NP are charged with the responsibility of detaining suspects but where this is done without following due process, it opens up the door for torture, and possibly death of wrongfully detained civilians.³⁹

The Criminal Code⁴⁰

In the case of *Ofoke Njoku v The State*,⁴¹ for a charge of murder to be brought against a police officer relying on Section 271 of the Criminal Code which states;

“When a peace officer or police officer is proceeding lawfully to arrest, with or without warrant, a person for an offence which is a felony, and is such that the offender may be arrested without warrant, and the person sought to be arrested takes to flight in order to avoid arrest, it is lawful for the peace officer or police officer and for any person lawfully assisting him, to use such force as may be reasonably necessary to prevent the escape of the person sought to be arrested, and, if the offence is such that the offender may be punished with death or with imprisonment for seven years or more, may kill him if he cannot by any means otherwise be arrested.”

Certain requirements were necessary to validate the charge of murder under Section 271 which was stated as follows;⁴²

1. The victim must have died.
2. The death of the victim must have been caused by the accused party
3. That the accused person intended to kill or cause grievous bodily harm to the victim

“It is unlawful to kill any person unless such killing is authorised or justified or excused by law.”⁴³

This section of the constitution basically summarises the crux of this project. No one should take the life of another except where he has been legally authorised to do so. Unless the law authorizes the killing of an individual or excuses the killing of any individual by the statutes it is unlawful to kill another human being. Hence, extrajudicial killing by NP officers is unlawful and should not be condoned.

Section 308

“Except as hereinafter set forth, any person who causes the death of another, directly or indirectly, by any means whatever, is deemed to have killed that other person”.⁴⁴

Certain police officers claim they never touched the individual or they did not directly kill the individual nor did they intend to kill the individual. This section basically states that as long as there is a direct or indirect interference with the life of that individual the police officers have killed that person. For example, where the stray bullet of a police officer kills another, like in the case of Timileyin Egun, the

³⁹ International Centre For Investigative Reporting, ‘Court Penalises Nigerian Police For Unlawful Detention’ <https://www.icirnigeria.org/court-penalises-nigerian-police-unlawful-detention/>> accessed 4 August 2018

⁴⁰ Criminal Code, CAP. C38 Laws of the Federation of Nigeria (2004)

⁴¹ *Ofoke Njoku v The State* [1993] NWLR (PT.299) 272

⁴² Unini Chioma, ‘Effect of Section 33(2) of the Constitution on Extrajudicial Killing by the Police’

<<http://thenigerialawyer.com/effect-of-section-332-of-the-constitution-on-extra-judicial-killing-by-police/>> accessed 6 September 2018

⁴³ The Criminal Code, Section 306.

⁴⁴ *Ibid*, Section 308.

nine year old child who was struck in the eye by a negligent police officer, the police officer would be deemed to have killed such an individual.⁴⁵

“Any person who unlawfully kills another is guilty of an offence which is called murder or manslaughter, according to the circumstances of the case”.⁴⁶

If it is detected that a police officer commits an extra-judicial killing in the course of duty, he should be prosecuted and if found guilty

The 1999 Constitution of the Federal Republic of Nigeria⁴⁷

In the case of *Olusegun Adegboye v The State*,⁴⁸ where a police officer shot and killed a fleeing suspect, Kumai Bayang Aka’ahs, JSC held that while Section 33(2) of the constitution permits the use of reasonable force upon arrest which could lead to the death of a person to prevent escape, thus relying on the authority of *Ibikunle v State*,⁴⁹ where the supreme court” held that it was unreasonable for the appellant to have shot the victim at the back as opposed to aiming for his legs, the police officer in *Olusegun Adegboye v The State*⁵⁰ was found guilty for the offence of murder and was sentenced to 10 years imprisonment with hard labour. Section 33 of the 1999 Nigerian Constitution provides that;

“(1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution if the sentence of a court 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 dies as a result of the use, to such extent and in such as are permitted by law, of 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 effect a 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 exceptions stated above as prescribed by the constitution are the only reasons why a person be deprived of his life. Although, certain police officers hide under these exceptions as reasons for killing individuals there have however been many cases which do not fall under these exceptions wherein arbitrary executions were carried out. One infamous case is the case of the Apo Six traders which was earlier discussed in this work, which has garnered a lot of popularity over the years. This is a violation of the constitution and should not be condoned. Extrajudicial killing is wrong and offenders should be prosecuted to serve as a form of deterrence to others.⁵¹

Section 34 (1) (a) of the 1999 Constitution states that

“Every individual is entitled to respect for the dignity of his person, and accordingly;

No person shall be subject to torture or to inhuman or degrading treatment”.

⁴⁵Bakare Olumide ‘Policemen I Lagos Killed A 9-Year-Old Boy and Fled’ *Information Nigeria* <<https://www.google.com/amp/www.informationng.com/2013/06/policemen-in-lagos-killed-a9-year-old-boy-and-fled-.html>> accessed 4 August 2018.

⁴⁶ The Criminal Code, Section 315.

⁴⁷ CAP. C23 Laws of the Federation of Nigeria (2004)

⁴⁸ *Adegboye v The State* [2007] 2 NWLR (pt.1019)

⁴⁹ *Ibikunle v State* [1995]1 NWLR (Pt.373) 507

⁵⁰ *Supra* at 54

⁵¹ Richards Oludare, Abuja, ‘Apo traders, victims’ families protest over court judgement’ *The Guardian* (11 March 2017) <https://guardian.ng/news/apo-traders-victims-families-protest-over-court-judgment/amp/> (accessed 3 August 2018)

Often times, individuals who have their life deprived of them through extrajudicial killing usually suffer inhuman and degrading treatment before they are killed. They are forced to undergo inhuman treatment such as assault, being flogged while suspended to the ceiling, insertion of objects such as nails and pins into the penis during interrogations, molestation and rape of female victims amongst other barbaric acts before they are eventually killed.⁵²

“In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality”.⁵³

This states clearly that in a situation whereby a person is charged with an offence that individual has a right to fair hearing within a reasonable time and by a court of competent jurisdiction. Hence, where a police officer kills a citizen for a crime committed without allowing him/her to exercise his right to fair hearing a violation of that right has occurred. Where individuals are not charged within 24 hours of arrest, the habeas corpus rule should be followed and such a person should be set free.⁵⁴

In the case of *Eshugbayi Eleko v The Officer administering the Government of Nigeria*,⁵⁵ the judge relied on *The Commissioner for Local Government, etc. v Kaderbhai*,⁵⁶ where it was stated that in applications for writs such as mandamus and habeas corpus, proper procedures must be maintained and the rule when requested for should be followed. This would go a long way in preventing citizens from suffering unnecessary and untold hardship and possibly death of citizens in detention.

The African Charter on Human & Peoples Right

The African commission on Human and Peoples’ Rights focuses majorly on addressing matters on torture and other cruel, inhuman or degrading treatment in Africa and its prevention. The importance of legislations against torture and cruel treatments cannot be over emphasized and article 4 and 5 of the African Charter does exactly that.⁵⁷

Article 4 states stipulates that;

“Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right”.⁵⁸

The life of every human being is sacred and the integrity of every individual should be protected. Under no circumstances should an individual be arbitrarily deprived of his life. Extrajudicial killing is unlawful and should not be condoned no matter the circumstance. Individuals who commit such atrocities should be brought to face the wrath of the law.

Article 5 states that;

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

⁵²Taiwo Kehinde, ‘Police Checkpoints in Nigeria: Mitigating the excesses by the Men in Black’ <<https://mymind.blogspot.com.ng/2013/09/police-checkpoints-in-nigeria.html/>> accessed 26 October 2018

⁵³The Section 36

⁵⁴Uwakah Onyebuchi, *Due Process in Nigeria’s Administrative Law System: History, Current Status, and Future* (University Press of America Inc.) 150

⁵⁵*Eshugbayi Eleko v The Officer administering the Government of Nigeria* [1931] 3 NILR 24

⁵⁶*The Commissioner for Local Government, etc. v Kaderbhai* [1931] A.C. 652

⁵⁷African Commission on Human and Peoples’ Rights ‘General Comment No.4 on the African Charter on Human and Peoples’ Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5) <http://www.achpr.org/instruments/general-comment-right-to-redress/> accessed 4 March 2018

⁵⁸African Charter, Article 4

Every individual should be treated with dignity. His legal status should be recognized hence the due process of the law “should be followed as regards him. Any form of degradation, torture, inhuman or degrading treatment by the NP should not be condoned. Where one engages in extrajudicial killing, he does not recognize the dignity of the human person; certain suspects are tortured until they die, this should not be the case. The dignity of the human person should be upheld no matter what. One of such cases was the case of 43 year old Bukola Adeogun, who was arrested as he closed up his shop at 23 Oke-Afa Street, Okokomaiko Lagos, alongside 29 others on an alleged raid of criminal hideouts by the NP. The deceased’s wife reported that when her husband was brought back home by the police at about 2:00 am that morning, he was discharging foam from his mouth and they were unable to revive him. Those that were arrested with him claimed that he was tortured and tear-gassed by the police while” he was being interrogated. Bukola Adeogun eventually died; he was a father of four children.⁵⁹

The U.N. Declaration on Human Right

The Universal Declaration of the United Nations in 1948 was the first and pertinent move towards a lasting “increasing protection of human rights, including the right to life, within the United Nations”.⁶⁰

The preamble of the U.N. Declaration on Human Right states;

“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, *Whereas* disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,..... Now, therefore, **The General Assembly**, Proclaims this **Universal Declaration of Human Rights** as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction”.

This Charter is regardful of certain barbarous acts which are done against mankind and which are against the inherent dignity and the equal and inalienable rights of all human beings. Extrajudicial killing falls under such barbarous acts and the police being a participating actor in such barbarous acts are also worth tackling. This declaration states clearly that where one's rights have been violated such individual shall have an effective remedy notwithstanding that the violator was acting in an official capacity. In this case where the violator is a police officer the person whose rights were violated shall have his right be determined by a court of competent jurisdiction provided for by the legal system of Nigeria through which remedies will be granted and must be implemented.⁶¹ Article 3 provides that;

“Everyone has the right to life, liberty and security of person”.

Extrajudicial killing is a violation of one’s rights to life liberty and security of person hence a violation of this charter. This charter, being ratified, has been dissolved into our local laws; hence it is binding on all Nigerians and subsequently on the police. Article 5 stipulates that

⁵⁹Urowayinwo Warami ‘Police torture lotto operator to death’ *The Vanguard*

<<https://www.google.com/amp/s/www.vanguardngr.com/2018/02/police-torture-lotto-operator-death/amp/>> accessed 3 March 2018

⁶⁰ Facts Sheet No11 (Rev.1), Extrajudicial, Summary or Arbitrary Executions

<<http://www.ohchr.org/Documents/Publications/FactSheet11rev.1en.pdf>> accessed 3 March 2018

⁶¹ Enyinna Nwauche ‘Fundamental Human Rights Enforcement Procedure in Nigeria : An overview’ (2014) EBSU Journal of International Law & Juridical Review

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.

The manner in which individuals who are exposed to extrajudicial killing are killed is cruel, inhuman and degrading. Some individuals are perforated with bullets; some are dragged and beaten till they die while some are subject to prison bullying and unlawful torture. All these actions are degrading and cruel and should not be tolerated.⁶² According to Article 6;

“Everyone has the right to recognition everywhere as a person before the law”

Every individual has a right to fair hearing before the law; hence, it is unlawful where a person is not deemed innocent until proven guilty. He should be tried by a court of competent jurisdiction. As a result, whenever a police officer viciously attacks a citizen he suspects of committing a crime as opposed to lawfully detaining him, that individual is not recognized as a person before the law which is a contravention of article 6 of the U.N. Declaration. Article 7 provides that

“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”.

The law sees every “suspect as innocent until proven guilty. Subsequently, every individual should be treated as innocent until the court states otherwise. Any discrimination suffered based on the fact that such person is an alleged criminal should not be tolerated. For example, where a devout Muslim man with long beards and strong family ties with other radical Muslims, is wrongly profiled and suspected to be a member of Boko haram, he should not be discriminated by the police especially to the point where he is tortured and maybe even unlawfully killed, this is against Article 7 of UDHR. Irrespective of the possible personal bias against such” an individual, he should be treated with dignity and respect as any other innocent person as there is a presumption of innocence.⁶³ According to Article 8,

“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”.

Individuals killed unlawfully by the NP should have their cases investigated and the erring police officers brought to face the wrath of the law. However, in our society today, many cases of this sort are swept under the carpet and where they are investigated the police officers hide under the guise of self-defence. In April 2012, the Centre for Victims of Extrajudicial Killings and Torture (CVEKT) claimed that the NP most times relied on Order 237 as an alibi or cover when they commit extrajudicial killings which avails an officer to shoot any suspect attempting to avoid arrest.⁶⁴

In accordance with Article 8 of UDHR these police officers should be brought before the law and be indicted for committing such acts that violated the rights of the deceased.

CONCLUSION

As we draw our conclusions in this research, except the officers of the Nigerian Police force are re-oriented on handling criminals and suspects, there is no end in sight to extra-judicial killings. The Nigerian police are a reflection of the “Nigerian State. It is important that they play their part in the administration of justice so as not to tarnish the Nigerian image within and without the international sphere. More importantly, the lives of citizens are dependent on the Police and they have a fiduciary duty to protect all citizens. With the duty of ensuring peace and safety of the nation comes an enormous amount of power and responsibility.

⁶²United for Human Rights, ‘A Brief History of Human Rights’ <http://www.humanrights.com/what-are-human-rights/brief-history/the-united-nations.html> (accessed 7/3/2018 1:03am)

⁶³Pennington Kenneth, ‘*Innocent Until Proven Guilty: The Origins of a Legal Maxim*’ (63 Jurist:Stud Church L & Ministry 2003) 106

⁶⁴Adeniyi Olusegun, ‘Beyond the Brutality of SARS’ *This Day* <<https://www.google.com/amp/s/www.thisdaylie.com/index.php/2017/12/14/beyond-the-brutalities-of-police-sars/amp/>> accessed 5 December 2018.

In Nigeria, the NP are constantly being reprimanded for their engagement in extrajudicial killings, torture and meting out of cruel, inhuman and degrading punishments on citizens, their unprofessionalism and ineffectiveness. Be that as it may, there are various establishments in the police sector charged with the responsibility of ensuring that the NP function as effectively as possible, some of which are; the Nigerian Police Council, the Police Service Commission, the Ministry of Interior amongst others. Where the institutions responsible for ensuring the NP's accountability prove to be just as ineffective or unable to carry out their duties, new strategies and methodologies would need to be adopted to ensure effective policing in Nigeria.⁶⁵

Culpability on the part of the Nigerian government could be seen from the government's attitude to many unresolved cases of extra judicial killings, violence, police condition of service, and general lawlessness in the country. There is a need for the government to demonstrate genuine commitment to ending impunity for police brutality because failure to ensure their accountability and ensure redress for their wrong doings denies the victims of justice.⁶⁶

RECOMMENDATION

The National Assembly should modify laws such as the Police Code of Conduct and the Police Force Order, to make the sanctions more rigorous and conscientious which would in turn serve as a form of deterrence to the police officers. Also, law enforcement officers must go through a thorough and effective training on fundamental human rights with emphasis on rule of law and human dignity. Likewise, the National Human Rights Commission of Nigeria must play a more active role by coordinating its work with the law enforcement agencies in Nigeria to ensuring that people's fundamental rights are respected and protected, and not only wait to react after the rights have been breached.⁶⁷

The legal system should be made more transparent in order to encourage the family members of the deceased to approach the courts for remedy. It is very important for citizens to be made aware of their rights as citizens but it is equally as necessary to enlighten them on the dangers of challenging the police or resisting arrest⁶⁸ for instance, the writ of Habeas Corpus must be strictly observed, this enables a suspect not to be detained for more than 24hrs in Police custody.

The Police force should be adequately equipped with all materials necessary to combat crime and perform their duties effectively. Firearms and the bullets should be properly licensed and accounted for, hence making it easier during investigations to point out if a police officer's weapon killed the deceased.

⁶⁵ Human Rights Watch. 'Rest in Pieces: Police Torture and Deaths In Custody' <<http://www.refworld.org/docid/45d2f62c2.html>> accessed 5 March 2018

⁶⁶ Okereke Benjamin, 'The Role Of Nigeria Police Force In The Administration Of Justice: Issues and Challenges' (A Thesis Submitted To The School Of Postgraduate Studies, Ahmadu Bello University, Zaria In Partial Fulfilment of The Requirements For The Award of Master of Laws Degree – (LLM))

⁶⁷ Emmanuel Patience 'The Nigeria Police, Human Rights Violations and Corruption: The Need for Re-Orientation' (2009) 1 Journal of Contemporary Legal Issues

⁶⁸ Nigeria Homepage- Breaking News, Business, Sports, Entertainment and Video News' (Thenigeriavoices.com, 2016) <<http://www.thenigeriavoices.com/nvnews/727...extra-judicial-killings-in-Nigeria.html>> accessed 7 March 2018