



# Extrajudicial Killing In Nigeria, Its Causes, Effects And Preventive Measures<sup>\*1</sup>

## ABSTRACT

Extrajudicial killing of both crime suspects and innocent citizens by law enforcement agents, security outfits, herders-farmers clash and bandits have become topical and indeed a global concern. Life is of the essence in human existence and in every civilised society, right to life is pivotal to all other rights. It is a right that mandates in every human right document that everyone has the right to life. Outside lawful homicide, nobody should be subjected to arbitrary deprivation of his life for a crime, without an order from a competent court after due process. The right to presumption of innocence and fair hearing are among the fundamental rights of an accused person globally recognised. However, despite legal guarantee for the protection of these rights as fundamental principles of criminal justice administration, extrajudicial killing is grossly on the increase in our today's Nigeria and the globe. Both Section 33 of the Constitution of the Federal Republic of Nigeria, 1999(fourth alteration), section 271 of the Criminal Code Act and some other laws are consciously or unconsciously encouraging extrajudicial killing due to inelegant drafting. This work introduces extrajudicial killing as an abuse of the right to life, presumption of innocence, and a denial of the right to fair hearing. It examines its causes, effects and preventive measures to be taken. The study adopts doctrinal designs with reliance made on Statutes, case law, and data in web-based sources. The aim is to highlight the danger inherent in extrajudicial killing.

**Keywords:** Accused person, extrajudicial killing, fundamental rights

## 1. INTRODUCTION

Life is of the essence in human existence. We are, because we exist. In a civilized and informed society, the life of every individual is importantly appreciated, respected and adequately protected, so that any form of arbitrariness, rascality or threat towards human life is frowned upon, condemned and deemed dishonorable to nature and the legal order. However, for quite some time now, despite legal guarantee for the right to life, human life in Nigeria and globally has suffered gross abuse, violation and destruction through acts of extrajudicial killing by law enforcement agents, security outfits, book-haram, herder-farmer clash, bandits and other non law enforcement agents alike. Unfortunately, under the Nigerian criminal justice system, "extrajudicial killing" is not strictly described or defined as an offence. As such, there is no prescribed punishment in that behalf. However, the fact remains that the Criminal Code defines, provides, and prescribes punishment for such offences as killing,<sup>2</sup> murder,<sup>3</sup> unlawful homicide and manslaughter.<sup>4</sup> The Penal Code has similar provisions too<sup>5</sup>. The International Criminal Court Statute

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<sup>2</sup> The Criminal Code Schedule to the Criminal Code Act. Cap. C38 *Laws of the Federation of Nigeria (LFN) 2004*, applicable to Southern Nigeria, (to be herein referred to as the C. C) s. 308.

<sup>3</sup> *Ibid.* ss. 316 and 319.

<sup>4</sup> *Ibid.* ss. 315 and 317.

<sup>5</sup> The Penal Code Cap. 89 *Laws of Northern Nigeria 1963*, applicable to Northern Nigeria (to be herein referred to as the P. C) s. 220, defines culpable homicide as (a) causing death by doing an act with the intention of causing death or such bodily injury as is likely to cause death ;or (b) by doing an act with the knowledge that he is likely by such act to cause death; or (c) by doing a rash or negligent act. In s. 221, death is prescribed as punishment for culpable homicide except when it is caused by provocation, mistake or accident.

also under crimes of genocide,<sup>5</sup> crimes against humanity,<sup>6</sup> war crimes<sup>7</sup> and the crimes of aggression subject to articles 121 and 123, made similar provisions to the Criminal Code.<sup>8</sup> Yet despite these provisions, extrajudicial killing is grossly on the increase in Nigeria so much so that human life means nothing or little and is easily snuff off. This has raised lots of questions on the cause(s) of this endemic culture of impunity in Nigeria. This research has linked the cause to among other things inelegant constitutional provision, general lawlessness, weakness of the system, legislative, executive and judicial indifference, recidivism on the side of some suspects in breaking the law, or still as a result of *ultra vires* executive command. Necessary action should be taken to combat extrajudicial killing and prevent future occurrences in Nigeria. There is also the need to study some criminological theories relevant to extrajudicial killing in Nigeria for a holistic approach in curbing the menace. These theories are seen as inducement into illegalities. When persons engage in illegalities, a good number are likely to be apprehended by law enforcement agents or private persons. Some may be killed in the process of arrest; some others may be tortured to death in custody. Few may have their cases heard in the open court, if they did not lose their lives before the just determination of their cases. This study is in five Parts. Part I introduced the study, defined extrajudicial killing and examined the criminological theories relevant to extrajudicial killing in Nigeria, Part II is on causes of extrajudicial killing in Nigeria, Part III discussed effects of extrajudicial killing on the Nigerian Criminal Justice Process, Part IV examined the preventive measures against extrajudicial killing in Nigeria and Part V is on recommendations and conclusion.

**1b. The Ordinary (Dictionary) Meaning of Extrajudicial and the Definition of Extrajudicial Killing**  
Ordinarily, “extrajudicial” is an adjective, meaning something, usually sentence or punishment, not legally authorized.<sup>9</sup> But legally, “extrajudicial” means outside the scope of legal procedure<sup>10</sup>. In another legal view, what is outside the functioning of the court system is extrajudicial<sup>11</sup>. Against the foregoing meaning, any killing which *per se* is not sanctioned by the court within the due process of law and which the law does not uphold as lawful is extrajudicial killing. This may narrowly be interpreted to mean that before any killing must take place outside the lawful grounds, the court must have permitted it after due process of law. It is presumed that situations of lawful homicides within the criminal law jurisprudence have been judicially taken notice of, being part of the law, therefore homicide in any of those situations is no longer extrajudicial but rather lawful. However, although every act of murder is not extrajudicial killing, every act of extrajudicial killing is murder whether carried out intentionally, recklessly or negligently, except where the circumstance of the killing changes the status. That is to say that extrajudicial killing could be carried out intentionally, recklessly or negligently. In that sense, homicide by a law enforcement agent becomes extrajudicial, when he adjudges a suspect in custody guilty and deserving death, takes law into his/her hand without reference to court, to do away with the life of that crime suspect *en route* criminal justice. That is intentional extrajudicial killing. Similarly a law enforcement agent can commit extrajudicial killing recklessly when in the process of arresting a suspect that is unarmed he/she fires a loaded gun to him and the suspect eventually dies in the process. That is a reckless extrajudicial killing. Also where a suspect is shot by a law enforcement agent arrested and left in custody without proper treatment and the suspect eventually dies from the effect of that wound, it is extrajudicial killing by negligence. It is the same thing where a suspect in custody is starved to death. Thus any killing of a crime suspect in custody by a law enforcement agent outside the lawful grounds and without court order after due process is extrajudicial killing. But any killing by a law enforcement agent outside these situations is murder in the strict sense of it.

<sup>5</sup> Rome Statute of International Criminal Court, 2002, Art. 6.

<sup>6</sup> *Ibid.*, Art.7.

<sup>7</sup> *Ibid.*, Art. 8.

<sup>8</sup> *Ibid.*, Art 5.

<sup>9</sup> *Concise Oxford English Dictionary*, 11<sup>th</sup> ed., p. 505.

<sup>10</sup> *Osborn's Concise Law Dictionary*, 8<sup>th</sup> ed., p. 140.

<sup>11</sup> *Blacks Law Dictionary*, 7<sup>th</sup> ed., p. 606.

Nonetheless, by virtue of section 272 of the Criminal Code, private persons are empowered to effect the arrest of a crime suspect or prevent escape from custody. In such a situation, the ideal thing to do by such a private person who effected the arrest is to hand over the arrestee to the police for proper action in continuation with the criminal justice process. But where private persons apprehend a crime suspect and decide to kill the suspect off on their own, having adjudged him guilty without reference to court, it is extrajudicial killing. Also where there is a misunderstanding between private persons either as members of different groups, parties, societies or communities and they decide to take laws into their hands to administer justice on their own by bloodshed, it is extrajudicial killing. In the doctrine of separation of powers, administration of justice and interpretation of laws are the official duties of only the judiciary and until she declares one guilty and sentences the person to death in a deserving case, no one usurps that power. The executive is responsible for maintenance of law and order within the country which she carries out through her agent- the law enforcement agents. Whenever and wherever the executive through its agent discovers a violation of law and order by a citizen, she must give the good example of respecting law and order by taking the offender through the right process to allow the offender receive the just desert for the offence he/she is alleged to have committed. The executive is not empowered to administer justice on its own, likewise the legislature the law making body. Each must recognise and respect the others powers. However, some other writers<sup>12</sup> have also defined extrajudicial killing as the intentional killing of a human being without recourse to the due process of law and in violation of the rule of law.

## 2. Criminological Theories Relevant to Extrajudicial Killing in Nigeria

According to Brown,<sup>13</sup> the complex nature of crime is that it can only be understood by considering the broad social context from which it emanates. So that attention is to be paid on the relativity of crime, the prevalence of the scientific method in the field of criminology and the impact of ideology on explanations of crime and crime policy. In that view, it is said that what is considered a crime varies by time, place, and who is doing the defining. That is precisely why scholars say that criminology is cross-cultural and the relativity of crime is a fruitful concept for understanding the continual redefinition of crime within our own culture. Criminology however is a science, and an empirical one. More particularly, it is one of the social or behavioural sciences. It has been defined in various ways by scholars, but according to Sutherland, one of the founding scholars of American criminology and whose definition is widely accepted

Criminology is the body of knowledge regarding crime as a social phenomenon. It includes within its scope the process of making laws, of breaking laws, and of reacting towards the breaking of laws.... The objective of criminology is the development of a body of general and verified principles and of other types of knowledge regarding this process of law, crime, and treatment or prevention.<sup>14</sup>

This definition suggests that the field of criminology is narrowly focused on crime yet broad in scope. According to Sutherland the causes of crime are in principle infinite. However, despite the relativity of crime and the fact that criminology is cross-cultural, certain theories seek the reasons for differences in crime rates in the social environment. This research shall concentrate on theories relevant to our immediate discussion namely the social disorganisation theory, social class theory, differential association theory, individual and threat theory and the frustration theory.

### (a) Social Disorganisation Theory

From the discoveries of Thomas and Florian in the 1920s to that of Shaw and McKay till the present day, the social disorganisation theory of crime has it that crimes are associated with social disorder, poverty,

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<sup>12</sup> Nwazuoke et al, *Legal Implications of Extra-judicial Killings in Nigeria*, presented at the National Conference on *Extra-judicial Killings in Nigeria: the way out*. Faculty of Law Auditorium Ebony State University, Abakaliki, December, 2005.

<sup>13</sup> S. E. Brown, et al, *Criminology: Explaining Crime and its Content*, 7<sup>th</sup> ed.(New Jersey: LexisNexis, 2010) 1.

<sup>14</sup> F. Adler, et al, *Criminology* 7<sup>th</sup> ed. (New York: McGraw Hill, 2010) 10.

economic deprivations with high population turnover, and other signs of community deterioration.<sup>15</sup> In situations of social disorder, crime and criminality abound resulting in survival of the fittest. Social disorganisation is simply the breakdown of effective social bonds, family and neighbourhood associations, and social controls in neighbourhood and communities. Researchers are of the view that while the engaged work force leave deteriorating neighborhoods, the most disadvantaged portion of the population remain in the neighbourhood to engage in survival of the fittest syndrome. A poverty concentrated effect, may cause neighborhoods to be isolated from the mainstream of society and become prone to violence of all sorts. There is another opinion that socially disorganised neighbourhoods live in fear because of victimisation and as such residents stay off the streets most of the time, abandoning the streets for gangs, drug dealers and others involved in illicit activities.<sup>16</sup> Besides, there is general lawlessness in a socially disorganised society. Some of these gangs and drug dealers are often dealt with instant killing, a kind of jungle justice without a hearing.

**(b) Social Class Theory**

Although much criticised,<sup>17</sup> but going by Merton's social class theory, it says that the American dreams of opportunity, freedom and prosperity by majority has a powerful culture and psychological motivation that create a dichotomy between what society expects of her citizens and what these citizens can actually achieve. Thus, since the social structure of opportunities is unequal and prevents the majority from realising their dreams, some take to illegality in order to belong, others retreat or drop out into deviant subcultures forming gangs, urban homeless drunks, drug abusers and robbers, determined to make it by all means so as to meet up with societal expectations. Their presence and attitude spells insecurity in the society so that 'the haves' build protections around themselves whatever that may entail whether with private armies, militia forces, or killer squads. These security guards always work at all cost to satisfy their employers even when their jobs entail killing another, real or imagined rivals. When apprehended by law enforcement agents or private security guards, some may be killed instantly while others may be tortured to death in custody. They are not usually given fair hearing in the court of law.

**(c) Individual and Trait Theory**

The individual and trait theory says that brutalisation by parents or peers that usually occur in childhood, results in violent crimes in adulthood and that people who have been exposed to violence and brutality tend to develop hard skin for violence.<sup>18</sup> Agnew in his general strain theory says that criminal behaviors often spring up in situations of strain caused by the presentation of negative stimuli. Such adverse situations include child abuse, criminal victimisation, bad experience with peers, school problems or verbal threat.<sup>19</sup> According to Agnew, each type of strain increases an individual's feelings of anger, fear or depression. And the most critical reaction for general strain theory is anger, an emotion that increases the desire for revenge, helps justify aggressive behavior and stimulates individuals to act. However, it is acknowledged that not all who experience strain become criminals. Many are equipped to cope with their frustration and anger.<sup>20</sup> Such persons tend to develop hard skin for violence and often engage in violence. Violence and persons of questionable behaviour easily attract the attention of law enforcement agent. The law enforcement agents may decide to go on random arrest. In the process of arrest, these persons may become victims of police extrajudicial killing or even in the cell.

<sup>15</sup> F. Adler, *et al*, *Criminology* 7<sup>th</sup> ed. (New York: McGraw Hill, 2010) 10.

<sup>16</sup> F. Adler, *et al* *ibid*,10.

<sup>17</sup> That if crime is caused by tension and strain generated by a society that for most people, routinely fails to deliver the promises of the American Dream, then how can crime be reduced? whether structural strain should be seen as the starting point of a chain of causation that ends in crime and deviance? Then what are the causes of strain? Whether non conformist conduct could be reduced by psychiatric counseling or prescription pills. See P. Beirne, *et Al*, *Criminology* 4<sup>th</sup> ed. (Los Angeles: Roxbury Publishing Company, 2006) .330. See also F. Adler *et al*, *Criminology* 7<sup>th</sup> ed. ( New York: Mc Graw Hill, 2010) 109.

<sup>18</sup> L. Athens, *Individual and Trait Theory*, *free encyclopaedia.com*. accessed 22/11/2022. p.3

<sup>19</sup> F. Adler, *et al*, *ibid*,3

<sup>20</sup> Some come up with rationalisation ( i don't really need it anyway), others use techniques for physical relief ( a good workout at the gym), and still others walk away from the condition causing stress ( get out of the house). See F. Adler, *op.cit.*, p. 113.

**(d) Differential Association Theory**

According to Sutherland's differential association theory,<sup>21</sup> criminal behavior is learnt like all other behaviors within intimate personal group in an interactive process of communication. Which means that criminality is not inherited biologically. Sutherland further states that the learning of criminal behavior includes instructions in the techniques of crime and in the motivational values favourable to committing it. The principle of differential association asserts that a person becomes criminal when definitions favourable to the violation of law exceed the definitions unfavourable to violation and when contacts with criminal pattern outweigh contacts with anti-criminal pattern. Exposure to such definitions and contacts varies in frequency, duration, priority, and intensity. With this exposure people with like criminal minds form cultural groups fragmenting away from the mainstream to form their own values and meaning about life according to their own criminal designs either in revenge for denials and betrayals whether from government, the elites or elders around them or even the society at large for failing them. They try to survive by hook or crook, damming all consequences. Such isolated groups often turn out to rebel against the society or government, for example the MEND. Consequently, they are seen as traits to the society, their presence creates tension even when they mean peace and anytime the peace of the vicinity is disturbed their members are seen as chief suspects. As a result law enforcement agents may lunch an arrest of the members, in the process of arrest some may be killed or tortured to death without hearing like the twelve Kaduna boys earlier cited.

**(e) Frustration Theory**

According to the writer's frustration theory, frustration is a strong inducement to criminality. A lot of crimes are committed out of frustration. For the youths, frustration from unemployment after university education, frustration from inability to meet up with societal demands, for students frustration from academic demands, for majority, frustration from bad government that is insensitive to the plights of the masses, and for the police, frustration from unnecessary adjournments and general laxity of most Nigerian courts, etc. As a result of these frustrations, most of these impatient youths especially the labour force end up in status frustration<sup>22</sup> because as a promising young graduate he/she finds himself/herself at the bottom of status hierarchy in the labour market. In reaction against these social norms, majority of these youths simply indulge in crime and illegalities to find solutions. Some resort to toughness and disrespect for authority. For them, the world is insensitive to their problems and everyone including the society has failed them. In Nigeria, the alarming rate of unemployment alone, might perhaps be the social origin of youth involvement in crimes such as armed robbery, cyber crime or internet scams, banditry, and the emergent trend of kidnapping, a vice unheard of over two decades ago. Some form militia groups. It is really a waste of time counting how many Nigerians, even foreigners that have lost their lives in the hands of these frustrated citizens. Some of them are in turn killed in the process of arrest by law enforcement agents.

**3. Causes of Extrajudicial Killing in Nigeria**

**(a) Inelegant Constitutional and Legislative Provisions**

Though, section 33 of the Constitution guarantees the right to life, it is evidently clear that the construction sub-section (2) (b)<sup>23</sup> of section 33, is not elegant enough to protect the right to life to the extent of arrests and prevention of escape from custody as far as the present day Nigerian law enforcement agents is concerned. The same inelegance extends to the Criminal Code so that section 271 of this enabling law contains similar powers of forcible arrest which is more barbaric and unjust than the absurdity in section 33 (2) (b) of the Constitution. Yet in Nigeria, the criminal laws still recognise the

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<sup>21</sup> P. Beirne, *et al*, *Criminology* 4th ed. ( Los Angeles: Roxbury Publishing Company, 2006) p. 331-334. See also S. E. Brown, *et.al*, *Criminology: Explaining Crime and its Context* 7<sup>th</sup> ed. ( New Jersey: LexisNexis, 2010) 274-283.

<sup>22</sup> P. Beirne, *et al*, 346

<sup>23</sup> That 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 circumstances as are permitted by law, or such force as is reasonably necessary- In order to effect a lawful arrest or to prevent the escape of a person lawfully detained.

rights to presumption of innocence and fair hearing of a suspect. Both provisions of the Constitution and the Criminal Code seem to give law enforcement agents statutory backing to indulge in extrajudicial killing of suspects<sup>24</sup>. Similarly, the Force Order, Order 237, which allows police officers to shoot suspects and detainees who attempt to escape or avoid arrest whether or not they pose a threat to life, is not an elegant drafting. When a suspect or a detainee does not pose any danger to the arrester, there is no need applying violence to the extent of causing damage. But of course, where it is clear that a suspect is armed with dangerous weapon whether explosive or otherwise and there is clear evidence that the suspect intends to or is likely to unleash terror or he poses danger to lives of those around, of course *Omoregie v. the State*,<sup>25</sup> says that self defence has no limit where it applies. It is submitted that section 33 (2) (b) of the Constitution, section 271 of the Criminal Code and Order 237 of the Force Order need to be revisited, reviewed, retracted, and, replaced. The use of lethal force should only be allowed when strictly unavoidable to protect life.

Section 271 of the Criminal Code is rather callous in its provision.<sup>26</sup> With due respect, the emphasised condition *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, presupposes that at arrest, the accused is already adjudged guilty. This presupposition contradicts the presumption of innocence of an accused under section 36(5) of the Nigerian Constitution<sup>27</sup>. In providing for presumption of innocence, section 36(5) did not define the category of suspects to be presumed innocent and those not to be so presumed, or the condition upon which an accused ceases to be presumed innocent except when proved guilty in the court of law<sup>28</sup>. By interpretation, the right to presumption of innocence is a right that remains applicable throughout the different stages of criminal justice process, starting from the discovery of the crime until the verdict of guilty is handed down by a competent court/tribunal. Therefore, if an arrester is permitted to kill at the very beginning of criminal justice process just to arrest, not even in self defence, then, there is no need for presumption of innocence again, which is a fundamental principle of criminal law. Certainly, the code is over reaching by that provision, because by so providing it is making the peace or police officer an accuser, the prosecutor, the Judge as well as the executioner all on the spot without affording the accused a chance for fair hearing<sup>29</sup>. No matter how unreasonable and stupid the defense of an accused may be, the Supreme Court in *Ndukwe v. State*<sup>30</sup> says that, that does not deny the accused the right to fair hearing. Furthermore, the same Supreme Court in *APC v. NDIC*,<sup>31</sup> has held that guilt or innocence is not determined or proved outside the court. More so, the right to presumption of innocence is not only a Nigerian issue, it is an internationally recognised right<sup>32</sup>. Just last week a police officer was alleged to have killed a very young promising lawyer Bolanle Raheem in Lagos while they

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<sup>24</sup> Section 271 of the Criminal Code says that when a peace 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.

<sup>25</sup> (2008) 35 N.R.N. 181, (2008) 18 NWLR ( Pt. 1119 ) 464.

<sup>26</sup> That 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 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.

<sup>27</sup> 1999 (fourth alteration).

<sup>28</sup> *Okoro v. The State* (1988) 12 SCNJ 19, (1988) NWLR (Pt. 74) 255, *Usu v. Commissioner of Police* (1972) 11 S.C. 37, the Supreme Court held that to ask the accused to defend himself is to ask him to prove his innocent.

<sup>29</sup> S. 36 of the 1999 Constitution. See also *R v. University of Cambridge* (1723) S.C. 128.

<sup>30</sup> (2009) 37 NSCQR 425.

<sup>31</sup> (2006)15 NWLR (Pt. 1002) 404 S. C.

<sup>32</sup> The International Covenant on Civil and Political Right 1966, Art. 14 (ii), and Art. 66 ICC.

were driving home from church service<sup>33</sup>. Though he was said to have been arrested and charged to court for prosecution but the painful truth is that no amount of punishment inflicted on him will bring back the life of this lawyer wasted in her prime.

It is submitted that section 271 of the Criminal Code should be expunged therefrom because it is encouraging extrajudicial killing. It is therefore suggested that a more protective, elegant, instructive and comprehensive provision should be provided to possibly runs thus:

when a peace 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 or police officer and for any person lawfully assisting him, to use such force as may be reasonably necessary to immobilise the suspect as to catch/apprehend the suspect alive. The use of gun is allowed as the last unavoidable eventual resort to immobilize the suspect so as to prevent his escape from custody or to get the suspect arrested especially where the arrestee poses a danger to life.

This provision rather calls for caution on the use of force or gun by any person arresting a suspect and even for the application of expertise in effecting an arrest or preventing the escape of a suspect not armed. When it comes to defending oneself against a suspect who is glaringly well armed and ready to do away with life, of course *Abegunrin v. The State*<sup>34</sup> says that self defence has no limit where it applies.

**(b) Disregard for the Rule of Law**

A disorganised society, whether socially, politically or otherwise is a fertile ground for crime and criminality. That is why the principle of rule of law advocates a system whereby law rules and where authority is legitimately exercised only in accordance with written, publicly disclosed and enforced method, in line with established procedure. According to the principle of rule of law, there is absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power and there is equal subjection of all classes of persons to the ordinary laws of the land administered by the ordinary courts. The law then becomes a consequence of the rights of individuals as defined and enforced by the court<sup>35</sup>. So that in a country where the rule of law is respected and observed, the law is the king. However, contrary to Dicey's exposition on the Rule of Law, the situation in Nigeria seems more like:

- 1) Absolute supremacy or predominance of the influence of arbitrary power as opposed to the regular laws.
- 2) An attempt to subject different classes of the population to different laws, administered not by the ordinary courts but by a few powerful individuals.
- 3) A subjugation of the rights of individuals to the whims of certain persons or bodies who attempt to take the place of the courts in the enforcement and interpretation of laws.

In the present day Nigeria, it seems that as long as a person has deadened one's conscience, one can finance his/her criminal ways out. But if one is financially disadvantaged, provided some other influential and powerful persons are connected with his/her crime, one can go ahead and commit any type of crime and go scot free. However, except on the other hand luck runs out of the accused and the accused falls into the hands of some serious minded and God fearing judges and other good Nigerians who would rather die than soil their consciences. That is why law enforcement agents and security outfits over the years have the audacity of executing crime suspects in their custody without trial and government remains reluctant to discipline the law enforcement agents or review their powers and operation in matters of security of life. On the other hand bandits, Boko haram and herders slauther innocent citizens and nothing

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<sup>33</sup> Premium Times Nigeria, <https://www.Premiumtimesng.com>, accessed 29/12/22.

<sup>34</sup> (2010) 10 W.R.N. 168. But where a suspect displays no sign of resistance it is unlawful to effect his arrest by force. See *R. v. Shaw ex parte Kane* (1915) 27 DLR 494.

<sup>35</sup> A. V. Dicey, *Introduction to the Study of the Law of the Constitution* 10<sup>th</sup> Edition ( London: Macmillian & Co. Ltd., 1961) 202- 205.

is done about it. As a result, the rule of law for the moment remains a legal fiction in Nigeria although, some fictions are more fictitious than others.

**(c) Use of Private Armies and Squads**

In almost all the towns, villages, states and local governments within the country, the ruling classes and the wealthy, use militia forces and local police as their private armies. By recruiting, arming and paying members of these various militia groups they subject them to their orders no matter how callous. In addition, local officials/chiefs use their authority to maneuver, appoint and dismiss police chiefs so as to improperly control the police for personal or other unlawful purposes, infringing police independence. These private armies and squad always work to satisfy their “employers” even if their jobs warrant killing another, real or imagined opponent<sup>36</sup>.

It is submitted that, it has become necessary to define or clarify the role of police officers OR any law enforcement agent attached to serving public office holders, including state governors, to avoid being misused as instruments of terror. Private security companies in Nigeria are almost taking the place of State security services. Without questioning, it leads to proliferation of military weaponry throughout the community to strengthen the officials behind the private armies. The rise of ethnic militias and communal vigilante is getting out of hand. Unfortunately these groups have metamorphosed into party thugs, enforcers and champions of their founder’s interest and it has encouraged the rise of so many others<sup>37</sup> well equipped with gun resulting to sporadic killings without regard. As a result, the country is faced with internal insecurity. And history has shown that seeking to replace professional armed forces and police with armed yet untrained civilians, is dangerous and counterproductive.

**(d) Effect of Civil War and Long History of Military Rule in Nigeria**

It is not out of place to say that the effect of the Nigerian civil war and long history of military rule in Nigeria are considered an evil inducement of the police to terror. The military issued out different decrees that ran counter to democratic values. For example, the Armed Robbery and Firearms Decree. This Decree gave the police wide latitude to use arms against crime suspects. And today the abuse of that Decree is what is now almost playing itself out as police zero accountability for due process in criminal justice process, especially when it comes to arrest and investigation including members of the judiciary<sup>38</sup>. Besides, the Nigerian civil war exposed many Nigerians especially law enforcement agents to violence towards human life.

**(e) Undue Political Ambition and Violence**

Because politics in Nigeria is seen as an opportunity for quick money rather than as a call to service, it has become a war fare where politicians exhibit their strength by the number of political thugs running errands for them, armed party supporters at their beck and call, and killer squad waiting for signal to shed

<sup>36</sup> On 21<sup>st</sup> of January 2010, it was allegedly claimed that Former Governor Ikedi Ohakim of Imo State sent a team of armed policemen from amongst his security details /personnel to abduct and produce one Ikenna Samuelson Iwuoha of Plot 98 Ikenegbu Layout Extension Owerri, to the Governor at the Government House Owerri. In his report to NOPRIN, Ikenna said that his Excellency’s anger was that he, Ikenna Samuel Uwuoha, an internet journalist, has been writing articles critical of his administration. And so when he was abducted by the police messengers, he was marched straight to the Governor’s office and was locked up and detained at the instruction of the Governor. The Governor himself came and brutally assaulted Ikenna, kicked and marched on him with shoes, mercilessly flogged him to bleed profusely. Before lacerating Ikenna, the governor and his chief security officer stripped him naked and gave him deadly blows. While this was going on, the Governor’s chief security officer a serving police officer, pulled out his gun and continued to point same at Ikenna, threatening that if he ever retaliates to or touches his Excellency, he, the chief security officer would shoot him dead. Ikenna was subsequently handed over to Imo State Police Commissioner, Mr. Aloysius Okorie who ordered that Ikenna be detained by his men and arraigned in court at the pleasure of the Governor. See O. Nwanguyma: *Take Action*, cited in <http://www.sahara-reporter.com/letter/complainant-abuction-torture-inhuman-and-degrading-treatment>- Retrieved 19/11/2022.

<sup>37</sup> The O’odua People Congress (OPC) established in the Yoruba-speaking south-west in 1994, Two groups, the Bakassi Boys and Movement for the Actualisation of the Sovereign State of Biafra (MASSOB) emerged in the Igbo-speaking southeast, The Arewa People Congress (APC) in the north established in 1999, the MEND, Boko Haram Sect and a host of others. See O. Douglas et al, *Oil and Militancy in the Niger Delta: Terrorist Threat or Another Colombia* 2004 cited in <http://geograph.berkeley.edu/project> Resources. Accessed on 21/11/2022.

<sup>38</sup> D. Oyewale, “Feeding Their Deadly Lust” *Tell Magazine* No. 31 August 1, 2005 p. 27.



the opponents blood without the least reference to court. As a result of this, many politicians go into the political arena with a do or dies attitude, ready to do the worst in order to occupy a political seat without any qualms of conscience. Unfortunately after grabbing the seat, they will not serve and they will never deliver. Examples of such killings abound in Nigeria.

**(f) Loss of Confidence in the Judiciary**

Some police sources say that the police commit extrajudicial killings because Judges take bribe and let criminals go free when charged to court. At the other side of the spectrum they say that court proceedings are not expeditious, so that cases suffer a lot due to several unnecessary adjournments. Another source says that the loss of confidence is not conditioned by any plausible reason other than the procedural trial of suspects in line with legal principles which police consider to be time wasting.<sup>39</sup> However, no matter how probable these excuses may be, it is painfully true that police lack capacities for thorough criminal investigations without resorting to third-degree policing strategies which include torture inspite of the Anti-Torture Act of 2017, extrajudicial killing, adequate use of forensic science in criminal investigation of suspects, and nothing to facilitate trials.

**4. Effects of Extrajudicial Killing on the Nigerian Criminal Justice Process**

No doubt, extrajudicial killing has exerted and posed lots of challenges to the Nigerian criminal justice process and the effect of this menace has been grossly felt. Obviously, while the right to life has tremendously suffered in the face of extrajudicial killing, the right to presumption of innocence is battered, the fundamental right to fair hearing is neglected, threatened and denied. Moreover, due process is abused. Invariably every act of extrajudicial killing is a presumption that the criminal justice process is no longer relevant and effective in today's Nigerian criminal justice system. The hidden danger inherent in this attitude is that with the escalating rate of extrajudicial killing, the masses are gradually embracing it and that is almost becoming the last port of call for law regarding the right to life, presumption of innocence, fair hearing and criminal justice in general. Rascality and arbitrariness are never palatable in law.

**(a) Threat and Abuse of the Right to Life**

First and foremost, extrajudicial killing is a threat and an abuse of the right to life. In a country where every other person is a potential armed robbery suspect except the force and the vigilante groups, and could easily be shot down on that note without any problem, no life is safe. At the least instance of mistaken arrest of a citizen as a suspect by any of these groups, there is the danger of losing that life without apologies. Everyone stands the risk of being shot down any day on the pretence of mistaken identity of a robbery suspect. A typical example is the extrajudicial killing of the twelve Kaduna boys who were only protesting the hike in price of fuel at that time<sup>40</sup>, the ENDSAARS LEKKI victims. If those boys were given hearing, at least the truth about them would have been found out before the nasty incident. But they were glaringly denied hearing.

**(b) Abuse of the Right to Presumption of Innocence**

Extrajudicial killing is an abuse of the right to presumption of innocence. Presumption of innocence as we know is one of the fundamental principles of criminal law in an accusatorial system. Its aim is to give room for proper investigation, and for the accused to have the opportunity to defend himself before his/her accuser before any verdict will be pronounced on the accused. The presumption of innocence is therefore meant to give justice a chance,<sup>41</sup> and to allow the prosecutor prove the guilt of the accused beyond doubt, not for the accused to prove his innocence.<sup>42</sup> And so when a suspect is extrajudicially killed without giving him chance to be heard, it simply means that the prosecutor has no cogent evidence to prove the guilt of the accused in an open court. Therefore, to avoid going through the ordeal of proving his guilt beyond reasonable doubt which is not an easy task of course, the officer on his/her own, presumes or adjudges the accused already guilty at the point of arrest and executes him summarily. This is contrary to both the constitutional provision on the presumption of innocence as well as the accusatorial

<sup>39</sup> D. Oyewale, *ibid*, p. 27.

<sup>40</sup> D. Oyewale, *ibid* ., pp. 26-27.

<sup>41</sup> S. 36 (5) of the 1999 Constitution

<sup>42</sup> *Okoro v. The State* (1988) 12 SC N J 19 or (1988) NW L R (Pt. 74) 255

system in practice in the Nigerian criminal law jurisprudence. That is a clear disregard and abuse of this fundamental principle of law- presumption of innocence.

**(c) Disregard of the Principle of Natural Justice- Fair Hearing**

Extrajudicial killing is a gross disregard of the principles and pillars of natural justice- the principle of fair hearing (*audi altarem pattem*), which is also a legal right. The right of an accused to fair hearing in any charge against him/her is never in contention all through the criminal law jurisdiction even in our various indigenous cultures. The Supreme Court was emphatic on this issue when in the recent case of *All Purpose Shelters Ltd v Dennis*<sup>43</sup> the court held that:

Rules of court cannot derogate from individual and personal rights to fair hearing guaranteed by the grundnorm, which is the fountain of all laws in Nigeria that is supreme, binding on all person and authorities and so prevails over them.

The fair hearing that is in issue here does not mean a secret hearing in a police torture cell, or hearing before one police officer or vigilante groups or members of the association, it is fair hearing before an open court or before a tribunal with competent authority to hear such matter<sup>44</sup>. Therefore, where a police officer decides to hear an accused in a torture room or at the side of the bush when the officer had already made up his/her mind to do away with the life of the accused, is simply brutality, unfair, a denial and disregard of an accused persons right to fair hearing.

**(d) Extrajudicial killing Questions the Relevance of the Nigerian Criminal Justice Process**

Every act of extrajudicial killing questions the relevance of the Nigerian criminal justice process. Thus, it obstructs the criminal justice process, distorts due process, and the rule of law. Due process of law in criminal justice administration, demands that a suspect passes through the hurdles of criminal justice process for the just determination of his/her case, starting from arrest and ending with conviction and sentence except the accused is discharged along the line for good reasons or the charge(s) against him/her is withdrawn. Aside questioning the relevance of the criminal justice process, it questions its effectiveness too. As long as crimes are still being committed, criminal justice is still relevant to criminal law, and the process to obtain this criminal justice is very much of the essence and therefore relevant. It is only until the criminal procedure laws exclude the criminal justice process and declares it irrelevant that anybody can draw the conclusions that the process is no longer relevant. Certainly, such assumption will spell a whole lot of danger in the society because life will simply become brutish and barbaric. The existence of lapses in some areas within the system is not cogent enough to conclude that the process is ineffective and therefore irrelevant. The rule of law must be adhered to.

**5. Preventive Measures Against Extrajudicial Killing in Nigeria**

Discovering a problem and its effect on a particular system is progressive; the giant stride is in combating the problem and establishing preventive measures against future occurrence. Having established the causes and effects of extrajudicial killing in Nigeria and its criminal justice process, it will be pertinent to adopt the following measures in combating extrajudicial killing in Nigeria and prevent future incidents of the menace.

**(a) Legislative Review and Re-drafting of the Criminal Laws.**

Having observed that the major reason for law enforcement agents' engagement in extrajudicial execution of suspects with impunity is the inelegant constitutional and statutory provisions of section 33 (2) (b)<sup>45</sup> of

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<sup>43</sup> (2022) 6 NWLR (Pt.1885)181

<sup>44</sup> S. 36 (4) of the 1999 Constitution specifically provides that whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal. See also *R v. University of Cambridge* (1723) S 128.

<sup>45</sup> 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 circumstances as are permitted by law, of such force as is reasonably necessary-(a) For the

the 1999 Constitution, section 271 of the Criminal Code,<sup>46</sup> which seemingly give them legal backing, it is submitted that these legislative provisions should be reviewed and re-drafted to protect the right to life of everyone. This research suggests that section 33 (2) (b) of the Constitution be re-drafted thus:

in order to immobilise a crime suspect, armed with dangerous weapons, posing a threat and about to inflict grievous bodily harm on another or to do away with life, in order to get him arrested or prevent his escape from custody.

And section 271 of the Criminal Code be re-drafted thus:

when a peace 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 or police officer and for any person lawfully assisting him, to use such force as may be reasonably necessary to immobilize him as to catch him alive. The use of gun is allowed as the last unavoidable eventual resort to immobilize him so as to prevent his escape from custody or to get him arrested especially where the arrestee poses a danger to life.

It is further submitted that section 271 be expunged and replaced as above and that order 237 of the force Order is to be redrafted to provide that “the use of lethal force should only be allowed when it is strictly unavoidable to protect life.” These provisions if left as they were, contradict the legal guarantee for the right to life and presumption of innocence of an accused. The law cannot stand to contradict itself otherwise it makes nonsense of itself, which is not the intent of the law. It is contradictory to boldly and categorically pronounce an accused innocent until the contrary is proved, and on the other hand empower some subjects of the law to summarily execute crime suspects without hearing, outside defence of life or property, but only on ground that his offence warrants death sentence, which conclusion is determined outside the court of law. Besides at a time when capital punishment is almost being abolished all over the civilised world, it is barbaric to kill a fleeing suspect except where he emits danger to life or to the arrester.

**(b) Enforcement of the Anti-Torture Act 2017 and Strengthening Enforcement Measures for Protecting the Rights of Suspects**

The Anti-Torture Act came when it is most needed in a country where torture has become the order of the day. However, it will become useless if it is not enforced. Torture as a means of extracting the truth from suspects has been abolished and criminalised by the Anti-Torture Act. Law enforcement agents have been legally and categorically banned from using torture as part of their strategy against suspects but the challenge is to what extent will they enforce this law that is directly against their brutal strategy? They should also be banned from wasting and killing crime suspects under their custody outside reasonable self defence or defence of life. That was one of the fundamental reasons for the ENDSAARS Protest. The constitutional rights of a suspect must be respected. So many lives have been lost through torture in police cells, NDLEA cells and vigilante groups. Those who survive their torture experience remain mere vegetables for life. At some torture sites one begins to wonder whether the Nigerian law enforcement agents are really human beings. Torture is in the real sense a violation of the fundamental human right to

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defense of any person from unlawful violence or for the defense 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.

<sup>46</sup> When a peace officer or police officer is proceeding lawfully to arrest, with or without warrant, a person for felony,... and the arrestee takes to flight in order to avoid arrest, it is lawful for the peace officer and 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.*

the dignity of the human person. Examples are numerous.<sup>47</sup> Thanks to the Administration of Criminal Justice Act 2015 and the Anti-Torture Act 2017 that has provided for, proper recording of the number of suspects under police custody, their entry and exit, by a body different from the police force. Law enforcement agents must learn to apply other skills and expertise to extract truth from suspects without resorting to torture.

**(c) Proper Forensic Investigatory Training and Facilities for Law Enforcement Agents**

Every law enforcement personnel should as a matter of necessity undergo proper forensic investigatory training for better efficiency in the discharge of his/her duty. More so, the police on whose shoulders lie the bulk of criminal investigation should have proper forensic training to enhance proper criminal investigation, recording of crime scenes prior to removal of objects, safe preservation of evidence and use of valid evidence in prosecution. Accordingly, law enforcement agents should also be provided with forensic facilities, to conduct certain necessary scientific test on evidence adduced. This will go a long way to facilitate prosecution, save unnecessary guise work, torture and presumption of guilt when no proper investigation has been conducted which is likely to give room for execution of suspects without trial. Reliance should not only be made on testimonial evidence to avoid delays and possible dismissal of valid prosecution. This may also encourage thorough investigation before arrest.

**(d) Abolition of use of Open Grazing, Private Armies, Vigilante and Militia Forces**

The Federal Government should discourage and ban open grazing which is often the cause of herder-farmers clash especially when cows are eating and destroying the farmers' crops. The Federal Government also has to revoke without discrimination, every permission granted to have or run private police and security as well as any law encouraging arming private police and security. Existing private militia forces anywhere in Nigeria should be disband and disarmed within a time frame, and every private funding of such group should be criminalised. Private militia forces should be made to surrender their arms. As a follow up, the Federal Government is to provide military recruitment option for the disband and disarmed militia. Since they are used to carrying arms, it will be a tragedy to live them carelessly to mingle with civilians, and so, government has to instruct the department of social welfare and development, to collaborate with non-governmental organisations and appropriate government agencies to afford ex-militants that are not willing to join the army after disbandment, appropriate assistance for physical and psychological rehabilitation, social re-integration, including alternative employment.

**(e) Strict Control on the Procurement of Arms and Weapons**

The Federal Government without discrimination has to exert tougher control measures on Herders', State and local government procurement of weapons. In this way, all official and individual arms acquired whether for professional or personal use must be properly reported and licensed. Therefore, all monetary allocations to State government for peace and security must be audited to ensure they have not been used to fund private armies. In that case, the custom officials especially those at the borders must be warned on what and who, they allow into the country because, most of these sophisticated weapons are not produced in Nigeria. Besides, there should be proper electronic search on anybody coming into the country whether by air, land or sea, irrespective of citizenship, Nigeria or foreign without minding official rank. On this plate form, the Federal Government, without sentiment but as a matter of urgency, should order for a thorough search for arms and ammunitions in the houses of all the village, town, tribal, kingdom as well as religious heads of different denominations in all the nooks and crannies of this country and cease same where any is found.

**(f) Re-activation of the Judicial System**

While the research appreciates the efforts of a good number of Nigerian judges and magistrates who are devoted to their judicial functions, it is submitted that to check extrajudicial killing, the judiciary has to be re-activated. More intelligent, functional, active and diligent judges who will save prosecutors the agony and frustration of unnecessary adjournments, without compromising the integrity of their person and

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<sup>47</sup> F. Asogwo, *Climate of Impunity: A Report on the Use of Torture by the Nigeria Police* (Lagos: Civil Liberties Organisation, 2005) 35-59. Although we are not condoning stealing, but torturing a suspect accused of stealing goat to death is simply inhuman and uncalled for.

office at the altar of injustice and bribery should be recruited into the judiciary. This will help to discourage law enforcement agents from engaging in extrajudicial killing.

**(g) Religious Tolerance**

Nigeria is a secular country without a national religion. This principle is sacrosanct and must be respected by both the ruling class and the citizens. This is enshrined in section 38 of the Constitution of the Federal Republic of Nigeria 1999(fourth alteration). No religion is superior to another and nobody should be forced to join one religion or the other.

**RECOMMENDATIONS AND CONCLUSION**

Ordinarily one may conclude that it is wise to kill off crime suspects at once, especially if one has had the unfortunate experience of the menace of these undesirable and merciless armed robbers, or if you had lost a dear one in their hands. They simply have no morals, no ethics and no qualms of conscience. That is probably why some members of the society consciously or unconsciously feel relieved whenever it is announced that so called suspects have been killed, now the killing has extended to innocent people. But no one queries whether indeed all those killed were all criminals, and even if they were, whether it is proper in law to kill them without trial? In another angle, when you recall that some courts are not helping matters with several adjournments that are uncalled for, so that a lot of time is being wasted deciding a particular case. Some take years before the end of justice is achieved, that is, if the particular case will survive the slippery maze of legal technicalities. But why extrajudicial killing is particularly dangerous is that death is carnally irremediable even in the face of mistakes. More so, the hidden danger inherent in this attitude is that with the escalating rate of extrajudicial killing, the masses are gradually embracing it and that in no distant time, if not checked, that might be the last port of call for the law especially in relation to the right to life, presumption of innocence, fair hearing and criminal justice in Nigeria. Rascality and arbitrariness are never palatable in law. Therefore, it is submitted that human life is sacred, and that human beings are the main reason for statehood, they must be treated accordingly by placing respect for life at the centre of criminal justice. So that every crime suspect passes through the criminal justice process, in accordance with the rule of law. Until the court of law duly finds him guilty, convicts and sentences him to death in a deserving case, no one has the right to take his life. Guilt or innocence is not within the powers of the president, police, politicians or vigilante groups or anybody to determine with the gun or its equivalent outside the court of law. Security must be in line with the rule of law. Who are we even, to take life that we cannot give.