

**EXTRAJUDICIAL KILLING AND THE CRIMINAL JUSTICE
PROCESS IN NIGERIA: A CRITIQUE**

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**DISSERTATION SUBMITTED TO THE POSTGRADUATE
SCHOOL IN PARTIAL ULFILLMENT OF THE REQUIREMENT
FOR THE AWARD OF MASTER OF LAW AND DIPLOMACY
MLD) DEGREE IN FACULTY OF LAW DELTA STATE
UNIVERSITY, ABRAKA**

DECEMBER, 2017

DECLARATION

I, declare that this is an original research work carried out by me in the Department of Jurisprudence and International Law, Faculty of Law, Delta State University, Abraka, Nigeria.

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APPROVAL/CERTIFICATION

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DEDICATION

I dedicate this project work to God Almighty and to my Loving husband Mr. Ebikeme Leghemo and my entire family members.

ACKNOWLEDGEMENTS

My profound gratitude goes to God Almighty for his divine grace and infinite mercies. I give special thanks to my project supervisor PROF. MARTIN O. U. GASIOKWU for his commitment and direction in the course of this research. My special thanks also go to all the lecturers and my husband, Mr. Ebikeme leghemo. My appreciation goes to my children for their help and support, Deborah Deinmotei Leghemo, Victor Ebikeme jnr. Leghemo, Woyinebi Wisdom Leghemo, Tokoni Anthony leghemo, Tonye Noko, Tokoni Noko and Ebiara Humphrey. I also appreciate my Dad Mr. Marcus P. Ogori, my beloved brothers and sisters and Mr. Owen Ockiya for his assistance all through my work, my course mates especially Mrs. Pere Talborts for their various roles in achieving this objective.

TABLE OF CONTENT

	Pages
Title Page - - - - -	i
Declaration - - - - -	ii
Certification - - - - -	iii
Dedication - - - - -	iv
Acknowledgements - - - - -	v
Table of Content - - - - -	vi
Table of Cases - - - - -	x
Table of Legislation - - - - -	xi
Table of Treaties - - - - -	xiii
Table of Abbreviation - - - - -	xiv
Abstract - - - - -	xv

CHAPTER ONE: INTRODUCTION

1.1 Background to the Study - - - - -	1
1.2 Research Questions - - - - -	3
1.3 Statement of the Problem - - - - -	4
1.4 General and Specific Objectives - - - - -	5
1.5 Significance of the Study - - - - -	6
1.6 Scope of the Study - - - - -	7
1.7 Methods and Materials - - - - -	7

3.2.4 Extra-judicial Killing by Non-Law Enforcement Agents	-	54
3.2.5 Games and Sports	- - - - -	55
3.2.6 Juvenile Delinquencies	- - - - -	56

CHAPTER FOUR: CRIMINOLOGY OF EXTRA-JUDICIAL KILLING

4.1 Introduction	- - - - -	57
4.2 Theories of Crime and Extra-judicial Killing in Nigeria	-	58
4.2.1 The Social Disorganization Theory	- - - - -	58
4.2.2 The Social Class Theory	- - - - -	59
4.2.3 The Differential Association Theory	- - - - -	62
4.2.4 The Individual and Trait Theory	- - - - -	62
4.2.5 The Frustration Theory	- - - - -	63
4.2.6 Social Control Theory	- - - - -	63
4.2.7 Structural Strain Theory	- - - - -	65
4.3 Comparative Overview of Extra-judicial Killing		
in some Developed and Developing Countries	- -	68
4.3.1 Philippines-	- - - - -	69

TABLE OF CASES

	Pages
Adekunle v. State (2006) vol. 5 LRCNCC P.I	46
Agbo v. The State (2004) 7NWLR, (2006) NWLR (pt. 977) 545	46
Ally v. State (2010) 8 WRN 185.	24,25
Augustine Guobadia v the state	56
Clark & Anor v. A.G. Lagos State, (1986) 1 QLRN 119.	18
Ibikunle v. State (2007) 2NWLR (pt. 1019) 546	46
Modupe v State (1988) NWLR (pt. 87) 130.	56
Oludamilola v. State (2010) 8 WRN 185.	25
Olud imilola vs. The State	47
R. v. Controller of Prisons (1899) 1Q. B909 at p.914, State v. Ilori (1983) 1 SCNLR 94.	17
S. 298. In State vs. Nwankwo (reported) No E/11C/82 delivered on the 1/11/82 by Ubaezonu J.(as he then was) High Court, Enugu cited in G.O.S. Amadi op cit., p. 56	43
Sinaltrainal vs. Coca-Cola Co., 578 F., 3d 1252 (11th Cir.) Fla.2009)(http://definitions.uslegal.com)	37
Sunday Udosen v. The State; S. 298	
Sunkami Adebesin v. The State (2010) 14 Weekly Reports of <i>Nigeria</i> (WRN) 177	25

TABLE OF LEGISLATION

Constitution of the Federal Republic of Nigeria, 1999

S.12

Constitution of the Federal Republic of Nigeria, 2011

S. 33 (1)

S. 36 (9)

S. 174

S. 211

Force Order 337

The Constitution of the People's Republic of Bangladesh, As modified up to 31st may, 2000).

Article, 31

Article, 32.

Article, 33 (1)

Article, 35 (1), (3),(5)

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S. 271, 272 and 273

S. 308

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S. 221

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Article 121

Article 123

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Art 6,

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Art 8,

ICC;

Art 5,

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TABLE OF TREATIES

Universal Declaration of Human Rights (UDHR) (1948). Article 3

P. 381

Article 7

International Covenant on Civil and Political Rights, (ICCPR) (1966).

Article, 6

Art.7

Universal Declaration of Human Rights (UDHR) (1985)

Article, 2 (1) (3)

Article 5

LIST OF ABBREVIATION

CFRN	-	Constitution Federal Republic of Nigeria Development Training Institutes
CPC	-	Criminal Procedure Code
EA	-	Evidence Act
FO	-	Force Order
HRW	-	Human Right Watch
ICC	-	International Criminal Court
ICCPR	-	International Covenant on Civil and Political Rights
LFN	-	Law of the Federation of Nigeria
NHRCA	-	National Human Rights Commissions Act
NWLR	-	Nigeria Weekly Law Report
PAC	-	Police Act
ICC	-	International Criminal Court
UDHR	-	Universal Declaration of Human Rights
UN	-	United Nations
NPF	-	Nigerian Police Force
ACHPR	-	A African Charter on Human and Peoples' Right
OPCAT	-	Optional Protocol to the Convention Against Torture

ABSTRACT

The study is an overview of the causes of extrajudicial killing and the criminal justice process in Nigeria. The aim was to assess the effect of extrajudicial killing on legal protection, and the challenges on the Nigeria criminal justice process and efficient legal machinery that will bring culprit to justice. Previous literature on extrajudicial was reviewed in Philippines, Bangladesh, Indonesia, The Democratic Socialist Republic of Sri Lanka, El Salvador and Nigeria and the result of the analysis confirms that extrajudicial killing is prevalent in Nigeria and other countries with reasons differing from one country to the other. The study confirmed that there are no genuine reasons for the enactment of extrajudicial laws and that in most cases it was for selfish political reasons. The findings further confirmed that extrajudicial killing is never a solution to fighting criminality. Based on the result of the analysis, it was basically recommended that the use of private armies, vigilante and militia forces should be abolished in the country. The police should be made to pay compensation in any case of police extrajudicial killing. The section that appears to encourage extra judicial killing be reviewed or expunged from the 1999 Nigerian constitution and the criminal code. This study has contributed to knowledge as the work has shown the need to review and redraft section 33(2)(b) of the 1999 constitution and section 271 of the criminal code as they tend to encourage extrajudicial killing. Also, the study has also shown the necessity for psychiatric and psychological test to ascertain the soundness of applicants to the various armed forces especially the police force.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Life is the essence of human existence, fragile but desired by all. In a civilized and well informed society, respect for life is importantly appreciated. Such respect is a mark of decency, so that any form of arbitrariness, rascality or threat towards human life is not only frowned at, but condemned and deemed dishonourable to nature as well. For quite some time now, human that lives in Nigeria and globally has suffered gross abuse and destruction through act of extrajudicial killing by law enforcement agents, security outfits and non-law enforcement agents.

Though there is no legal definition of an extrajudicial killing, if a death is caused by law enforcement or non-law enforcement agents without following the legal rules or due judicial process, it can be considered extrajudicial. Unfortunately, neither the Criminal Justice System, the Criminal Code nor Penal Code or any of the statute books, not even the International Criminal Court Statute firmly describes or defines an offence as “extrajudicial killing”. But, the fact remains

that such offences as killing¹, murder², unlawful homicide and manslaughter¹ are defined and or provided for by both codes³. The International Criminal Court Statute too under genocides⁴, crime against humanity⁵, war crimes⁶, and the crime of aggression subject to articles 121 and 123 made similar provision⁷.

Despite these provisions, the prevalence of extra judicial killings in recent times has taken an upward swing. Reports have shown a wide spread disregard for human rights in the police force. Amnesty International reported that in 2010, hundreds of people were killed in police custody⁸. The Nigeria Police Force is responsible for hundreds of extrajudicial executions, other unlawful killings and enforced disappearances each year. The majority of cases go uninvestigated and unpunished. The families of the victims usually have no recourse to justice or redress. Many do not even get to find out what exactly happened to their loved ones.

¹ SS. 308, The Nigerian Criminal Code Schedule to the Criminal Act. Cap. C38 Law of Federation of Nigeria (LFN) 2004 (to be herein referred to as the Criminal Code).

² Ibid., SS. 315 and 319.

³ SS.220 Penal Code Cap. 18 Laws of Northern Nigeria 1963, defines culpable homicide as (a) causing death by doing an act with the intention of causing death or such bodily injury as likely to cause death; or (b) by doing an act with the knowledge that he is likely by such act likely 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 caused by provocation, mistake or accident.

⁴ Art 6, Rome Statute of International Court, 2002.

⁵ Art 7, loc cit.

⁶ Art 8, Ibid.

⁷ Art 5, ICC; loc cite Defining the crime and setting out conditions for courts exercise of jurisdiction.

⁸ Unlawful Killings and Enforced Disappearances; Amnesty International Report 2011, The State of the World's Human Rights.

Amnesty International also recorded cases of suspects who were tortured to death while in detention. In other cases, people are victims of enforced disappearances; the police tell the families that they were transferred to a different police station or released on bail, but have no documentation to confirm it. Besides, the activities of the police, there had been other cases of extrajudicial killing involving other law enforcement agents and non-law enforcement agents. The cases of APO six and UNIPORT four in Nigeria readily come to mind as recent cases where victims were gruesomely murdered with little or nothing done to prosecute the perpetrators of the crime (BBC News, 2009; Random News, October, 2012)⁹. This study therefore is an attempt to determine the causes of extrajudicial killing in Nigeria and the lacuna that is inherent in the Nigeria criminal justice process in a bid to filling the gap in literature.

1.2 Research Questions

Extra Judicial Killing is the killing of a person by governmental authorities without the sanction of any judicial proceeding or any legal process¹⁰. The term extrajudicial means the process, which is done, given, or affected outside the

⁹ Will Nigeria Apo Six ever get Justice, BBC News, UK, Tuesday, 5th May, 2009; Justice for the Uniport 4 Students Killed in Port Harcourt Nigeria, My Online Diary, Random News, October, 2012.

¹⁰ Inciardi J. A.: *Criminal Justice, 1st ed.* (Boston: McGraw Hill, 2004) p.139

course of regular judicial proceedings¹¹. It refers to actions outside the judicial system. Though there is no legal definition of an extrajudicial killing, but if a death is caused by a law enforcement authority without following the legal rules or due judicial process, it can be considered as extrajudicial killing. Extrajudicial Punishments are unlawful by nature, because they break the process of legal jurisdiction. It is a violation of the rights of human of person killed; therefore it is imperative that it is curtailed.

Consequently, this study is guided by the following research questions: Are there extrajudicial killings in Nigeria? What provokes extrajudicial killing in Nigeria? What are the challenges and the way forward for the criminal justice process in Nigeria?

1.3 Statement of the Problem

Presumption of innocence is the universally accepted legal maxim, which denotes that a person remains not guilty until his or her culpability is proven. The very purpose of the judicial administration is to disseminate or dispense justice in all litigations that appears before the court. Therefore, no one should be penalized or killed without awarding reasonable opportunities to defend

¹¹ West Encyclopedia of American law, edition.2nd.2008.

oneself. Any breach of this rule will bring about miscarriage of justice. The right to life is not only a natural right, it is as well legally guaranteed. But despite these provisions, domestic and international, indiscriminate destruction of human life with impunity is rather the order of the day in Nigeria and elsewhere.

In Nigeria, the prevalence of extra judicial killings in recent times has increased to the dismay of law abiding citizens. Reports have shown a wide spread disregard for human rights in the police force. Amnesty International reported that in 2010, hundreds of people were killed in police custody¹². This study is therefore faced with the problem of assessing the causes of extrajudicial killing and the challenges it poses to the Nigerian criminal justice process.

1.4 General and Specific Objectives

The primary aim of the study is to assess the challenges extrajudicial killing has posed to the Nigeria criminal justice process. The specific are as follows:

1. It will highlight the heinous effect of extrajudicial killing on the right to life.
2. It will further seek for an effective legal protection for the right to life.

¹² Unlawful Killings and Enforced Disappearances; Amnesty International Report 2011, The State of the World's Human Rights.

3. Lastly, it will seek for an efficient legal machinery to check excesses and bring culprit to justice.

1.5 Significance of the Study

The study reveals the lacuna in the criminal justice process and the incapacity of the constitution in checkmating the cases of extrajudicial killing in Nigeria. Also, the findings and recommendation will seek to address the lacuna that extrajudicial killing has on the Nigeria criminal justice process. Lastly, it has offered insight to the extent of lives that have been wasted, and advocates for a check on the excesses of security and non-security agents on the issue of extrajudicial killing.

1.6 Scope of the Study

The scope covers law of homicide and human rights in Nigeria with examples of extrajudicial killing in Philippines, Bangladesh, Indonesia, Democratic Socialist Republic of Sri Lanka, El Salvador and International Criminal Law.

1.7 Materials and Methods

The method applied in this doctrinal. The work exposes the prevalence of extrajudicial killing in Nigeria and some other places and analyses comparatively, current position of criminal laws on the subject matter. Secondary source materials include text books, journals, articles, workshops and seminar papers, newspapers and internet materials etc.

1.8 Literature Review

Extra Judicial Killing is the killing of a person by governmental authorities without the sanction of any judicial proceeding or any legal process¹³. The term extrajudicial means the process, which is done, given, or affected outside the course of regular judicial proceedings¹⁴. It refers to actions outside the judicial system. Extrajudicial Punishments are unlawful by nature, because they break the process of legal jurisdiction in which they occur. Most of the times Extra Judicial Killing targets the leading politicians, religious figures, trade unions leaders and sometimes socially popular figures¹⁵. Extra Judicial killings are most times carried out by government authorities like the armed forces and police.

¹³ J. A. Inciard: Criminal Justice, 1st ed. (Boston: McGraw Hill, 2004) p.139.

¹⁴ West's Encyclopedia of American law, ed.2nd.2008.

¹⁵ Extra-judicial killings some issues by Barrister Harun Ur Rashid, The daily Star, June 18,2005.

Though there is no legal definition of an extrajudicial killing, but if a death is caused by law enforcement authority without following the legal rules or due judicial process, it can be considered as extrajudicial killing. Extra-judicial killings, however, are those that are not committed by the order of a judiciary or court under the laws of the land. Killings, which have been executed beyond judicial process, as a result of which right to life of the victim is denied, therefore, all reasonable legitimate opportunities, remain inapplicable to the alleged sufferer.

The term also includes illegal executions or killings by law-enforcing agencies or death in custody. It is also said that death, which are not executed by the order of the court in accordance with the laws, are designated as extra-judicial killing¹⁶. This is a sort of punishment by the state or some other official authority without the permission of a court or legal authority. It is further defined as a deliberate killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees, which are recognized as indispensable by civilized people¹⁷.

Existence of extra-judicial punishment exposes the shortcomings of the legal machinery of the government concerned to execute sentences properly.

¹⁶ Extra-judicial killings some issues by Barrister Harun Ur Rashid, The daily Star, June 18,2005

¹⁷ *Sinaltrainal vs. Coca-Cola Co.*,578 F.,3d 1252 (11th Cir. Fla.2009)(<http://definitions.uslegal.com>)

Extrajudicial punishment is often a feature of politically repressive regimes using death squads for killing opponents for their political gains. Right to have equal protection of law means both the parties to a proceeding have the right to defend themselves with the counsel of their lawyer as because they were unable to understand the legal scope to prove the case, or discharge or acquittal from the allegation. This right has been guaranteed in the constitution as well as in the International laws¹⁸.

If any killing occurs by the law reinforcement battalion of the country outside the authority of the court will be known as extrajudicial killing¹⁹. It is a violation in democracy because democracy is based on the right of humans and thus is guided with rules and regulation. Civil court has the authority to give order on execution and it is the highest state of the land.

Extrajudicial killing basically started from the very beginning of civilization when the lust for power arose, the killing began in the form of assassination. People like Julius Caésar fell victim of extrajudicial killing. During the civil war there is a term used as 'lynching'. Lynching is an extrajudicial execution carried out by mobs, often by hanging, but also by burning at the stake or shooting, in order to punish an alleged transgressor, or to intimidate, control or

¹⁸ Article. 3, Universal Declaration of Human Rights (UDHR) 1948.

¹⁹ Ibid, p.381

otherwise manipulate a population of people, however large or small²⁰ . Today lynching is defined in the united state by some code of law as “any act of violence inflicted by a mob upon the body of another person which results in the death of the person”²¹ .

In Europe early example of a similar phenomenon are found in the proceedings of the vehmgerichte in medieval Germany and of Lyford Law, Gibbet Law or Halifax law in England and Cowper justice and Jeddart justice in Scotland. In Imperial Russia anti- Jewish lynching’s called Pogoms occurred in the 19th-early 20th centuries²² . In Britain a series of race riots broke out in several cities in 1919 between whites and black sailors.

In Liverpool, after a black sailor had been stabbed by two whites in a pub, his friend attacked pubs in revenge. In response, the police raided lodging houses with black occupants, accompanied by an “enraged lynch mob’ . Charles Wotton, a young black seaman who had not been involved in the attack was chased into the river Mersey and drowned after being pelted missiles thrown by

²⁰ Law Teacher, UK. (November 2013). Extra Judicial Punishments and Killings Constitutional Law Essay. Retrieved from <http://www.lawteacher.net/free-law-essays/constitutional-law/extra-judicial-punishments-and-killings-on-constitutional-law-essay.php?cref=1>

²¹ Ibid, p.18

²² Ibid, p.41

the mob. The Charles Wotton College in Liverpool was named after his memory²³.

The judicial process follows the criminal laws of the country where, the process from the institution of a criminal case to the execution of judgment are clearly prescribed. In traditional legal system, a criminal case is filed through a police station or direct to the magistrate by any of the party. The magistrate issues a warrant of arrest to the alleged person and order for investigation of the case to the concerned authority. After submitting the charge sheet, hearing the parties and their witnesses through examination and cross examination, a magistrate awards a particular sentence. If it is a death sentence, execution of it is subject to the confirmation of the High Court Division.

Beyond the abovementioned process and authority, any death caused by any individual, government or nongovernmental agencies would be illegal, ultra-vires, gross violation of human rights and therefore, subject to judicial enquiry and adequate punishment. During the trial period, both parties are given the opportunity to counsel with their legal counselor. The accused has not been denied this right in the ordinary criminal proceedings. If this right is denied unjustly with any of the party convicted accordingly, injustice will happen

²³ Ibid, p.57

inevitably. So, the execution of sentences particularly death sentences must be in due process of the existing criminal proceedings.

The extrajudicial killing of Princess Diana Spencer and Dodi readily comes to mind as one murder that was masterminded by the government. For some years after 1997, it was theorized that there was an orchestrated criminal conspiracy surrounding the death of Diana, Princess of Wales. Official investigations in both Britain and France found that Diana died in a manner consistent with media reports following the fatal car crash in Paris on 31 August 1997. In 1999, a French investigation concluded that Diana died as a result of the accident.²⁴ However, a French investigator, Judge Hervé Stephan, concluded that the paparazzi were some distance from the Mercedes S280 when it crashed and were not responsible.²⁵ After hearing evidence at the British inquest, a jury in 2008 returned a verdict of "unlawful killing" by driver Henri Paul and the paparazzi pursuing the car.²⁶

Despite this verdict, there were still some controversy surrounding the death of Princess Diana and Dodi. Prominent in disputing the official version of events

²⁴ Paul Webster and Stuart Millar "[Diana verdict sparks Fayed appeal](#)", *The Guardian*, 4 September 1999.

²⁵ Martyn Gregory "[Stranded on Planet Fayed](#)", *The Spectator*, 27 June 2007.

²⁶ "[Diana jury blames paparazzi and Henri Paul for her 'unlawful killing'](#)". *Daily Telegraph*. 7 April 2008. Retrieved 12 October 2013.

have been the British newspaper Daily Express²⁷ and Egyptian businessman Mohamed Al-Fayed, whose son, Dodi, was Diana's boyfriend at the time and also died with her in the crash. A special Metropolitan Police inquiry team was established in 2004 headed by Commissioner John Stevens to investigate the various conspiracy theories which led up to the British inquest. This investigation looked into 175 conspiracy claims that had been made by Fayed. Fayed has persistently suggested what were found to be conspiracy theories at the inquest and has repeatedly claimed that his son and Diana were murdered.²⁸

One of the main motives which has been advanced for alleged murder includes suggestions Diana was pregnant with Dodi Fayed's child and the couple were about to get engaged. The alleged dislike of the idea of a non-Christian within the British Royal Family meant such a relationship between the mother of the future king and a prominent Egyptian Muslim would not be tolerated.²⁹ The absence of CCTV images showing the Mercedes journey from the hotel to the crash site has been frequently cited as evidence of an organized conspiracy. According to The Independent newspaper in 2006, there were more than 14

²⁷ Louise Jack "[The Express' and Diana: Cover-ups, spies and conspiracies](#)", *The Independent*, 18 December 2006.

²⁸ [Diana murdered, Al Fayed claims](#)", BBC News, 18 February 2008.

²⁹ "[The detail of the investigation into the claims of pregnancy and the nature of her relationship with Dodi Fayed are in Chapter 1 of the Operation Paget report](#)". Metropolitan Police. Archived from [the original](#) (PDF) on 2 May 2013. Retrieved 2 November 2010.

CCTV cameras in the Pont de l'Alma underpass, though none recorded footage of the fatal collision.³⁰

Extra-judicial killing is however, by no means acceptable in anywhere in the civilized world, because the killing occurs beyond any judicial capacity. Though there is no legal definition of an extrajudicial killing, if a death is caused by a law enforcement official without following the legal rules or due judicial process, it can be considered extrajudicial. Crossfire is an extrajudicial execution that is in the flagrant violation of the constitution and the international human rights conventions.

Although some people believe that extrajudicial killing of hardened criminals helps ease the problem of “terrorism”, in reality, it encourages lawlessness and aggravates ‘state terrorism’. In different countries across the world, people in power have created the impression that killing “terrorist” without bringing them to justice can help curb “terrorism”, but such extrajudicial killing can neither bring peace nor eradicate “terrorism”.

³⁰ [Princess Diana's death: the conspiracy theories](#)". The Daily Telegraph. 18 August 2013. Retrieved 17 October 2016.

Criminal justice exists for the control and prevention of crime. As a process, the criminal justice process involves all the agencies and procedures set up to manage both crimes and those accused of violating the criminal law.³¹ The criminal justice process cannot be conveniently discussed without reference to the criminal justice system because the process takes place within the system. And so the criminal justice system is the collective institutions through which an accused offender passes until the accusations have been disposed of or the assessed punishment concluded. It has three³² components namely the law enforcement, the judicial process and correction.

Criminal justice process involves series of steps beginning with a complaint or information of crime commission, followed by a criminal investigation and arrest, prosecution processes and ending with a probable acquittal/discharge or the release of a convicted offender after serving his term on even the execution of an offender where applicable.³³ According to Reid the accused, like a product goes from station to station in the system; and at each station something is done

³¹ J. A. Inciard: *Criminal Justice*, 1st ed. (Boston: McGraw Hill, 2004) p.139.

³² Bryan A. Garner, *Black Law Dictionary ap.cit.*,381

³³ *Ibid*, p.381

in the system; and something is done to the accused. If he “passes” inspection, he moves on to the next station.

Theoretically, if he goes through the entire system and “passes” he is ready to return to society.³⁴ The criminal justice system is the major meeting place of the police and the citizen, and it is here that the clash between the exercise of police powers and the claim of rights by the citizen occurs.³⁵ However, within the criminal justice process, justice is often frustrated with acts of extrajudicial killing either at the arrest stage or at the prosecution stage. Ordinarily, without applying the law, everyone in the society is presumed innocent until the person commits a crime or is accused of one.

Legally speaking it is trite that an accused is presumed innocent until proven guilty. As such the Criminal Justice process within the system is set on motion the moment a complaint is made to the police by the society or any member of the society or by the police on its own detecting the commission of a crime.³⁶ Then the accused/suspect is ready for “processing”. He may or may not go through the process of prosecution depending on the outcome of the investigation and his involvement in the alleged crime. The police can

³⁴S. T. Reid, *Crime and Criminology*, (Hinsdale, Illinois’ The Dryden Press, 1976) p.260 (cited in G.O.S. Amadiop.cit, p.32-33)

³⁵G.O.S. Amadi op.cit, p.31

³⁶G.O.S. Amadi op.cit, p.31

prosecute,³⁷ subject to constitutional provision.³⁸ He may even obtain a nolleprosequi or withdrawal of charge by the Attorney-General as the case may be. Which power overrides that of the police (or the private persons) to prosecute³⁹ and it is not subject to control by the court.⁴⁰

And although the police have no power to enter a nolleprosequi, they can always if the circumstances warrants, withdraw their charges from the court.⁴¹

When any of these exculpatory circumstances take place, the accused is free to leave the system and return to the society. Nonetheless, a nolleprosequi or withdrawal of a charge is not equivalent to an acquittal; and it is no bar to a new indictment or charge for the same offence.⁴² Of course, crimes are not status barred, and so the accused may be brought back into the criminal justice system if the need arises.⁴³

Where the accused is found guilty and is sentenced to a prison term, he is institutionalized for the process of reformation and rehabilitation before he gets

³⁷S.23, of the Police Act Cap. P19, LFN 2004, with Registrations Robbery/Firearms Special Provision Act and Advance Fee Fraud Act 2006.

³⁸Ss. 174,211, The 2011 Constitution op. cit. subject to the provisions of the constitutions which relates to the power of the Attorney-General of the Federation and the state as the case may be, to institute and undertake. Take over and continue or discontinue criminal proceedings against any person before any court of law in Nigeria except the court martial.

³⁹G.O.S. Amadi op.cit.p.37

⁴⁰R.v.Comptroller of Prsents (1899) 1Q.B909 at p.914, State v. Ilori (1983) 1 SCNLR 94.

⁴¹ S.23,Police Act.

⁴²G.O.S. Amadi loc.cit., p.38

⁴³The Criminal Procedure Act, ss. 73 (3), 74 (4), the Criminal Procedure Code, s.253 (3). See also Clark &Anor v. A.G. Lagos State, (1986) 1 QLRN 119. In that case the court held inter alia that the effect of a nolleprosequi is a mere discharge and not an acquittal. Also s. 36(9) 2011 Constitution.

back to the society. But more so, where he gets convicted and receives a capital punishment, in the words of Professor Amadi, “the process of reformation and rehabilitation becomes a non-issue since eventually, he will be hanged or executed as the case may be or he may remain in the prison for life. Yet if given a reprieve, he still has a chance of leaving the system and returning to the society.

However, although the contemporary criminal justice process and system were introduced in Nigeria by the British, but prior to this introduction, our various indigenous communities, for example the Ibo’s and their traditional ways of apprehending offenders and suspects, taking them to their local chiefs and village heads for trial to ascertain their innocence. But despite their differences especially in modes of operations,⁴⁴ both systems, share a striking similarity of an open trial according to laid down procedure for each offence. Thus even the indigenous system does not welcome extrajudicial killing.

Extrajudicial killing by its nature offends criminal justice, obstructs the criminal justice process and frustrates due process. Following due process in criminal justice process will bring a general sense of order in the system; offenders will

⁴⁴Ss.138(2), 140, The Evidence Act Cap, 112, Laws of Federation of Nigeria (LFN), 2004. While the indigenous system is inquisitorial and the accused is already presumed guilty until proven innocent by himself, the contemporary system is accusatorial and the accused is presumed innocent until proven guilty by the prosecutor.

be properly handled without escaping the wrath of the law. Unfortunately, neither the Criminal Justice System, the Criminal Code nor Penal Code or any of the statute books, not even the International Criminal Court Statute firmly describes or defines an offence as “extrajudicial killing”. But, the fact remains that such offences as killing⁴⁵, murder⁴⁶, unlawful homicide and manslaughter⁴⁷ are defined and or provided for by both codes⁴⁸. The International Criminal Court Statute too under genocides⁴⁹, crime against humanity⁵⁰, war crimes⁵¹, and the crime of aggression subject to articles 121 and 123 made similar provision⁵².

The Chapter IV of the 1999 constitution of the Federal Republic of Nigeria, which is a supreme law, sets out the fundamental human rights of the citizens of the Nigeria. The provisions of the Constitution are clearly against torture and killing and promote the right to life. The Federal Government also established the National Human Rights Commission which is charged to deal with matters

⁴⁵ SS. 308, The Nigerian Criminal Code Schedule to the Criminal Act. Cap. C38 Law of Federation of Nigeria (LFN) 2004 (to be herein referred to as the Criminal Code).

⁴⁶ Ibid., SS. 315 and 319.

⁴⁷ Ibid., SS. 315 and 317.

⁴⁸ SS.220 Penal Code Cap. 18 Laws of Northern Nigeria 1963, defines culpable homicide as (a) causing death by doing an act with the intention of causing death or such bodily injury as likely to cause death; or (b) by doing an act with the knowledge that he is likely by such act likely 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 caused by provocation, mistake or accident.

⁴⁹ Art 6, Rome Statute of International Court, 2002.

⁵⁰ Art 7, loc cit.

⁵¹ Art 8, ibid.

⁵² Art 5, ICC; loc cite Defining the crime and setting out conditions for courts exercise of jurisdiction.

relating to the protection of human rights as guaranteed by the Constitution, the African Charter on Human and Peoples' Rights, the United Nations Charter and the Universal Declaration on Human Rights and other International Treaties on human rights to which Nigeria is a signatory.⁵³

Although Nigeria has ratified the International Covenant on Civil and Political Rights (ICCPR) in 1993, the Convention against Torture (CAT) in 2001 and the Optional Protocol to the Convention against Torture (OPCAT) in 2009 they have not been integrated into the local laws. Nigeria is also, yet to recognize the competence of the Committee against Torture to receive communications from individuals under article 22 of CAT. Nigeria has established a National Committee on Torture as its National Preventive Mechanism (NPM) for the prevention of torture at the domestic level in accordance with the obligations of OPCAT.

The committee is charged with the duty to receive and consider complaints on torture; conduct visits to places of detention and examine allegations of torture, prevent torture by reviewing the treatment of persons in detention, put in place, a national anti-torture policy. Nigeria is also a State Party to the African Charter on Human and Peoples Rights (ACHPR). Though there are presently no legal

⁵³ Section 5 (a) National Human Rights Commissions Act

provisions criminalizing torture or providing compensation to victims of torture in accordance with the UN Convention against Torture and extra judicial killings. This has created a lacuna in the Nigeria criminal judicial process.

The lacuna in the Nigerian criminal judicial process as it relates to extrajudicial killings also lies in the fact that there is no mechanism in place in the constitution or any other law to check and monitor the law enforcement agencies. The absence of television monitoring device in the 'questioning room' has afforded the law enforcement agencies the luxury to get away with extrajudicial killings and torture. Internally, the lack of internal control in the NPF promotes crime by its personnel. In order to repair its reputation and prevent future crimes by its personnel, the NPF must establish internal accountability mechanisms that deter police misconduct and ensure a thorough investigation into allegations of misconduct.

The Nigerian government has repeatedly expressed willingness to address the problems in the criminal justice system with an improve access to justice and reform the Nigeria Police Force. Despite several review panels in recent years, which presented detailed recommendations for improvement, little has been done. A review of the Police Act (1990) began in 2004, but the draft bill has

been pending since October 2006. Laws, regulations, and codes of conduct to protect human rights are not enforced.

CHAPTER TWO

EXTRA JUDICIAL KILLING AND CRIMINAL JUSTICE PROCESS

This chapter will carry out an extensive literature review of extra judicial killing and criminal justice process. This will be achieved with the following headings:

2.1 Definition of Terms

2.1.1 Murder

2.1.2 Manslaughter

2.1.3 Homicide

2.1.4 Killing

2.2 International Criminal Laws

2.3 Criminal Justice

2.4 Criminal Justice Process

2.5 Extra Judicial Killing

2.3 Definition of Terms

The following words and terms are defined so as to ensure proper understanding of the entire research work:

2.1.1 Murder

The criminal code has a detailed definition of murder. Murder has been variously defined as the killing of a human being with malice aforethought⁵⁴, and as the unlawful premeditated killing of one person by another⁵⁵. The word murder encapsulates all our moral beliefs as to the dreadful and terrible nature of the crime. It is an irreversible crime of taking away another's life. In some countries, it incurs death penalty in others, a fixed sentence of life imprisonment⁵⁶, and a sentence that must be imposed upon all murderers.

According to the criminal code⁵⁷, any person who unlawfully kills another is guilty of an offence which is called murder or manslaughter, according to the

⁵⁴ B.A. Garner: Black Law Dictionary 7th Ed. (USA: West Group Publishers, 1999) p.1038.

⁵⁵ C. Soanes, A. Stevenson: Concise Oxford English Dictionary 11th Ed. (Oxford University Press, 2007) p. 941.

⁵⁶ C.M.V. Clarkson; op. cit, p.201.

⁵⁷ S. 315 of the Criminal Code, op. cit.

circumstances of the case. And for the killing to be unlawful, it must be intentional, deliberate or premeditated. The code also defined murder⁵⁸. For a conviction for murder to hold, the prosecution must therefore establish intent to kill or cause grievous harm which must be proved beyond reasonable doubt⁵⁹.

2.1.2 Manslaughter

A person who unlawfully kills another in such circumstances as not to constitute murder is guilty of manslaughter⁶⁰. It is the unlawful killing of a human being without malice aforethought⁶¹. The Concise Oxford English Dictionary⁶² defines it as the crime of killing a human being without malice aforethought, or in circumstances not amounting to murder.

2.1.3 Homicide

The Criminal Code did not define homicide but in defining unlawful homicide it states: that any person who unlawfully kills another is guilty of an offence

⁵⁸ Following circumstances that is to say: (1) If the offender intends to cause the death of the person killed, or that of some other person, (2) if the offender intends to do to the person killed or some other person some grievous harm, (3) if death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such nature as to likely endanger human life; (4) if the offender intends to do grievous bodily harm to some person for the purpose of facilitating the commission of an offence which is such that the offender may be arrested without warrant or for the purpose of facilitating the flight of the offender who has committed or attempted to commit any such offence; (5) if death is caused administering any stupefying or overpowering things for either of the purpose aforesaid, (6) if death is caused by willfully stopping the breath of any person for either of such purpose, is guilty of murder. In the second case, it is immaterial that the offender did not intend to hurt the particular person killed. In the third case it is immaterial that the offender did not intend to hurt any person. In the last three cases it is immaterial that the offender did not intend to cause death or did not know that death was likely to result. Also see *Ally v. State* (2010) 8 WRN 185.

⁵⁹ *Oludamilola v. State op. cit, Ally v. State* (2010) 8 WRN 185, *Sunkami Adebessin v. The State* (2010) 14 WRN 177

⁶⁰ S.317, C.C. op. cit.

⁶¹ Bryan A. Garner, op., cit., p. 1038.

⁶² C. Soanes, A. Stevenson op., cit., p.869.

which is called murder or manslaughter, according to the circumstance of the case⁶³. However, both the Black Law Dictionary⁶⁴ and the Concise Oxford Dictionary⁶⁵ define homicide as the killing of one person by another. The Black Law Dictionary specifically says that the legal term for killing a man, whether lawfully or unlawfully is homicide.

2.1.4 Killing

Dictionary⁶⁶ simply defines killing as an act of causing death. However, section 308 of the criminal Code⁶⁷, states that: Except as hereinafter set forth, any person who causes the death of another, directly or indirectly, by any means whatsoever, is deemed to have killed that other person.

2.4 International Criminal Law

International Criminal Law is the law that governs international crimes. It is that body of law where penal aspect of international law including international humanitarian law, and the international aspect of national criminal law converge⁶⁸. Presumption of innocence is the universally accepted legal maxim,

⁶³ S. 315, C.C. op., cit.

⁶⁴ 6th ed., p. 739.

⁶⁵ 11th ed., p. 682.

⁶⁶ Concise Oxford Dictionary., loc. Cit.. p. 782.

⁶⁷ S. 308.

⁶⁸ K. Kittichaisaree, International Criminal Law (USA: Oxford University Press, 2011) p. 1, International Humanitarian Law is the body of law protecting victims of armed conflict. However, International Criminal Court is the criminal court established to prosecute international crimes namely genocide, crime against

which denotes that the person remains blameless until his or her culpability is proven. The very purpose of the judicial administration is to disseminate or dispense justice in litigations that appears before the court.

Therefore, no one should be killed without awarding reasonable opportunities to defend oneself. Any breach of this rule will bring about miscarriage of justice and the judicial institutions will lose its credibility from the heart of the people at large. Islamic legal system also emphasizes to establish justice in all cases, even if it is injurious to one's self-interest or interest of near and dear ones. International human rights instrument such as Universal Declaration of Human Rights (UDHR, 1948), International Covenant on Civil and Political Right (ICCPR, 1966), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 etc., declared the inviolability of the life and liberty of an individual.

The focuses of the conventions are summarized herewith. Such as every person has the inherent right to life, liberty and security⁶⁹. This right shall be protected by law and no one shall be arbitrarily deprived of his life⁷⁰. No one should be subjected to torture, or to cruel, inhuman or degrading treatment or

humanity, war crimes subject to the provision of article 121 and 123 of the Roman Statute. It is the outcome of the Rome conference of 1998.

⁶⁹ Article. 3, Universal Declaration of Human Rights (UDHR) 1948.

⁷⁰ Article, 6, International Covenant on Civil and Political Rights, (ICCPR) 1966.

punishment⁷¹. An order from a superior officer or a public authority may not be invoked as a justification of torture; therefore, each state party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction⁷².

The Covenants are also attributed to the entitling equality before law and equal access to law without any discrimination, it is stated, “All are equal before the law and are entitled without any discrimination, to equal protection of the law⁷³.”

The spirit of these universally accepted norms are that a state would be obliged to maintain rights of the individual particularly the rights of an accused. Under international obligation, a state is responsible for establishing on the one side, fair and impartial judicial process through which no criminal could remain unpunished, on the other side, ensuring the execution of punishment including death sentence not beyond judicial verdict by any means.

2.5 Criminal Justice

Several authors and writers have made attempt to convey the true meaning of the phrase “criminal justice”. Justice also has been variously discussed by

⁷¹ Article, 5 of UDHR, Art.7 of ICCPR

⁷² Article, 2 (1) (3), Convention against Torture and other cruel, Inhuman or Degrading Treatment or Punishment, 1985.

⁷³ Article, 7 of UDHR.

writers, like Aristotle⁷⁴, Thomas Aquinas and John Austine⁷⁵, Salmond⁷⁶, Putman⁷⁷, Rawls⁷⁸ Paton⁷⁹, yet there is no precise and concrete definition of the phenomenon. Some opinions strongly believe that natural law, the Law of Heaven is the standard of justice to which all positive laws must conform⁸⁰. A dictionary definition has it that justice is the quality of being just; the administration of the law or authority in maintaining the law. Whereas, Natural Law approach sees justice in a sense of morality and equity⁸¹.

Positive law approach of justice is rather restrained and qualified such as natural justice, social justice or functional justice⁸². Criminal justice should well then be seen in this restrictive sense. In that wise, it is according to the law relating to crimes and trial of persons accused of committing crimes. It is justice which a person receives as his desert after he has been tried for committing an offence under the law creating that offence and in accordance with the legal procedure

⁷⁴ Aristotle, Nichomacean Ethics, Book V para 3:1131a-4:1132b (cited in Freeman M.D.A., Lloyds' Introduction to Jurisprudence, 7th Ed. (London: Sweet & Maxwell, 2001) p.523.

⁷⁵ T. Aquinas, Summa Theologia Part I; John Austin: Lectures on Jurisprudence edited by Robert Campbell.

⁷⁶ G. Williams, Salmond on Jurisprudence 11th Ed. (London: Sweet & Maxwell, 1957) p. 41 (cited in G.O.S. Amadi op. cit., p.16).

⁷⁷ R.A. Putman et al: Women Culture and Development (1995) p. 303 (cited in M.D.A. Freeman) op cit. p. 523.

⁷⁸ M.D.A. Freeman loc cit, pp. 523-524.

⁷⁹ G.O.S. Amadi op. cit., p.16.

⁸⁰ Loc cit.

⁸¹ The Concise Oxford English Dictionary, op. cit., p.772.

⁸² F. Adaramola: Basic Jurisprudence, 2nd Ed. (Lagos: Nayee Publishing Co. Ltd 2003)p. 239. He defines functional justice as the application of the rules and principles of legal justice to social everyday problem that are brought before the courts and quasi-judicial and administrative bodies. It connotes justice in the perpetual, precarious and inevitable balancing of jural relationship between individual citizens and communal institutions such as government and its agencies on the other.

for trial⁸³. The U.S. Supreme Court in *Booth vs. Maryland*⁸⁴ held that to administer justice, the decision of the court should be based on reason and relevant evidence concerning the crime and the defendant rather than on emotion.

Criminal justice can be defined either as a legal process or as an academic discipline. As a legal process, it involves the procedure of processing the person accused of committing crime from the arrest to the final disposal of the case.

According to Clare and Kramer (1977)⁸⁵:

It is possible to view criminal justice as a consequence of decision making stages. Through this system offenders are either passed on to the next stage or diverted out of the system. This diversion may be due to any number of reasons such as lack of evidence or a desire to reduce the load on the system. Each subsequent stage of the process is dependent on upon the previous stage for its elements; it is this dependence that best exemplifies the system nature of the criminal justice.

As an academic discipline, criminal justice studies provide a thorough understanding of the criminal justice system in relation to the society. Students interested in pursuing professional career within the criminal justice system

⁸³ G.O.S. Amadi loc. cit, p.28.

⁸⁴ 482 U.S. 496 (1987).

⁸⁵ Clare P.K. and Kramer, J. H. (1977) *Introduction to American Corrections*, Boston, M.A: Holbrook Press, Inc.

focus on subjects with concentration on law enforcement, corrections or legal studies. The subject covered includes criminal law, criminal investigation, police science and management, introduction to criminology and security management etc. The criminal justice scholar must be knowledgeable in law and legal process because the criminal justice system is a legal entity.

From the legal perspective, a criminal is someone who has committed crime(s), and has been found to commit the crime(s) through a criminal justice process involving the police and the criminal courts leading to conviction. In order to legally establish that an individual is a criminal, that person must have violated a known criminal law; must have been processed through a criminal courts and found guilty; and subsequently convicted and punished. There is a problem with this strict legal definition because not all persons who violate the criminal law are processed through the criminal justice system. For instance, certain persons such as the insane and persons by virtue of their position have immunity against criminal prosecution. These include diplomats serving in foreign countries and the 1999 Nigeria constitution provided immunity for executives at the state and federal levels.

2.6 Criminal Justice Process

The Constitution universally has guaranteed the rights of protection of law for its citizen without discrimination. It is stated that “to enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law⁸⁶.” Concerning the right to protection of life and personal liberty, it is provided that “No person shall be deprived of life or personal liberties save in accordance with law⁸⁷.” It is further stated, “No person, who is arrested, shall be detained in custody without being informed, as soon it may be of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice⁸⁸.”

Furthermore, the constitution makes clear procedural direction for fair trial and punishment of the offenders. It provides that, “No person, shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than, or different from, that which might have been inflicted under the law in force at

⁸⁶ Article, 31, The Constitution of the People’s Republic of Bangladesh, (As modified up to 31st may, 2000), Law Justice and Parliamentary Affairs, Peoples Republic of Bangladesh.

⁸⁷ Article, 32 *ibid*.

⁸⁸ Article, 33 (1)

the time of commission of the offence. Every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law. No person shall be subject to torture or to cruel, inhuman, or degrading punishment or treatment⁸⁹.”

According to the above constitutional declaration, it is absolute violation of the law of the land to kill a person extra-judicially without providing any opportunity as assured in the constitution to the alleged person.

In awarding judicial sentence and execution, concerned states commonly observe the judicial machinery of the state. This judicial process follows the criminal laws of the country where, the process from the institution of a criminal case to the execution of judgment are clearly prescribed. Moreover, Jurisdiction and power of the court to pronounce the sentences particularly death sentences in a criminal proceeding are also to be prescribed. In both Islamic and traditional legal system, a criminal case either is filed through a police station or direct to the magistrate or *QÉdi* by any of the party. The magistrate normally issues a warrant of arrest to the alleged person and order for investigating the case to the concerned authority. After submitting the charge sheet, hearing the

⁸⁹ Article, 35 (1), (3),(5)

parties and their witnesses through examination and cross examination, a magistrate awards a particular sentence.

Beyond the abovementioned process and authority, any death caused by any individual, government or nongovernment agencies would be illegal and a gross violation of human rights and therefore, subject to judicial enquiry and adequate punishment. During the trial period, both parties are given the opportunity to counsel with their legal counselor. The accused has not been denied this right in the ordinary criminal proceedings. If this right is withdrawn unjustly and conviction made to a party, injustice will happen inevitably. So, the execution of sentences particularly death sentences must be in due process of the existing criminal proceedings. Extra-judicial killing is however, by no means acceptable in anywhere in the civilized world, because the killing occurs beyond any judicial capacity.

The Criminal justice process exists for the implementation of this provision in the constitution. As a process, it involves all the agencies and procedures set up to manage both crime and those accused of violating the criminal law³⁵. And the criminal justice system is the collective institutions through which an accused offender passes until the accusations have been disposed of or the

assessed punishment concluded. It has three components namely the law enforcement, the judicial process and corrections⁹⁰.

The criminal justice process involves series of steps beginning with a complaint or information of a crime commission, followed by a criminal investigation and arrest, prosecution processes and ending with a probable acquittal or discharge or the release of a convicted offender after serving his term or even the execution of an offender where applicable⁹¹. According to Reid, the accused like a product goes from station to station in the system and at each station something is done in the system; and something is done to the accused. If he passes inspection, he moves on to the next station.

Theoretically, if he goes through the entire system and “passes”, he is ready to return to society⁹². The criminal justice system is the major meeting place of the police and the citizen, and it is here that the clash between the exercise of police powers and the claim of rights by the citizen occurs⁹³. However, within the criminal justice process, justice is often frustrated with acts of extrajudicial killing either at the arrest stage or at the prosecution stage.

⁹⁰ Black Law Dictionary op. cit., p. 381.

⁹¹ Black Law Dictionary ibid, p. 381.

⁹² S.T. Reid, Crime and Criminology, (Hinsdale, Illinois The Dryden Press, 1976) p.260 (cited in G.O.S. Amadi op. cit p.32-33.

⁹³ G.O.S. Amadi op. cit., p. 31.

2.5 Extra Judicial Killing

The term extrajudicial means the process, which is done, given, or affected outside the course of regular judicial proceedings⁹⁴. It refers to actions outside the judicial system. Though there is no legal definition of an extrajudicial killing, but if a death is caused by a law enforcement authority without following the legal rules or due judicial process, it can be considered as extrajudicial killing. Extra-judicial killings, however, are those that are not committed by the order of a judiciary or court under the laws of the land. Killings, which have been executed beyond judicial process, as a result of which right to life of the victim is denied, therefore, all reasonable legitimate opportunities, remain inapplicable to the alleged sufferer.

Extrajudicial killing is the deliberate killing not authorized by a previous judgment pronounced by a regular constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law,

⁹⁴ West's Encyclopedia of American law, edt.2nd.2008.

is lawfully carried out under the authority of a foreign nation⁹⁵. The term also includes illegal executions or killings by law-enforcing agencies or death in custody. It is also said that death, which are not executed by the order of the court in accordance with the laws, are designated as extra-judicial killing⁹⁶. This is a sort of punishment by the state or some other official authority without the permission of a court or legal authority. It is further defined as a deliberate killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees, which are recognized as indispensable by civilized people⁹⁷. Existence of Extra-judicial punishment exposes the shortcomings of the legal machinery of the government concerned to execute sentences properly.

Extrajudicial killing is often a feature of politically repressive regimes, but even self-proclaimed or internationally recognized democracies have been known to use extrajudicial punishment under certain circumstances. Although the legal use of capital punishment is generally decreasing around the world, individuals or groups deemed threatening or undesirable to a government may be targeted for punishment by a regime or its representatives. Security forces acting on a

⁹⁵ [Congressional Record, v. 147, Pt. 6, May 9, 2001 to May 21 2001](#), United States Government Printing Office, October 2005, p. 7897.

⁹⁶ Extra-judicial killings some issues by (Harun Ur Rashid), The daily Star, June 18,2005, p.3.

⁹⁷ Sinaltrainal vs. Coca-Cola Co.,578 F.,3d 1252 (11th Cir. Fla.2009)(<http://definitions.uslegal.com>)

covert basis carry out this action in such a way as to avoid a massive public outcry and/or international criticism that would reflect badly on the state. Sometimes, the killers are agents outside the government.

Another possibility is for uniformed security forces to punish a victim, but under circumstances that make it appear as self-defense or suicide. This can be accomplished by planting recently fired weapons near the body of the victim by fabricating evidence suggesting suicide. In such cases, it can be difficult to prove that the perpetrators acted wrongly. Because of the dangers inherent in armed confrontation, even police or soldiers who might strongly prefer to take an enemy alive may still kill to protect themselves or civilians, and potentially cross the line into extrajudicial murder.

Extrajudicial killing may be planned and carried out by a particular branch of a state, without informing other branches, or even without having been ordered to commit such acts. Other branches sometimes tacitly approve of the punishment after the fact. They can also genuinely disagree with it, depending on the circumstances, especially when complex intra-government or internal policy struggles also exist within a state's policymaking apparatus.

In times of war, natural disaster, societal collapse, or in the absence of an established system of criminal justice, there may be increased incidences of

extrajudicial killings. In such circumstances, police or military personnel may be unofficially authorized to punish severely individuals involved in looting, rioting and other violent acts, especially if caught in flagrante delicto. This position is sometimes itself corrupted, resulting in the death of innocent persons who are just in the wrong place at the wrong time.

CHAPTER THREE

“HOMICIDE” OUTSIDE THE DUE PROCESS OF LAW: EXTRAJUCICIAL KILLING

3.1 The Ordinary Meaning of Extrajudicial killing

Ordinarily, extrajudicial is an adjective meaning something usually sentence or punishment not legally authorized⁹⁸. Legally, extrajudicial killing means outside the scope of legal procedure⁹⁹. In another legal view, what is outside the functioning of the court system is extrajudicial¹⁰⁰. Based on the foregoing meaning, any killing which is not sanctioned by the court is extrajudicial. By implication, before any killing must take place, the court must have permitted it after due process of law¹⁰¹. The criminal code provision is enabled by the constitution¹⁰².

3.2 Trends of Extrajudicial killing in Nigeria: Extrajudicial Killing by Law Enforcement Agents

3.2.1 Extrajudicial Killing by the Nigeria Police

⁹⁸ Concise Oxford English Dictionary, 11th Ed., p. 505.

⁹⁹ Osborn's Concise Law Dictionary, 8th ed., p.140.

¹⁰⁰ Black Law Dictionary 7th ed., p. 606.

¹⁰¹ S. 306 of the criminal Code op. cit.

¹⁰² S. 33 (1) of the constitution of the Federal Republic of Nigeria, 2011.

The police are an important component of the criminal justice process. According to Wikipedia, extra judicial killing is “the killing of a person by governmental authorities’ without the sanction of any judicial proceeding or legal process. There seem to be no valid record of the prevalence of extrajudicial killing by the Nigerian police, however on face value the phenomenon appears to be on the increase. The outcry of the public as captured in recent media reports on alleged extrajudicial killing of Mr. Chibuikwe Edeh who was in the custody of officers of the Nigerian police Edo state command and Mr. Gbenga Omolo who was in the custody of the officers of the Nigerian police Ondo state command is still agitating the minds of Nigerians¹⁰³. Some officers of the Nigerian police have also been victims of this menace in the hands of their colleagues. Nigerians have not forgotten the killing of a senior police officer, the former aided- camp to the immediate past governor of Delta state by a colleague.

These sad stories confirm the comprehensive report by Amnesty International (2011) report on “killing at will, extra judicial executions and other unlawful

¹⁰³ Family of extrajudicial killing victims demand for justice by (Konye Abaji), <http://www.afrik-news.com/article>. retrieved, 20/10/2015.

killing by the police in Nigeria”¹⁰⁴. Excerpts from the report reveal that “The Nigerian Police Force (NPF) is responsible for hundreds of extrajudicial executions, other unlawful killing and enforced disappearance every year. The majority of cases go un-investigated and unpunished. The families of the victims usually have no recourse to justice or redress”¹⁰⁵. A report on human rights abuses by the Nigerian police force” issued by the United States based organization indicate that “several cases of extrajudicial killing by the Nigerian police are linked to failed attempts to extort money. The victims were either in police detention within a police station, or at police checkpoints after commercial minibus drivers failed to pay the money illegally demanded by the police”¹⁰⁶.

In view of the primary duties of the Nigeria police Force (NPF) well represented by section 4 of the Police Act¹⁰⁷, the law allows the police and anybody lawfully assisting them, the use of reasonable force to an extent¹⁰⁸, but on the other hand

¹⁰⁴ Unlawful Killings and Enforced Disappearances; Amnesty International Report 2011, The State of the World's

Human Rights

¹⁰⁵ Ibid, p. 21

¹⁰⁶ Human Rights Watch (2010)

¹⁰⁷ Police Act Cap. P. 19 LFN, 2004, the prevention and Detection of Crime; Apprehension of Offenders, Preservation of law and order; Protection of Life and Property; and the due enforcement of all laws and Regulation with which they are directly charged, and such military duties within or without Nigeria as may be required by them by or under the authority of this or any other act.

¹⁰⁸ S. 261 C.C, is the lawful execution of any sentence process or warrant, or in making arrest, and for any person lawfully assisting him, Ss 271 and 272, C.C. to prevent escape from arrest.

warns that use of excessive force is punishable¹⁰⁹. The force firing rule restricts them further.

Studies reveal that significant proportion of people who had cases in police station end up having mental disorder. These disorders ensue when the police attempt to obtain statement from such an individual. It is pertinent to mention that the use of force by a police officer while obtaining statement from a suspect may be a reflection of the officers' lack of the knowledge of anger management techniques. The job of policing is stressful, and one reaction to stress is violence against others or against self. Police officers who have undertaken special assignments/duties usually experience some stress and will require some form of therapy to prevent socio-occupational dysfunction. Evidence based methods of investigating crime including extracting confessions from suspects is within the reach of the Nigerian Police Force. The development of standardized protocol for interviewing suspects by the Nigerian police would certainly not be a tall order for the Inspector General of Police.

Amnesty International (2011) claims that some Nigerian police officers hide under the cover of Order 237 to commit extrajudicial killings as the order

¹⁰⁹ S. 298. In State vs. Nwankwo Unapproved No E/11C/82 delivered on the 1/11/82 by Ubaezonu J.(as he then was) High Court, Enugu cited in G.O.S. Amadi op cit., p. 56, a police officer on a night duty shot dead the deceased who was coming back from a night party in the company of friends. He was charged with and convicted of murder.

permits officers to shoot suspects and detainees who attempt to escape or avoid arrest¹¹⁰. Based on this, the IGP spoke of his resolve to tackle all acts of human rights violation by his officers and men. A good step towards this end will be the conduct of an audit on extrajudicial killings by officers of the Nigerian police. An audit will reveal the predictors, prevalence and correlates of extrajudicial killing by officers of the Nigerian police. The findings from such an audit will assist in the development and implementation of effective strategies aimed at curbing the menace. It must be mentioned that extrajudicial killing by the police is a worldwide phenomenon, thus the Nigerian police should explore the use of technology such as the use of body cameras as a means of curbing the menace of extrajudicial killing by its officers and men. As our democratic experience as a nation grows citizens are bound to clamour for better ethical conduct from officers and men of the Nigerian police.

Extrajudicial killing by the police is often accompanied by public demonstration by relatives and friends of the deceased, thereafter not much is heard about the disposal of such cases albeit bringing the culprits to justice. The job of policing occasionally elicits controversy. The police may use excessive force in a particular situation and be accused of human rights abuse, while they

¹¹⁰ Unlawful Killings and Enforced Disappearances; Amnesty International Report 2011, The State of the World's Human Rights

may be accused of negligence if they fail to use the same measure of force in a similar scenario. The menace of extrajudicial killing by officers and men of the Nigerian police is the end in a continuum of human rights abuses perpetrated by the police. The recent salutary comment by the IGP with respect to his plans to tackle abuse of police powers especially during the pre-trial detention phase is commendable. Some commentators have attributed human rights abuse by the Nigerian police to faulty recruitment process into the service of the Nigerian police.

Despite the existence of the international human rights treaty obligations and the Constitution, Nigerian security agents and unknown gunmen continue to violate human rights norms that guarantee the dignity of life and human persons. Both Sections 33 and 34 of the 1999 Constitution clearly made execution lawful only if ordered by a constitutionally empowered institution, authority or person or in circumstances envisaged by the Constitution. It follows therefore, that any other method other than the constitutionally recognized means of depriving one's life is not only unconstitutional, illegal, but also unlawful and nothing but extrajudicial. Evidence of accidental discharges, assassinations, killings of innocent citizens and disregard for human life by paid assassins, however, abounds. Despite the provisions in the criminal and penal codes and the nation's criminal justice system, a large percentage of extra-

judicial killings and cases arising from assassinations and murders in the country has remained unresolved.

The Nigerian Police have become a comprehensive horror to the Nigerian Public with little or no regard for life. Crime suspects are executed by the police without trial. There is much aggression towards commercial suspects drivers who may delay in complying with their routine practice of stop and pay. In fact, such a driver may be toying with his life and those of his passengers¹¹¹. Very pathetic is another case of *Adava v. State*¹¹², where a police officer returning from a people rally, armed with all sorts of dangerous weapons, just attacked the premises of some people including the deceased, commanding the 1st appellant to shoot at the deceased. He shot him in the stomach and he died two days later. The accused escaped justice on grounds of technicality. But the dissenting opinion of PCK Pats Acholonu, JSC is quite instructive with utmost respect:

....If they had merely intended to immobilize man, they could have shot him on the leg, but no! They shot him in the tummy; we must not reduce the trial of a person who in all his premeditation without any sort of provocation shot someone

¹¹¹ Ss. 73, 261, 271, 273 C.C and Force Order 337., hence a police officer can shoot (a) when it is reasonably necessary to disperse rioters or prevent them from committing serious offences against life; (b) when he cannot by any other means arrest a person who being in lawful custody escapes, in order to avoid re-arrest provided the offence he committed is a felony; (c) when life is in danger and there is no other way of saving it; (d) when a policeman thinks he cannot defend himself or any other person by any other means.

¹¹² *Adekunle v. State* (2006) vol. 5 LRCNCC P.I, *Agbo v. The State* (2004) 7NWLR, (2006) NWLR (pt. 977) 545., *Ibikunle v. State* (2007) 2NWLR (pt. 1019) 546.

who suffered grievous bodily harm, to a theatre of absurd or...analysis which would rob the case of the strength of the facts that assail it.... It is to my mind inescapable that the death of the deceased is attributed and traceable to the violation of his person by the shooting which he suffered. It is my belief and I hold dearly to it that... the act of shooting a victim in the stomach, demonstrate an uncanny recklessness of the life of a bystander..... In other words, the life of the victims is worth nothing more than a candle in the wind...it is simply barbarous for a group of politicians or their minions and supporters armed to the teeth to roam the streets and blindly decide who to shoot at will.. I do not agree.

In the recent case of *Olud imilola v. The State*¹¹³, a police officer, saturated with gin, shot the deceased who had gone to a police station in sympathy with an arrested person. Whether visiting the police station in sympathy with an arrested person has become an offence the laws have not said so. In recent time, there are cases of drunken police officers shooting innocent citizens to death. Off the records of the court, there are numerous examples of extrajudicial executions of crime suspects by the Nigeria police without trial. According to NOPRIN's¹¹⁴ reports, it takes different forms, as there exist an unwritten rule in police stations across the country that "confirmed armed robbery suspect should be escorted, "sent on errands" or transferred to Abuja¹¹⁵.

¹¹³ *Olud Imilola vs. The State*

¹¹⁴ C.A Odinkalu, *Criminal Force: Toture Abuse and Extra-Judicial killing by Police in Nigeria* (NOPRIN 2008) p. 39.

¹¹⁵ Network on Police Reform in Nigeria.

For the Nigerian Police, suspects are “confirmed” through torture; and they are escorted” or “transferred” through summary execution, disappearance or mid-night interrogation strategy, whereby the suspect is shot down in the guise of escaping arrest while in fact he was asked to run for his dear life¹¹⁶. In April 2005, six armed robbery suspects were paraded before journalists at the Enugu State Police Command Criminal Investigation Department C.I.D, and were later executed against human right effort for proper hearing¹¹⁷. In August 2005 Nigeria witnessed the Abuja killing of the six Igbo traders, now code-named “Apo Killings”¹¹⁸.

Similarly, on 9 August 2006, the police parade 12 alleged robbery suspects, including a 12 year old boy, before the media and the public at the central police station in Umuahia and later killed them without trial¹¹⁹. Another set of 20 other detainees between the ages of 23 and 24 were executed by the police at the Central Police Station, Awka-Anambra State. The police alleged that they have been kept in custody for months without trial¹²⁰. With all due respect, was it their fault that they were in custody for months without trial? Instead of

¹¹⁶ K.O Orji, “Nigeria: Police Officers Arrested for Extra-Judicial Killings”. Tuesday 2 March 2010 <http://www.afrik-news.com/article>

¹¹⁷ D.Oyewale: *Feeding their deadly lust: (Tell Magazine. No. 3 August 1, 2005) p.25.*

¹¹⁸ Ekene Isaac, Ifeanyi Ozor, Chinedu Meniru, Paulinus Ogbonna, Anthony Ifeanyi, and Austina Arobu, cited in D. 2004, the police killed and hurriedly buried 12 alleged armed robbery suspects.³⁴ The 12 boys were only arrested during the Nigerian Labour Congress strike in protest of the hike in prices of petroleum products and police just tagged them armed robbery suspects. See also LEDAP: Impunity in Nigeria, 2004, pp. 4-13.

¹¹⁹ A. Soyinka: *Death Row (Tel Magazine No. 16 April 20, 2009) pp. 19-24.*

¹²⁰ D. Oyewale: *Feeding their deadly lust: (Tell Magazine. No. 3 August 1, 2005) p.25.*

charging them to court for expeditious trial, the police preferred executing them extra judicially. In some places like Rivers State, police extrajudicial killing and brutality are now seen by the residents as normal modus operandi of the police. Sometimes some of these killings receive government consent; otherwise we will not be talking of the Zakibiam disappearance, Odi massacre¹²¹, the Niger-Delta Joint Task Force expedition. Shocking as it was, former President Obasanjo, the incumbent president at the time, declared to a local television station in March 2001 that he had “no apologies to make” over the Odi massacre¹²². The no apologies of the then president, dangerous as it was, paved the way for new incidents of similar nature. Several inspector’s General of Police, count it as mark of police efficiency in security matters when they announce the execution of several armed robbery suspects¹²³. Then in 2009 Mohammed Yusuf was extra judicially killed¹²⁴.

¹²¹ I. Isiguzo. “The Police and Extra Judicial Killings; Police as your F(r)iend” (Sunday Vanguard August9, 2009) p.10

¹²² Loc. Cit., p.10. Recently he was blaming Akune, the then governor of Benue State for the action in Zakibian since he requested for military action to arrest the situation then. See R. Ejemba; “Zakibiam Invasion-blame Akune not me” (Daily sun, Tuesday, January 18, 2011) p.11

¹²³ Mustafa Balogun, at the Lagos Command Headquarters, on March 11, 2002 directed police throughout the federation to return fire for fire, without seeking approval from superior officers when in ‘very difficult situations’. Then in 2003, police stated that at least 225 crime suspects had been shot dead between March and June 2002. Prior to that, in 2000 the police reported killing 509 persons and injuring 113 in pursuit of robbers in Lagos State. In the same vein, former Inspector-General of Police, Mike Okiro, within his first 90 days in office, happily announced that police arrested almost 1,600 suspected armed robbers and killed another 785. A similar report was made in 2003 on killing another 3100 robbery suspect. See K.O. Orji, “Nigeria: Police Officers Arrested for extra-judicial Killings”. Tuesday 2 March 2010 <http://www.afrik-news.com/article>.

¹²⁴ K.O. Orji, op. cit., p.i. The Boko Haram sect attacked a police station in he Northern City of

Since then till date, there been series of feedbacks of killing by the members of that sect with nuclear weapons that have claimed lives in million¹²⁵. Nigerian police are simply reckless with life¹²⁶. Even on February 10, 2012, a police officer at a check point in Onitsha, Anambra State, killed a commercial bus driver for failing to comply with the usual stop and pay N20 business. How can a reasonable man equate human life with just twenty five naira? Arbitrariness is not a term to be associated with the police; it simply negates the very essence of policing protection of life and property, and maintenance of law and order.

3.2.2 Extrajudicial Killing by other Security Outfit in Nigeria

Over the years, Nigerians have lost confidence in the police to enforce genuine security, people take laws into their hands, form vigilant groups and paramilitary security outfits, fish out both real and presumed criminals, conduct a kangaroo trial and kill them off in mob action. Let it be said that constitutionally and statutorily, these groups have no functions in crime

¹²⁵ Even on 4th and 5th November 2011, while the Eidelkibir was going on in Kaduna, Yobe and Bornu were mourning their dead relatives who were victims of their bombing.

¹²⁶ L. Baiyewu; Extrajudicial killing: 10 killed weekly, 95 percent Unresolved, Sunday Punch Novemebr 6, 2011, p.5

According to the resent human rights report, there are about 2800 unlawful killings each year, out of which 420 are extrajudicial killings, about 8 to 10 Nigerian are killed weekly by the police and armed task forces in conflict areas. On February 1, 2011 in Mpape Abuja, police opened fire in a bank and killed a pregnant woman who came to transact with the bank. See J. Ajanim "Mpape Killing; The agony of a widower", Vanguard, February 19, 2011. On October 16, 2011, police in Bayelsa killed a 20 year old boy. See M. Odiegwu: Bayelsa police kill 20 year old boy at checkpoint. The Punch, Friday, October 21, 2011. P.5. see also LEDAP: op.cit., pp. 27 ad 54.

prevention or detection, apart from the general powers given to every private citizen to arrest offenders and hand them over to the police. The first of these groups the “Operation sweep” was formed in Lagos State in May 1996 by the then military Administrator, Colonial Olagunsoye Oyinola¹²⁷. It was a success as far as its mission to execute adjudged offenders without reference to the courts was concerned. The success of “operation sweep” inspired other states to establish similar security outfits¹²⁸. Experience has proved that the various security outfits are not the best alternative for security, they are even more lethal and callous than the police¹²⁹. From the year 2000 in Anambra State, the activities of members of Anambra vigilante services known as the scorpion squad-the Bakassi boys cannot be easily forgotten. Eddy and Derico fell victims¹³⁰. The situation was so bad in the Bakassai case until factions emerged

¹²⁷ Prof. M,C, Okany; Dean Faculty of Law Ebony State University at the Conference on Extra-judicial Killings I Nigeria, organized by the Faculty, December 1-2, 2005.

¹²⁸ Ogun State has “operation wedge”, Oyo State got ‘operation Gbale”, Kwara State established “Operation, Imo State preferred

“Operation Storm”. Abia State got “Operation Flush. In Anambra “Operation Sting” and the “Anambra Troupers”, Metamorphosed into Bakasi Boys and the Odeeshis”. In Ondo State is “Operation Crush”, Plateau is “Xsquad”, while Rivers State formed “Operation Fish”, Benue State has “Operatio Scorpion” while Eboyi State has “Operation crime storm” etc, Enugu State has the “SAS” and Kano preferred “Hisba” see. Mba-Afolabi, “The Saviour as the Problem” Newswatch Nov. 30, 1998 p.8.

¹²⁹ www.nairaland.com/nigeria/topi>314 Retrieved 30/11/2010. Also Johannes Harnisschfeder. The Journal of modern Africa Studies (Cambridge University Press 2003) p.1 The heartless murder of Polycarp Okezie Amarube is still bizarre and pathetic. He was the publisher of editor-in-chief of News service, an Enugu based Magazine.

¹³⁰ www.nairaland.com/nigeria/topi>314 Retrieved 30/11/2010. Also Johannes Harnisschfeder. The Journal of modern Africa Studies (Cambridge University Press 2003) p.1 loc.cit. They paraded Awka and environs with axes and pump action guns. Initially they brought back a kind of sense of security to the South-East; People involved in bloodshed, seldom come down south, while those who dared paid the ultimate price for their sins. In Anambra then it could be described as the axis of death, a point of no return of sorts. The Bakasi boys carried out their barbaric, yet almost generally accepted acts diligently until it was politicized. News had it that they began taking bribes, witch-hunting and intimidating innocent people and killing indiscriminately.

among them and the rest became history. Elsewhere in Afikpo, the year 2001-2003 witnessed serious case of extra-judicial killing by the vigilante group¹³¹.

There is no doubt that it is important to appreciate the effort to ensure strong security, I strongly disagree with the arbitrary slaughtering of presumed offenders without reference to court. If these outfits are serious with security, when they apprehend criminals, they should hand them over to police who charges them to court for trial. It is only when the court convicts them and sentences them to death that they are liable to die. Justice has to be according to the rule of law. Besides, it remains a fact that when these boys are disengaged or when the government that established them is extinguished, they become criminals themselves. Besides, it remains a fact that when these boys are disengaged or when the government that established them is extinguished, they become criminals themselves. History tells us that in all the states where the activities of these vigilante/militias are highly reckoned with, crimes and criminality abound. And so, forming and arming vigilante groups without proper information, do not seem to be a lasting-reasonable solution.

¹³¹ E.O. Oko, Extra-Judicial killings in Nigeria: The case of Afikpo Town (a paper presented at the 17th International Conference of the International Society for the Reform of Criminal Law in Hagele Netherlands August 2003. Many robbery and witchcraft suspects in Afikpo were arrested, tried by men of vigilante group, found guilty and burnt.

3.2.3 Extrajudicial Killings by Political Thugs

Most of the members of these vigilante groups are often used by politicians as political thugs, armed party supporters, security guards and killer squad, so that be elections in Nigeria since 1993 without excluding the 2011 elections, have become moments of holocaust¹³². Yet the 2011 post electoral violent bombing, killing and terrorism by these thugs and their financiers is better not imagined. Sad enough, because these killings are probably linked with the activities of political thugs of influential politicians or powerful political god fathers, they are taken as normal electoral activity. The Attorney General seems indifferent to it, without associating it with their constitutional powers under section 174 and 211 of the constitution, and not only to discharge them of any criminal allegation that may hinder them from reaching their political ambition. Private person are even discouraged from prosecuting with high rate of legal fees, just to obtain the Attorney General's fiat So that the cause of Justice is never pursued at all.

¹³² The Unacknowledged Violence” <http://www.hrw.org/reports/2004/nigeria0604/2.htm> Retrieved 28/9/2010 the 1993 election, annulled by Ibrahim Babangida, made Abiola a president –elect for life in the prison, and later claimed his life after four years of arrest. His wife Kudirat, was allegedly murdered in retaliation for her dogged pursuit of the restoration of her husband's electoral mandate. The 1999 election that brought former president Obasanjo into power was marred by violence and intimidation. In 2003, the General Elections became a “do or die” affair for PDP candidates, simply because president Obasanjo was going for a second term. In 2007, it was nothing to write home about even the Ekiti re-run in 2009 was worst. On the 28 of January 2011, the ANPP governorship candidate for the 2011 election and seven others were assassinated in Maiduguri. The same election claimed the lives of young graduates on youth service.

3.2.4 Extrajudicial Killing by Non Law Enforcement Agents

- **Domestic Violence**

According to records, there is domestic violence going on round the globe every second and a lot end up in extrajudicial killing of either of the parties¹³³.

Recently in Enugu State a pregnant mother, one Mrs. Ifeoma Egeonu and her two sons were deliberately locked up in a stall and set ablaze by the husband Mr. Ndubisi Egeonu, for no just reason¹³⁴.

- **Affray**

A lot of extrajudicial killing are committed in affray between two persons, opposing groups and so on. Some are momentary, while others are of long duration. For example in Nigeria the whole of 2010 was infested with horrible and unprecedented styles of bloodshed in Jos-Plateau State crisis. It lingered into 2011. Commencing with slaughtering of women and children enmass, and

¹³³ R.J. Gelles: "Domestic Violence Facloids", <http://www.mincava.umu.edu/facloid> Retrieved 18/11/2011. Mrs. Akolade was allegedly killed by her husband Mr. Arowolo Akolade on Saturday 24th June, 2011, see Bola Aduwo: No to Domestic Violence: Husband Kills Wife in a Jealous Rage; <http://nollywooduncut.com>, retrieved 15/11/2011. Also Barbara Sheehan, admitted killing her husband to avoid being killed first by the husband. See the New York Times Report: <http://jezebel.com/victim-of-violence>, retrieved 17/11/2011. Again one Kelechi Charles Emeruwa killed his wife in the States on her return from her father's burial in Nigeria, because the husband was against the journey back home though she was the breadwinner in the house. See Ichoku: "why do men kill their wives" <http://nigerianchannel.com> . Retrieved 18/11/2011.

¹³⁴ W. Sawa: Horror in Enugu: The Agony and Sad End of Pregnant Woman and Children set Ablaze by Husband; Pilot Daily, <http://NigeriaPilot.com> Retrieved. 20/11/2011. She died three days after a National Orthopedic

extended to youths and adults as well¹³⁵. Abakaliki in Ebony State witnessed the same.

3.2.5 Games and Sports

Extrajudicial Killings occur during sports and games too. Participants may engage in foul play, inflicting harm on the other or become reckless as to it. A good example is the February 2, 2012 Egypt football violence that aimed the lives of about 74 fans and left others injured.

3.2.6 Juvenile Delinquencies

Although childhood creates immunity, according to the public policy of each state, it is good we acknowledge that extrajudicial killings also occur out of juvenile delinquencies so as to give them better attention. In *Stanford v Kentucky*¹³⁶, two youths, 16 and 17 raped a twenty year old woman and killed her afterwards. In 1994 five Texas teens were sentenced to death for the atrocious rape and murder of two young women, without showing any remorse for their actions¹³⁷.

¹³⁵ Hospital, Enugu. See also LEDAP, op.cit pp. 16 and 39.

¹³⁶ AIT News Broadcast, 2/2/2012 at 9am. 192, US.361 (1989).

¹³⁷ New York Times (25. Sept. 1994) p. 15.

Also in the Nigerian case of Augustine Guobadia v the state¹³⁸, the accused who claimed to be 17 then, killed his two-year-old half brother. In recent times children of tender age engage in outrageous illegalities. Sometimes they engage in killings themselves, other times, adults use them to perpetrate extrajudicial killing.

CHAPTER FOUR

CRIMINOLOGY OF EXTRAJUDICIAL KILLING

4.1 Introduction

Criminology is an interdisciplinary field of study which involves aspects of human behavior, analyzing why a particular behavior is criminal; why people commit crime, causes of juvenile delinquency; and the necessary steps in combating criminal behaviour. According to Danbazu, criminology is the scientific study of crime and criminal behaviour, investigating the nature and

¹³⁸ (2004) 6 NWLR (pt. 869) 360. See also Modupe v State (1988) NWLR (pt. 87) 130.

extent of crime, the possible explanations to criminal behaviour, including juvenile delinquency; the functions of criminal law; the study and rehabilitation of victims of crime, and the strategies for the prevention and control of crime¹³⁹. This chapter is therefore aimed at examining the causes and trend of extrajudicial killing in Nigeria and the relevance of criminology to extrajudicial killing.

4.3 Theories of Crime and Extrajudicial Killing in Nigeria

4.2.1 The Social Disorganization Theory

The social disorganization theory postulates that crimes are associated with poverty, economic deprivations with high population turnover, disorder, high number of abandoned buildings and other signs of community deterioration. In situations of social disorder, crime and criminology abound resulting to survival of the fittest (Alemika and Chukwuma, 2007).¹⁴⁰

¹³⁹ A.B, Dambazu; *Criminology and Criminal Justice*; 2nd ed. (Ibadan: Spectrum Books Limited, 2007) p.6

¹⁴⁰ Alemika and Chukwuma (2007)

Cullen and Agnew (2002)¹⁴¹ noted that disorganized communities cause crime because informal social control breaks down and criminal cultures emerge. Moreover, disorganized society lack the collective efficacy to fight crime and disorder. Igbo (2007)¹⁴² using Nigeria as a point of analyses noted that social disorganization refers to a breakdown in the normal and habitual way of life of a people. He asserted that social disorganization theorist argue that whenever and wherever there is social disorganization, there is always an increase in crime and other criminal behaviour.

Social disorganization theory grew out of research conducted in Chicago by (Shaw and McKay, 1942)¹⁴³. Using spatial maps to examine the residential locations of juveniles referred by Chicago courts, they discovered that rates of crime were not evenly dispersed across time and space in the city. Instead, crime tended to be concentrated in particular areas of the city, and importantly, remained relatively stable within different areas despite continual changes in the populations who lived in each area. In neighbour-hoods with high crime

¹⁴¹ Cullen and Agnew (2002)

¹⁴² Igbo (2007)

¹⁴³ Shaw, C. R. and H.D. McKay. (1942). *Juvenile delinquency and urban areas; A study of rates of delinquents in relation to differential characteristics of local communities in American cities*. Chicago: University of Chicago Press.

rates, the rates remained relatively high regardless of which racial or ethnic group happened to reside there at any particular time, and, as these previously “crime-prone groups” moved to lower-crime areas of the city, the rate of criminal activity decreased accordingly to correspond with the lower rates characteristic of that area.

4.3.2 The Social Class Theory

The social class theory is of the view that the America dreams of opportunity, freedom and prosperity by majority has a powerful culture and psychological motivation that creates a dichotomy between what societies expects of her citizens and what these citizens can actually achieve. And since the social structure of opportunities is unequal and prevents the majority from realizing their dreams, some of them turn to illegality in order to belong. Others retreat or drop out into deviant subculture forming gangs, urban homeless drunks, drug abusers and robbers¹⁴⁴. They kill their victims to have their way, the rest devise illegal ways to make quick money in other to meet up with societal expectations. They become terrors of insecurity in the society such that they build protections around themselves with private armies, militia forces, and

¹⁴⁴ Merton, Roberts K. *The Social Class Theory of Criminology*. Wikipedia op.cit., p.2

killer squads, who would always work at any cost to satisfy their employers even when their jobs entail killings another real or imagined opponent¹⁴⁵.

Marx's class theory rests on the premise that "the history of all hitherto existing society is the history of class struggles¹⁴⁶." According to this view, ever since human society emerged from its primitive and relatively undifferentiated state, it has remained fundamentally divided between classes who clash in the pursuit of class interests. In the world of capitalism, for example, the nuclear cell of the capitalist system, the factory, is the prime locus of antagonism between classes—between exploiters and exploited, between buyers and sellers of labour, power—rather than of functional collaboration. Class interests and the confrontations of power that they bring in their wake are to Marx the central determinant of social and historical process.

Marx's analysis continually centers on how the relationships between men are shaped by their relative positions as regard to the means of production, that is, by their differential access to scarce resources and scarce power. He notes that unequal access need not at all times and under all conditions lead to active class

¹⁴⁵ O. Nwanguyma: *Take Action*, cited in <http://www.saharareporter.com/letetr/complainant-abuction-torture-inhuman-and-degrading-treatment-Retrieved-19/11/2010>. Where the security details/personnel of former Governor Ikedi Ohakim of Imo State tortured one Ikenna Samuelson Iwuoha of Plot 98 Ikenegbu Layout Extension Owerri on 21st of January 2010.

¹⁴⁶ Karl Marx (1977) *Class Theory: The Sociology of Knowledge Dynamics of Social Change*. **From Coser, 1977:48-50.**

struggle¹⁴⁷. But he considered it axiomatic that the potential for class conflict is inherent in every differentiated society, since such a society systematically generates conflicts of interest between persons and groups differentially located within the social structure, and, more particularly, in relation to the means of production. Marx was concerned with the ways in which specific positions in the social structure tended to shape the social experiences of their incumbents and to predispose them to actions oriented to improve their collective fate. It is this class difference that is playing out in Nigeria as witnessed in increase cases of violence, kidnapping and extrajudicial killing as seen in the activities of the Niger Delta militants and Boko Haram in Nigeria.

4.3.3 The Differential Association Theory

According to the differential association theory, cultural groups fragmenting away from the mainstream to form their own values and meaning about life could perpetrate crime in the society in revenge for government's failure to address their problems. Or for betrayal of trust by the elites or elders around them or the society at large for failing them. A good example is the Niger-Delta Millitant¹⁴⁸.

¹⁴⁷ Karl Marx (1977) Class Theory: The Sociology of Knowledge Dynamics of Social Change. **From Coser, 1977:48-50**

¹⁴⁸ E. Sutherland: *The Differential Association Theory*, *Wikipedia op.cit.*, p.3

4.2.4 The Individual and Trait Theory

The individual and trait theory opines that brutalization 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 violence¹⁴⁹. To this extent, the effect of the Nigerian civil war and long history of military rule in Nigeria is considered an evil inducement of the police to terror. The military issued out different decrees that ran counter to democratic values e.g, the Armed Robbery and Firearms Decree, which gave the police wide latitude to use arms against crime suspects. The abuse of that decree is what is now playing itself out as police zero accountability for due process in criminal justice process, especially when it comes to arrest and investigation¹⁵⁰.

4.2.5 The Frustration Theory

Another theory which we wish to include is the frustration theory. Frustration from unemployment after university education, from bad demands etc. most of these impatient youths react against these social norms by simply indulging in crimes and illegalities. Some resort to toughness and disrespect for authority. For example the recent social and political unrest in Tunisia, Libya and Egypt that claimed several lives. In Nigeria, the weight of unemployment alone has

¹⁴⁹ L. Athens; Individual and Trait Theory, Wikipedia op.cit., p3

¹⁵⁰ L. Athens, p.27

given rise to kidnapping, militia groups and robbery gangs among our youth. It is a waste of time counting how many Nigerians and foreigners as well, that have lost their lives in the hands of these frustrated citizens.

4.2.6 Social Control Theory

Social control theory as developed by American criminologists Travis Hirschi in the late 1960s posits that criminal behaviour and delinquency results from failure of individuals to bond with conventional social groups such as the family and schools (Miller, 2009)¹⁵¹. According to Travis Hirschi no special forces were necessary to explain law-breaking. Lawbreaking is often the most immediate source of gratification or conflict resolution, and no special motivation is required to explain such behaviour. Human beings are active, flexible organisms who will engage in a wide range of activities, unless the range is limited by processes of socialization and social learning (Randy, 2010)¹⁵².

However, Kobrin (2003)¹⁵³ noted that neighbourhood mechanisms that reduce crime and disorder include residents' social ties and the degree to which people

¹⁵¹ Miller, K. (2009). The effect of family income, geography and structure on Juvenile Crime. Retrieved April 20 2011 from <http://www.unh.edu/sociology/media/podcasts/millerkarthryn.pdf>.

¹⁵² Randy, S. (2010). Social Disorganisation Theory. Review of the Roots of Youth Violence. Retrieved May 12 2012 from www.sagepub.com/upm-data/36812-5.pdf

¹⁵³ Kubrin, W. (2003). "New Direction in Social Disorganisation Theory". *Journal of research in crime and delinquency*. 40 (4) 374-402.

exercise social control in their neighbourhoods. These ties may increase residents' capacity to engage in social control over individuals in the community, thus reducing crime and disorder. According to Kubrin, formal control refers to practices of authorities to maintain order and enforce legal and regulatory codes. Formal control may be important in two ways: (1) by directly influencing crime and disorder and (2) by influencing residents' informal control practices.

Formal social control includes the criminal justice system involving the police, courts and prisons. Informal social control consists of mechanisms which are not based upon formal rules but are carried by the family, friends and member of the society everyday (Farhaan, 2010)¹⁵⁴. Nevertheless, the police whose responsibility is the security of lives and property enshrined in section 214 of the 1999 constitution have not been effective due to corruption, repressive style of policing and manpower shortage (Ugwuoke, 2011)¹⁵⁵. Due to lack of control mechanism corruption seems like it is a tradition in Nigeria. However, the emergence of kidnapping could be seen as a result of poor control mechanism, since communities have no or little control mechanism to fight crime.

¹⁵⁴Faarhaan, P. (2010). Formal and Informal Social Control, retrieved February 19 2014 from www.studymode.com.

¹⁵⁵ Ugwuoke, C. U (2010). *Criminology, Explaining Crime in the Nigeria Context*. Enugu: Great Express Publishers Ltd.

4.2.7 Structural Strain Theory

Strain theory, advanced by American sociologist Robert Merton (1968)¹⁵⁶ suggests that mainstream culture, especially in the United States, is saturated with dreams of opportunity, freedom and prosperity; as Merton put it, the American Dream. Most people buy into this dream and become a powerful cultural and psychological motivator. Merton also used the term anomie, but it meant something slightly different for him than it did for Durkheim, whose work is fundamental in his theory.

Merton saw the term as meaning a dichotomy between what the society expected of its citizens, and what those citizens could actually achieve. Therefore, if the social structure of opportunities is unequal and prevents the majority from realizing the dream, some of them will turn to illegitimate means (crime) in order to realize it. Others will retreat or drop out into deviant subcultures, gang members, urban homeless drunks and drug abusers (Siegel, 2008)¹⁵⁷. According to Farthworth and Leiber (1989)¹⁵⁸ Merton (1968)¹⁵⁹ argued that:

¹⁵⁶ Merton (1968)

¹⁵⁷ Siegel, J. L. (2008). *criminology: The Core*. 3rd ed. United States of America: Thompson and Wadsworth. Inc

¹⁵⁸ Farthworth and Leiber (1989)

¹⁵⁹ Merton (1968)

Cultural goals of success are proposed for all members of the society, but not all groups have equal access to the means for their attainment. This dysfunction between cultural prescription and access to desired goals create an acute sense of strain on the individual level. Merton proposed that individual strain is most likely among lower-class members who internalize cultural goals of wealth and status but recognize blocks to conventional means for their attainment.

In American society, the culture places great emphasis on economic success, but many people are prevented from achieving it. This is so because, being born in a lower socioeconomic class infringes on individual's ability to acquire higher education, thus, the chances of achieving economic success in the generally accepted way is reduced. In this context deviance is often in the form of alternative unacceptable and sometimes illegal means of achieving economic success (Ritzer, 2008)¹⁶⁰. Ugwuoke (2010)¹⁶¹ affirmed that the only means of achieving success according to Merton is by acquiring good education.

Merton identified five modes of response which are conformity, innovation, ritualism, retreatism and rebellion. The conformist accepts the goals and means of society. The innovationist rejects the normative means of success while

¹⁶⁰ Ritzer, G. (2008). *Sociological Theory*. 7th ed. United States of America: McGraw-Hill.

¹⁶¹ Ugwuoke, C. U (2010). *Criminology, Explaining Crime in the Nigeria Context*. Enugu: Great Express Publishers Ltd.

holding fast to the goals. The ritualism abandons the commonly held success goals and accepts the means while adopting a goal quite different from the prescribed goal. Retreatism applies to those who internalize both success goal and institutionalized means but are unable to achieve success because they don't rely on the institutionalized success goals. The rebellion rejects both the success goals and the institutionalized means and adopts different goals and means. They are the revolutionary group (Haralambos and Holborn, 2004)¹⁶².

According to Olalenye (2010)¹⁶³ a lot of youths who are not working due to lack of adequate skills, lack funds and therefore get involved in various criminal activities such as kidnapping. Moreover kidnapping is a crime that is perpetuated to gain ransom from the victim or victims' relatives. Kidnapping in Nigeria can therefore be linked to structural strain theory of Robert Merton, because it tries to show that over emphasis on economic goals exert pressure for deviance.

¹⁶² Haralambos, M and Holborn, M (2004). *Sociological themes and perspective*. 6th ed. London.

¹⁶³ Ibid

4.4 Comparative Overview of Extrajudicial Killing in some Developed and Developing Countries

Although extrajudicial killing has become a global problem awakening international concern, it is instructive to know that from the comparative overview of this menace in countries like America¹⁶⁴, Philippines, Botswana, Srilanka, Bangladesh, Indonesia, Thailand, Democratic Republic of Congo etc, the reasons for involvement in extrajudicial killings differ from one country to the other. For example, while U.S adopts the policy as a means to combat terrorism since after the September 11, bomb attack¹⁶⁵, Thailand¹⁶⁶ is using it as a policy to fight drug trafficking.

In Bangladesh¹⁶⁷, it was adopted as a policy to check extrajudicial killings which exist due mainly to awkward constitutional and legislative provisions, lawlessness and the principle of might is right, although law enforcement agents use it as a façade to fighting criminality, yet the real criminals receives golden handshake and go scot free. Be that as it may, extrajudicial killing is never a

¹⁶⁴ A. Qureshi, *The Obama Doctrine: Kill, don't detain* <http://www.guardian.co.uk> guardian news and media limited 2010. Retrieved 19/11/2010

¹⁶⁵ G. Greenwald, "Presidential Assassination of U.S Citizens" Cited in <http://www.salton.com> retrieved 11/1/2011
<http://www.extra-judicial-executions.org/application/2015/2010> Retrieved 19/11/2010.

¹⁶⁶ P. Alston 'Report of the Special Rapporteur on extrajudicial killing summary or arbitrary execution' cited in <http://www.extra-judicial-execution.org/application/2015/2010>. Retrieved 19/11/2010.

¹⁶⁷ O. Modise, *op.cit.*, p.3

solution as far as fighting criminality is the target. It rather blurs investigation and shield criminals, and despite all the killings, criminality abounds everywhere. Crimes are to be dealt with, according to the mind of the law creating them.

4.3.1 Philippines

On February 12-21, 2007, the UN Special Rapporteur conducted a visit to the Philippines concerning the problem of extrajudicial killings. In his report¹⁶⁸, the UN Special Rapporteur immediately concedes that there pervade impunity for extrajudicial executions in the Philippines. The unabated slew of killings has eliminated civil society leaders, including human rights defenders, trade unionists and land reform advocates¹⁶⁹. Concern was particularly expressed at the manner that the killings were done: carefully selected and intentionally targeted. The killings were observed to have for their aim a chilling effect on the activism of the general public by intimidating civil society actors leading to the serious endangerment of democratic rights of Filipinos¹⁷⁰.

¹⁶⁸ Philip Alston, Mission to the Philippines, A/HRC/8/3/Add.2, United Nations Human Rights Council, April 16, 2008.

¹⁶⁹ Philip Alston, Mission to the Philippines, A/HRC/8/3/Add.2, United Nations Human Rights Council, April 16, 2008, p. 5.

¹⁷⁰ Philip Alston, Mission to the Philippines, A/HRC/8/3/Add.2, United Nations Human Rights Council, April 16, 2008, p. 5.

According to the report, the main causes of the problem in the Philippine jurisdiction are:

1. The killings of leftist activists;
2. The killings by the New People's Army;
3. The killings related to conflicts in Western Mindanao;
4. The killings related to agrarian reform disputes;
5. The killings of journalists; and
6. The killings conducted by vigilantes or death squad in Davao City.

A concern of the UN Special Rapporteur was that in killings of leftist activists, law enforcement authorities seem to follow distorted priorities that have them focused on prosecuting civil society leaders rather than their killers¹⁷¹. He expressed concern at certain practices of the military which tend to aggravate the situation or constitute a vain attempt to deny liability. He notes that the military engages in aggressive intelligence operations in the countryside in an

¹⁷¹ Philip Alston, Mission to the Philippines, A/HRC/8/3/Add.2, United Nations Human Rights Council, April 16, 2008, p. 5.

attempt to identify potential members of the rebel CPP-NPA. This is done through the means of a census or a “Know Your Enemies” seminar¹⁷².

The UN Special Rapporteur took notice of the killings allegedly committed also by the CPP/NPA/NDF. The Government figures peg the death toll at 1,335. Intelligence personnel of the AFP in general are considered legitimate targets for attack¹⁷³. However it was noted that while some of these personnel are indeed combatants, the Report states that the CPP/NPA/NDF defines intelligence personnel too broadly that it encompasses even casual informers who happened to answer some queries posed by the AFP or those who report on the NPA.

Violence in Western Mindanao drew grave concern as incidences of extrajudicial killings there appear to be committed for little or no apparent reason¹⁷⁴. It was found that investigation on the said killings is the most difficult to conduct as little or no witnesses dare come forward and concerned parties merely pass on the blame incoherently – victims blame the AFP while AFP

¹⁷² The census is generally a one-on-one interview conducted by soldiers with residents of the local barangay whereby soldiers attempt to elicit information from the latter in a casual and private setting. Names that come up in the conversations are added into a list known as the “order of battle” which contains identified or suspected communist individuals or entities. “Know Your Enemies” seminars serve to spread propaganda denouncing the CPP-NPA lies, revealing its true aims and its rampant use of front organizations. However, the purpose of such meetings would appear simply to encourage “surrender” and to lay the groundwork for making killings of civil society members appear justified and legitimate.

¹⁷³ Philip Alston, Mission to the Philippines, A/HRC/8/3/Add.2, United Nations Human Rights Council, April 16, 2008, p. 14.

¹⁷⁴ Philip Alston, Mission to the Philippines, A/HRC/8/3/Add.2, United Nations Human Rights Council, April 16, 2008, p. 15.

blames the terrorist group Abu Sayyaf or the insurgent group Moro National Liberation Front (MNLF)¹⁷⁵.

Killings related to agrarian reform disputes can be largely attributed to the conflicts of interest of three parties. Peasants claiming land rights through the Government's Comprehensive Agrarian Reform Program (CARP) find themselves caught in the middle of conflicting interests among the Government, the CPP/NPA/NDF, and large landowners¹⁷⁶. Some farmers strive to avail for themselves the benefits of the CARP but nonetheless find their efforts stymied by local government officials who appear more interested in protecting the lands of the local elites rather than the lives and rights of the peasants¹⁷⁷. Certain landowners also have fiercely resisted the implementation of the CARP, exhausting all means possible.

Killings of journalists appear to have different causes than the killings of leftist activists¹⁷⁸. Nonetheless; it would appear that they would have the same effect. The UN Special Rapporteur noted that some of the killings were intended to prevent journalists from exposing information related to the crimes and

¹⁷⁵ Philip Alston, Mission to the Philippines, A/HRC/8/3/Add.2, United Nations Human Rights Council, April 16, 2008, p. 15.

¹⁷⁶ Philip Alston, Mission to the Philippines, A/HRC/8/3/Add.2, United Nations Human Rights Council, April 16, 2008, p. 15.

¹⁷⁷ Philip Alston, Mission to the Philippines, A/HRC/8/3/Add.2, United Nations Human Rights Council, April 16, 2008, p. 15.

¹⁷⁸ Philip Alston, Mission to the Philippines, A/HRC/8/3/Add.2, United Nations Human Rights Council, April 16, 2008, p. 16.

corruption of powerful individuals while other killings resulted from local disputes. The focus of the UN Special Rapporteur's report focused on the phenomenon of authorized or tolerated extrajudicial killings that have continuously pervaded Davao City for over 10 years. From data gathered from newspaper articles that chronicled the relentless killings in Davao City, the UN Special Rapporteur finds that around 553 have been killed either by stabbing or gunshot¹⁷⁹. Victims of the killings range from street children, gang members, and petty criminals¹⁸⁰.

4.3.2 Bangladesh

Human rights are the rights of human that a human gets by birth. These rights are protected by the constitution and other international declaration like- UDHR, ICCPR, ICESCR etc. But, these days' human rights are violated in many ways. In Bangladesh, the human rights are violated mainly by the extra judicial killing of the offender by law enforcement agencies. They violate the rights of the accused. Some of such rights are describe here according to Bangladesh Constitution, UDHR, ICCPR and ICESCR¹⁸¹. According to Article

¹⁷⁹ Philip Alston, *Mission to the Philippines*, A/HRC/8/3/Add.2, United Nations Human Rights Council, April 16, 2008, p. 16.

¹⁸⁰ Philip Alston, *Mission to the Philippines*, A/HRC/8/3/Add.2, United Nations Human Rights Council, April 16, 2008, p. 5.

¹⁸¹ Article, 31, The Constitution of the People's Republic of Bangladesh, (As modified up to 31st may, 2000),Law Justice and Parliamentary Affairs, Peoples Republic of Bangladesh.

32 of BD constitution, Article 3 of UDHR, Article 9 of ICCPR, and Article 9 of ICESCR, no person shall be deprived of life or personal liberty saves in accordance with law. According to Article 35 of BD constitution, Article 5 of UDHR, Article 7 of ICCPR, and Article 5 of ICESCR, Protection in respect of trial and punishment¹⁸².

According to Article 33 of BD constitution, Article 9 of UDHR, Article 9 of ICCPR, and Article 8 of ICESCR¹⁸³, safeguards as to arrest and detain. Today in the case of extra judicial killings, the law enforcement agencies do not follow these rules and violate human rights. For this reason, it has become a big problem for the country. According to the human rights forum “Law and Salish Centre”, during the first year of AL rule (January–December, 2009), total 229 persons were killed by crossfire. The other organization “Odhikar” puts the number of extra- judicial killings by law enforcers at 154 for the same period. Of these people, “41 were reportedly killed by RAB, 75 by police, 25 jointly by the RAB-Police, 3 by Army, 2 by Ansar, 1 by Jail Police and 1 by Forest Guards, 5 were under the custody of BDR and 1 was a coast guard. Of the 154

¹⁸²Article, 5, The Constitution of the People’s Republic of Bangladesh, (As modified up to 31st may, 2000),Law Justice and Parliamentary Affairs, Peoples Republic of Bangladesh.

¹⁸³ Article, 8, The Constitution of the People’s Republic of Bangladesh, (As modified up to 31st may, 2000),Law Justice and Parliamentary Affairs, Peoples Republic of Bangladesh.

killed, 35 were killed while they were in custody of the law enforcement agencies”.¹⁸⁴

The barbaric practices of extra-judicial killings and custodial torture have existed and still exist in many countries of the world. In Bangladesh, these practices started right after the country’s independence and have continued till today, with different intensities at different times. The elite Rapid Action Battalion (RAB) was formed by the last Bangladesh Nationalist Party (BNP) government in 2004 to fight serious crimes along with the police forces. They were successful to some extent in their stated missions including the arrests of some notorious militants and criminals, but in many cases they were alleged to have tortured detainees and killed many suspected criminals and extreme “left-wing” activists without any trial (“cross-fire”, “encounter”, “shootout”, or “gunfight”). This unlawful practice reached a new height during the caretaker government which was mainly a semi-military regime (2007-2008), and this has also continued during the present AL government¹⁸⁵. In Bangladesh, the law says minimum force should be applied to arrests and every person has the right to

¹⁸⁴ Habib, A.Z.M. Arman, Extrajudicial Killing in Bangladesh: A Murder of Human Rights (February 28, 2015). OIDA International Journal of Sustainable Development, Vol. 08, No. 02, pp. 69-80, 2015. Available at SSRN: <http://ssrn.com/abstract=2593650>.

¹⁸⁵ Dr. K. M. A. Malik 2010. Cross fire, encounter, gunshots and shootout in Bangladesh: activities of RAB.

seek a trial. In the cases of “crossfire” and “encounters”, however, we find that these legal provisions are being totally ignored.

4.3.3 Indonesia

Indonesia is a victim of its own national composition. With 13,700 islands, over 250 languages, and at least 300 ethnic groups, the diversity of interests destabilizes the central authority. After independence from the Dutch East India Company in 1949, the two largest political parties, the Indonesian National Party (PNI) and the Indonesian Communist Party (PKI), shared power with several other small parties. The popularity of the PKI grew as the peasant farmers were attracted to the ideology. The coalition government struggled to preserve the balance of the PKI and the army. In 1965, a coup called the September 30 Movement attempted to seize power.

The PNI and General Suharto quickly turned back the uprising. Suharto established de facto control and became president in 1967. The new government placed the former president under house arrest until his death in 1970. The army blamed the coup attempt on PKI and launched retaliation and a round-up of all suspected sympathizers. The conflict between the PKI and the army culminated in the massacre of 500,000 PKI supporters and the arrest of 500,000 others,

mainly civilians, from 1965-66, until the PNI had established full dominance¹⁸⁶. Suharto stayed in power until 1998 in one of the longest reigns of any military dictator. For over 30 years of his rule, raids and massacres continued.

The killings had ethnic and religious dimensions with the targeting of Chinese populations and attacks by both Christians and Muslims. The two political parties basically were composed along ethnic, religious, and class distinctions. Indonesian Muslims and parts of the Christian population aligned themselves with the conservative PNI to suppress the atheists or indigenous polytheists. Furthermore, some victims seemed to be selected because of their Chinese heritage. Analysts also identify social features that marked the victims since urban elite tried to control the rural peasants. Due to the political nature of these killings and the strategic relations between the Indonesian government and the international community, few states have called this incident genocide. Like many military regimes, the Indonesian government was characterized by continuous armed oppression of a civilian population.

This tension between civilians and military again was manifested in mass killings and destruction in East Timor. Indonesia invaded the Small Island in 1975, one day after a visit to Jakarta by President Ford and Secretary of State

¹⁸⁶ Cribb, Robert (2001). Genocide in Indonesia, 1965-1966. *Journal of Genocide Research* (Great Britain), 3(2): 219-239. ISSN: 1462-3528. Entry: 53:9432.

Henry Kissinger. The occupation claimed over 200,000 lives, or 1/3 of the population, and occurred against United Nations appeals to the Indonesian government, largely because of US support of the government and its arms buying¹⁸⁷. For two decades, the East Timorese resisted occupation.

In 1998, after President Suharto was forced to resign due to the economic crisis, the new government offered to have elections to decide the fate of East Timor. On August 30, 1999, with a voter turnout of over 98% of East Timorese, 78% voted for independence in U.N.-supervised elections. The subsequent murder, looting, and arson by anti-independence militias and Indonesian police and troops destroyed around 70% of the local property and displaced 3/4 of the population. United Nations estimates placed the casualties at 1,500 killed¹⁸⁸.

Many people were relocated forcefully to West Timor. Currently, East Timor is under UN supervision awaiting full independence. US policy makers often ignored the Indonesian conflicts until the outbreak of violence after the Timorese elections. The Indonesian government was considered a long time arms trade partner and an ally against the so-called Asian Communists. However, American and East Timorese human rights activists worked with

¹⁸⁷ Kohen, Arnold, and Taylor, John (1979). *An Act of Genocide: Indonesia's Invasion of East Timor*. London: TAPOL.

¹⁸⁸ Chomsky, Noam (2000). The United States, East Timor, and Intervention. *Bulletin of Concerned Asian Scholars*, 32(102): 55-58. ISSN: 0007-4810.

members of Congress over the years to slowly change foreign policy. In reaction to the violence in East Timor, the US suspended military relations with Indonesia.

The United Nations annually released resolutions condemning human rights violations by the Indonesian military, but it neither recognized East Timor's autonomy in the face of the government's invasion nor took any action against Indonesia. However, groups of non-governmental organizations and global human rights advocates mobilized opposition to the violence. The Norwegian Nobel Committee awarded a joint Peace Prize to Bishop Carlos Belo and Jose Ramos-Horta of East Timor for seeking a just and peaceful solution to the conflict. Indonesia of late has been under further scrutiny for its militant reaction to national movements in Aceh, Maluku, and West Papua.

4.3.4 The Democratic Socialist Republic of Sri Lanka

Sri Lanka's¹⁸⁹ 26-year long armed conflict was essentially the result of deepening divides along ethnic and religious lines followed by the escalation of

¹⁸⁹ The Democratic Socialist Republic of Sri Lanka is an island state in the Indian Ocean, off the Southern Coast of the Indian subcontinent. It has an ethnically, linguistically and religiously diverse population of 21 million (State Department, 2011). The Sinhalese, speak Sinhala and are mostly Buddhists, make up 74% of the population and live predominantly in the southwest parts of the country. The Sri Lankan Tamils make up 13% of the population and live mainly in the northeastern provinces. They speak Tamil and are mostly Hindus. Other minorities include Indian Tamils, at about 5% of the population; Islam practicing Muslims (both Moors and Malays) at 7% and around 1% of the population belong to other ethnic communities such as Burghers and aboriginal Veddahs (State Department, 2011).

violent confrontations between the GSL and the LTTE, also known as the Tamil tigers. After Sri Lanka gained independence from Britain in 1948, the newly elected GSL mainly composed of elite Sinhalese was brought to power. The GSL enforced a series of discriminatory policies limiting access to education and employment for Tamils. Most importantly, in 1956 Sinhala was established as the official language of Sri Lanka, making it difficult for Tamils to secure employment in the public sector or hold on to their civil service jobs (Watchlist on Children and Armed Conflict, 2008)¹⁹⁰.

In reaction to these inequalities, the Tamils staged rallies and demonstrations demanding equal rights. This was met with violent repression by the GSL, thereby inciting the emerging militant Tamil groups, the most popular being the LTTE, to use force. Over time, what began as peaceful protests by the Tamil community against discriminatory state policies turned into a violent civil war in 1980s, with a central demand for a separate state in the Northern and Eastern Sri Lanka. The violence rapidly escalated in 1983 flaring up ethnic riots and

¹⁹⁰ Watchlist on Children and Armed Conflict. (2008, April). *No Safety No Escape: Children and the Escalating Armed Conflict in Sri Lanka*. Retrieved October 2011, from Watchlist web site: http://watchlist.org/reports/pdf/sri_lanka/ENGLISH%20REPORT%20LR%20p.pdf

generating large-scale displacement of Tamils (Council on Foreign Relations [CFR], 2009)¹⁹¹.

Sri Lanka's civil conflict assumed an international dimension when the GSL accused India, which is home to a large number of ethnic Tamils, of assisting Tamil insurgents. In an effort to resolve the conflict, India formulated the Indo-Sri Lankan Peace Accord and deployed Indian Peace-Keeping Forces (IPKF) on the island (Hargreaves et. al., 2011)¹⁹². However, the defiant LTTE rebels continued their armed struggle for an independent state, and the IPKF mission did not succeed in restoring peace. By 1990, India had withdrawn the last of its forces from the Island (State Department, 2011)¹⁹³. A year later Rajiv Gandhi, prime minister of India at the time of the peacekeeping force deployment, was killed by an LTTE suicide bomber.

In February 2002, the GSL and the LTTE signed a Cease-fire Agreement (CFA) facilitated by Norway which intervened as the international moderator of the peace process (CFR, 2009)¹⁹⁴. Despite international support, the peace process

¹⁹¹ Council on Foreign Relations. (2009, May 19). *The Sri Lankan Conflict*. Retrieved October 29, 2011, from The Council on Foreign Relations web site: <http://www.cfr.org/terrorist-organizations/sri-lankan-conflict/p11407>.

¹⁹² Hargreaves, C., Karlsson, M., Agarwal, S., Tengtio, K & Hootnick, J. (2011). *International Dimensions of the Sri Lankan Conflict*. Retrieved October 31, 2011, from University of St. Andrews web site: <http://www.standrews.ac.uk/intrel/media/Sri%20Lanka%20International%20Dimensions-1>

¹⁹³ State Department. (2011). *Background Note: Sri Lanka*. Retrieved November 22, 2011, from State Department web site: <http://www.state.gov/r/pa/ei/bgn/5249.htm>

¹⁹⁴ Council on Foreign Relations. (2009, May 19). *The Sri Lankan Conflict*. Retrieved October 29, 2011, from The Council on Foreign Relations web site: <http://www.cfr.org/terrorist-organizations/sri-lankan-conflict/p11407>.

failed to achieve its intended goals. The LTTE abandoned the peace talks after one year of signing the agreement, asserting that they were being marginalized. The human rights condition of children, and civilians in general, had improved significantly on the signing of CFA. But in December 2005, the fighting continued to escalate at an alarming rate and the number of civilian casualties reached dramatic levels.

The United States, India, the United Kingdom, Canada and many other countries along with the European Union (EU) banned the LTTE as a terrorist group. The United States and the United Kingdom also reduced military assistance and aid to Sri Lanka in response to the human rights violations by the Sri Lankan security forces (Watchlist on Children and Armed Conflict, 2008)¹⁹⁵. The armed conflict in Sri Lanka has been characterized by massive human rights abuses carried out by both the Sri Lankan government forces and the LTTE. The LTTE used civilians as human shields, conscripted child soldiers and employed landmines. Similarly, the GSL supported the Sri Lankan army that shelled areas populated with civilians and committed extra judicial killing.

4.3.5 El Salvador

¹⁹⁵ Watchlist on Children and Armed Conflict. (2008, April). *No Safety No Escape: Children and the Escalating Armed Conflict in Sri Lanka*. Retrieved October 2011, from Watchlist web site: http://watchlist.org/reports/pdf/sri_lanka/ENGLISH%20REPORT%20LR%20p.pdf

The Salvadoran Civil War began after a 1979 military coup brought the Revolutionary Government Junta to power. Catholic activists protested against the junta's oppression of impoverished citizens. Óscar Romero, the Archbishop of San Salvador, was assassinated on March 24, 1980 while saying Mass. On December 2, 1980, four Catholic missionaries from the United States working in El Salvador were raped and murdered by five members of the El Salvador National Guard. The four murdered Americans were involved in an international humanitarian aid mission which was suspected by the régime of fomenting political opposition.

They were Maryknoll Sisters Maura Clarke and Ita Ford, Ursuline Dorothy Kazel, and lay missionary Jean Donovan. Kazel and Donovan, who were based in La Libertad, drove to El Salvador International Airport on the afternoon of December 2 to pick up two Maryknoll Sisters returning from a Maryknoll conference in Managua, Nicaragua. Kazel and Donovan were under surveillance by a National Guardsman at the time, who phoned his commander. Acting on orders from the commander, five National Guardsmen changed out of uniform and continued to stake out the airport. Donovan and Kazel returned to pick up Clarke and Ford, who were returning from the same conference, on

a flight due at 7:00 pm, which landed at 9:11 pm¹⁹⁶. The five Guardsmen stopped the four women's vehicle after they left the airport. They were taken to a relatively isolated spot where they were beaten, raped and murdered by the soldiers¹⁹⁷.

Additional ongoing violence related to the massacres and their obfuscation has claimed numerous activists, religious leaders, university professors, mayors, and foreigners in the decades following the civil war until the present day. In 11th December of 1981, the El Mozote massacre recorded up to 900 persons¹⁹⁸. The massacre of El Calabozo in August 21-22 recorded a death rate of more than 200 persons¹⁹⁹

In recent times, organized crime in El Salvador is a serious problem. Efforts to understand or deal with this phenomenon in the small Central American country have been insufficient. There are an estimated 25,000 gang members at large in El Salvador; another 9,000 are in prison²⁰⁰. The best-known gangs, called maras in colloquial Salvadoran Spanish, are Mara Salvatrucha and their rivals Calle 18; maras are hunted by death squads, including Sombra Negra.

¹⁹⁶ Judith Noone (1995). *The Same Fate as the Poor*, Orbis Books pp. 1-2.

¹⁹⁷ Ibid.

¹⁹⁸ Alex J. Bellamy (2012). *Massacres and Morality; Mass Atrocities in an Age of Civilian Immunity*. Oxford University Press. P.214.

¹⁹⁹ Tom Rosenstiel and Amy S. Mitchell (2003).

²⁰⁰ Guillermprieto, Alma. (2011)

Newer rivals include the rising *mara*, The Rebels 13²⁰¹. Criminal youth gangs dominate life in El Salvador; an estimation of at least 60,000 young people belongs to gangs²⁰².

In early 2012, there were on average of 16 killings per day, but in late March that number dropped to fewer than five per day, and on April 14, 2012, for the first time in over three years, there were no killings in the country²⁰³. Overall, there were 411 killings in the month of January 2012, but in March the number was 188, more than a 40% reduction in crime²⁰⁴.

4.3.6 Nigeria

There have been numerous cases of torture and extra-judicial killings since the advent of the Nigerian nascent democracy. This is notwithstanding the constitutional guarantee of right to life in provision against torture, inhuman or degrading to treatment. Members of the police and armed forces regularly beat up, kill or maim protesters, criminal suspects and, in some cases, innocent persons. In Nigeria, gunshots and horsewhips are still instruments of compliance/obedience employed by the security forces. In 2003, the police in

²⁰¹ Catholic Online (2012)

²⁰² Ribando, Clare (2005). *Gangs in Central America*. Congressional Research Service. The Library of Congress. Retrieved 2007-06-30.

²⁰³ ABC News (2013)

²⁰⁴ Archibold, Randal C. (2012).

Anambra State shot to death four persons when the driver of the vehicle conveying them refused to offer gratification to the police. The police on a regular basis employ torture as a means of extracting confessional statements from suspects.

During communal conflicts that have become recurrent in Nigeria, the police and the armed forces do not respond to them timeously. When they arrive late, the only solution they know is to kill and maim. Worse still, where in the course of communal conflicts or during riots, a member of the police or armed forces is killed, the police or armed forces will exact revenge by ordering a massacre of the people of the area. The people of Odi in Bayelsa State, Obiaruku in Delta State and the Tivs in Benue State have witnessed such massacre. In the Tiv case, the Tiv militiamen had murdered 19 soldiers sent to Zaki-Biam on a peacekeeping mission, mistaking them for spies of the opposing Jukun people. Nigerian soldiers went on a revenge mission, killing more than 200 innocent Tivs. The story of the manner of the execution of the revenge mission in Gbeji village is most horrifying. According to the Tell Magazine account,

The soldiers were said to have stormed the village and invited the residents for a peace meeting at a market square. All of them gathered, and were later told that they had a message from the President for the men. The women and children were told to go shortly after

the women departed, the soldiers opened fire at (sic) the men, killing over 70 of them.

In the case of Odi town in Bayelsa State, some irate youths kidnapped and murdered 12 policemen who were in the town on a surveillance mission. President Olusegun Obasanjo gave the youths a 14-day ultimatum to produce the policemen. At the expiration of the 14-day ultimatum, on the 20th November, 2002, the town came under bombardment by soldiers drafted to the area who employed heavy artillery, aircraft, grenade launchers, bombs and other sophisticated weapons in their operation. Many lives were lost in the process. A similar incident occurred at Obiaruku in Delta, where the police alleged that some protesting youths shot at them; consequently they opened fire on the youths, which left many of them dead.

In response to the spate of violence being unleashed by some ethnic militia groups, President Obasanjo had on several occasions made a 'shoot on sight' order. He once ordered that any member of the Odua People's Congress, an ethnic army of Yorubas, should be shot on sight. Killing of persons in such circumstance amounts to extra-judicial killing. No matter the motive of the President in positively ordering the coercive institutions of the State to kill, either in retaliation for the killing of their members, or as a means of stopping violence or riotous behaviour, it must be stated that he acted in breach of the

rule of law, the constitution and democracy. In a democracy, the State cannot order its coercive apparatus to intentionally take life without due process. Even in times of war, the State cannot take life arbitrarily.

Another disturbing trend since the advent of the civilian regime is the growing number of politically motivated assassinations. To use the words of the Nigerian-based news magazine:

More than 15 states of Nigeria have witnessed the kill-the-opponent trend so far. It has been most bloody in Enugu, Nasarawa, Lagos, Bayelsa and Taraba States. Across Nigeria more than 100 people suffered brutalities, death, harassment, threats or intimidation over political disagreements.

After every incident of assassination, the Governor of the State and other political officeholders will make a public statement denying complicity in the act. Assuming they have no hand in the assassinations, they tend to forget that they have a duty under the constitution to take necessary steps to protect life and, as such, prevent such occurrence.

CHAPTER FIVE

SUMMARY, OBSERVATIONS AND RECOMMENDATIONS

5.1 Summary

Although extrajudicial killing has become a global problem awakening international concern, it is instructive to know that from the comparative overview of this menace in countries like America²⁰⁵, Philippines, Botswana, Srilanka, Bangladesh, Indonesia, Thailand, Democratic Republic of Congo etc, the reasons for involvement in extrajudicial killing differ from one country to the other. For example, while U.S. adopts the policy as a means to combat terrorism since after the September 11, bomb attack²⁰⁶, Thailand²⁰⁷ is using it as a policy to fight drug trafficking.

²⁰⁵ A. Qureshi, *The Obama Doctrine: Kill, don't detain* <http://www.guardian.co.uk> guardian news and media limited 2010. Retrieved 19/11/2010.

²⁰⁶ G. Greenwald, Presidential Assassination of U.S. Citizens" cited in <http://www.sallon.com> retrieved 11/1/2011

²⁰⁷ P. Aslton, "Report of the Special Rapporter on extra-judicial, summary or arbitrary execution" cited in <http://www.extra-judicial> executions. Org/application2015/2010 Retrieved 19/11/2010.

In Bangladesh,²⁰⁸ it was adopted as a policy to maintain law and order, together with the Joint Drive Indemnity Act to grant total immunity to the force. In Indonesia²⁰⁹, President Saharto in 1989 adopted it as a shock therapy to deter prospective criminals. In Nigeria, extrajudicial killings exist due mainly to awkward constitutional and legislative provisions such as 33(2) (b) of the 2011 Constitution and 271 of the Criminal Code. These sections should be reviewed and the use of lethal force should only be allowed in strictly unavoidable circumstances to protect life.

Be that as it may, extrajudicial killing is never a solution as far as fighting criminality is the target. It rather blurs investigation and shield criminals, and despite all the killings, criminality abounds everywhere. Crimes are to be dealt with, according to the mind of the law creating them.

5.2 Observation

Extrajudicial killing is never a solution to check criminality. It abuses both the right to life, fair hearing and due process of law. Today despite all the killings, criminality abounds. That means that first thing must be done first and crimes have to be dealt with, according to the dictates of the law creating them in line

²⁰⁸ O. Modise, *op.cit.*, p.3.

²⁰⁹ *Loc. Cit.*p.3.

with the rule of law. It is much more unlawful for a police officer or anyone, to plunder the very citizens or a person he has a duty to protect.

Taken into cognizance the violent activities of criminals, one may conclude that it is wise to kill crime suspects at once. This is especially true if one has had the unfortunate experience of these undesirable violent and merciless acts, or one had lost a dear one in their hands. They simply have no morals, no ethics and no qualms of conscience. This is the reason for the conscious or unconscious relief by some members of the society whenever it is announced that suspects have been killed. But no one query whether all those killed was all criminals, whether it is proper in law to kill them without trail.

It is again discouraging and frustrating when you recall that a lot of time will be wasted in court due to unnecessary adjournments. Sometimes deciding a particular case extends to 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 irreversible even in the face of mistakes. Human life is sacred, and human beings are the main reason for statehood, they must be treated accordingly by placing respect for life at the centre of criminal justice.

Therefore, it is imperative that every crime suspect passes through the criminal justice process in accordance with the rule of law. And it is only the court of law with jurisdiction that is saddled with the power to convict and sentence to death a person found guilty in a deserving case after proper trial. Guilt or innocence is not within the powers of the police or anybody to determine outside the court of law with the gun or its equivalent.

5.3 Recommendations

Anywhere in the world, the right to life is one right that is not compromised. It is fundamental and pivotal to other rights, so that without its protection all other rights become illusory. Amidst the menace of extrajudicial killing, the right to life insists that everyone has the right to his life, and that no one should be deprived intentionally of his life except in execution of the sentence of a court for a criminal offence. In the light of the above finding, the following recommendations are proffered:

1. The Federal Government is to organize a national summit on extrajudicial killing and forced disappearance in Nigeria to create awareness on the prevalence and negative implications of extrajudicial killing, and publicly condemn and criminalize the act.

2. Government is to set up a commission for investigation, detection and prosecution of extrajudicial killings in Nigeria, in line with the specialization of the EFCC, without involving the police in the prosecution aspect of the exercise. Also adopt measures to protect witnesses and their immediate family members in such cases.
3. The Nigeria Police Force should undergo proper psychological, physical, and intellectual overhauling. The force needs total reformation, transformation and reorganization, beyond equipping them with sophisticated arms and ammunitions.
4. There should be a review and re-definition of the criteria for recruitment into the Nigerian police force, to include among others fitness examinations, psychiatric and psychological examination to ascertain their psychological fitness for that position.
5. There should be a review and redrafting of sections 33(2) (b) of the 2011 Constitution and 271 of the Criminal Code and if possible expunge them entirely because they encourage extrajudicial killing. The same goes with Order 237, of the force. It has to be repealed and let it be publicly announced and ruled that, the use of lethal force is only allowed when strictly unavoidable to protect life.

6. The police and the government, whose agent the police is, should be made to pay compensation in any case of police extrajudicial killing.
7. There should be expeditious prosecution of criminal matters to avoid unnecessary frustrating adjournments that may lead to extrajudicial killing. The Attorneys General Powers should be exercised judiciously without bias or favouritism, liberalizing the prosecution process and enforcing the corona laws to know who died, why, when and how death occurred should be encouraged.
8. Finally, the prisons should not be left out either, a culture of record keeping of inmates both at the police jail and state prisons has to be strongly imbibed and submitted monthly to the commission to be established.
9. The use of private armies, vigilante and militia forces should be abolished in the country, the existing ones should be disbanded and disarmed or be recruited into the force and not to be left unengaged to mix freely with civilians since they have been used to carrying arms.

5.4 Contributions to Knowledge

- i. The work has shown the need to review and redraft Section 33(2)(b) of the 1999 constitution, Section 271 of the Criminal Code Section 4 of the police Act and order 237 of the Police Act as they tend to encourage extrajudicial killing. The aspect of using reasonable force, shooting suspect or detainees who attempt to escape or avoid arrest should be expunged from these laws.

- ii. The reoccurring cases of uniform men killing armless civilians and suspect over little or no provocation has also shown the necessity for psychiatric and psychological test to ascertain the soundness of applicants to the various armed forces especially the police force.

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