

EXTRA JUDICIAL KILLINGS: A REFLECTION OF FAILING IN CRIMINAL JUSTICE SYSTEM.¹

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ABSTRACT

The recent incidents of killings in many developing countries call for a serious appraisal of the administration of criminal justice with regards to the concepts of punishment. Besides killings that is politically motivated and the use of state apparatus to execute perceived enemies and alleged criminals, the public have equally been invested with self-help oriented killings. Lynching of alleged offenders has become the order of the day, people now care less about the judicial process; mob attacks and other form of lawlessness remain unabated as public brutality triumph against the due process of law. The trend now assumes a more dangerous dimension as it has graduated from a personal concept of an eye for an eye syndrome to a community organized event such as the recent killings or the lynching of the "UNIPORT" students which was regarded as a community event, also a young person was burnt to death by a mob attack in Orile-Iganmu area of Lagos State recently for allegedly stealing of a phone. These happenings are worrisome and it is indeed an indication of a systematic collapse or failings of the Criminal Justice System. How does the situation degenerate to this hopeless situation? What are those things that led to this great depravity in our justice system? Why are the citizens taking laws into their hands by lynching and engaging in other barbarities? These and other unresolved questions that make National Policy on Criminal Justice to remain incoherent are of particular scope of this paper. This paper employs the doctrinal research methodology to examine the concept of justice and national policy on justice system by focusing the Nigeria criminal justice system; and conclude with suggested solutions which make reform in administration of criminal justice system much paramount.

Keywords: Extra-Judicial, Killings, Criminal-Justice and Nigeria

Introduction

Extrajudicial killings are becoming more rampant and the problem has assumed an astronomic increase in many countries of the world. It remains unsolved issue in the Philippines, Indonesia, Nigeria and many other developing countries. It has become a bi-dimensional issue because it now involves the government apparatus in one hand and on the other hand, the ordinary citizens taking laws into their hands. Therefore, besides killings that are politically motivated and the use of state apparatus to execute perceived enemies and alleged criminals, the public have equally been invested with self-help oriented killings.

Lynching of alleged offenders has become the order of the day, people now appears to be less care about the judicial process; mob attacks and other form of lawlessness is now on the increase and remain unabated. This seems to be painting the picture of the triumph of public brutality against the due process of law. The trend is now assuming a more dangerous dimension as it seems to have graduated from a personal concept of an eye for an eye syndrome to a community organized event.

These happenings are worrisome and it is indeed an indication of a systematic collapse or failings of the Criminal Justice System. How does the situation degenerate to this hopeless situation? What are those things that led to this great depravity in our justice system? Why are the citizens taking laws into their hands by lynching and engaging in other barbarities? These and other unresolved questions that make National Policy on Criminal Justice to remain incoherent are of scope of this paper.

This paper will also examine the concept of justice and national policy on justice system by focusing the Nigeria criminal justice system; and conclude with suggested solutions which make reform in administration of criminal justice system much paramount.

The Trend

While it is extremely difficult to quantify the number of extra judicial killings in the developing countries, the fact that it is becoming endemic in nature is not oblivion. For instance, in Philippines, there are facts that indicates the level of extra judicial killings to be outrageous. In a recent research on extra judicial killings in Philippines reveal a deplorable situation in which within 2001 and 2010, incidents of extra judicial killings recorded were 305 in numbers and this involved the loss of 390 victims.²

The situation in Nigeria is equally appalling, many suspected criminals were reported to have been killed indiscreetly, mostly by shot at sight while several suspects died due to torture in police custody and so many other innocents appears to have met their sudden death in the hand of police. This is evident from the Human Rights Reports (2003) where it was stated that between March and June 2002, the numbers of the suspected criminal that were shot death by the police is 225, while the state department

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² Al A Parreno, *Report on the Philippine Extrajudicial Killings, 2001-August 2010* (Asia Foundation, 2011).

human rights report of the Nigerian Democratic Movement (NDM) stated that in a single year, 509 persons were killed and 113 were either maimed or seriously injured.³

The trend among the citizen too has become worrisome as it now assumes a more dangerous dimension. It has graduated from a personal concept of an eye for an eye syndrome to a community organized event such as the recent killings or the lynching of the "UNIPORT" students which was regarded as a community event, also a young person was burnt to death by a mob attack in Orile-Iganmu area of Lagos State recently for allegedly stealing of a phone. While on allegation of abduction or kidnaping, the mobs has burnt alive several persons in a celebrated manner.

These happenings are worrisome and it is indeed an indication of a systematic collapse or failings of the Criminal Justice System.

The Meaning of Justice

People have defined justice in their own way and its disturbing that in the recent past, there have been shocking reports of lynching in most south-western states of Nigeria, just like other part of the country and in most cases, alleged crime such as issues revolving around suspected thieves, abductors, robbers, kidnappers and other related crimes having being the basis for the dastard act of set ablaze the perceived offenders by irate mobs. Members of public are now resulting to extra judicial killings, they take law into their hands by lynching or burning suspected kidnappers. Is this justice? Can we say the public are entirely wrong in this circumstance? Answers to these hypothetical questions will therefore pave way to unravel the mystery of extra judicial killings.

Justice was succinctly defined by the "Online Etymology Dictionary"⁴ as "the exercise of authority in vindication of right by assigning reward or punishment", it is further described to be "quality of being fair and just"². The Black Law Dictionary proffer an apt and simple definition. The meaning of justice is given to be "the fair and proper administration of law"⁵. The Law ought to be as a matter of fact synonymous with the word justice, the two words are supposed to be interwoven such that former seeks the latter, Justice should therefore be seeing as true and correct application of the enabling law and not otherwise.

The primary responsibility of any state among others is the maintenance of peace and order as state in the word of a former America president is "people organized for law within a definite territory"⁶, while a definite population and a legal system was recognized to be an attribute of a state or a politically organized society⁷. Administration of justice in any given society would therefore be a function of the legal system adopted by the said state.

Against this background, the Nigeria legal system with respect to criminal justice administration and the necessary agencies which includes the courts, the police and prison services among others would be examined. This is necessary to unravel the mystery or the circumstance(s) that could in a supposedly civilized country of Nigeria status and in this century, give any person the courage to assume the full responsibilities of the law enforcement agency, prosecutor, court(judge) and executor in dealings with perceived criminal matters.

Nigeria Legal System

Nigeria is a common-law country by heritage; English common law tradition was inherited. The legal system however stands on a tripod platform as the judicial system is tripartite in nature, there exists a customary and Islamic law courts co-existing with the English common law based courts.⁸ The tripartite nature of the legal system is responsible for the dual procedural nature in the criminal administration of justice in Nigeria.⁹

Unlike the English common law court that applies adversarial system of proceedings, the criminal proceedings at Customary and Islamic law courts is based on inquisitorial system where the judge plays more active roles. The judge does all humanly possible to uncover the truth, he asks witnesses questions that assists investigation and takes steps that will ordinarily be classified in a common-law court as descending to arena. It is observed however that despite the pluralistic nature of administration of criminal justice in Nigeria most of her citizenry appears not to belief in the system. Indeed, the spate of extra judicial killings in the country nowadays could be said to be a strong pointer to the public loss of confidence in the law and the entire criminal justice system. This is an attitude which is of course, a clear invitation to unwelcome anarchy.

³ *The Nigerian Democratic Movement (NDM) State Department Human Rights Report Released February 26, 2001. See O Oko Elechi, "Extra-Judicial Killings in Nigeria: The Case of Afikpo Town," in Paper Delivered at the 17th International Conference of the Intral Society for the Reform of Criminal Law, The Hague, The Netherlands, 2003.*

⁴ Online etymology dictionary, -, @2010 Douglas Harper.

⁵ Black law dictionary, 8th edition, @ page 881.

⁶ Definition of a state given by a former United States of America, Woodrow Wilson; J.H Price, Comparative Government, 2nd edition, London, Hutchison, 1975, p.23

⁷ Sanni Abiola, "Introduction To Nigerian Legal Method; 2006" (Obafemi Awolowo University Press Limited, Ile Ife, Nigeria, n.d.). 8

⁸ Taslim Olawale Elias, *The Nigerian Legal System* (Routledge & Kegan Paul, 1963).

⁹ Akintunde Olusegun Obilade, *The Nigerian Legal System* (Sweet & Maxwell Ibadan, 1979).

The happenings might not be unconnected with the consequential effects of the several years of colonial rule naturally has a greater influence that has greatly affected the criminal justice of many colonized countries, therefore, Nigeria is left with a patchwork quilt of obsolete and inconsistent laws in term of substantive and procedural laws governing especially the dispensation of criminal justice in the different regions of the country.¹⁰ The Criminal Code which as being introduced to Nigeria by Lord Lugard¹¹ since 1904 is still applicable and ditto for the Penal Code which is dated back to 1945. Subsequent laws were substantially military products which were essentially anti human rights in nature and scope.

Definition of Extra Judicial Killings

An extrajudicial killing is the killing of person that is not sanctioned by a court of competent jurisdiction; it is indeed killings by person, group of persons or governmental authorities without the sanction of any judicial proceeding or legal process. Extrajudicial punishments are by their nature unlawful, since they bypass the due process of the legal jurisdiction in which they occur. West Encyclopaedia succinctly define the word extra judicial as follows;

“That which is done, given or effected outside the course of regular judicial proceedings. Not founded upon, or unconnected with, the action of a court of law, as in extrajudicial evidence or an extra judicial oath”.
And “that which though done in the course of regular judicial proceedings, is unnecessary to such proceedings, or interpolated, or beyond their scope, as an extrajudicial opinion.”¹²

The purport of this definition is that though acts done without having recourse to court are extra judicial it does not limit to that. An act even though within a regular court proceeding might constitutes extra judicial once it is done ultra vires. Which implies that it is done beyond the power or jurisdiction of the court.

Specifically, the most unfortunate ones are those extrajudicial killings that are politically motivated. A lot of killings have political connotation. Many leading political figures (personality), trade unionists; dissident, religious, and social figures are sometimes the target. They will be marked for killings.

Consequently, the acts are carried out by the government or other state authority agencies like the department of state security (DSS), armed forces and police on a slightest flimsy excuse. A good example is the “Odi” killings in which a whole community was wiped off on the instruction of President Obasanjo led government. The process is entirely non-judicial and ultimately a few or one person’s decision.

Extra judicial killings are twin brother of torture or better still goes along with torture as the perceived offenders are usually killed in most brutalized form. Torture, according to the Cambridge Dictionary is; “The act of causing great physical or mental pain in order to persuade someone to do something or to give information, or to be cruel to a person or animal”¹³

At the United Nation Convention on Torture, it was described as all acts that “constitute an aggravated and deliberate form of cruel, inhuman and degrading treatment or punishment”¹⁴. It therefore depletes all form of inhuman treatments which includes infliction of punishment, forceful extraction of statement, confession or information and others. The fundamental question that readily comes to mind is what could have been the causes of this dastard act especially from the public?

Causes

i. Government inactiveness

One of the major causes of jungle justice, self-dispensation of criminal justice and the extra judicial killings is the inability of the government to discharge its major and primary constitutional responsibilities of securing lives and property of her people within the confine of its jurisdiction. The situation even becomes worst in the democratic dispensation. There have been reports of various high profile political killings in which the government as failed woefully to unravel the culprits.

The government of Nigeria is yet to get to the root of gruesome murder of the former Attorney General of the Federation, late Chief Bola Ige, years after the nasty incident had occurred and the killers are still walking freely in the society. The candidate of the then PDP (Peoples Democratic Party) in Lagos State gubernatorial election, Mr. Funsho Williams was equally killed in the same manner and till the present moment the killers are yet to be found or better still none has been pronounced guilty for that heinous act.

The spate of perceived political killings or politically motivated assassinations has been on the increase since the advent of democratic rules in Nigeria while the failure on the part of government through its state securities apparatuses to preserve lives and property has multiplier effects on the society at large.

¹⁰ Yemi Akinseye George, “Modernizing Nigeria’s Criminal Justice System”, a Mac Arthur Foundation Report 2006. <http://www.macfound.org/article>, accessed on November 15, 2015.

¹¹ Lord Lugard, is the 1st British Colonial Governor General who ruled the Southern and Northern protectorates of Nigeria and who supervised the amalgamation of the two protectorates to become one single entity called Nigeria as at today

¹² West’s Encyclopaedia of American Law, edition 2

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One of the effects is the creations of ethnic militia groups, The Oodua People's Congress in the southern part of the country (OPC) which has equally been divided into two factions¹⁵ Bakasi Boys in the South, Movement for the emancipations of the Biafra's (MASSOBS) in the East, Arewa and Egbesu Boys in the other parts of the country. The resultant effects of this are the upsurge of ethnic sentiments and the militarization of ethnic conflicts.

Provision of private securities now becomes the order of the day, these are in different forms. Some people constitute themselves into vigilante groups and took charge of the securing lives and properties in their environment and in discharging this self-imposed responsibilities, all sort of crude systems are employed in providing these so-called services.

Extractions of confessional statement from their captives are always based on torturing of the said suspect. Many suspects have been killed, maimed or inflicted with permanent injuries of various forms or degrees without any recourse to judicial trial. There are now in existence private detention by this so-called vigilante groups contrary to the provision of law¹⁶ and people tend to have more confidence in their ability to secure them than the police force or even the security and civil defence officials.

The modus operandi of this various vigilante groups are in sharp contrast to the provisions of law and principle of fair hearing, since the practice does not provide for an opportunity for the person (their suspect) whose rights and obligations may be affected to make representations, especially when they have turned the administration of matters with them to be final and conclusive¹⁷ contrary to the provision of the constitution which stated as follows; "Whenever a person is charged with a criminal offence, he shall unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal"¹⁸

Apart from the fact that every person that faces criminal charges is expected to be presumed an innocent person until guilt is proved at the court with competent jurisdiction¹⁹, the constitution further provides that person charged with a criminal offence shall be entitled to the following:

- (a) "be informed promptly in the language that he understands and the details of the nature of the offence
- (b) be given adequate time and facilities for the preparation of his defence;
- (c) defend himself in person or by legal practitioner of his own choice...."²⁰

Some groups are even registered with the corporate affairs commission as private securities agency but the mechanism to monitor and check the activities of these various groups are lacking and there exist a lot of excesses and many forms of jungle justice are known attributes of these private securities which have technically constituted themselves to be pseudo police contrary to section 214 of the 1999 Constitution.²¹

The vigilante groups as well as private securities agency in Nigeria have now arrogated the judicial power to themselves contrary to the provision of Section 6 of the 1999 constitution which declares unequivocal that the judicial powers of the federation shall be vested in the courts²² and the inherent powers of the said courts to do justice is contained under section 6(6).²³

ii Judicial Corruption

Corruption has indeed permeated the entire strata of human endeavours to the extent that the judiciary which hitherto had, always in the past considered to be the bastion of hope and indeed the last hope for the common man is not spared.

Corruption in the judiciary is undoubtedly perceived as a greatest problem worldwide, it is of course a failure of acceptable moral standards, so much that people now care less about the judicial process, mob attacks and other forms of lawlessness remains unabated as public brutality triumphs against the due process of law.²⁴

¹⁵ OPC led by Dr. Fredrick Fasheun and the one being led by Otunba Gani Adams

¹⁶ Section 35(1), Constitution of Federal Republic of Nigeria, 1999 (as amended) states that "every person shall be entitled to his personal liberty and no person may be deprived of such liberty.....and in accordance with a procedure permitted by law"

¹⁷ Section 36(2) (a&b), Constitution of Federal Republic of Nigeria 1999 (as amended)

¹⁸ Section 36(4) Constitution of Federal Republic of Nigeria 1999 (as amended)

¹⁹ Section 36(5) Constitution of Federal Republic of Nigeria 1999 (as amended)

²⁰ Section 36(6) Constitution of Federal Republic of Nigeria 1999 (as amended)

²¹ Section 214 Constitution of Federal Republic of Nigeria 1999 (as amended) provides for the establishment of Nigeria Police Force and prohibits any form of parallel or pseudo police force, it stated thus "no other police force shall be established for the Federation"

²² Section 6(1), Constitution of Federal Republic of Nigeria 1999 (as amended) provides thus "the judicial powers of the federation shall be vested in the courts to which this section relates, being courts established for the Federation. A similar provision with regards to the states is contained under Section 35(2) of the same constitution.

²³ Section 6(6) (a-d), Constitution of Federal Republic of Nigeria 1999 (as amended)

²⁴ Nasir Maruf Adeniyi, *Combating Judicial Corruption Under Islamic Law*, 2013, Nigeria Institutes of Advance Legal Studies (NIALS), vol 1.

Judicial corruption undermines citizens' morale, violates their human rights, harms their jobs prospects and national development and depletes the quality of governance. A government that functions on behalf of all its citizens requires not only the rules of law, but an independent and effective judiciary to enforce it to the satisfaction of all parties.²⁵

The situation has become so worst that the judiciary has drifted to a level where ordinary members of the society popularly refers to as common men are not sure of what justice holds for them. A human right activist²⁶ once observed that search for justice is extremely expensive in this part of the world and often not even worth the effort especially when the available personnel are not only poorly trained but equally not sufficient.

Invariably cases suffer unnecessary adjournment which automatically occasioned a protracted period of litigation in which so many people that cannot avoid the cost abandon their claims. Justice is therefore ostensibly kept away from the reach of the poor masses and the downtrodden. The multiplier effect of that is that peoples' confidence in the judiciary has been eroded, therefore report of crime committed for determination of guilt and appropriate sanction by court of competent jurisdiction as provided by the law²⁷ is now perceived as share wasting of precious time.

iii The Police Ineffectiveness

The Nigeria Police Force as an integral part of the society as being infected with corruption virus and in some instances guilty of extra judicial killings. Investigating police officers (IPO) are always compromised and the result of investigation eventually becomes a function of highest bidders. While those that are involved in crime are left unpunished because of compromising nature of the force which have turn to a money-making venture, the innocent one bears the burden of an offence they never commit, some are detained, tortured or even arraigned for no just cause.

The prison yards are filled with many awaiting trials in cases that cannot be proved by the so-called prosecutors due to inadequate investigation by the law enforcement agencies which have allows those that really committed the offence to move freely in the society. So many lives got lost in the hand of police without due process of law while many others were tortured to death.

As a matter of fact, the issue of the terrorist group terrorizing the Northern part of Nigeria (Boko Haram) was believed by many to have been escalated as a resultant effect of the extra judicial killing of the leader of the group Yusuf Muhammed who was arrested and killed in police custody without allowing the due process of law to take its course.

The most worrisome features that are reported against the law enforcement agency is turning the criminal against the person who gave the information on the criminal act of the suspect by licking the source of such report and by so doing leading to persecution of the said person by the accused. This is partly because unlike most developed countries of the world, there is no specific legislation to protect whistle blower presently in Nigeria and the bill on it as suffered a lot of setbacks.

Contradictorily, it is amazing that Nigerian policeman are known for their hardworking and professionalism whenever they participate on peacekeeping or other foreign assignment where they have access to modern equipment and conducive environment to perform as law enforcement officers. This is a clear indication that, it is the system that is infected and not the police officers.

iv Unemployment

The astronomic increase in the unemployment among the teeming youth in in many countries has equally led to a corresponding increase in crime rate. Devil, the popular adage says, find works for the idle. Crime rates usually increase and fall with unemployment and Nigeria is not an exception to this general principle. It is even more absurd that those that are said to be employed found it extremely difficult to earn their wages, as at present many States in Nigeria and even the Federal government are finding it difficult to pay workers salary due to economic recession and the whole environment is tensed filled up with hunger and anger.

How do one justified non-payment of salary for a period ranging from 4 to 13 months,²⁸ it is utterly demeaning and unacceptable for government to plunge its workers into a pitiable state of penury, diffidence and dishonour. This is indeed a breach of the social contract on the part of the rulers (political leaders). The multiplier effect of such situation vis-à-vis the crime rate is better imagined.

With the increase in the crime rate where incidents of thuggery, banditry and all sort of violent crimes such as armed robbery has become the order of the day, while government at all levels in Nigeria have breached the social contracts entered with citizens of the country and they have also manifested their inability to discharge their primary responsibilities of providing security of lives and property, it would therefore easier to conclude that these said acts have given the public no option than to seek self-help which spur the spread of jungle justice and cases of extra judicial killings should therefore be expected in such a society.

²⁵ Transparent International, Global Corruption Report, 2007

²⁶ John Oziegbe, The Nation Newspaper, November 11, 2014 in an Article titled Nigeria, justice and development.

²⁷ Section 36, Constitution of Federal Republic of Nigeria(CFRN),1999 (as amended)

²⁸ More than 18 states of the Federation owe workers within 4 to 13 months' salary as at June 2015.

www.punchng.com accessed on 26thJune, 2015.

It is on record that the budget of National Assembly is higher than the individual budget of 21 states. Is it then justifiable for Nigeria to allocate 25% of its annual budget to the National Assembly? With a population of over 180 million people and a National Assembly of just 409 members.²⁹ This is indeed appearing to be a miss-placement of priority.

Although, it appears that failure on the part of government to discharge its responsibility and quest on the part of people to avenge could be said to be largely responsible for the extra judicial killings or jungle justice. Can we now absorb people from being criminally culpable for this dastard act? The answer will definitely be 'NO', but to determine the extent of peoples' fault, aim of criminal justice and concept of punishment is needed to be examined.

v. Aim of Criminal Justice and Concept of Punishment

There are five main theories that could be identified as purpose of punishment. These are retribution, Incapacitation, Deterrence, Rehabilitation and Restitution. While the retributive theory seeks to punish offenders because they deserve to be punished by focuses on the crime itself as the reason for imposing punishment, the remaining four theories are termed to be Utilitarian theory which look forward to the consequences of punishment and hope to discourage or deter future wrong, it is otherwise termed consequentiality theory because it seeks to achieve consequence at any price³⁰.

The retributive philosophy is synonymous with vengeance or expiation and the desire for vengeance presupposes that it is expected that the affected person(s) (The victims) sees that the punishment that is being exacted by the state apparatus on his/her behalf is a sort of retaliation that quench the desires for the punishment.

It is equally a known fact that there is an instinctive demand which is active in every human being to retaliate and if there were no punishment melted out by the government on behalf of the victim, there is high tendency that the victim aggressions would become repressed and naturally leads to an anti-social manner an attitude that was said to "represent the breakdown of human intelligence, as well as good will, shows perhaps the ugliest phase of our human nature"³¹.

The society also requires the offender to pass through a specific suffering as a condition precedent for reconciliation back to the society. This could therefore explain the reason behind the happenings in Nigeria. While the bulk of the blames could be attributed to the government, the laxity experienced because of government inefficiency cannot be used to justify extra judicial killings as right to life is sacrosanct.

A noticeable fact is that preservation of life is sacrosanct and right to life is held gorgeously all over the world. Indeed, the right to life and the prohibition of cruel, inhuman or degrading punishment are set out in the Universal Declaration of Human Rights (UDHR)³², the United Nation International Covenant on Civil and Political Rights (ICCPR)³³, the African Charter on Human and Peoples' Rights (ACHPR)³⁴, the America Convention on Human Rights (ACHR)³⁵, the European Convention on Human Rights (ECHR)³⁶ and other important human rights treaties. These rights are also guarantee by many national constitutions and other laws including the constitution of federal Republic of Nigeria.

The government responsibilities on the need to protect life and properties was enunciated in the case of 'AMNESTY INTERNATIONAL V SUDAN' by the African Commission on Human and Peoples' Rights where a correct meaning was given to rights of life in attempting to interprets Article 4 of African Charter on Human and Peoples' rights' which coincides (impari materia) with the section 33(1) constitution of the Federal Republic of Nigeria.

It was held that protection of people within any given jurisdiction shall be the responsibilities of the government of that area. Citing Article 6(1) of the International Covenant on Civil and Political Rights, Frances Moneke, a human rights activist reported that United Nations Human Rights Committee in general comments No.6 of 1982 has interpreted the Rights to Life as entailing not only the need for the state parties to take measures to prevent and punish such deprivation of life by the criminal acts of

²⁹ www.change.org accessed on 26th June, 2015.

³⁰ Andrew Von Hirsch and Andrew Ashworth, "Proportionate Sentencing: Exploring the Principles," 2005.

³¹ Morris R Cohen, "Moral Aspects of the Criminal Law," *The Yale Law Journal* 49, no. 6 (1940): 987-1026.

³² Universal Declaration of Human Rights (UDHR), under Article 5, states: "Everyone has the right to life, liberty and security of the person".

³³ Article 6(1) of the ICCPR provides thus: "every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life"

³⁴ (ACHPR), The African Charter on Human and Peoples' Rights, Article 4 provides: human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right

³⁵ The American Convention on Human Rights (ACHR) in Article 4 is like that of ICCPR but goes further in providing for safeguards and limitations on the death penalty, excluding its use for political crimes and the elderly. It particularly provides that once a State has abolished death penalty it cannot reinstate it

³⁶ ECHR, under Article 2 provides thus: "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of court following the conviction of a crime for which this penalty is provided by law

private individuals. The import of this is that the emphasis made by the committee was on the protection of life against arbitrary deprivation of life.³⁷

The Constitution of the Federal Republic of Nigeria guarantees the right to freedom from torture, inhuman and degrading treatment. Consequently, any act of torture is a violation of human rights.³⁸

Section 34(1) of the 1999 Constitution of the Federal Republic of Nigeria provides that "... no person shall be subjected to torture or inhuman or degrading treatment".

The section 33(1) guarantees the right to life in the following terms:

"Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of a sentence of a court in respect of a criminal offence of which he has been found guilty."

The only permissible limitations on the right to life are contained in section 33(2) of the Constitution, which provides that;

"a person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary:

- (a) For the defence of any person from unlawful violence or property;
- (b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- (c) for the purpose of suppressing a riot, insurrection or mutiny"

The purport of the above provision of the constitution of the Federal Republic of Nigeria is quite clear and unambiguous with regards to death penalty, but this can only be validly done with the strict compliance of the same constitution. The Supreme Court declared unequivocal the constitutionality of the death penalty in the celebrated case of *Kalu v State*,³⁹ when the Court declare inter alia:

"under section 30(1) of the 1979 Constitution, the right to life, although fully guaranteed, is nevertheless subject to the execution of a court of law in respect of a criminal offence of which one has been found guilty in Nigeria. The qualifying word "save", used in the section, seems to be unmistakable key to the construction of the provision. Thus, it is plain that the 1979 Constitution can by no stretch of imagination be said to have proscribed or outlawed the death penalty

On the contrary, section 30(1) of the 1979 Constitution permits it in the clearest terms so long it is inflicted pursuant to the sentence of a court of law in Nigeria in a criminal offence. In other words, Constitution recognizes the death penalty as a form of punishment but only on the condition that it is in execution of the sentence of a court of law in a criminal offence of which the accused person has been found guilty in Nigeria"

While interpreting the provision of section 30(1) and 31(1)(a) of the 1999 Constitution which is 'impari materia' with section 30(1) of 1979 Constitution in the case of *Okoro v the State*⁴⁰, the Supreme Court further affirmed the constitutionality of death penalty subject to the Court sentence only and does not support any form of killing except as laid down by the provision of the constitution.

This practice is indeed universal in jurisdictions where death penalty is still operative, for instance under the constitution of Jamaica, the section 14 provides as follow; "No one shall intentionally be deprived of his life save in execution of the sentence of a Court in respect of a criminal offence of which he has been convicted"

Any form of killings or death penalty is even completely outlawed in many countries of the world. Considering the provision of African Charter on Human and Peoples' Rights (ACHPR), it provides thus; "Human beings are inviolable. Every human being shall be entitled to respect for life and integrity of his person. No one may be arbitrarily deprived of this right."⁴¹ It provides further as follow; "All peoples shall have the right to existence".⁴²

The provision of European Convention on Human Rights (ECHR) equally provide thus:

Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which

³⁷ This day Newspaper, Tuesday, October 16, 2012.

³⁸ Osita Mnamani Ogbu, is a human rights activist and a lecturer in the Faculty of Law, Rivers State University.

³⁹ *Kalu v The State* (1998)13 NWLR (pt.583) 531

⁴⁰ *Okoro v The State* (1998)14 NWLR (pt.584) 181.

⁴¹ Article 4, African Charter on Human and Peoples' Rights.

⁴² Article 20, African Charter on Human and Peoples' Rights

this penalty is provided by law

Article 6 of the United Nation International Covenant on Civil and Political Rights (ICCPR) provides thus;

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries, which have not abolished the death penalty, sentence of death may be imposed only for the most serious of crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State party to the present Covenant to derogate in any way from any provision assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay the abolition of capital punishment by any State party to the present covenant.

The right to life, liberty and security is therefore not limited to only the national law (the Nigeria constitution), but equally backed by many international human rights documents and United Nation consensus documents.⁴³ While the twin brother of the said right is the right not to be subjected to torture or to other cruel, inhuman, or degrading treatment or punishment equally has the wide range of provisions in the local and international domain⁴⁴.

The Universal Declaration of Human Rights (UDHR) equally stated that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. The rights to life is expanded by the United Nations Human Rights Committee to include a duty not to deny access to medication to safe life, duty to prevent any sort of act that will endanger life or cause arbitrary loss of life, the right to life is therefore a fundamental human rights which is expected to cover all things that will protect people who are at risk of dying.

The Supreme Court of India decided in the case of; *Paschim Banga Khet Mazdoor Samity V State of West Banga*, that right to life was breached when access to government hospital was denied an individual who sought to be treated for a serious head injury⁴⁵. The deprivation of life is only envisaged when it results from the use of force which is no more than necessary only in the defence of any person from unlawful violence, to effect or execute a lawful arrest or to prevent the escape of a person lawfully detained and in action lawfully taken for quelling a riot or insurrection⁴⁶.

It is therefore a known fact that all laws irrespective of its jurisdiction did not support any form of deprivation of life as well as jungle justice, thus extra judicial killing cannot be justified by any means and all other cause or causes of extra judicial killings can only be traced to failure in our criminal justice system.

It should however be noted that criminal acts or omission may not be justified under any disguise and in the word of John Cardner, to classify some actions as criminal, the law asserts that there are prima facie reasons against its performance- indeed reasons sufficient to make its performance prima facie wrongful. In providing a justificatory defence the law nevertheless concedes that one may sometimes have sufficient reason to perform the unlawful act, all things considered⁴⁷.

The criminal justice is all encompassing which composed of the processes that combines legal and social agencies that is charged with the responsibilities of preventing, defending, prosecuting and enforcement of all sort of criminal laws. This can only be strengthened, if it's deeply rooted in the principle of the rule of law. The meaning of this principle was encapsulated by Wade in his book "Administrative Law" where the rule of law was classified into five meanings.

⁴³ See Universal Declaration of Human Rights adopted December 10, 1948, Covenant on Civil and Political Rights (1966), Convention on the Rights of the Child, adopted November 20, 1989 (entered to force in September 2, 1990).

⁴⁴ See Universal Declaration of Human Rights (supra), Article 5; Civil and Political Rights Covenants (supra), Article 7, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted December 10, 1984 (entered force June 26, 1987), Article 7, Child Rights Convention (supra).

⁴⁵ *Paschim Banga Khet Mazdoor Samity V State of West Banga*, (1996) 4 SCC, p.37

⁴⁶ Protocol 13, European Convention on Human Rights and Fundamental and Fundamental Freedoms

⁴⁷ John Cardner, Justifications and Reasons in A.P. Simester and A.T.H. Smith (eds.) *Harm and Culpability* (1996), pp.107-108

These includes the fact that all things must be done according to law, secondly the affairs of government should be conducted in strict compliance to the recognised rules and principles which restrict discretionary power. Thirdly, the rule of law may mean that disputes as to the legality of governmental actions are to be decided by judges that are wholly independent of the executive, fourthly, law should be even-handed between the government and citizens such that there would be no unnecessary privileges and exemption from law and fifth no one should be punished except for a legally defined crime or offence.⁴⁸ Therefore, anything that is contrary to the above postulation may likely leads to breach of trust in the system.

It is pertinent to note however, that the consequential effects of the several years of colonial rule naturally has a greater influence that has greatly affected the criminal justice of many colonized countries, therefore, in the case of Nigeria, it is left with a patchwork quilt of obsolete and inconsistent laws, especially in term of substantive and procedural laws governing the dispensation of criminal justice in the different regions of the country.⁴⁹ The Criminal Code which has being introduced to Nigeria by Lord Lugard⁵⁰ since 1904 is still applicable and ditto for the Penal Code which is dated back to 1945. Subsequent laws were substantially military products which were essentially anti human rights in nature and scope.

Conclusion

The backbone of any just and democratic society is a legitimate criminal justice system that effectively protects the rights of its citizens.⁵¹ A criminal justice system that is in strict compliance with the principle of the rule of law will most likely stem the wave of extra judicial killings and make such criminal justice to be legitimate. This would be in tandem with the dictum of the Supreme Court of Nigeria in the case of Military Governor of Lagos State V Chief Emeka Ojukwu where it held that constitution was founded on the rule of law the primary meaning of which is that everything must be done in accordance to the law.⁵²

The loss of public trust in the system can lead people to abandon due process and resort to private means of settling disputes, possibly even through vigilantism and communal violence. In order to rekindle the trust of people a criminal justice system that will facilitate quick dispensation of justice is necessary. To this end, various developing countries must therefore overhaul her impaired and outdated criminal justice system.

On the part of Nigeria, the legal system indeed needed a comprehensive revision to remove these vestiges of military and colonial rule and to reflect the true spirit of the 1999 constitution. It is therefore necessary to upgrade penal laws and an urgent overhauling the entire criminal justice system⁵³ To this end, the newly introduced Administration of Criminal Justice (ACJA) 2015 that is intended to address some of this problem should be domesticated in all the states of the federation.

The penal laws should contain an appropriate sanction which will ensure deterrence, by imposing stiffer penalty and setting out machinery that will facilitates quick and just determination of criminal case will not only discourage others from committing such crime, but the affected person(s) (the victims) will be satisfied when it is seen that the punishment that is being exacted by the state apparatus on his / her behalf is a sort of retaliation that quench the desire for a self-help, jungle justice and extra judicial killings. The trust is most likely to be rekindled and rule of law will be allowed to prevail as oppose to self-help.

An effective criminal justice system if it is achieved would leads to a reduction in the awaiting trials, decongestion of prisons, an efficient prosecutorial system, and greater protection of human rights within the various countries. This in my view will most likely close the door of extra judicial killings.

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⁴⁸ Wade, Administrative Law, pp. 22-25, see also B. O Nwabueze, Constitutional Law of the Nigerian Republic (1964), pp.142-144, O.H Philips, Constitutional and Administrative Law, (1978) pp. 18-21. The Origins of Dicey's Concept of "The Rule of Law" (1975) 31 Australian L.J,117

⁴⁹ Yemi Akinseye George (supra)

⁵⁰ Lord Lugard, is the 1st British Colonial Governor General who ruled the Southern and Northern protectorates of Nigeria and who supervised the amalgamation of the two protectorates to become one single entity called Nigeria as at today

⁵¹ Yemi Akinseye George, "Modernizing Nigeria's Criminal Justice System", a Mac Arthur Foundation Report 2006. <http://www.macfound.org/article>, accessed on November 15, 2014

⁵² Military Governor of Lagos State & ors V Chief Emeka Ojukwu, (1986) All NLR,223. Where Justice Kayode Esho stated that "Nigerian Constitution is founded on the rule of law the primary meaning of which is that everything must be done according to law. It means also that government should be conducted within the framework of recognised rules and principles which restricts discretionary power."

⁵³ The Criminal Justice System is made of subsystems including law enforcement agencies, courts, public defenders, prison authority and prosecutors

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