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NATIONAL SECURITY; IMPUNITY AND JUSTICE IN NIGERIA: WEEPING FOR THE INNOCENT

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Abstract

The right to life is viewed in human rights parlance as sacrosanct. All human rights are of no significance without the right to life as ‘life’ is a prerequisite for the enjoyment of all rights. This paper argues on the security challenges posed by civilian or democratic oversight of security roles in Nigeria. It is posited that this has led to increase in the spate of extra judicial killings in Nigeria championed by informal security sector and the state owned security agencies. Activities of the non conventional security outfits like the Bakasi, OPC are x-rayed reaching a conclusion that Post-colonial Africa has been characterized by a tragic litany of failure of governance. Based on this worrisome phenomenon, this paper espouses the recent increase in the practice of extra judicial killings by both conventional and non conventional security outfits in Nigeria with particular respect to the South Eastern States. Possible modus operandi is proffered in hope of ensuring better respect for the right to life of the citizens and fashioning a healthier model for the security sector and conflict management in Nigeria.

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*Post-colonial Africa has been characterized by a tragic litany of failure of governance ... It is not just a failure of governance due to ignorance, inexperience or technical errors. It is sad that much of the failure of governance have all the hallmarks of violations of the rights of citizens that in some cases rival those under colonial oppression. The repeated nature of these violations within and across countries suggests a culture of impunity on the part of the leaders involved.*¹

*All human rights are of no significance without the right to life as 'life' is a prerequisite for the enjoyment of all rights; this is in light of the fact that any punishment that stripes a human of his dignity or of his humanity is everything but cruel and degrading.*²

1.1 Introduction

The right to life is viewed in human rights parlance as sacrosanct.³ In current developments, it is said to be inviolable in the international law regime.⁴ However, it is noted that some Constitutions still recognise the legality of limiting this right via laid down Constitutional mechanisms. For instance, the Nigerian Constitution recognises that the right to life can be curtailed to give effect to a court judgment or by a Police officer in enforcing an arrest warrant. In Nigeria, the death penalty is provided for under the Constitution of the Federal Republic of Nigeria, 1999 (CFRN).⁵ It provides in clear terms that the right to life is to be preserved, however, subject to execution of court orders or in any other allowed legal circumstances.

The African Charter on Human and Peoples' Rights (ACHPR) while recognising the 'lawful limitation' of this right has influenced the decision of the African Union (AU) to implore State parties to place a moratorium on the practice of death penalty.⁶ The Rome Statute also

¹ <http://historymatters.co.za/2008/07/03/culture-of-impunity-in-afican-governance-who-sets-the-limits/> (accessed on December 10, 2009).

² Chenwi L 'Towards the Abolition of Death Penalty in Africa' a Human Rights Perspective 57 PULP, 2005.

³ Article 3, UDHR, Article 6, ICCPR, Article 4, ACHPR.

⁴ Article 4 ACHPR, Article 3 UDHR, Article 6, CCPR.

⁵ Section 33 and Section 34.

⁶ African Union Resolution 136: Calling on State Parties to Observe a Moratorium on the Death Penalty available at <http://www.achpr.org/sessions/44th/resolutions/136/> (accessed November 27, 2013).

abhors the death penalty and has made it a prerequisite for all states intending to become state parties to at least accept a moratorium on death penalty.⁷ Despite the safe guards provided for in African Constitutions, death penalty as a penalty whether judicial or extra judicial is frowned against. It has become a subject of judicial scrutiny and consideration, resulting in virtually unanimous condemnation of Statutes providing for it.⁸

With the above position, it is imperative to state that, despite the veneer of constitutional apparatus, African political society remains patrimonial or neo- patrimonial. The concept of patrimonialism is espoused to show situation where the ruler and his officials are perceived to be above the law and insulated from rational legal order and constitutionalism.⁹ Contemporary African politics are best understood as the exercise of neo-patrimonial power so that, despite the formal political structures in place,¹⁰ personalised power is exercised essentially as an informal system of patronage, to which administrative and electoral processes are subordinate.¹¹ It is therefore hinged on the ever present patronage of neo-patrimonial power that individuals have been saddled with the responsibility which ought to be performed by law enforcement agencies either in upholding the dictates of the elite or to oppress any form of opposition be it political or economic.

Justice on its own remains a jurisprudential concept with divers' meanings applicable to people in different situations and positions. However, for the purposes of this paper, justice is approached in the sense of a well framed out procedure of ensuring that violation and violators of existing laws are made to face punishment as spelt out by Statues creating such laws and prescribing such punishment. The concept of impunity emanates from the *latin*

⁷ If found guilty before the International Criminal Court, The Rome Statute provides the following as prescribed penalties (a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or (b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person. 2. In addition to imprisonment, the Court may order: (a) A fine under the criteria provided for in the Rules of Procedure and Evidence; (b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

⁸ N 2 above 50.

⁹ Oloka-Onyango J, Constitutionalism in Africa, in Comparative Constitutionalism and Good Governance in Common Wealth- Eastern and Southern African Perspective eds. J Hatchard, M Ndulo and Slinn (2004) Cambridge 302.

¹⁰ The author views these structures as including both the law enforcement structures and the judicial structures of the State.

¹¹ P Chabal, The Quest for good governance in Constitutional governance: the lessons from Southern and eastern experience in comparative constitutionalism and good governance in the Common Wealth. eds. J Hatchard, M Ndulo and Slinn (2004) Cambridge 308.

word '*impunis or impunitas*' in the 16 century and is translated to mean '*without punishment*'.¹² In the words of Mramphele, impunity is freedom from punishment or loss.¹³

Currently in Nigeria, there is an increase in the spate of killings which neither meets the constitutional threshold of basis on which the sacrosanct right to life can be breached. In the same vein, countless and unaccountable killings abound, carried out by both non conventional and conventional outfits which are neither judicially approved nor constitutional but seems to receive executive approvals. The current issues of *boko Haram* attests to the inability of the security forces to foster security and safe guard life and property of peace loving Nigerians. Thus, the introductory quotes in this paper explains that the government cannot validly pursue economic turnaround without addressing issues that border on the right to life of the Nigeria citizen.

Based on this worrisome phenomenon, this paper espouses the recent increase in the practice of extra judicial killing by both conventional and non conventional security out fits in Nigeria with particular respect to the South Eastern States. Possible modus operandi is proffered in hope of ensuring better respect for the right to life of the citizens and possibly to identify the causes at the remote, immediate and distant levels such that the way out of the logjam could be identified.

2.1 Impunity and Justice: what relationship?

Justice is viewed from the perspective of doing things lawfully and legally. It is however, a concept that is void of certainty as justice to one may be injustice to another. It has however, become a settled maxim in law that justice must not only be done but seen to be done.¹⁴ Thus, in the modern State, justice is said to be guaranteed by constitutionalism.¹⁵

In tracing the emergence of impunity in Africa states, it is sadly observed that, the legacy of colonialism is frequently offered as an explanation for African current ills and western criticism of Africa's development performance is often branded as neo- colonialist.¹⁶ In all

¹² Microsoft® Encarta® 2008. © 1993-2007 Microsoft Corporation.

¹³<http://historymatters.co.za/2008/07/03/culture-of-impunity-in-afican-governance-who-sets-the-limits/> (accessed on June 26, 2012).

¹⁴ *Macfoy V UAC* (1961) 3 W.L.R. 1405.

¹⁵ Hansungule M, Paper delivered at a conference 'Constitutionalism under threat in Africa', at University of Pretoria December 9, 2009.

¹⁶ P Chabal, *The Quest for good governance in Constitutional governance: the lessons from Southern and eastern experience in comparative constitutionalism and good governance in the Common Wealth.* eds. J Hatchard, M Ndulo and Slinn (2004) Cambridge 311.

sectors of governance in Africa, accountability remains a core phenomenon especially in the electoral processes. For accountability to be in place, it is important that the electoral process be normalised. Though it has become a routine for observer groups to follow elections in Africa, it is appalling that no presidential election has been flawed in Africa arising from their observations and recommendations.¹⁷ This principally is due to the fact that the observer status of that group has no basis in the electoral process of the States involved. Their views remain observation. In order to get the best of this process, it is imperative that the electoral laws formalise their presence in the process and equally provide for the place of their reports.

The Nigerian concept of ‘Ghana Must Go’¹⁸ bags changing hands has ensured that even a patently transparent and fair election does not guarantee that the parliament would maintain the principles of check and balance in separation of power. In Nigeria, the parliament has attempted to summon courage to challenge the executive but have not been able to escape the pit fall of corruption.¹⁹

The experience of Eastern African States shows, that even if parliament is restored to a key position in constitutional edifice, it may not work as a mechanism of democratic accountability. In most circumstances, parliament is often treated with contempt by the executive, so that when ministers are summoned they either provide inadequate answers or do not appear at all.²⁰ The ineffectiveness of parliamentary questions accounts for poor state of good governance in Most African States. The truth is that the legislature is viewed as the junior partner in the power calculus in the African States and thus they are treated with that in mind. This is more so that most legislative bodies rely on the executive for funding and largely understudied.²¹

The judiciary is not left alone in the current imbalances in the scheme of event in African situation. The inter play between money wise legal practitioners and corresponding bench

¹⁷ n 11 above, 316. It should be noted that no Presidential election has been flawed in Africa. The Nigeria election of 2007 which was plagued by countless accusation of rigging that saw several elections cancelled left the Presidential election standing on a judgment that was more sociological than legal. (This may not fairly represent the position as a close study of the judgment of the Supreme Court in *Buhari V. Yar'Adua* will depict a split of 4 to 3 Justices and the basis of the decision is essentially the inability of the Petitioners to properly present their case and that is a decision that is guided purely by law.

¹⁸ This concept describes a sack packed with huge amount of money meant for bribery.

¹⁹ The recent corruption allegation against the Chairman of the House of Representatives Committee on the probe of Oil Subsidy and his counterpart on Capital Market are reference points.

²⁰ See making Legislatures effective in Hatchard p31 n 11 above.

²¹ See generally Alabi, MOA & Egbewole, WO Perspectives on the Legislature in the Government of Nigeria CAFRAD, Morocco, 2010

officials ensure that the judicial body meant to be the last hope of man is not free from the practice of impunity.

It is thus in the light of the above inability with institutions that have been saddled with the responsibility to protect citizens that power has devolved into the hands of the masses.

It is apparent that there exist no form of relationship between justice and impunity. However, the current intercourse between pursuit of justice and impunity in Nigeria bringing to the fore the increase in extra judicial killings as mostly exhibited by non conventional security outfits is worth interrogating. This is borne on the backdrop that the people long for justice against armed bandits that terrorise life and property and consequently, extra judicial killing to some represents justice.

2.2 Emergence of Non Conventional Security Outfits

An effective government anywhere in the globe is expected to provide justice, order, security and efficient social infrastructures. But Nigeria, like many African states, is found wanting in this regard. The emergence of ‘ethnic militias’ in the 1990s in Nigeria is, therefore, an apt response to the dysfunctional state.²² The advent of non conventional security out fits is traceable in Nigeria to the failure of the high expectations from Nigerians to have the rule of law established in Nigeria after years of Military dictatorship and the return to civil rule on May 29, 1999.²³

With the inability of the government to ensure peace, order and security of lives and properties, as well as adequate provision of infrastructural facilities, people sought solace in cultural and ethnic identities. Thus, in return to the state of self reliance or what scholars like Heyns describe as the struggle approach,²⁴ various militia groups where churned out and over a period of time they metamorphosed into vigilante groups. A clear example of this group is

²² Funso Adesola. “National Security, Democratization and the Menace of ‘Ethnic Militias’ in Nigeria” *West Africa Review*: Issue 11, 2007. Available at <http://www.westafricareview.com/issue11/adesola.html>.

²³ n 20 above.

²⁴ Heyns C, Lecture delivered to the LLM class (Human Rights and Democratisation in Africa) University of Pretoria, 2008. Heyns, is of the view that the failure of a state in any situation-whether in an integrated or un-integrated setting is unacceptable. He looks at the concept of human rights from the flip side of the coin of a legitimate resistance. In addition, he reiterates the relative ease with which injustice is recognized as against justice.

the 'Bakaasi Boys' that sprang up in the Eastern State of Abia and later spread across the other South Eastern States.

However, in analysing the activities of the Bakaasi Boys in Nigeria, Meagher challenged the recourse to cultural or instrumentalist explanations, in which vigilantism is portrayed as a reversion to violent indigenous institutions of law and order based on secret societies and occultist practices.²⁵ Indeed, the activities of such group showed over a period that it was merely an opportunity for political thugs engaged in power struggles to hijack States, economies and act with impunity.²⁶

In an interview, Alhaji Usman Jaum Mohammed,²⁷

*stated that the vigilante group has always being part of the social, cultural and political security systems all over the world. In Nigeria, it was established since after the civil war, and it has been on since then till this present day. It is an informal policing system in order to help the Nigerian Police and other security operatives to create a better society. Our mission is to literally protect the greenery of the country and to enforce the laws of the state, protect property by working with the police, protect the environment and guarantee friendly society. Vigilante Group of Nigeria will assist in protecting the infrastructure of the government and the private sector. We will ensure that public properties are prevented from damage, we will also protect private and public properties in the states and nationwide.*²⁸

The above captures the seeming acceptance of non conventional security outfits in Nigeria as they are deemed to be useful and assist the Police in its work. Consequently, they have grown to become consultants in informal Policing.

This "informal policing" happens in cities across Nigeria. The vigilantes are the only ones that stand between robbers and residents. The seeming inability of the Nigeria Police force to

²⁵ Meagher K, Hijacking civil society: the inside story of the Bakassi Boys vigilante group of south-eastern Nigeria (2007) Journal of Modern African Studies Volume 45, issue 1, Cambridge, 90.

²⁶ Chief Barnabas Igwe and Wife were brutally murdered by the Bakassi boys in Anambra State, The assassination remains a puzzle even as the then government were fingered to be behind the murder.

²⁷ Commander General of Nigeria Vigilante Groups. <http://vigilantegroupofnigeria.org/Achievements.html> (accessed July 30, 2012).

²⁸ <http://thenationonline.net/web2/articles/10010/1/Nigeria-needs-Vigilante-group-to-sustain-democracy---Commander-General/Page1.html> (accessed February 1 2010).

carry out its constitutional duties is said to be hinged on the lack of sufficient human resources and also modern ammunition.²⁹

According to Emmanuel Ojukwu in an interview, the police can't get into every nook and cranny, the police try to send officers out on patrol with as many vigilante groups as possible, but with one policeman for every 400 Nigerians this is difficult. He goes further to state that vigilantes who kill suspects would face the law. It is noted interesting that until two years ago, the infamous Bakassi Boys policed the streets of Anambra State. They executed suspects with a "magic cutlass" which they said glowed in the presence of armed robbers - but only the Bakassi Boys themselves could see the glow.³⁰

It remains till date to know if there has been any such prosecution by the authorities for such erring vigilante groups. Invariably, the argument and debate still continue presently as to the relevance of this non conventional security out fits. Politicians in Anambra State currently promise the populace of their plans to put in place structures that will ensure crime reduction.³¹ Counter arguments have also been made as to the degrading and inhuman treatment suffered by indigenes of Anambra State in the hands of security out fits, who 'butchered' our kit's and kin's in the name of security.³²

2.3 The Role of Nigerian Police

The Nigerian Constitution provides for the establishment of a federal Police under the command of an Inspector General of Police, who shall be appointed by the President.³³ The Nigerian Police is tasked with the promotion and maintenance of law and order. The Constitution prohibits local and state Police. Policing cannot be understood outside the government and society in which it takes place.

The Police in Nigeria could be characterized as authoritarian. The Police also lack legitimacy. The Nigerian Police do not enjoy the confidence, respect and support of the people. Sensitivity, respect, responsiveness and service are central to effective social control, which

²⁹ <http://news.bbc.co.uk/2/hi/africa/8021468.stm> (accessed February 1 2010).

³⁰ Commander General of Nigeria Vigilante Groups. <http://vigilantegroupofnigeria.org/Achievements.html> (accessed July 30, 2012).

³¹ The recent proscription of some youth organizations by the Peter Obi administration may be a pointer to the structures being proposed

³² The author was a delegate at the Manifesto presentation of all the gubernatorial candidates organised by the Society of Justice, Equity and Fairness (SEJUP) on February 1, 2010 at Emmaus House Awka, Anambra State. The issue was an unresolved equation among most of the candidates who showed clear preference to the use of non conventional out fits rather empowering the Police.

³³ Section 215 CFRN 1999.

the Nigerian Police are not capable of. The Police to all intent and purposes exist to service the state rather than the people.³⁴

In different times, the Police have been used for parochial interests of influential citizens. For instance, startling revelations during the hearings following the botched attempt to depose the elected governor of Anambra State showed that the Police take and execute orders from rich and powerful citizens outside of government. Mafia groups and political godfathers install governments and also forcefully dethrone legally constituted governments at will using the Police. In addition during the arson and subsequent kidnapping of the former governor of Anambra State, the Police played roles in favour of influential Anambra State political ‘god father’.³⁵

The image many Nigerians have of the Police is that of a “lazy, corrupt, inefficient, bribe taking. It is important to reiterate that several lives have been lost in Nigeria by the callous actions of trigger happy Police men. On several occasions, either commercial drivers have been killed or people killed by stray bullets.³⁶ Also, extrajudicial executions, other unlawful killings and enforced disappearances in Nigeria are not random. In a country where bribes guarantee safety, those who cannot afford to pay are at risk of being shot or tortured to death by the police. The families of the victims often cannot afford to seek justice or redress, because they cannot pay for a lawyer or the court fees. In many cases, they cannot even afford to retrieve the body.³⁷

Summarily, the Nigeria Police has contributed its fair share to the current response by citizens in finding a self made solution. The activities of the Police have not been a

³⁴ Oko Elechi O, Extra-Judicial Killings in Nigeria – the case of Afikpo Town (Being a Paper for Presentation at the 17th International Conference of the International Society for the Reform of Criminal Law, p.4, The Hague, Netherlands, 24 – 28 August, 2003). Available at <http://www.isrcl.org/Papers/Elechi.pdf> (accessed July 30, 2012)

³⁵ Dr. Chris Nwabueze Ngige was abducted and several state properties were burnt. The response of the Police was silent to say the least. Till date no prosecutions has taken place or even arrests made.

³⁶ Index: AFR 44/038/2009 Amnesty International December 2009.

³⁷ Oko Elechi O, Extra-Judicial Killings in Nigeria – the case of Afikpo Town (Being a Paper for Presentation at the 17th International Conference of the International Society for the Reform of Criminal Law, p.10, The Hague, Netherlands, 24 – 28 August, 2003). Available at <http://www.isrcl.org/Papers/Elechi.pdf> (accessed July 30, 2012)

responsive one as they have failed to follow tip offs or react promptly at the moments when life and property was under siege.³⁸

3.0 Killings on the streets of Nigeria: Justice or act of impunity?

The Nigeria Police Force and the State Security Service (SSS) continue to commit human rights violations with impunity, including extra-judicial executions.³⁹ One wonders the role of human rights institutions in bringing about a paradigm shift in the situation as highlighted. The National Human Rights Commission of Nigeria (NHRC) has observed that the situation of extra judicial killing is still on the increase in Nigeria; however, it chooses to blame the existence of military regime as it was then in Nigeria. What exactly is the situation in Nigeria today? Has anything changed? More than a decade after the introduction of civil rule, nothing has changed. The NHRC is still blowing a muted trumpet on the role of the police in extra-judicial killings.

In several Nigerian cities, armed robbery suspects and others suspected of witchcraft have been arrested, hurriedly and publicly tried, found guilty and burnt to death by vigilante groups.⁴⁰ Statistics according to The Sun Newspapers show that as of 30th December 2009, one of the groups in the South East called the Bakassi Boys have killed 159 persons.⁴¹ A firsthand experience by the author on the October 30, 2009, when a young man of about 25 was brutally butchered and burnt alive by security outfits in charge of Omagba layout in Onitsha was that of mixed reactions from the crowd. While some cried foul alleging that the victim was about implicating a member of the security outfit as one of their members before his neck was chopped off received no further attention, some celebrated the extermination of an armed robber.

In decrying the uncanny ways of the Nigeria Police, the Nigeria Supreme Council for Islamic Affiars (NSCIA) described as savage and inhuman, Nigeria Police brutality while

³⁸ In most circumstances the police will complain of either no fuel to power their vehicles or lack of ammunition to respond to emergency calls from citizens.

³⁹ Nigeria: "Pragmatic policing" through extra-judicial executions and torture An Amnesty International Report, 16 May 2008. AI Index AFR 44/006/2008.

⁴⁰ Oko Elechi O, Extra-Judicial Killings in Nigeria – the case of Afikpo Town (Being a Paper for Presentation at the 17th International Conference of the International Society for the Reform of Criminal Law, p11, The Hague, Netherlands, 24 – 28 August, 2003). Available at <http://www.isrcl.org/Papers/Elechi.pdf> (accessed July 30, 2012).

⁴¹ Elvis Chinaka Nwadike is the 159th person, see the Sun Newspapers, Wednesday 30 December 2009. This position still remain unchanged with reports of Police shootings at check points still common in Nigeria. The recent move by the Inspector General of Police to dismantle all check points is lauded but it is still the authors view that illegal Police check points still abound on Nigeria high ways.

suppressing the Boko Haram rebellion in North-Eastern Nigeria where ‘unarmed Nigerians, some of them cripples were lined up, ordered to lie down and were shot to dead in cold blood’.⁴²

Despite recent developments, extra judicial killings, or ‘justice to those who rob us of our life and property’ is on the increase. The question remains, what is the legal position as regard to the issue under the Nigerian Constitution? As already highlighted, the CFRN does not recognise any kind of community or regional Police system. Does the Nigeria Legal System provide for procedure of bringing defaulters to justice in terms of any breach of the law and the consequent ‘violation’ or taking of life?

The Constitution of the Federal Republic of Nigeria (CFRN) and the Criminal Procedure Code (CPC) provides in clear and certain terms, the procedure via which an accused person would be tried and found guilty. Section 402 (2) a & b of the Criminal Code Act of Nigeria prescribes death penalty for offence termed to be aggravated robbery.⁴³

Sec 33(1) of the Nigeria Constitution provides that every person has a right to life , and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. Sub section (2) provides for grounds on which this right can be limited. In sec 34 (1) the Constitutional right of human dignity is well entrenched, it is further provided that no person shall be subjected to torture or to in human or degrading treatment.

The CPC provides in Chapter IV for the procedure for arrest of individuals who are suspected of committing an offence. It goes further to provide that both the Police and the ordinary citizens have the right to arrest. However, it must be pointed out that this responsibility is only to last for a few hours, as the citizen is expected to hand over the individual to the Police as soon as practicable.⁴⁴ It is therefore argued that contentions supporting the activities of vigilante services based on responsibilities placed on both the public and police do not hold

⁴² The statement was made by the secretary general of the body in an interview with Daily Sun of February 15, 2010.

⁴³ CAP C LFN 2004.

⁴⁴ Section 12 Criminal Code of Nigeria, LFN, 2004.

grounds.⁴⁵ This position is adopted in the light that the said provision does not in any way suggest any basis for breach of the constitutional right to life.

Apparently, whatever interpretation given to any statute is subject to the CFRN,⁴⁶ in addition sec 134 CPC provides that every offence shall ordinarily be inquired into and tried by a court. After a due process of trial, one's right to life may be violated by the court. Indeed, the procedure of this is more stringent and goes beyond the court's decision. After a sentence of death has been pronounced, the presiding judge shall, as soon as maybe convenient communicate the decision to the minister who in turn makes recommendation to the Governor or President as the case may be.⁴⁷ Thus, a convicted person can only be executed at the order of the executive.⁴⁸

Premised on the above provisions, it is concluded that the activities of vigilante groups are clearly an affront to both the CFRN and the statutory protection of the right to life. It is thus a clear violation of the right to life of both the innocent accused and the guilty accused individuals.

In addition, in its moratorium on death penalty the ACHPR urged all State parties that still maintain the death penalty to comply fully with their obligations under the Charter and to limit the imposition of the death penalty and reflect on the possibility of abolishing the death penalty.⁴⁹

In a reaction to the increase in extra judicial killings in Nigeria, the NBA called on the Inspector General of the Police (IGP) to investigate the spate of extra judicial killings and prosecute the erring officers.⁵⁰ It is wondered how the IGP can initiate investigation into extra judicial killings when it is rumoured that there is a standing order to summarily kill any suspect especially in the spate of kidnappings.⁵¹ It has also been argued that police not only

⁴⁵ Sec 112 and 113 of CPC.

⁴⁶ Sec 1 provides for the supremacy of the CFRN and that all contrary laws are void to the extent of their inconsistency.

⁴⁷ The Executive Governor of Kwara State of Nigeria granted two convicted persons state pardon on the 1st of January 2010.

⁴⁸ Sec 295-298 of the CPC.

⁴⁹ The resolution was adopted at the African Commission's 44th Ordinary session in Abuja Nigeria. See <http://www.achpr.org/sessions/51st/intersession-activity-reports/death-penalty/> (accessed July 31, 2012).

⁵⁰ Communiqué of the NBA Executive committee, 2009 issued at Zodaic Hotels Enugu.

⁵¹ It was reported in PUNCH December 12, 2009, that in the South West State of Ijebu Ife, Ogun State where scores of houses and 16 people were burnt in retaliation for lynching of a senior Police officer.

routinely torture suspects, shoot them at will but also use all their powers to help killer Policemen escape justice.⁵²

In Anambra State, The current governor⁵³ on March 17, 2006, when he was inaugurated, made it abundantly clear that he would work for peace, that his government would enthrone lasting peace based on justice.⁵⁴ However, since entering into governance, the killings by this non conventional security forces is on the increase. How more will one judge the paradox of seeking peace through justice with the current formation across the State of Vigilante groups saddled with the rights to kill at sight without inquiry into the innocence of an alleged criminal?

The author recollects with nostalgia, the formation of the Onitsha Vigilante Services (OVS) which was heralded by a fan fare of young and brutal looking thugs brandishing their sharp machetes along the major streets celebrating the power conferred on them to kill any suspect not minding if such accusation are ill founded, baseless or malice motivated. The question thus begging for answer is, does the governor of a State have any power to allow the formation of such groups laden with such unconstitutional powers? Police men have stood aloof as ‘innocent criminals’ go ablaze and simply looked away with no feeling of having the constitutional responsibilities of protecting citizens while maintaining law and order.

In all it concluded that the act of extra judicial killing is nowhere near justice but rather a clear act of impunity and disrespect for the laws of the land.

3.1 Extra Judicial killing a violation of Fundamental Human Rights?

It has been argued that both the legal method of execution is degrading and inhuman talk less of the extra-judicial means.⁵⁵ Invariably whenever a person is killed extra judicially, the person’s fundamental right of fair hearing is violated. Fair hearing remains the bedrock of rule of law. If the Nigerian human rights responsibility must improve the settled legal process of bringing violators to justice must be upheld and protected.⁵⁶

⁵² Punch Newspaper of December 12, 2009.

⁵³ Mr Peter Obi is currently re-elected to run the states for his final four year term which will now end in 2014.

⁵⁴ The Sun Newspaper, July 2, 2009.

⁵⁵ Chenwi L ‘Towards the Abolition of Death Penalty in Africa’ a Human Rights Perspective 57 PULP, 2005. 138.

⁵⁶ R Clayton and H Tomlinson ‘fair trial rights (2002) 2 in Chenwi L ‘Towards the Abolition of Death Penalty in Africa’ a Human Rights Perspective 57 PULP, 2005.

In *Onuoha Kalu and state*⁵⁷, the propriety of respecting fair hearing was greatly enunciated. In that case a death sentence was reaffirmed to be constitutional by virtue of the derogating language in the CFRN. However, in *Reid v Jamaica*⁵⁸ states were implored to ensure that all the facets of trial are rigorously adhered to. The court stated that death penalty is a qualified right and if unqualified would be unconstitutional. Thus any form of execution that defies the Constitutional safe guard is unconstitutional and a violation of the rights of the accused. In the case of *Pius Nwoga v State*,⁵⁹ there the accused led some Army officers during the civil war to the home of the deceased with the sole aim of getting him killed. The court held that the deliberate and intentional killing of an unarmed person living peacefully inside the Federal Territory of Nigeria is a “crime against humanity” and even if committed during a civil war is a violation of the domestic law of Nigeria and deserved to be punished. Thus all killings of unarmed persons accused rightly or wrongly violate the Nigeria law and must be shunned.

In the jurisprudence of the ACHPR, lack of respect or observance of fair trial rights is the absence of the essential protection of human rights.⁶⁰ It is thus argued that for all intents and purposes, vigilante executions deny citizens the right to be presumed innocent until proven guilty by a court of law. It is arguable that the ‘red machete’ testing of the bakassi boys does not find a place in the term ‘court of law’. The General Comment No 13 of the ICCPR guarantees fully for the right of presumption of innocence.⁶¹

Conclusively, all forms of extra judicial killings violate;

- a. The right to fair hearing by an independent and impartial court established by law.⁶²
- b. The right to be presumed innocent until proven guilty by a court of law.⁶³
- c. The right of an accused to have adequate time for the preparation of his or her defence.⁶⁴

3.2 The innocent: Need we weep for them?

⁵⁷ (1998)13 NWLR Pt. 583.

⁵⁸ Communication 250/1987, UN DOC.CCPR/C/39/D/250/1978 2 August 1990.

⁵⁹ (1972)/ALL NLR (Pt 1)149

⁶⁰ See <http://www.acdhhs.org/tag/african-commission-on-human-and-peoples-rights/> (accessed July 31, 2013).

⁶¹ Para 7.

⁶² Art 7 (1) (d) ACHPR.

⁶³ Art 7 (b) ACHPR.

⁶⁴ Article 7 (c) ACHPR.

From the analysis made above, it is penitent to examine the propriety in interrogating the fate of the innocent in the current bullish trend faced by citizens when they are subjected to the pains of extra judicial killings. The impact indeed is either direct or indirect. Considering the level of poverty ridiculing the populace in Nigeria, it behoves one to imagine the level of pain that families are made to go through when their loved ones are killed without conviction.

Aside the issue and pains of poverty, the sudden extinguishing of the joys of families when promising children in higher institutions and thriving businesses are suddenly nipped in the bud. In most of the killings experienced during the reign of terror by the bakassi boys in Onitsha Anambra State, 70 percent were claimed to be either politically motivated or as a form of vendetta by rich and popular business men against upcoming business competitors. It is therefore safe to presume that several families have been subjected to grieve unjustly. Indeed, to the innocent who lost their life in the past and to those that may lose it if corrections are not adhered to we need weep for them until the rule of law is entrenched to guard the fundamental right to life of citizens.

Weeping alone is however not enough but for the government to take concerted position in ensuring that the culprits are brought to book and the victims compensated. This is the only way that these acts of impunity will not continue unabated. There is need to strengthen the security outfits and re-position them for greater efficiency and effectiveness to be able to perform the roles constitutionally assigned for them. It is imperative to inquire into this atrocity. In our view, the problem is squarely, poverty. Government must be alive to its responsibility of providing employment for the citizenry to nip the crisis in the bud.

4.1 Conclusion

It is our view that there exists no relationship between impunity and justice. It is also concluded that the situation in Nigeria is highly dismal with unprecedented brutality by the Police forces and non conventional security outfits in the way and manner that citizens are killed extra judicially.

It is also important to note that there is a huge disparity in Nigerian government responsibility to protect her citizens. Ironically, the Police seem to have owned up to their inability to

provide security to the common man, thus this responsibility has been passed on to the populace. The current position therefore is one that can be best described as a return to the state of nature where man fought and lived a lawless life.

Furthermore, vigilante groups and non conventional security outfit activities have no judicial status and no powers under the Nigerian constitution to detain, charge, try or judge.⁶⁵ In contemporary Nigeria, they have no legal power or authority under the justice system to administer punishments, including death.⁶⁶ In addition, Vigilante justice seems to create more problems than it solves. Many vigilante groups are also alleged to be involved in violent crimes. Vigilante groups are involved in extrajudicial killings, illegal detention and torture of crime suspects. States and local governments and powerful politicians have also hijacked the vigilante groups for political purposes. Vigilante groups have become ready tools for the intimidation, threat and murder of political opponents.

Finally, there is an urgent need for both the government and the citizens to find a balance between its quest for jungle justice and justice rightly so called.

4.2 Recommendations

From the foregoing, it is recommended that the government of Nigeria must awake to its legal responsibility to protect citizens in both horizontal and vertical relations in the country. While, it may be tempting to appreciate the courage of the vigilante services, it should be paramount that the Police should occupy its central role in social control.⁶⁷

It is suggested that all such vigilante groups be stripped of whatever powers that are directly or indirectly conferred on them to kill suspects (not sure the authority is derived from anywhere in any form. The right approach is that the police must strictly monitor them and ensure that all such groups operate strictly on the provisions of the law). The statutory provisions that all suspects arrested by civilians should be handed over to the Police should be upheld. However, Police must ensure that when such persons are handed over to them that they must be investigated and if possible charged to court. Under no circumstances must they

⁶⁵ Section 214 CFRN provides in clear terms that there shall be no other form of Police anywhere in Nigeria outside the Nigeria Police Force.

⁶⁶ n 31 above.

⁶⁷ Oko Elechi O, Extra-Judicial Killings in Nigeria – the case of Afikpo Town (Being a Paper for Presentation at the 17th International Conference of the International Society for the Reform of Criminal Law, p11, The Hague, Netherlands, 24 – 28 August, 2003). Available at <http://www.isrcl.org/Papers/Elechi.pdf> (accessed July 30, 2012).

show favouritism and let such suspects handed over to them off the hook without justification.

It is also recommended that the Police chide in serious wordings the organisation and operations of vigilante group. For instance, during the formation of the ‘Cross and Die’ group set up in Onitsha,⁶⁸ the Divisional Police Officer in charge of central police station Onitsha sounded a note of warning, that the outfit must desist from misuse of firearms.⁶⁹ However, such statements must be followed through and met with laid down sanctions when the outfits embark on a frolic of their own outside the legal limits allowed. (Should such groups carry arms in the first place? Is it not an admission of failure on the part of the police to even allow such groups to exist in the first place?)

Finally, both the government and civil society groups should embark on massive human rights education of these groups. This is to ensure that they appreciate the basic component of the right to life and at least attempt to respect them.

⁶⁸ The Peace Mass Transit transport company set up a vigilante outfit to secure its park at the upper Iweka area of Onitsha, Anambra state.

⁶⁹ Daily Sun Newspaper, February 15, 2010.