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## A review of enforceable rights for victims of extra-judicial killings in Nigeria

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### Abstract

One of the fundamental principles of the criminal justice system and indeed the Nigerian constitution is the right of fair hearing of an accused person irrespective of the alleged criminality. This right if denied by whosoever notwithstanding the circumstances of such violation, could result to massive fundamental rights abuse including extra judicial killing. Therefore a victim of extra judicial killing whose death depicts unlawfulness, illegality and /or systemic impunity by members of the security agencies is entitled to the fundamental right of fair hearing among other enforceable rights. However, these enforceable rights of the victims of extra judicial killings, very often are not recognized, respected and observed by the perpetrators of extra judicial killings due to impunity on the part of the security agencies, issues of court's jurisdiction, cause of action, non-justiciability of chapter two of the constitution among others. This state of affairs this paper suggests, can be altered if the security agencies adopt more of electronic intelligence gathering measures in tackling crimes, perpetrators of extra judicial killings prosecuted in the regular court other than trial by court-martial, deliberate steps taken to protect/ensure the safety of representatives/families of victims of extra judicial killing and their witnesses from intimidation and retaliation during trial.

**Keywords:** Enforcement, rights, victims, extra-judicial killing

### Introduction

The justification for the existence of government extends to cover the reality for the defence of the citizens, for the citizens to put their views across with all potency, for them to feel and breathe the air of freedom around. The indispensability of the rule of law in a democracy also helps to ensure the collective progress and happiness of the society. As the interpreters of the law and arbiters of disputes, the courts or judges have a unique role in their protection, promotion and enforceability of the rights of victims of rights violation through the exercise of judicial discretion. Such discretion involves investigation of facts and declaration of rights and liabilities and their enforcement. The observance of or obedience to a court judgment presupposes the enforceable nature of such judgment which may be for purposes of determining that a person is innocent or guilty and confirmation of sentence as the appellate body of last resort.

The word 'right' is derived from a latin word *rectus* which in the noun form means that which a person has a just and valid claim, whether it be land, a thing, or the privilege of doing something or saying something <sup>[1]</sup>. Rights are those conditions of social life without which man cannot be at his or give his best. It is what is needful to the adequate development and expression of his personality <sup>[2]</sup>. It is therefore trite that only a right recognized and protected by the legal system that can be considered a right. The denial of a legal right in a manner inconsistent with laid down rules render the supposed beneficiary of such right a victim. Where also a guaranteed right under a given legal system is infringed upon it automatically activate the feeling of deprivation on the part of the victim. As a victim, there is usually a deep sense of being harmed, injured, hurt which may be attributed to crime, accident, or other event or action.

One way to become a victim in a manner devoid of the sanction of the court is through extra judicial killing. Extra-judicial killing presupposes the killing of a person by governmental authorities without the sanction of any judicial proceeding or any legal process <sup>[3]</sup>. This form of killing is as old as the inception of civilization when extreme lust for power ignited the desire in men to kill in the form of assassination.

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### **Notable Extra Judicial killings in Nigeria Rivers State (Chima Ikwunado)**

A newly married auto mechanic, Chima Ikwunado was arrested on allegation of armed robbery by E-Crack squad, tactical unit of the Nigerian Police Force domiciled at Mile One Police Division in Diobu, Port Harcourt on the 15<sup>th</sup> day of December 2020<sup>[4]</sup>. Due to extreme torture while in police detention, Chima died a few days later<sup>[5]</sup>. This was in spite of his protestation of his innocence before the police. Chima's death once again brought to limelight the culture of impunity by the police whose primary responsibility is the protection of life and property being the first line security agency in Nigeria.

### **Michael Akor and Michael Igwe**

Michael Akor and Michael Igwe were arrested by a five man team of men of the then Special Anti-Robbery Squad, SARS led by one ASP Samuel Chigbu on June 22, 2009<sup>[6]</sup>. They were extra judicially killed in a bush in Oyigbo the next day. The court per justice Adolphus Enebeli of the High Court in Port Harcourt while ruling in the enforcement of fundamental human rights suit before him stated that; *it is not a coincidence that the two Michaels were shot at the same part of their body, died at the Braithwaite Memorial Hospital at the same time and buried at the same place and time*<sup>[7]</sup>. The court went further and awarded the sum of fifty million naira to the families of the deceased as compensation to be paid by the Inspector General of Police and the Commissioner of Police in Rivers State.

### **South East (Operation Python Dance)**

The Operation Python Dance was an exercise carried out by the military in the five eastern states of Nigeria<sup>[8]</sup>. The said operation raised so much concern as it is the police and not the army that has the duty to maintain internal security anywhere in the country. During the period under review which commenced on November 17<sup>th</sup> 2016, excessive force was used against the Indigenous People of Biafra IPOB who embarked on a peaceful protest<sup>[9]</sup>. Ten people were reported dead in Aba, Abia State after the group held a protest with respect to army's invasion of their leader's (Nnamdi Kanu) house. The army intimidated citizens and instances of unaddressed extra judicial killings and harassment by soldiers deployed to the south east were recorded<sup>[10]</sup>.

### **Abuja (The APO Six Killings)**

The Apo Six killings has remain indelible in the hearts of most Nigerians, especially members of the human rights community. These six unfortunate Nigerians got their lives terminated by the Nigerian police in the Apo area of Abuja in June 2005 on the pretext that they were armed robbers. They were stopped by the police, while returning home<sup>[11]</sup>. An argument ensued over bribe demanded by one of the policemen and Ozor. The policeman shot Ozor who died on the spot. In a bid to cover the dastardly act, the remaining five occupants were killed by the police at different locations, a few hours later. This heinous crime by the police was met with stiff resistance by traders at the Apo Mechanic Village, as well as the determination of the counsel to the victims, who was able to prove in court that the victims were extra-judicially killed by the police<sup>[12]</sup>.

### **The Killing of #EndSARS Protesters)**

The impunity and total disregard to human right to life was again unleashed on innocent and peaceful protesters who were fed up with police brutality and decided to protest peacefully. Evidence gathered from eye witnesses, video footage and hospital reports confirm that between 6:45pm and 9:00pm on Tuesday 20<sup>th</sup> October 2020, the Nigerian military opened fire on thousands of people who were peacefully calling for good governance and an end to police brutality<sup>[13]</sup>. At the end, 12 peaceful protesters were confirmed killed extra judicially by the army and police in Lekki and Alausa part of Lagos state.

### **Substantive Rights**

The impunity by members of the law enforcement agencies such as the police and the Nigerian Armed Forces account for most of the cases of extra judicial killings in Nigeria. This does not preclude other security agencies like the Nigerian Customs Service, the Nigerian Correctional Service and the Nigerian Security and Civil Defence Corps from allegations of extra judicial killings<sup>[14]</sup>. The culture of impunity which has resulted in the death of many innocent Nigerians is derived largely from government's authorization of a policy of shoot-to-kill or shoot-at-sight, when in confrontation with armed robbers<sup>[15]</sup>. Unfortunately, innocent protesters are not spared the consequence of this ignoble policy and have become sustained targets of extra judicial killings by Nigeria's security forces.

The latin maxim, *ubi jus ibi remedium*, which means, where there is a wrong, there is a remedy, clearly justifies the imperative to accord victims of extra judicial killings their enforceable rights. Some of the known enforceable rights of the victims of extra judicial killings include:

- Rights to fair hearing
- Right to life
- Right to dignity of human person
- Right to personal liberty
- Right of action
- Right of appeal

### **Right to fair Hearing**

Section 36(1) of the Constitution of the Federal Republic of Nigeria<sup>[16]</sup> is clear on the right to fair hearing. It states that; in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing with a responsible time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality<sup>[17]</sup>. The right to fair hearing according to natural justice or the fair hearing provisions of the CFRN, cannot be ousted whether during civil rule or military rule. The principles enshrined in section 36(1) of the CFRN represent an indispensable cornerstone of the well settled rules of natural justice, which must be observed in every determination affecting the rights and obligations of a person<sup>[18]</sup>.

The Supreme Court, per Karibi-Whyte in *LPDC v Fawehinmi*, stated that 'in the circumstances of this country fair hearing is an entrenched provision of the constitution which cannot be displaced by legislation however unambiguously worded<sup>[19]</sup>. No doubt, the right of a person to a fair hearing is so fundamental to the concept of justice, that the right can neither be waived nor taken away, whether

expressly or by implication. A denial of fair hearing by a law or security forces of the state is an act of injustice. Victims of extra judicial killings are very often not allowed the opportunity to be heard or ventilate their case by the security agencies before having them killed.

The Committee for the Defence of Human Rights CDHR, in its recent report noted that the group had hoped that with the return to democratic rule on May 29, 1999 that, "there would be a reduction in extra-judicial killings in Nigeria, but, rather surprisingly, there was an increase in incidences [20]". In *Ariori, & others v. Elemo & others*, the supreme court per Obaseki JSc, said, fair hearing, therefore must mean a trial conducted according to all the legal rules formulated to ensure that justice is done to the parties in the case [21]. The above judicial pronouncement further concretized the imperative of fair hearing not just to the parties concerned but for the sake of justice. This is obviously the contrary where extra-judicial killing hold sway and the perpetrators are not prosecuted. The fundamental nature of the right to fair hearing was stressed when the supreme court Per Oputa Jsc in *Olatunbosun v. NISER* stated that, The right of a man to be heard in his own defence is the most elementary protection of all, and where a statutory form of protection would be less effective if it did not carry with it a right to be heard, I would not find it difficult to imply this right" [22].

### Right to Life

The right to life remains one of the pre-trial rights of an accused person. This right is extinguished when an accused person becomes a victim of extra-judicial killing. The CFRN provides for the right to life, thus: Every person has a right to life, and no one shall be deprived intentionally save in execution of the sentence of a court in respect of a criminal offence which he has been found guilty in Nigeria [23]. The right to life is one of the most important rights since without the right to life it is impossible to enjoy other rights. Therefore, the right to life is not to be deprived unless, after the due process of law and in the execution of the sentence of a court for criminal offence for which the accused has been found guilty. The due process of law entails the trial of the accused person including other legal considerations followed by a guilty verdict by the court. In *Bello v A.G Oyo State*, the Supreme Court held that "the premature killing of Nasiru Bello (appellant) in the surrounding circumstances of this case was both unlawful and illegal. It was wrongful in the sense that it was injurious to the rights primarily of Bello to life...it was unjust in the sense that he (Nasiru Bello) was not allowed a just determination of his appeal by the Federal Court of Appeal... [24] The constitution however provides the exceptions to the right to life to include deprivation of life, in defence of a person, or unlawful violence, or defence of property, to effect a lawful arrest, or to prevent the escape of a person lawfully detained and for the purpose of surprising a riot, insurrection or mutiny [25].

It is pertinent to observe that the rise in the number of extra judicial killings in Nigerian are not attributable to either of the constitutional exceptions. Institutionalized culture of impunity derived largely from government's authorization policy of shoot- to- kill when in confrontation with armed robbers and other dangerous criminals account for extra judicial killings in the country. The compliance with the policy by the security agencies, unfortunately, and to a

larger extent, has rendered many innocent persons victims of extra judicial killing.

### Right to Dignity of Human Person

The CFRN provides to the effect that every individual is entitled to respect for the dignity of his person, and accordingly no person shall be subjected to torture or to inhuman or degrading treatment or required to perform forced or compulsory labour [26]. Forced or compulsory labour does not include any labour required in consequence of the sentence or order of a court, required for armed forces, reasonably necessary in the event of any emergency or capacity, required under the National Youth Service Corps Programme (NYSC). Therefore dignity is the right of a person to be valued and respected for their own sake, and to be treated ethically [27]. This right is universal in nature and apply to all members of the human species irrespective of race, colour, gender, class, nationality, religion, age, employment status, political orientation, sexual orientation, disability status and so forth [28]. Sexual violence, female genital mutilation, widowhood practices are some of the forms in which violation of the right to human dignity manifests other than in cases of extra judicial killings,

In the case of *R v Jegede* [29], members of a night guard killed a notorious thief whom they alleged was carrying stolen goods and was armed. Convicting them of manslaughter, the court pointed out that the verdict would have been that of murder but for the fact that the evidence of deliberate killing was not clearly established [30]. The sacredness of human life in its entirety abhors the termination of life in circumstances devoid of the sanction of the law. Therefore, the court is not a mechanical automatic calculator, but a court of law dealing with varying situations and applying law to situations in order to do justice in each and every situation according to its peculiar surrounding circumstances [31].

The right to dignity of human person is protected even in situations where the deceased consented to his death. In *State v Okezie* [32], the accused, a native doctor, prepared charms for the deceased. The deceased thereafter invited the accused to test the charms on him by firing gun shot at the chest and killed him. He was convicted for murder [33]. Death in either of the aforementioned circumstances clearly violate the victim's right to dignity of human person to the extent that the absence of due legal process of arrest, investigation, trial and a guilty verdict by the court of competent jurisdiction constitute a violation of the right to human dignity.

### Right to Personal Liberty

Under the constitution, every person is entitled to his or her personal liberty. Section 35(1) is to the effect that every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in circumstances and in accordance with a procedure permitted by the law including; execution of the sentence or order of court in a criminal offence, failure to comply with the order of court, to bring an accused person before a court in execution of the order of a court, for the purpose of the education of welfare of a person yet eighteen years among others. Personal liberty in its wide context is the freedom of every law-abiding citizen to think what he will. To say what he will on his lawful occasions without let or hindrance from any other person [34].

However, in the narrow sense in which it is used in section 35(1), personal liberty means right to freedom from wrongful or false imprisonment, arrest, or any physical restraint whether in any common prison, or even in the open streets without legal justification<sup>[35]</sup>. The right therefore is basically to protect the individual against the excesses of the government and its agents. Lord Atkin while dissenting in the case of *Liversidge v Anderson*<sup>[36]</sup> stated that, in English law every imprisonment is *prima facie* unlawful and...it is for a person directing imprisonment to justify his act. The only exception is in respect of imprisonment ordered by a judge<sup>[37]</sup>.

The right to personal liberty extends to the right of a person to trained and be trained in a way and manner such a person deems fit. And so in *Adewole v. Jakande*<sup>[38]</sup>, the court held to the effect that the closure of private schools by the Lagos State government is a violation of the personal liberty of parents to train their children where and how they deem fit. The right to personal liberty avails not only Nigerians but aliens also. The right is however not absolute. It can be deprived in circumstances prescribed by any law in accordance with the constitution<sup>[39]</sup>. In *Egenokwu v AG Federation & Anor*<sup>[40]</sup>, where the applicant sought a declaration that his arrest and the detention of the applicant by the 2<sup>nd</sup> respondents officers for a total period of four (4) days at Karimu police station, Police Command Area II and Police Force CID Area 10 is unreasonable, unconstitutional and a grave violation of the applicant's fundamental right to liberty. The court held as unreasonable, unconstitutional and a grave violation of applicant's fundamental right to liberty<sup>[41]</sup>.

### Right of Action

A right of action is the legal right to sue another person, body or government<sup>[42]</sup>. This right can be exercised by the representatives of a victim of extra-judicial killing. In Nigeria, the right to action may be activated if a person alleges that his right has been, is being or is likely to be contravened. To be able to challenge a government or administrative power, decision or act, one must have right of action in law<sup>[43]</sup>. Generally, a person has a right of action under section 6(6) (b) and section 46(1) CFRN as follows: for the determination of any question as to his civil rights and obligations against any person, body or government and /or where any of the fundamental rights and obligations of the person has been, is being or is likely to be contravened<sup>[44]</sup>.

The aforementioned constitutional provisions are consistent with the trite position that where there is a wrong, there is a remedy. This antiquing position found support by the court in the case of *Ashby v White*<sup>[45]</sup>. In which the court frowned at the attitude of the defendant who discountenanced the vote of the plaintiff at an election. It held that an elector has a right of legal action for a form of nuisance or disturbance of rights, if his vote was wrongly rejected by the returning officer, even though the candidate he had tried to vote for was elected any way<sup>[46]</sup>.

### Right of Appeal

Right of appeal is the right to go to a higher court for the review of the judgment or ruling of a lower court, with which the appellant is not satisfied<sup>[47]</sup>. A person can only appeal against a decision or judgment of a court or tribunal where there is a right of appeal. A right of appeal is

conferred by section 241-243 CFRN or by any other statute, including the statute establishing the court. The court per Musdapher JCA in *Lekwot & others v Judicial Tribunal* stated that, it is well established that no appeal lies unless a right of appeal is expressly conferred by statute--- and must also come with the provisions of the statute creating the right of appeal<sup>[48]</sup>. Consequently, a victim of extra judicial killing may through his representatives challenge the judgment or ruling of a lower court either as of right or with the leave of court. This right was exercised by the representatives of the appellant in *Bello v. A.G Oyo State*<sup>[49]</sup>, where the supreme court declared the premature killing of the appellant by the state as both unlawful and illegal despite the yet to be determined pendency of the appellant's appeal.

### Procedural Rights

The procedural rights of a victim of extra judicial killing is mostly contained in the right to fair hearing. The fair hearing provision in the constitution<sup>[50]</sup> envisages the principles of *audi alteram partem*, hearing within a reasonable time; hearing before a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality; trial to be held in open court or public and the parties allowed access; presumption of innocence until otherwise is proven; making known promptly in the language understood by the accused the nature of the offence; provision of adequate time and facilities for defence; defend himself in person or by legal practitioner of his choice; examination of the witnesses called by the prosecution in person or his legal practitioner to contradict their evidence among others.

In view of the above elements of fair hearing, it is therefore imperative for the observance of fair hearing in every trial as a slight deviation is an entronement of injustice to the accused person. The Supreme Court, Per Jibowu FJ in *Mallam Saadu of Kunya v. Abdulkadir*<sup>[51]</sup> stated the fundamental importance of fair hearing when he remarked; it is a fundamental principle of the determination of natural justice, that a defendant and its witnesses should be heard before the case against him is determined, and it is, in my view, a denial of justice to refuse to hear a defendant's witnesses<sup>[52]</sup>. No doubt, a victim of extra judicial killing is not allowed the opportunity to benefit from the exercise of this right for the determination of his guilt or innocence since fair hearing lies in the procedure followed in the determination of the case, not in the correctness of the decision. Therefore, no determination involving civil rights or criminal trial can be properly made, until the person whose civil rights or in whose detriment the criminal trial is commenced has been notified of the matter and given opportunity of answering the case against him.

### Challenges in the Enforcement of Victim's Rights

It is trite that rights which are enforceable in law are those rights which are recognized by law as distinguished from mere aspirations. Some of the notable challenges in the enforcement of the rights of victims of extra judicial killings include;

### Jurisdiction of Court

Despite the novel innovations by the Fundamental Rights (Enforcement Procedure) Rules 2009 made pursuant to section 46(3) of CFRN by the Chief Justice of the

Federation, which among others, circumscribed the hitherto unlimited jurisdiction of State High Court to entertain matters involving violation of fundamental rights of Nigerians thereby conferred on Federal High Court the jurisdiction to adjudicate on rights violation especially where such infringement is occasioned by the federal government or any of its agencies. However, the challenge with this requirement is the fact that federal high courts are not spread across all the states of the federation. This therefore constitute a limitation in the enforcement of a victim's right as litigants, must necessarily travel enormous distances and expenses to initiate actions at the nearest Federal High Court which covers their locality. This senior has helped to discourage litigants from seeking redress where their rights have been infringed.

### The Issue of Cause of Action

In an application for the enforcement of fundamental rights, it is a condition precedent that the enforcement of the fundamental right should be the main claim and not an ancillary claim<sup>[53]</sup>. This is to confer the court with proper jurisdiction in order to avoid the suit being incompetent or inappropriate. In *Ihenacho v. N.P.P*<sup>[54]</sup>, the court held that for a claim to qualify as falling under the fundamental rights (Enforcement Procedure) Rules, it must be clear that the principal relief sought by the appellant is for the enforcement of a fundamental right and not to redress grievance that is ancillary to the principal relief which is not itself *ipso facto* a claim of fundamental right<sup>[55]</sup>. Consequently, notwithstanding the right of employees to belong to Trade Union for the protection of their interest as guaranteed by the constitution and the Trade Union Act, such right is extinguished by employer of labour though the proscription of trade union and inexplicably viewed as an accessory claim which cannot be enforced under the Fundamental Rights (Enforcement Procedure) Rules.

### Non Justiciability of Chapter two of the Constitution

The non justiciability of the provisions of chapter two of the CFRN which encapsulates economic, social, political, cultural, educational and foreign policy viewed as Fundamental Objectives and Directive Principles of state policy remains a major challenge in the enforcement of fundamental objectives and directive principles of state policy remains a major challenge in the enforcement of fundamental rights. The rights incorporates the right to work, fair remuneration, adequate standard of living, form and join trade union, security, education among others. However, by section (6) (6) (c) of the CFRN, the judicial powers of the courts do not extend to cover any issue or question as to whether any act or omission by any authority is in conformity with the Fundamental Objectives and Directive Principles of State Policy. Consequently, this state of affairs clearly inhibits the right of a victim of extra judicial killing to be heard before a court or other tribunal established by law and constituted in such a manner to ensure impartiality and independence.

### Conclusion

There is no gainsaying the fact that extra judicial killings in Nigeria has assumed unprecedented dimension in our history as a country. The victims in the majority of the cases are the common citizens going about their legitimate endeavours but abruptly/unlawfully denied their cherished

right to life whose sacredness is the most fundamental of all rights symbolizing the core of humanity. This unfortunate dent in our criminal justice system is mostly perpetrated by members of the security agencies propelled by impunity and tacit approval by the execution arm of government through deliberate failure to prosecute the perpetrators in numerous instances.

Right to life if extinguished through extra judicial killing, automatically bring to an end the prospects for the exercise of other rights including, right to personal liberty, right to dignity of human person, right to fair hearing, among others. However, plethora of court judgments abound which unambiguously declared extra judicial killings illegal and a violation of the victims' fundamental rights.

### Recommendations

1. Electronic intelligence gathering should be inculcated in the policing methods by all the security agencies so as to avoid being reactionary and ends up extra judicially killing innocent citizens other than the prevention of crimes before they occur.
2. Perpetrators of extra judicial killings should be tried more often in the regular courts other than trial by court martial in order to ensure the observance of all the incidences of fair hearing.
3. Deliberate measures must be taken by the state to ensure the safety of the representatives of the victims of extra judicial killing, their families and witnesses from intimidation and retaliation during trial.
4. Reasonable compensation should be ordered by the court to be paid to the families of the victims of extra judicial killings taking into account; loss of earnings, funeral expenses, loss of maintenance (as regards dependents), pain and suffering, loss of expectation of life among others.
5. Proper orientation and education of members of the security agencies on the imperative and importance of compliance with all laid down procedure of handling suspects before, during and after trial.

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