

# I will kill you and nothing will happen: extra-judicial killings in Nigeria and public interest litigation.

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## **I Will Kill You and Nothing Will Happen: Extra-Judicial Killings in Nigeria and Public Interest Litigation**

**Abstract:** Public interest litigation is a mechanism of intervention in a matter that concerns the public. It could be about human rights, government policy, or some other issue that could present a challenge to public life. Public interest litigation is important because it presents hope to the powerless and offers justice where there might not previously have been the opportunity. The aim of public interest litigation is to recognise injustice and give a voice to the concerns of members of society who might not have the means to articulate them. In Nigeria there is a high tendency for people of low socioeconomic status to experience police brutality, or even become victims of extra-judicial killing. In this article, it was argued that although public interest litigation is a good strategy to engage the injustice of extra-judicial killings, the recurrence shows that the solution lies more in addressing a systemic problem.

**Keywords:** extrajudicial killings, police, public interest litigation, security forces

### **Introduction**

Institutional weaknesses in Nigeria have often resulted in social challenges that vary in severity. Extra judicial killings for instance, are a problem in Nigeria, which is

a consequence of low executive constraint.<sup>1</sup> Since the change in political dispensation, from military regimes to democratically elected governments, there has been an increase in violence of varying degrees, perpetrated by uniformed men, bandits, religious fundamentalists, and cultists.<sup>2</sup> It appears that Nigeria, like many developing nations, is a Hobbesian state, since the value of human life becomes subject to a primeval prescription for survival, that suggests that ‘might is right’. The monopoly of force which was exclusive to the Nigerian state, and which is one of the indicators to show whether a state has failed or not, has now become lost to a proliferation of arms in the wrong hands.<sup>3</sup> There is a rising level of lawlessness caused by extra-judicial killings, especially by the police force, and with the worsening policing in Nigeria, extra-judicial killings seem to be on a rising curve.<sup>4</sup> The police force is crucial to the domestic security of a country. To know how orderly and secure a society is, the professionalism and effectiveness of the police force is a very pertinent factor.

Public interest litigation is the balance that counters police brutality. Public interest, as a term was, a creation of the social unrest that took place in the 1960s in the United States. It was consolidated by the normative practice advanced by Louis Brandeis. Before he was appointed a U.S. Supreme Court justice, he had, as a lawyer, integrated advocacy for the public interest into private practice.<sup>5</sup> In a popular speech made in 1905, Brandeis had lamented the legal profession at the time that:

Able lawyers have to a large extent allowed themselves to become adjuncts of great corporations and have neglected their obligation to use their powers for the protection of the people.<sup>6</sup>

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1 Low executive constraint is a term for the power imbalance that could occur in a developing state, which is characterized by a severe political or legal incapacitation of the legislative arm and the judicial arm of government to check the excesses of the executive arm. This usually occurs when the executive arm of government becomes too powerful by means of a defect in the constitutional allocation of power or resources.

2 A.E. Ojie Ethnicity, and the Problem of Extrajudicial Killing in Nigeria, “Journal of Black Studies” 2006, vol. 36 no. 4, p. 546, <https://www.jstor.org/stable/40034770> (2.11.2020).

3 International Crisis Group, Violence in Nigeria’s North West: Rolling Back the Mayhem (18.05.2020), <https://reliefweb.int/sites/reliefweb.int/files/resources/288-violence-in-nigerias-north-west.pdf> (1.10. 2021); D.E. Agbiboa, The Precariousness of Protection: Civilian Defense Groups Countering Boko Haram in Northeastern Nigeria, “ASR” 2020, vol. 64 no.1; C. Danjuma Dami, Impact of Terrorism, Banditry and Kidnapping on Human Security in Nigeria, “Saudi J. Humanities Soc. Sci.” 2021, vol. 6 no. 8.

4 E.U.M. Igbo, The Use and Abuse of Police Powers and Extrajudicial Killings in Nigeria, “African Journal of Criminology and Justice Studies” 2017, vol. 10 no. 1.

5 E. Rekosh, K.A. Buchko, V. Terzieva, Pursuing the Public Interest: A Handbook for Legal Professionals and Activists, Public Interest Law Initiative in Transitional Societies, Columbia 2001.

6 *Ibidem*.

This was a reflection that today mirrors the reactive state of legal practice in Nigeria, where it seems that lawyers have chosen to be passive actors in the social sphere. Public interest litigation, although it has been a veritable tool of resistance employed by human rights activists and legal professionals in many countries of the world, has its own challenges. Literally, extra-judicial execution is an unethical crime by governmental authorities in contradiction of humanity. It is basically the unlawful killing of human beings that is *void ab initio*, and *ultra vires* since it is without legal process and or judicial proceedings.<sup>7</sup> While public interest litigation simply means using the law to augment human rights, public as well as sometimes private issues, and address far-reaching concerns of the public.<sup>8</sup> The Constitution of the Federal Republic of Nigeria (as amended), being the grundnorm of all laws, is the supreme law of the land.<sup>9</sup> Accordingly, unlawful arrests and extra judicial killings contravenes the constitutional rights to personal liberty, and life, guaranteed under sections 33–35.<sup>10</sup> Particularly, 33 which stipulates the right of life to every person except in the instances of the sentence of a court of law in respect of a criminal offence found guilty of in Nigeria. And section 46 further provides for the special jurisdiction of the high court and legal aid in such instances.<sup>11</sup> Thus, the basic principles of necessity, legality, and proportionality must be in *tandem* with the seriousness of the offence and the legitimate objective to be achieved in accordance with the strict rule of law.

Historically, Nigeria has a deep-rooted genesis of violation of human rights and extra judicial killings from her colonial roots.<sup>12</sup> The British colonial masters, in an effort to consolidate and expand their power, grossly violated the rights of Nigerians. In addition, the mutual pledge system was a prototype to the institution of the Police force in Britain. Under this system, villagers were responsible for their safety as well as protection of their settlements from thieves and marauders. It was a sort of collective responsibility for everybody.<sup>13</sup> Arguably, this was a distinct time in history as there were little to no extra-judicial killings at the time, based on being each other's neighbour's keeper, and communal living of sisterhood and brotherhood. However, sixty-one (61) years after independence, Nigeria continues to experience extra judicial killings despite some measures of public interest litigation. Nigeria's experiences date

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7 O.O. Elechi, Extra-Judicial Killings in Nigeria: The Case of Afikpo Town, National Criminal Justice, Case Number 202800 (2003), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/extra-judicial-killings-nigeria-case-afikpo-town> (4.10.2021).

8 A.T. Vahyala, Dissecting Management Strategies of Farmer-Herder Conflict in Selected Vulnerable States in North-Central Nigeria, "GIJMSS" 2021, vol. 4 no. 2 p. 17.

9 Section 1 CFRN 1999 Third Alteration Act as amended 2011.

10 M. Ladan, Combating Unlawful Arrests, Torture and Extra-Judicial Killings in Nigeria, "SSRN Electronic Journal" 2013.

11 Anti-Torture Act, Laws of the Federal Republic of Nigeria, Number 21, 2017.

12 A. Jauhari, Colonial and Post-Colonial Human Rights Violations in Nigeria, "IJHSS" 2011, vol. 1, issue 5, p. 53.

13 *Ibidem*.

back to the epochs of military and civilian rule. The military rule denoted absolute authoritarianism, coup d'état, unconstitutionalism, and abuse of power.<sup>14</sup> After every military coup, the government suspended the constitution and, thus, liberated itself of the accountability towards its people.<sup>15</sup> It is against this backdrop that Nigerian Afro beat king, Fela Anikulapo Kuti and the Egypt 80 Band, which debuted "Animal Rights", satirized the military on its abuse of human rights.<sup>16</sup> Arguably, it suffices to assert that extra judicial killings were primarily the order of the day during that brutal military era.<sup>17</sup>

On the other hand, civilian rule also came, a supposed democratic and peaceful regime with the unique opportunities of public interest litigation and the acclaimed protection of fundamental rights. Yet, it is said to be characterized by an institutional failure in observing people's rights.<sup>18</sup> In order to hold on to power, the civilian leaders denied freedom of expression, practiced unlawful and extra-judicial killings, and rigged elections. With successful transition to democracy in 1999, and the consequent stabilization with the conduct of four successive elections as of 2011, Nigeria continues to confront serious human rights challenges politically and socio-economically, including the culture of impunity where perpetrators are often not held accountable for their actions in forms of corrupt practices, extra-judicial killings by the police, and the Boko Haram insurgency.<sup>19</sup> This indicates the worsening human rights situation even after independence as compared to the colonial period.<sup>20</sup> Nigeria is a signatory to many international human right initiatives; nonetheless, the country also has a history of human rights violations involving unjustifiable torture and extra-judicial killings.<sup>21</sup> The almost daily occurrence of extra judicial killings, and or accidental discharge, causing fatal harm to innocent citizens, and abuse of

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14 J. Mbagwu, A. Mavalla, Nonviolent Approach: Alternative to Military Strategy for Curbing Terrorism in Nigeria, "ASRJETS" 2016, vol. 26, issue 3, p. 124.

15 *Ibidem*.

16 S. Chukwu, G. Emerinwe, Police Brutality and Human Rights in Nigeria's Democracy: Focus on Restoration of Man's Dignity, "Revista Brasileira de Gestão Ambiental e Sustentabilidade" 2020, vol. 15 issue 7 p. 155.

17 S. Zems, Police-Public Relations as a Potent Tool for Combating Crime, Insecurity, and Social Disorder in Nigeria. "IJBMI" 2016, vol. 5, issue 11, p. 20.

18 C. Ugochukwu, O. Nwolu, The Influence of Social Media Framing on Audience Perception of EndSARS Agenda Protest, "J. Media Commun. Stud." 2021, vol. 2, issue 1, p. 14.

19 G.L. Animasawun, Causal Analysis of Radical Islamism in Northern Nigeria's Fourth Republic, "Afr. Secur. Rev." 2013, vol. 22, Issue 4, p. 231, G. Animasawun, The Military and Internal Security Operations in Nigeria's Fourth Republic: Rethinking Security for Positive Peace in Maiduguri Nigeria, "J. Peace Res." 2012 vol. 45, Issue 2, p. 113.

20 O.C. Obi-Nwosu, H.C. Nwafor et al., The Psychological Implications of #EndSARS Protest in Nigeria: A Theoretical Expository Approach. *Curr. j. appl.* 2021, p. 20.

21 J. Dada, Impediments to Human Rights Protection in Nigeria, "Ann. Surv. Am. L." 2012, vol. 18, issue 1, p. 67; I. Adegbite, Human Rights Protection and the Question of Good Governance in Nigeria, "Journal of Humanities" 2018, vol. 4, p. 219; U. Emelonye, Non-Governmental Appraisal

firearms by security agencies is a source of serious security and safety concerns. After about two decades of military rule in Nigeria, Nigerians appeared to have misplaced their ability to contend for their rights up until the 2020 #EndSARs protest, which resulted in more extra judicial killings. In this vein, the Nigerian government have continued to remain untouchable. More so, any attempt to talk about human rights has been very controversial since the return of democracy in 1991, because the police have problematically taken over the lawlessness of the military.<sup>22</sup> Idiomatically, it seems to be the case of the dark spots of a leopard which cannot be washed away by rain.<sup>23</sup> Therefore this article will discuss the serious problem of extrajudicial killing in Nigeria, and how public interest litigation can be used to get justice for the families of victims. It will also discuss the challenges of public interest litigation. This article uses desk, and analytical, research. Data such as journal articles, newspaper reports, online sources, and international instruments were collected. The data was processed through content analysis.

## 1. The Meaning and Concept of Extra Judicial Killings

The right to life is very important in the realization of human rights and without it being protected, human rights are in danger of violation. This is because human rights are just as essential to a living person as personal possessions are. This is why for the African Commission, the right to life is the foundation of all other rights. Kayitesi also observed in a general comment that the right<sup>24</sup> to life is so important that ‘without it, there can be no human rights.’<sup>25</sup> The right to life is at the core of the philosophical basis for human existence and was the provision in Article 3 of the Universal Declaration of Human Rights 1948, where it was stated that everyone, without exception, has a right to life and the security of their person.<sup>26</sup> At the regional level, the African multilateral human rights instrument provides for the right to life

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of the Frameworks for the Promotion and Protection of Human Rights in Nigeria, “GJPLR” 2021, vol. 9, no. 5, p. 31.

- 22 S. Chukwu, G. Emerinwe, Police brutality and human rights in Nigeria’s democracy: Focus on restoration of man’s dignity, “Revista Brasileira de Gestão Ambiental e Sustentabilidade” 2020, issue 7, vol. 15, p. 155.
- 23 S.I. Ifejika, The Nigerian State and International Human Rights Laws in the Fourth Republic, “Pertanika J. Soc. Sci. Humanit. : 2021, vol. 29, issue 1, p. 581.
- 24 African Commission on Human and Peoples’ Rights, General Comment No. 3 On The African Charter On Human And Peoples’ Rights: The Right To Life (Article 4), Pretoria University Law Press November (2015), <https://www.achpr.org/legalinstruments/detail?id=10> (1.10.2021).
- 25 S.Z. Kayitesi, General Comment No. 3 On the African Charter on Human and Peoples’ Rights: The Right to Life (Article 4), ACPHR (2015), <https://www.achpr.org/legalinstruments/detail?id=10> (1.10. 2021).
- 26 Universal Declaration of Human Rights, 1948 (UDHR) Article 3.

in Article 4 of the African Charter on Human and Peoples' Rights (African Charter). It provides that:

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person, and no one shall be deprived of this right.<sup>27</sup>

The Nigerian constitution, deriving from state practice, provides for the right to life thus:

Persons living in Nigeria, shall have a right to life and no one shall be deprived intentionally of his life unless in execution of the sentence of a court of a criminal office of which he has been found guilty.<sup>28</sup>

The description of the social contract<sup>29</sup> in Thomas Hobbes's *Leviathan*, makes it correct to assume that it is the duty of the government in any country to protect the right to life and all other rights for that matter, because in any state, the government is expected to have monopoly of the use of force. This is why the right to life becomes endangered in countries where executive power is unrestrained and where impunity overrides the rule of law. In some developing states where executive power is unrestrained, governments violate the right to life of citizens where there is a threat to the private interests of the people in government or resulting from police brutality. Extra-judicial killing is a violation of the right to life, and it is any killing that is not sanctioned by law and that is carried out by agents of the state. Sommer and Assal defined extra-judicial killings as the instances where a government murders its subjects without judicial oversight.<sup>30</sup> It is the brutish and highhanded display of executive power and the corrosion of constitutional processes. Many times, extra-judicial killings are often a sign of a weak rule of law and institutional decay.

Some people who are in support of extra-judicial killing believe it is a short-cut to justice especially where the judicial system is slow and ineffective.<sup>31</sup> The Queensland Human Rights Commission wrote that public entities should not engage upon the negative duty of depriving the right to life, but take on the positive duty to ensure that the right to life is protected as it should.<sup>32</sup> Extra-judicial killing is a betrayal of the

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27 African Charter on Human And Peoples' Rights (African Charter), Article 4, [https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf) (1.10. 2021)

28 Constitution of the Federal Republic of Nigeria (as amended) 1999, Section 33.

29 T. Hobbes, *Leviathan*, Create Space Independent Publishing Platform 2011.

30 U. Sommer, V. Asal, *Examining Extra-judicial Killings: Discriminant Analyses of Human Rights' Violations*, "Dynamics of Asymmetric Conflict: Pathways toward terrorism and genocide" 2019, vol. 12, issue 3.

31 J. Fernquest, *State Killing, Denial, and Cycles of Violence in the Philippines*, "PSR" 2018, vol. 66.

32 Queensland Human Rights Commission, *Right to Life*, Queensland Human Rights Commission (2019), <https://www.qhrc.qld.gov.au/your-rights/human-rights-law/right-to-life> (1.10. 2021).



responsibility to protect, and it is an indictment on state power. There are evolving meanings of extra-judicial killing and one is the new definitions presented by the Philippine law, the Special Protection of Children in Situations of Armed Conflict Act (Republic Act 11188) signed on 10 January 2019, which defines extra-judicial killing as:

Extrajudicial killings refer to all acts and omissions of State actors that constitute violation of the general recognition of the right to life embodied in the Universal Declaration of Human Rights, the United Nations Covenant on Civil and Political Rights, the UNCRC and similar other human rights treaties to which the Philippines is a state party.<sup>33</sup>

Extra-judicial killing is not only a problem in developing countries, but it has also become expressed in police brutality that has led to the deaths of suspects in developed countries like the United States,<sup>34</sup> this has proved that extra-judicial killing is a real problem that must be resolved in states across the world to protect human rights. It is even more urgent as the United Nations has noted that there has been a rise in extra-judicial killings in some African countries, particularly, Nigeria, and Sudan.<sup>35</sup> It is important that the context of extra-judicial killings in developing countries is expanded a little bit to accommodate the mob lynching that is done by non-state actors to suspects. However even extra-judicial killing that is done through mob lynching results from the failure of government in the countries where such events take place, to protect the right to life.

## 2. Extra Judicial Killings in Nigeria

There is no doubt that many lives have been lost to extra-judicial killings in Nigeria; however, this article will focus on extra-judicial killings executed by members of the police force. One of the several instances of extra-judicial killings

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33 Special Protection of Children in Situations of Armed Conflict Act (Republic Act 11188), 2019 Section 5.

34 The Center for Justice & Accountability, Extrajudicial Killing of Black Americans, The Center for Justice & Accountability (2020), <https://cja.org/what-we-do/litigation/extrajudicial-killing-of-black-americans/> (1.10. 2021); HRMI Rights Tracker, United States: How Well is the United States Respecting People's Human Rights? Human Rights Measurement Initiative (2019), <https://rightstracker.org/en/country/USA> (1.10. 2021).

35 United Nations Human Rights Council, Disturbing Wave of Extrajudicial Executions on the Rise in South Sudan's Warrap State – UN Experts Note, United Nations Human Rights Council (2021), <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=27345&LangID=E> (1.10. 2021); V. Ojeme, UN Expresses Concern Over High Rate of Extra-Judicial Killings in Nigeria, Vanguard, <https://www.vanguardngr.com/2019/09/un-expresses-concern-over-high-rate-of-extra-judicial-killings-in-nigeria/> (1.10. 2021).



by the Nigerian police was the case as far back as 2008, of a 22 year old student, Chukwuemeka Matthew Onovo, who left his father's house one morning in 2008 and never returned.<sup>36</sup> The boy's father, who had gone to report to the police about his missing son, was later told by his son's neighbours that there had been a gunfight with the police around his house. When Chukwuemeka's father got to his son's place, he found the boy's glasses on the ground. The police had told Chukwuemeka's father that his son was an armed robber. Even though someone who was a witness to the whole incidence said that Chukwuemeka was unarmed when the police killed him.<sup>37</sup> There was no further action to find Chukwuemeka's killer despite a court-ordered autopsy finding that he had died of a bullet injury.<sup>38</sup> Chukwuemeka was his father's only son and child. This kind of story is similar to the cases of so many people who have lost their loved ones to extra-judicial killings by the Nigerian police, as the Nigerian Police Force is guilty of many extra-judicial executions. In many instances, no one is held accountable for the murders.<sup>39</sup> Extra-judicial killings are one way the Nigerian security forces manifests its high-handedness.

In many other ways, police oppression manifests in arbitrary arrests, torture, and false detention. It is without doubt that extra-judicial killings are a threat to the collective existence of every Nigerian citizen, since the risk remains of the growth of such an ugly reality in the law enforcement of Nigeria. Not all the victims of extra-judicial killings in Nigeria die from gunshots; some are tortured to death in detention.<sup>40</sup> The monstrosity of extra-judicial killings perpetrated by the Nigerian Police Force came up again into the public space when in April, Kolade Johnson, a young man who had just returned from South Africa, was killed by police stray bullet at a football viewing centre.<sup>41</sup> It becomes even worse when the police authorities are silent and pretend that these things do not happen. There are some regulatory defects within institutions in Nigeria that allow for exploitation of whatever benefits or power such institution is embodied with. For instance, the old Police Force Order 237, allowed the police the liberty to shoot any suspect or detainee who attempted to escape or resist arrest. The thought behind that directive negated the presumption of innocence and has made many people victims of a system lacking in administrative coordination and insight. Recently there has been a modification of Police Force

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36 Amnesty International, *Killing at Will Extrajudicial Executions and Other Unlawful Killings by the Police in Nigeria*, Amnesty International Publications (2009).

37 *Ibidem*.

38 *Ibidem*.

39 *Ibidem*.

40 *Ibidem*.

41 B. Adebayo, *The Fatal Shooting of a Nigerian Man Brings more Demands to Shut Down a Controversial Police Unit*, <https://www.google.com/cnn/2019/04/02/africa/nigeria-police-shooting-outrage-int/index.html> (4.11.2019).

Order 237,<sup>42</sup> and this is driven towards addressing the abuse of force by the officers of the Nigerian Police Force. The abuse of the use of force by the Nigerian police is something which seems deeply entrenched and cannot just be addressed by a window-dressing review of the Police Force Order 237. It becomes quite pertinent to point out that the problems of policing in Nigeria and the non-conforming unprofessionalism that marks certain practices in the Nigerian Police Force are issues that reach far deeper into the institutional integrity of the force itself.

With the institutional rot in the police system in Nigeria, it is time to ask very important questions about the recruitment procedures; if there ever is a background check on candidates, as there is a huge possibility that without background checks on candidates, the system would have handed a country's security into the hands of criminals and cutthroats. This is true when stories that some police officers give out service arms to robbers emerge, highlighting the need to weed the police force of some criminally minded officers, as these people pose a threat to society. The Latin phrase, '*Quis custodiet ipsos custodes*'<sup>43</sup> written by the Roman poet, Juvenal in the 2<sup>nd</sup> century AD, and which translates to 'Who watches the watchers themselves' aptly captures the institutional dilemma that confronts policing in Nigeria. If the common people are dying from police excesses, as long as the rich and powerful people are not affected, change is not necessary. The lack of accountability which is rife in Nigeria's institutions does not exempt the Nigerian Police Force. The lack of accountability within the Nigerian Police Force cascades down from the top down to the lower ranks. The posturing of the top ranks of the police force signals to the lower ranks that a police officer is above the rule of law, and that as guardians, they possess limitless powers to do whatever they want.

To an average Nigerian citizen, the police represent 'images of surveillance, inconvenience, embarrassment, frustration, and indignation, as well as the prospect of coercion and violence.'<sup>44</sup> It has become so bad that there is so much public mistrust of the police that many people would not see a difference between the police force and what they are to protect people from. The image of the Nigerian Police Force, internationally, is depictive of how the world views the security situation in Nigeria. The police leadership in Nigeria appear lacking in the will necessary for the reformation of the police force. Often times, policies brought about by different police Inspectors General only seem to go a short way in addressing what is obviously a systemic problem. There are many things wrong with the police system in Nigeria,

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42 Channels Television, IG Unveils New Police Order 237 on Use of Force, <https://www.channelstv.com/2019/10/03/ig-unveils-new-police-order-237-on-use-of-force/> (4.11.2019).

43 Juvenal, Satire: Satire VI, Juvenal, 2<sup>nd</sup> century AD.

44 M.R. White, T.C. Cox, J. Basehart, Theoretical Consideration of Officer Profanity and Obscenity in Formal Contacts with Citizens, (in:) T. Barker, D.L Carter (eds.), *Police Deviance*, Anderson 1991.

and this is made more obvious by the fact that there have never been serious reforms to restructure the police force in Nigeria, and the system through which it operates.<sup>45</sup>

### **3. Meaning and Historical Background of the Concept of Public Litigation in Nigeria**

Public interest litigation as a concept is the initiation and sustenance of legal action in court so as to derive a monetary or legal entitlement in 'favour of the general public, a community or class of persons by an individual, group, or organization, who might have some or no personal interest in the outcome.'<sup>46</sup> Public interest litigation has come a long way as a tool in the derivation of justice for social change. Public interest litigation developed from the need to address widespread social injustice. The origin of public interest litigation is entrenched in the history of social activism in the United States when it became popular and was employed in the social chaos of the 1960s.<sup>47</sup> Civil rights groups and lawyers advocating against racism resorted to public interest litigation in the resolution of injustices. The concept of public interest litigation was made popular by Louis Brandeis, lawyer who was an advocate for communal interests as regards justice.<sup>48</sup> Public interest litigation history in Nigeria began with the flourish of legal activism in Nigeria, during the military regime that saw many human rights abuses. Prior to that time, public interest litigation had no strong antecedence, and was a child of necessity at a time military repression was most debilitating.<sup>49</sup> The rise of lawyers like the late Gani Fawehinmi, was on his dedication to the development of public interest litigation and in the training of lawyers like Femi Falana who continued its development in Nigeria. It was said of Gani Fawehinmi that he:

...resisted arbitrary actions of government that were arguably inconsistent with the rule of law using PILs whether it was to force military governments to render an account of oil export earnings, or to challenge the misuse of public funds by the wife of a military president, her 'office' not being created by law, or to declare unconstitutional, the setting aside of 5% of the

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45 D.D. Ayoyo, *Police Officers' Assessment of NPF Reforms: Evidence from an Area Command in Ondo State*, "Police Practice and Research" 2019, vol. 20, issue 1.

46 O.I. Usang, *Public Interest Litigation: A Veritable Avenue for the Fight Against Corruption in Nigeria*, "NAUJCPL" 2021, vol. 8, issue 1.

47 A. Mukherjee, *Public Interest Litigation- Genesis and Evolution*, Law Circa, <https://lawcirca.com/public-interest-litigation-genesis-and-evolution/> (3.10.2021); O.I. Usang, *Public Interest Litigation: A Veritable Avenue for the Fight Against Corruption in Nigeria*, "NAUJCPL" 2021, vol. 8, issue 1.

48 J.S. Dzienkowski, *The Contributions of Louis Brandeis to the Law of Lawyering*, "Touro Law Review" 2016, vol. 33.

49 J. Otteh (ed.), *Litigating for Justice: A Primer on Public Interest Litigation*, Access to Justice 2012.

Federal Government allocation to all Local Government Authorities for the maintenance of traditional rulers.<sup>50</sup>

Today, activities of the human rights organization, The Socio-Economic Rights and Accountability Project (SERAP) is well represented in Nigeria's public interest litigation scene, as the organization has contributed so much to public interest litigation in Nigeria. From challenging government policies that threaten citizens' human rights, to instituting action to give legal force to the right to quality education, SERAP has been at the forefront of contemporary public interest litigation in Nigeria.<sup>51</sup>

#### 4. Public Interest Litigation to the Rescue?

Impunity is the empowerment factor for extra-judicial killing in Nigeria. Where it concerns the police force, impunity means that there are no effective checks to the executive power that the police wield, therefore it is common to hear a police officer in Nigeria saying, 'I will kill you and nothing will happen.' Impunity is also the trigger factor in extra-judicial killings that happen through mob-lynching where citizens are concerned. This is because there are rarely any sanctions for extra-judicial killings in Nigeria. Public interest litigation as a tool for social change holds much promise in tackling the high rate of extra-judicial killings in Nigeria. However, there are some challenges to its practice. Firstly, the reality of litigation in Nigeria is that it can be slow and costly, and justice can only be realized where the judicial system is fast and efficient.<sup>52</sup> The Nigerian state, as a developing one, has a weak judicial structure, just like many developing states, with judicial structures mired by institutional decadence.<sup>53</sup> Public interest litigation as a tool for social change is largely dependent on good judicial structures, since justice is its aim. Another problem that public litigation can face in Nigeria is the enforcement of judgments. The enforcement of judgment is dependent on the seamless, effective interaction of institutions and the accountability of institutional leaders. This is also lacking in Nigeria, with unlawful actions committed by security officers done with impunity. To get public litigation to serve the interest of justice in Nigeria, there should be an attempt to tackle the problems that would limit its effectiveness. One reason public interest litigation is

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50 *Ibidem.*

51 O.I. Usang, Public Interest Litigation: A Veritable Avenue for the Fight Against Corruption in Nigeria, "Nnamdi Azikiwe University Journal of Commercial and Property Law" 2021, vol. 8, no. 1.

52 H. Doma, Enhancing Justice Administration in Nigeria through Information and Communications Technology, "The John Marshall Journal of Information Technology & Privacy Law" 2016, vol. 32, no. 2.

53 O.M. Lalude, A. Fatehinse, Economic Justice and Judicial Structure: Realizing Economic Growth in Nigeria, "Society & Sustainability" 2020, vol. 2 no.1.

engaged in the developed state is to challenge existing state policy or address a social problem. In Nigeria, the flagrant disregard for the rule of law and the impunity has emasculated the power of legal advocacy.

The ambition of legal practitioners to enrich themselves, which has become heightened by the deepening poverty rates in Nigeria is killing advocacy and has made the career trajectory of public interest advocates seem almost unpragmatic. Furthermore, there is a legal technicality in Nigeria that impedes the successful prosecution of public interest litigation cases, which is the requirement of a 'sufficient interest' or 'injury' that supersedes that of the other members of the community.<sup>54</sup> This legal challenge, notwithstanding that it hopes to curb the abuse of legal processes, still stands against justice in matters that would be better prosecuted through public interest litigation. One of the risk factors for extrajudicial killings in Nigeria is the congestion of prisons with people awaiting trial. World Prison Brief shows that 49,139 inmates, which is about 74.8% of the prison population and 23 percent of the national population are pre-trial inmates.<sup>55</sup> This stretches the fragile infrastructure of the prison system wafer thin and allows for the possibility of extra-judicial executions off the radar of the justice system. In some cases, extra-judicial killings may result from extreme torture. From 2017 to 2019, Amnesty International did field research into human rights abuses committed by the Nigerian police, especially the Special Anti-Robbery Squad (SARS), the notorious police unit that inspired the End SARS protests of 2020 in Nigeria. The findings of their research revealed the sordid practices of the Nigerian police that has led to the loss of many lives. They also found that, despite the legislation against torture, which is the Anti-Torture Act, the lack of interest of the authorities makes it seem like torture is institutionalized.<sup>56</sup> One of the victims of SARS brutality, Sunday Bang, who had been arrested because his girlfriend's house had been robbed some few hours after he went visiting, told Amnesty International:

They took me to the torture chambers the second day after my arrest. One police officer, in charge of torture, came with a bicycle/car tyre tube and a hard piece of wood. He tied my left arm with the tube. It was very painful, and my arm went numb. He tied me from my palm to the end of my upper arm. They beat me with a stick and rod on my arms, knees, and legs. They broke my two legs... I couldn't stand... I was bleeding from my legs and body. My blood was flowing all over the floor. I kept telling them that I was innocent of the accusation. The police officer was threatening he would

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54 J.N. Mbadugha, *Locus Standi and Public Interest Litigation in Environmental Matters in Nigeria: Lessons from Centre for Oil Pollution Watch V Nigerian National Petroleum Corporation*, "The Gravitas Review of Business & Property Law" 2020, vol. 11, no. 3.

55 World Prison Brief, Nigeria, <https://www.prisonstudies.org/country/nigeria> (20.07.2021).

56 Amnesty International, Nigeria: Time to End Impunity: Torture and Other Violations by Special Anti-Robbery Squad (SARS), Amnesty International Nigeria 2020, AFR 44/9505/2020.

shoot me, if I didn't admit that I participated in the robbery. I was very weak, because I had not eaten any food since my arrest.<sup>57</sup>

He had been beaten severely and even kept further in detention, after the robbers had been arrested, so as to make sure his injuries healed, thereby wiping any evidence for the torture. They had gone ahead to extort his family members before releasing him.<sup>58</sup> When he had been arrested, he was denied a lawyer, and from seeing his family.<sup>59</sup> This sort of story is typical of many others and part of a pattern of operation. SARS brutality had been so widespread that it was the original demand of the countrywide End SARS protests that rocked Nigeria in 2020. The occurrence of police brutality, and the effect of its viciousness that sometimes leads to the death of the victims, often cannot be matched by the legal interventions of public interest lawyers. Even if there were more public interest lawyers to cope with the many incidents of severe human rights abuse, or extra-judicial killings, the Nigerian courts, already congested with numerous cases, would only be burdened further by cases that would never be resolved in time to apprehend the injustice. Since it appears that public interest litigation, as a form of intervention, in Nigeria, is beyond the sole capacity of legal aid groups or human rights lawyers, the Nigerian Bar Association (NBA) set up a public interest litigation committee to coordinate public interest litigation for the association.<sup>60</sup> Unfortunately, even a committee of the NBA cannot achieve so much, as the pressure of many incidents of police brutality outweighs the intervention of advocacy.<sup>61</sup> Even though public interest litigation faces challenges in Nigeria, this does not mean that it has failed, and will fail, in achieving justice. What it means is that the challenges would have to be taken as its reality and its expectations rationed. It would mean that public interest litigation would not rise above institutional challenges, but would have to be adapted to it. Public interest litigation would not just be about arguments in court, or resistance in the form of legal advocacy, it would also involve the strong engagement of the public sphere. This could be on the virtual spaces of social media or on the insistent waves of radio stations. The power of the public sphere should never be missing where public interest litigation is concerned in Nigeria.

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57 *Ibidem.*

58 *Ibidem.*

59 *Ibidem.*

60 Premium Times, NBA Sets Up 'Public Interest Litigation Committee', <https://www.premiumtimesng.com/news/more-news/436537-nba-sets-up-public-interest-litigation-committee.html> (4.10.2021).

61 Gboyega Akinsanmi, Nigeria Records 122 Extra-Judicial Killings in Nine Months, This Day, <https://www.thisdaylive.com/index.php/2020/10/11/nigeria-records-122-extra-judicial-killings-in-nine-months/> (4.10.2021).



## Conclusion

Extra-judicial killings in Nigeria cannot be resolved by public interest litigation. This is not to say public interest litigation would have no effect whatsoever in decreasing the rate of extra-judicial killings. Extra-judicial killings in Nigeria have their roots in the institutional failure and the lack of accountability that has come to characterize public service in Nigeria. Therefore, to make any significant impact would be to attempt to build institutional integrity and improve public service structures. Public interest litigation is a good short-term tool to address social injustices on a case-by-case basis. There are conditions on which it must be supported before it records any success. The engagement of public opinion and social capital is a necessity for public interest litigation in Nigeria. The use of social media spaces to generate discussions on social issues has shown much promise in its political and social value. Public interest lawyers could make use of virtual spaces to engage the public in their work, especially in regard to extra—judicial killings. This is because the need to maintain good optics has become motivation for institutional interaction with the public in Nigeria. Finally, it is important that public interest lawyers in Nigeria should collectively insist on institutional change in the judiciary, and in the legal profession. This would help with the procedural obstacles in litigation and would also ensure that the legal profession is united in its stand for the rule of law. Up to now, it is somewhat disturbing that despite the constitutional power granted to the police to maintain public peace, safety, and general security in Nigeria, the quality of security is nothing to be proud of, and has, no doubt, generated a great deal of controversies.<sup>62</sup> It could therefore be adduced, that the crucial way forward now, is to look internally with a readiness to use political will in the right direction.<sup>63</sup> Impliedly, a culture of lawfulness is imperative as a foundation for collaborative cooperation in addressing political failures, accountability, fairness, and transparency.<sup>64</sup> The culture, albeit the genuine willingness of government officials and members of society to hold themselves and one another accountable to the law, which requires a certain level of trust, impartiality, confidence, checks and balances, respect for the Nigerian justice system, and their ability to protect everyone from injustice and insecurity is apparently of the essence in curbing and/or eradicating the prominent issue of extra-

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62 A.J. Aderinto, *The Nigeria Police and Crime Control in Lagos Metropolis*, "Afr. J. Psychol. Study Soc." 2008, vol. 11, issue 1, p. 145; V. Ibezim-Ohaeri, *Spaces for Change: Galvanizing Collective, Action to Protect the Civic Space in Nigeria*, <https://yaraduafoundation.org/files/Galvanizing%20Collective%20Action.pdf> (03.10.2021).

63 K.D. Nwideduh, *The Political Economy of Criminal Justice System Reform in Nigeria 2000–2009*, "Int. j. trend res." 2017, vol. 1, issue 5, p. 550.

64 S.C. Igwe, A.O. Obari, *Towards a Systems Theory Approach to Managing Human Rights Violations in Nigeria*, "CSCanada" 2021, vol. 17, no. 3, p. 52; C.C. Ajibo, N. Itanyi, E. Okiche, I. Chime, S. Mosanya, F. Nwodo, *Sustainable Development Enforcement Conundrum in Nigeria: Challenges and Way Forward*, "Commonwealth Law Bulletin" 2020, vol. 47 issue 2, p. 197.



judicial killings.<sup>65</sup> There should be other comprehensive reforms and reorientations necessary to bring Nigeria's policing operations and government authorities into conformity with constitutional and international human rights standards.

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