

## Extrajudicial Killings: A Clear State of Human Right Violation

Arthur Florian and Mathias Zoe

Department of History, Faculty of Arts and Philosophy, Ghent University, Belgium.

### ABSTRACT

*Extrajudicial Punishments are unlawful by nature, because they break the process of legal jurisdiction in which they occur. Most of the times Extra Judicial Killing targets the leading politicians, religious figures, trade unions leaders and sometimes socially popular figures. It is being caused by government inactiveness, Judicial Corruption, Police Ineffectiveness and*  
*Keywords: Extrajudicial, Killings, state, human, right, violation*

*therefore can be avoided through Official condemnation, Chain-of-command control and Restraints on use of force etc. It is therefore necessary to upgrade penal laws and an urgent over hauling the entire criminal justice system. In other to rekindle the trust of people a criminal justice system that will facilitate quick dispensation of justice is necessary.*

### INTRODUCTION

An extrajudicial killing is the killing of person that is not sanctioned by a court of competent jurisdiction; it is indeed killings by person, group of persons or governmental authorities without the sanction of any judicial proceeding or legal process. Extrajudicial punishments are by their nature unlawful, since they bypass the due process of the legal jurisdiction in which they occur [1] [2] [3]. Extrajudicial killings are becoming more rampant and the problem has assumed an astronomic increase in many countries of the world. It remains unsolved issue in the Philippines, Indonesia, Nigeria and many other developing countries. It has become a bi-dimensional issue because it now involves the government apparatus in one hand and on the other hand, the ordinary citizens taking laws into their hands. Therefore, besides killings that are politically motivated and the use of state apparatus to execute perceived enemies and alleged criminals, the public have equally been invested with self-help oriented killings. Lynching of alleged offenders has become the order of the day, people now appears to be less care about the judicial process; mob attacks and other form of lawlessness is now on the increase and remain unabated. This

seems to be painting the picture of the triumph of public brutality against the due process of law. The trend is now assuming a more dangerous dimension as it seems to have graduated from a personal concept of an eye for an eye syndrome to a community organized event [4] [5]. These happenings are worrisome and it is indeed an indication of a systematic collapse or failings of the Criminal Justice System. How does the situation degenerate to this hopeless situation? What are those things that led to this great depravity in our justice system? Why are the citizens taking laws into their hands by lynching and engaging in other barbarities? These and other unresolved questions that make National Policy on Criminal Justice to remain incoherent are of scope of this paper.

#### Causes

Government inactiveness; One of the major causes of jungle justice, self-dispensation of criminal justice and the extra judicial killings is the inability of the government to discharge its major and primary constitutional responsibilities of securing lives and property of her people within the confine of its jurisdiction. The situation even becomes worst in many developing

<http://www.inosr.net/inosr-arts-and-humanities/>

Arthur and Mathias

INOSR ARTS AND HUMANITIES 1(1): 1-6, 2015. countries [6] [7] [8] [9]. There have been reports of various high profile political killings in which the government has failed woefully to unravel the culprits. The spate of perceived political killings or politically motivated assassinations has been on the increase and the failure on the part of government through its state securities apparatuses to preserve lives and property has multiplier effects on the society at large.

Judicial Corruption; Corruption has indeed permeated the entire strata of human endeavors to the extent that the judiciary which hitherto had, always in the past considered to be the bastion of hope and indeed the last hope for the common man is not spared. Corruption in the judiciary is undoubtedly perceived as a greatest problem worldwide, it is of course a failure of acceptable moral standards, so much that people now care less about the judicial process, mob attacks and other form of lawlessness remains unabated as public brutality triumph against the due process of law. Judicial corruption undermines citizens' morale, violates their human rights, harms their jobs prospects and national development and depletes the quality of governance [10]. A government that functions on behalf of all its citizens requires not only the rules of law, but an independent and effective judiciary to enforce it to the satisfaction of all parties [11]. The situation has become so worst that the judiciary has drifted to a level where ordinary members of the society popularly refers to as common men are not sure of what justice holds for them. A human right activist<sup>26</sup> once observed that search for justice is extremely expensive in this part of the world and often not even worth the effort especially when the available personnel are not only poorly trained but equally not sufficient. Invariably cases suffer unnecessary adjournment which automatically occasioned a protracted period of litigation in which so many people that cannot afford the cost abandon their claims [12]. Justice is therefore ostensibly kept away from the reach of the poor masses and the downtrodden. The

multiplier effect of that is that peoples' confidence in the judiciary has been eroded, therefore report of crime committed for determination of guilt and appropriate sanction by court of competent jurisdiction as provided by the law<sup>27</sup> is now perceived as share wasting of precious time [13].

The Police Ineffectiveness; The Police Force as an integral part of the society has been infected with corruption virus and in some instances guilty of extra judicial killings. Investigating police officers (IPO) are always compromised and the result of investigation eventually becomes a function of highest bidders [14] [15]. While those that are involved in crime are left unpunished because of compromising nature of the force which have turn to a money-making venture, the innocent one bears the burden of an offence they never commit, some are detained, tortured or even arraigned for no just cause. Some prisons in many developing countries are filled with many awaiting trials in cases that cannot be proved by the so-called prosecutors due to inadequate investigation by the law enforcement agencies which have allows those that really committed the offence to move freely in the society. So many lives got lost in the hand of police without due process of law while many others were tortured to death [16].

Aim of Criminal Justice and Concept of Punishment; there are five main theories that could be identified as purpose of punishment. These are retribution, Incapacitation, Deterrence, Rehabilitation and Restitution [17]. While the retributive theory seeks to punish offenders because they deserve to be punished by focuses on the crime itself as the reason for imposing punishment, the remaining four theories are termed to be Utilitarian theory which look forward to the consequences of punishment and hope to discourage or deter future wrong, it is otherwise termed consequentiality theory because it seeks to achieve consequence at any price [18]. The retributive philosophy is synonymous with vengeance or expiation and the desire for vengeance presupposes that it is expected

that the affected person(s) (The victims) sees that the punishment that is being exacted by the state apparatus on his/her behalf is a sort of retaliation that quench the desires for the punishment. It is equally a known fact that there is an instinctive demand which is active in every human being to retaliate and if there were no punishment melted out by the government on behalf of the victim, there is high tendency that the victim aggressions would become repressed and naturally leads to an anti-social manner an attitude that was said to "represent the breakdown of human intelligence, as well as good will, shows perhaps the ugliest phase of our human nature" [19]. The society also requires the offender to pass through a specific suffering as a condition precedent for reconciliation back to the society. This could therefore explain the reason behind the happenings in Nigeria. While the bulk of the blames could be attributed to the government, the laxity experienced because of government inefficiency cannot be used to justify extra judicial killings as right to life is sacrosanct [20].

#### **Preventive Measures**

##### **1. Official condemnation**

The highest authorities of every country should demonstrate their total opposition to extrajudicial executions. They should make clear to all members of the police, military and other security forces that extrajudicial executions will not be tolerated under any circumstances.

##### **2. Chain-of-command control**

Those in charge of the security forces should maintain strict chain-of-command control to ensure that officers under their command do not commit extrajudicial executions. Officials with chain-of-command responsibility who order or tolerate extrajudicial executions by those under their command should be held criminally responsible for these acts.

##### **3. Restraints on use of force**

Governments should ensure that law enforcement officials use force only when strictly necessary and only to the minimum extent required under the circumstances. Lethal force should not be

used except when strictly unavoidable in order to protect life.

##### **4. Action against "death squads"**

Death squads", private armies, criminal gangs and paramilitary forces operating outside the chain of command but with official support or acquiescence should be prohibited and disbanded. Members of such groups who have perpetrated extrajudicial executions should be brought to justice.

##### **5. Protection against death threats**

Governments should ensure that anyone in danger of extrajudicial execution, including those who receive death threats, is effectively protected.

##### **6. No secret detention**

Governments should ensure that prisoners are held only in publicly recognized places of detention and that accurate information about the arrest and detention of any prisoner is made available promptly to relatives, lawyers and the courts. No one should be secretly detained.

##### **7. Access to prisoners**

All prisoners should be brought before a judicial authority without delay after being taken into custody. Relatives, lawyers and doctors should have prompt and regular access to them. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

##### **8. Prohibition in law**

Governments should ensure that the commission of an extrajudicial execution is a criminal offence, punishable by sanctions commensurate with the gravity of the practice. The prohibition of extrajudicial executions and the essential safeguards for their prevention must not be suspended under any circumstances, including states of war or other public emergency.

##### **9. Individual responsibility**

The prohibition of extrajudicial executions should be reflected in the training of all officials involved in the arrest and custody of prisoners and all officials authorized to use lethal force, and in the instructions issued to them. These officials should be instructed that they have the right and duty to refuse to

obey any order to participate in an extrajudicial execution. An order from a superior officer or a public authority must never be invoked as a justification for taking part in an extrajudicial execution.

#### **10. Investigation**

Governments should ensure that all complaints and reports of extrajudicial executions are investigated promptly, impartially and effectively by a body which is independent of those allegedly responsible and has the necessary powers and resources to carry out the investigation. The methods and findings of the investigation should be made public. The body of the alleged victim should not be disposed of until an adequate autopsy has been conducted by a suitably qualified doctor who is able to function impartially. Officials suspected of responsibility for extrajudicial executions should be suspended from active duty during the investigation. Relatives of the victim should have access to information relevant to the investigation, should be entitled to appoint their own doctor to carry out or be present at an autopsy, and should be entitled to present evidence. Complainants, witnesses, lawyers, judges and others involved in the investigation should be protected from intimidation and reprisals.

#### **11. Prosecution**

Governments should ensure that those responsible for extrajudicial executions are brought to justice. This principle should apply wherever such people happen to be, wherever the crime was committed, whatever the nationality of the perpetrators or victims and no matter how much time has elapsed since the

It is totally worrisome and mind-boggling considering what circumstance may warrant security operatives to shoot at mere suspects and even when they don't pose danger and after they have already succumbed. Our patience and calm for such notorious brutality and culture of torture on the part of those whose duties are primarily and fundamentally to protect lives and property of all, have

commission of the crime [21]. Trials should be in the civilian courts. The perpetrators should not be allowed to benefit from any legal measures exempting them from criminal prosecution or conviction.

12. Compensation Dependents of victims of extrajudicial execution should be entitled to obtain fair and adequate redress from the state, including financial compensation [22].

13. Ratification of human rights treaties and implementation of international standards All governments should ratify international treaties containing safeguards and remedies against extrajudicial executions, including the International Covenant on Civil and Political Rights and its first Optional Protocol which provides for individual complaints [23]. Governments should ensure full implementation of the relevant provisions of these and other international instruments, including the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, and comply with the recommendations of intergovernmental organizations concerning these abuses [24].

14. International responsibility Governments should use all available channels to intercede with the governments of countries where extrajudicial executions have been reported [25]. They should ensure that transfers of equipment, know-how and training for military, security or police use do not facilitate extrajudicial executions. No one should be forcibly returned to a country where he or she risks becoming a victim of extrajudicial execution [26].

#### **CONCLUSION**

worn out. Today the exercise of every human right is seen as a crime and the adjudicatory system is afraid of disciplining the police and the armed forces for 'fear of consequences'. A system that is not prepared to risk the absence of state violence can never tolerate any attempt to secure human rights. A campaign for human rights must address itself to the system the state

INOSR ARTS AND HUMANITIES 1(1): 1-6, 2015. sponsors. A criminal justice system that is in strict compliance with the principle of the rule of law will most likely stem the wave of extra judicial killings and make such criminal justice to be legitimate. The loss of public trust in the judicial system can lead people to abandon due process and resort to private means of settling disputes, possibly even through ways that are totally unlawful which might lead to communal violence and extra judicial killing. In other to rekindle the trust of people a criminal justice system that will facilitate quick dispensation of justice is necessary. To this end, various

developing countries must therefore overhaul her impaired and outdated criminal justice system. It is therefore necessary to upgrade penal laws and an urgent over hauling the entire criminal justice system. An effective criminal justice system if it is achieved would lead to a reduction in the awaiting trials, decongestion of prisons, an efficient prosecutorial system, and greater protection of human rights within the various developing countries. This in my view will most likely close the door of extra judicial killings.

#### REFERENCES

1. Adelman, H. (2011). Monoculturalism versus interculturalism in a multicultural world. In Adelman, H. & Anctil, P. (Eds.). *Religion, Culture and the State: Reflections on the Bouchard-Taylor Report* (pp. 37-57). Toronto: University of Toronto Press.
2. Allen, C. (2010). *Islamophobia*. Burlington, VT: Ashgate Publishing Company.
3. Angus-Reid. (2010). *Canadian Public Opinion Poll on Multiculturalism*.
4. Balibar, E. (2007). Is there "neo-racism"? In Gupta, T. D., James, C.E., Maaka, R. C. A., Galabuzi, G.E. & Anderson, C. (Eds.), *Race and Racialization: Essential Readings* (pp. 83-88). Toronto: Canadian Scholars Press Inc.
5. Banerjee, S. & Coward, H. (2005). Hindus in Canada: Negotiating identity in a "different" homeland. In Bramadat, P. & Seljak, D. (Eds.). *Religion and Ethnicity in Canada* (pp. 30-49). Toronto: Pearson Education Canada Inc.
6. Barker, M. (1981). *The New Racism*. London: Junction Books.
7. Beaman, L. (2003). The Myth of Pluralism, Diversity, and Vigor The Constitutional Privilege of Protestantism in the United States and Canada. *Journal for the Scientific Study of Religion*, 42, 311-325.
8. Beaman, L. (2006). Aboriginal spirituality and the construction of freedom of religion. In Beaman, L. (Ed.). *Religion and Canadian Society: Traditions, Transitions, and Innovations* (pp. 229-241). Toronto: Canadian Scholars Press Inc.
9. Beaman, L. (2006b). "Wicked Witches of the West: Exploring Court Treatments of Wicca as a Religion." In Reid, S. (Ed.), *Between the Worlds: Readings in Contemporary Neopaganism* (pp. 161-185). Toronto: Canadian Scholars Press.
10. Beaman, L. (2008). A cross-national comparison of approaches to religious diversity: Canada, France and the United States. In Beaman, L. & Beyer, P. (Eds.). *Religion and Diversity in Canada* (pp. 199-216). Boston: Brill Academic Publishers.
11. Beaman, L. (2012). The missing link: tolerance, acceptance, accommodation and...equality. *Canadian Diversity*, 9(3), 16-19. Retrieved from [www.ohrc.on.ca/en/creed-freedom-religion-and-human-rights-special-issue-....](http://www.ohrc.on.ca/en/creed-freedom-religion-and-human-rights-special-issue-....)
12. Bellah, R.N., Madsen, R., Sullivan, W.M., Swidler, A. & Tipton. (1985). *Habits of the heart: Individualism and commitment in American life*. Berkley and Los Angeles: University of California Press.

13. Ben-Moshe (2007). The New Anti-Semitism. In Gopalkrishnan, N. and Babacan, H. (Eds.). *Racisms in the New World Order. Realities of Cultures, Colours and Identity* (pp. 107-123). UK: Cambridge Scholars Publishing.
14. Benson, I.T. (2000). Notes towards a (re)definition of the "secular". *University of British Columbia Law Review*, 33(3), 519-549.
15. Benson, I. T. (2004). Considering Secularism. In Farrow, D. ed. *Recognizing Religion in a Secular Society* (pp. 83-98). Montreal: McGill Queens.
16. Benson, I.T. (2010). That False Struggle between Believers and Non-Believers. *Oasis*, 12.
17. Benson, I.T. (2012a, March 29-30). Religious inclusion and the construction of the "public". Paper presented at the Ontario Human Rights Commission/York University Legal Workshop on Human rights, creed and freedom of religion. Osgoode Hall, York University.
18. Benson, I. T. (2012b). Two errors in relation to respecting religious rights: Driving a wedge between religion and ethics/morals and treating all kinds of religious employers the same. *Canadian Diversity*, 9(3), 20-24. Retrieved from [www.ohrc.on.ca/en/creed-freedom-religion-and-human-rights-special-issue-diversity-magazine-volume-93-summer-2012/two-errors-relation-respecting-religious-rights-driving-wedge-between-religion](http://www.ohrc.on.ca/en/creed-freedom-religion-and-human-rights-special-issue-diversity-magazine-volume-93-summer-2012/two-errors-relation-respecting-religious-rights-driving-wedge-between-religion).
19. Benson, I.T. (2013). Seeing Through the Secular Illusion. *NGTT Deel 54 Supplementum 4*. Available at SSRN: <http://ssrn.com/abstract=2304313>.
20. Berger, B. (2002). The Limits of Belief: Freedom of Religion, Secularism and the Liberal State. *Canadian Journal of Law and Society / Revue Canadienne Droit et Societe*, Volume 17(1), pp. 39-68.
21. Berger, B. (2012). Inducing fundamentalisms: Law as a cultural force in the domain of religion. *Canadian Diversity*, 9(3), 25-28. Retrieved from [www.ohrc.on.ca/en/creed-freedom-religion-and-human-rights-special-issue-....](http://www.ohrc.on.ca/en/creed-freedom-religion-and-human-rights-special-issue-....)
22. Beyer, P. (2005). Religious Identity and Educational Attainment among Recent Immigrants to Canada: Gender, Age and 2nd Generation. *Journal of International Migration and Integration*, 6(2), 177-99.
23. Beyer, P. (2006). Religious vitality in Canada: The complementarity of religious market and secularization perspectives. In Beaman, L. (Ed.). *Religion and Canadian Society: Traditions, Transitions, and Innovations* (pp. 71-91). Toronto: Canadian Scholars Press Inc.
24. Beyer, P. (2008). From far and wide: Canadian religious and cultural diversity in global/local context. In Beaman, L. & Beyer, P. (Eds.). *Religion and Diversity in Canada* (pp. 9-39). Boston: Brill Academic Publishers.
25. Bhabha, F. (2012, March 29-30). From whence to where and what not to wear: Refining the conception of religious freedom. Paper presented at the Ontario Human Rights Commission/York University Legal Workshop on Human rights, creed
26. Bhargava, R. (2010). States, religious diversity, and the crisis of secularism. *The Hedgehog Review* 12.3. Expanded Academic ASAP. Retrieved from <http://go.galegroup.com.ezproxy.library.yorku.ca/ps/i.do?id=GALE%7CA2428...>