

## EXTRA JUDICIAL KILLINGS UNDER INTERNATIONAL AND ISLAMIC LAW: A COMPARATIVE REVIEW

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### ABSTRACT

*Killing generally is abhorrent to creatures of both mankind and animals. Right to life is donated by the Almighty God and more often than not philosophers call it nature. Security to life has become a societal issue and global phenomenon. There are laws already in place to put measure to unlawful killing but despite the laws unlawful killing is increasing day in day out at universal level. This paper sets to examine the legal framework in place to control unlawful killing. It will also examine the degree of effectiveness of the control and will make suggestion on how law can be improved upon to put unlawful killing under control in the society.*

### INTRODUCTION

Virtually all international organisations have passed resolutions against extra judicial killings. The Universal Declaration of Human Rights (UDHR) states that “everyone has the right to life, liberty and security of person. ‘UDHR also recognises the inherent dignity and equal and inalienable rights of all members of the human family’”.<sup>601</sup>

The United Nation General Assembly also acted in response to arbitrary executions and politically motivated killing, on December, 15, 1980, when it adopted resolution in which it urged member states to abide by the provisions of Articles 6, 14 and 15 of the International Covenants on Civil and Political Rights that cover the right to life and equally guaranty fair and impartial judicial proceedings.<sup>602</sup>

Under the Islamic Law, Allah and His messengers condemned murder with utter disgust. Killing without just cause is mischief and it is treated as an offence against universe, thus:

*... if someone kills another person – unless it is in retaliation for someone else or for causing corruption in the earth – it is as if he had murdered all mankind. And if anyone gives life to another person, it is as if he had given life to all mankind...*<sup>603</sup>

The question bordering minds is why unlawful killing is still rampant despite all these legal frameworks?. How can unlawful killing be put under control?. It must be noted that all extra judicial killings are unlawful killings. Before, a person can be punished by way of death

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<sup>601</sup> See Article 3 of the Universal Declaration of Human Rights (UDHR), UN General Assembly, December 1948, Resolution 217, Paris, France.

<sup>602</sup> In order to check the act of unlawful killing, the General Assembly passed on resolution that all the UN members should abide by Article 6, 14 and 15 of the ICCPR

<sup>603</sup> See Quran 5 v 32

penalty, he must have gone through judicial proceeding in which he/she is pronounced guilty of an offence punishable by death. Scores of killing nowadays are extra judicial either at instance of security agents, hoodlums, cultists, gangsters, politicians, area boys, insurgents, terrorists etc. Therefore, it is important to have a preview on some relevant laws on unlawful killing in order to offer appropriate suggestion on how the menace can be controlled.

## UNITED NATION CONVENTIONS ON EXTRA JUDICIAL KILLING

Extra-Judicial killing is indefensible, morally abhorrent, and illegal under International Laws and norms. The 1907 Hague Regulations prohibits “Assassination, or outlawry of an enemy, or putting a price upon an enemy’s head, as well as offering a reward for any enemy ‘dead or alive.’<sup>604</sup>

Article 3 of the Universal Declaration of Human Rights (UDHR) states that “Everyone has the right to life, liberty and security of person.” ‘UDHR also recognizes the inherent dignity (and the) equal and inalienable rights of all members of the human family.’<sup>605</sup>

The Sixth United Nations congress on the Prevention of Crime and the Treatment of Offenders<sup>606</sup> condemned ‘the practice of killing and executing political opponents or suspected offenders carried out by armed forces, law enforcement or other governmental agencies or by paramilitary or political groups acting with the support of official forces or agencies.’<sup>607</sup>

The General Assembly also acted in response to arbitrary executions and politically motivated killings; in 1980 it adopted resolution in which it urged members states to abide by the provisions of Articles 6, 14 and 15 of the International Covenant on Civil and Political rights that cover the right to life and equal and impartial criminal justice system.

The first principle on Extra Judicial Killing of the UN is the 1989 UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions which states:

*‘Governments shall prohibit by law and extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognised as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances, including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such execution. They shall not be carried out under any circumstances including, but not limited to , situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the*

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<sup>604</sup> See Article 23(b) of 1907 Hague Regulations

<sup>605</sup> Article 3 of the UDHR

<sup>606</sup> The United Nations Congress on Crime Prevention and Criminal Justice is a United Nations congress on crime and criminal justice, held every five years. It is initially called the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the current name was adopted in 2005

<sup>607</sup> The UN Congress on the prevention of an treatment of Offenders, Caracas, Venezuela, 25 August – 5<sup>th</sup> September, 1981 also condemned targeted killings with particular recall to Article 3 of UDHR and Article 6 Paragraph 1 of the ICCPR

*consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority*<sup>608</sup>.

In 1982, the UN established the Special Rapporteur on extrajudicial, summary or arbitrary executions. It was one of the several mandates to address disappearances, torture, assassinations and many other human rights abuses and violations of international law. This Rapporteur, in its latest resolution 35/15 of 22 June, 2017, the Human Rights Council renewed the mandate of the Special Rapporteur for another three years to ensure compliance of all members states with the UN Principles on Extra judicial killings irrespective of whether those members states have ratified the relevant international convention or not<sup>609</sup>.

## **AU CHARTER ON EXTRA JUDICIAL KILLING**

There are three overlapping phases of criminal justice system. These are: pre-trial, trial and post trial. More often than not extra judicial killing does happen in the pre trial phase though it may be possible to also occur during trial phase but in a very rare occasion. In an effort to ensure that members states put measure to summary execution the African Union (AU) put in place legal frame work that will give general recognition to the right to life as provided for in Article 3 of the UDHR, Article 6 of the International Covenant on Civil and Political Rights which provides that right to life shall be protected by law and that no one shall be arbitrarily deprived of life. Likewise Article 4 paragraph 2 of the International Covenant on Civil and Political Rights provides that political instability and public emergency shall not be used as exceptions to right to life<sup>610</sup>.

The General Assembly of the AU on 27<sup>th</sup> June, 1981<sup>611</sup> adopted the African Charter on Human and Peoples' Right which came into force on 21<sup>st</sup> October, 1996 particularly Article 4 of the African Charter that guarantees right to life. Article 4 of the African Charter provides as follows:

*Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.*

## **ISLAMIC LAW ON EXTRA JUDICIAL KILLING**

Islam holds murder as one of the greatest crimes known to human society. It is punishable under all system of law since the early history of mankind and throughout the ages up to the present.<sup>612</sup>

The act of assaulting someone's body is the act that obligates qisas (legal retribution), diyah, or expiation. Muslim scholars unanimously agreed on the prohibition of termination of a

<sup>608</sup> The 1989 UN principles of the Effective Prevention and Investigation of Extra Legal, Arbitrary and Summary Executions

<sup>609</sup> [www.lan.ohchr.org](http://www.lan.ohchr.org); Accessed 23<sup>rd</sup> October, 2017

<sup>610</sup> Human Rights in Africa – major African legal instrument citeseerx.irt.psu.edu accused on 24/10/2017

<sup>611</sup> Ibid

<sup>612</sup> Karim, A.M.F. Mishkat-ul-Masabih, (Law Publishing Co. Lahore Pakistan) Vol. 11 p. 5088

person's life without right. The proof of this prohibition is derived from the ever-Glorious Book, the Qur'an, and the Sunnah (Prophetic Tradition). Allah (SWT) says:

*And do not kill the soul (i.e. person) which Allah has forbidden, except by right...*<sup>613</sup>

Majority of Islamic jurists identified three offences that can attract death penalty. These are<sup>614</sup>:

1. Zina – Adultery and fornication
2. Ridah – Apostasy
3. Hirabah – Waging war against God and society or brigandage/banditry

There are various ahadith that carry the same meaning of the aforementioned one<sup>615</sup>.

Therefore, whoever takes the life of a Muslim intentionally and without right, Allah (SWT) will punish him severely in the Hereafter, as He says:

*But whoever kills a believer intentionally – has recompense is Hell, wherein he will abide eternally, and Allah has become angry with him and has cursed him and has prepared for him a great punishment.*<sup>616</sup>

Such a murderer is regarded as a defiantly disobedient person, as he commits one of the major sins, namely murder. Still, Allah is the One to judge such a person; He will punish him if He wills or forgives him if He wills. Allah (SWT) says:

*Indeed, Allah does not forgive association with Him, but He forgives what is less than that for whom He wills.*<sup>617</sup>

Hence murder may be forgiven, since it is lesser than associating others in worship with Allah. This is the case when the murderer does not repent, but if he repents, his repentance may be accepted, as Allah, Exalted be He says:

*Says, 'O My servants who have transgressed against themselves (by sinning), do not despair of the mercy of Allah. Indeed, Allah forgive all sins. Indeed, it is He who is the most Forgiving, the Merciful.*<sup>618</sup>

Despite the forgiveness the right of the murdered person is not dropped in the Hereafter by the repentance of the murder. The right of the murdered person will be taken from the good deeds of his murderer. In addition, the right of the murdered person is not dropped through qisas (legal retribution), as such retribution is only of the family of the murdered person. In this respect, Ibnul-Qayyim (may Allah have mercy on him) said:

*There are three rights to murder: The first belongs to Allah, the second to the murdered person, and the third to the family of the murdered person, hence, if the murderer gives himself up to the family of the murdered persons, showing regret, fear of Allah, and sincere repentance, Allah's right will be dropped and the right of the family of the murdered person will dropped when the qisas (legal retribution) or reconciliation is applied. As regards the right of the*

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<sup>613</sup> Qur'an: 6 vs. 151

<sup>614</sup> Muhammad I.S. The Penal Law of Islam, Kazi Publications, Lahore Pakistan Page 53 – 81, 95-102, 139-144

<sup>615</sup> Ibid

<sup>616</sup> Qur'an: 4 vs. 93

<sup>617</sup> Qur'an 4 vs. 48

<sup>618</sup> Qur'an: 39 vs. 53

*murdered person, Allah will compensate him on the behalf of the repentant murdered on the Day of resurrection and reconcile between them as well.*<sup>619</sup>

The Islamic law categorises murderer to three; intentional, quasi intentional and manslaughter. Each of these categories has its respective punishment.

## **TYPES OF MURDER**

According to the majority of Muslim scholars, there are three kinds of killing:

- Premeditated murder
- Quasi-premeditated murder
- Manslaughter

## **PREMEDITATED MURDER**

It is a type of murder in which one intentionally kills a human being knowing that his blood is inviolable-by attacking him with something harmful. This definition points that killing is not regarded as premeditated unless the following conditions are met:

- i. Having the intention of killing.
- ii. Being previously aware of the inviolability of the victim's blood as a human being.
- iii. The weapon or the tool used is a dangerous one, whether it is specified for killing or not.

Therefore, if one of these conditions is not present, the case will not be regarded as premeditated murder. This is because the absence of intention does not obligate qisas (legal retribution), and the occurrence of death with something that is not supposed to be fatal indicates that death may have been due to something else as scholars agreed.

According to the majority of scholars, there are nine forms of premeditated murder.<sup>620</sup> Thus:

The murderer wounds a person with something sharp and body-penetrating objects, such as a knife, a spike or the like. In this regard, Al-Muwaffaq said, 'As far as we know, there is no disagreement among scholars and jurists on this ruling (i.e. killing using such tools is deemed premeditated murder).

Another situation is where the murderer kills a person with something heavy, such as stone and the like. Therefore, if the stone, for example is small, the case will not be regarded as premeditated murder, unless it is intentionally aimed at a vital part of the body. Similarly, it will be regarded as premeditated murder if such a small stone (that usually does not cause death) is used while the victim is in a state of weakness, illness, young, old and similar other fragile conditions. This applies when the murderer repeats the action of beating the victim with such a small stone or the like until he dies. This is also similar to the cases when a person kills another by letting a wall fall on him, hitting him with a car, or throwing him from a high place.

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<sup>619</sup> Al-Bukhari (6815) (12/47) and Muslim (4396) (6/193)

<sup>620</sup> Al-Fawzan S.A., A Summary of Islamic Jurisprudence' p. 517

The murderer throws a person to a deadly animal, such as a lion or a serpent. Thus, if one intentionally throws another to such deadly creatures, the cause is deemed premeditated murder, for such creatures are generally known to be killers.

The murderer may throw a person into fire or pool of water, which may cause him to drown, while the victim cannot escape.

The murderer may strangle a person with a rope or the like or stifle him to death.

The murderer imprisons the victim and deprives him of food and drink until he dies, i.e. being imprisoned for a period in which any may die of hunger and thirst. Such a case is considered premeditated murder. The murderer, knowingly, uses sorcery or black magic that often causes death to the victim.

The murderer knowingly makes the victim drink poison or cunningly mixes it with the victim's food while the latter is unaware.

Some witnesses falsely testify against someone causing the latter to be sentenced to death, as in cases like adultery, apostasy, or premeditated murder whose penalty in Islam is capital punishment. Such witnesses are regarded as murderers, as they intentionally killed an innocent person. So, if they renege on their testimony or if their plot is disclosed, they are to be sentenced to death as well.

## QUASI-PREMEDITATED MURDER

According to Faqih, quasi-premeditated murder occurs when someone kills another with the intention of causing him harm or injury, not death. Such a case is regarded as quasi-premeditated murder whether the murderer's purpose is aggression or mere disciplinary punishment, as the offender exceeds the limits in doing so until it results in death. It is called 'quasi-premeditated murder' as the perpetrator just intends harm or injury, but he unintentionally kills the victim. Abu Hurayrah (may Allah be pleased with him) narrated:

*Two women from (the tribe of) Hudhayl fought with each other and one of them hit the other with a stone that killed both her and the foetus she carries. The killer's agnate relatives and those of the victim submitted their cause to the Prophet (PBUH) who judged that the diyah for the murdered woman was to be paid by the murderer's agnate relatives.*<sup>621</sup>

As for the premeditated killing and manslaughter, they are stated in the Glorious Quran, Allah (SWT) says:

*And never is it for a believer to kill a believer except by mistake. And whoever kills a believer by mistake - then the freeing of a believing slave and a compensation payment (diyah) presented to his (i.e. the deceased's) family (is required) unless they give (up their right as a) charity. But whoever kills a believer intentionally his recompense is Hell, wherein he will abide eternally,*

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<sup>621</sup> See Sahih al-Bukhari, "Kitab al-Diyat", Vol.4, pp.40-46; Sahih Muslim "Kitab al-Qasamah", Vol.2, pp.110-111; Sunan Ibn Majah, "Kitab al-Diyat", Vol.2, pp.889-884; Sunan al-Nasa'i "Kitab al-Qasamah", Vol.3, pp.996-997; Sunan Abi Daud, "Kitab al-Diyat", Vol.3, pp.192-93.

*and Allah has become angry with him and has cursed him and has prepared for him a great punishment.*<sup>622</sup>

The ruling on quasi-premeditated murder is stated in the Sunnah of the Prophet (PBUH), for example, ‘Amr ibn Shu’ayb reported on the authority of his father and grandfather respectively that the Prophet (PBUH) said:

*The diyah (blood money) for quasi-premeditated murder is to be made as much as that for premeditated murder, but the culprit in the former case is not to be killed. Satan (in quasi-premeditated murder) insinuates people and then blood is shed blindly without any previous malice or weapon.*<sup>623</sup>

Moreover, ‘Abdullah ibn ‘Amr (may Allah be pleased with him) narrated that the Messenger of Allah (PBUH) said:

*The diyah (blood money) for quasi-premeditated murder, such as that committed with a whip or a stick, is one hundred camels, forty of which are pregnant.*<sup>624</sup>

## **MANSLAUGHTER**

According to faqihs (may Allah have mercy on them), manslaughter occurs when someone kills an inviolable human being by mistake while doing something permissible such as shooting or hunting. The same applies when a Muslim kills a fellow Muslim in a battle, thinking he is one of the disbelievers.

Furthermore, if a Muslim kills a Muslim mistakenly in a war believing that he is one of the disbelievers, there will be nothing obligatory on him except for the expiation. Allah (SWT) says:

*Never should a believer kill a believer: Except by mistake, and Whoever kills a believer by mistake it is ordained that he should free a believing slave. And pay blood-money to the deceased's family, unless they remit it freely. If the deceased belonged to people at war with you, and he was a believer, the freeing of believing slave (is enough). If he belonged to a people whom you have a treaty of mutual alliance, blood-money should be paid to his family and a believing slave be freed. For those who find this beyond their means, (is prescribed) a fast for two months Running: by way of repentance to Allah: for Allah hath all knowledge and all wisdoms.*<sup>625</sup>

It should be added that no one is allowed to kill another person without just cause. Killing should be done according to justice. What justice demands is the proof of commission of offence beyond reasonable doubt. It is only the due process of law that can be used as a parameter of just cause. Therefore, anyone who kills without just cause has committed murder under the Islamic law.

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<sup>622</sup> Qur'an: 4 vs 92-93

<sup>623</sup> An-Nasa'I (4892) (4/438)

<sup>624</sup> See: "Majmu'ul-Fatawa"

<sup>625</sup> Quran 4 vs. 92

## **JUSTAPOSITON BETWEEN THE POSITION OF THE UNO TREATY AND THE ISLAMIC LAW VIS-À-VIS NIGERIA LEGAL SYSTEM ON EXTRA JUDICIAL KILLING**

The United nation Treaty under Article 3 provides that ‘everyone has the right to life, liberty and security of person as guaranteed by the UN. This is because the rights cannot be guaranteed without just cause. In other words, the rights to life, liberty and security of person may be encroached through the due process of law. The provision should have added exception to the rights.

The UN treaty is only binding on its members states and if any members state fails to abide by the treaty there is no serious sanction against such member state. The only sanction like withdrawal of membership is not stiff enough to compel member state to abide by the treaty. More particularly when the relationship between the UN and its members is more of contractual relationship. That is more reason why the UN mainly finds it difficult to exercise power of enforcement.

It must be pointed out that the treaty can be enforced through the domesticating of the treaty<sup>626</sup>, since the states themselves sign treaties.

It must be pointed out that unlike the national law, the punishment for the breach of the international treaties does not attract punishment like imprisonment, sentence to death etc. but political and economic sanctions. International treaties can be seen as a contract between parties. That is the root of the international treaties. It follows therefore that each member state has the opportunity to choose which of the international treaties it wishes to join. It can also withdraw its consent<sup>627</sup> from the same subsequent to its ratification. Once a treaty is made, it becomes binding among the member state that ratified it. However, individual is not bound by treaty. Save exceptional cases, it is the member state that will domesticate it into their own domestic law before it becomes binding on the individual. It must be pointed out that international institutions are the custodians of the international treaties. There are many international organisations. However the United Nations Organisation is the major international institution that comprises representatives from several countries of all the continents of the world. The duo has made treaties against extra judicial killing by guaranteeing right to life, liberty and security of life.

Whereas under the Islamic Law, the provision of the law is generally applicable to the generality of mankind irrespective of tribe, race, sex and religion. The glorious Quran said ‘we have not sent you (O Muhammad) except as a giver of glad tidings and a warner to all mankind.<sup>628</sup> Another verse says that ‘we have sent you (O Muhammad) not but as a mercy for the Alamin (mankind, jinn and all that exists).<sup>629</sup> Prophet Muhammad’s message is not meant for any specific people. the words O people refer to all of mankind, and the criteria for differentiating between people are based on piety.

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<sup>626</sup> See section 12 of CFRN 1999

<sup>627</sup> Ibid page 7

<sup>628</sup> Quran 34 vs. 28

<sup>629</sup> Quran 21 vs. 107



*O mankind! We have created you from a male and a female and made you into nations and tribe, that you may know one another. Verily the most honourable of you with Allah is that (believer) who has a Taqwa (i.e. he is one of the pious) verily, Allah is all knowing, Al-aware<sup>630</sup>.*

Islamic Law generalises its provisions and its binding nature is neither voluntary nor contractual. The offence and punishment of murder under the Islamic law is the same everywhere all over the world. It is unlike the UN treaty that gives opportunity to each state to determine its parameter of right to life.

Islamic Law commands all mankind not to kill a soul (i.e. person) which Allah has forbidden, except by right...<sup>631</sup>

This allows mankind to look into the exceptions to the right to life before making conclusion that a killing is extra judicial or not. The following offences are the exceptions to the right to life.

- i. A-zina-Adultery
- ii. Al-Hirabah-highway robbery or brigandage
- iii. Al-ridah- apostasy
- iv. Al-Baghy- rebellion or treason

Under the Nigeria legal system, the 1999 constitution guarantees right to life and provides that every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. Section 33(2) gives exception to section 33(1) and provides as follows:

(2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use of judicial process, to such extent and in such circumstances as are permitted by law in the following circumstances:

- a. For the defence of any person from unlawful violence or for the defence of property.
- b. In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;  
or
- c. For the purpose of suppressing a riot, insurrection or mutiny.<sup>632</sup>

Therefore, the Nigerian legal system though provides for right to life but it makes provision for exception as contained in section 33(2) adumbrated above. Of course, it is not extended to the outside jurisdiction of Nigeria.

The Nigerian constitution has a binding force and power of enforcement but the area of its difference to the Islamic law is that the two have different commission of offence as exception. The Nigerian constitution has jurisdiction on the people of Nigeria alone while the Islamic Law has no limitation of jurisdiction.

Therefore, under the UN treaty, the act of extra judicial killing is made the same with the capital punishment. Simply put, the provision of Article 3 is left open, such that everyone has the right

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<sup>630</sup> Quran 49 vs. 13

<sup>631</sup> Quran 6 vs. 151

<sup>632</sup> Section 33(2) of the constitution of the Federal Republic of Nigeria, 1999 makes provision for exceptions to right to life but there are fundamental differences between exceptions of the Nigerian Constitution and that of Islamic Law.

to life, liberty and security of person. This provision does not allow capital punishment. The question now is that what of the situation where somebody committed murder? Would the offender be left to enjoy the provision of the Article 3 of the UN treaty?

## CONCLUSION

Islamic Law generalises its provisions and its binding nature is neither voluntary nor contractual. The offence and punishment of murder under the Islamic Law is the same everywhere all over the world. The UDHR leaves its provision open and gives opportunity to each state to determine its parameter of right to life. The ICCPR also prohibit extra judicial killing as a way to guarantee right to life. All these International Conventions or Treaties are due for review because the menace of extra judicial killing is increasing day in day out. It is not controversial that there is a wide difference between the provision of the International Law and Islamic Law on extra judicial killing. It must be pointed out that Islamic law also gains universal applicability. Therefore, there is a need for the international organisations to iron out the differences between the so called international law and Islamic law on extra judicial killing. This will make them to improve on conventions and treaties on extra judicial killing so that the laws will be uniform across the globe to achieve substantial justice on cases of extra judicial killing and the rampancy of the offence will be minimised by so doing.