

POLICE SERVICE COMMISSION

IN-CUSTODY DEATH POLICY

FOR

THE NIGERIA POLICE FORCE

Chapter One

1. INTRODUCTION

Definition

Death in custody¹ can be defined as a situation when a person dies when in the custody of the police, prison services or other authorities. For the purpose of this policy formulation, death in custody is being looked at from the perspective of a person who dies while in the custody of the police. This would also include death of a person following contact between the police where there may be a link between the contact and the death. This means that fatal shootings involving police, where a Police Officer has fired the fatal shot and is also covered in this process.

It remains a controversial subject with the authorities often being accused of abuse, neglect, ethnicity / religious affiliation considerations, and cover ups of the causes of death.

2. SITUATION ANALYSIS

The Constitution of the Federal Republic of Nigeria 1999 and other regional and international laws and treaties, for example the Universal Declaration of

¹ It initially used to be described as unexpected deaths when there was no apparent

Human Rights and the African Charter on Human and Peoples Rights² clearly provide for and guarantee the right to life for all human persons.

In Nigeria, the Nigeria Police Force has been constantly accused and at times found to be involved in cases of extra judicial killings, torture of suspects which leads to the death of the suspected person(s) etc. These cases are reported periodically in national dailies while many are unreported for fear of victimization by the perpetrators. Those reported are rarely investigated by the police authorities or oversight agencies so as to bring the perpetrators to justice. This creates a cycle of impunity that engenders more violations.

There have been various international human rights reports³ that have also risen and criticized the issue of death in Police custody in Nigeria. In 2003, the Human Rights watch world report stated that the police itself stated that at least 225 criminal suspects had been shot dead between March and June 2002; in 2000 the police reported killing 509 and injuring 113 while in pursuit of robbers in Lagos State.

Mr. Philip Alston, the United Nations Special Rapporteur on Extra Judicial Summary and Arbitrary killings in a report which was borne out of an official fact finding visit to Nigeria between 27 June and 8 July 2005 noted that 'police put forth various pretexts to justify extra judicial executions when a victim is killed in custody; it is said that the victim was attempting to

²Section 33(1) 1999 CFRN; Article 3 of the UDHR, Article 4 of the ACHPR

³ The report of the United Nations Special rapporteur on Extra Judicial summary and arbitrary executions, 2005; the Human Rights Watch report 2005 etc

escape. If the victim was killed before being taken into detention, his status as an armed robber may be cited.

Some examples of cases of death in custody which were reported in the national dailies or on the internet are as follows:

Mr. Ken Nweigha a militant leader was arrested in June and killed within 24 hours in controversial circumstances. The said Ken Nweigha was alleged to have masterminded the killings of 12 policemen, which eventually led to Odi invasion in 1999. He was paraded before journalists. He was also accused of trying to kill the Bayelsa State Commissioner of Police, Mr. Onuoha Udeka and a team of policemen coming back from Odi.

There is also the trend of 'midnight interrogations' by the police where they are said to illegally terminate the lives of persons detained in their custodial facilities. There have been various reports from inmates of Special Anti robbery squads (monitoring unit) cell, narrating the practice of calling out specific inmates at about midnight for interrogation. Investigations that have been carried out by the Civil Liberties Organisation⁴ and the Network on Police Reform in Nigeria⁵ and some other civil society groups have revealed that many of those called out never make it back to the cell⁶.

⁴ Frank Asogwah, Damian Ugwu and Chijioke Udom (October 2005), *Climate of Impunity: A report on the use of torture by the Nigeria Police Force*, published by the Civil Liberties Organisation.

⁵ Chidi Anslem Odinaklu: *Criminal Force? Torture, Abuse and Extrajudicial killings by police in Nigeria (2008)*, published by the Network on Police Reform in Nigeria (NOPRIN).

⁶ This was also stated by various witnesses that testified during the public hearings organised by the Network on Police Reform in Nigeria, National Human Rights Commission and the Public Complaints Commission. The proceedings of the public hearings would be published in a book titled *Cry for Justice: Proceedings of a public tribunal on police accountability in Nigeria*.

Another example is the case of Ndudiri Onyekwere, a 28-year-old student, who was arrested by the police on 11th June in Onitsha, Anambra State, and taken to Alausa police station. A friend had accused him of robbery. Ndudiri Onyekwere died six days later, after he had been transferred to the Special Anti-Robbery Squad facility in Panti. According to his family, he was taken to Ikeja General Hospital on 17th June after complaining of stomach pains, and died there hours later. An autopsy showed that he had been severely beaten and attributed his death to "traumatic shock consequent upon multiple soft tissue and skeletal injuries".

Recently, the death of the leader of the Islamic religious sect - Boko Haram, Mohammed Yusuf who was killed soon after his arrest by the police, who claimed that he was shot while trying to escape, also lays emphasis on the importance of death in custody issue in Nigeria.

The present mode of investigation by the police leaves much to be desired. In a bid to get information during investigation, different methods of torture are used by the law enforcement agents to compel the suspects to make implicating statements - based on allegations made against them. The methods of investigation employed by these agencies have resulted in the deaths of many people who are in police custody.

The phenomenon is however, not limited to the investigation methods. The places where suspects are also held in custody are also more often than not, not conducive. This has also resulted in more cases of 'death in-custody'.

3. **JUSTIFICATION**

The Nigerian Constitution under section 33 and 34 (1) (a) (b) clearly guarantees the fundamental rights of every person such as right to life and respect for the dignity of his or her person. As such no one shall be subjected to torture or any inhuman or degrading treatment. The law also states that "everyman is innocent until proven guilty by the court of law" as such no man, be it the police or any other state agent or otherwise has the right to torture an individual to the extent of death just because information needs to be retrieved from a suspect. As such there should be a policy to safeguard the lives of persons that come in contact with the police - as suspects are detained by the police either in police station / detention facilities or at road blocks or while the police are on stop and search duties.

Chapter Two

Framework, declarations and Guiding Principles

The policy framework that should be adopted should be one that will draw public attention to the unremitting attitude of the police towards individuals who are in custody for one offence or the other. **The need to also sensitize the Officers on how to use civilized ways in retrieving information without causing death as well as giving the consequences for any Officer found violating the rules and proceedings of interrogation.**

The United Nations Organisation under its Principles on the Effective Prevention and Investigation of Extra Legal Arbitrary and Summary Executions (1989) recognizes the establishment of the Coroners system as an established investigative procedure

Article 9 of the United Nations Principles on the Effective Prevention and Investigation of Extra Legal Arbitrary and Summary Executions states that there should be a thorough, prompt and impartial investigation of all suspected cases of extra legal, arbitrary and summary executions including cases where complaints by relatives and other reliable reports suggest unnatural death.

Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible and pattern or practice which might have brought about the death. An autopsy shall be carried

out; physical and documentary evidence and statements shall be collected from witnesses and analyzed.

The investigation report shall distinguish between natural death, accidental death, suicide and homicide.

Article 18 of the UN principles states that persons identified by the investigation as having participated in extra legal, arbitrary or summary executions should be brought to justice irrespective of who and where the perpetrators are, their nationalities or where the offence was committed.

All deaths that take place while the person is in custody of the police shall be investigated and be reported within 24 hours to the Police Service Commission. The Police Service Commission in collaboration with the National Human Rights Commission shall mandate that a coroner's inquest be carried out immediately. In a State where the Coroner's Act is not part of the legislations, an autopsy shall be requested and carried out by the Nigeria Police Force with supervision from the Police Service Commission and the National Human Rights Commission

Chapter Three

A. Goals and objectives

It is great to have policies being implemented as it serves as a guideline towards gearing a cause of action. The only way a policy can achieve its aims and objectives is, if it is adhered to strictly by observing the rules. As such the goal of this policy is to ensure the preventable ways of in-custody death and maintain the highest professional standards of interrogation and investigations without unreasonable use of force

The primal objective of this policy is to ensure the strict adherence to the rule of law as well as follow the appropriate proceedings during interrogation. Another objective is to target the men of the armed forces (the Police Officers) in ensuring that due process is taken as well as the proceedings that should be taken in case of in-custody death.

B. Strategies and Institutional Framework for Implementation

In coming up with a strategy for implementation, it is important that Police officers are properly sensitized about the need to resort to other means of investigation other than torture. Therefore, accountability on the side of officers from proper documentation of detainees, state and nature of the detainee to a routine check up by the top Officers on the conditions and well-being of the detainee.

Also the need to allow other agencies such as civil society groups and Non-governmental organizations do an assessment on in-custody death, which will serve as a way of curtailing the excesses of severe torture as well as minimize death in police custody; thereby bring consciousness and awareness to the implications and consequences of not obeying the rules and conducts of investigation.

C. Roles and Responsibility of the Nigerian Police Force, the Police Service Commission, Ministry of Police Affairs and Civil Society Organisations.

(i) The Nigerian Police Force

The essential role of the Police is to serve the populace as such provide protection to lives and property. This is not to say that situations would not arise where in-custody death becomes inevitable but there can be preventable measures which brings us to the responsibilities of the different stakeholders:

- The need to educate Officers of the Police force most especially the investigation officers on the importance of using minimal force to obtain information during investigations.
- The need to provide special training on **behavioural analysis and interrogative psychology for Police Officers** whose responsibility and line of work deals strictly with investigations, this will reduce the inefficiency and recklessness that goes with in-custody death.

- In a case of suspicious behavior exhibited by a detainee, such as ill health or mental imbalance, such cases be reported to the appropriate authorities immediately and if need be, a transfer should be effected.

(ii) **The Police Serve Commission (PSC)**

The Police Serve Commission is the watch dog of the Police; as such they should exercise their full constitutional mandate of appointing efficient men of integrity into the Police. Being the middle man between the Police and the public, there is need to establish a relationship that is based on trust and not suspicion. The PSC should also exercise its powers to discipline all erring officers and make such actions public to serve as deterrent to others.

(iii) **Ministry of Police Affairs**

This is the body that over sees the affairs of the Nigerian Police Force; as such it is given the responsibility of providing strategies, logistics, administration and financing the force for proper effective discharge of duties. Also it is empowered with the duties of enhancing the image of the police and improving the quality of police equipment and identifying key strategic areas of collaboration with the necessary stakeholders on police affairs.

(iv) **Civil Society organizations and Development Partners**

These are the bedrock of the society as they have become the sensory organs of the society. It is through their efforts that the ills and positive efforts of the police is been heard. It is not fair enough to condemn an institution but the need to find common grounds on how to improve, develop and re-position the institution in a more civilized and democratic manner. Their efforts and continuous involvement in the spheres of the institution cannot be negotiated.

D. RECOMMENDATIONS

In order to have effective and great dissemination of information, it is important that all stakeholders have to work together to ensure the improvement of the justice delivery system especially when it pertains to in-custody death. Therefore there is need to breach protocol in terms of the bureaucratic nature of the system and for an effective policy to achieve its aims and objectives. The following must be considered:

- The need to properly fund the police with modern investigating equipment, evidence gathering tools and gadgets for efficiency in the discharge of duties.
- The need to seek for new ideas and expert opinions through engagement with other officers of different nations. This can be done through exchange programmes, sending officers on training to mention but a few.

- **Re-emphasizing the principle that an accused should live to face his trial and that the untimely death of a suspect, an accused or a prisoner is not service to the Law, government or community at large.**
- The rigidity of the Force must be geared towards public friendly policing in order to win the confidence of the masses and willingness to cooperate with the police during investigations.
- There must be constant interaction among stakeholders on how to handle issues that portray the police in a negative image and ensure that they are put back on course.
- **Inculcating the ideology of responsive policing which involves:
Recognition of the fact that policing can and should be done through lawful and humane means and towards respect from the populace being protected.**