



**UNDERSTANDING THE CONCEPT OF SELF
DEFENCE UNDER NIGERIA LAW**

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ABSTRACT

Self-defence is a necessary right of every person in Nigeria. It is a right granted to every citizen under the constitution. This right enables a person to exercise defence to unlawful violence meted against oneself or property but in a reasonable manner. Although the right of self-defence may be pleaded by any person in a court of law to negate the existence and liability of an offence, it must however conform strictly to the standard of reasonability and necessity. Thus, this paper examines the scope of the right of self-defence under Nigeria law.

Keywords: Self-defence, Right, Nigeria

1.0 INTRODUCTION

It is long existing right that a person is justified in employing force to defend himself or his property from unlawful attack. The use of protective force is regarded as a fundamental and inalienable right of natural law or mortality. This concept stemmed from the Holy Book of Christianity 'The Bible', where in the face of violence, it was taken 'eye for an eye, a tooth for a tooth.'¹ By implication, it has long existed as a view of the people from this race.

However, the term 'self-defense' is derived from the Latin term 'se defendendo' meaning defending oneself. In other words, it means the use of force to protect oneself, liberty, family, and property from unjustifiable or threatened attack. This definition has been derived from the Black Law Dictionary 9th edition and was relied upon in *Oko v The State*².

Self-defence was defined in the case of *Ekpoudo v State*³ as:

the use of force to protect oneself, one's family or one's property from a real or threatened attack. Generally. A person is justified in using a reasonable amount of force in self-defence he or she reasonably believes that the danger of bodily harm is imminent and that force is necessary to avoid the danger.

¹ Alexander, L., *Self-Defense, Justification, and Excuse*. (1994) Philosophy & Public Affairs 23 at P. 53-66

²(2012) 4 NWLR (part 1290) at P. 351

³ (2021) LPELR-52826(CA)

The use of the term ‘self-defence’ or ‘private defence’ has no statutory definition in Nigeria.⁴ The term ‘private defence’ is used in Northern Nigeria under the Penal code, while the term ‘self-defence’ is used in Southern Nigeria under the Criminal code. This self-defence can be distilled into two contexts, where a person uses force to either obtain an object or repel an unlawful attack, in a bid to protect oneself, liberty or property. The corollary of these two contexts is that self-defence may serve different purposes.

2.0 APPLICABLE LAWS FOR SELF DEFENCE.

Different Nigerian laws provide for the self-defence of a person. These laws also provide the circumstances when an action is deemed ‘self-defence’. Among these laws are; the 1999 Constitution of the Federal Republic of Nigeria (as Amended), the Criminal code, and the Penal code. These laws for self-defence in Nigeria are further discussed.

2.1 THE 1999 CONSTITUTION OF FEDERAL REPUBLIC OF NIGERIA (AS AMENDED).

Nigeria’s Constitution protects the indispensable right of self-defence. In its express provision of Section 33, which guarantees the fundamental right to life of any person, a person is entitled to defend himself from any unlawful attack that may threaten his life.

Section 33(2) (a) the 1999 Constitution of Federal Republic of Nigeria⁵ (as Amended) provides thus:

⁴ Alfred Filani, An Examination of the Right of Self Defence and Others in Nigeria [2014] (28)

Journal Law, Policy and Globalization, 164

⁵ *CFRN*, 1999

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, to such extent and in such circumstances as are permitted by the law, of such force as is reasonably necessary- (a) for the defence of any person from unlawful violence or for the defence of property.

This provision of the constitution reaffirms that a person is entitled to protect himself from an unjustifiable attack from another. The aforementioned provision implies that the right of self-defense contained in the grundnorm document is constitutionally guaranteed.

2.2 THE CRIMINAL CODE

The Constitution of the Federal Republic of Nigeria is not the only law that provides for the right of self-defense, the Criminal code operating in Southern Nigeria also secures this right. The right of self-defense is provided in Section 286-293 of the Criminal Code⁶. A person has the right to protect his body or the body of any other person as provided in Section 32 (3) of the Criminal Code. This implies the protection of a person's right to life as provided under the Criminal Code.

Section 32(3) of the Criminal Code provides:

A person is not criminally responsible for an act or omission if he does or omits to do the act... when the

⁶ LFN, Cap C 38 2004

act is reasonably necessary in order to resist actual and unlawful violence threatened to him or to another person in his presence.

Under this provision, a person will not be liable for any criminal offence of having exercised his right of self-defence.

2.2 THE PENAL CODE.

The term 'private defence' is used under this act, rather than self-defence as used in Southern Nigeria. The right of a person to private defence was provided in Sections 59-67 of the Penal code. The explicit provision of Section 59 of the Penal Code⁷ provides as follows 'Nothing is an offence of which is done in the lawful exercise of the right of private defence'. This provision reiterates that a person will not be liable for any offence while he/she exercises the right of private defence.

3.0 FACTORS OF SELF DEFENCE UNDER NIGERIA LAW.

In the case of *Uwaekweghinya v State*⁸, the Supreme Court was of the firm view that:

Where a person kills another in defence of himself, such a killing is excused, and it does not amount to manslaughter under the Criminal Code or Culpable Homicide not punishable with death under the Penal Code.

⁷ LFN, Cap P3 2004

⁸ (2005) 9 NWLR (part 930) at P. 27

Although the plea of self-defense has the power to negate the existence of an offence, it must however contain some factors to be successful.

This implies that not all force a person employs in his/her defence would be considered reasonable to be a plea of self-defense. If the plea of self-defense does not possess these factors, it would not be regarded as such. These factors are the facts and circumstances surrounding the defence action that a person must prove to succeed in the plea of self-defense. A scenario of these factors was laid down in the case of *Ita & Anor v State*⁹, where the court held that:

A man is justified in using against an assailant a proportionate amount of force in defence of himself or other persons who he is under a duty to defend, where he considers his life or such person's lives to be in danger.

The above judicial decision explains that a plea of self-defense must contain such element to be successful.

Further discussing these factors, among them are:

1. Reasonableness: This factor entails that the plea of self-defense must be reasonable. In the sense, that the person making the plea must examine the circumstances in a way that a reasonable person would. The Court of Appeal explained this factor of self defence in the case of *Mohammed v State*¹⁰. Such person must understand what a reasonable person would have done if faced

⁹ (2013) LPELR-21392(CA)

¹⁰ (2020) LPELR-50919(CA)

with that violent action. For instance, to determine whether the person making the plea acted as a reasonable person, such a person must have perceived an immediate threat of physical harm. By implication, there must be a justification that a reasonable person with the feelings and experience of immediate threat would use such force.

2. **Necessity:** This factor is based on the need for such force. A successful plea of self-defense must show the urgency of the situation. The person pleading must prove within the circumstances that the danger was imminent and no other option was open to him than employing such force for his defence. A plea of self-defense under this factor would be unsuccessful if it is seen that the threat has ended already before the person retaliated with such force.
3. **Proportionality:** This factor is as important as every other factor. This factor supports the balance of proportionality in self-defense. The person making the plea of self-defense must prove that the force employed is proportionate to the force used against him/her. As such, self-defense of deadly violence would not be right, to reciprocate non-deadly violence. For instance, a plea of self-defense would be considered unsuccessful, when a person stabs the attacker who intends a slap. Such an instance is deemed not proportionate.

Hopefully, the Supreme Court has set the criteria for measuring the proportionality of self-defense in the case of *George v State*¹¹, where the court held that: *Proportionality can be*

¹¹ (1993) LPELR-1320(SC)

determined by the nature of the weapon used in retaliation, and the obvious disparity in the relative physical strength of the parties.

The corollary of this is that proportionality in the use of self-defense can be determined by what weapon is employed by the person against the attacker and the amount of physical strength not being an exception.

4. **Innocence:** This factor must first be proved in a plea of self-defense as it is fundamental to its success. The plea of self-defense must show that the person who pleads such is innocent of instigating or initiating the violence and rather defending himself from harm. However, this is not to say that there are no instances in which a person may lose said innocence. The plea of self-defense would be unsuccessful when it is found that the person pleading started the violence or is deemed to be the aggressor.

4.0 RECOMMENDATIONS ON THE EXERCISE OF THE RIGHT OF SELF DEFENCE IN NIGERIA.

It is established that every citizen in Nigeria has the right to self-defense from any danger, harm and threat. This has been provided in the country's most superior law which is the Constitution, which implies that the right to self-defense is constitutionally guaranteed. When a citizen of Nigeria is confronted with danger or harm, such a person should first legitimately try to find a non-violent way out of the situation. If the danger is immediate and the person would resort to force, such a person must reasonably know what to use and how

to use it against the attacker, in such a way that the force used would be proportionate and would not cause what was unintended by the attacker. Every citizen can get knowledge about self-defense from an available criminal defence attorney in their area. Citizens must be careful about how they understand self-defense cases they hear from social media or news, as people's judgments are bound to be affected in the heat of the moment. Thus, self-defense cases must be explained to them by persons knowledgeable in the law.

5.0 CONCLUSION.

The concept of self-defense constitutes a right in Nigeria that permits persons under immediate threat or danger, to use force to defend themselves, their liberty, family, and property from unlawful attack. This tends to protect a person's right to life in Nigeria. With this, a citizen is entitled to protect his/her body from unlawful harm.

While the successful plea of self-defense may negate the existence of an offence, the exercise of the right of self-defense must be deemed reasonable, necessary, and proportional to the force used by the attacker. Notwithstanding, the innocence of the person pleading self-defense must first be proven to assure the success of the plea.