

EXAMINING THE NECESSITY OF SELF DEFENCE IN CONTEMPORARY NIGERIAN SOCIETY

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Abstract

The principle of self defence is borne out of the innate human instinct of self-preservation. Self defence is the use of necessary force to protect one's self, family or property from a real or threatened attack. The decision to defend oneself has always been viewed from the necessity to act and the proportionality of the response when faced with imminent threat. However, in contemporary time, questions have pop-up as to the proportionality of the response considering the reflex action of a person faced with fear and despair. Also, should the aggressor execute or attempt to execute his act of aggression before a person can preemptively activate his right to defend himself against the aggressor or one can act in anticipation, having regards to fear possessed as a result of existing pattern of attacks? Adopting the doctrinal research method, this paper examines the position of the law concerning self defence in Nigeria? It also discusses the principles of necessity and proportionality when exercising the right to self defence. The paper finds that the proportionality of a person's response to imminent threat will have to be viewed subjectively from the circumstance of each case, considering current realities and pattern of threats. It also finds that a person faced with immediate danger may act without the aggressor establishing its threat first. This paper suggests that, cases of self defence can't be decided in isolation from negative incidence that the court has judicial notices of in contemporary time.

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1.0 INTRODUCTION

The Supreme Court of Nigeria on March 7, 2025, affirmed the death sentence passed on Sunday Jackson, a local farmer from Adamawa State who had been convicted of killing a Fulani herder during a violent encounter in his farm land, thus rejecting its plea of self defence.¹ This recent judgment rejuvenated discuss on the right to self defence by a person confronted with real or imminent threat in Nigeria and the subjective human reaction expected of a person under extreme fear and pressure. Also, the recent escalation of the conflict in the Middle East between Israel and Iran has been anchored on Israel’s assertion of its right to defend itself from an imminent threat to its existence supposedly and the United State of America rightly or wrongly has continuously given its full support to Israel stating that Israel has every right to defend itself, though regarded under the international law as anticipatory self defence.

It is no doubt that there exists the right to self defence in the Nigerian Constitution and a successful plea of same exonerates a person from criminal liability in Nigeria. However, at what point does the law permits a person who feels threatened to activate his right to defend himself and to what extent can he go in his defence? These amidst other issues are what this paper examines to ascertain the position of the law in Nigeria.

¹ Sunday Jackson v State (SC/CR/1026/2022) Delivered on 7/3/2025.

2.0 THE CONCEPT OF SELF DEFENCE

The sanctity of human life is to the effect that human life is sacred and must be respected by every person. This is why the killing of any human being is frowned at by all sectors of the society. The Nigeria Criminal Code Act expressly prohibits the unlawful killing of any person.² The word unlawful used in the above provision goes to show that there are circumstances where the killing of a person may be lawful. This is so, because, there are circumstances that may necessitate the State or an individual to take certain actions that may undermine the life of another, such actions may invariably lead to the death of a human being. The question that these actions may raise is whether the death is necessary in such circumstances, and if so, whether it is excusable and justifiable under the Nigerian legal system. Section 33 of the Constitution of the Federal Republic of Nigeria (CFRN), 1999 provides thus;

1. 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.
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 to such extent and in such circumstances as permitted by law of such force as is reasonably necessary;
 - 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

² Criminal Code Act, s 306

- c) for the purpose of suppressing a riot, insurrection or mutiny.³

Section 33 (2) of the CFRN, 1999, as amended, can be deduce to be drawn out of necessity and exigencies to act at that material time and it is immaterial if death is the probable outcome of such action. The doctrine of necessity in criminal trials arises where an otherwise criminal act is justified by the necessity to preserve something of greater utilitarian value than that sought to be lost or sacrificed.⁴ It is a principle that in a situation of emergency, an action that ordinarily ought to be illegal becomes excusable.⁵

Section 33 (2) of the CFRN 1999, as amended, authorises a person effecting a lawful arrest to use reasonable force if he encounters any violent resistance and it is immaterial if death is the outcome of the use of such reasonable force. The section also authorises individuals to use reasonable force in the defence of their lives and properties against violent assailants, if the need be.

The necessity to preserve one's life at all cost as authorised in Section 33 (2) of the CFRN, 1999, as amended, only applies where there is an imminent danger posed to one's life and property by the assailant himself. It does not extend to one's selfish desire to enhance and prolong his or her life as enunciated in the English case of *R. v Dudley and Stephens*.⁶ In this case, four seamen and crew members, Tom Dudley, Edwin Stephens,

³ Constitution Federal Republic of Nigeria (CFRN) 1999; *Ndubuisi v State* (2018) LPELR-44908 (SC) 16, Paragraph B-F.

⁴ Your dictionary, 'Doctrine of Necessity Definition' <<https://yourdictionary.com>>accessed 17 November, 2025.

⁵ *Ibid.*

⁶ (1884) 14 QBD 273 DC

Edmund Brooks and Richard Parker who was only 17 years old and the youngest of the seamen set out on a voyage from Southampton to Sydney in 1884. The yacht on which they sailed sank and all the four seamen resorted to the life boat without enough food and water to sustain them pending any anticipated rescue. Along the line, they lacked food and water and Parker became ill, a decision was reached by the other crew members to use Parker as a sacrificial victim who would be killed to feed the others in order for them to survive. Thus, before Parker's natural death, he was killed by his fellow crew members and they used his body as meal for survival. The court held that necessity was no defence against a charge of murder. The decision of the English court in this case was born out of the need to nip the cannibalistic instinct of seamen and other persons who usually relied on the doctrine of necessity to kill innocent and vulnerable persons who in no way put their lives at risk.

The morality and legality of taking another person's life to prolong one's own chances of survival only arises where the deceased was the assailant who put the life of the accused under the apprehension of death or grievous harm and not just the necessity to survive.

Though the killing of any person is ordinarily murder, circumstances do exist where it may become necessary and inevitable to take certain decision that may result in the death of another and the law may have regard to the surrounding circumstances justify and excuse the accused person from the criminal liability of murder and its attending consequences. The exercise of an individual's right to self defence is one of those circumstances where the need to preserve one's own life may occasion the death of another and the law will totally excuse the accused person from the charge of murder

unlike other defences to criminal liability that only seek to reduce the punishment.

2.1 What is Self Defence

Self defence is defined as the use of force to protect oneself, one's family or one's property from a real or threatened attack.⁷ Generally, a person is justified in using a reasonable amount of force in self defence if he or she reasonably believes that the danger of bodily harm is imminent and the force is necessary to avoid danger.⁸ Self -preservation remains an instinct that is innate in all human beings. The law in recognition of this instinct made provision for self defence as an excuse from criminal liability in cases where death becomes the probable consequences of one's action when he or her life is faced with imminent danger.

Section 33 of the CFRN, 1999, as amended, which guarantees the right to life of every citizen, creates exceptional circumstances where the right to life may be jettisoned. One of such exceptions is the exercise of ones right to defend him or herself against unnecessary aggression that tends to put his or her life and properties at risk. Section 33(2)(a) of the CFRN 1999, as amended provides that 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 an extent and in such circumstances as are permitted by law of such force as is reasonably necessary for the defence of any person from unlawful violence or for the defence of property.

⁷ *Ekpoudo v State* (2021) LPERL-52826 (CA).

⁸ *Ibid.*

2.2 Necessity and Proportionality of Self Defence

Self defence as an excuse to criminal liability in murder cases is borne out of necessity.⁹ Thus where death becomes the outcome of an attempt to repel or escape from an attack, the person who caused the death of the deceased may be justified upon a successful plea of self defence, if he can show that his action was for the purpose of protecting his own life which was put at risk by the de cease and there was no other cause of action open to him at that material time, considering the facts and circumstances of his situation. In *Mohammed v State*,¹⁰ the court re stated that self defence is clearly a child of necessity. It is a defence that is not pleaded as a matter of course, but one in which the defendant is expected to establish that he was at the time of the killing in reasonable apprehension of death and that it was necessary at that time to use force in order to preserve his life.¹¹

Section 286 of the Criminal Code provides that when a person is unlawfully assaulted and has not provoked the assault, it is lawful for him to use such force to the assailant as is reasonably necessary to make effectual defence against the assault. The Second limb of the above section however provide that, if the nature of the assault is such as to cause reasonable apprehension of death or grievous harm and the person using force by way of defence believes, on reasonable grounds that he cannot otherwise preserve the person defended from death or grievous harm, it is lawful for him to use any such force to the assailant as is necessary for the defence, even though such force may cause death or grievous harm.¹²In *Okonkwo v State*,¹³the

⁹ *Edoko v State* (2015) 9 NWLR (Part 1465) 463.

¹⁰ (2020) LPELR-50919 (CA)

¹¹ *Ibid.*

¹² *Ibid.*

¹³ (1998) 4NWLR 143 CA

deceased entered the appellant's house at 12am with a dagger. The court held the plea of self defence as there was reasonable apprehension of death by the appellant. According to the court, there was no doubt that the circumstances of breaking in by the deceased at midnight dictated the conclusion reached by the courts that the appellant and others were defending their property from wrongful invasion. The court acknowledged the value of subjective human reaction under extreme fear and pressure.

Self defence is a protection afforded to all persons for the protection and preservation of their life provided they act in good faith. Thus for a person or an accused relying on this defence to escape criminal liability, he must show that;

- i. He is free from fault in bringing about the assault or encounter;
- ii. There must be an impending danger to the life of the accused or risk of grievous body injury necessitating the counter response which lead to the loss of the assailant's life;
- iii. That the killer used reasonable force;
- iv. There is no other option available to him at the material time.¹⁴

To sustain this defence, all the above ingredients must co-exist and be established, this simply means that, he who comes to equity must do so with clean hands, the killer who asserts immediate or impending danger must not be the aggressor, the force used to repel the danger must be reasonable and commensurate and the force must stop once the danger stops. It is not a defence of an angry person but that of a person who had no other option open to him at the material time.

¹⁴ *Afosi v State* (2013) 13 NWLR (1371) 336; *Odunlami v Nigerian Navy* (2013) 12 NWLR (Pt 1367) 31

In *Nwokearu v State*,¹⁵ the Appellant's father who was the head of family had dispute with his brothers over the demand that Appellant's father release to them their own share of the family land, while the argument was ongoing, Appellant emerged from his room with a dagger and stab the deceased who is his uncle to death and also stabbed the deceased brother on his left jaw and right arm, during trial Appellant claimed he acted in self defence. On appeal to the Supreme Court, the court held that the appellant who was a trained soldier, armed with a dagger, who attacked and killed an unarmed and defenceless civilian who did not in any way attack him, could not rely on self defence, he was not defending himself from anything or anyone.

Also, in *Odunlami v Nigeria Navy*,¹⁶ the appellant a lieutenant in the Nigerian Navy was tried and convicted for manslaughter by the Nigerian Navy General Court martial. The fact of the case was that the deceased a commercial motor cyclist hit the Mercedes Benz car of the appellant. The deceased on noticing the appellant was a military man immediately knelt down and started pleading for forgiveness, rather than accede to the deceased's plea, the appellant brought out his service pistol and shot the deceased in the mouth, thus killing the deceased on the spot. The Supreme Court held that the General Court martial and the Court of Appeal were right when they found that the plea of self defence did not avail the appellant as there was no reasonable apprehension of death or grievous harm to him to warrant the defence.

¹⁵ (2013) 10 NWLR (Part 1380)209.

¹⁶ (2013)12 NWLR (Part 1367) 20.

Self defence is a defence against unprovoked assault that results in death. The Supreme Court in *Edoko v. State*¹⁷ likened self defence in a case of murder to a “child of necessity”. In this case, the deceased who was serving PW1 and his friends in a burial food and drinks, approached the accused, who came to the vicinity and was smoking indian herm to leave the area, a scuffle ensued and the accused/appellant stabbed the deceased to death with a jack knife. The court rejected the defence of self defence and sentenced the accused to death for murder.

Any inevitable death, that necessitate a successful plea of self defence by an accused person is excused and justified in law and does not constitute a violation of the right to life. If the defence is upheld, it completely exonerates the accused person from the charge of murder or manslaughter and the accused is entitled to be discharged and acquitted. In *Ita v State*,¹⁸ 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 persons’ life to be in danger.

The scale of evaluating the proportionality of an accused person response to imminent attack in the heat of passion ought to be subjective having particular regards to the circumstances of each case. In the recent case of *Sunday Jackson v State*¹⁹, in 2018, Jackson had gone to his farm to harvest thatching grass when he was confronted by the deceased who allegedly accused him of being involved in the killing of his cattle, a confrontation ensued, according to Jacksons’ statement, the deceased attacked him with

¹⁷ (2015) 9NWLR (Part 1465) 463

¹⁸ (2013) LPELR-21392(CA)

¹⁹ *Note 1*

a dagger, in the struggle that followed, the accused managed to disarm him and in a bid to protect himself, he stabbed the deceased multiple times, fled the scene and was subsequently arrested and charged with culpable homicide punishable with death. The accused was found guilty both at the High Court and the Court of Appeal under section 221 of the Penal Code. The Supreme Court in affirming the decision of the lower court, concluded that Jackson use of force was excessive and unnecessary once the threat was neutralized by his having disarmed his assailant. However, Helen Moronkeji Ogunwunmju JSC in her dissent judgment opined that;

It is not reasonable, nor indeed natural to expect that a man who has been stabbed twice and suddenly finds himself struggling for his life would pause to calibrate the proportionality of his defence action. The expectation of retreat after such an attack, is neither practicable or fair.”²⁰

His Lordship emphasized the necessity of interpreting the law in light of real human experience, not abstract logic, she concluded that Jackson acted within permissible limit of both self defence and provocation.²¹

Effiong²² however notes that, the duty to retreat in the face of imminent danger to one’s life is copied from the English Common Law duty to retreat in self defence, where in the accused person is expected to have taken reasonable steps to see that he tries to escape the threat pose by the assailant and can only resort to self defence when it seems to be the last option. This writer notes that the duty to retreat in self defence is however prejudicial to

²⁰ *Ibid*

²¹ *Ibid*

²² Inibehe Effiong, The Duty to Retreat or Escape as a Requirement for the Defence of Self Defence in Nigeria <<https://inibeheeffiong.com>> accessed 30/1/26

Nigerians who frequently face attacks on their person and property without any help from constituted authorities. He suggest the need for an extension of the defence of self defence under the Nigerian criminal laws to include the duty to ‘stand your ground’ as obtainable in some States in the United State of America.

The Supreme Court majority decision in the ‘Sunday Jackson v State’ case has been criticized as perverse, unjust and unscholarly by many, including people from the legal community, writers, editors and the public.²³ Prof. Mike Ozekhome, drew attention to the Supreme Court failure to take judicial notice of the lingering farmers-herders crisis in assessing the defence of self defence, thus affirming the position of many that the judgment lost touch with the reality of the time. In affirming the conviction and death sentence of Sunday Jackson, the Supreme Court appeared to have approached the case in vacuum, as though the incident took place in a socially and historically neutral setting. It made no reference whatsoever to the widely recognized and ongoing farmers-herders conflict that have plagued communities across the country. This oversight is striking particularly because Jackson’s alleged assailant, a herder confronted him in a rural bush area, a pattern consistent with the violent clashes that have led to hundreds of death and displacement in the country particularly the northern region. According to him, the Supreme Court failure to contextualize Jackson’s fear and response within this reality deprived the judgment of the necessary social, sociological and historical nuance²⁴

²³ This Day Live, Justice Denied; Supreme Court’s Judgment on Sunday Jackson’s Self Defence Case [www.thisdaylive.com] accessed 17/6/25

²⁴ Prof. Mike Ozekhome, Justice Denied; Supreme Court’s Judgment on Sunday Jackson’s Self Defence Case, June 3, 2025 [www.mikeozekhomeschambers.com] accessed 18/6/25

While Nigerians were pondering on the proper applicability of the principles of self defence in its local context considering the decision of the supreme court in Sunday Johnson's case, the international community was also at that same period, confronted with the escalation in the Middle East between Israel and Iran, with both countries asserting their right to defend themselves, the assertion by the both countries had further buttressed another facet of the defence of self defence.

According to Schmitt, the Israel Defence Force (IDF) on Friday, June 13, 2025 launched Operation Rising Lion against Iran Nuclear infrastructure and ballistic missiles capability while targeting Iranians senior military officers and top nuclear scientists. Iran also responded to the attacks claiming a right to self defence. Israel's primary justification for this attack is on the basis of an existential threat posed to it by the acquisition and development of nuclear weapon by Iran. According to this writer, this operation comes at the heels of the June 12, 2025 findings of the International Atomic Energy Agency (IAEA) that Iran was in non-compliance with its safeguard obligations under the Treaty on Non-Proliferation of Nuclear Weapons and the Associated Comprehensive Safeguards Agreement. This report made Israel to be apprehensive and preemptive because the current Iranian regime had long threatened to destroy Israel and the actualization of the nuclear weapon by Iran will give Iran the capability to fulfill that objective. If Israel had failed to act when it

did, it would have lost the ability to effectively defend itself against an Iranian nuclear attack.²⁵

Corn and Kittrie notes that, there exist a shadow war between Israel and Iran that even pre-dates April 13-14, 2024, when Iran fired over 300 drones and missiles at Israel and on October 1, 2024 when she launched over 180 missiles at Israel again, backed by the continuous threat by its Supreme leader and top military officers to annihilate Israel from the face of the earth. This writers posit that Israel’s attack on Iran nuclear weapon program including its ballistic missile capabilities on Friday, June 13, 2025 was legal having regard to the fact that both countries were already in a state of arm conflict and the findings of the IAEA on June 12, 2025 further justified Israel’s legal right to defend itself against an imminent danger, considering Iran’s elimination threat and actions towards Israel, coupled with its relentless march towards the actualization of its nuclear weapon. The writers further note that an imminent attack is not a necessary condition for resort to force in self defence in this circumstance, because arm attack by Iran had already occurred and were expected to occur again.

Putting Israel’s apprehension and response to imminent threat, side by side with the Sunday Johnson’s case recently decided by the Nigerian Supreme Court, it can be rightly argued that, from the continuous farmers-herders clashes Nigerians have had in contemporary time and the fatal effect it has had on the lives and properties of these farmers, a farmer confronted by a herder in the bush need not wait for the herder to execute its attack on him first before he activates its instinct to defend himself in the Nigerian

²⁵ Michael N. Schmitt; Israel’s Operation Rising Lion and the Right to Self Defence
<<https://lieber.westpoint.edu>> accessed 18/6/2025

context, because there exist series of attack on farmers and it were expected to occur again. Failure to act preemptively by a farmer may deprived him of the opportunity to effectively defend himself against the aggressor otherwise the farmer may have been demystified.

3.0 CONCLUSION

This paper has examined the necessity of self defence and the proportionality of ones' response to an imminent threat in Nigeria. It also provides an overview of the criminal defence of self defence and notes that it is generally accepted by people from all works of life notwithstanding the different religious and traditional beliefs, this is because no reasonably person is expected to stand by and watch his life been snuff out of him and do nothing about it.

This work laments the expectation of objectiveness in the response of a person faced with imminent threat. This paper recommends that cases bothering on the assertion of a right to self defence, be interpreted in light of real human experience. There must be a paradigm shift in the conceptualization of preemptive response to imminent threat in notoriously hostile situations like the farmer-headers cases in Nigeria.

Finally, it is important to state that a person seeking to avail himself of the benefit of the defence of self defence must be without fault and his reaction necessary to preserve his own life because he who comes to equity must do so with clean hands.