Violation of the Rule of Law and Abuse of Public Authority: As Factors Procuring the Breach of the Right to Life

Abstract

This study evaluates how the fundamental right to life is violated by agents of the state, who perpetrate corrupt practices that lead to a violation of the fundamental right to life, specifically in the context of violation for the rule of law and abuse of public authority. Thus, this research conducts an analyses aimed at establishing the fact that – abuse of public authority and the violation of the rule of law, are mutually reinforcing practices/vices that in specific circumstances, can lead to the violation of the right to life. Especially when nefarious and abusive public officials/law enforcement officers act contrary to their constitutionally defined scope of authority, or antithetically to their legitimate functions as agents of the state. In verifying the inviolability of the right to life, references are made to guarantees, inter-alia, under the International Covenant on Civil and Political Rights (ICCPR). References are also made to the role of the Administration of Criminal Justice Act, 2015 (ACJA),[1] as a tool for enhancing accountability, and for discouraging abuse of public authority. Nonetheless, irrespective of legal guarantees the blatant violation of the right to life is still a dark reality, especially is countries dealing with systemic corruption. Thus recommendations are made concerning proactive

[1] The ACJA is a Nigerian Criminal Procedure Law.
Cap C41 LFN 2004

measures including improved surveillance, due-diligence, monitoring and regulatory requirements; and the implementation of anti-corruption and criminal laws proscribing abuse of public authority.

Keywords: life, rights, abuse, law, corruption

1. Introduction

Life is the most fundamental right, which is foundational to human existence, and the exercise of all human rights. Life is the basic human capital, through which all kinds of human endeavor are progressively achieved. Only a living human being can possess and exercise human rights. Thus, the International Covenant on Civil and Political Rights (ICCPR) declares that 'every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.'[2] According to Article 4 of the ICCPR, the right to life is one of the human rights, of which no derogation is permitted, regardless of the exigencies of the situation in times of public emergency.[3] That makes the right to life an inviolable human right. Save in exceptional circumstances, for example as a consequence of the verdict of a court of competent jurisdiction, for countries that have not ratified the Covenant aimed at the abolition of the death penalty,[4] and without prejudice to the right to fair trial.[5] The right to life is also guaranteed by section 33 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and Article 4 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.[6] However, regardless of the laws guaranteeing the right to life, there are countless instances where persons have lost their lives, based on arbitrary acts of abuse of public authority, and blatant violations of the law, as a consequence of institutionalized corrupt

[2] Article 6(1.) of the International Covenant on Civil and Political Rights
Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966
Article 3 of the Universal Declaration of Human Rights
Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948
[3] Article 6(2) of the ICCPR
[4] Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
Adopted and proclaimed by General Assembly resolution 44/128 of 15 December 1989
[5] Article 6(2) of the ICCPR
[6] Chapter A9 (Chapter 10 LFN 1990) (No 2 of 1983) Laws of the Federation of Nigeria 1990

practices. So it is worth considering what legal, administrative, or regulatory measures can be put in place for the protection of the fundamental right to life.

2. **Violation of the Rule of Law as a Sine-qua-non to Abuse of Public Authority**

Although, due to the proliferation of various conceptualizations of the rule of law, the 'rule of law eludes any clear definition', however there are various pointers which create a kaleidoscopic picture that can be applied in identifying its essence, and the features of the rule of law.[7] The rule of law has, inter-alia, been recognized as –

(1.) The principle that legitimizes political authority.[8]

(2.) A universal principle of law, and 'an essential, universal good'.[9]

(3.) 'The protection of individual rights or ideals of democracy, whether it is to be understood in strictly formalistic terms (i.e. abiding by written legal rules and limiting law-making power), or whether it refers to the conditions for the fulfillment of humanity's "legitimate aspirations and dignity."[10]

(4.) The consequence of the exercise of legitimate or symbolic power, as embodied in statutory law.[11]

(5.) 'Rule of law refers to an ideal that ensures fairness, justice, and equality before the law. Rule of law also implies preventing official arbitrariness.'[12]

(6.) A body of rules that are enforced by the institutions of the state.[13]

(7.) Legal principles, which are judicially interpreted, with the aim of actualizing justice.[14]

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[7] A Mora, Rule of Law [2020] eds. Antonio De Lauri, 'Humanitarianism: Keywords' <https://www.jstor.org/stable/10.1163/j.ctv2gjwwnw.90> accessed 16 May 2025 185

[8] In fact, it has become "the preeminent legitimating political ideal in the world today." Ibid

[9] A Mora, Rule of Law [2020] eds. Antonio De Lauri, 'Humanitarianism: Keywords' <https://www.jstor.org/stable/10.1163/j.ctv2gjwwnw.90> accessed 16 May 2025 185

[10] Ibid

[11] L Mara, 'The Modern State and the Primitive Accumulation of Symbolic Power' [2005] Vol. 110 (6) *American Journal of Sociology*1652 186

[12] J Dobbins, SG Jones, K Crane and BC DeGrasse, Rule of Law: the Beginner's Guide to Nation-Building <https://www.jstor.org/stable/10.7249/mg557srf.13> accessed 16 May 2025 73

[13] International Crisis Group, Rule of Law. Chechnya: The Inner Abroad [2015] Crisis Group Europe Report N°236<https://www.jstor.org/stable/resrep31732.9> Accessed on 16th May, 2025 28

(8.) The rule of law is "what the law says and what the people need."[15]

(9.) An institutionalized legal system which creates "a government of laws, not men."[16]

(10.) Rules designed to protect the rights and liberties of the human person.[17]

The rule of law is an order-centric principle. According to the Secretary General of the United Nations, 'the rule of law is like the law if gravity. It is the rule of law that ensures that our world and society remains together and that order prevails over chaos.'[18] Thus, the rule of law connotes inviolable standards, and a doctrinal scope of rigidity, which confines the actions of the agents of the state to defined boundaries of legitimacy, aimed at curtailing and checkmating abuses of authority, and the boundless exercise of executive, judicial, and legislative discretion – in order to avoid tyranny, totalitarianism and destructive acts by public authorities. Therefore, the rule of law is centered on the principles designed to 'unite us around common values and anchors us in the common good.'[19] So what are these principles?

The UN Secretary General explains that 'unlike the law of gravity, the rule of law does not arise spontaneously. It must be nourished by the continuing and concerted efforts of real leaders.'[20] Based on that account, the rule of law is a principle as well as a process that is centered on the reoccurring jurisprudential question of: what is just? And how can justice be achieved? A question that is to be answered on a normative level, as well as on a practical/empirical level suited to the circumstances of each case. That is why, 'the rule of law seeks to describe and stipulate a set of principles of a system that does not yet exist fully in any location but which is sought to be attained.'[21]

To a certain degree, although the rule of law is normatively rigid, the progressive process of its implementation as a vector of positive change and justice for guaranteeing the common good of society, is what makes it empirically progress oriented. So, the rule of law is founded on the:

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[14] 'n 12' 31

[15] 'n 12' 34

[16] J Dobbins, SG Jones, K Crane and BC DeGrasse, Rule of Law: the Beginner's Guide to Nation-Building <https://www.jstor.org/stable/10.7249/mg557srf.13> accessed 16 May 2025 73

[17] Ibid

[18] Secretary-General of the United Nations (UN), UN General Assembly, 67th Session, Agenda Item 83, High-Level Meeting on the Rule of Law at National and International Levels, UN Doc A/67/PV.3 at 2

[19] Secretary-General of the United Nations (UN), UN General Assembly, 67th Session, Agenda Item 83, High-Level Meeting on the Rule of Law at National and International Levels, UN Doc A/67/PV.3 at 2

[20] Ibid

[21] R McCorquodale, 'Defining the International Rule of Law: Defying Gravity' [2016] 65(2) The International and Comparative Law Quarterly 277

(1.) Supremacy of the law over government power;

(2.) The constitutive power of the law, "that is, the way which it generates forms of agency, modes of action, strategies of justification and argument, and normative outcomes";

(3.) Equality before the law; and

(4.) The enforceability/justiciability of the law, before the courts.[22]

On that account it is suggestible that corruption and abuse of public authority is the antithesis of the rule of law – because, while the rule of law is centered on actualizing justice, corruption is inextricably connected to injustice, and the violation of all core principles of the rule of law. Abuse of power or the abuse of public authority, is an intentional act of a public official or agent of the state that violates the rule of law, and is aimed at perpetrating public sector corruption, or acts of breach of public trust.[23] Thus, the abuse of public authority, corrupt practices, and the violation of the rule of law, are mutually reinforcing vices.

Using Nigeria as an example: From Nigeria's independence till date, the pervasiveness of corruption in the country's public sector has had a negative impact on the rule of law. Abuse of public authority has been a problem bedeviling the country since the First Republic, by virtue of corrupt, and abusive acts perpetrated by public officials/officers.[24] Under Abacha's regime, undue damage was done to the rule of law, the regime enacted "Decree No. 12, of 1994, which officially removed the authority of the courts to investigate, let alone challenge, the actions of members of the regime."[25] This, Ake (1995) insists, should ordinarily not happen to a state because when they happen, "the state effectively ceases to exist as a state and compromises its ability to pursue development," as well as the protection of human rights and liberties.[26]

[22] A Dicey, 'An Introduction to Study of the Law of the Constitution' (Macmillan 1885) Pt II
R McCorquodale, 'Defining the International Rule of Law: Defying Gravity' [2016] 65(2) The International and Comparative Law Quarterly 278, 279
[23] SW Cooper, Abuse of Police Powers [1890] 150 (402) *The North American Review* 659
Z Pearson, 'An International Human Rights approach to Corruption' in P. Larmour and N. Wolanin (eds), *Corruption and Anti-Corruption* (ANU Press 2013) 33
[24] DE Agbiboa, 'Between Corruption and Development: The Political Economy of State Robbery in Nigeria' [2012] Vol. 108(3) *Journal of Business Ethics* 331
[25] Ibid
[26] Ibid

3. How Corruption Sabotages the Fiduciary Responsibility of Good Governance, and the State's Duty to Protect Human Rights

According to social contract theorists the functions of government are centered on the protection of rights.[27] Hugo Gortius, St. Augustine, Rene Descartes, among others, have emphasized on the state's duty to uphold natural justice – through "proper ordering" of the society, according to the rule of law 'for common advantage.'[28] On that account 'the authority so conferred upon' by the state 'is granted only to be used for the public good.'[29] Thus, a fiduciary obligation is 'taken as an implicit part of the conferral of political power for the purposes of administrative law,'[30] and 'a statutory power conferred on any person or authority for public purposes is conferred as it were, upon trust and not absolutely.'[31] So, governments are fiduciaries, being 'persons who are obliged to act in the interests of others rather than in their own interest.'[32] But there are countless instances where state actors have failed to uphold public trust, even to the extent of sanctioning acts of violence against innocent citizens.

Max Weber conceptualizes the state as a military, political, and economic accomplishment that claims the monopoly of the legitimate use of physical force within its territory.[33] In the same line of thought Gorski recognizes that states are not only administrative, policing and military organizations, they are also pedagogical, and corrective organizations.[34] However, it is problematic when public authorities manipulate, instrumentalize, or utilize their symbolic power, for the purpose of executing nefarious, or unethical objectives, especially in systemically corrupt

[27] RG David, 'Contributions to the History of the Social Contract Theory' [1891] 6(4) Political Science Quarterly 656
[28] R William, 'Hugo Grotius' [1905] 6(1) *Journal of the Society of Comparative Legislation* 73
RG David, 'Contributions to the History of the Social Contract Theory' [1891] 6(4) *Political Science Quarterly* 676, 680
P Frederick, 'Hobbes and Locke: The Social Contract in English Political Philosophy' [1908] Vol. 9(1) *Journal of the Society of Comparative Legislation* 107
[29] P Frederick, 'Hobbes and Locke: The Social Contract in English Political Philosophy' [1908] Vol. 9(1) *Journal of the Society of Comparative Legislation* 110
[30] R Hughes, 'Corruption' in A. Jowitt and T. N. Cain (eds), *Passage of Change: Law, Society and Governance in the Pacific* (ANU Press 2010) 40
[31] Ibid
[32] Ibid
[33] L Mara, 'The Modern State and the Primitive Accumulation of Symbolic Power' [2005] Vol. 110(6) *American Journal of Sociology* 1651
[34] Ibid

regimes.[35] That is a problematic trend occurring in various parts of the world, which has led to countless human rights violations, inter-alia, through extra-judicial executions that violate the right to life. For instance in *Suleymane v Senegal*,[36] it was reported that 40,000 political murders and systemic acts of torture were committed by the Habre' regime;[37] and in *Al Jilani v Libya*,[38] it was reported that at least 1,000 prisoners were killed in prison by the Libyan Security Services, who never published the list of the victims, in 1996.[39]

4. The System for Record Keeping and Reports, under the Administration of Criminal Justice Act (ACJA) – as a tool for enhancing Accountability, Transparency, and for Discouraging Abuse of Public Authority

The Administration of Criminal Justice Act, 2015 (ACJA) provides for the establishment of a Central Criminal Records Registry, which shall receive and keep information transmitted from the Criminal Records Registry of every state police command, containing all criminal judgments within 30 days of the final verdict.[40] The duty to transmit records to the Central Criminal Records Registry, is vested on the State or Federal Capital Territory (FCT) Police Command.[41] The Inspector-General of Police and the head of every agency authorized to execute arrests, are obliged to make mandatory quarterly reports of arrests to the Attorney General of the State for state offences, and to the Attorney General of the Federation for federal offences.[42] The Act further obliges the Attorney General of the Federation to establish an electronic and manual database of all records of arrests at the Federal and State level.[43] Magistrates, on receipt of

[35] The distinctive feature of systemic corruption is that it is institutionalized and deep-rooted in the administrative system, 'perhaps accepted, but not necessarily approved.'
S Asongu, 'Fighting Corruption in Africa: Do Existing Corruption-Control Levels Matter?' [2013] Vol. 21(1) *International Journal of Development* 39
JM Mbaku, 'International Law and the Fight against Bureaucratic Corruption in Africa' [2016] Vol. 33(3) *Arizona Journal of International and Comparative Law* 665
[36] CAT/C/36/D/181/2001
[37] 'n 35' para 2.1
[38] CCPR/C/111/D/1882/2009
[39] 'n 37' para 2.6
[40] Section 16 of the Administration of Criminal Justice Act, 2015 (ACJA)
[41] Ibid
[42] Section 29 of the ACJA
[43] Ibid

monthly reports from police stations, containing details of arrests – shall forward them to the Criminal Justice Monitoring Committee which shall analyse the reports and advice the Attorney-General of the Federation as to the trends of arrests, bail and related matters.[44]

All criminal courts are obliged to make quarterly returns of the particulars of all cases, including charges, remands and other proceedings commenced and dealt with by the court within the quarter, to the Chief Judge.[45] The Administration of Criminal Justice Monitoring Committee, is also authorized to consider all returns made to the Chief Judge, and the National Human Rights Commission set up under the National Human Rights Commission Act shall have access to the returns.[46]

The Comptroller-General of Prisons is obliged by the ACJA to make returns every 90 days to the Chief Judge of the Federal High Court, Chief Judge of the Federal Capital Territory, the President of the National Industrial Court, the Chief Judge of the State in which the prison is situated and to the Attorney-General of the Federation "of all persons awaiting trial, held in custody in Nigerian prisons for a period beyond 180 days from the date of arraignment."[47] The information contained in the form shall contain:

> (a) the name of the suspect held in custody or Awaiting Trial Persons; (b) passport photograph of the suspect; (c) the date of his arraignment or remand; (d) the date of his admission to custody; (e) the particulars of the offence with which he was charged; (f) the courts before which he was arraigned; (g) name of the prosecuting agency; and (h) any other relevant information.[48] Upon receipt of such return, the recipient shall take such steps as are necessary to address the issues raised in the return in furtherance of the objectives of this Act.[49] Thus, there is a statutory obligation to act.

Duty of Judges and Magistrates to Visit Police Stations and Detention Centers

[44] Section 33 of the ACJA
[45] Section 110 of the ACJA
[46] Ibid
[47] Section 111 of the Administration of Criminal Justice Act, 2015 (ACJA)
[48] Ibid
[49] Ibid

> The ACJA obliges Magistrates to carry out monthly visits to police stations: (1) The Chief Magistrate, or where there is no Chief Magistrate within the police division, any Magistrate designated by the Chief Judge for that purpose, shall, at least every month, conduct an inspection of police stations or other places of detention within his territorial jurisdiction other than the prison.
>
> (2) During a visit, the Magistrate may: (a) call for, and inspect, the record of arrests; (b) direct the arraignment of a suspect; (c) where bail has been refused, grant bail to any suspect where appropriate if the offence for which the suspect is held is within the jurisdiction of the Magistrate.
>
> (3) An officer in charge of a police station or official in charge of an agency authorised to make an arrest shall make available to the visiting Chief Magistrate or designated Magistrate exercising his powers under subsection (1) of this section: (a) the full record of arrest and record of bail; (b) applications and decisions on bail made within the period; and (c) any other facility the Magistrate requires to exercise his powers under that subsection.
>
> (4) With respect to other Federal Government agencies authorised to make an arrests, the High Court having jurisdiction shall visit such detention facilities for the purpose provided in this section.
>
> (5) Where there is default by an officer in charge of a police station or official in-charge of an agency authorised to make arrest to comply with the provisions of subsection (3) of this section, the default shall be treated as a misconduct and shall be dealt with in accordance with the relevant Police Regulation under the Police Act, or pursuant to any other disciplinary procedure prescribed by any provision regulating the conduct of the officer or official of the agency.[50]

Robert notes the fact that lack of transparency and poor accountability are vectors of corruption and acts of abuse of public authority that cause the violation of human rights.[51] Thus, the report and record keeping systems established under the ACJA are key for ensuring transparency, as well as regulatory prudence through the prescription of periodic visitations by Judges and magistrates to police stations and detention facilities. Such measures can possibly aid the release of potential victims of abusive acts of corrupt officers. Proper documentation and transmission of

[50] Section 34 of the Administration of Criminal Justice Act, 2015 (ACJA)
[51] EK Robert, *Controlling Corruption* (1st ed. Berkeley: University of California Press 1988) 75

records will also aid the prevention of enforced disappearances and summary executions of detainees whose details have not been recorded in the official registry, a situation that might embolden officers to act with impunity. However, a major problem is the issue of the weak systemic culture of poor enforcement or lack of implementation, as noted by Ugbe et al –

> It is common knowledge that most times, the problem is not with the law but with the execution of the law. Practice has shown that the Police and some judges are reluctant to execute the Act. If the law is not enforced by the Practitioners its implementation will be a mirage.[52]

5. Measures prescribed by the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (DPJCA) to curb Abuse of Public Authority

In order to prevent abuses of public authority, Article 1 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (DPJCA),[53] recognizes the duty of the legislature to enact laws proscribing criminal abuse of power. Article 2 of the DPJCA extends the scope of victims of abuse of power where appropriate to include 'the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.'[54] The Declaration emphasizes on the respect for human dignity, access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harms suffered;[55] the strengthening of judicial and administrative mechanisms for 'expeditious, fair, inexpensive and accessible' remedy, through formal and informal procedures designed to aid the victims of abuse of authority;[56] that 'victims should be informed of their rights in seeking redress through such mechanisms.'[57] The Declaration further states that –

[52] RO Ugbe, AA Agi and JB Ugbe, A Critique of the Nigerian Administration of Criminal Justice Act 2015 and Challenges in the Implementation of the Act [2019] <https://www.researchgate.net/publication/341313899> Accessed on 17th May, 2025 80
[53] Adopted by General Assembly resolution 40/34 of 29 November 1985
[54] Article 2 of the DPJCA
[55] Article 4 'n 53'
[56] Article 5 'n 53'
[57] Article 5 'n 53'

> "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.[58] States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts.[59]

6. **Cases involving the violation of the right to life**

The case of *Basilio Laureano Atachahua v Peru*[60] involved the enforced disappearance of a lady who was last seen in 1992. 'The Committee[61] recalls in particular that the victim had previously been arrested and detained by the Peruvian military' and 'that the life of Ms. Laureano and of the members of her family had previously been threatened by a captain of the military base at Amber, who in fact confirmed to Ms. Laureano's grandmother that Ana R. Celis Laureano had already been killed.'[62] The downhill trajectory of the victim's experience began in March 1992, when she was abducted by unknown armed men, presumably guerrillas of the Shining Path movement (Sendiero Luminoso), who threatened to kill her if she refused to join them. Thus, she was involved with the guerrillas[63] until she eventually escaped.[64] Although she was not a voluntary participant in the activities of the militia – on 23 June 1992, Ana R. Celis Laureano was abducted, and detained by the military on the ground of suspected collaboration with the Shining Path Movement. Consequently, she was held incommunicado at the military base in Amber.

[58] Article 18 'n 53'
[59] Article 21 'n 53'
[60] CCPR/C/56/D/540/1993
[61] Human Rights Committee
[62] *Basilio Laureano Atachahua v Peru* CCPR/C/56/D/540/1993 para 8.4
[63] Shining Path movement (Sendiero Luminoso)
[64] 'n 61' para 2.1

On 5 August, a judge in the civil court of Huacho ordered her release on the ground that she was a minor.[65] Irrespective of the subsisting court order, on 13 August 1992, for the second time, at approximately 1 a.m., Ms. Laureano was abducted, allegedly by agents of the state.

> Two of the kidnappers entered the building via the roof, while the others entered through the front door. The men were masked, but one of them wore a military uniform, and the make of the van into which his daughter was pulled, indicated that the kidnappers belonged to the military and/or special police forces.[66]

All attempts to access her, inter-alia through, habeas corpus, inquires through a local human rights group to the military and police authorities, petitioning the National Minister of Defence in 1992, and the registration of the case before the United Nations Working Group on Enforced Involuntary Disappearances, in 1992, were all inconclusive.[67] Judging from the facts of the case – the Human Rights Committee, acting under the Optional Protocol to the International Covenant on Civil and Political Rights, inter-alia, found the violation of articles 6 of the Covenant (the right to life).[68] As alleged in this case, enforced disappearances, which lead to extra-judicial executions are nefarious practices that violate the fundamental right to life.

In the case of *Hugo Gilmet Dermit v Uruguay*,[69] Hugo Dermit who appeared to be a political prisoner died in detention in Uruguay between 24 and 28 December 1980. He was arrested in 1972, tried by the military court, and given an eight year sentence, which lasted till July 1980. Nonetheless, after the expiration of the sentence in 1980, he was not released – 'Instead, he was informed that he would be released only if he left the country, a condition which, according to the author, was not mentioned in the judgment, nor was it based on any rule of law.' However, after he notified the authorities of his intention to migrate, owing to an entry visa which he obtained from the Swedish Government – in September 1980, Hugo Dermit was transferred from

[65] 'n 61' para 2.3
[66] 'n 61' para 2.5
[67] 'n 61' paras 2.5, 2.6, 2.8, and 2.13
[68] 'n 61' para 9
[69] Communication No. 84/1981

the Libertad prison department of San Jose to the barracks of the Fourth Mechanized Cavalry Regiment situated in Montevideo.[70]

Surprisingly, on 9 December 1980, the police authorities made it known that he would not be granted permission to leave the country. In addition to the fact that his request to migrate to Sweden was declined by the state; his location was unknown to his relatives until 28 December 1980, when they identified his body. Thus, the demise of Hugo Dermit was confirmed by a death certificate, which reported the cause of death as "acute haemorrhage resulting from a cut of the carotid artery." However, it is alleged that "Hugo Dermit died as a consequence of the torture."[71]

> Consequently, the Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights is of the view that the communication discloses violations of the Covenant, in particular: (a) With respect to Hugo Haroldo Dermit Barbato: of article 6, because the Uruguayan authorities failed to take appropriate measures to protect his life while he was in custody.[72]
>
> The Committee, accordingly, is of the view that the State party is under an obligation to take effective steps (a) to establish the facts of Hugo Detmit's death, to bring to justice any persons found to be responsible for his death and to pay appropriate compensation to his family.[73]

Kanta Baboeram-Adhin et. al v Suriname[74], involved the arrest of a number of persons including John Baboeram, whose corpse along with 14 other persons was identified on 10 December 1982, as described in the "Report of the Dutch Lawyers Committee for Human Rights."[75] The corpse of John Khemraadi Baboeram, a Surinamese lawyer who was allegedly arrested by Surinamese military authorities on 8 December 1982, was delivered to the mortuary on 9 December 1982, showing signs of severe maltreatment and numerous bullet wounds. The persons arrested and allegedly killed were four journalists, four lawyers, amongst whom was the Dean of the Bar

[70] *Hugo Gilmet Dermit v Uruguay* Communication No. 84/1981 para 1.4
[71] 'n 69' para 1.4
[72] 'n 69' para 10
[73] 'n 69' para 11
[74] Communications Nos. 146/1983 and 148 to 154/1983
[75] *Kanta Baboeram-Adhin et. al v Suriname* Communications Nos. 146/1983 and 148 to 154/1983 para 1.2

Association, two professors, two businessmen, two army officers and one trade union leader. The executions are said to have taken place at Fort Zeelandia.[76] Neither autopsies nor official investigations of the killings have taken place.[77]

> "It became obvious from different sources that the highest military authority […] was involved in the killing", because the official judicial investigation required in such a case of violent death had not taken place, and "because of the atmosphere of fear one would find no lawyer prepared to [plead] such a case, considering the fact that three lawyers have been killed, apparently because of their concern with human rights and democratic principles".[78] "The highest military and civilian authorities were involved in planning and carrying out the murders."[79]

In the case of *Herrara Rubio v Colombia*[80], the author submitted the communication on his own behalf and in respect of his deceased parents, Jose Joaqin Herrera and Emma Rubio de Herrera.

> On 27 March 1981, at 3 a.m., a group of individuals in military uniform identified as members of the "counter guerrilla", arrived at the home of the author's parents and ordered his father to follow them. When his mother objected, she was also obliged to follow them. The author's brothers reported the disappearance of their parents immediately afterwards to the Tribunal of Doncello. One week later they were called by the authorities of Doncello to identify the bodies of their parents; their father's body was decapitated and his hands tied with a rope.[81]
>
> With regard to the question of exhaustion of domestic remedies, the author states that from prison he wrote to the President of Colombia, to the Office of the Attorney-General and to the responsible military authorities, but never received a reply. He further states that the copies which he had kept of these letters were removed from his cell by the prison authorities during a search. He adds that all incidents complained of occurred in a region under military control where violations of the rights of the civilian population have allegedly become general practice.[82]

[76] 'n 74' para 3.1
[77] 'n 74' para 6.3
[78] 'n 74' para 2.2
[79] 'n 74' para 6.6
[80] Communication No. 161/1983
[81] *Herrara Rubio v Colombia* Communication No. 161/1983 para 1.5
[82] *Herrara Rubio v Colombia* Communication No. 161/1983 para 1.6

Thus, the State party was held liable for failing to take appropriate measures to prevent the disappearance and subsequent killings of Jose Herrera and Emma Rubio de Herrera.[83] On the Constitutional guarantee of right to life, in the case of *Ndubuisi v. State*,[84] it was held that:

> By virtue of section 33 of the Constitution of the Federal Republic of Nigeria, 1999, 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. (p.35, paras. E-F; p.37)

In the case of *Mrs. G. T. v Australia*,[85] the author claimed that her husband's deportation to Malaysia would violate his right of life. He was convicted in Australia for importing around 240 grams of heroin from Malaysia into Australia in 1992, and was sentenced to six years imprisonment. While in custody, on 15 June 1993, he made an application for refugee status, which was rejected on 10 August 1993. A subsequent application for review was similarly refused by the Refugee Tribunal on 6 July 1994. On 25 October 1995, while on parole, he applied for a protection visa, under section 417 of the Migration Act, which was also refused. However, the contentious issue, is the question – if extradited to Malaysia, will he be charged there again under the Dangerous Drugs Act? Section 39(b) of which provides for mandatory death penalty for trafficking drugs.[86] Thus, it was claimed that his 'deportation to Malaysia, where there is a real chance that he will face the death penalty, will violate Australia's duty to protect his life. In the context, the author notes that Australia itself has abolished the death penalty.'[87] Nonetheless, the Committee concluded that:

> The State party itself has made investigations into the possibility of the imposition of the death sentence for T. and has been informed that in similar cases no prosecution has occurred. In the circumstances, it cannot be concluded that it is a foreseeable and necessary consequence of T's deportation that he will be tried, convicted and sentenced to death. The Committee therefore concludes that

[83] 'n 81' para 11
[84] (2018) 16 NWLR (Pt. 1644) 24
[85] CCPR/61/D/706/1996
[86] *Mrs. G. T. v Australia* CCPR/61/D/706/1996 para 2.3
[87] *Mrs. G. T. v Australia* CCPR/61/D/706/1996 para 3.1

> Australia would not violate T's rights under article 6 of the Covenant and article 1 of the Second Protocol if the decision to deport him were to be implemented.[88]

Therefore if there was a genuine or concrete chance of execution of the death penalty, in-line with the facts of the case, the deportation would have been deemed a violation of the State's obligation to protect the life of T., in-line with article 6 of the ICCPR, and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

Making references to other violations of the right to life, for example in Sierra Leone, twelve (12) citizens were executed by firing squad, as a consequence of the states blatant refusal to respect an order for stay of execution, during the pendency of a joint communication procedure, appealing against the death sentences;[89] there is also the case of execution of detainees by security forces in Libya;[90] and extra-judicial/summary executions.[91] The violation of the right to life is also a major vice that plagues Nigeria, using the prison system for instance it is reported that:

> From a perspective that questions these foundational issues of violence as intrinsic to the functions of the penal system, the struggles of Nigerian prisoners can be understood more accurately. In almost all Nigerian prisons death in custody is common. While there are no official statistics available, I witnessed many convicted prisoners assigned the harrowing task of carrying out for burial awaiting-trial prisoners corpses (sometimes decayed) on rusted stretchers,

[88] 'n 86' 8.4 and 8.5
[89] *Mr. Anthony v. Sierra Leone* CCPR/C/72/D/839/1998 paras 2.3 & 2.4
[90] *Khaled II Khwildy v Libya* CCCPR/C/106/D/1804/2008 para 2.3
Khaled v Tunisia CAT/C/23/D/60/1996
[91] *Ibrahim Aboubakr v Libya* CCPR/C/108/D/1832/2008 para 2.5
Nouar Abdelmalek v Algeria CAT/C/52/D/402/2009 para 2.1
Djamila Bendib v Algeria CAT/C/51/D/376/2009 paras 2.3 & 2.4
Fatiha v Algeria CAT/C/64/D/341/2008 para 2.1
Mohamed Mehalli v Algeria CCPR/C/110/D/1900/2009 para 2.3
Bousseloub v Algeria CCPR/C/111/D/1974/2010 para 2.1 & 2.3
Khalifa Fedsi v Algeria CCPR/C/111/D/1964/2010 para 2.2
Aicha Dehimi v Algeria CCPR/C/112/D/2086/2011 para 2.2

wrapped in grey blankets. Many of these casualties were young men. All the casualties I witnessed had never been convicted.[92]

7. Conclusion and Recommendations

Protection of life and property is the primary purpose of governance. However, public officers become perverted/corrupted, when their actions are antithetical to their constitutionally mandated functions. Thus, leading to the violation of the rule of law, through acts of abuse of public authority, and breaches of public trust – which can lead to a wide range of human right infringements including the violation of the right to life, which occurs in the most serious/grievously damaging instances of public sector corruption. Nonetheless, the state depends on the law and its administrative system to construct efficacious checks and balance, as well as proactive and corrective measure to checkmate the acts of corrupt and nefarious persons, who act contrary to public interest. That is the basis of the state's responsibility to protect. Hence, such legal measures will be substantive, as well as procedural. Consequently, the state is obliged to enact anti-corruption as well as criminal legislation that proscribes and vilifies all acts that can lead to the violation of the right to life. The state is also obliged to formulate due process requirements to regulate the discretion of law enforcement officers, in order to curtail acts of abuse of office. The state can also ensure due diligence by creating ad hoc bodies or monitoring agencies, which will be designated to monitor or accompany law enforcement officers in the course of arrests and other interactions with citizens and suspects in order to ensure that authority is not abused. A modern system of surveillance and wide installation of security cameras in as much areas as possible, is also advisable as a means of monitoring the affairs of officers, in order to identify and possibly punish corrupt and abusive public officers. Nonetheless, the most important value is the ethicality of government, because corrupt public officials are more susceptible to nefarious practices that can possibly violate the fundamental right to life.

[92] V Saleh-Hanna, *Colonial Systems of Control: Criminal Justice in Nigeria. University of Ottawa Press* [2008] <https://www.jstor.org/stable/j.ctt1ckph37.5> accessed 16 May 2025 5