

PETITION ON THE EXTRA JUDICIAL KILLING OF ANDREW EBAK-ABASI MBANG SUBMITTED BY THE PUBLIC INTEREST LAWYERS LEAGUE (PILL) ON BEHALF OF IRENE ANDREW MBANG AND MRS. PATIENCE EBAK-ABASI MBANG TO THE RIVERS STATE JUDICIAL PANEL OF INQUIRY ON THE ACTIVITIES OF THE SPECIAL ANTI-ROBBERY SQUAD (SARS), RIVERS STATE.

1. NAME OF THE ATTORNEYS FILING THE PETITION:

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2. NAMES OF THE VICTIM OF HUMAN RIGHTS VIOLATION (EXTRA JUDICIAL KILLING), PETITIONERS AND THE RELATIONSHIP:

i) Name of the victim:

Andrew Ebak-Abasi Mbang

Date of birth: 27 April 1987

Age (At the time of arrest): 20 years

ii) Names of the Petitioners:

- a. Irene Andrew Mbang (Sister)
- b. Mrs. Patience Ebak-Abasi Mbang (Mother)

Address: c/o The Attorneys

Email: c/o The Attorneys

Telephone: c/o The Attorneys

3. STATEMENT OF FACTS:

- a. On the 20th of September 2007, 20 year-old Andrew Ebak-Abasi Mbang (hereinafter referred to as Andrew), the first child in a family of two boys and one girl was watching a football match with two of his friends, Kingsley and Obele at his apartment in Eneka, Obio-Akpor in Rivers State.

- b. While there, they were paid an august visit by officers of the Special Anti-Robbery Squad (SARS) who proceeded to arrest all three without any explanations and bundle them away to the Old GRA Police Station on Olusegun Obasanjo Way, Woji Port Harcourt where they were detained.
- c. Kingsley's sister, Ada, went to the police station to give food to the three boys.
- d. The **SECOND PETITIONER** (hereinafter referred to as the mother) went to the said Old GRA Police Station to see her son and find out why he had been arrested and detained but she was denied access to see Andrew by the officers on duty and was asked to return the next day.
- e. When she arrived the next day between the hours of 5 and 6am, she was told that Andrew, Obele, and Kingsley had been transferred to the state prison and had been charged to court already.
- f. When Andrew's mother got to the court to which she was directed, she was told the trio had been transferred to the state prison. (At some point in the back and forth, they were said to have been transferred to State CID). She was still not told what offence Andrew and his friends committed.
- g. She went back to the police station, and the officers who earlier told her the boys had been taken to court, denied ever knowing or having anything to do with my Andrew and/or his friends. All of them, including one Supol Bassey, one of the officers involved

with the case denied any involvement or knowledge. All entries had been deleted and there was nothing to show that Andrew had ever been arrested. No record, just like he was never there.

- h. In 2009, Supol Bassey sent Andrew's mother a text message which read: **"Your son is alive. Someone paid me money to do what I did. Your tears are (sic) disturbing me. Your son is alive, please forgive me."**
- i. Following a suggestion from her children, Andrew's mother forwarded the text messages to her sisters.
- j. A few months later, she lost her phone and since then, her sisters also changed phones, inadvertently leading to the loss of the text message.
- k. When Supol Bassey was transferred to Ikot Ekpene, Akwa-ibom State around 2011, Andrew's mum visited him and begged him but he denied having anything to do with the case and asked her to leave his office. In 2012, she went back with a family friend who was a retired police officer but Supol Bassey still denied.
- l. Andrew's mum has been to Port Harcourt Prison and there was no sign of Andrew, Obele and Kingsley.
- m. Andrew has not been seen or heard from since 20 September 2007.

4. LEGAL ISSUES ARISING FROM THE STATEMENT OF FACTS:

Considering the above distressing facts, we respectfully draw the attention of the Judicial Panel of Inquiry to the following legal issues that form the bedrock of this petition, to wit:

4.1 ISSUE 1: THE FUNDAMENTAL RIGHT OF PRESUMPTION OF INNOCENCE ACCRUED OF EVERY SUSPECT UPON ARREST IN NIGERIA

i. The doctrine of the presumption of innocence is one of the Constitutional safeguards afforded to a suspect upon arrest in Nigeria, and is provided for in Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999, which places a very heavy burden on the prosecution not only to prove the guilt of the accused but to prove it beyond reasonable doubt. It follows, therefore, that a person accused of a crime is presumed innocent until the contrary is proven in a Court of law of competent jurisdiction. This has been the time hallowed principle of law given judicial recognition in a plethora of cases, including the case of *CHINEDU EZE v. THE STATE (2015) AELR 6294*.

Further, by our criminal justice system, a suspect is always presumed innocent until proven guilty. This principle of presumption of innocence has a constitutional blessing by virtue of Section 36(5) of the 1999 Constitution (as amended) which provides thus:

"Every person charged with a criminal offence shall be presumed to be innocent until he is proved guilty."

ii. Consequently, assuming but not conceding that there was any suspicion of commission of offence on Andrew's part, he was a mere suspect who ought to have been availed his constitutional right to be presumed innocent.

iii. Andrew was not tried before any known Court of law in Nigeria. The facts supplied in this petition show that he was summarily executed contrary to established statutory provisions of the law as provided in section 36(5) of the 1999 Constitution as enunciated by the Court in *ODOGWU V. THE STATE (2013) 14 NWLR (PT. 1373) 74 AT 127 (SC)*.

iv. Suspicion, no matter how strong, or even evidence of opportunity to commit the offence charged, cannot replace the legal proof of guilt. This is the position of the Court as decided in *ONAH V. STATE (1985) 3 NWLR (PT.12)*.

Andrew was taken away and killed on grounds of mere suspicion, which was never laid before the Court of law.

4.2 ISSUE 2: FUNDAMENTAL RIGHT TO LIFE

i. The Constitutional provision as regards right to life is Section 33(1)-2(a), (b) to (c) of the Constitution of the Federal Republic of Nigeria, 1999 as amended and it reads as follows:

"33 (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 are 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
- (c) for the purpose of suppressing a riot, insurrection or mutiny."

ii. Flowing from the facts supplied in this petition, Andrew was denied his fundamental right to life when he was summarily executed, in contravention of a written law - section 33(1) the 1999 Constitution: *ZAMAN V. STATE (2015) AELR 6350*.

Accordingly, the manner in which Andrew was killed by Bassey was unlawful.

iii. The right to life has also found expressions in all the major human rights instruments, including the Universal Declaration of Human Rights (UDHR), The International Covenant on Civil and Political Rights (ICPR), the European and American Conventions and the African Charter on Human and People's Rights, which Nigeria is a signatory to. Specifically, Article 4 of the African Charter on Human and Peoples Rights states stipulates:

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

v. The life of every human being is sacred and the integrity of every individual should be protected. Under no circumstances should an individual be arbitrarily deprived of his life.

Further, extrajudicial killing of a suspect is unlawful and should not be condoned no matter the circumstance, or the individual involved. Individuals who commit such atrocities should be brought to face the wrath of the law. This is why the petitioners are praying that Supol Bassey and all others involved in the murder of Andrew be prosecuted for same.

4.3 ISSUE 3: POWER AND DUTY OF THE NIGERIA POLICE VIS-A-VIS SPECIAL ANTI ROBBERY SQUAD

i. The statutory provision governing the power of the Nigeria police is Section 214 of the 1999 Constitution of the Federal, Republic of Nigeria (as amended) and it reads:

(1) There shall be a police force for Nigeria, which shall be known as the Nigeria Police Force, and subject to the provisions of this section no other Police Force shall be established for the Federation or any part thereof;

(2) Subject to the provisions of the Constitution 1999

(a) The Nigeria Police Force shall be organised and administered in accordance with such provisions as may be prescribed by an act of the National Assembly.

(b) The members of the Nigeria Police shall have such powers and duties as may be conferred upon them by law;

(c) The National Assembly may make provision for branches of the Nigeria Police Force forming part of the Armed Forces of the Federation or for the protection of harbours, waterways, railways and air fields.

ii. The Constitutional and statutory duty of the Nigeria Police to investigate criminal allegations made against a citizen. Section 4 of the Police Act, Cap 359, Laws of the Federation 1990 states the duties of the Police to include, amongst others to wit:

- the prevention and detection of crime;
- the apprehension of offenders;
- the preservation of law and order;
- the protection of life and property; and
- the due enforcement of all laws and regulations with which they are charged.

iii. The duty of the Police which calls for consideration here is the duty to detect crime which involves investigation of allegations of commission of crime. The criminal investigative powers of the Police came under scrutiny in *FAWEHINMI V. I.G.P. & 2 ORS (2002) 7 NWLR (PT. 767) PAGE 606 AT 670-671 (F-A)* where the Supreme Court summed up the investigative powers of the Police as follows:

"The appellant is no doubt right in his argument that by virtue of the fact that section 214 (1) of the 1999 Constitution recognizes one Police Force for Nigeria and the said police are given a duty under section 4 of the Police Act (now in Cap. 359, Laws of the Federation of Nigeria,

1990) to prevent and detect crime, apprehend offenders, preserve law and order, protect life and property and enforce all laws and regulations with which they are directly charged, and that it is an important statutory duty which they owe to the generality of Nigerians and all other persons lawfully living within Nigeria. It follows that in their duty to detect crime, allegations of the crime committed by any person should normally be investigated by the Police."

iv. It is also the position of the law that once a criminal allegation is made against a citizen, the Police have a constitutional and a statutory duty to investigate the allegations. This has been recognised over and over again in our Courts in a plethora of cases, including the case of *AGBI VS OGBEH (2005) 8 NWLR (PT.926) 40*, *CHRISTLIEB PLC VS MAJEKODUNMI (2008) 16 NWLR (PT.1113) 324* and *ONAH VS OKENWA (2010) 7 NWLR (PT.1194) 512*.

v. May we respectfully draw your attention to the fact that Supol Bassey, or his colleagues, did not comply with this laid down statutory creed that guides the modus operandi of his job - at the time he was a Superintendent of Police at the Old GRA Police Station in Rivers State. He did not only arrest Andrew, but also killed or ordered the killing of the suspect (sic).

vi. The Nigeria Police Act prescribes that, in exercise of his powers, every police officer shall be personally liable for any misuse of his powers, or any act done in excess of his authority. The Act also provides that "every police officer is required to use his best endeavour to uphold the good name of the force, and to further good relations with the public.

vii. Consequently, the Act prescribes that a police officer shall "be determined and incorruptible in the exercise of his police duties" and shall "have a strict regard to the correctness of his

general behaviour. Furthermore, the Act requires Nigeria police officers to develop the following attributes:

- (a) Efficiency and thoroughness through meticulous attention to details in the performance of his duties;
- (b) Courtesy, forbearance and helpfulness in his dealings with members of the public;
- (c) Tact, patience and tolerance, and the control of his temper in trying situations;
- (d) Integrity in refusing to allow religious, racial, political or personal feelings or other considerations to influence him in the exercise of his duties;
- (e) Impartiality, the avoidance of feelings of vindictiveness towards offenders;
- (f) Strict truthfulness in his handling of investigations and in the giving of evidence.

viii. Sadly, from the facts supplied in this petition, Supol Bassey's conduct at the time, with respect to the unlawful killing of Andrew, is not in accord with the aforesaid Nigeria Police Act. From the facts supplied in this petition, Supol Bassey's conduct has further bastardised the image of the Nigeria police in the eyes of the Nigerian and global community, as several human rights, notably Amnesty International, have consistently highlighted, and brings to it only shame and disrepute.

4.4 GROSS DEPRIVATION OF THE CONSTITUTIONAL RIGHTS ACCRUED TO A SUSPECT IN NIGERIA

i. In chapter 4 of the 1999 Constitutions, and under the criminal procedure statutes, the following fundamental rights of a suspect are guaranteed to wit:

a. Right to life, human dignity (freedom from inhuman and degrading treatment, torture) personal liberty, and privacy;

b. Right to be presumed innocent until proven guilty;

c. Right to remain silent during criminal investigation and trial processes;

d. Right to notice of charges within a reasonable period;

e. Right to be arraigned before a court or tribunal, and to a judicial proceeding in language(s) understood by the suspect (including interpretation of proceeding in language understood by suspect);

f. Right to be arraigned before a court within a reasonable time;

g. Right to be represented by a counsel of one's own choice provided one is able to pay for the services (and to state legal aid for indigent persons in cases of capital offences)

h. Right to bail.

Consequent upon the facts supplied in this petition, it can be seen that Chijioke was denied all the above Constitutional rights, even though he was just a mere suspect.

5. THE SPECIFIC HUMAN RIGHTS VIOLATED:

a. The Right to Life

(Protected under Section 33 (1) of the Constitution of the Federal Republic of Nigeria 1999 (with alterations) and Article 4, African Charter on Human And Peoples Rights, Laws of the Federation of Nigeria, 2004);

b. The Right to Presumption of Innocence

(Protected by Section 36(5) of the Constitution 1999 and Article 7(1) of the African Charter on Human and Peoples Rights, Laws of the Federation of Nigeria, 2004);

c. Cumulatively, the following rights of Andrew Ebak-Abasi Mbang protected under Section 35 of the Constitution of the Federal Republic of Nigeria 1999 were also violated:

a. Right to dignity of human person, including freedom from inhuman and degrading treatment, torture - Section 34;

b. Right to remain silent during criminal investigation and trial processes- Section 35(2);

c. Right to notice of charges within a reasonable period - Section 35(3);

d. Right to be arraigned before a court or tribunal, and to a judicial proceeding in language(s) understood by the suspect (including interpretation of proceeding in language understood by suspect)- Section 35 (3) & 4);

e. Right to be arraigned before a court within a reasonable time- Section 35(4)

f. Right to be represented by a counsel of one's own choice provided one is able to pay for the services (and to state legal aid for indigent persons in cases of capital offences) - Section 35(2)

g. Right to bail - Section 35(4)

6. EVIDENCE:

- a. Photocopies of interviews granted by the *FIRST PETITIONER* to local and international media.

7. WITNESSES:

- a. Irene Andrew Mbang
- b. Patience Ebak-Abasi Mbang

Address, email and telephone number: c/o The Attorneys

8. NAMES OF POLICE OFFICERS RESPONSIBLE FOR THE EXTRA JUDICIAL KILLING OF CHIJOKE JOHN ILOANYA:

- a. Supol Bassey

Address:

c/o The Commissioner of Police,

State Police Command headquarters,

Portharcourt, Rivers State.

9. REMEDIES:

- a. The sum of One Hundred Million Naira (N100,000,000.00) being compensation for the unlawful arrest and detention and subsequent extrajudicial and unlawful killing of Andrew Ebak-Abasi Mbang, pursuant to Section 36 (5) of the Constitution of the Federal Republic of Nigeria 1999;
- b. A written public apology from the Nigeria Police Force for the unlawful arrest and detention and subsequent extrajudicial and unlawful killing of of Andrew Ebak-Abasi Mbang;
- c. The Petitioners demand the prosecution of Supol Bassey for the extrajudicial and unlawful killing of Andrew Ebak-Abasi Mbang.

Dated this 28th day of October, 2020.

This Petition was filed by **ABDUL MAHMUD ESQ**, of the Public Interest Lawyers League (PILL), Attorney to the Petitioners, Irene Andrew Mbang and Patience Ebak-Abasi Mbang, and whose address is at 42 Tunis Street, off Bissau Street, Wuse Zone 6, Abuja; Email: interestpublic911@gmail.com; Telephone: 08162491840,

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